

Mr. Karel de Gucht
Commissioner for Trade
Member of the European Commission
Karel.DE-GUCHT@ec.europa.eu

4th April 2013

Dear Commissioner de Gucht,

On behalf of the Clarkson-Montesinos Institute, I write to you with regard to the European Union's Economic Partnership Agreement (EPA-CARIFORUM) and the obligation of the EU to address serious and systematic human rights abuses and violations of core international labor standards in the sugarcane plantations of the Dominican Republic, which constitute a serious infringement of the terms of the EPA.

The Institute hereby formally requests that the European Commission undertake an independent investigation into the situation under Article 15 of Council Regulation (EC) 732/2008 and corresponding EPA articles. We furthermore request temporary withdrawal and suspension of EPA status for Dominican sugar products during the formal consultation and monitoring processes, and until such abuses have been properly addressed.

1.- Interest and Legitimation

The **Clarkson-Montesinos Institute** is a non-profit Spanish association, dedicated to protecting the fundamental human rights of sugarcane workers in the Dominican Republic, and to promoting a better future for these workers and their families. Father Christopher Hartley, with ten years of missionary work in the bateyes, is the founding Director of the Institute, and former US Ambassador Armando Valladares serves as honorary President.

2.- Precedents

This petition further elaborates on previous communications from Fr. Hartley to colleagues in your Directorate General four years ago when, for the first time, Dominican sugar was allowed to be imported into Europe under the EPA (see Annex 1).

Approximately three years ago, the organization Bonsucro (then known as the Better Sugarcane Initiative or "BSI"), undertook the cumbersome program of developing a certification and verification process for Dominican Republic producers, and potential exporters under the EPA, to ensure compliance with internationally recognized labor and human rights standards and thereby secure access to Bonsucro's fair trade seal. Unfortunately, those efforts completely collapsed when the affected Dominican companies opted to pull out of Bonsucro rather than comply with the required industry standards. (See Annex 2.)



Subsequently, in December 2011, Fr. Hartley filed a petition with the Office of Trade and Labor Affairs (OTLA) of the U.S. Department of Labor (see Annex 3) regarding the failure of the Government of the Dominican Republic to fulfill its obligations under the labor chapter (Chapter 16) of the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). Based on the merits of the petition, OTLA launched a formal investigation and will soon be releasing its report.

3.- Summary of Denounced Abuses

The cases, reports and documentation described and referred in Annex 4, are proof of a broad pattern of continuing human rights abuses and violations stemming from a blatant and officially consensual trafficking of human beings, negation of basic civil rights, and labor exploitation for the sole benefit of a few private companies that control at least 80% of sugar output in the Dominican Republic and that operate with the consent of the Dominican Government.

Human Rights monitoring bodies, including the UN Human Rights Council, have routinely denounced widespread situations of racism, racial discrimination, xenophobia, related forms of intolerance, and human rights abuses, all as shown in Annex 5.

4.- Legal grounds for the petition

Article 15 of the Council Regulations requires *"the suspension of preferential arrangements, in respect of all or of certain products originating in a beneficiary country, where it considers that there is sufficient evidence that temporary withdrawal would be justified."* Among the justifications for suspension are *"serious and systematic violations of principles laid down in international human rights conventions, on the basis of the conclusions of the relevant monitoring bodies."* Proof of such violations and concluding reports of relevant bodies are referenced herein or attached herewith.

The EPA itself is based on the firm commitment to help create the right conditions for trade and investment by, among other things, *"aiming to uphold democratic standards, good governance, and human rights."* The serious and systematic violations of fundamental principles and internationally-recognized standards in the Dominican Republic have been thoroughly documented and warrant an immediate investigation by your office.

In Annex 6, we summarize those clauses under the EPA that sustain the present petition.

Finally, we invoke your own firm commitment, as Commissioner *"to promote an open market while tackling unfair practices and addressing the challenges of globalization, aiming at shaping a trade environment that benefits both people and business."* Allowing the importation of Dominican sugar under the EPA would not only aid and abet the continuation of human rights abuses in the sugarcane industry in the Dominican Republic but would also contravene the EC's critical obligations for responsibly shaping global trade.

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5.- Formal Petition

In closing, on behalf of the Clarkson-Montesinos Institute, I am compelled to underscore the urgency and the gravity of this situation and the seriousness of the abuses taking place in the sugar industry of the Dominican Republic. Accordingly, under EC Article 15 and corresponding EPA articles, I again urge the Commission to undertake an independent investigation; engage in the processes of formal consultation and monitoring; and, seek temporary withdrawal and suspension of EPA status for Dominican sugar until such time as all irregularities have been properly addressed.

We are aware that this is a difficult situation and are concerned for, and sympathize with, the economic interests of both the EU and the Dominican Republic. It is particularly frustrating that this petition could be precluded were the handful of private sugar producers in the Dominican Republic willing to comply with very basic international labor and human rights standards, and fair trade certification requirements. We will, therefore, support every effort to promote a fruitful social dialogue as a way forward.

