

DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

PUBLIC REPORT OF REVIEW OF  
U.S. SUBMISSION 2011-03 (DOMINICAN REPUBLIC)



OFFICE OF TRADE AND LABOR AFFAIRS  
BUREAU OF INTERNATIONAL LABOR AFFAIRS  
U.S. DEPARTMENT OF LABOR

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# **PUBLIC REPORT OF REVIEW OF U. S. SUBMISSION 2011-03 (DOMINICAN REPUBLIC)**

## **Executive Summary**

This report responds to U.S. Submission 2011-03 (Dominican Republic), filed by Father Christopher Hartley on December 22, 2011, with the Office of Trade and Labor Affairs (OTLA) of the U.S. Department of Labor's Bureau of International Labor Affairs. The submission alleges violations of the Labor Chapter of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), which has been in force between the United States and the Dominican Republic since March 2007.

Although the Dominican Republic in general has a strong legal framework for protecting internationally recognized labor rights, allegations of labor abuses in the Dominican sugar sector have been longstanding subjects of international scrutiny. Reports on working conditions in this sector have repeatedly highlighted concerns. The Government of the Dominican Republic has conducted preventive labor inspections across the country during the period under review. However, the OTLA review has identified significant concerns about procedural and methodological shortcomings of that inspection process in the sugar sector that undermine the government's capacity to effectively identify labor violations. The United States believes that implementation by the Government of the Dominican Republic of the recommendations in this report would help address such concerns and would improve the protection and promotion of worker rights in the sugar sector.

## **Purpose of the Report**

Under Article 16.2.1 of the CAFTA-DR, the Government of the Dominican Republic is obligated not to “fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties.”<sup>1</sup>

On December 22, 2011, the OTLA received a public submission under Chapter 16 (the Labor Chapter) of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) from Father Christopher Hartley.<sup>2</sup> On February 22, 2012, the OTLA accepted for review U.S. Submission 2011-03 (Dominican Republic), stating that it met the criteria for acceptance for review, and published its decision to accept in a *Federal Register* notice on March 15, 2012.<sup>3</sup>

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<sup>1</sup> The Dominican Republic-Central America-United States Free Trade Agreement [hereinafter CAFTA-DR], art. 16.2.1. For the full text of the agreement, see <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text>.

<sup>2</sup> U.S. Submission 2011-03 (Dominican Republic), *Formal Public Submission*, December 22, 2011, available from <http://www.dol.gov/ilab/programs/otla/DRSubmission2011.pdf> [hereinafter U.S. Submission 2011-03 (Dominican Republic)].

<sup>3</sup> 77 Fed. Reg. 15397 (March 15, 2012), available from <http://www.dol.gov/ilab/programs/otla/20120315FRN%20DR.pdf>.

During the course of its review, the OTLA examined extensive documentation provided by the Government of the Dominican Republic and the submitter. The OTLA also undertook two missions to the Dominican Republic to interview relevant stakeholders and to gather additional information on the issues raised in the submission. From April 22-30, and July 22-26, 2012, OTLA officials, joined by other officials from the U.S. Department of Labor and the U.S. Department of State, met with officials from the Dominican Ministry of Foreign Affairs, the Dominican Ministry of Labor, and other organizations and individuals in the Dominican Republic to gather information relevant to the submission. As part of the review, OTLA officials conducted detailed interviews with 71 workers in the Dominican sugar sector.<sup>4</sup> The interviews were conducted in the presence of only OTLA officials and Spanish-Creole interpreters. The OTLA spoke with workers employed by each of the three major sugar companies in the Dominican Republic.<sup>5</sup> The OTLA also met with executives from these companies and carefully reviewed information that they provided.<sup>6</sup>

In addition, on June 19, 2012, the OTLA issued a *Federal Register* notice soliciting comments and specific information from the public related to the submission.<sup>7</sup> Subsequently, the OTLA carefully reviewed all comments received. Throughout the process, the OTLA consulted with the U.S. Department of State and the Office of the U.S. Trade Representative. This report presents the OTLA's findings and recommendations based on the information obtained in accordance with the OTLA's Procedural Guidelines.<sup>8</sup>

### **Summary of U.S. Submission 2011-03 (Dominican Republic)**

U.S. Submission 2011-03 (Dominican Republic) alleges that the Government of the Dominican Republic failed “to enforce labor laws, as required under Chapter 16 of the CAFTA-DR, as these relate to the Dominican sugar industry.”<sup>9</sup> The submission asserts that labor abuses are occurring on Dominican sugar plantations, including the following: (1) human trafficking and/or forced labor; (2) child labor; (3) deplorable and unsanitary living conditions; (4) denial of medical, pension, and other benefits due; (5) refusal to

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<sup>4</sup> The OTLA interviews with workers from three locations in the sugarcane industry of the Dominican Republic, San Pedro de Macorís, Barahona, and La Romana, Dominican Republic, April & July 2012 [hereinafter The OTLA interviews with workers, April & July 2012].

<sup>5</sup> For the 2010-2011 harvest, the three largest sugar producing companies collectively produced 98.13 percent of the sugar in the Dominican Republic (72.68 percent, 12.75 percent, and 12.70 percent). Government of the Dominican Republic, Dominican Sugar Institute (*INAZUCAR*), Preliminary Report on the 2010-2011 Sugar Harvest (*Informe Preliminar Sobre la Zafra Azucarera 2010/11*), available from [http://www.inazucar.gov.do/inf\\_preliminar\\_zafra2010-2011.pdf](http://www.inazucar.gov.do/inf_preliminar_zafra2010-2011.pdf) (last visited September 4, 2013), p. 4.

<sup>6</sup> Meetings between the OTLA and executives of the three major sugar companies, Santo Domingo (April 23-24, 2012), San Pedro de Macorís (July 23, 2012), and Barahona (July 24, 2012), Dominican Republic.

<sup>7</sup> 77 Fed. Reg. 36578 (June 19, 2012), available from <http://www.dol.gov/ilab/programs/otla/20120619.pdf>.

<sup>8</sup> 71 Fed. Reg. 76691 (Dec. 21, 2006), available from <http://www.dol.gov/ilab/programs/otla/2006021837.pdf>.

<sup>9</sup> U.S. Submission 2011-03 (Dominican Republic).

inform and publish the current rate and terms of pay; (6) hazardous working conditions; (7) refusal to issue written work contracts; (8) manipulation in the weighing of sugarcane; and (9) retaliatory firing of workers for affiliation with or attempts to organize labor groups or unions and/or for their participation in legal proceedings against employers.<sup>10</sup> The submission claims that these labor abuses demonstrate that the government has failed to effectively enforce labor laws as defined in the CAFTA-DR with respect to: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>11</sup>

## Findings

The OTLA conducted a thorough and detailed review of all information obtained related to allegations of violations of the labor rights covered by Article 16.8 of the CAFTA-DR in the sugar sector. The OTLA found evidence of apparent and potential violations of labor law in that sector with respect to: (1) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; (2) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (3) a prohibition on the use of any form of forced or compulsory labor. The OTLA also noted concerns in the sugar sector with respect to Dominican labor law on freedom of association, the right to organize, and collective bargaining. The OTLA's review also raised significant concerns about procedural and methodological shortcomings in the inspection process, including failure to follow Dominican guidelines for such inspections, that undermine the government's capacity to effectively identify labor violations.

Within the Dominican Republic's legal and institutional framework, the Ministry of Labor's inspectorate bears primary responsibility for ensuring compliance with labor laws. The OTLA requested from the Government of the Dominican Republic information on any labor inspections conducted in the sugar sector since the CAFTA-DR entered into force. In response, the Dominican government submitted documentation to the OTLA on June 22, 2012, summarizing information from 14 reports on preventive inspections conducted in the sugar sector from 2007 through February 2012 and attached the 14 corresponding inspection reports as annexes. Additional information on country-wide inspections provided by the Government of the Dominican Republic to the OTLA on June 22 and previously to the ILO indicates that the Ministry of Labor conducted a total of 284,953 preventive inspections across the country from 2007 through September 2011.<sup>12</sup>

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<sup>10</sup> U.S. Submission 2011-03 (Dominican Republic).

<sup>11</sup> CAFTA-DR, art. 16.8.

<sup>12</sup> The Government of the Dominican Republic reported to the OTLA that it conducted 38,604 preventive inspections on a national level from January through September 2011. Government of the Dominican Republic, *Declaration of the Government of the Dominican Republic About the Public Submission of Father Christopher Hartley*, June 22, 2012, [hereinafter Government of the Dominican Republic, June 22

The OTLA's review raises significant concerns about procedural and methodological shortcomings in the inspection process for the sugar sector that undermine the government's capacity to effectively identify labor violations. For example, Spanish-speaking inspectors were responsible for interviewing Creole-speaking workers with limited or no Spanish, interviewed only a small number of workers, only spoke with workers about topics relevant to assessing labor law compliance on 17 percent of the sites inspected, and questioned workers in front of their supervisors.<sup>13</sup>

In addition, the 14 inspection reports produced by the Government of the Dominican Republic indicate that inspectors conducted only one follow-up inspection to verify remediation of violations identified and no case against a sugar company was transferred by the Ministry of Labor to the relevant court for the application of a fine for failure to remedy an identified labor violation during the roughly five-year period at issue. The 14 inspection reports further reveal instances where it appears that inspectors did not respond to specific allegations of labor law violations conveyed by workers to inspectors during inspections, failing to discuss the allegations with employers, issue related warnings, as appropriate, and conduct follow-up inspections.<sup>14</sup> The few workers interviewed by the OTLA who reported alleging labor law violations to labor inspectors similarly stated that they observed no follow-up or subsequent change in conditions.<sup>15</sup>

## Recommendations

In order to address the concerns identified in the course of its review, the OTLA makes the following recommendations to the Government of the Dominican Republic, particularly regarding enforcement of Dominican labor laws in the sugar sector:

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response], Annex XVIII. The Government of the Dominican Republic also reported that it conducted 65,482 preventive inspections in 2010; 62,891 in 2009; 59,503 in 2008; and 58,473 in 2007. ILO, *Verification Report on the Implementation of White Paper Recommendations, August – December 2010*, p. 136, available from [http://www.ilo.org/sanjose/publicaciones/WCMS\\_180195/lang--es/index.htm](http://www.ilo.org/sanjose/publicaciones/WCMS_180195/lang--es/index.htm) (last visited September 4, 2013).

<sup>13</sup> See, e.g., Government of the Dominican Republic, Ministry of Labor, Inspection of December 18, 2007; Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22, 2009; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/10, January 14, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 109/2010, May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 023/2011 of January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection of February 29, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection No. 176, May 9, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection No. 190, June 6, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection of firing of worker 16099, October 18, 2012.

<sup>14</sup> Specifically, workers complained to inspectors about employer manipulation of the weighing of sugarcane, delayed payments to workers, full latrines in the labor camps, and employers' failure to provide safety equipment to workers. Government of the Dominican Republic, Ministry of Labor, Inspection No. 028/2010 of February 1, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/2010 of May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 023/2011 of January 31, 2011.

<sup>15</sup> The OTLA interviews with workers, April & July 2012.

- Follow the Ministry of Labor’s 2008 General Inspection Protocol, 2011 Inspection Protocol for Agriculture, and other best practices for labor inspections, including:
  - speaking with significant numbers of workers chosen by inspectors;
  - interviewing workers outside the presence of management representatives;
  - discussing with workers, in all cases, matters related to labor law compliance;
  - following up on allegations of labor law violations made by workers during the inspection process; and
  - conducting follow-up inspections to verify remediation of violations identified.
  
- Use labor inspectors or interpreters with the language skills necessary to communicate with workers in the sugar sector, in particular Creole;
  
- Provide training for labor inspectors on methods and best practices for identifying forced labor and indicators of forced labor, child labor, and violations of acceptable conditions of work, including with respect to minimum wages, hours of work, and occupational safety and health, particularly with regards to the sugar sector;
  
- Conduct outreach campaigns to sugar sector workers to inform them of their labor rights and increase awareness of existing methods to anonymously complain and provide information to the Ministry of Labor about alleged labor law violations. Ensure that any such methods involving verbal communication are staffed with sufficient personnel with relevant language skills, in particular Creole;
  
- Formally and publicly commit that the Ministry of Labor will maintain the confidentiality and anonymity of workers involved in inspections or who have filed complaints with the Ministry, as recommended in the 2008 General Inspection Protocol and regardless of migration status;
  
- Strengthen enforcement of the 2012 Minimum Wage Resolution requiring visible posting of the minimum wage in the workplace;
  
- Strengthen enforcement of Article 161 of the Labor Code requiring employers to record workers’ hours of work and compensation due and effectively enforce other labor laws related to hours of work and the minimum wage, with a particular focus on ensuring payment of the minimum wage, a 36-hour weekly rest period or premium pay or a subsequent day off for working that period, workdays under the 10-hour limit for agriculture, and paid holidays;
  
- Strengthen enforcement of relevant laws governing workers’ social security contributions to ensure that workers who are legally entitled to social security

benefits are able to receive them, that employers do not deduct contributions from workers who are not legally entitled to receive benefits, and that workers who are ineligible for benefits can fully recover any deducted amounts;

- Strengthen enforcement of Occupational Safety and Health Regulation 522-06 and Resolution 04-2007 requiring employers to provide all workers with a sufficient quantity of potable water or other healthy beverage and free adequate personal safety equipment;
- Strengthen enforcement of Labor Code Articles 245 and 247 and Labor Resolution 52/2004 establishing 14 as the minimum age for legal employment, limiting the workday to six hours for children under 16, and banning dangerous and unhealthy work for children under 18, to prevent unlawful child labor in the sugar sector, including by establishing a system to verify the ages of young workers without birth certificates or other legal documentation to help protect them from exploitation;
- Strengthen enforcement of Article 62.2 of the Labor Code prohibiting forced labor, including by developing and implementing a plan to address conditions contributing to and indicators of forced labor, including unlawful overtime performed under threat, deceptive recruitment practices, fear of dismissal or deportation for formally complaining about unlawful labor conditions, fear of deportation or denouncement to authorities for quitting work or leaving the *bateyes*, a bonus payment system that creates pressure for workers to return to work each season or remain on the *bateyes* year-round, and growing indebtedness to local privately-owned *colmados* on the *bateyes*.

The OTLA will engage with the Government of the Dominican Republic to address the concerns identified in this report and implement the above recommendations. The OTLA will work with the Government of the Dominican Republic to develop time-bound steps and measurable milestones by which to monitor and assess progress and will review implementation of the recommendations six months and again 12 months after the publication of this report.

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## I. Introduction

The Dominican Republic signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) on August 5, 2004, and the agreement entered into force between the United States and the Dominican Republic on March 1, 2007.<sup>16</sup> The CAFTA-DR Labor Chapter states that each Party shall designate an office within its labor ministry or equivalent entity to serve as a contact point with the other Parties and with the public.<sup>17</sup> For the United States, the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) was designated as this contact point in a *Federal Register* notice published on December 21, 2006.<sup>18</sup>

On December 22, 2011, the OTLA received a public submission under Chapter 16 (the Labor Chapter) of the CAFTA-DR from Father Christopher Hartley.<sup>19</sup> U.S. Submission 2011-03 (Dominican Republic) alleges "the failure of the Government of the Dominican Republic to enforce labor laws, as required under Chapter 16 of the CAFTA-DR, as these relate to the Dominican sugar industry."<sup>20</sup> In Article 16.2.1 of the CAFTA-DR, the Government of the Dominican Republic committed not to "fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement."<sup>21</sup>

The submission asserts that the following labor abuses are occurring on Dominican sugar plantations: (1) human trafficking and/or forced labor; (2) child labor; (3) deplorable and unsanitary living conditions; (4) denial of medical, pension, and other benefits due; (5) refusal to inform and publish the current rate and terms of pay; (6) hazardous working conditions; (7) refusal to issue written work contracts; (8) manipulation in the weighing of sugarcane; and (9) retaliatory firing of workers for affiliation with or attempts to organize labor groups or unions and/or for their participation in legal proceedings against employers.<sup>22</sup>

The submission alleges that these labor abuses represent a failure to effectively enforce "labor laws" with respect to each element of the CAFTA-DR Article 16.8 definition of that term: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst

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<sup>16</sup> Office of the United States Trade Representative, CAFTA-DR (Dominican Republic-Central America FTA), available from <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta>.