We thank you for your kind attention to our request and look forward to hearing from you at your earliest convenience. Should you require any additional information, please do not hesitate to contact me.

Sincerely,

Eduardo Brunet
Vice President



**CLARKSON -
MONTESINOS
INSTITUTE**

Cc:

Vivian Reding, Commissioner for Justice, Rights & Citizenship
Barbara Lochbihler, Chair of the Subcommittee on Human Rights of the European
Parliament
Irene Horejs, European Union delegate in Dominican Republic

Carmen Rosa Villa Quintana, UN regional office for Central America

ANNEX 1

Father Hartley letter to Directorate General

Father Christopher Hartley

hartley.christopher@gmail.com

Mr. Lutz Gullner
Spokesperson for Trade
European Commission
c/o Policy Coordination Unit – Trade 01
200 Rue de la Loi-Wetstraat
B-1049 Brussels
Belgium

August 14, 2009

Dear Mr. Gullner:

Under the new EU-Economic Partnership Agreement (EPA) with African, Caribbean and Pacific (ACP) countries, 60,000 metric tons of Dominican sugar has been purchased by three companies located in the UK and France (Tate & Lyle, Tereos and St. Louis Sucre). This recent turn of events has prompted me to express my concerns to you as Deputy Director General in Charge of Directions A&B.

This is the first time ever that sugar harvested in the Dominican Republic is available to the EU marketplace. And for the first time ever, that same Dominican sugar—knowingly produced in violation of both internationally accepted human rights principles and Fairtrade standards—will be stirred into the morning coffee of millions of European consumers. Involvement in the EU-EPA has changed everything.

In question is the “wisdom” of procuring product that is grown and harvested by human beings whose basic rights and fundamental physical needs are systematically suppressed by every one of the EPA supplier companies in the Dominican Republic. In question, also, are far-reaching legal and social ramifications pertaining to:

- EU member nations and their purchasing corporate entities;
- Current and future EU/European Commission policy;
- ACP supplier conduct;
- Fairtrade certification; and
- Public perception, etc.

Broadly speaking: Who is scrutinizing EPA purchasers, and their adherence to self-advertised claims of social responsibility, etc.? Who is scrutinizing the human rights practices of their new supplier(s)? *[This is a responsibility that cannot rest on local government in the case of the Dominican Republic, because the CEA (Consejo Estatal del Azúcar) is a government producer and complicit in private sector practices.]* Where does individual corporate accountability come into play? Where is the accountability of the EU/EC itself, especially in terms of determining the “eligibility” of its EPA suppliers? Surely, the long history of human rights abuses in the Dominican Republic cannot be ignored when making such a determination.

These are among the many questions that will certainly arise as EPA transactions come under scrutiny.

Allow me to use Tate & Lyle’s purchase of 30,000 metric tons (or half the current sugar quota) to illustrate just one specific and problematic issue. The company publicizes itself as Fairtrade, displays the Fairtrade logo on its

packaging and proudly claims to be socially responsible. Tate & Lyle's certified suppliers of record in Belize are still being scrutinized for adherence to Fairtrade standards; the company is still purchasing sugar from them; and, nothing appears to have changed. The reality, however, is that a percentage of raw product from the Dominican Republic has been procured under the EPA, and "un-Fairtrade" sugar now enters into its supply chain and production line. Herein lies a dilemma: Is an advertised member of the Fairtrade Foundation simply "allowed" to make "un-Fairtrade" purchases and still retain the Fairtrade logo on its final product packaging? Dominican sugar is, after all, produced under conditions that are antithetical to both the actual standards, as well as the spirit, of Fairtrade.

If you will permit, I should clarify by what authority I am able to speak to the scope and severity of human rights abuses on the sugar cane plantations of the Dominican Republic. Quite simply, because I was there—a witness who lived in the midst of de-humanizing conditions that are tantamount to modern-day slavery.

In 1997 I went as a Catholic missionary priest to the Dominican Republic, where I spent ten years among Haitian sugar cane cutters on the Vicini family plantations within my parish. The human rights abuses I encountered included—and *still* include—daily and systematic disregard for fundamental human dignity in the forms of "statelessness" (and its inherent lack of civil liberties), human trafficking, extreme poverty, child labor, racial discrimination, lack of education and healthcare, and general squalor. The dirty laundry list goes on and is further compounded during this harvest season (2008-2009) by new variations, which include: 1) failure to withhold social security (IDSS) contributions, leaving workers without basic benefits; 2) preservation of sub-standard, poverty-level wages; 3) new forms of fraud in the weighing of, and remuneration for, cut cane; 4) resurgence in trafficking of human persons (after a hiatus of approximately three years); 5) deprivation of entitled healthcare benefits; 6) arbitrary terminations and denial of earned benefits; and, 7) refusal to issue written contracts guaranteed under Dominican law.