<sup>17</sup> The Dominican Republic-Central America-United States Free Trade Agreement [hereinafter CAFTA-DR], art. 16.4.3.

<sup>18</sup> 71 Fed. Reg. 76691 (Dec. 21, 2006), available from <http://www.dol.gov/ilab/programs/otla/2006021837.pdf> [hereinafter 71 Fed. Reg. 76691 (Dec. 21, 2006)].

<sup>19</sup> U.S. Submission 2011-03 (Dominican Republic), *Formal Public Submission*, December 22, 2011, available from <http://www.dol.gov/ilab/programs/otla/DRSubmission2011.pdf> [hereinafter U.S. Submission 2011-03 (Dominican Republic)].

<sup>20</sup> *Ibid.*

<sup>21</sup> CAFTA-DR, art. 16.2.1.

<sup>22</sup> U.S. Submission 2011-03 (Dominican Republic).

forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>23</sup>

Under the Labor Chapter, each Party's contact point provides for the submission, receipt, and consideration of communications on matters related to the Chapter and reviews such communications in accordance with domestic procedures.<sup>24</sup> The same *Federal Register* notice that designated the OTLA as such contact point also set out the Procedural Guidelines that the OTLA follows for the receipt and review of public submissions. According to the definitions contained in the Procedural Guidelines, a "submission" means "a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter."<sup>25</sup>

On February 22, 2012, the OTLA accepted for review U.S. Submission 2011-03 (Dominican Republic), stating that it met the criteria for acceptance. The decision to accept the submission was published in a *Federal Register* notice on March 15, 2012.<sup>26</sup>

Under the Procedural Guidelines, the OTLA shall issue a public report within 180 days of the acceptance of a submission for review, unless circumstances as determined by the OTLA require an extension of time. On August 17, 2012, the OTLA notified the Government of the Dominican Republic and the submitter that it was extending the period for review; this decision to extend was published in the *Federal Register* on August 27, 2012.<sup>27</sup>

The OTLA conducted a review designed to gather information to better understand and publicly report on the issues raised by the submission. Throughout the process, the OTLA consulted with the U.S. Department of State and the Office of the U.S. Trade Representative. The OTLA reviewed thoroughly the documentation provided by the submitter, including the original submission and well over 400 additional documents, emails, videos, and photographs, as well as information provided by the Government of the Dominican Republic and by others with direct knowledge of the relevant issues. In addition, on June 19, 2012, the OTLA issued a *Federal Register* notice soliciting comments and specific information from the public related to the submission, subsequent to which the OTLA carefully reviewed all comments received.<sup>28</sup>

The OTLA also undertook two missions to the Dominican Republic to interview relevant stakeholders and to gather additional information on the issues raised in the submission. From April 22-30, and July 22-26, 2012, OTLA officials, joined by officials from the

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<sup>23</sup> U.S. Submission 2011-03 (Dominican Republic); CAFTA-DR, art. 16.8.

<sup>24</sup> CAFTA-DR, art. 16.4.3.

<sup>25</sup> 71 Fed. Reg. 76691 (Dec. 21, 2006).

<sup>26</sup> 77 Fed. Reg. 15397 (March 15, 2012), available from <http://www.dol.gov/ilab/programs/otla/20120315FRN%20DR.pdf>.

<sup>27</sup> 77 Fed. Reg. 51828 (Aug. 27, 2012), available from <http://www.dol.gov/ilab/programs/otla/FRNDRExtension.pdf>.

<sup>28</sup> 77 Fed. Reg. 36578 (June 19, 2012), available from <http://www.dol.gov/ilab/programs/otla/20120619.pdf>.

U.S. Department of Labor and the U.S. Department of State, met with officials from the Dominican Ministry of Foreign Affairs, the Dominican Ministry of Labor, and other organizations and individuals in the Dominican Republic. As part of the review, OTLA officials conducted detailed interviews with 71 workers in the Dominican sugar sector.<sup>29</sup> The interviews were conducted in the presence of only OTLA officials and Spanish-Creole interpreters. The OTLA spoke with workers employed by each of the three major sugar companies in the Dominican Republic.<sup>30</sup> The OTLA also met with executives from these companies and carefully reviewed information that they provided.<sup>31</sup>

## II. Analysis and Findings

CAFTA-DR defines “labor laws” as “a Party’s statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”<sup>32</sup> The following sections discuss in detail the OTLA’s findings with respect to apparent and potential violations of Dominican labor laws covering the areas raised in the public submission and in other materials received during the OTLA review, and related concerns regarding the Government of the Dominican Republic’s enforcement of labor laws covering those areas.

### A. Acceptable conditions of work

#### 1. Minimum wages and hours of work

Dominican law sets the minimum wage for field workers in the sugar sector at 129 pesos (\$3.08) per eight-hour workday, which is lower than the minimum wage for any other sector.<sup>33</sup> The minimum wage is to be prorated for workdays of more or less than eight

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<sup>29</sup> The OTLA interviews with workers from three locations in the sugarcane industry, San Pedro de Macorís, Barahona, and La Romana, Dominican Republic, April & July 2012 [hereinafter The OTLA interviews with workers, April & July 2012].

<sup>30</sup> For the 2010-2011 harvest, the three largest sugar producing companies collectively produced 98.13 percent of the sugar in the Dominican Republic (72.68 percent, 12.75 percent, and 12.70 percent). Government of the Dominican Republic, Dominican Sugar Institute (*INAZUCAR*), Preliminary Report on the 2010-2011 Sugar Harvest (*Informe Preliminar Sobre la Zafra Azucarera 2010/11*), available from [http://www.inazucar.gov.do/inf\\_preliminar\\_zafra2010-2011.pdf](http://www.inazucar.gov.do/inf_preliminar_zafra2010-2011.pdf) (last visited September 4, 2013), p. 4.

<sup>31</sup> Meetings between the OTLA and executives of the three major sugar companies, Santo Domingo (April 23-24, 2012), San Pedro de Macorís (July 23, 2012), and Barahona (July 24, 2012), Dominican Republic [hereinafter Meetings between the OTLA and executives of the three major sugar companies, April & July 2012].

<sup>32</sup> CAFTA-DR, art. 16.8.

<sup>33</sup> National Salary Committee, Resolution 1/2012 About the National Minimum Wage for Workers of the Sugar Industry (*Resolución No. 1/2012 Sobre Salario Mínimo Nacional para los trabajadores de la Industria Azucarera*), article 3, 2012 [hereinafter 2012 Minimum Wage Resolution]. See also, e.g., El Nacional, *Aumentan salario mínimo a trabajadores azucarero del país*, March 8, 2012, available from

hours.<sup>34</sup> The Labor Code establishes that workers may never receive less than the minimum wage.<sup>35</sup>

Article 281 of the Labor Code exempts agricultural employers from the general eight-hour workday and 44-hour workweek limits contained in Article 147,<sup>36</sup> but it states that in no case can the workday in agriculture exceed 10 hours.<sup>37</sup> The Labor Code also establishes that workers have the right to receive 36 uninterrupted hours of rest per week, regardless of the sector.<sup>38</sup> The weekly rest period is to begin at noon on Saturday, unless the parties agree on a different day and time or the worker elects to receive a payment instead.<sup>39</sup> The Labor Code states that if a worker works during his or her weekly rest period, he or she can opt to either receive the normal daily pay plus a 100 percent premium or receive an extra day of rest during the following week.<sup>40</sup> In addition, all legal holidays, declared by the Constitution or other laws, are considered to be paid non-working days for workers, unless they coincide with weekly days of rest.<sup>41</sup> The Labor

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<http://www.elnacional.com.do/nacional/2012/3/8/114190/Aumentan-salario-minimo-a-trabajadoresazucarero-del-pais> (last visited September 4, 2013). U.S. Department of State, 2012 Country Reports on Human Rights Practices: Dominican Republic, available from <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> [hereinafter 2012 State Department Human Rights Report]. The 129 peso/day minimum wage took effect in February 2012, and therefore it was applicable throughout the period of the OTLA's review. Because the new rate took effect only months before the OTLA's first investigation trip, however, the OTLA also assessed the evidence using the prior 110 peso/day minimum wage and reached the same conclusions. See National Salary Committee, Resolution 1/2010 About the National Minimum Wage for Workers of the Sugar Industry (*Resolución No. 1/2010 Sobre Salario Mínimo Nacional para los trabajadores de la Industria Azucarera*), article 3, 2010 [hereinafter 2010 Minimum Wage Resolution].

<sup>34</sup> 2010 Minimum Wage Resolution; 2012 Minimum Wage Resolution.

<sup>35</sup> The Labor Code of the Dominican Republic, Santo Domingo, August 2007, available from [http://www.suprema.gov.do/PDF\\_2/codigos/Codigo\\_Trabajo.pdf](http://www.suprema.gov.do/PDF_2/codigos/Codigo_Trabajo.pdf) (last visited September 4, 2013) [hereinafter Labor Code], art. 193. The Spanish phrasing of article 193 is: "*El monto del salario es el que haya sido convenido en el contrato de trabajo. No puede ser, en ningún caso, inferior al tipo de salario mínimo legalmente establecido.*"

<sup>36</sup> *Ibid.*, art. 147. The Spanish phrasing of article 147 is: "*La duración normal de la jornada de trabajo es la determinada en el contrato. No podrá exceder de ocho horas por día ni de cuarenta y cuatro horas por semana.*"

<sup>37</sup> *Ibid.*, art. 281. The Spanish phrasing of article 281 is: "*Son aplicables a las empresas agrícolas, agrícolas industriales, pecuarias o forestales todas las disposiciones de este Código con excepción de las relativas a las jornadas de trabajo y cierre de establecimientos. En todo caso, la jornada no excederá de diez horas diarias.*"

<sup>38</sup> *Ibid.*, art. 163. The Spanish phrasing of article 163 is: "*Todo trabajador tiene derecho a un descanso semanal ininterrumpido de treinta y seis horas. Este descanso será el convenido entre las partes y puede iniciarse cualquier día de la semana. A falta de convención expresa, se inicia a partir del sábado a mediodía.*"

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, art. 164. The Spanish phrasing of article 164 is: "*Si el trabajador presta servicio en el período de su descanso semanal, puede optar entre recibir su salario ordinario aumentado en un ciento por ciento o disfrutar en la semana siguiente de un descanso compensatorio igual al tiempo de su descanso semanal.*"

<sup>41</sup> *Ibid.*, art. 165. The Spanish phrasing of article 165 is: "*Los días declaradas no laborales por la Constitución o las leyes, son de descanso remunerado para el trabajador, salvo que coincidan con el día de descanso semanal.*"

Code requires employers to keep records for each employee that include both hours of work and compensation due.<sup>42</sup>

The Ministry of Labor's 2008 General Inspection Protocol and 2011 Inspection Protocol for Agriculture provide inspectors with instructions on how to verify compliance with Dominican labor laws in the agricultural sector, including the sugar sector.<sup>43</sup> These Protocols instruct inspectors to speak with both workers and employers and to review payroll records, attendance records, and pay stubs to verify compliance with Dominican laws on wages and hours of work, including that the salary received by workers is equal to or greater than the minimum wage; that agricultural workers are not working more than 10 hours per day; and that workers are receiving a weekly uninterrupted 36-hour rest period, or premium compensation or a subsequent extra day of rest, and paid non-working holidays.<sup>44</sup>

An executive of one of the major sugar companies told the OTLA, however, that the company does not keep employee records such as those referenced in the Inspection Protocols.<sup>45</sup> This lack of records makes it difficult for the Ministry of Labor to verify how much a worker is making per hour and, as a result, also makes it difficult to determine whether employers are paying the minimum wage.

This difficulty of determining whether employers are paying at least the minimum wage is exacerbated by employers' regular use of a piece- or weight-based payment system, which enables employers to pay workers without tracking hours of work, despite the legal requirement to do so. Both workers and employers stated that workers in the sugar sector are usually paid on a piece-rate basis. This means that cutters are paid according to how many stacks, piles, or kilograms of sugarcane they cut, and workers clearing and replanting fields are paid based on the area cleared or replanted.<sup>46</sup>

According to an executive of one of the major sugar companies, in 2011, approximately 55 percent of sugarcane cutters were able to harvest sufficient sugarcane to equal or exceed the minimum wage.<sup>47</sup> Interviewed workers stated that the piece-rate payment

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<sup>42</sup> Labor Code, art. 161. The Spanish phrasing of article 161 is: "*El empleador está obligado a llevar registros, conforme a modelos aprobados por el Departamento de Trabajo, en los cuales deben hacerse las siguientes menciones relativas a cada trabajador: (1) horario de trabajo; (2) interrupciones del trabajo y sus causas; (3) horas trabajadas en exceso de la jornada; (4) monto de las remuneraciones debidas; (5) edad y sexo.*"

<sup>43</sup> Ministry of Labor of the Dominican Republic, Inspection Protocol for Agriculture in the Dominican Republic (*Protocolo de Inspección para la Agricultura, República Dominicana*), Santo Domingo, March 2011 [hereinafter Ministry of Labor, Agriculture Inspection Protocol]; Ministry of Labor of the Dominican Republic, Collection of Inspection Protocols, San José, October 2008 [hereinafter Ministry of Labor, General Inspection Protocol].

<sup>44</sup> Ministry of Labor, Agriculture Inspection Protocol, pp. 24-30; Ministry of Labor, General Inspection Protocol, pp. 18-19, 32, 35-36.

<sup>45</sup> Meeting between the OTLA and sugar executives, San Pedro de Macorís, July 2012.

<sup>46</sup> Meetings between the OTLA and the executives of the three major sugar companies, April & July, 2012; The OTLA interviews with workers, April & July 2012.

<sup>47</sup> Meeting between the OTLA and sugar executives, Santo Domingo, Dominican Republic, April 23, 2012. In subsequent material provided to the OTLA, the executives of one company represented this figure

system used for sugarcane cutters is especially hard on elderly or infirm workers, who often cut at a slower pace, and that despite a legal obligation to do so, sugar companies do not always ensure that all workers are earning the minimum wage.<sup>48</sup> Both the State Department's *Human Rights Report* and the OTLA's interviews with workers further indicate that some workers who remain on sugar plantations during the non-harvest season to clear and re-plant the sugarcane fields also earn less than the minimum wage.<sup>49</sup> Interviewed workers stated that if the terrain is difficult or the overgrowth is thick, workers in some cases are unable to clear or replant a sufficient area to make the minimum wage for a full day's work.<sup>50</sup> Some of the interviewed workers explained to the OTLA that the daily wages they receive are sometimes so low that they do not provide them with enough money to eat.<sup>51</sup>

Interviewed workers from all three major sugar companies, executives of those companies, a communication sent to the OTLA by the Government of the Dominican Republic, and a June 2013 report by the Dominican sugar industry also explained that in some cases, the net salaries of both documented and undocumented workers are further reduced by employers taking monthly deductions from the workers' paychecks for Dominican Social Security Institute (IDSS) contributions.<sup>52</sup> The law regarding undocumented workers' eligibility for IDSS benefits is unclear. Although Article 60 of

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slightly differently, stating, "During the 2011 harvest season, 56% of total man weeks for cane cutting activities equaled or exceeded the weekly minimum wage." *Consortio Azucarero de Empresas Industriales (CAEI), Written Comments Submission of the Consortio Azucarero de Empresas Industriales (CAEI), of the Dominican Republic on The Office of Trade and Labor Affairs (OTLA) Notice of Determination Regarding Review of Submission #2011-03, Accepted on February 22, 2012, Pursuant to Article 16.4.3 of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), July 9, 2012 [hereinafter CAEI Response, July 9, 2012], p. 13.*

<sup>48</sup> The OTLA interviews with workers, April & July 2012; 2012 State Department Human Rights Report (stating, "Less able-bodied workers, who were often older, were paid only for the amount of the cane they cut, even if the amount was less than the minimum wage.").

<sup>49</sup> 2012 State Department Human Rights Report; The OTLA interviews with workers, April & July 2012.

<sup>50</sup> The OTLA interviews with workers, April & July 2012. Workers reported that the payment for this offseason work is 41 pesos/hectare and, if the terrain is bad, a worker may be unable to finish a hectare in a full workday. Such payment would be less than 33 percent of the minimum wage of 129 pesos per eight-hour workday. 2012 State Department Human Rights Report (stating, "During the six-month off-season, some workers in sugar plantations remained in their communities and worked part-time jobs clearing land or cleaning sugarcane. Such workers reported that they were not paid the legally mandated minimum wage.").

<sup>51</sup> The OTLA interviews with workers, April & July 2012; *See* 2012 State Department Human Rights Report (noting, "Although no official estimate of the poverty income level was available, the Worker Rights Consortium estimated the living wage was over 18,000 pesos (\$456) per month.").

<sup>52</sup> The OTLA interviews with workers, April & July 2012; Meetings between the OTLA and executives of the three major sugar companies, April & July 2012; Government of the Dominican Republic, *Declaration of the Government of the Dominican Republic About the Public Submission of Father Christopher Hartley*, June 22, 2012, [hereinafter Government of the Dominican Republic, June 22 response], p. 10; Dominican Republic Sugar Industry, *Labor Practices in the Dominican Sugar Industry: Recent Developments in Working Conditions in the Sugar Sector*, June 2013 [hereinafter Sugar Industry June 2013 Report], pp. 10, 21-22. In interviews with the OTLA delegation, employers asserted that the practice of deducting social security payments varies across companies, with some employers acknowledging that they make the deductions from workers' paychecks, while others saying they do not. Meetings between the OTLA and executives of the three major sugar companies, April & July 2012.

the Constitution states that “every person has a right to social security,”<sup>53</sup> the Social Security Act of 2001 provides in Article 5 that only Dominican citizens and legal residents have that right.<sup>54</sup> Further clouding this issue is the recent initiative undertaken by the Government of the Dominican Republic to provide identity cards and social security benefits to temporary migrant workers in the Dominican Republic, regardless of documentation.<sup>55</sup> In practice, some undocumented workers told the OTLA that they are unable to access IDSS benefits funded by those paycheck deductions.<sup>56</sup> Additionally, with the help of legal assistance, in 2004, 52 undocumented sugarcane workers filed forms with the IDSS requesting their pensions.<sup>57</sup> At the time of this report, the OTLA understands that none of these workers has successfully received a pension through these requests.<sup>58</sup> These IDSS deductions thus may result in undocumented workers being paid less than they are legally due, to the extent that they are unable to access benefits to which their deductions contributed.

Many interviewed workers also believe that their wages are artificially low due to manipulation of the weighing of cut sugarcane, resulting in paychecks that reflect less sugarcane than they actually cut.<sup>59</sup> An inspection report produced by the Government of the Dominican Republic, for example, documents that during one inspection, two workers complained of employers’ inaccurate weighing of cut sugarcane and eight workers complained that they were paid the lower rate for burnt sugarcane, when in fact they cut green cane.<sup>60</sup> Employers acknowledge that the sugarcane often is not weighed in workers’ presence, but instead is transported to be weighed elsewhere while the sugarcane cutters continue working.<sup>61</sup>

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<sup>53</sup> Constitution of the Dominican Republic, Gaceta Oficial No. 10561, January 26, 2010, available from [http://www.suprema.gov.do/PDF\\_2/constitucion/Constitucion.pdf](http://www.suprema.gov.do/PDF_2/constitucion/Constitucion.pdf) (last visited September 4, 2013) [hereinafter Constitution of the Dominican Republic], art. 60. The Spanish phrasing of article 60 is: “*Toda persona tiene derecho a la seguridad social.*”

<sup>54</sup> Ministry of Labor, National Social Security Council, Law No. 87-01, that creates the Dominican National Social Security System, May 9, 2001, available from [www.sisalril.gov.do/pdf/ley8701.pdf](http://www.sisalril.gov.do/pdf/ley8701.pdf) (last visited September 4, 2013).

<sup>55</sup> Listin Diario, *Gobierno regulariza mano de obra extranjera en RD: 220 Obreros Temporeros Recibieron Sus Carnés*, January 14, 2013, available from <http://www.listin.com.do/la-republica/2013/1/13/262065/Gobierno-regulariza-mano-de-obra-extranjera-en-RD> (last visited September 4, 2013); Hoy Digital, *Cañeros pensionados agradecen a periodistas con caminata*, January 23, 2013, available from <http://www.hoy.com.do/el-pais/2013/1/23/463955/Caneros-pensionados-agradecen-a-periodistas-con-caminata> (last visited September 4, 2013).

<sup>56</sup> The OTLA interviews with workers, April & July 2012; In an inspection report provided by the Government of the Dominican Republic, workers complained that state medical care costs were deducted from their paychecks but that they did not receive the corresponding services. Government of the Dominican Republic, Ministry of Labor, Inspection No. 031/10, January 26, 2010.

<sup>57</sup> Forms filed with the Dominican Social Security Institute, Department of Risk Management, requesting pensions on behalf of 52 sugarcane workers, April 2004.

<sup>58</sup> The OTLA interviews with workers, April 2012; Phone conversation between the OTLA and local contact, November 9, 2012.

<sup>59</sup> The OTLA interviews with workers, April & July 2012.

<sup>60</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/2010, May 18, 2010.

<sup>61</sup> Meetings between the OTLA and executives of the three major sugar companies, April & July 2012.

Under the 2010 and 2012 Minimum Wage Resolutions, employers are required to visibly post the minimum wage in the workplace,<sup>62</sup> but workers interviewed by the OTLA described employer failure to do so, and the OTLA did not see any minimum wage postings during any of the visits to the *bateyes* or worksites.<sup>63</sup> The lack of minimum wage postings, combined with the general absence of written work contracts in the sector,<sup>64</sup> has meant that interviewed workers often lacked specific knowledge about the precise amount of payments and benefits they were due,<sup>65</sup> potentially further deterring them from reporting or complaining about suspected wage violations.

Most workers interviewed also told the OTLA that they regularly work over the legal limit of 10 hours per day, many reporting 12-hour days or longer. Thirty-three of the 56 workers interviewed by the OTLA delegation who responded to questions about days worked per week reported working seven days a week without the weekly 36-hour rest period.<sup>66</sup> Workers indicated that when they forfeit the 36-hour rest period, they do not receive premium pay or a subsequent day off, as required by the Labor Code.<sup>67</sup> None of the interviewed workers reported receiving the legally required paid holidays off.<sup>68</sup>

The OTLA conducted a thorough and detailed review of all information obtained related to payment of minimum wage and hours worked in the Dominican sugar sector. Information reviewed included worker allegations of employers' failures to pay the minimum wage, provide premium pay or a subsequent day off for working during the 36-hour rest period, ensure workers are not working in excess of the 10-hour daily limit for agriculture, grant workers paid holidays, visibly display the minimum wage in the workplace, and record the hours worked by each employee, as well as the findings of payment below the minimum wage by the 2012 U.S. Department of State's *Country Report on Human Rights Practices* for the Dominican Republic, and statements and information provided by the Government of the Dominican Republic and representatives of the sugar companies, including the June 2013 report by the Dominican sugar industry. Based on this review, the OTLA has found sufficient evidence of apparent and potential violations of the labor laws of the Dominican Republic related to minimum wage and hours of work in the sugar sector to warrant further Government inspection and, as appropriate, sanction and remediation.

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<sup>62</sup> 2010 Minimum Wage Resolution; 2012 Minimum Wage Resolution.

<sup>63</sup> The OTLA interviews with workers, April & July 2012.

<sup>64</sup> Ibid. Only one worker with whom the OTLA spoke reported having a written work contract.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid. The OTLA calculated the wage that each interviewed worker is due based on the hours of work the worker reported. According to these calculations, most workers do not always make minimum wage plus the premium owed for forfeiting the 36-hour rest period and working paid holidays.

<sup>68</sup> Ibid.; For a list of legally required paid holidays, see Government of the Dominican Republic, Ministry of Labor, *Ministerio de Trabajo informa sobre días feriados del 2012*, November 2, 2011, available from <http://www.ministeriodetrabajo.gob.do/index.php/todas-las-noticias/196-ministerio-de-trabajo-informa-sobre-dias-feriados-del-2012> (last visited September 4, 2013).

## 2. Occupational safety and health

The Constitution of the Dominican Republic establishes employers' responsibilities regarding the occupational safety and health of their employees: "It is the obligation of all employers to guarantee to workers conditions of safety, health, hygiene, and a suitable work environment."<sup>69</sup> Through Occupational Safety and Health Regulation 522-06 and Resolution 04-2007, the Ministry of Labor sets the rights and duties of employers and employees with respect to health and safety at work.<sup>70</sup> According to these provisions, employers are required to provide workers with "adequate" personal safety equipment free of cost,<sup>71</sup> though "adequate" appears undefined in law or regulation. Resolution 04-2007 also requires employers to make a "sufficient" quantity of potable water or other healthy beverage available to workers,<sup>72</sup> though "sufficient" appears undefined, as well. The Ministry of Labor's 2008 General Inspection Protocol and 2011 Inspection Protocol for Agriculture instruct inspectors to speak with both workers and employers to verify compliance with these requirements, as well as other workplace health and safety provisions.<sup>73</sup>

Many interviewed workers stated that they are not provided with potable water during the workday.<sup>74</sup> This problem is exacerbated by the lack of clean drinking water in some workers' communities, known as *bateyes*,<sup>75</sup> where most workers employed in the sugar

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<sup>69</sup> Constitution of the Dominican Republic, art. 62.8. The Spanish phrasing of article 62.8 is: "*Es obligación de todo empleador garantizar a sus trabajadores condiciones de seguridad, salubridad, higiene y ambiente de trabajo adecuados.*"

<sup>70</sup> Government of the Dominican Republic, Ministry of Labor, Occupational Safety and Health Regulation, Decree Number 522-06, October 17, 2006, *available from* <http://www.set.gov.do/documentospdf/dghsi/Reglamento522-06.pdf> (last visited September 4, 2013) [hereinafter Regulation 522-06]; Government of the Dominican Republic, Ministry of Labor, Resolution No. 04/2007, January 30, 2007, *available from* <http://www.set.gov.do/documentospdf/dghsi/Reglamento522-06.pdf> (last visited September 4, 2013) [hereinafter Resolution 04/2007]. The occupational safety and health laws of the Dominican Republic apply equally to Dominicans, documented migrant workers, and undocumented migrant workers. Government of the Dominican Republic, June 22 response, p. 9.

<sup>71</sup> Regulation 522-06, art. 7.9. The Spanish phrasing of article 7 is: "*Obligaciones del empleador en lo referente a la acción preventiva. El empleador aplicará las siguientes medidas de prevención: (7.9) Proporcionar, sin ningún costo para el trabajador, los equipos de protección individual adecuados.*"; Resolution 04/2007, art. 5.1.2. The Spanish phrasing of article 5 is: "*El empleador estará en la obligación de: (5.1.2) Proporcionar gratuitamente a los trabajadores los equipos de protección individual que deban utilizar, reponiéndolos cuando resulte necesario.*"

<sup>72</sup> Resolution 04/2007, art. 1.16. The Spanish phrasing of article 1.16 is: "*Se deberá poner a disposición de los trabajadores, en cantidad suficiente, agua potable o cualquier otra bebida sana. En las fuentes de agua se indicará si ésta es o no potable, siempre que puedan existir dudas al respecto.*"

<sup>73</sup> Ministry of Labor, General Inspection Protocol, pp. 16-21; Ministry of Labor, Agriculture Inspection Protocol, pp. 17-23.

<sup>74</sup> The OTLA interviews with workers, April & July 2012.

<sup>75</sup> *Ibid.*; The OTLA observational visits to *bateyes*, La Romana, San Pedro de Macoris, and Barahona, Dominican Republic, April & July 2012; Meetings between the OTLA and local contacts, April 2012. Poor water quality in the *bateyes* was documented by the Government of the Dominican Republic as early as 2009, when inspectors noted the "brackish" quality of supposedly potable water during a preventive inspection. Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22, 2009.

sector traditionally reside. These villages also often lack adequate housing, medical services, and other basic sanitary services.<sup>76</sup>

In addition, many interviewed workers stated that their employers do not provide them with basic safety equipment, including gloves and boots.<sup>77</sup> Sixteen of the 51 workers interviewed by the OTLA delegation who responded to questions about safety equipment reported receiving no safety gear. Nine of the 51 reported receiving full or partial safety equipment but stated that the cost of the equipment is deducted from their paychecks.<sup>78</sup> In contrast, the June 2013 report by the Dominican Republic sugar industry asserts that all three major sugar companies provide all their workers with safety gear.<sup>79</sup> One of the three explicitly claims that the equipment is provided at no cost to workers, despite reports to the contrary from some of that company's workers.<sup>80</sup>

The OTLA conducted a thorough and detailed review of all information obtained related to occupational safety and health in the Dominican sugar sector, including: reports of employers' failure to provide workers with adequate personal safety equipment free of cost and to make a sufficient quantity of potable water or other healthy beverage available to workers, as well as statements and information provided by the Government of the Dominican Republic and representatives of the sugar companies, including the June 2013 report by the Dominican sugar industry. Based on this review, the OTLA has found sufficient evidence of apparent and potential violations of the labor laws of the Dominican Republic related to occupational safety and health in the sugar sector to warrant further Government inspection and, as appropriate, sanction and remediation.

## **B. The right of association and the right to organize and bargain collectively**

The Constitution and the Labor Code of the Dominican Republic establish the freedom to associate, to assemble, and to unionize. Article 47 of the Constitution states, "Every person has the right to associate for lawful purposes,"<sup>81</sup> and Article 48 asserts, "Every person has the right to meet for lawful and peaceful purposes without previous permission."<sup>82</sup> Both the Constitution and the Labor Code recognize the right to join and

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<sup>76</sup> U.S. Department of Labor's 2011 Findings on the Worst Forms of Child Labor, Report Required by the Trade and Development Act of 2000, available from <http://www.dol.gov/ilab/programs/ocft/tda.htm> [hereinafter 2011 TDA Report], p. 188.

<sup>77</sup> The OTLA interviews with workers, April & July 2012.

<sup>78</sup> Ibid.