I return now to the EPA issues at hand...

As members of the European Union, countries agreed to the substance and spirit of the Economic Partnership Agreement, whose original intent was to aid the economic, social and cultural development of ACP participants. Company participants in EPA-endorsed purchases agreed tacitly to the same. Member countries and companies alike are therefore obligated to examine the "ethical provenance" of EPA products introduced into the EU market. They are also obligated under the spirit of the agreement to determine whether transactions are indeed subsequently benefiting the economy, society and culture of the Dominican Republic, and not simply enhancing the bottom line of the CEA, and Vicini, Fanjul and Campollo families.

No one, it seems, has fully exercised their obligation to oversee EPA suppliers and purchasers. Corporations are not exempt from culpability; neither are the EU and CARIFORUM. Due diligence must be practiced both by the EU/EC and by any company that suspects human rights abuses in its supply chain. Organizations and corporations must be proactive—because doing what is ethically correct equals sound national and corporate governance.

Perhaps this 2008-2009 purchase of 60,000 metric tons of Dominican sugar can be deemed unfortunate blemishes on the public records of the EU, as well as Tate & Lyle, St. Louis Sucre and Tereos. But the sanctioning of Dominican sugar transactions by the European Commission is, sadly, untenable. With that said, the EU-EPA with Caribbean countries is ongoing. Sugar from the Dominican Republic will be available to the European market for many years to come.

Therefore, further introduction of Dominican sugar into the EU **must** be contingent upon verifiable rectification of human rights abuses on the sugar cane plantations of the CEA, and the Fanjul, Campollo and Vicini families.

This urgent appeal is made to you as a matter, first, of conscience; second, of solid international leadership and accountability; and, third, as good business practice for the corporations of your member nations.

I would sincerely welcome the opportunity to discuss the contents of this letter and the accompanying materials with you at your convenience. Despite the return address on this packet, email remains the best, most efficient means to contact me, as I am currently on tour, doing missionary work.

Most respectfully yours,



Father Christopher Hartley
hartley.christopher@gmail.com

encls:

- **DVD's**—four highly acclaimed documentary films on the subject of human rights abuses on the sugar cane plantations of the Dominican Republic: *The Price of Sugar, Big Sugar, The Sugar Babies, and Azúcar Amargo*.
- **Photographs**—documenting child labor practices, living and working conditions, laborers and their traffickers, an ambassadorial visit, etc.
- **Articles**—a sampling of eight print articles from prestigious publications addressing aspects of human rights abuses on and/or involving Dominican sugar cane plantations.
- **Selections from 2004 & 2006 US State Dept. Human Rights Reports**—specifically relating to the plantations of the Vicini Family.
- **Useful Links**—additional press/media coverage.

Addendum:

For all their well orchestrated rhetoric and machinations, Dominican sugar cane producers can no longer conceal the extent and gravity of the human rights abuses that occur on their plantations. I urge you learn more about these violations by reviewing the materials we have included for you herewith, among which are DVDs of four recent major documentaries:

The Price of Sugar—Uncommon Productions, 2007. Executive Producer: Tim Disney. Directed by Bill Haney. Narrated by Paul Newman—Academy Award-winning actor, director, American icon, and noted philanthropist; *The Price of Sugar* was his last film. This powerful, heart-wrenching and intelligent examination of the human rights abuses and daily struggles of Haitian sugar cane cutters on the Vicini Company plantations was so compelling that the film was short-listed for the **2008 Academy Awards** in the documentary category.

The Price of Sugar is also a recipient of the following awards and citations: Seattle International Film Festival-Official Selection; The 2008 Gabriel Award-Best Documentary; 2008 Slow Food Film Festival, Bologna-Best Documentary; International Black DocuFest-Best Human Rights Watch Award; SXSW Film Festival-Audience Award; Silverdocs Film Festival-Witness Award, Honorable Mention; Docuweek Showcase-Official Selection; and nominated for the 2008 Image Award for Outstanding Documentary. (Largely focused on human rights abuses taking place on Vicini Family plantations.) In English and French.

ANNEX 2

Bonsucro program of compliance

BETTER SUGAR CANE INITIATIVE

PROPOSAL FOR ADVANCING DOMINICAN REPUBLIC MEMBER ACTIONS

PURPOSE

This note sets out a draft proposal for the resolution of the complaint submitted to the Better Sugar Cane Initiative (BSI) concerning the behaviour and impact of several of its corporate members involved in the production and purchase of sugar from the Dominican Republic.

The proposal has been prepared by an external facilitator, Simon Zadek, engaged to assist in the productive resolution of the complaint. As such, it is a basis for discussion and does not at this stage represent the views of, or constitute an agreement involving, the BSI, its members, or the complainant.