<sup>79</sup> Sugar Industry June 2013 Report, p. 19.

<sup>80</sup> Ibid.; The OTLA interviews with workers, April & July 2012.

<sup>81</sup> Constitution of the Dominican Republic, art. 47. The Spanish phrasing of article 47 is: "*Toda persona tiene derecho de asociarse con fines lícitos, de conformidad con la ley.*"

<sup>82</sup> Ibid, art. 48. The Spanish phrasing of Article 48 is: "*Toda persona tiene derecho de reunirse, sin permiso previo, con fines lícitos y pacíficos, de conformidad con la ley.*" The 2011 Inspection Protocol for Agriculture also cites internationally recognized labor rights when providing enforcement guidelines for labor inspectors who are inspecting for freedom of association-related violations. Ministry of Labor, Agriculture Inspection Protocol.

participate in a union as one of workers' basic rights.<sup>83</sup> Further, employers are prohibited from interfering in the creation or administration of unions,<sup>84</sup> and workers have a right to strike, if they do so in accordance with the law.<sup>85</sup> The Labor Code defines "practices contrary to the freedom to join and participate in a union" as a very serious (*muy grave*) violation subject to fines of seven to 12 times the applicable minimum wage, the highest fine contained in the Code.<sup>86</sup>

The 2008 General Inspection Protocol and the 2011 Inspection Protocol for Agriculture instruct inspectors to speak with both workers and employers to verify that employers are not restricting workers' right to freely associate through the use of threats, firings, or other negative differential treatment towards workers who support, are affiliated with, or are active in unions or organizing efforts or through positive differential treatment towards workers who are not affiliated with or who oppose independent unions or organizing efforts.<sup>87</sup> Despite clear recommendations in these Inspection Protocols, a review of the 14 reports on preventive inspections conducted in the sugar sector from 2007 through February 2012 suggests that inspectors failed to ask workers or supervisors about any issues relating to freedom of association, the right to organize, union membership or activity, or collective bargaining.<sup>88</sup>

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<sup>83</sup> Constitution of the Dominican Republic, art. 62.3. The Spanish phrasing of article 62.3 is: "*Son derechos básicos de trabajadores y trabajadoras, entre otros: la libertad sindical, la seguridad social, la negociación colectiva....*" Labor Code, Principle XII. The Spanish phrasing of Principle XII is: "*Se reconocen como derechos básicos de los trabajadores, entre otros, la libertad sindical, el disfrute de un salario justo...*"

<sup>84</sup> Labor Code, art. 333.5. The Spanish phrasing of article 333.5 is "*Se reputará entre otras, prácticas desleales o contrarias a la ética profesional del trabajo: . . . Intervenir en cualquier forma en la creación o administración de un sindicato de trabajadores o sostenerlo por medios financieros o de cualquier naturaleza.*"

<sup>85</sup> Ibid. at Libro 6, Título II; Constitution of the Dominican Republic, art. 62.6. The Spanish phrasing of Article 62.6 is: "*Para resolver conflictos laborales y pacíficos se reconoce el derecho de trabajadores a la huelga y de empleadores al paro de las empresas privadas, siempre que se ejerzan con arreglo a la ley, la cual dispondrá las medidas para garantizar el mantenimiento de los servicios públicos o los de utilidad pública.*"

<sup>86</sup> Labor Code, art. 720.3. The Spanish phrasing of article 720 is: "*Las violaciones sujetas a sanciones penales, se clasifican en:...(3) Muy graves:...En materia de derechos colectivos, se reputa como muy grave, la comisión de prácticas desleales contrarias a la libertad sindical.*" Article 721 sets out the corresponding fines for each level of violation (*leve*, *grave*, and *muy grave*). The Spanish phrasing of article 721 is: "*Las violaciones que figuran en el artículo 720, son sancionadas del modo siguiente:...(3) Las muy graves, con multas de siete a doce salarios mínimos.*" See also Labor Code art. 333.2, prohibiting employers from penalizing employees for participating in union activities. The Spanish phrasing of Article 333.2 is: "*Se reputará entre otras, prácticas desleales o contrarias a la ética profesional del trabajo: . . . Ejercer represalias contra los trabajadores en razón de sus actividades sindicales.*"

<sup>87</sup> Ministry of Labor, General Inspection Protocol, pp. 38-39; Ministry of Labor, Agriculture Inspection Protocol, pp. 12-14.

<sup>88</sup> Government of the Dominican Republic, Ministry of Labor, Inspection of December 18, 2007; Government of the Dominican Republic, Ministry of Labor, Inspection No. 159/2008, December 17, 2008; Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22, 2009; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/10, January 14, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 22, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 31/10, January 26, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 28/10, February 1, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 41/10, February 8, 2010; Government of the

In addition to analyzing the 14 inspection reports produced by the Government of the Dominican Republic, the OTLA engaged in fact-finding to gather evidence related to the submission's allegations regarding freedom of association. In meetings with the OTLA and other U.S. government officials during the course of missions to the Dominican Republic in April and July 2012, executives of the three major sugar companies referenced in the submission asserted that each of the three companies has a union and that these unions have negotiated collective bargaining agreements on behalf of workers.<sup>89</sup> However, in the one collective bargaining agreement provided to the OTLA, most of the provisions apply only to permanent workers, rather than "seasonal" migrant sugarcane cutters,<sup>90</sup> and most workers interviewed during these missions told the OTLA that they did not know of any unions representing them.<sup>91</sup> The few interviewed workers who knew of existing unions asserted that those unions appear not to represent their interests.<sup>92</sup> During meetings with the OTLA, executives of two of the major sugar companies promised to send the OTLA information regarding the union leaders at each company, including whether they speak Creole.<sup>93</sup> As of the date of this report and despite a second request to representatives of the sugar companies, the OTLA has not received the information.

In addition, many of the interviewed workers expressed a general fear that they would be fired or otherwise punished if they attempted to organize formal or informal independent workers' organizations and therefore do not try.<sup>94</sup> Some workers reported having been directly threatened by their employers with firing or loss of housing if they were to meet with fellow co-workers, and others recounted the story of a group of co-workers being fired for attempting to "negotiate" with their employer.<sup>95</sup>

Interviewed workers also told the OTLA that on March 23, 2012, the Ingenio Cristobal Colon fired 18 workers, for participating in a collective work stoppage to protest wages insufficient to cover food costs and failure to pay amounts due.<sup>96</sup> The company has

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Dominican Republic, Ministry of Labor, Inspection of March 2, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 16/10, March 9, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 109/2010, May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection No. 23/10, January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection of February 29, 2012.

<sup>89</sup> Meetings between the OTLA and executives of the three major sugar companies, April & July 2012.

<sup>90</sup> Collective Bargaining Agreement (*Convenio Colectivo de Condiciones de Trabajo*) 2010-2013, provided to the OTLA by sugar executives on April 24, 2012.

<sup>91</sup> The OTLA interviews with workers, April 2012.

<sup>92</sup> The OTLA interviews with workers, April & July 2012. For example, the OTLA interviewed a delegate in one of the unions who expressed frustration with the union and asserted that when he brings complaints to the union leadership on behalf of workers, the union does not pursue them. The OTLA interviews with workers, July 2012.

<sup>93</sup> Meetings between the OTLA and executives of the major sugar companies, San Pedro de Macorís and Barahona, July 2012.

<sup>94</sup> The OTLA interviews with workers, April & July 2012.

<sup>95</sup> The OTLA interviews with workers, April 2012.

<sup>96</sup> *Ibid.*; Wrongful termination lawsuits filed on behalf of 15 workers, Labor Court of the District Court of San Pedro de Macorís, April 18, 2012.

asserted that the work stoppage was unlawful and that it fired these workers for illegally “trying to prevent other workers from performing their duties, and making threats with machetes or cane knives.”<sup>97</sup> On April 18, 2012, an attorney filed a wrongful termination lawsuit on behalf of these workers.<sup>98</sup> On December 26, 2012, 15 of the 18 fired workers withdrew their claims;<sup>99</sup> three of the original 18 workers continue to await a decision on their case from the regional Labor Court.

The OTLA conducted a thorough and detailed review of all information obtained related to the general allegations of employer interference in union activity and the specific allegation of retaliatory firing for work stoppage participation. Based on its review, the OTLA has concerns regarding alleged violations of Dominican labor laws related to the right of association and the right to organize and bargain collectively in the sugar sector. As provided under the relevant Inspection Protocols, all inspections conducted in the sector should verify that employers are not restricting workers’ right to freely associate. The Government of the Dominican Republic should identify any violations and, as appropriate, impose sanctions and ensure remediation.

### **C. A minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor**

The Government of the Dominican Republic has a Strategic National Plan to Eradicate the Worst Forms of Child Labor (2006-2016) and a Roadmap Towards the Elimination of Child Labor in the Dominican Republic, which lays out a plan to eliminate the worst forms of child labor in the country by 2015 and all other types of child labor by 2020.<sup>100</sup> Although the Roadmap notes that at least one of the three main sugar companies has supported efforts to eliminate child labor, it does not appear that the government has a plan specifically to combat the worst forms of child labor in the sugar sector.<sup>101</sup>

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<sup>97</sup> Communication on behalf of the Dominican Sugar Commission to the OTLA, July 18, 2012.

<sup>98</sup> Wrongful termination lawsuits filed on behalf of 15 workers, Labor Court of the District Court of San Pedro de Macorís, April 18, 2012.

<sup>99</sup> The submitter alleges that a supervisor at one of the sugar companies verbally offered these 15 workers reinstatement plus payment of back wages if they withdrew their claims. As of the date of this report, these workers have not received the reinstatement or payment of back wages they were allegedly promised. Email from submitter to the OTLA, June 28, 2013; Phone conversation between the OTLA and submitter, June 28, 2013.

<sup>100</sup> Government of the Dominican Republic, Plan Estratégico Nacional para la erradicación de las peores formas de trabajo infantil en República Dominicana 2006-2016, *available from* [http://www.dol.gov/ilab/programs/ocft/FR20100224/DominicanRepublic/GovPrograms/DR\\_NationalStrategy\\_ChildLabor.pdf](http://www.dol.gov/ilab/programs/ocft/FR20100224/DominicanRepublic/GovPrograms/DR_NationalStrategy_ChildLabor.pdf); Government of the Dominican Republic, Hoja de Ruta para hacer de República Dominicana un país libre de trabajo infantil y sus peores formas: Documento Estratégico, *available from* <http://white.oit.org.pe/ipec/pagina.php?pagina=337> (last visited September 4, 2013) [hereinafter Roadmap Towards the Elimination of Child Labor in the Dominican Republic].

<sup>101</sup> Roadmap Towards the Elimination of Child Labor in the Dominican Republic, p. 88. The Roadmap explicitly notes that the CAEI or the “Vicini Group” has supported such efforts. *Ibid.*

The Dominican Constitution declares that the eradication of child labor is an issue of the highest importance to the nation.<sup>102</sup> The Labor Code codifies a prohibition against child labor. It establishes 14 as the minimum age for legal employment.<sup>103</sup> Children under 16 years of age cannot work more than six hours per day.<sup>104</sup> The Labor Code permits children under 18 years of age to participate in light collection work in the agricultural sector,<sup>105</sup> but Labor Resolution 52/2004 establishes that children under 18 years of age are prohibited from participating in dangerous and unhealthy work, including planting, cutting, carrying, or lifting sugarcane or handling the bagasse.<sup>106</sup> This same Labor Resolution states that violations of this prohibition are to be treated as very serious violations subject to fines of seven to 12 times the minimum wage under the Labor Code.<sup>107</sup>

According to the Ministry of Labor's 2008 General Inspection Protocol and 2011 Inspection Protocol for Agriculture, inspectors are to speak with both workers and employers to verify that no children under 14 years of age are employed, that the workday for children does not exceed that established by law (including that children under 16 are not working more than six hours per day), that children are only working in light collection work, and that the employer is not misrepresenting prohibited work as light collection work.<sup>108</sup>

Employers asserted in meetings with the OTLA that they prohibit child labor and that child labor does not exist on their plantations.<sup>109</sup> Many interviewed workers corroborated that this is the official policy at the major sugar companies.<sup>110</sup> However, many workers

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<sup>102</sup> Constitution of the Dominican Republic, art. 56.1 The Spanish phrasing of Article 56.1 is "*Se declara del más alto interés nacional la erradicación del trabajo infantil y todo tipo de maltrato o violencia contra las personas menores de edad. Los niños, niñas y adolescentes serán protegidos por el Estado contra toda forma de abandono, secuestro, estado de vulnerabilidad, abuso o violencia física, psicológica, moral o sexual, explotación comercial, laboral, económica y trabajos riesgosos.*"

<sup>103</sup> Labor Code, art. 245. The Spanish phrasing of article 245 is: "*Se prohíbe el trabajo de menores de catorce años.*"

<sup>104</sup> *Ibid.*, art. 247. The Spanish phrasing of article 247 is: "*La jornada de trabajo de los menores de dieciséis años no puede exceder, en ninguna circunstancia, de seis horas diarias.*"

<sup>105</sup> *Ibid.*, art. 282. The Spanish phrasing of article 282 is: "*Las disposiciones concernientes al trabajo de los menores no se aplican cuando éstos se utilicen en el campo en trabajos ligeros de recolección.*"

<sup>106</sup> Government of the Dominican Republic, Ministry of Labor, Resolution No. 52/2004 About Dangerous and Unhealthy Work for Persons Under 18 Years of Age (*Resolución No. 52/2004 Sobre Trabajos Peligrosos e Insalubres para Personas Menores de 18 Años*), August 13, 2004, available from <http://www.ministeriodetrabajo.gob.do/documentospdf/TrabajoInfantil/resolucion%2052-2004.pdf> (last visited September 4, 2013), art. 2.25. The Spanish phrasing of article 2.25 is: "*Se prohíbe la participación de personas menores de 18 años en los siguientes trabajos y tareas...25) Siembra, corte, acarreo y alza de la caña de azúcar y manipulación del bagazo de la caña.*" "Bagasse" is defined as the plant residue (as of sugarcane or grapes) left after a product (as juice) has been extracted. Merriam-Webster Dictionary, available from <http://www.merriam-webster.com/dictionary/bagasse> (last visited September 4, 2013).

<sup>107</sup> *Ibid.*, art. 6. The Spanish phrasing of article 6 is: "*Las violaciones en contra de la presente Resolución serán consideradas como faltas muy graves y en consecuencia conllevarán las sanciones establecidas al efecto en el artículo No. 721 del Código de Trabajo (Ley 16-92).*"

<sup>108</sup> Ministry of Labor, General Inspection Protocol, pp. 37-38; Ministry of Labor, Agriculture Inspection Protocol, p. 8.

<sup>109</sup> Meetings between the OTLA and executives of the three major sugar companies, April & July 2012.