THE BETTER SUGAR CANE INITIATIVE

BSI's mission is to advance appropriate social and environmental performance in the sugar cane industry, and so the industry's long-term sustainability and success for all stakeholders, including employees and workers. Built into BSI's Code of Conduct, among other principles, is the mandate to "Respect Human Rights and Labour Standards" (Principle 2). BSI seeks to achieve this through the development of appropriate standards, their adoption by its corporate membership, and their use as a reference point for consumers, governments, other businesses and other stakeholders across the global value chains for sugar cane.

VERIFIED PERFORMANCE OVERALL

BSI's approach involves the development and use of methods enabling its corporate members to demonstrate their compliance over time with these agreed standards. Many aspects of this approach are in development, including the underlying assessment process, which will be implemented across all corporate members, beginning in early-2011, and will include five core aspects:

- Identifying *performance baseline* enabling comparison against agreed standards and over time.
- Agreeing *performance improvement schedule* based on the above.
- Initiating *independent audit cycle* to verify agreed improvements.
- Establishing *effective oversight* to determine application of baseline and audit findings to membership, certification and other aspects.
- Confirming *membership procedures* for determining eligibility criteria and outcomes based on baseline and audit results.

VERIFIED PERFORMANCE: PRINCIPLE 2

While the legal, production, business and ecological aspects of compliance are recognized as important, the complaint specifically addresses and calls for adherence to the aspects of Human Rights and Labour Standards, as put forth in Principle 2:

- **Criterion 2.1:** To Comply with ILO labour conventions governing child labour, forced labour, discrimination and freedom of association and the right to collective bargaining.
- **Criterion 2.2:** To apply BSI human rights and labour standards to suppliers and contractors.
- **Criterion 2.3:** To provide a safe and healthy working environment in work place operations.
- **Criterion 2.4:** To provide employees and workers (including migrant, seasonal and other contract labour) with at least the national minimum wage.
- **Criterion 2.5:** To provide clear, equitable and comprehensive contracts.

As part of the overall agreement set out in this note:

1. *All BSI corporate members would reconfirm their commitment to implementing an approach that is consistent with all five Principles outlined in BSI's Code of Conduct, and, would agree that the Criteria contained in Principle 2 are of primary importance and will be addressed immediately.*
2. *Furthermore, in accordance with the original and existing design of BSI's approach, all members would reconfirm that corporate membership is contingent on achieving demonstrable performance improvements over agreed timeframes, as these pertain to all five Principles, and especially to Principle 2.*

PERFORMANCE OF DOMINICAN REPUBLIC MEMBERS

In the specific circumstances of the three BSI members from the Dominican Republic, it is proposed that the core of the resolution be to:

3. *Establish a forward-focused roadmap for ensuring a credible alignment of the performance of each member from the Dominican Republic with the BSI standard based on agreed metrics, processes, oversight and timelines.*
4. *Provide a separate timetable for the immediate implementation and near-term completion of changes that would correct infringements against Principle 2.*

Note: *As Principles 1, 3, 4 and 5 are being implemented over the longer term, Principle 2 demands immediate attention. The rights of thousands of plantation workers and their families/dependents in the Dominican Republic cannot be put "on hold" as performance improvement schedules, audit cycles, etc., are being implemented along the broader scope of Principles 1, 3, 4 and 5. Principle 2 requires a near-term plan and immediately implementable action.*

Therefore, a separate and near-term timetable for the core aspects discussed in "Verified Performance Overall" must also be developed specifically for Principle 2.

- First and foremost, in accordance with Criterion 2.5, the BSI members from the Dominican Republic will draft a standard work contract, the terms of which will be reviewed by BSI and counsel for the complainant for adherence to international and national standards. Contracts will be finalized by [INSERT DATE-Near-term deadline for this process needs to be established.]
- Once approved, all laborers – permanent, long-term and migratory – will be issued a work contract, upon hire or retroactively. [INSERT DATE-Near-term deadline for this step needs to be established.]
- Additionally, the BSI members from the Dominican Republic will put into place measures to ensure that all the terms of Criteria 2.1, 2.2, 2.3 and 2.4 are in effect by [INSERT DATE-Soonest feasible time].

5. *The agreed approach would be the same as that adopted over time by all corporate members, or consistent where differing circumstances apply.*

To this end, each corporate member from the Dominican Republic confirms their commitment to implementing the following:

6. *Agrees to take leadership in advancing their own practices pertaining to Principles 1, 3, 4 and 5 beginning early in 2011 within the framework involving all five core aspects as stipulated in "Verified Performance Overall;" and also agrees to comply with POINT 3, above, as swiftly as possible, and to comply with the terms of POINT 4 using an accelerated timetable that will preclude delay.*

To implement this commitment, the following would need to be determined:

- *Performance targets and associated metrics* on which to focus baseline analysis and on-going audits and reporting.
- *Surveyors and auditors* with the appropriate expertise and independence.
- *Oversight* of the process with suitable expertise and autonomy, and appropriately aligned to BSI's overall governance.
- *Performance reporting* to the oversight function, BSI's governance, and publicly.
- *Timelines and milestones* for completing each stage of the process and for achieving any agreed performance improvements.

The process for determining the above would be as follows:

7. *BSI's Supervisory Board to take the final decision.*
8. *Decision to draw on views of the complainant, its corporate members, best practice in other multi-stakeholder standards initiatives and associated grievance mechanisms and other expert inputs as required, including reports and testimony issued by: NGOs, agencies or departments of international governments, duly qualified individual witnesses, and the*

plantation workers themselves, as to the extent and severity of infringements against Principle 2 of BSI's Code of Conduct.

9. *That said, overall agreement to go ahead would be required by the Dominican Republic members of BSI and the complainant, although they might not agree on every point.*

PUBLIC COMMENTARY

Any agreed approach will take place over an agreed time-frame, with regular reporting. Material performance shortfalls against agreed targets and milestones would trigger an assessment of continued membership eligibility, as it would for any corporate member in such circumstances. Given, and during this structured approach, it is important to regularise public commentary between, about and from BSI's Dominican Republic corporate members and the complainant.

10. *Overall, both parties, and the BSI, agree during the implementation of the approach not to comment, or encourage others to comment on each other publicly except where such commentary is an agreed part of the approach or un-related to the substantive issues covered by the approach. This agreement is strictly limited in scope to the proceedings within BSI and does not preclude either party from commenting on actions external to the approach. This agreement will only be in force during the process and does not preclude discussion of issues relating to the approach after resolution or completion, or in the event of breakdown or failure.*
11. *Furthermore, until the approach is complete or has failed or broken down, both sides, and BSI, will comment on it in all its aspects according to an agreed approach, including the roles of each party in its design and implementation.*
12. *If necessary, a facility for channelling and dealing with concerns about public commentaries could be established as part of the approach.*
13. *In order to assure transparency, all communications pertaining to the process, as outlined in POINTS 3 through 6, above, will be shared with the complainant.*

Clearly the intention is to minimise any continued 'war of words', pursued directly or indirectly, in order to build common ownership and allow for the agreed approach to be implemented under fair and reasonable terms, thereby increasing its chances of success.

RELATED ASPECTS

Some concerns have been raised about the capacities of the BSI to implement all aspects of its mandate effectively, given its current stage of development, available resources, etc. Whilst these concerns lie in the main outside of the mandate of this engagement, aspects may impact on its successful resolution, therefore:

14. *BSI will review and where necessary establish for the purpose of implementing a successful agreement a roadmap for adjusting its own arrangements and practices.*

AGREEMENT

An agreement to productively resolve the complaint will require a formal status to ensure clarity, transparency and accountability of all parties. Proposed is as follows:

- 15. Agreement on a way forward will be adopted by the BSI's Supervisory Board.*
- 16. Any related agreement with the complainant will be with BSI.*

DISCLAIMER: This draft document is not final or legally binding in any way.

ANNEX 3

USDOL formal complaint

FATHER CHRISTOPHER HARTLEY
c/o Fundación Misión de la Misericordia
Calle Pedro de Valdivia n. 8, 7o D
28006 Madrid, ESPANA
hartley.christopher@gmail.com

December 21, 2011

VIA EMAIL: Schoepfle.Gregory@dol.gov

Gregory Schoepfle
Director
Office of Trade and Labor Affairs (OTLA)
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: **FORMAL PUBLIC SUBMISSION**

Dear Director Schoepfle:

At the suggestion of Deputy Undersecretary of Labor Sandra Polaski in her June 23, 2011, in response to correspondence addressed to Secretary Hilda Solis on May 27, 2011, this letter serves as a formal submission to the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) regarding the failure of the Government of the Dominican Republic to enforce labor laws, as required under Chapter 16 of the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), as these relate to the Dominican sugar industry.

We formally request that the Department of Labor's Office of Trade and Labor Affairs launch an immediate investigation into the egregious violations cited below by the US Department of State, and by a qualified independent observer on the ground in the Dominican Republic, as these pertain to the obligations and commitments of the US and the Dominican Republic as Parties to the CAFTA-DR and as members of the ILO. Documentation of the evidence collected by the independent observer is attached herewith. Additional supporting documentation concerning the findings contained in the US Department of State's Human Rights Report can be presented to you by the State Department itself.

The annual Human Rights Reports issued by the US Department of State, in conjunction with the annual TVPRA and Executive Order 13126 lists generated by the Department of Labor have been instruments for greater change in the Dominican Republic—in spite of the sugar industry's relentless efforts to thwart the process.

While these reports provide a valuable tool, they have failed to eradicate the abuses they expose. In addition to breaching international labor law, Dominican sugar producers are

also in direct violation of articles contained in the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR).