<sup>110</sup> The OTLA interviews with workers, April & July 2012.

who spoke with the OTLA also reported that they observed children performing tasks in sugarcane that are prohibited by Labor Resolution 52/2004 for children under 18, such as cutting or collecting cane, planting seeds, or clearing fields.<sup>111</sup> Some workers also reported seeing children cutting sugarcane, in one case appearing as young as 12, also in contravention of the law.<sup>112</sup> One worker stated, “Yes, child labor still exists here. They plant and cut sugarcane. Some appear to be 15 years old; some look as young as 12 years old.”<sup>113</sup> Some workers further reported that children work with the knowledge of company supervisors,<sup>114</sup> with one worker stating, “Children still cut sugarcane here. I have seen about 10 of them, aged 15 to 16, that work full days cutting sugarcane, and the supervisors know about it.”<sup>115</sup>

In addition to the information collected by the OTLA delegation detailed above, a 2012 independent study by Verité, which surveyed 740 sugar sector workers between June and August 2010 and included both individual cases and sector-wide analysis of the sugar industry, found 12 cases of child labor in the sugar sector.<sup>116</sup> These cases included a nine-year-old child who was paid to help his father and other sugarcane cutters harvest sugarcane during non-school hours and adolescents between the ages of 15 and 17 planting and cutting sugarcane. Two recent U.S. Department of Labor reports also find that child labor occurs in the Dominican sugar sector. The Department of Labor’s *2012 List of Goods Produced by Child Labor or Forced Labor* lists Dominican sugarcane as a good produced by child labor.<sup>117</sup> The Department of Labor’s *2011 Findings on the Worst Forms of Child Labor* notes that according to a 2011 report from the ILO Committee of Experts on the Application of Conventions and Recommendations, children work in Dominican sugarcane plantations alongside their parents, which may involve collecting cut cane or clearing land, and that these children risk injury from carrying heavy loads, using dangerous tools, and getting cut by the plants.<sup>118</sup> Similarly, the 2012 U.S.

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<sup>111</sup> The OTLA interviews with workers, April & July 2012.

<sup>112</sup> Ibid.

<sup>113</sup> The OTLA interviews with workers, July 2012.

<sup>114</sup> The OTLA interviews with workers, April 2012.

<sup>115</sup> Ibid.

<sup>116</sup> Verité, *Research Into Indicators of Forced Labor in the Supply Chain of the Dominican Republic*, 2012, available from

[http://www.verite.org/sites/default/files/images/Research%20on%20Indicators%20of%20Forced%20Labor%20in%20the%20Dominican%20Republic%20Sugar%20Sector\\_9.18.pdf](http://www.verite.org/sites/default/files/images/Research%20on%20Indicators%20of%20Forced%20Labor%20in%20the%20Dominican%20Republic%20Sugar%20Sector_9.18.pdf) (last visited September 4, 2013)

[hereinafter 2012 Verité Report], pp. 78 – 80. Verité’s report states that its “report is based on research on the presence of indicators of forced labor in the Dominican sugar sector. This research was not intended to determine the existence or scale of forced labor in the countries and sectors under study, but rather to identify the presence of indicators of forced labor and factors that increased workers’ vulnerability to labor exploitation.” Ibid, p. 7.

<sup>117</sup> U.S. Department of Labor’s *List of Goods Produced by Child Labor or Forced Labor*, Report Required by the Trafficking Victims Protection Reauthorization Act of 2005, 2012, p. 18, available from <http://www.dol.gov/ilab/programs/ocft/tvpra.htm> (last visited June 19, 2013) [hereinafter 2012 TVPRA Report], p. 18.

<sup>118</sup> 2011 TDA Report, p. 188. For this information, the 2011 TDA Report cites ILO Committee of Experts. Individual Observation concerning Minimum Age Convention, 1973 (No. 138) Dominican Republic (ratification: 1999), November 21, 2011, available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=12535&chapter=6&query=> (last visited September 4, 2013); International Trade Union Confederation, *Internationally Recognised Core Labour*

Department of State's *Country Report on Human Rights Practices* reports allegations of children working in the production of Dominican sugarcane.<sup>119</sup>

A lack of birth certificates among many vulnerable children and adolescents complicates efforts to verify the age of some young workers, hindering enforcement of child labor laws. One employer stated that since many young workers in the sector lack birth documentation, employers assess their ages by how old they appear, preventing employers from being able to guarantee that children under 18 are not participating in dangerous and unhealthy work.<sup>120</sup> Some interviewed workers told the OTLA that although management does not allow children under 18 to work, sometimes 15-17 year-olds will pretend to be over age 18 to get work.<sup>121</sup>

The 2010 Constitution stipulates that children born in the Dominican Republic receive Dominican citizenship at birth if one of their parents is a Dominican citizen.<sup>122</sup> The 2010 Constitution denies Dominican citizenship at birth to children born on Dominican soil to parents who are "in transit" or who reside illegally in the Dominican Republic.<sup>123</sup> The Constitution adopted the 2004 Migration Law's definition of "in transit" as covering anyone in the Dominican Republic without resident status.<sup>124</sup> On December 1, 2011, the Dominican Supreme Court upheld the Central Electoral Board's Circular 17, which instructs Civil Registry officials to deny Dominican birth certificates to children of parents who lack resident status, including those who are "in transit."<sup>125</sup> As a result, all

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Standards in the Dominican Republic: Report for the WTO General Council Review of the Trade Policies of the Dominican Republic, Geneva, November 2008; Johns J. "CNN Anderson Cooper 360 Degrees: Invisible Chains: Sex, Work and Slavery [transcript]," February 16, 2007 [cited February 21, 2012], available from <http://transcripts.cnn.com/TRANSCRIPTS/0702/16/acd.02.html> (last visited September 4, 2013); U.S. Embassy – Santo Domingo, reporting, June 4, 2008. See also CSCC - Responsible Sourcing Solutions, Dominican Sugar: A Macro View of Today's Industry, 2009, available from: <http://www.thecoca-colacompany.com/citizenship/pdf/DominicanSugarIndustry-AMacroLevelReport.pdf> (last visited September 4, 2013).

<sup>119</sup> 2012 State Department Human Rights Report.

<sup>120</sup> Meetings between the OTLA and sugar executives, Santo Domingo, April 23, 2012; CAEI Response, July 9, 2012, p. 10 (stating that, "When a potential worker does not have personal documents the age is estimated by look appreciation. A worker that looks underage will not be registered, even if he states to have the minimum age of 18").

<sup>121</sup> The OTLA interviews with workers, April 2012. A recent industry report notes that the use of biometrics systems prevents any unauthorized or underage individuals from working, but it fails to explain how the systems could help verify the age of workers without identity documents. Sugar Industry June 2013 Report, pp. 11-13.

<sup>122</sup> Constitution of the Dominican Republic, art. 18. The Spanish phrasing of article 18 is: "*Nacionalidad. Son dominicanas y dominicanos: (1) Los hijos e hijas de madre o padre dominicanos... (3) Las personas nacidas en territorio nacional, con excepción de los hijos e hijas de extranjeros miembros de legaciones diplomáticas y consulares, de extranjeros que se hallen en tránsito o residen ilegalmente en territorio dominicano. Se considera persona en tránsito a toda extranjera o extranjero definido como tal en las leyes dominicanas...*"

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> See, e.g., Dominican Today, "Supreme Court upholds Denial of Nationality to Descendant of Haitians," December 1, 2011, available from <http://www.dominicantoday.com/dr/local/2011/12/1/41827/Supreme-Court-upholds-denial-of-nationality-to-descendant-of-Haitians> (last visited September 4, 2013); Dominican Today, "NGOs Slam Ruling denies Citizenship to Children of Haitian Ancestry," December 2, 2011,

those born on Dominican soil to parents without resident status are not entitled to Dominican birth certificates.<sup>126</sup> Furthermore, many such children also cannot obtain birth certificates from their parents' countries of origin or face virtually insurmountable obstacles to doing so, particularly if their parents are no longer citizens of other countries or have lost ties with their countries of origin as a result of their long-established presence in the Dominican Republic.<sup>127</sup>

The OTLA conducted a thorough and detailed review of all information obtained related to child labor in the Dominican sugar sector, including: workers' statements that they have seen children cutting or collecting sugarcane, planting seeds, or clearing fields and have observed children, in one case appearing as young as 12, cutting sugarcane; the above-referenced 2010 constitutional amendment; findings of child labor by the U.S. Department of Labor's *2011 Findings on the Worst Forms of Child Labor* and *2012 List of Goods Produced by Child Labor or Forced Labor*; the 2011 U.S. Department of State's *Country Report on Human Rights Practices* for the Dominican Republic; the 2012 Verité report, *Research Into Indicators of Forced Labor in the Supply Chain of the Dominican Republic*; and statements and information provided by the Government of the Dominican Republic and representatives of the sugar companies, including the June 2013 report by the Dominican sugar industry and evidence that employers often assess young undocumented workers' ages based on appearance. Based on this review, the OTLA has found sufficient evidence of apparent and potential violations of the labor laws of the Dominican Republic related to child labor in the sugar sector to warrant further Government inspection and, as appropriate, sanction and remediation.

#### **D. A prohibition on any form of forced or compulsory labor**

The Constitution of the Dominican Republic bans all forms of slavery, servitude, and trafficking in persons.<sup>128</sup> Both the Constitution and the Labor Code also prohibit anyone from forcing anyone else to work against his or her will.<sup>129</sup>

As discussed in prior sections, the Ministry of Labor's 2008 General Inspection Protocol and 2011 Inspection Protocol for Agriculture provide enforcement guidelines for labor inspectors applying Dominican labor laws.<sup>130</sup> For forced labor, the Inspection Protocols

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available from <http://www.dominicantoday.com/dr/local/2011/12/2/41840/NGOs-slam-ruling-denies-citizenship-to-children-of-Haitian-ancestry> (last visited September 4, 2013).

<sup>126</sup> Law 285-04 on Migration, art. 36.10. The Spanish phrasing of article 36.10 is: "Los no residentes son considerados personas en tránsito;" U.S. Department of State official, e-mail communication to U. S. Department of Labor official, May 29, 2012.

<sup>127</sup> 2012 State Department Human Rights Report.

<sup>128</sup> Constitution of the Dominican Republic, art. 41. The Spanish phrasing of article 41 is: "Se prohíben en todas sus formas, la esclavitud, la servidumbre, la trata y el tráfico de personas."

<sup>129</sup> Ibid., art. 62.2; Labor Code, Principle II. Article 62.2 of the Constitution and Principle II of the Labor Code both contain the same language. The Spanish phrasing of this language is: "Nadie puede impedir el trabajo de los demás ni obligarles a trabajar contra su voluntad."

<sup>130</sup> Ministry of Labor, Agriculture Inspection Protocol. The inspection protocol lists the "Legal Standards" ("Norma Legal" in Spanish) that inspectors are to apply for each labor right ("Tema Laboral" in Spanish) covered by the protocol.

identify situations that may be indicative of forced labor and incorporate the Constitution, the Labor Code, and ILO Convention No. 29 as applicable legal standards.<sup>131</sup>

Convention No. 29 defines forced labor as “all work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.”<sup>132</sup> The following sections analyze labor conditions in the Dominican sugar sector under the framework provided by Convention No. 29, as directly incorporated into the 2011 Inspection Protocol for Agriculture. The analysis also considers the particular vulnerabilities of the workers in the sugar sector as directly related to the application of the definition of forced labor, including whether a particular worker is in a position to decline the required work. The same overlapping conditions and employer actions may be indicative of involuntariness, menace of penalty, and workers’ vulnerability to forced labor.

The OTLA delegation found many workers in situations that indicate forced overtime. Many interviewed workers work 12 hours or more per day, exceeding the 10-hour legal limit for agriculture, and seven days per week, including on government holidays, despite the mandatory 36-hour weekly rest period and the requirement of paid holidays off.<sup>133</sup> Employers stressed to the OTLA that workers are free to stop working or take days off whenever they want.<sup>134</sup> Nonetheless, while some workers suggested to the OTLA that, at times, they choose to work hours in excess of the legal limit for economic reasons, several workers reported feeling compelled to work illegal overtime in response to supervisors’ threats to fire them if they do not come to work every day, or if they refuse to complete or protest the long schedule.<sup>135</sup> For example, one worker told the delegation, “If we leave early [and don’t work the full day from 6:00 a.m.-6:00 p.m.], the boss gets angry. They threaten us with losing our jobs. If you lose your job and stay in the house, you won’t eat.”<sup>136</sup> Another worker told the delegation, “The sugarcane cutters have to finish their work before they can leave. The boss tells us we have to stay until it is

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<sup>131</sup> Ministry of Labor, Agriculture Inspection Protocol, pp. 9-10. The Dominican Republic ratified Convention No. 29 on December 5, 1956. International Labor Organization, Ratifications of C029 – Forced Labor Convention, 1930 (No. 29), *available from* [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312174](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174) (last visited September 4, 2013).

<sup>132</sup> International Labor Organization, Convention Concerning Forced or Compulsory Labor, Forced Labor Convention, 1930 (No. 29), art. 2.1., *available from* [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029) (last visited September 4, 2013). This definition of forced labor was reiterated by the former Minister of Labor of the Dominican Republic, Francisco Domínguez Brito, when he explained the ILO’s definition of forced labor as, “*todo trabajo o servicio exigido a un individuo bajo la amenaza de una pena cualquiera y para el cual dicho individuo no se ofrece voluntariamente.*” Government of the Dominican Republic, Ministry of Labor, *Minister of Labor says no forced labor exists in the Dominican Republic (Ministro de Trabajo afirma no existe trabajo forzoso en República Dominicana)*, April 27, 2012, *available from* <http://www.ministeriodetrabajo.gob.do/index.php/todas-las-noticias/343-ministro-de-trabajo-afirma-no-existe-trabajo-forzoso-en-republica-dominicana> (last visited September 4, 2013).

<sup>133</sup> The OTLA interviews with workers, April & July 2012.

<sup>134</sup> Meetings between the OTLA and executives of the three major sugar companies, April & July 2012.

<sup>135</sup> The OTLA interviews with workers, April & July 2012. Workers told the OTLA delegation that they work every day, including during the weekly rest period, because, “if you don’t work, you get fired.” *Ibid.*

<sup>136</sup> The OTLA interviews with workers, April & July 2012.

finished.”<sup>137</sup> One worker said he was fired for asking to amend his schedule from 12 to 10 hours per day so that he could study in the evenings. He provided the OTLA delegation with a signed notice of termination that supported his statement.<sup>138</sup> Such threats and the resulting overtime in excess of the legal limit are indicative of forced labor.

Some interviewed workers also told the OTLA delegation that although they voluntarily migrated to the Dominican Republic, they were victims of deceptive recruiting and subsequently entered into employment other than that which they originally expected. Many workers reported having been deceived about the type of work in which they would be engaged and the conditions of their employment in the Dominican Republic.<sup>139</sup> For example, some workers were told they would be employed in jobs other than cutting sugarcane, such as picking tomatoes, doing construction, or working in offices,<sup>140</sup> and some were promised higher pay than they actually received.<sup>141</sup> Each of these deceptive recruitment practices is indicative of forced labor.

Sugar sector workers also described various impediments to formally complaining to employers or to the Ministry of Labor about unacceptable terms and conditions of employment and other labor law violations. Some interviewed workers stated that they had been explicitly told by employers that they have no rights and cannot file complaints.<sup>142</sup> Others explained that the fear of being deported or reported to immigration authorities or of being fired prevents them from formally complaining.<sup>143</sup> In one case where 15 workers participated in a collective work stoppage to protest perceived irregularities in their payment system, their employer called immigration authorities to disperse them, spurring the workers to flee.<sup>144</sup> All 15 workers were subsequently fired and none received payments they were legally due.<sup>145</sup> Similarly, workers who met with the OTLA delegation reported that they felt the need to sneak out of their housing in the *bateyes* to meet with the delegation, fearing that they might be detected and face repercussions for speaking with the OTLA.<sup>146</sup> As discussed in Section E, two workers reported being fired in retaliation for speaking with the OTLA delegation during its April 2012 mission to the Dominican Republic. Depriving workers of the ability to seek legal enforcement of their rights can contribute to worker isolation, disempowerment, and a culture of fear and employer control that makes workers particularly vulnerable to forced labor.