Article 16.2 of CAFTA provides specifically for the enforcement of labor laws, while Article 16.8 supplies the definitions to be applied, as follows:

For purposes of this Chapter: labor laws means 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 in 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.*

We would like to focus the attention of the Office of Trade and Labor Affairs on the laundry list of abuses which are still in practice on the sugarcane plantations owned and/or operated by the Vicini, Fanjul and Campollo families of the Dominican Republic:

- Human trafficking and/or forced labor
- Child labor
- Deplorable and unsanitary living conditions
- Denial of medical, pension and other benefits due
- Refusal to inform and publish the current rate and terms of pay
- Hazardous working conditions
- Refusal to issue written contracts
- Manipulation in the weighing of cut sugarcane
- Retaliatory firing of workers for affiliation with or attempts to organize labor groups or unions, and/or for their participation in legal proceedings

Many of these abuses have been highlighted by the US Department of State in its 2010 Human Rights Report for the Dominican Republic, issued on 4/8/11, as per the following excerpts:

p. 35 "...there also continued to be some reports of **exploitive labor practices** that some observers maintained **could constitute forced labor** when considered together. These reports included deceptive recruiting practices, **nonpayment** or payment in vouchers which were difficult to convert into cash, and **restrictions** on some workers' ability to leave plantations--including **forcible capture and return of workers**, withholding of documents, and **threats** of deportation."

p.36 "...others continued to report that **children work in sugar plantations** alongside their parents."

p.38 "... workers in the sugarcane industry who lived in company owned bateyes had **inadequate access to schools, medical facilities, running water, and sewage systems**. Sugarcane workers often **did not receive medical services or pensions** due to the lack of documentation even though deductions were taken from their pay."

"Cane cutters continued to suspect fraud by weigh station operators and noted that employers sometimes did not provide trucks or carts to transport the newly cut cane at the end of the workday, causing workers to receive lower compensation because the cane dried out overnight and weighed less."

As mentioned, supporting materials pertaining to the above findings contained in the 2010 US Department of State's Human Rights Report can be furnished to you by the State Department itself.

Additional documentation and evidentiary materials are included herewith, as follows:

➤ ***Informe*** dated 12/19/11: This comprehensive overview of abuses by the Vicini Group/CAEI was prepared by a qualified expert on legal matters, Doctor María Victoria Mendez, who is "on the ground" in the Dominican Republic. The report references corroborating materials – Attachments (*Anexos*) 1 through 11, as follows:

- **Anexo 1-Listado de Solicitud de Pensiones**
- **Anexo 2-Solicitud de pensión Andrés Morán Molano**
- **Anexo 3-Solicitud de pensión Andrés Esteban**
- **Anexo 4-Solicitud de pensión Zacarias Michel**
- **Anexo 5-Acta de Defunción Mauricio**
- **Anexo 6-Carta de desahucio de Santeli Sanio**
- **Anexo 7-Sentencias No. 249-2009 (SANTELI SANIO)**
- **Anexo 8-Recibo pago Seguridad Social (SS)**
- **Anexo 9-Recibo sin pago Seguridad Social (SS)**
- **Anexo 10-Sentencia Laboral Apelacion No. 511-2009**
- **Anexo 11-San Felipe 039, 040 & 181**

Further material relating to the actions of the Dominican sugar industry with regard to membership in and audit by the Better Sugar Cane Initiative (BSI) is supplied herewith, as follows:

Please note: BSI is currently known as Bonsucro.

- **Letter of Formal Complaint dated April 8, 2010.** A formal complaint was registered with BSI against four Dominican member companies, resulting in the engagement by BSI of an independent facilitator; examination of issues by a BSI Complaints and Grievance Committee; and approval of plans to conduct an audit of the member firms named in the Formal Complaint.
- ***Better Sugar Cane Initiative: Audit Guidance for Production Standard (220710).*** Final draft of the Better Sugar Cane Initiative's (BSI) audit guidance document. See pp 11-27, 4.2: Principle 2: "Respect Human Rights and Labour Standards."
- ***Documento de observaciones al Audit Guidance for BSI Production Standard - Final Draft Version 0.4 (220710).*** Also prepared by Doctor María Victoria Mendez, this document references the Dominican Constitution and applicable laws relating to BSI's Principle 2: "Respect Human Rights and Labour Standards." It was produced as a response to a final draft of the Better Sugar Cane Initiative's (BSI) Audit Guidance for Production Standard (220710).

- **Bonsucro CEO Letter dated May 16, 2011 (template), sent to Board Members and/or key Executives of Bonsucro member firms.** This document includes an informative overview of the complaint process and ensuing events.

We request that the OTLA ensure the safety and security of sugarcane cutters (workers) and their families throughout investigatory and resolution processes. It is imperative that workers' testimony and opinions be elicited, in accordance with OTLA and CAFTA-DR guidelines, as to: working and living conditions; wages and benefits; and labor rights. It is also requested that the duration of time worked on particular plantations or lived in particular *bateyes* be elicited so as to establish the incidence of non-migratory vs. migratory status (older "retired" workers should be interviewed, as well as current laborers, and their family members), since the sugar industry habitually uses "migratory status" as a means to deny workers the rights and benefits that are their due. Additionally, we request that workers be represented and participate in all Labor Cooperation and Capacity Building activities and that the proper means to assure that the "Cooperation and Capacity Building Priorities," as outlined in Annex 16.5, Item 3 (a) through (m), are established and monitored. Lastly, it is crucial that in any investigatory and resolution procedures be conducted during the harvest season, since this is the period during which the majority of workers are in the fields and when abuses are most prevalent.

We await your prompt response. Should any additional information be required, please do not hesitate to contact me.

Most sincerely yours,



Father Christopher Hartley
hartley.christopher@gmail.com

cc: Secretary of Labor Hilda Solis, U.S. Department of Labor: talktosolis@dol.gov

Encls:

Informe, 12/19/11 and *Anexos* 1-11
Letter of Formal Complaint dated April 8, 2010
Better Sugar Cane Initiative: Audit Guidance for Production Standard (220710)
Documento de observaciones al Audit Guidance for BSI Production Standard - Final
Draft Version 0.4 (220710)
Bonsucro CEO Letter dated May 16, 2011 (template)

ANNEX 4

List of human rights abuse, human trafficking, child abuse and forced labor evidence.

The Price Of Sugar (2007) Free Online

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ANNEX 5

Some of the concerns shown in the 2012 observations of the UN Human Rights Committee

The extremely vulnerable situation of Haitian migrants and their descendants, as well as at the discriminatory treatment, violence and aggression of which they are victims

The lack of clarity concerning the status of refugees within the territory of the State party, including in terms of their access to temporary identity documents that would legalize their stay in the country

The increasing number of cases of trafficking in persons, which mainly affect women and children, and the fact that only a few cases have resulted in investigations, prosecution and sentences. The Committee also regrets the limited number of shelters available for victims of trafficking in persons, especially in areas far from the main cities

The serious situation of boys and girls who are victims of child labor, especially in the domestic and agricultural sectors

The conditions to which migrant workers who work under unspecified employment contracts, without access to the basic rights and benefits to which they are entitled are subjected

The practice of deporting foreigners in conditions incompatible with the provisions of the Covenant. The Committee also regrets the detention for unspecified periods of persons who are going to be deported

The fact that the 2004 General Migration Act has been applied retroactively in a number of cases in which recognition of the Dominican nationality of Dominican adults of Haitian origin has been withdrawn because their parents were "in transit" at the time of their birth, regardless of the duration of their stay in the country. The Committee regrets the serious consequences of this situation in terms of the affected persons' access to education, justice, employment, housing, health services and to all the civil and political rights related to migration status and nationality

The reports concerning children of Haitian origin born in the Dominican Republic who are deprived of access of official documentation on account of their origins

The lack of information concerning measures adopted to promote the effective exercise of the right to peaceful assembly and freedom of association on the part of undocumented migrant workers and to protect their freedom of association by applying the current legal provisions of domestic legislation

The constraints on access to justice and adequate protection for victims, especially in rural areas where there are no competent judicial authorities or shelters or residences.

The police brutality and the excessive use of force by law enforcement officials and at the high number of extrajudicial executions. The Committee also regrets the lack of criminalization of extrajudicial execution in domestic legislation, which has resulted in limited public awareness of the phenomenon and a lack of appropriate action by the judicial authorities

ANNEX 6

Summary of those clauses under the EPA that sustain the present petition:

Article 3

Sustainable development

1. The Parties reaffirm that the objective of sustainable development is to be applied and integrated at every level of their economic partnership, in fulfillment of the overarching commitments set out in Articles 1, 2 and 9 of the Cotonou Agreement, and especially the general commitment to reducing and eventually eradicating poverty in a way that is consistent with the objectives of sustainable development.

2. The Parties understand this objective to apply in the case of the present Economic Partnership Agreement as a commitment that:

(a) the application of this Agreement shall fully take into account the human, cultural, economic, social, health and environmental best interests of their respective population and of future generations;

(b) decision-taking methods shall embrace the fundamental principles of ownership, participation and dialogue.

3. As a result the Parties agree to work cooperatively towards the realisation of a sustainable development centered on the human person, who is the main beneficiary of development

Article 5

Monitoring

The Parties undertake to monitor continuously the operation of the Agreement through their respective participative processes and institutions, as well as those set up under this Agreement, in order to ensure that the objectives of the Agreement are realized, the Agreement is properly implemented and the benefits for men, women, young people and children deriving from their Partnership are maximized. The Parties also undertake to consult each other promptly over any problem that may arise

Article 20

Special provisions on administrative cooperation

1. The Parties agree that administrative cooperation is essential for the implementation and the control of the preferential treatment granted under this Title and underline their commitment to combat irregularities and fraud in customs and related matters.