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<sup>137</sup> The OTLA interviews with workers, April & July 2012.

<sup>138</sup> The OTLA interviews with workers, July 2012.

<sup>139</sup> The OTLA interviews with workers, April & July 2012.

<sup>140</sup> Ibid. Reportedly, other sugarcane workers were told by the persons who transported them to the sugar plantations (*buscones*) that they would be working in hotels. AFL-CIO, *Response to Request for Comments on Article 156.4.3 of the DR-CAFTA*, July 2, 2012.

<sup>141</sup> The OTLA interviews with workers, April & July 2012.

<sup>142</sup> The OTLA interviews with workers, April 2012. For example, a worker told the OTLA, “We cannot complain to our supervisor. The supervisors say that we have no rights to complain because we are ‘congós’ [from Haiti]. If we are in a bad situation, it stays that way.” Ibid.

<sup>143</sup> The OTLA interviews with workers, April & July 2012.

<sup>144</sup> The OTLA interviews with workers, April 2012.

<sup>145</sup> Ibid.; Phone conversation between the OTLA and local contact, November 9, 2012.

<sup>146</sup> The OTLA interviews with workers, April 2012.

Some of the undocumented migrant workers interviewed by the OTLA also reported that they fear being deported or denounced to Dominican immigration authorities if they quit their jobs and leave the *bateyes*.<sup>147</sup> The Ministry of Labor’s 2011 Inspection Protocol for Agriculture highlights the extra vulnerability of undocumented workers, noting that a lack of documentation can limit workers’ mobility.<sup>148</sup> This, especially when combined with workers’ fear of formally complaining about unlawful employment conditions and other labor law violations, increases workers’ vulnerability to forced labor.

Additionally, interviewed workers stated, and sugar company executives confirmed, that workers must remain in the *bateyes* during the non-harvest season or return to the *bateyes* for the following year’s harvest to receive their legally-mandated Christmas bonuses, due by December 20,<sup>149</sup> and profit-sharing bonuses, due 90 to 120 days after the harvest season ends.<sup>150</sup> An executive of one of the major sugar companies explained that his

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<sup>147</sup> The OTLA interviews with workers, April 2012. For example, a worker told the OTLA that, “We are afraid to go out on the highway. We run and hide for fear of immigration.” Ibid. 2012 State Department Human Rights Report (stating that, “Many *batey* residents, lacking documentation, felt they had little choice but to remain in their communities, where they felt relatively safe from the risks of deportation and harassment that existed elsewhere in the country”).

<sup>148</sup> Under the heading of “Possible Problematic Areas” that labor inspectors are to consider with regard to inspections into forced labor, the Protocol states, “A lack of documentation can make workers’ mobility difficult” (“*Falta de documentación puede dificultar la movilidad de los trabajadores*”). Ministry of Labor, Agriculture Inspection Protocol, p. 10. In 2011, the ILO requested that the Government of the Dominican Republic reply to allegations that this lack of documentation made migrant workers more vulnerable to forced labor. In 2012, the ILO noted with regret that the Dominican government had not responded to this request. ILO, Committee of Experts on the Application of Conventions and Recommendations, Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Forced Labor Convention, 1930 (No. 29) – Dominican Republic (Ratification: 1956), available from [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2698151](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2698151) (last visited September 4, 2013).

<sup>149</sup> Labor Code, arts. 219 and 220. The Spanish phrasing of article 219 is: “*El empleador está obligado a pagar al trabajador en el mes de diciembre, el salario de navidad, consistente en la duodécima parte del salario ordinario devengado por el trabajador en el año calendario, sin perjuicio de los usos y prácticas de la empresa, lo pactado en el convenio colectivo o el derecho del empleador de otorgar por concepto de éste una suma mayor. Sin embargo, en ningún caso el salario de navidad será mayor del monto de cinco salarios mínimos legalmente establecido. Para el pago de este salario se excluyen las retribuciones por horas extraordinarias y el salario correspondiente a la participación en los beneficios de la empresa. El salario de navidad no será computado para los fines del preaviso, de la cesantía y de la asistencia económica prevista en este Código.*” The Spanish phrasing of article 220 is: “*El pago del salario de navidad se hará a más tardar el día veinte del mes de diciembre aunque el contrato de trabajo se hubiere resuelto con anterioridad y sin tener en cuenta la causa de la resolución. El trabajador que no haya prestado servicios durante todo el año tiene derecho al salario de navidad en proporción al tiempo trabajado durante el año.*”

<sup>150</sup> Ibid., arts. 223, 30, and 224. The Spanish phrasing of article 223 is: “*Es obligatorio para toda empresa otorgar una participación equivalente al diez por ciento de las utilidades o beneficios netos anuales a todos sus trabajadores por tiempo indefinido. La participación individual de cada trabajador no podrá exceder del equivalente a cuarenta y cinco días de salario ordinario para aquellos que hayan prestado servicios por menos de tres años y de sesenta días de salario ordinario para los que hayan prestado servicio durante tres o más años. Cuando el trabajador no preste servicios durante todo el año que corresponde al ejercicio económico, la participación individual será proporcional al salario del tiempo trabajado.*” The Spanish phrasing of article 30 is: “*Los contratos estacionales de la industria azucarera, se reputan contratos de trabajo por tiempo indefinido sujetos a las reglas establecidas para éstos en caso*

company pays the Christmas bonus at the beginning of the following harvest season (typically near the end of November or early December) and the profit-sharing bonus after the fiscal year ends in September.<sup>151</sup> Some of the interviewed workers similarly told the OTLA that they receive their Christmas bonuses in December, at least one week after the subsequent harvest season has commenced.<sup>152</sup> A local contact reported, however, that in 2012, workers at another one of the major sugar companies did not receive their Christmas bonuses until January 2013, almost two months into the subsequent harvest season.<sup>153</sup>

Some interviewed workers reported that they leave the *bateyes* and return for their bonuses later in the year. Others told the OTLA, however, that they must stay because, without their bonuses, they cannot afford the trip home, generally back to Haiti.<sup>154</sup> Those workers who remain often perform additional work during the non-harvest season. When the subsequent harvest season begins, if these workers have not yet received their Christmas bonuses and still remain in the *bateyes*, as occurred in at least some cases for the 2012 harvest, they begin working that harvest as they await their bonuses. Having commenced the subsequent harvest season, they once again face the conditions, described in the paragraphs above, in which they fear reporting unlawful conditions or quitting their jobs and leaving the *bateyes*.<sup>155</sup> This cycle further exacerbates workers' vulnerability to forced labor.

Many interviewed workers also reported purchasing food and other staple products at privately-owned stores, or *colmados*, located within their *bateyes*.<sup>156</sup> Because many *bateyes* are isolated, these *colmados* are often the sole sources of food and other provisions available to workers living in *bateyes*. Some interviewed workers reported that *colmados* typically inflate the prices of their goods, forcing workers, in some cases, to purchase food and other goods on credit, as the workers do not have sufficient money to pay upfront.<sup>157</sup> *Colmados* charge high interest rates for the privilege of purchasing goods on credit, however, and as a result, workers' debts to *colmados* can quickly balloon over the course of a harvest season.<sup>158</sup> One worker reported that a *colmado* owner threatened to "take his house away" to collect payment; another reported having to sell all of his possessions, "even his shoes," in order to pay his debt to the local *colmado*.<sup>159</sup>

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*de desahucio, salvo disposición contraria de la ley o del convenio colectivo. Los períodos de prestación del servicio, correspondientes a varias zafras o temporadas consecutivas, se acumularán para la determinación de los derechos del trabajador.*" The Spanish phrasing of article 224 is: "El pago de la participación a los trabajadores será efectuado por las empresas a más tardar entre los noventa y los ciento veinte días después del cierre de cada ejercicio económico. La participación de que trata el presente título goza de los mismos privilegios, garantías y exenciones que el salario."

<sup>151</sup> Meeting between the OTLA and sugar executives, San Pedro de Macoris, Dominican Republic, July 23, 2012.

<sup>152</sup> The OTLA interviews with workers, April 2012.

<sup>153</sup> Phone conversation between the OTLA and local contact, January 31, 2013.

<sup>154</sup> The OTLA interviews with workers, April 2012.

<sup>155</sup> The OTLA interviews with workers, April & July 2012.

<sup>156</sup> Ibid.

<sup>157</sup> The OTLA interviews with workers, April 2012

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

Another worker told the OTLA that “we can never get out of debt” and that “sometimes we have to hide from the *colmado* owner.”<sup>160</sup> The cycle of indebtedness engendered by the *colmado* system further limits the money that some Haitian migrant workers have available for transportation out of the *bateyes* and back to Haiti, thereby limiting their ability to leave the *bateyes*, even between harvest seasons. It thus negatively affects workers’ mobility and adds to their vulnerability to forced labor.

Sugar sector workers’ experiences often reflect a combination of some or all of the above-described conditions that are tantamount to forced labor and factors that increase workers’ vulnerability to forced labor. “Patrice’s” experience, as he recounted it to the OTLA delegation in April 2012, is representative of this on-the-ground reality that workers may face in the sector.<sup>161</sup> Patrice told the OTLA that he came to the Dominican Republic from Haiti, without legal documents, in 2003. Since that time, he has worked as a sugarcane cutter, living in a *batey* that lacks electricity and other basic services. Normally, Patrice works from 4:00 a.m. until 7:00 p.m., seven days per week. His supervisor tells him that he cannot leave his worksite until his daily work is finished, which generally takes 15 or more hours. According to Patrice, despite his long hours, he does not earn enough money cutting sugarcane to afford food and relies on remittances to survive. “I am in a situation that is the opposite of what I thought,” he told the OTLA. “Instead of sending money home to support my mom in Haiti, she has to send me money so that I can eat.” Patrice would leave the Dominican Republic if he could afford the trip back home to Haiti, but he cannot. He does not complain to management about his situation, because if workers complain, “the bosses can take away their jobs. Many people have lost their jobs this way.” In addition, as an undocumented migrant, he is also afraid to alert the Government of the Dominican Republic to his plight. “Last year immigration came, and we had to hide. They lit the cane fields on fire to try to get us to run out, so we had to run. This is a technique that immigration officials often use.”<sup>162</sup>

In addition to the information collected by the OTLA delegation detailed above, the independent 2012 Verité study referenced above also found multiple indicators of forced labor in the sector. The Verité study identified a number of indicators of forced labor and of vulnerability to forced labor, similar to those found in the OTLA interviews, including: hours in excess of legal limits and a lack of days off; subminimum wage payments and illegal deductions for safety equipment and IDSS contributions; vulnerability to withholding or non-payment of wages, due to lack of written employment contracts; deception or false promises about terms and conditions of work; deportation or threats of deportation and dismissal or threats of dismissal for complaining about terms and conditions of employment; and “induced indebtedness” to *colmados*. The study also noted additional indicators of forced labor and of vulnerability to forced labor, including: psychological compulsion to obey supervisors’ orders to work, resulting from “a credible threat of a penalty for non-compliance”; physical confinement in work locations, including isolation in remote *bateyes* and limited “authorized zones” in which workers

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<sup>160</sup> The OTLA interviews with workers, April 2012.

<sup>161</sup> “Patrice” is not the worker’s real name, but all other information in this narrative was reported directly to the OTLA delegation. Ibid.

<sup>162</sup> Ibid.

must remain; employer retention of identity documents, specifically temporary worker cards or *carnets*; induced indebtedness for costs related to the *buscones*, who recruit and transport workers to the sugar plantations; the use of a voucher system to make payments to *colmados*, with voucher values artificially deflated; loss of employer-provided housing or threats of such loss for failure to report to work for one or more days; exclusion from future employment or threats of such exclusion for complaining about unlawful working conditions, missing work, or quitting employment and leaving the *bateyes*; and physical violence or threats of physical violence for quitting work and leaving the *bateyes*.<sup>163</sup>

Furthermore, the U.S. Department of Labor's 2012 *List of Goods Produced by Child Labor or Forced Labor* lists Dominican sugarcane as a good produced by forced labor.<sup>164</sup> Sugarcane has been on the list since the report's first publication in 2009.<sup>165</sup>

The OTLA conducted a thorough and detailed review of the information obtained related to forced labor in the Dominican sugar sector, including worker reports of unlawful overtime under the threat of dismissal, deceptive recruitment practices, fear of dismissal or deportation for formally complaining about unlawful labor conditions, fear of deportation for quitting work and leaving the *bateyes*, a bonus payment system that creates pressure for workers to return to work each season or remain on the *bateyes* year-round, and growing indebtedness to local privately-owned *colmados*. In addition, this review included statements by employers, as well as reports by the U.S. Department of Labor, independent organizations, and the sugar industry. Based on this review, the OTLA has found sufficient evidence of apparent and potential violations of the labor laws of the Dominican Republic related to forced labor and to indicators of forced labor in the sugar sector to warrant further Government inspection and, as appropriate, sanction and remediation.

### **E. Post-OTLA mission reprisals against workers**

Prior to the OTLA's first fact-finding trip to the Dominican Republic in April 2012, the OTLA received an allegation that certain employers were threatening workers with reprisals, including firings, if they spoke with the OTLA delegation.<sup>166</sup>

Due to the seriousness of the allegation, the OTLA raised this concern with the Government of the Dominican Republic and sugar company executives at two of the three major sugar companies in meetings on April 23 and 24, noting that if such

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<sup>163</sup> 2012 Verité Report, p. 80. Verité's report states that its "report is based on research on the presence of indicators of forced labor in the Dominican sugar sector. This research was not intended to determine the existence or scale of forced labor in the countries and sectors under study, but rather to identify the presence of indicators of forced labor and factors that increased workers' vulnerability to labor exploitation." Ibid., p. 7.

<sup>164</sup> 2012 TVPRA Report, p. 18.

<sup>165</sup> U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor, Report Required by the Trafficking Victims Reauthorization Act of 2005, 2009, available from <http://www.dol.gov/ilab/programs/ocft/tvpra.htm>, p. 27.

<sup>166</sup> Email from the submitter to the OTLA, April 23, 2012.

allegations were true and any such reprisals were to occur, they could be seen as attempts to undermine this review process.<sup>167</sup> Officials of the Government of the Dominican Republic stated that they would investigate any specific allegations of such threats or reprisals, and sugar executives assured the OTLA that there had been no threats of reprisals against workers and would be no such threats or reprisals in the future.<sup>168</sup>

Nevertheless, shortly after meeting with workers during its April 2012 trip, the OTLA received specific allegations of reprisals against those workers.<sup>169</sup> On Saturday, April 28, the OTLA met with sugarcane workers in both a group setting and individually. Then on May 2, the OTLA was informed that two of the workers with whom the delegation met individually had been fired on Sunday, April 29, less than 24 hours after meeting with the OTLA.<sup>170</sup> The workers stated that they were fired as a result of speaking with the delegation.<sup>171</sup>

On May 7, the OTLA informed the Government of the Dominican Republic of these reported reprisals without identifying the two workers by name.<sup>172</sup> Ministry of Labor inspectors investigated the matter on May 9 and June 6, speaking with a total of four workers and eight managers during the investigation.<sup>173</sup> The Ministry sent the OTLA a summary of these inspections on June 21 and shared the specific inspection reports with the OTLA on July 24.<sup>174</sup> The May 9 inspection report finds, based on a statement by the company's Human Resources Director, that one of the workers had been suspended for causing a disturbance in a meeting with the local Haitian consul, but that this worker had been reinstated after one day and received compensatory pay for the day of work missed.<sup>175</sup> However, the June 6 inspection report contains a statement from the same worker that he "was suspended for speaking ill of the company to the commission that

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<sup>167</sup> Meeting between the OTLA and the Dominican Ministries of Labor and Foreign Affairs, Santo Domingo, April 23, 2012; Meeting between the OTLA and sugar executives, Santo Domingo, Dominican Republic, April 23-24, 2012.

<sup>168</sup> Meeting between the OTLA and the Dominican Ministries of Labor and Foreign Affairs, Santo Domingo, April 23, 2012; Meeting between the OTLA and sugar executives, Santo Domingo, Dominican Republic, April 23-24, 2012. A representative of the sugar companies also agreed, stating that any such reprisals against workers would be a very serious situation, tantamount to "witness tampering." Meeting between the OTLA and an attorney for the Dominican sugar sector, Washington, D.C., June 7, 2012.

<sup>169</sup> Email from local contact to the OTLA, May 2, 2012. The alleged reprisals occurred against workers employed by the one sugar company with whose executives the OTLA delegation did not meet during the April 2012 trip.

<sup>170</sup> Ibid. The local contact alerted the OTLA to these alleged reprisals in an email on May 2, 2012, and then, during a phone call with the OTLA on May 3, provided clarifying information, including the names of the fired workers and the allegations that they were fired for speaking against the company in a meeting.

<sup>171</sup> Ibid.; The OTLA interviews with workers, July 2012; Government of the Dominican Republic, Ministry of Labor, Inspection No. 190, June 6, 2012.

<sup>172</sup> Email from the OTLA to the Government of the Dominican Republic, May 7, 2012. The OTLA also met with representatives of the Embassy of the Dominican Republic in Washington, D.C., to discuss this matter on May 7, 2012.

<sup>173</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 176, May 9, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection No. 190, June 6, 2012.

<sup>174</sup> Letter sent to the OTLA by the Ministry of Labor of the Dominican Republic regarding inspections into alleged post-OTLA mission reprisals against workers, June 21, 2012; Meeting between the OTLA and the Ministry of Labor, Barahona, Dominican Republic, July 24, 2012.

<sup>175</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 176, May 9, 2012.

visited from the United States.”<sup>176</sup> The June 21 letter from the Government of the Dominican Republic to the OTLA cites the Human Resources Director’s statement from May 9 without referencing the worker’s statement on June 6.<sup>177</sup>

During the OTLA’s July trip, the OTLA delegation spoke with the local Haitian consul mentioned in the May 9 inspection report. He stated that the only in-person engagement he had with workers on or about April 29 was during a Labor Day party hosted by the sugar company on the afternoon of Monday, April 30, during which there had been no disturbances or other incidents involving workers in his presence.<sup>178</sup> The Haitian consul showed the OTLA delegation a video taken during the party.<sup>179</sup>

The May 9 and June 6 inspection reports do not mention the second worker allegedly fired for speaking with the OTLA. On September 12, the OTLA provided the Ministry of Labor with the name of the second allegedly fired worker, after receiving his permission to do so.<sup>180</sup> The OTLA also alerted the Ministry of Labor to several issues raised by the labor inspectors’ investigation into the matter, including that the inspectors spoke with few workers, conducted the inspection in Spanish rather than Creole, and failed to ascertain the identity of the second fired worker.<sup>181</sup> The Ministry of Labor investigated this matter as it relates to the second worker on October 12 and sent the OTLA a copy of the inspection report on November 22.<sup>182</sup> This inspection report contains a statement by the worker that he was never fired,<sup>183</sup> despite his assertion to the contrary to the OTLA during a meeting in July.<sup>184</sup> The inspection report also notes that the worker’s statement was made in the presence of two supervisors.<sup>185</sup> The OTLA has been informed that one of these is the same supervisor who allegedly fired the worker.<sup>186</sup> In addition to the October 12 inspection report, on November 22, the Government of the Dominican Republic also sent the OTLA copies of what appear to be payroll records intended to show that this second worker was never fired.<sup>187</sup> The OTLA has been unable to verify the information contained in these records.

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<sup>176</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 190, June 6, 2012. The statement contained in this inspection report, in Spanish, is: “*contestándome que fue que el habló mal de la empresa a la comisión que lo visitó desde los Estados Unidos.*”

<sup>177</sup> Letter sent to the OTLA by the Ministry of Labor of the Dominican Republic regarding inspections into alleged post-OTLA mission reprisals against workers, June 21, 2012.

<sup>178</sup> Meeting between the OTLA and the Haitian consul of Barahona, Barahona, Dominican Republic, July 24, 2012.

<sup>179</sup> Ibid.

<sup>180</sup> Email from the OTLA to the Dominican Ministry of Labor, September 12, 2012.

<sup>181</sup> Ibid.

<sup>182</sup> Government of the Dominican Republic, Ministry of Labor, Report of the October 12 inspection into the situation of Worker 16099, October 18, 2012; Email from the Dominican Ministry of Labor to the OTLA, November 22, 2012.

<sup>183</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 245, October 12, 2012. The statement contained in this inspection report, in Spanish, is: “*No, yo nunca he sido despedido de mi trabajo.*”

<sup>184</sup> The OTLA interviews with workers, July 2012.

<sup>185</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 245, October 12, 2012.

<sup>186</sup> Phone call between the OTLA and a local contact, November 27, 2012.

<sup>187</sup> Government of the Dominican Republic, Ministry of Labor, Inspection No. 0158/2012, November 20, 2012.

The OTLA has received information that both workers allegedly fired as a result of speaking with the OTLA delegation are now re-employed with their company.<sup>188</sup>

## F. Government enforcement of labor laws

The Labor Code of the Dominican Republic tasks the Ministry of Labor's inspectorate with overseeing compliance with labor laws,<sup>189</sup> including through worksite inspections. The Labor Code authorizes labor inspectors to enter worksites freely and without prior notification, interview company personnel, and request and review employer records and documentation.<sup>190</sup> If labor inspectors identify a labor law violation during the inspection process, they must communicate the finding to the employer and establish a period for remediation.<sup>191</sup> Upon expiration of that period, inspectors must conduct a re-inspection to confirm that remediation has occurred.<sup>192</sup> If the violation persists, labor inspectors are required to file a notice of the violation with the local office of the Labor Ministry, which must then transfer the case within five days to the relevant local court to levy and ultimately collect the appropriate fine.<sup>193</sup>

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<sup>188</sup> Phone call between the OTLA and a local contact, November 27, 2012.

<sup>189</sup> Labor Code, art. 433. The Spanish phrasing of article 433 is: "*Compete al servicio de inspección de trabajo velar por el fiel cumplimiento de las disposiciones legales o reglamentarias relativas al trabajo, especialmente las que se refieren a las materias enunciadas en los ordinales de artículo 423.*" The Spanish phrasing of article 423 is: "*Corresponde al Departamento de Trabajo despachar de acuerdo con las leyes y reglamentos, bajo la vigilancia de la Secretaría de Estado de Trabajo todo lo relativo: (1) a la jornada de trabajo; (2) a los descansos legales; (3) a las vacaciones de los trabajadores; (4) a cierre de las empresas; (5) a la protección de la maternidad de las trabajadoras; (6) a la protección de los menores en materia de trabajo; (7) a los salarios de los trabajadores; (8) a la nacionalización de trabajo; (9) a las asociaciones de empleadores y trabajadores; (10) a los contratos de trabajo; (11) a los demás asuntos relacionados con el trabajo como factor de la producción.*"

<sup>190</sup> Ibid., art. 434. The Spanish phrasing of article 434 is: "*Los inspectores de trabajo que acrediten su identidad, están autorizados: (1) A penetrar libremente y sin previa notificación en los lugares en los cuales puedan ser objeto de violación las disposiciones a que se refiere el artículo 433, guardando el respecto debido a las personas que se encuentren en ellos y tratando de que no se interrumpan innecesariamente los trabajos que se estén realizando; (2) A proceder a cualquier examen, comprobación o investigación que consideren necesarios para tener la convicción de que se observan las disposiciones legales, en particular: (a) A interrogar, sólo o ante testigos, al empleador y al personal de la empresa sobre cualquier asunto relativo a la aplicación de las disposiciones legales; (b) a pedir la presentación de libros, registros o documentos que las leyes y los reglamentos de trabajo ordenen llevar, a fin de comprobar si se hallan en debida forma, y para sacar copias o extractos de ellos; y (c) a requerir la colocación de los avisos y cartels que exigen las leyes y reglamentos. Los inspectores de trabajo podrán requerir el auxilio de la fuerza pública para el cumplimiento de lo dispuesto en el ordinal primero, en caso de oposición del propietario sus representantes o las personas que se encuentren en los lugares indicados en dicho ordinal o que acudan a ellos.*"

<sup>191</sup> Labor Code, art. 436; Ministry of Labor, General Inspection Protocol, p. 20; Meeting between the OTLA and the Ministry of Labor's Director of Inspections, July 25, 2012. Labor inspectors are also required to file an inspection report with the Ministry of Labor within two days of concluding an inspection. Labor Code, art. 435.

<sup>192</sup> Ministry of Labor, General Inspection Protocol, p. 20; Meeting between the OTLA and the Ministry of Labor's Director of Inspections, July 25, 2012.

<sup>193</sup> Labor Code, arts. 439, 442, 711, 715; Ministry of Labor, General Inspection Protocol, p. 20; Meeting between the OTLA and the Ministry of Labor's Director of Inspections, July 25, 2012.

The Ministry of Labor's 2008 General Inspection Protocol and 2011 Inspection Protocol for Agriculture list specific labor rights established in Dominican laws and identify the relevant domestic legal provisions and international standards on each right; indicate what constitutes compliance, how inspectors are to verify compliance, and possible problematic areas; and instruct inspectors to review relevant employer records, speak with both employers and workers during inspections, interview workers outside the presence of management representatives, and protect the anonymity of workers interviewed.<sup>194</sup>

The Ministry of Labor conducts two types of inspections: special inspections, which respond to specific requests or complaints filed with the Ministry of Labor; and preventive inspections, which are scheduled periodically and proactively focus on particularly high-risk sectors or employers.<sup>195</sup> According to the Ministry of Labor, no special inspections were conducted in the sugar sector from 2007 through February 2012 because no requests for inspections or complaints were filed for that sector during that five-year period.<sup>196</sup> However, the OTLA is aware of one inspection requested on behalf of 21 sugar sector workers by a local non-governmental organization on March 8, 2011, to which the Ministry reportedly never responded.<sup>197</sup>

On April 16, 2012, the OTLA requested in writing from the Government of the Dominican Republic information on any labor inspections conducted in the sugar industry since the CAFTA-DR entered into force between the United States and the Dominican Republic on March 1, 2007.<sup>198</sup> Specifically, the OTLA asked for "information on where and when those inspections were conducted, the findings of the inspections, what remediation of identified problems was requested and the date of that remediation, what steps it involved, and the [Government of the Dominican Republic's] role in enforcing that remediation."<sup>199</sup>

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<sup>194</sup> Ministry of Labor, General Inspection Protocol; Ministry of Labor, Agriculture Inspection Protocol.

<sup>195</sup> Government of the Dominican Republic, June 22 response, p. 2; Meeting between the OTLA and the Dominican Ministry of Labor, July 25, 2012.

<sup>196</sup> Government of the Dominican Republic, June 22 response, pp. 3-6; Meeting between the OTLA and the Dominican Ministries of Labor and Foreign Affairs, Santo Domingo, April 23, 2012.

<sup>197</sup> The complaint alleged labor rights abuses including payments below the minimum wage, four pay periods without pay, and no weekly day of rest. Inspection request filed with the Ministry of Labor by a local non-governmental organization on behalf of workers, San Pedro de Macorís, March 8, 2011; Meeting between the OTLA and local contacts, San Pedro de Macorís, July 25, 2012.

<sup>198</sup> Email from the OTLA to the Government of the Dominican Republic, April 16, 2012.

<sup>199</sup> Ibid. The questions submitted to Government of the Dominican Republic were sent in both English and Spanish. The Spanish text of this question read: "*¿Se realizaron la SET y el CNSS inspecciones laborales recientes en el sector azucarero (incluyendo inspecciones relacionadas con el trabajo infantil)? Si las han realizado, favor de proporcionar información sobre las inspecciones realizadas, incluyendo: (a) la fecha de la inspección, (b) el lugar de la inspección, (c) las conclusiones de los inspectores, (d) el tipo de remedio mandado por el [Gobierno de la República Dominicana] para violaciones identificadas, (e) la fecha y una descripción de los remedios implementados en las empresas violadoras, y (f) el papel del [Gobierno de la República Dominicana] en hacer que la empresa o el ingenio cumpla con los remedios mandados.*"

In response, on June 22, 2012, the Government of the Dominican Republic submitted documentation to the OTLA summarizing information from 14 reports representing 148 preventive inspections conducted in the sugar sector from March 1, 2007, through February 2012 and attached the 14 corresponding inspection reports as annexes to its response.<sup>200</sup> The Government of the Dominican Republic also attached Annex XVIII to its June 22 response to the OTLA, reporting that it conducted 38,604 preventive inspections on a national level from January through September 2011.<sup>201</sup> The Government of the Dominican Republic similarly reported to the ILO having conducted 246,349 preventive inspections nationwide from 2007 through 2010.<sup>202</sup> Thus, the Government of the Dominican Republic reported conducting a total of 284,953 preventive inspections across the country from March 1, 2007, through September 2011.

The OTLA's analysis of the information that the Government of the Dominican Republic provided to the OTLA and the ILO suggests that the Dominican government has adopted two distinct approaches for counting inspections. While the 14 inspection reports cited and annexed to the June 22 response to the OTLA count each inspection of a *company* as a separate event,<sup>203</sup> the information provided to the OTLA in Annex XVIII of the June 22 response and to the ILO counts each inspection of a *batey or worksite* as a separate event.<sup>204</sup> Based on this latter approach, the OTLA review of the 14 inspection reports suggests that inspectors visited 148 *bateyes* or worksites in the sugar sector from March 1, 2007, through February 2012.<sup>205</sup>

The OTLA's review also reveals discrepancies between the 14 inspection reports provided and the information that the Government of the Dominican Republic reported to the ILO for that same period. These discrepancies include, among others: apparent double-counting of five inspection visits in the information provided to the ILO;<sup>206</sup> and

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<sup>200</sup> Government of the Dominican Republic, June 22 response, pp. 3-6 and Annex I (*Informes de Inspección realizados desde el 2007 a la fecha*).

<sup>201</sup> *Ibid.*, Annex XVIII.

<sup>202</sup> The Government of the Dominican Republic reported to the ILO that it conducted 65,482 preventive inspections in 2010, 62,891 in 2009, 59,503 in 2008, and 58,473 in 2007. ILO, *Verification Report on the Implementation of White Paper Recommendations, August – December 2010*, p. 136, available from [http://www.ilo.org/sanjose/publicaciones/WCMS\\_180195/lang--es/index.htm](http://www.ilo.org/sanjose/publicaciones/WCMS_180195/lang--es/index.htm) (last visited September 4, 2013).

<sup>203</sup> See Government of the Dominican Republic, June 22 response, pp. 3-6 and Annex I.

<sup>204</sup> See ILO, *Verification Report on the Implementation of White Paper Recommendations, August 2009 – January 2010*, p. 128, fn. 122; Government of the Dominican Republic, June 22 response, Annex XVIII.

<sup>205</sup> Government of the Dominican Republic, June 22 response, Annex I.

<sup>206</sup> For example, the OTLA's analysis of the January 14, 2010, inspection report (Informe No. 025/10) provided by the Government of the Dominican Republic shows that three bateyes were visited by inspectors on January 13 (Batey Colonia Elsie Kalil, Batey Consuelito, Batey Los Chicharrones) and three bateyes were visited by inspectors on January 14 (Batey Toronja, Batey Experimental, Finca Experimental El Peñon UCE). However, the information reported to the ILO and reflected in the *Verification Report on the Implementation of White Paper Recommendations, August 2009 – January 2010*, which is uncorroborated by the inspection reports provided to the OTLA, states that all six of these bateyes were visited on January 13 and that five of them were visited again on January 14. ILO, *Verification Report on the Implementation of White Paper Recommendations, August 2009 – January 2010*, p. 128, fn. 122. The statement suggesting that the Government of the Dominican Republic made 64 inspection visits in the sugar sector over this period counts each of these 11 visits as an individual event.

the inclusion of an additional 26 inspection visits in the materials for the ILO that are not documented in the inspection reports provided to the OTLA.<sup>207</sup> Such discrepancies raise questions regarding consistency in tracking, recording, and reporting on labor inspections conducted.

Additionally, the OTLA's review raises significant concerns about procedural and methodological shortcomings in the inspection process that undermine the government's capacity to effectively identify labor violations. Although the majority of workers whom the OTLA encountered in the course of this review spoke Creole, with limited or no Spanish,<sup>208</sup> the Ministry of Labor could not verify that any of its inspectors speak Creole.<sup>209</sup> As a result, Spanish-speaking inspectors were responsible for interviewing Creole-speaking workers, calling into question inspectors' ability to communicate directly with workers during the inspection process.

In its review of the 14 inspection reports, OTLA identified particular and significant concerns regarding the number of workers with whom inspectors spoke during each site visit and the substance of those conversations. According to the OTLA's analysis of the reports, inspectors did not report speaking with any workers on 117 of the 148 worksites visited, or 79 percent.<sup>210</sup> For nine of the 31 sites where inspectors spoke with a worker, inspectors reported speaking with only one worker.<sup>211</sup> In addition, for six of these 31

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<sup>207</sup> The additional 26 bateyes and worksites reported to the ILO as inspection visit sites are: (1) December 15, 2009, San Luis (Las Flores, El Ingenio, El Vertedero, San Mateo, Puente Rojo, Cruce de Yabacao); (2) December 15, 2009, Guerra (Cyear Nuevo, Cyear Marucho, Batey Yabacao, Batey Chirino, Batey el Talao, Batey Hato de Palma, Batey Bayaguana) (3) March 1, 2010, San Pedro de Macorís (Batey Chicharrones, Batey Toronja, Batey Carlos Torres Ríos; (4) March 3, 2010, La Romana (Batey Palo Blanco, Batey No. 5, Batey No. 16, Batey No. 20, Batey No. 82, Batey Guerrero, Batey Carmoni); (5) March 5, 2010, La Romana (Batey Higueral, Batey La Milagrosa); (6) July 8, 2010 (Cristóbal Colón mill). ILO, *Verification Report on the Implementation of White Paper Recommendations, August 2009 – January 2010*, p. 128, fn. 122, and *Verification Report on the Implementation of White Paper Recommendations, February 2010 – July 2010*, p. 139, fn. 115.

<sup>208</sup> The OTLA interviews with workers, April & July 2012.

<sup>209</sup> Meeting between the OTLA and the Dominican Ministries of Labor and Foreign Affairs, Santo Domingo, July 23, 2012; Meeting between the OTLA and the Ministry of Labor's Director of Inspections, July 25, 2012.

<sup>210</sup> Government of the Dominican Republic, Ministry of Labor, Inspection of December 18, 2007; Government of the Dominican Republic, Ministry of Labor, Inspection No. 0159/2008, December 17, 2008; Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22, 2009; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/10, January 14, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 22, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 031/10, January 26, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 028/2010, February 1, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 041/10, February 8, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of March 2, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 016/2010, March 9, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/2010, May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection No. 0023/2011, January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection of February 29, 2012.

<sup>211</sup> Government of the Dominican Republic, Ministry of Labor, Inspection of December 18, 2007; Government of the Dominican Republic, Ministry of Labor, Inspection No. 0159/2008, December 17, 2008; Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22,

sites, the inspection reports do not reflect conversations between inspectors and workers on topics related to employer compliance with Dominican labor laws.<sup>212</sup> Thus, the 14 inspection reports provided by the Government of the Dominican Republic to the OTLA suggest that inspectors did not speak to workers about topics relevant to assessing labor law compliance on 123 of the 148 sites visited, or 83 percent.

The OTLA review of the 14 reports of inspections in the sugar sector between March 1, 2007, and February 2012 also reveals that inspectors questioned workers in the presence of their supervisors.<sup>213</sup> Apparent or potential violations of certain Dominican labor laws that workers repeatedly reported to the OTLA delegation, such as not receiving paid holidays off, working more than the legal limit of 10 hours per day, and not receiving at least 36 hours of uninterrupted rest or premium pay in lieu of the rest period,<sup>214</sup> were not cited as violations in any of the reports reviewed by the OTLA.<sup>215</sup>

The OTLA's analysis of the 14 inspection reports also reveals instances where it appears that inspectors did not respond to specific allegations of labor law violations made by workers to inspectors during inspections. Inspectors appear to have failed to discuss the allegations with employers; identify violations, as appropriate; and issue related warnings.<sup>216</sup> The few workers interviewed by the OTLA who reported alleging labor law violations to labor inspectors also stated that they observed no follow-up or subsequent change in conditions.<sup>217</sup>

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2009; Government of the Dominican Republic, Ministry of Labor, Inspection No. 031/10, January 26, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 041/10, February 8, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/2010, May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection No. 0023/2011, January 31, 2011.

<sup>212</sup> For example, inspectors reported conversations in which they spoke with workers exclusively about how much sugarcane they were able to cut on average (Government of the Dominican Republic, Ministry of Labor, Inspection of January 22, 2010, p. 3; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011, p.3), about when the local harvest would start (Government of the Dominican Republic, Ministry of Labor, Inspection of January 22, 2010, p. 5; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011, p.5), and about how much of the local harvest was mechanized (Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011, p.5).

<sup>213</sup> See, e.g., Government of the Dominican Republic, Ministry of Labor, Inspection of December 18, 2007; Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22, 2009; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/10, January 14, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 109/2010, May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection of February 29, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection No. 176, May 9, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection No. 190, June 6, 2012; Government of the Dominican Republic, Ministry of Labor, Inspection of firing of worker 16099, October 18, 2012.

<sup>214</sup> The OTLA interviews with workers, April & July 2012.

<sup>215</sup> Government of the Dominican Republic, June 22 response, pp. 3-6 and Annex I.

<sup>216</sup> For example, in certain instances when workers complained to inspectors about employers' failure to provide safety equipment and potable water to workers, the inspection reports do not reflect inspectors discussing these allegations with employers, issuing warnings, or conducting follow-up inspections. Government of the Dominican Republic, Ministry of Labor, Inspection No. 023/2011 of January 31, 2011.

<sup>217</sup> The OTLA interviews with workers, April & July 2012.

According to the 14 inspection reports, during the 148 documented site visits, inspectors appear to have identified 35 labor law violations on 17 sites, 16 of which relate to laws on worker nationality and three of which relate to the record keeping requirement to maintain a registry of all labor inspections at a worksite. The inspection reports further reflect that although 35 violations were identified on 17 sites, inspectors conducted only one follow-up inspection to verify remediation, during which inspectors determined that remediation had occurred.<sup>218</sup> Thus, according to the 14 inspection reports, during the five-year period at issue, no case against a sugar company was transferred by the Ministry of Labor to the relevant court for the application of a fine for failure to remedy an identified labor violation.<sup>219</sup>

The OTLA's review has thus raised questions and concerns regarding the Government of the Dominican Republic's enforcement of its labor laws in the sugar sector, in particular through worksite inspections. The concerns relate to procedural and methodological shortcomings in the inspection process that undermine the government's capacity to effectively identify labor violations, including: (1) interviewing few or no workers; (2) failing to discuss topics related to labor law compliance with workers; (3) conducting worker interviews with employer representatives present; (4) lacking inspectors with language skills, particularly Creole, necessary to communicate effectively with workers; (5) failing to follow up on allegations of labor law violations made by workers during the inspection process; and (6) failing to conduct follow-up inspections to verify remediation of violations identified.

### **III. Conclusion**

The OTLA conducted a thorough and detailed review of all information obtained related to allegations of violations of the labor rights covered by Article 16.8 of the CAFTA-DR in the sugar sector. The OTLA found evidence of apparent and potential violations of labor law in that sector with respect to: (1) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; (2) a minimum age for the employment of children and the prohibition and elimination of the worst forms of

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<sup>218</sup> Government of the Dominican Republic, Ministry of Labor, Inspection of March 2, 2010.

<sup>219</sup> Government of the Dominican Republic, Ministry of Labor, Inspection of December 18, 2007; Government of the Dominican Republic, Ministry of Labor, Inspection No. 0159/2008, December 17, 2008; Government of the Dominican Republic, Ministry of Labor, Inspection No. 079/09, October 22, 2009; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/10, January 14, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 22, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 031/10, January 26, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 028/2010, February 1, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 041/10, February 8, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of March 2, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 016/2010, March 9, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection No. 025/2010, May 18, 2010; Government of the Dominican Republic, Ministry of Labor, Inspection of January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection No. 0023/2011, January 31, 2011; Government of the Dominican Republic, Ministry of Labor, Inspection of February 29, 2012.

child labor; and (3) a prohibition on the use of any form of forced or compulsory labor. The OTLA also noted concerns in the sugar sector with respect to Dominican labor law on freedom of association, the right to organize, and collective bargaining.

Under Article 16.2.1 of the CAFTA-DR, each Party is obligated “not to fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties.”<sup>220</sup> Within the Dominican Republic’s legal and institutional framework, the Ministry of Labor’s inspectorate bears primary responsibility for ensuring compliance with the labor laws,<sup>221</sup> and the Ministry of Labor’s 2008 General Inspection Protocol and 2011 Inspection Protocol for Agriculture provide inspectors with instructions on how to verify compliance with the labor laws of the Dominican Republic in agricultural sectors, including the sugar sector.<sup>222</sup>

The OTLA’s interviews with sugar sector workers and analysis of 14 reports of inspections conducted in the sugar sector from March 1, 2007, through February 2012, raise questions related to consistency in tracking, recording, and reporting on labor inspections and methodological and procedural concerns with the inspections process, including failure to follow Dominican Inspection Protocols<sup>223</sup> that undermine the government’s capacity to effectively identify labor violations. For example, the OTLA review raises concerns that labor inspectors interviewed only a small number of workers, discussed with workers topics related to labor law compliance in only 17 percent of sites inspected, failed to identify or cite certain apparent or potential violations repeatedly reported to the OTLA during this review, questioned workers in front of their supervisors, spoke Spanish and were unable to communicate directly with Creole-speaking workers, failed to follow-up on specific worker allegations of labor law violations conveyed directly to inspectors during preventive inspections, and failed to conduct follow-up inspections to verify remediation of violations identified.

#### **IV. Recommendations**

In order to address the concerns identified in the course of its review, the OTLA makes the following recommendations to the Government of the Dominican Republic, particularly regarding enforcement of Dominican labor laws in the sugar sector:

- Follow the Ministry of Labor’s 2008 General Inspection Protocol, 2011 Inspection Protocol for Agriculture, and other best practices for labor inspections, including:
  - speaking with significant numbers of workers chosen by inspectors;

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<sup>220</sup> CAFTA-DR, art. 16.2.1.

<sup>221</sup> Labor Code, art. 433. For the Spanish phrasing of article 433, *see* fn. 189.

<sup>222</sup> Ministry of Labor, Agriculture Inspection Protocol; Ministry of Labor, General Inspection Protocol.

<sup>223</sup> The OTLA interviews with workers, April & July 2012; Government of the Dominican Republic, June 22 response, Annexes I and XVIII; ILO, *Verification Report on the Implementation of White Paper Recommendations, August 2009 – January 2010*, p. 128, fn. 122, and *Verification Report on the Implementation of White Paper Recommendations, February 2010 – July 2010*, p. 139, fn. 115; Ministry of Labor, Agriculture Inspection Protocol; Ministry of Labor, General Inspection Protocol.

- interviewing workers outside the presence of management representatives;
  - discussing with workers, in all cases, matters related to labor law compliance;
  - following up on allegations of labor law violations made by workers during the inspection process; and
  - conducting follow-up inspections to verify remediation of violations identified.
- Use labor inspectors or interpreters with the language skills necessary to communicate with workers in the sugar sector, in particular Creole;
  - Provide training for labor inspectors on methods and best practices for identifying forced labor and indicators of forced labor, child labor, and violations of acceptable conditions of work, including with respect to minimum wages, hours of work, and occupational safety and health, particularly with regards to the sugar sector;
  - Conduct outreach campaigns to sugar sector workers to inform them of their labor rights and increase awareness of existing methods to anonymously complain and provide information to the Ministry of Labor about alleged labor law violations. Ensure that any such methods involving verbal communication are staffed with sufficient personnel with relevant language skills, in particular Creole;
  - Formally and publicly commit that the Ministry of Labor will maintain the confidentiality and anonymity of workers involved in inspections or who have filed complaints with the Ministry, as recommended in the 2008 General Inspection Protocol and regardless of migration status;
  - Strengthen enforcement of the 2012 Minimum Wage Resolution requiring visible posting of the minimum wage in the workplace;
  - Strengthen enforcement of Article 161 of the Labor Code requiring employers to record workers' hours of work and compensation due and effectively enforce other labor laws related to hours of work and the minimum wage, with a particular focus on ensuring payment of the minimum wage, a 36-hour weekly rest period or premium pay or a subsequent day off for working that period, workdays under the 10-hour limit for agriculture, and paid holidays;
  - Strengthen enforcement of relevant laws governing workers' social security contributions to ensure that workers who are legally entitled to social security benefits are able to receive them, that employers do not deduct contributions from workers who are not legally entitled to receive benefits, and that workers who are ineligible for benefits can fully recover any deducted amounts;

- Strengthen enforcement of Occupational Safety and Health Regulation 522-06 and Resolution 04-2007 requiring employers to provide all workers with a sufficient quantity of potable water or other healthy beverage and free adequate personal safety equipment;
- Strengthen enforcement of Labor Code Articles 245 and 247 and Labor Resolution 52/2004 establishing 14 as the minimum age for legal employment, limiting the workday to six hours for children under 16, and banning dangerous and unhealthy work for children under 18, to prevent unlawful child labor in the sugar sector, including by establishing a system to verify the ages of young workers without birth certificates or other legal documentation to help protect them from exploitation;
- Strengthen enforcement of Article 62.2 of the Labor Code prohibiting forced labor, including by developing and implementing a plan to address conditions contributing to and indicators of forced labor, including but not limited to unlawful overtime performed under threat, deceptive recruitment practices, fear of dismissal or deportation for formally complaining about unlawful labor conditions, fear of deportation or denouncement to authorities for quitting work or leaving the *bateyes*, a bonus payment system that creates pressure for workers to return to work each season or remain on the *bateyes* year-round, and growing indebtedness to local privately-owned *colmados* on the *bateyes*.

The OTLA will engage with the Government of the Dominican Republic to address the concerns identified in this report and implement the above recommendations. The OTLA will work with the Government of the Dominican Republic to develop time-bound steps and measurable milestones by which to monitor and assess progress and will review implementation of the recommendations six months and again 12 months after the publication of this report.