2. Where a Party or a Signatory CARIFORUM State has made a finding, on the basis of objective information, of a failure to provide administrative cooperation and/or of irregularities or fraud, the Party or Signatory CARIFORUM State concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.

Article 191

Objectives and multilateral commitments

1. The Parties reaffirm their commitment to the internationally recognized core labor standards, as defined by the relevant ILO Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labor, the elimination of the worst forms of child labor and nondiscrimination in respect to employment. The Parties also reaffirm their obligations as members of the ILO and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).
2. The Parties reaffirm their commitment to the 2006 Ministerial declaration by the UN Economic and Social Council on Full Employment and Decent Work, promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all, including men, women and young people.
3. The Parties recognize the beneficial role that core labor standards and decent work can have on economic efficiency, innovation and productivity, and they highlight the value of greater policy coherence between trade policies, on the one hand, and employment and social policies on the other.
4. The Parties agree that labour standards should not be used for protectionist trade purposes.
5. The Parties recognize the benefits of commerce in fair and ethical trade products and the importance of facilitating such commerce between them.

Article 192

Levels of protection and right to regulate

Recognising the right of the Parties and the Signatory CARIFORUM States to regulate in order to establish their own social regulations and labor standards in line with their own social development priorities, and to adopt or modify accordingly their relevant laws and policies, each Party and Signatory CARIFORUM State shall ensure that its own social and labor regulations and policies provide for and encourage high levels of social and labor standards consistent with the internationally recognized rights set forth in Article 191 and shall strive to continue to improve those laws and policies.

Article 193

Upholding levels of protection

Subject to Article 192, the Parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by:

- (a) Lowering the level of protection provided by domestic social and labor legislation;
- (b) Derogating from, or failing to apply such legislation and standards.

Article 194

Regional Integration

In the light of the social challenges facing their respective regions, and in order to promote the sustainable development of international trade, the Parties recognize the importance of establishing social cohesion policies and measures to promote decent work at regional level.

Article 195

Consultation and monitoring process

1. In accordance with Article 191, the Parties recognize the importance of monitoring and assessing the operation of the Agreement on decent work and other areas of sustainable development through their respective participative processes and institutions, as well as those set up under this Agreement.
2. The Parties may consult each other and the CARIFORUM-EC Consultative Committee on social issues covered by Articles 191 to 194. Members of the CARIFORUM-EC Consultative Committee may submit oral or written recommendations to the Parties for disseminating and sharing best practice relating to issues covered by this Chapter.
3. On any issue covered by Articles 191 to 194 the Parties may agree to seek advice from the ILO on best practice, the use of effective policy tools for addressing trade-related social challenges, such as labour market adjustment, and the identification of any obstacles that may prevent the effective implementation of core labour standards.
4. A Party may request consultations with the other Party on matters concerning the interpretation and application of Articles 191 to 194. The consultations shall not exceed three months. In the context of this procedure any Party may independently seek advice from the ILO. In this case the limit for the period of consultations is extended by a further period of three months.
5. If the matter has not been satisfactorily resolved through consultations between the Parties pursuant to paragraph 3 any Party may request that a Committee of Experts be convened to examine such matter.
6. The Committee of Experts shall comprise three members with specific expertise in the issues covered by this Chapter. The Chairperson shall not be a national of either Party. The Committee of Experts shall present to the Parties a report within three month of its composition. The report shall be made available to the CARIFORUM-EC Consultative Committee.

Article 196

Cooperation

1. The Parties recognize the importance of cooperating on social and labor issues in order to achieve the objectives of this Agreement.
2. Subject to the provisions of Article 7, the Parties agree to cooperate, including by facilitating support, in the following areas:

(a) Exchange of information on the respective social and labor legislation and related policies, regulations and other measures;

(b) the formulation of national social and labor legislation and the strengthening of existing legislation, as well as mechanisms for social dialogue, including measures aimed at promoting the Decent Work Agenda as defined by the ILO; c) educational and awareness-raising programmes, including skills training and policies for labor market adjustment, and raising awareness of health and safety responsibilities, workers' rights and employers' responsibilities; and

(d) enforcement of adherence to national legislation and work regulation, including training and capacity building initiatives of labor inspectors, and promoting corporate social responsibility through public information and reporting

Article 224

General exception clause

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods, services or establishment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by the EC Party, the CARIFORUM States or a Signatory CARIFORUM State of measures which:

(a) are necessary to protect public security and public morals ⁽¹⁾ or to maintain public order;

(b) are necessary to protect human, animal or plant life or health;

(c) are necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement .