

LABOR PRACTICES COMPLIANCE IN THE DOMINICAN REPUBLIC SUGAR INDUSTRY



August 2013

THE ROAD TO IMPROVED WORKING AND LIVING
CONDITIONS

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS	ii
I. KEY ISSUES	1
II. HISTORICAL BACKGROUND	4
A. History of Haitian-Dominican Labor	4
1. 19 th Century	4
2. 1900 to 1970s	4
3. 1980s to 1990s.....	5
4. 2000s to Present	5
B. Sugar Production.....	7
1. Period of 1980s and 1990s.....	7
2. 1999 to Present.....	7
III. ALLEGATIONS THAT ARE THE BASIS OF THE PURPORTED CAFTA-DR LABOR VIOLATIONS .	9
A. The Bases of the Allegations are Insufficient and Lack Transparency	9
B. The Allegations Do Not Reflect Industry Practices	11
1. Prohibition on the Use of any Form of Forced or Compulsory Labor	13
2. Compliance with the Minimum Age for the Employment of Children and Elimination of the Worst Forms of Child Labor.....	15
3. Respect for the Right to Organize and Bargain Collectively	18
4. Acceptable Conditions of Work with Respect to Minimum Wages, Hours of Work, and Occupational Safety and Health.....	19
IV. GOVERNMENT LABOR LAW REFORMS AND COMPLIANCE	26
A. Sugar Sector Reforms.....	26
B. Labor Protections.....	27
C. Child Labor Protections	28
D. Institutional Enforcement Mechanisms	29
E. Migrant Population Challenges	30
V. CONCLUSION	31

ACRONYMS AND ABBREVIATIONS

CAC: *Consortio Azucarero Central*

CAEI: *Consortio Azucarero de Empresas Industriales*

CAFTA-DR: United States-Central America-Dominican Republic Free Trade Agreement

CEA: *Consortio Estatal del Azúcar* - State Sugar Council

Central Romana: Central Romana Corporation

CIPAF: *Centro de Investigación para la Acción Femenina*

DOL: United States Department of Labor

DOS: United States Department of State

GDP: Gross Domestic Product

IDSS: Dominican Social Security Institute

INAZUCAR: *Instituto Azucarero Dominicano*

ILO: International Labor Organization

IPEC/ILO: International Program on the Elimination of Child Labor of the ILO

NGOs: Non-governmental organizations

OTLA: U.S. Department of Labor's Office of Trade and Labor Affairs

TRQ: Tariff Rate Quota

TVPRA: Trafficking Victims Protection Reauthorization Act, 2005

U.S.: United States

White Paper: *The Labor Dimension in Central America and the Dominican Republic, Building on Progress: Strengthening Compliance and Enhancing Capacity (April 2005)*, Report of the Vice Ministers of Trade and Labor of the Central American countries and the Dominican Republic, supported by the Inter-American Development Bank

Labor Practices Compliance in the Dominican Republic Sugar Industry

THE ROAD TO IMPROVED WORKING AND LIVING CONDITIONS

I. KEY ISSUES

The Dominican Republic Sugar Industry has made significant progress over more than a decade in improving the labor standards and working conditions in the sugar sector. These improvements have been recognized by key actors including the International Labor Organization (ILO), non-governmental organizations (NGOs), and other labor rights advocates.

In addition, the Government of the Dominican Republic has taken further steps to improve both the labor law regime applicable to the sugar sector, and also the effective application and oversight of those norms as part of the process of signing the free trade agreement with the United States and Central America in 2004 (known as CAFTA-DR). The CAFTA-DR process initiated substantial and still on-going efforts to enhance the protection of worker rights and labor standards in all signatory countries. The United States Government had committed significant technical assistance funding for supporting the CAFTA-DR process during the Fiscal Years 2005-2009, but that funding has not been continued.

In the period prior to the negotiation of the CAFTA-DR, the Dominican Republic enacted a new Labor Code to improve the labor law regime and enhance the protection of labor rights. The legislation established reforms with regard to working hours, compensation, the minimum working age, and dismissals and termination. In 2010, the Dominican Republic approved a new Constitution with amendments strengthening labor rights, including a guarantee to the right to bargain collectively¹ and committing to the eradication of child labor as a national priority.²

The sugar industry, meanwhile, committed itself to improvements since the late 1990s, including strengthening its own labor standards, protections, and compliance mechanisms. The industry has a zero-tolerance policy toward child labor and actively works to ensure that no forced labor occurs in the workforce. Compliance with these policies is enforced by industry representatives and is also subject to external audits by independent firms and government labor inspectors. Modernization efforts to improve living and working conditions are also on-going and include healthcare benefits for employees and their families. Industry representatives are also working with the Dominican Government to provide visas for Haitian migrant workers.

Despite significant and widely-noted improvements and reforms, allegations continue to be made that child labor and forced labor are on-going practices in the sugar industry.

¹ Constitution of the Dominican Republic (2010), art. 62(3).

² *Id.* art. 56(1).

Nonetheless, when these allegations have been subjected to serious investigation by local and international organizations, they have been found to be without substantial evidence. Any examples of such abuses that exist are aberrations contrary to the laws of the Dominican Republic, and against the extensive and continuously improving compliance policies and practices in the sugar sector. In short, any continuing allegations that illegal child and forced labor are practices currently tolerated in the sugar sector of the Dominican Republic are totally without foundation.

It is possible that child labor may still occur in some of the communities where sugar industry workers live -- in the informal sector or in family enterprises. However, children are not employed in the sugar sector, nor are they permitted to work in the industry with other family members. Moreover, the industry is also encouraging the Ministry of Education to convert schools in the local communities to an extended day schedule from 8:00am-4:00pm under the new budget that allocates 4 percent of the Gross Domestic Product (GDP) to pre-university education, which would further reduce the hours when children might be likely to be found working in the informal sector or family enterprises.

Most of the allegations of abusive-forced and child labor revolve around the cane-cutting workforce, which is predominantly of Haitian descent. These allegations appear to be strongly influenced by the history of labor practices in the government-operated sector of the sugar industry and broader social and political factors relating to migrant Haitian workers in the Dominican Republic. Such allegations are simply not reflective of present-day realities and the policies long-implemented in the privately-run Dominican sugar sector, including the now-privatized operations of the previously state-run part of the sugar industry.

While historically there is no doubt Haitian migrant workers faced significant discrimination and unacceptable working conditions in sugar operations run by the government, the situation has changed significantly over the past decades. Responsible private operators in the sugar sector continue to further improve working and living conditions for all employees, including workers of Haitian origin and their families.

On December 22, 2011, the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) received a public submission from Father Christopher Hartley alleging labor violations under Chapter 16 of CAFTA-DR, specifically alleging forced and child labor violations by the sugar industry with regard to sugarcane cutters. The OTLA accepted the submission on February 22, 2012, and subsequently commenced an investigation into the validity of the allegations in the submission.

The Dominican Sugar Industry has concerns about the submission relied upon in initiating the OTLA investigation. The submission is based on unsubstantiated allegations and non-transparent "data." It also fails to take account of the significant and documented progress made by the industry in improving working conditions, including information that is available to the OTLA. While the Dominican Sugar Industry welcomes comments and suggestions regarding methods to make further improvements to the labor compliance profile of the sugar

sector, the pending OTLA submission is not based on any verifiable evidence for the abuses alleged and therefore is unlikely to be the basis upon which any constructive findings or recommendations could be framed.

This report was prepared by the members of the Dominican Republic Sugar Industry (referred to herein as the “Dominican Sugar Industry”)³ as a response to the OTLA investigation and a corrective to the allegations that led to its initiation. It provides the historical context of the Dominican Sugar Industry that appears to be the basis for the on-going justification to criticize the sector and to continue the misperceptions and misstatements about the current labor practices. The document provides information regarding the current operations of sugar producers in the Dominican Republic and their efforts to incorporate best practices on labor compliance.

³ The three private-sector members of the industry responsible for producing this report are Central Romana Corporation (Central Romana), *Consortio Azucarero Central* (CAC), and *Consortio Azucarero de Empresas Industriales* (CAEI).

II. HISTORICAL BACKGROUND

A. History of Haitian-Dominican Labor

1. 19th Century

The Dominican Republic (a former Spanish colony) and Haiti (a former French colony) share the same island of Hispaniola. Despite many common historical experiences, at times the countries have had strained relations over the last two centuries.

After defeating the French and becoming independent in 1804, Haitians believed that their continued independence relied on a unification of both sides of the island. Haiti then began a policy of forced unification and invaded the Dominican Republic. The Haitian government eventually succeeded and engaged in a twenty-two year occupation of the Dominican Republic, lasting from 1822 to 1844. The Dominicans would regain independence in 1844, and other attempts by Haiti to rejoin the two nations were also subsequently defeated. But Dominican fears of its Haitian neighbor were strong enough that the country invited Spain to recolonize it in 1861, although this move was short-lived.

The tension between Haiti and the Dominican Republic also had a racial underpinning. The people of the Dominican Republic are largely of Spanish and mixed descent, while the population of Haiti is predominantly of African origin (explained by years of reliance on African slaves for agricultural operations in the former French colony). The cultural differences further solidified the separate identities between the two sides of the island.

2. 1900 to 1970s

Due to the porous nature of the border, migratory movements from Haiti to the Dominican Republic have always existed. During a U.S. occupation of the Dominican Republic from 1916-1924, the sugar industry began to grow rapidly, in parallel with the demand for labor. Since the 1930s, Haitian cane cutters settled increasingly in the Dominican Republic.

Tensions between the two populations intensified during the tenure of Dominican President Rafael Leónidas Trujillo Molina, as a result of the policies of his administration towards Haitian immigrants.⁴ Nonetheless, Haitian labor continued to arrive to work in the government-operated sector of the sugar industry. Starting in 1952, a series of bilateral agreements, or *convenios*, between the Dominican Republic and Haiti were signed under which Haitian laborers were brought into the Dominican Republic to work on sugar plantations for specified periods.⁵ Under the agreements signed in the 1960s employers were allowed to have agents sent to Haiti to recruit workers. Those agents had the power to conclude individual contracts with workers on behalf of the employer.⁶ In addition, the armed forces and police

⁴ ILO, *Official Bulletin*, Special Supplement, Vol. LXVI, Series B, 1983, at 168.

⁵ *Id.*, at 38.

⁶ *Id.*, at 40.

acted as recruiters or condoned illicit border crossings to provide labor for the sugar industry, the country's largest.⁷

Despite the negotiated *convenios*, there were still at times shortages of workers during the sugar-harvesting season. To meet the shortages, government owned mills took steps to retain workers.⁸ In addition, undocumented workers routinely crossed the border in anticipation of work in the sector.

Although the *convenios* required the repatriation of temporary workers to Haiti at the end of each harvest, many remained behind.⁹ These resident populations settled in work camps known as *bateyes* that were originally constructed in the early twentieth century to house temporary contract workers. The camps were never designed to accommodate large numbers of people year-round. Moreover, as families began to settle in these camps, the infrastructure of the *bateyes* was severely tested and reports of inadequate living conditions began to surface.

The government-operated sugar industry also became associated with substandard working conditions, including underpayment of wages, inadequate medical care, physical abuse and servitude-like conditions. Some laborers reported that they were physically prevented from leaving their places of employment by armed overseers or military personnel.

3. 1980s to 1990s

The conditions in the *bateyes* attracted international attention in the 1980s. In 1983 a fact-finding mission by the ILO investigated these allegations and reported on labor abuses in the sector.¹⁰ For the next two decades, ILO supervisory bodies worked with both the Haitian and Dominican governments to monitor and remedy the issues.¹¹

The last *convenio* came to an end in 1986. Nonetheless, Haitian workers continued to migrate to the Dominican Republic in pursuit of work. As a result, large numbers of undocumented workers resided in the Dominican Republic. The foreign criticism of the treatment of migrant workers led the Dominican government, under Joaquín Balaguer, to begin an expulsion of Haitians from the Dominican Republic in 1991 -- a practice which continued through most of the 1990s.

4. 2000s to Present

Haitian-labor migration continues to the present, influenced in large part by differences in economic growth and income opportunities between the two countries. In 1960, the countries

⁷ *Id.*, at 170.

⁸ *Id.*, at 151.

⁹ *Id.*, at 43.

¹⁰ *Id.*

¹¹ For examples of monitoring reports, see, e.g., ILO, *Observation of the Committee of Experts C098*, adopted 1990, published 77th ILC session (1990); ILO, *Observation of the Committee of Experts C111*, adopted 2012, published 102nd ILC session (2013). For examples of efforts to remedy the issue, see, e.g., ILO, *Stopping Forced Labor*, at 83 (2001).

had roughly the same GDP per capita,¹² but by 2011 the Dominican Republic's per capita GDP was US\$5,530 while Haiti's was US\$726¹³ – a difference of more than seven times. In addition, the January 2010 earthquake in Haiti led to a new surge of Haitian migrants to the Dominican Republic in search of employment and better living conditions.¹⁴ According to data published in 2013 by the National Office of Statistics of the Dominican Republic, there are an estimated 458,233 Haitian immigrants living in the country.¹⁵ Haitian migrants work in many sectors beyond agriculture, including construction, transport and tourism.¹⁶

Despite previous tensions, in recent years the Government of the Dominican Republic has undertaken further efforts to improve bilateral relations with Haiti. Prompt earthquake relief efforts by the Dominican Republic are symbolic of the steps to resolve historical tensions.¹⁷ Moreover, the country has also made strides in remedying previous labor-rights concerns in the sugar sector. The industry is regularly monitored by labor inspectors from the Dominican Republic's Ministry of Labor and none of the labor inspections performed since 2008 has recorded any instances of forced labor or child labor, despite the allegations provided to the OTLA.

The Government also has a zero-tolerance policy for child labor and has developed a number of initiatives to eradicate child labor, including establishing a National Steering Committee to Eradicate Child Labor and a child labor unit within the Ministry of Labor.¹⁸ Additional details on labor reform are highlighted in Section IV of this report.

¹² Laura Jaramillo and Cemile Sancak, *Growth in the Dominican Republic and Haiti: Why has the Grass Been Greener on One Side of Hispaniola?*, at 4 (2007), WP/07/63, INT'L MONETARY FUND, available at <http://www.imf.org/external/pubs/ft/wp/2007/wp0763.pdf> ("In 1960, the Dominican Republic and Haiti had the same per capita real GDP at just below US\$800.") (last visited Aug. 2, 2013).

¹³ The World Bank, GDP per capita (current US\$), available at <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last visited Aug. 2, 2013).

¹⁴ See, e.g., Rosalie Fournier, *Helping communities who are helping Haiti's displaced*, UNHCR, Mar. 14, 2011, available at <http://www.unhcr.org>; Ezra Fieser, *In Dominican Republic, conflicting attitudes toward Haiti*, GLOBAL POST, Aug. 4, 2010, available at <http://www.globalpost.com/dispatch/americas/100723/haiti-dominican-republic-immigrants> ("The Dominican migration director, Sigfrido Pared Perez, estimated that the earthquake led to a 15-percent increase in the Haitian migrant population.") (last visited Aug. 2, 2013).

¹⁵ National Bureau of Statistics, *First National Survey of Immigrants in the Dominican Republic ENI-2012*, (2013) at 15, available at <http://www.one.gob.do/var/uploads/File/ENI%202012/Informe%20General%20Primera%20Encuesta%20Nacional%20de%20Inmigrantes%20en%20RD-ENI%202012.pdf> (last visited Aug. 2, 2013).

¹⁶ Dominican Labor Market Observatory, *Haitian Immigrants and the Labor Market: Study on Workers in the Construction Industry and Banana Production in the Dominican Republic*, at 71, available at <http://www.omlad.gob.do/LinkClick.aspx?fileticket=6Vp5XqU8E-c%3d&tabid=40&forcedownload=true> (last visited Aug. 2, 2013).

¹⁷ Scott Kraft, *Haiti aid flows out of the Dominican Republic, and the desperate flow in*, LOS ANGELES TIMES, Jan. 18, 2010, available at <http://articles.latimes.com/2010/jan/18/world/la-fg-haiti-road19-2010jan19> (last visited Aug. 2, 2013).

¹⁸ U.S. DEPT. OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, *2011 Findings on the Worst Forms of Child Labor - Dominican Republic*, at 188,190 (2011), available at <http://www.dol.gov/ilab/programs/ocft/2011TDA/DominicanRepublic.pdf> (last visited Aug. 2, 2013).

B. Sugar Production

1. Period of 1980s and 1990s¹⁹

Historically, sugar was a mainstay of the Dominican economy; it was the nation's largest employer and the main source of export earnings. In the late 1980s, the Dominican Republic was the world's fourth largest producer of sugarcane. In 1982, the Dominican Republic had the largest share of the U.S. allocated Tariff Rate Quota (TRQ) at 17.6 percent.²⁰ A TRQ permits a certain quantity of sugar to enter the United States at a reduced customs duty during a quota period; quantities in excess of the quota are subject to a higher duty rate.²¹

Sugar production began to decline in the 1980s and further into the 1990s due to both international and domestic factors. One major factor was a decision by the United States Government to reduce the size of the sugar import quote due to expanding domestic production. Additionally, due to the differential in U.S. domestic prices, major soft drink manufacturers switched away from sugar to cheaper high-fructose corn sweeteners, leading to reduced demand for imported sugar. At the same time, the increased production in the E.U. and some developing countries, particularly Brazil, in the 1980s also depressed international sugar prices, reducing them to their lowest levels in forty years. At this time, sugar production was still primarily concentrated in the hands of state-owned sugar mills which experienced production difficulties in the 1990s. The combination of these factors led to a substantial decrease in Dominican sugar production.

2. 1999 to Present

The Dominican Government decided on a dramatic change in policy to privatize its sugar holdings and in 1999 the government completed the privatization and shut-down of government-owned sugar operations. As a result, there are now three main private groups which continue to produce sugar for domestic consumption and export: Central Romana Corporation (Central Romana), *Consorcio Azucarero de Empresas Industriales* (CAEI), and *Consorcio Azucarero Central* (CAC).²²

¹⁹ Unless otherwise noted, the information in this section was based on Richard A. Haggerty, ed., *Dominican Republic: A Country Study*, at Cash Crops Ch., U.S. LIBRARY OF CONGRESS, 1989, available at <http://countrystudies.us/dominican-republic/43.htm> (last visited Aug. 2, 2013).

²⁰ David Skully, *Auctioning Tariff Quotas for U.S. Sugar Imports, Sugar and Sweetener/SSS-223* at 18, May 1998, U.S. DEPT. OF AGRICULTURE, available at <http://ers.usda.gov/Briefing/Sugar/sugarpdf/SSS223tariffquotas.pdf> (last visited Aug. 2, 2013).

²¹ U.S. CUSTOMS AND BORDER PROTECTION, *Absolute v. Tariff Rate Quotas*, https://help.cbp.gov/app/answers/detail/a_id/9/~absolute-vs.-tariff-rate-quotas (last visited Aug. 2, 2013).

²² There is one additional government-owned mill at *Porvenir*, leased to a private operator from Spain. The mill produces significantly smaller quantities than the other three producers and was largely inoperable until 2010. According to INAZUCAR, during the 2011-2012 harvest season *Porvenir* crushed 142,909 metric tons of cane, amounting to a total of less than 3 percent of cane crushed by the four mills. They have not exported since 2010, but under the law *Porvenir* has for the first time a small export quota for FY 2013. See, INAZUCAR, *Institutional Memory 2012* at 5 (2012), available at <http://www.inazucar.gov.do/> and USDA, *GAIN Report, Dominican Republic, Sugar Semi-annual 2012* (2012) available at

In addition to the major producers, independent growers and *colonos*²³ also supply raw sugarcane to major sugar mills that produce for export. Central Romana and CAEI, the two largest private producers of sugar, grow sugarcane independently and also purchase sugarcane – Central Romana from *colonos* and CAEI from independent growers. CAC does not purchase any cane from independent growers or *colonos*. According to the *Instituto Azucarero Dominicano* (INAZUCAR), the Dominican Sugar Institute, since 2008 independent growers and *colonos* have harvested on average 32 percent of the sugarcane crushed.²⁴ Many of the *colonos* are members of associations which represent their interests.²⁵

INAZUCAR also reported that 553,717 metric tons of sugar was produced during the 2011-2012 harvest season.²⁶ The Dominican Republic is the largest exporter of raw sugar to the United States with over 17 percent of the allocated TRQ, the largest share of any country.²⁷ INAZUCAR estimates that 30,000 jobs are generated by the sugar industry.²⁸

Until recent years, most of the harvesting was done manually. It is the cane-cutter workforce which is alleged to be subject to exploitation in the sugar industry. At the same time, the industry is moving towards greater reliance on mechanical harvesting. Indeed, the country's producers now have the equipment to harvest most sugarcane mechanically, but continue with a higher percentage of manual cane cutting because the industry management recognizes that a more rapid elimination of jobs would have a negative economic impact on the workforce and communities. It also makes sense to use a certain percentage of manual cutting because of the hilly nature of some of the growing terrain in the Dominican Republic.

<http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Sugar%20Semi-annual%20Santo%20Domingo%20Dominican%20Republic%209-28-2012.pdf> (last visited Aug. 2, 2013).

²³ *Colonos* and independent growers have different relationships with the mills. *Colonos* are sugarcane producers who are tied to selling their sugarcane to a specific mill, which provides technical assistance for the sugarcane production that could include supporting the cutting process, cultivation and/or renovation of the land and transportation of the sugarcane. For figures on production by *colonos* and by the Dominican Sugar Industry, see INAZUCAR *Institutional Memory 2012*, at 5; INAZUCAR, *Institutional Memory 2011 (Draft)*, at 2; INAZUCAR, *Institutional Memory 2010*, at 1; INAZUCAR, *Institutional Memory 2009*, at 1; INAZUCAR, *Institutional Memory 2008*, INAZUCAR, *Institutional Memory 2007*. All reports are available at the INAZUCAR website at <http://www.inazucar.gov.do/>.

²⁴ *Id.*

²⁵ Two important associations of *colonos* are the *Asociación de Colonos de Central Romana* and the *Federación Dominicana de Colonos Azucareros*. The former represents the *colonos* that supply sugar to Central Romana. The latter was initially formed to associate *colonos* of the State Sugar Council (CEA) and has been active in the sugar sector after the privatization process of the mills.

²⁶ INAZUCAR, *Institutional Memory 2012*, *supra* note 23.

²⁷ Office of the U.S. Trade Representative (USTR), United States Trade Representative Ron Kirk Announces FY 2013 Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar and Sugar-Containing Products, Sep. 11, 2012, <http://www.ustr.gov/node/7747> (last visited Aug. 2, 2013).

²⁸ INAZUCAR, *Institutional Memory 2008*, *supra* note 23.

III. ALLEGATIONS THAT ARE THE BASIS OF THE PURPORTED CAFTA-DR LABOR VIOLATIONS

A. The Bases of the Allegations are Insufficient and Lack Transparency

The OTLA petition submitted by Father Christopher Hartley purports to be based on a “laundry list of abuses” that are practices in the sugar sector in the Dominican Republic. The submission cites abuses in a variety of areas including: human trafficking and/or forced labor; child labor; the denial of medical, pension and other benefits; and retaliatory firing of workers for affiliations with organized labor.

In reaching this conclusion, Father Hartley cites as a “qualified independent observer,” reports by the U.S. Department of Labor (DOL) on the List of Goods Produced by Child Labor or Forced Labor and annual Human Rights Reports issued by the U.S. Department of State (DOS). Based on these reports, the petition alleges that the Government of the Dominican Republic has failed to enforce its labor laws in relation to the sugar industry, as required by Chapter 16 of CAFTA-DR.

The submission by Father Hartley that is publicly available cites almost no data or evidence for its allegations and lacks any transparency for the bases of the claims it makes. It thus is tautological in its presentation -- its allegations constitute its evidence for its conclusions of violations of the CAFTA-DR. The submission itself fails to provide any of the “independent” observations that are allegedly the basis of the submission.

While the submission reportedly attached “additional documentation and evidentiary materials” corroborating the accusations, these materials are redacted, thus the Sugar Industry is unable to evaluate the merits of the claims contained therein. In addition, the scope of these claims is unclear – they could have been isolated incidents or they could have been based on outdated information, or related to issues that have already been or are in the process of being effectively addressed by the industry. Without further details, the submission as presented does not contain any evidence of any violations. Indeed, if there is information of serious and exploitative conditions provided to the Department of Labor as part of this submission, it would be highly regrettable that the specifics were not immediately made available to the Dominican Sugar Industry so that necessary remedial action could be taken.

Moreover, Father Hartley’s submission also attempts to use as its foundation reports previously produced by the DOL and DOS that are outdated and lacking in specific information on alleged ongoing abuses in the sugar sector, or are based on Father Hartley’s own past allegations.

The 2005 Trafficking Victims Protection Reauthorization Act (TVPRA) requires the DOL to prepare an annual list of products around the world that the department believes are produced by forced labor or child labor in violation of international standards (referred to

herein as the TVPRA list). The TVPRA list, while commendable in purpose, is questionable in implementation. The methodology relied upon to list a product and country is not based on transparent or consistent criteria. Moreover, much of the information used for the annual TVPRA list is based on secondary sources that the DOL is not required to assess or verify before using them as the basis for including a product on the list. As a result, potentially outdated information, uncorroborated allegations and invalid research findings are used to list an entire sector or exclude the industries of some countries while including others. Goods may also be added to the list even where labor abuses are not representative of the industry, but rather are isolated illegal actions.

Regrettably, Dominican sugarcane was added to the TVPRA list in 2010. Despite efforts by the Dominican Republic to provide detailed information on industry compliance practices, as well as efforts to prevent child and forced labor in the country, the sugar sector remains on the list in 2013. The punitive listing of sectors in countries that have been transparent and are working to eliminate problems is detrimental to the intent of the TVPRA legislation. The inclusion of the Dominican Sugar Industry on the TVPRA list is not reflective of data confirming the absence of forced- and child-labor abuses in the workforce.

Indeed, Father Hartley's submission seems inconsistent with recent findings in DOS human-rights reports. Both the 2010 and 2011 reports acknowledge improvements in the sugar sector and include the results of a survey investigation which did not find forced labor in the sector. According to the 2010 report:

Private enterprises in the sugar sector continued to make improvements at their facilities, a process that began in 2007, including new schools and both new and renovated housing. In the Barahona area, the sugar consortium opened the first phase of a new housing facility for its seasonal employees. The first phase provided secure housing for 280 employees, and a second phase is to double this, providing safe housing for 560 employees. The facility is for employees only and has a 24-hour medical clinic, a secure cashier from which the employees can receive their wages, individual lockers and locks assigned to each employee, restroom and shower facilities, a multipurpose area for dining and training, and a recreation field.²⁹

As of early 2013, 100-percent of CAC sugarcane cutters (which now number 420) reside in the new facility, and there is sufficient infrastructure to expand these facilities for additional workers if needed.

Further, the 2011 human-rights report indicates that while there are some allegations of forced labor in the sector, the current data is to the contrary. The report cites that "an NGO that studied the sugar sector presented its preliminary findings and noted that it had not found evidence of forced labor."³⁰ The NGO cited is a local Dominican Republic civil society organization, *Centro de Investigación para la Acción Femenina* (CIPAF), and is entirely independent of the sugar industry. CIPAF was the subcontractor responsible for conducting the field research in the Verité report (funded by the DOL) on indicators of forced labor in the

²⁹ U.S. DEPT. OF STATE, *2011 Human Rights Report: Dominican Republic* (May 24, 2012) <http://www.state.gov/j/drl/rls/hrrpt/2011/wha/186510.htm> (last visited Aug. 2, 2013).

³⁰ *Id.*

supply chain of sugar in the Dominican Republic.³¹ The survey was conducted between February 2009 and March 2011 and involved interviews with 730 workers in a total of 178 bateyes. The results of such an investigation should surely be given more weight than older and unsubstantiated allegations.

The 2012 DOS human-rights report is disappointing in that it repeats allegations without any assessment of the credibility of such allegations. The report also fails to recognize the continuous improvements in working conditions for sugarcane workers that have been implemented by the sugar industry, and the record of inspections by the Ministry of Labor of the industry that have verified there is no child labor or forced labor in the sector.³² Furthermore, the current report fails to consider achievements recognized internationally and by foreign governments, and the available information about labor conditions in the industry. For instance, the legalization and documentation program initiated by CAC has been praised by both the ILO³³ and the Government of Haiti.³⁴ As discussed below, both CAEI and Central Romana provide private health coverage to their workers and finance health clinics and programs in their communities, while CAC has its workers enrolled in the government health system. Moreover, it is not accurate that CAC pays its sugarcane cutters by the hour as stated in the human rights report. In 2012, Central Romana submitted its public report to the United Nations Global Compact, which includes important information about labor rights improvements, and its collective bargaining agreement negotiations have been praised as best practice by the Global Compact.

B. The Allegations Do Not Reflect Industry Practices

It is no doubt the case that the sugar sector has been the focus of past concerns about abusive labor conditions, including child and forced labor. This is a consequence of the legacy of migrant Haitian sugarcane cutters in the sector. It is estimated that the vast majority of cane cutters in the Dominican Republic today are of Haitian origin, with some estimates as high as 90-95 percent. However, as mentioned above, a number of these jobs have been mechanized in the last decade, and that trend will likely continue.

Moreover, by the late 1990s there was considerable progress in industry standards and changes in prior labor practices in the sector that had previously permitted the environment for abusive working conditions. The privatization of the government-controlled segment of the sugar sector was an important development contributing to the positive progress on labor

³¹ Verité, *Research on Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic*, available at 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 Aug. 2, 2013).

³² U.S. DEPT. OF STATE, *2012 Human Rights Report: Dominican Republic*, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204446> (last visited Aug. 2, 2013).

³³ *The ILO recognizes CAC as an Example of Good Migration Practices*, EL AZUCARERO DEL SUR, Feb. 2013, at 4.

³⁴ Teuddy Sánchez, *Haitian Consul Appreciates Good Treatment of Haitian Immigrants by CAC*, EL AZUCARERO DEL SUR, Jan. 2013, at 2.

standards. . Living conditions, although still difficult, have also improved. According to Maria Virtudes Berroa, the Executive Director of the Batey Relief Alliance, “the *batey* today is not the same as fifty years ago or three years ago. There is a new vision of the *batey* and the people of the *batey*.”³⁵

The global sugar industry has also been a driver of positive change. For example, Bonsucro (a private, not-for-profit initiative of major elements of the global sugar industry) has created a certification process to assess compliance with labor rights, among other social and environmental standards.³⁶ CAC is currently seeking certification under Bonsucro standards and is undergoing the required evaluation of its operations prior to certification. CAEI undergoes regular independent evaluations of its operations against Bonsucro standards. Under both processes, independent external auditors conduct on-site visits and interview employees to assess compliance with national labor laws. None of the audits performed have recorded forced labor or child labor in either CAEI or CAC.

In addition to taking into account the Bonsucro standards, as reported by the DOS, Central Romana and CAEI have voluntarily made improvements in the conditions of the *bateyes* including funding modernization efforts, healthcare facilities, schools and recreation activities. These improvements are outlined in further detail below.

Moreover, the Government of the Dominican Republic has also demonstrated its commitment to internationally recognized labor rights. These rights are enshrined in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) and are also affirmed in the CAFTA-DR.

Article 16.8 in CAFTA-DR has its own definition of internationally recognized principles of labor rights which include:

- the right of association;
- the right to organize and bargain collectively;
- a prohibition on the use of any form of forced or compulsory labor;
- a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Father Hartley’s submission alleges that there are violations of four of these rights in the sugar industry. However, the submission also mischaracterizes the current state of labor practices in the sugar industry and does not provide sufficient evidence to support a finding of labor violations and breach of CAFTA-DR obligations. As demonstrated in sections 1 through 4

³⁵ CSCC, *Dominican Sugar: A Macro View of Today’s Industry*, at 8, available at <http://assets.coca-colacompany.com/e5/1a/cd3d5c2b49ab93599bbb8200716d/DominicanSugarIndustry-AMacroLevelReport.pdf> (last visited Aug. 2, 2013).

³⁶ For more information, visit the Bonsucro website at <http://www.bonsucro.com/>.

below, there is little or no evidence provided to support any finding that these rights are violated for the sugar workforce.

Indeed, since 2008, the major sugar producers have been inspected at least twenty five times by Ministry of Labor officials. During this period of active and continuous scrutiny by the Ministry of Labor, labor inspection reports do not show that forced or child labor is present in the sugar industry.

1. Prohibition on the Use of any Form of Forced or Compulsory Labor

Allegation: Human trafficking and/or forced labor

The Dominican Sugar Industry disputes any allegations that there are systemic occurrences of forced or compulsory labor in the sugar industry. The industry also takes seriously its commitments to its labor policies and legal obligations, which prohibit trafficking and migrant smuggling activities. The industry also respects the freedom of movement for sugar workers. All workers are free to leave their places of employment. Indeed, the industry experiences significant turnover and in many cases sugarcane cutters leave during the harvest season to undertake other jobs or simply decide not to complete a full harvesting cycle. For instance, in CAEI for the 2011-2012 harvest, only 176 cutters completed the full harvest cutting season out of over 2,500 that worked at least some portion of the harvest.

There is also a common and well-established pattern of sugarcane cutters freely returning to work for the next harvest season at mills where they were previously employed. The harvesting cycle runs for about 7 months and cutters seek other work during the break periods.

Further, due to the increasing mechanization of many sugarcane processes, there is declining demand and a surplus of migrant labor for cutting cane, which also significantly reduces the likelihood or incentive to coerce any worker to remain in the sector.

Nevertheless, the industry recognizes that the inadequacy of official work authorization documentation for many cutters may increase the concern that workers are subject to some types of exploitation and will find it more difficult to protect their rights – not simply in the sugar sector but in all the other economic activities where the vast majority of Haitian-origin migrant workers are employed. Indeed, the sugar industry accounts for a tiny fraction of total employment for migrant Haitian workers in the Dominican Republic. A large source of employment in the past, the sugar industry has been overtaken in importance by other sectors -- such as the construction industry, where more than 100,000 Haitian migrants work.³⁷ Moreover, the presence of undocumented workers alone and their deportation fears is not an indicator of forced or compulsory labor. If so, the presence of millions of undocumented workers at risk of deportation in the United States would also be a prima facie case of forced labor.

³⁷ Dominican Labor Market Observatory, *supra* note 16.

Such a line of reasoning not only fails to survive scrutiny but also unfairly penalizes sugar producers for a process they cannot control. Members of the sugar industry do not have the power or authority to provide official work authorizations or legalization papers to Haitian workers or to provide them with government-issued identity papers. Members of the Dominican Sugar Industry have in fact made numerous requests to the Government of the Dominican Republic to provide proper documentation for their Haitian-origin workforce. In addition, the sugar producers are working closely with the government on newer application initiatives to obtain legal work visas for the Haitian-origin sugarcane cutters. CAC has already applied for visas for more than 100 of its sugarcane cutters, assisting them with the required documentation and application fees. CAEI is also following the same approach. A new decree from the Government is expected shortly which will further streamline the process.

Regardless of official documentation status, workers have the right to move freely in and out of their workplaces and communities. Furthermore, not all residents of the *bateyes* are employed by the sugar industry.

At Central Romana, of the 8,000 cutters working in any one season, only about 2,000 reside permanently in the *bateyes*. Most residents of the *bateyes* actually work in other agricultural sectors, while some are employed in construction and in the tourism sector.

In some *bateyes* which are located on private lands, management has instituted security measures that control access to those that live on the *bateyes* and bona fide visitors, but do not act in any way to restrict the right of movement of workers or their families.

CAEI, for instance, implemented a policy in crime-impacted *bateyes* where workers are free to leave the compound, but visitors are required to get an access pass to go on to CAEI property. Three initial access points were established and three additional points have recently been established for overall security for these private lands and communities. Known residents of the *bateyes* are free to come and go through these points without providing any identification. At some points security access procedures exist only after 6:00pm in the evening.

CAC has a modern dormitory complex that provides free housing for sugarcane cutters. Workers can leave and return to the facility at any time. Once the harvesting season is over, workers must vacate the complex and the installations are closed for maintenance or necessary repairs and reopened for the next harvesting season.

These basic and routine security measures are criticized as somehow intended to coerce workers or their visitors. Such allegations are without foundation or corroboration.

2. Compliance with the Minimum Age for the Employment of Children and Elimination of the Worst Forms of Child Labor

Allegation: Child labor

The Dominican Labor Code provides the minimum age of employment with parental consent is 14 years old (16 years without parental consent)³⁸, although a 2004 resolution by the Ministry of Labor stipulates that the participation of anyone under 18 years old is prohibited in the planting, cutting and growing of sugarcane.³⁹ Sugar producers in the Dominican Republic have worked to eradicate child labor in the sector. Accordingly, the sugar industry has implemented the following policies in compliance with the law to prevent the hiring of employees under the age of 18.

- Central Romana has a zero-tolerance policy toward child labor. Central Romana's contracts with its unionized workers contain provisions prohibiting child labor. The company and its union have established a joint monitoring and surveillance committee to prevent child labor and assist in the enforcement of the company's policy. In addition, management issues memoranda both in Spanish and Creole, and distributes them among workers, stating Central Romana's policy on the prohibition of child labor. Copies have been placed on notice boards throughout its facilities, including harvesting fields and *bateyes*.
- CAEI similarly has a strict policy against child labor; compliance is independently verified by external audits. Workers employed for cutting and harvesting are transported to the fields by company vehicles, and only verified workers (and no children) are allowed to ride on them. In addition, since 2010 CAEI has had in place an enrollment process to ensure that all workers are over the age of 18 years old. In addition, a biometric verification system prevents work authorization identifications being given by an authorized worker to anyone else, including any under-age worker. For independent suppliers, CAEI has a code of conduct which covers human rights policies, including child labor. Every year before the harvest, all sugarcane cutters, independent suppliers and CAEI personnel are trained on compliance on human rights, labor standards and occupational health and safety in Spanish and Creole. For the current harvest, the trainings began on November 7, 2012. The last incident involving a child worker at a CAEI field was in 2006 and at a CAEI sugarcane supplier in 2007.
- CAC bans child labor. CAC has undertaken a poster campaign throughout its facilities and in the surrounding towns in both Spanish and Creole making clear that child labor on CAC facilities is prohibited. At the beginning of each harvest season the orientation training and verification includes a medical and documentation process to

³⁸ Law No. 16-92, Labor Code, art. 17, (2007) (Dom. Rep.) available at

http://www.suprema.gov.do/PDF_2/codigos/Codigo_Trabajo.pdf (last visited Aug. 2, 2013).

³⁹ Resolution by the State Secretary of Labor on Dangerous and Hazardous Jobs for Minors under 18 Years Old. No. 52-2004, art. 2(25), (2004) (Dom. Rep.) available at

<http://www.set.gov.do/documentospdf/Trabajoinfantil/resolucion%2052-2004.pdf> (last visited Aug. 2, 2013).

ensure that all cutters are over 18 years old. Biometric systems also prevent any authorized worker from providing their CAC identification to an unauthorized and/or underage worker. All CAC cutters also live in a central dormitory and are transported by bus to the fields – such living and transport arrangements prevent the use of child labor. Under terms stated in the CAC employment rule book, the hiring of a child worker is defined as a serious violation and subjects an employee to dismissal.

The major sugar producers have effectively prevented the use of child labor for a number of years. It remains possible that child labor might be found in the communities where cane cutters live, but in other economic activities unrelated to the sugar sector, such as informal street sales or family businesses.

The zero-tolerance commitment of the industry against child labor extends to suppliers and independent providers, including those from which Central Romana and CAEI source sugarcane. All three companies have implemented programs to advance their child labor policies:

- Each year, Central Romana issues written instructions to the *colonos* they contract, specifying that child labor is not to be used in their growing and harvesting activities. Central Romana also supervises the compliance of the *colonos*. For most *colonos*, Central Romana closely coordinates on the management of the property and the harvest of the sugarcane. All *colonos* must work with the production teams of Central Romana, which assures their compliance with the child labor policy.
- CAEI notifies all of its independent suppliers of its zero-tolerance policy on child labor and operates a verification program to ensure that no child labor is used by them. This prohibition is also included in the Code of Conduct for Sugar Cane Suppliers, which is discussed and presented in meetings with the suppliers, along with the CAEI human rights policy. In addition, independent suppliers receive training from CAEI on the application of the human rights principles and the importance of aligning the human rights policy of the supplier with that of CAEI.
- All independent businesses that supply CAC (CAC does not source sugarcane from any outside suppliers) are required to comply with the law and the company's policy regarding child labor. Each provider needs to declare compliance in a written statement and submit it to the company. Those statements are available to external auditors that supervise CAC's operations.

In order to assure further there are no children working in the sugarcane fields, CAEI and Central Romana have established and funded schools in the *bateyes* on their lands. Generally, teachers are from the Ministry of Education, although CAEI and Central Romana donate land and physical infrastructure. CAC does not have any control over the communities that surround their sugar cane production or mill operations – they are municipalities organized under governmental authority and are not on private lands as are the *bateyes* of Central Romana and CAEI.

Remedial education programs that allow children who have had problems staying in school have also been established by CAEI and are open to all children in the region, including those of Haitian origin. The objective of these programs is to support these children and transition them back to regular school programs.

CAEI and Central Romana are coordinating with the Ministry of Education to implement plans that all schools in the sugar communities be converted to full day schedules of 8:00am-4:00pm, with funding under the new law allocating 4 percent of the national budget to primary and secondary education. The Government is asking for land to be donated to increase school infrastructure to support the scheduled expansion.

Some of the current schools in CAEI-related communities are operated by an NGO, but all teachers must still come from the Ministry of Education. INICIA, a CAEI-related foundation, has a contract with Fe y Alegría⁴⁰ to operate its school in Nuevo Cayacoa. The Ministry of Education determines the school schedules, which are currently 8:00am-11:30am or 2:00pm-4:30pm. Three facilities are already being expanded to a full day schedule of 8:00am-4:00pm.

- Central Romana funds primary schools through Grade 8 with a 90 percent attendance rate and maintains playgrounds for after-school activities. Students can also complete high school education in either Central Romana funded schools or in Ministry of Education schools. There are 59 schools funded by Central Romana, with teachers provided by the Ministry of Education. There are almost 8,000 students enrolled in these schools. Central Romana also provides free transportation for students.
- CAEI maintains 29 schools within its communities. While many of the schools were only intended for children of CAEI workers, they are now open to all local residents of the *bateyes* and nearby communities of San Pedro and San Cristobal. These schools range across ages and include pre-schools, primary schools, intermediate schools and high schools.
- Since the communities surrounding CAC's mill and farm operations do not belong to the company, all schools are operated by the Ministry of Education with government teachers. CAC, through its foundation, sponsors sports programs such as softball and soccer that are open to children in the community. CAC operates morning day-care and early-learning facilities with education and food for pre-school age children.

⁴⁰ Fe y Alegría is an international federation of NGOs focused on inclusive education.

3. Respect for the Right to Organize and Bargain Collectively

Allegation: Retaliatory firing of workers for affiliation with or attempts to organize labor groups or unions, and/or for their participation in legal proceedings

The Dominican Sugar Industry respects the right of citizens and migrant workers to organize and to bargain collectively. All three private sugar producers have active unions at their locations and have negotiated collective bargaining agreements with them.

- Central Romana's Worker's Central Union is the largest union in the country with 15,000 members. The most recent collective bargaining agreement was completed in 2010, and negotiations are underway to renew it. Working conditions and compensation under the agreement meet or exceed the minimum legal requirements, including sale of some food items at subsidized prices. Sugarcane cutters have delegates to the union.
- CAEI has three active unions with a membership of almost 1,000 workers. CAEI has a collective bargaining agreement with all three unions providing for compensation levels and working conditions that exceed the minimum legal requirements. CAEI completed new collective bargaining agreements in April 2013 for a new three-year period until 2016. Besides the collective bargaining agreements, CAEI has a corporate policy on the right of association, which mandates that CAEI or their representatives shall not act against employees that would like to organize, belong to a union or collectively bargain.
- CAC has two unions. One union of cutters and a second for the mill and other employees. The first collective bargaining agreement between CAC (which began operations in 2000) and the two unions was signed in February 2011 and expires in March 2014. Virtually all of the 400-plus cutters are members of the union. The second union has about 350 workers from the other CAC operations. There is a peak level of about 2,800 workers at CAC during the year.

While Father Hartley has alleged retaliatory firings of workers for attempts to organize, these allegations have not been substantiated. The sugar industry does not tolerate dismissal or other forms of retaliatory action against any workers for participation in unions or otherwise defending their labor rights.

Moreover, in 2012 there were allegations that workers who spoke with a DOL delegation regarding the OTLA investigation had been "retaliated" against. As emphasized in a letter dated July 18, 2012 by counsel for the Dominican Sugar Industry to Mr. Eric Biel, Acting Associate Deputy Undersecretary for International Labor Affairs, these allegations of retaliation were upon investigation revealed to be proper terminations for cause. Where workers have been dismissed for cause, reasons have included threatening other workers with

machetes⁴¹, damage of property⁴² and other disruptive behavior preventing workers from performing their duties.⁴³

4. Acceptable Conditions of Work with Respect to Minimum Wages, Hours of Work, and Occupational Safety and Health

Allegation: 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; and Manipulation in the weighing of cut sugarcane

Working Conditions – Wages and Hours

The Dominican Sugar Industry complies with the Dominican laws related to compensation. Cane cutters are informed of the payment rate for harvesting cane and other terms with regard to wages and hours. Payment is made by tonnage and varies depending on the amount and type of cane that is cut and the method by which the cane is harvested.

Agricultural workers are not permitted to work more than ten hours per day, and the minimum wage for workers in the sugar industry is RD \$129 per eight- hour day.⁴⁴ Much of the focus in this area has been on whether or not sugarcane cutters receive the applicable minimum wages.

At Central Romana, there are four ways that sugarcane is harvested. The first method is *cacho de buey* -- cane is cut in piles and the worker loads the sugarcane into carts. They work in teams, with some cutting and some loading into carts pulled by oxen. A second method of harvesting is a mechanized version of the traditional *cacho de buey*, which uses tractors to pull the carts. A third method is *cargadoras*, where sugarcane is cut into piles and stacked, and the piles are picked up by a grabber.⁴⁵ The rate for this system is different since there is no need to carry the sugarcane to the carts. A fourth method would be completely mechanized, however, there currently is a surplus of cutters available, so no sugarcane is harvested by a mechanized system. By using existing equipment, Central Romana could reduce the labor force by 80 percent, but does not do so because of the social problems that it would cause.

To assure that the workers are paid the minimum daily rate, each cutter is checked in by a supervisor at 6:00am when each cutting day begins, and the supervisor assigns the worker to an area for cutting. Upon completing their work hours, the cutter checks out with the same

⁴¹ One CAC employee who performed maintenance and cleaning duties, not a cane cutter, was terminated after threatening his supervisor and other workers with a machete.

⁴² Two CAEI workers were terminated after engaging in disorderly behavior while the company was paying the employees, and breaking the back glass of a vehicle.

⁴³ A group of fourteen CAEI workers were terminated after going to two *bateyes* with machetes and threatening other workers.

⁴⁴ Resolution No. 1/2012 on National Minimum Wage for Workers of the Sugar Industry by the National Wage Committee, Ministry of Labor, art. 3, (2012) (Dom. Rep.) available at <http://www.omlad.gob.do/LinkClick.aspx?fileticket=qzZcPmJnb0%3d&tabid=97&forcedownload=true> (last visited Aug. 2, 2013).

⁴⁵ A machine designed to lift or “grab” piles of sugarcane from the field.

supervisor who goes to the weighing station. Each brigade gets a ticket per cart load – each cart load is tracked in terms of the sugar variety, where it is cut, how it is cut, and which workers should be credited for the cutting. The weigher provides a receipt to the driver of the cart for the brigade. At the end of the day the weigher sends the data to the accounting department and a calculation based upon the worker's production is done for that day, which is paid each Friday.

At CAEI the payment system for sugarcane cutters also varies depending on the type of harvesting system (*bocado*, *semi-chorro* or *pila*) and the condition of the sugarcane (green or harvest burned). To earn the minimum wage, a sugarcane cutter has to cut between 1.03 tons per day under the *bocado* system and 1.17 tons per day under the *semi-chorro* system. The *bocado* system requires a worker to place the cut cane in standard piles, while the *semi-chorro* system allows the worker to leave the cane in place where it is cut. Thus, the compensation rate for the *bocado* system takes into account the extra time to stack rather than just cut the cane. Under the *green pila* system, it also takes 1.03 tons per day to earn the minimum wage because the cane must be cleaned of leaves and the top and bottom removed. With the *bocado* or *semi-chorro* systems, in the current 2012-2013 harvest a cane-cutter has been able to cut an average of 3.2 tons per work day. On average, cane cutters work five hours per day in CAEI's fields. Under both systems, workers are able to earn more than the applicable minimum wage and in the *semi-chorro* method significantly more than the minimum wage.

At Central Romana the payments per tonnage based upon the cutting method used are specified in the collective bargaining agreement, as is the bonus system. There is also a memorandum given to each worker in Creole and Spanish on the payment systems and rates, and the information is also posted on notice boards in the *bateyes*.

At CAC, most harvesting (approximately 60 percent) is now mechanized. The remaining hand-cutting sugarcane is done by approximately 400 workers. For hand-harvested sugarcane, CAC uses a *bocado* system, which limits the amount of soil that is taken from the field. The grabber loads the harvested sugarcane into a tractor-pulled cart. The cutter leaves the worker-identification number for each *bocado*. Another worker enters the number of the cutter and the tractor driver into a computer. The computer then sends the data to accounting. The weight of the cart is divided by the tracked number of grabs per worker. Each worker is then credited with the total weight of the cart divided by the number of grabs in that cart attributed to the specific worker. CAC pays by tonnage and gives cutters productivity bonuses including one for weekly attendance and another based on the amount cut per week. The average worker cuts 6.5 tons per day, thus yielding an average daily wage well above the minimum.

The sugar industry accurately informs cane cutters of the current rate and terms of pay. The actual procedures employed vary by producer. At the beginning of each harvest season, CAEI workers are both orally explained and provided in writing a statement specifying the rates per ton of cut cane for each cropping method. Workers indicate their acceptance of these terms by signing or applying a fingerprint to the document. The same system of

information is done at CAC, with each worker as part of their employment contract and orientation information receiving the schedule of payment and compensation.

The Government of the Dominican Republic has also worked with sugar producers to provide mechanisms to reduce any manipulation in the weighing of cut sugarcane. In order to ensure the efficiency and predictability of weighing cut sugarcane, CAEI implemented a mechanized process. There are three systems for weighing cut cane. Under the *bocado* system the worker is immediately given a ticket for the number of piles cut and the cane is collected by machine and taken to a weigh station at the mill. When the total field is cut, the sum of weight of the field is divided by the total piles, and the worker gets credited for the number of their piles.

In the case of the *semi-chorro* system, the amount of cane cut by the worker is weighed immediately in the field and the worker gets a ticket daily for the weight of their cut cane. Most cane at CAEI is weighed on the basis of the *semi-chorro* system. *Pila* system cane is loaded into a cart mechanically and then weighed at a combined weighing and loading station, and the worker is given a daily ticket for the weight of their cane.

Working Conditions - Safety Standards

Dominican sugar producers maintain industry recognized health and safety standards.

- Central Romana
 - Central Romana provides workers with safety boots and a specialized cutting tool, known as a *mocha*. Regular workers are also provided gloves.
 - There is a health and safety manager, and a health and safety committee.
 - Safety training is done before the harvesting season begins and every worker must be trained before beginning to harvest each year. Medical assessments are also done for each worker at the beginning of each harvest.
 - Central Romana is now doing its own diagnostic assessment through its department of health and safety on how to improve the health and safety procedures in the fields with a pilot program being implemented.
- CAEI
 - All new cane cutters receive occupational health and safety training. All agricultural workers engaged in cultivation are also trained in the safest work methods. All trainings and participation rates are documented. All field workers must receive safety training.
 - CAEI provides work and safety gear to workers at no cost. All cutters receive protective headwear, gloves (which are replaced monthly), goggles, boots, a water container and a machete and sharpener. The company also provides access to first-aid kits and provisions for emergency response. There were 0.40 accidents per million hours worked at CAEI locations for the first quarter of 2013. Medical treatment for any injuries is also available.
 - CAEI has been certified by the Ministry of Labor for its compliance with the National Health and Safety Standards at the workplace.

- CAC
 - Workers are provided safety boots, shin guards, gloves, protective eyewear, water bottles, and an Australian machete and sharpening tool. These are replaced as needed.
 - Mandatory health and safety training is also provided at the beginning of each harvest season, and each worker's attendance is registered and verified. The program includes training on policies and programs, evacuation and fire, health and occupational safety, and environmental safety. Training on tools, personal protective equipment, and hazards is also provided. A health, safety and environment committee has been established. The committee also reviews the relevant experience from sugar industries in other countries.
 - CAC has an award system for the safest cutters that use the equipment.
 - CAC has a health and safety manager responsible for the compliance program.

Living Conditions

Members of the Dominican Sugar Industry have consistently worked to improve the living conditions of their employees. Central Romana and CAEI provide housing and potable or running water at no cost to their employees. As part of their housing, workers receive:

- Subsidized food
 - Workers at Central Romana generally purchase their own food from private mini-markets owned by third parties (known as *colmados*). Central Romana, meanwhile, subsidizes 80 percent of the price of meat for its workers. Other foods, including vegetables, cheese, and processed meats from other Central Romana operations are also available to workers at subsidized costs and at a loss to Central Romana of over US\$1 million annually.
 - At CAEI all agricultural workers receive a free meal at noon each day.
- Free schools for children of workers and often other community members of the *bateyes*
- Free transportation when necessary for children to attend school
- Healthcare facilities
- Cultural and sports programs

CAC does not have control over the 22 communities in the areas adjacent to their sugar operations. These communities are under the authority of the government which owns the land and is responsible for the municipal services. All of these communities are recognized as formal municipalities and have a population of around 22,000 people.

CAC assumed a 60-year lease to operate the sugar mill and sugar fields from the government in late 1999. This lease does not include the *bateyes* or communities that

developed in the area adjacent to the sugar operations. CAC provides housing to cutters who live at the company dormitory, which also has an on-site clinic for primary care. The company also has two other clinics, one at the mill and one other in the fields. CAC also has two ambulances, one in the fields and one near the headquarters operations.

As noted above, *bateyes* were historically meant to house short-term seasonal workers and were not built to accommodate the current populations who live in them. In light of this history and recognizing the need to improve conditions in the *bateyes*, Central Romana and CAEI have engaged in a number of substantial efforts to modernize living conditions for their workers. A summary of these efforts is listed below:

- Central Romana
 - The company has built and provided almost 6,000 homes for its 87 *bateyes* where workers live at no cost. Central Romana has built and given over 1,000 homes to employees in the surrounding urban areas.
 - Central Romana enables home ownership for its employees by maintaining a housing-assistance program. Over 6,000 workers own their own homes as a result of the program. In addition, hundreds of workers have received land where they have built their own homes.
- CAEI
 - Approximately 2,600 total CAEI workers presently live in 56 *bateyes*. CAEI initiated a modernization effort to centralize them into more urban living areas. The first of these facilities, Nuevo Cayacoa, was built at a cost of over US\$3.5 million. This includes a new school (elementary through high school), a healthcare facility, a community center and a new commercial block. The facility was improved to provide adequate sanitation facilities, water, and electricity, as well as a greater amount of space to accommodate more residents in each home. Unfortunately, the efforts establishing Nuevo Cayacoa had limited success for a number of reasons, including that *batey* residents often prefer to remain in their current communities, even if the infrastructure is inferior.
 - However, the plan remains to develop new communities into official municipalities under the local government. CAEI is now partnering with Catholic Relief Services on developing a strategic plan to further meet community priorities in the *bateyes*, including upgrading the physical infrastructure. That program will be initiated in the summer of 2013.

Maintenance of the *bateyes* has been challenging, particularly related to sanitation issues. In addition, not all the residents in the *bateyes* work in the sugar industry. For example, one

census done in August 2011 found close to 1,400 economically-active males resided in CAEI properties although they did not work for CAEI.⁴⁶

Having functional sanitation facilities constitutes a challenge not only because of maintenance efforts required in multiple locations, but also due to cultural differences in their use by migrant workers who live in the *bateyes*. In addition, sanitation facilities are sometimes used to dump garbage. Eliminating this problem requires not only improving or maintaining existing infrastructure. It also requires further engagement with residents on effective utilization strategies.

The lack of electricity in some *bateyes* has been a regular issue raised by residents. However, bringing electrical power is a major undertaking given the remoteness of some of the *bateyes*, their lack of access to the electrical grid and the need of investments by the local power company.

Healthcare Services:

The sugar industry has gone beyond legally-mandated healthcare requirements to provide substantial health-related benefits to employees and their families. All companies have built medical facilities in the *bateyes* to provide healthcare services to the population.

- Central Romana
 - All employees and their families have access to medical services, including medication provided by the company at no cost.
 - Central Romana has built and manages a central hospital, two ambulatory healthcare clinics, three mobile healthcare units and one oral healthcare mobile unit. The hospital employs 47 doctors and 68 nurses, and has 84 beds, surgery rooms, labs, x-ray facilities, maternity services and more. More than US\$40 million has been invested to expand the central hospital.
 - The company has also developed several disease prevention initiatives, including for HIV, cholera, malaria and dengue fever.
- CAEI
 - CAEI maintains 8 centers for primary care for its workers and their families. Five are public and three are private, and the private facilities are the larger ones financed by CAEI.
 - Additionally, CAEI has private service contracts with medical providers for consultations and referrals. All medications and medical and surgical supplies are provided free to workers.
 - CAEI also has a program that provides secondary health care in private in-patient medical centers in San Pedro de Macoris. For treatment or surgery that cannot be accommodated in these facilities, there is also an insurance

⁴⁶ Dominican Association Pro Family Welfare (Profamilia), *Census of population and housing in the sugarcane, agricultural and livestock communities of the Consorcio Azucarero de Empresas Industriales (CAEI)*, (Aug. 2011).

program for coverage in the larger hospitals of Santo Domingo. These services are provided to all workers.

- CAC
 - Employees of the company receive primary medical care through CAC's medical clinics.
 - Although the *bateyes* around CAC mills are under the control of the municipal government, CAC has established a medical center in one *batey* to provide health-care services to workers, and a second clinic for the field operations. It has also established a medical clinic at the mill to provide first-aid care, prevention and referrals. During the harvest the clinics are in operation 24 hours a day.

CAC workers are all enrolled in the government-health-care system, and can access municipal hospitals for treatment beyond the primary care provided. This is financed by a payroll-tax deduction of 1.41 percent on the worker's compensation and a 3.57 percent contribution by the company to IDSS – the Dominican Social Security Institute.

IV. GOVERNMENT LABOR LAW REFORMS AND COMPLIANCE

The Government of the Dominican Republic has placed significant emphasis on improving the labor-law regime and on strengthening the capacity of its domestic labor institutions to successfully implement and enforce the Labor Code. In 2005, the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic produced a report following the signing of CAFTA-DR titled, *The Labor Dimension in Central America and the Dominican Republic, Building on Progress: Strengthening Compliance and Enhancing Capacity* (also known as the White Paper).⁴⁷ In the White Paper, the Vice Ministers lauded the Dominican Republic's significant progress in developing national dialogue to address labor-sector issues.

The White Paper specifically cited a number of positive elements of the Dominican Republic labor regime including:

- Provisions in the Constitution and Labor Code on the fundamental labor rights defined by the ILO;
- A targeted compliance initiative launched by the Ministry of Labor for the sugar sector;
- A five-year training program for labor prosecutors initiated by the Supreme Court and National Judiciary School (2005);
- Strengthened child-labor laws and regulations; and
- Outreach activities to inform the public of labor rights through varied mediums such as television, radio, print, and in-person initiatives.

The White Paper also raised recommendations to build on progress in labor law administration and enforcement that has led to additional reforms since the report was published.

The remainder of this section highlights government action in the sugar sector, as well as other relevant reforms in labor law, child labor, and enforcement. It also highlights unique labor challenges posed by the large migrant population in the country.

A. Sugar Sector Reforms

Improvements in the oversight of the sugar sector by the Government of the Dominican Republic are well recognized over the last decade. A 2001 ILO report commended the work

⁴⁷ Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic, *The Labor Dimension in Central America and the Dominican Republic, Building on Progress: Strengthening Compliance and Enhancing Capacity* [White Paper], (2005).

of the Government in reducing forced labor practices.⁴⁸ The report noted government action in:

- Moving against intermediaries who were engaged in improper recruitment;
- Introducing written contracts of employment;
- Agreeing with the trade unions to provide for observers when the sugarcane is weighed;
- Changing the ticket system to a weekly basis;
- Assigning labor inspectors directly to plantations, with an emphasis on the supervision of working hours and wage payments; and
- Revising the Labor Code, with ILO assistance, taking into account the past difficulties encountered.⁴⁹

To advance on these improvements, the ILO has supported a number of technical-cooperation programs related to recruitment methods; stabilization of the plantation labor force; publicity on inter-State agreements; payment of wages and contracts of employment; freedom of movement for plantation workers; non-confiscation of Haitian workers' documents; improved labor- inspection services; and regularization of the status of Haitians who had lived for a long period in the Dominican Republic.⁵⁰

In order to focus further on compliance in the sugar sector, the CAFTA-DR White Paper noted that the Ministry of Labor began a program in 2005 that assigns full-time inspectors to inspect sugar plantations,⁵¹ and a government-education campaign to inform children in schools in sugar regions about labor laws.⁵²

B. Labor Protections

The Dominican Republic has had a union registry process since 1992. By law, union officers cannot be terminated without prior authorization of the Labor Court.⁵³ All union members have full protections regardless of nationality.⁵⁴ Thus, migrant workers can be members of unions and benefit from collective-bargaining agreements.

To encourage and promote the right to collective bargaining, the Government of the Dominican Republic has disseminated laws and regulations, trained trade unions, workers and employers, and provided guidance at the request of interested parties.

⁴⁸ ILO, *supra* note 4 at 24.

⁴⁹ *Id.*

⁵⁰ *Id.* at 83.

⁵¹ White Paper, *supra* note 47 at 24.

⁵² White Paper, *supra* note 47 at 26.

⁵³ Law No. 16-92, art. 391, *supra* note 38.

⁵⁴ Law No. 16-92, Principio IV, *supra* note 38.

The Ministry of Labor investigates cases of alleged anti-union activities, including impermissible terminations of union members. The Supreme Court has also upheld the reinstatement of workers who were illegally dismissed.⁵⁵ Further, legal immigration status is not necessary to file a labor-related claim before the domestic courts and therefore does not bar a worker from challenging an impermissible termination or seeking restitution for other labor-law violations.⁵⁶

The Ministry of Labor plays a major role in the mediation of labor disputes, including disputes arising out of collective-bargaining agreements. In 2010, the Ministry carried out the mediation of collective-bargaining agreements, including one for Central Romana and one for CAEI. In 2011, CAC also signed a collective bargaining agreement. All agreements are valid for three years, and those for Central Romana and CAEI have been renegotiated in 2013.

The Ministry of Labor also houses a judicial-assistance office that provides free legal advice to workers and employers who cannot afford legal counsel on labor issues.

Under Dominican law, a written contract is not required to establish a work relationship between workers and employers⁵⁷ -- a situation that has been upheld by the courts on numerous occasions. Therefore, workers can establish their employment relationship through various means of evidence, including the testimony of witnesses. In addition, the “*in dubio pro operario*” principle is applied by the courts when interpreting legal or contractual provisions. Under this principle, whenever different interpretations may arise, judges have the obligation to apply the interpretation most favorable to the employee.

C. Child Labor Protections

The Dominican Labor Code limits the minimum age for employment to 14 years⁵⁸ in most industries and to 18 years in the sugarcane cutting workforce.⁵⁹ In August 2003, the Dominican Republic adopted a modified Code for Minors⁶⁰ which criminalizes many of the worst forms of child labor. Constitutional Amendments in 2010 further enshrine protections for children and include a prohibition on all forms of “slavery, servitude and human trafficking”⁶¹ and reaffirms the Government’s responsibility to protect children from exploitation.⁶²

The Code for the Protection of the Rights of Children and Adolescents⁶³ guarantees free primary education and sets the compulsory school age at 14 years. Furthermore, with the support of the International Program on the Elimination of Child Labor of the ILO (IPEC/ILO),

⁵⁵ The CAFTA-DR White Paper cites to at least two instances where the Supreme Court has upheld the reinstatement of illegally terminated workers, La Romana Textile Union in 1999 and Gaseosas Puerto Plata in 2000. See White Paper, *supra* note 47 at 24 (2005).

⁵⁶ Law No. 16-92, *supra* note 38.

⁵⁷ Law No. 16-92, art. 15, *supra* note 38.

⁵⁸ Law No. 16-92, art. 17, *supra* note 38.

⁵⁹ Resolution No. 52-2004, *supra* note 39.

⁶⁰ Law No. 136-03, Code for the Protection of the Rights of Children and Adolescents, (2003) (Dom. Rep.).

⁶¹ Constitution, art. 41, *supra* note 1.

⁶² *Id.* at art. 56.

⁶³ Law No. 136-03, *supra* note 60.

the government of the Dominican Republic produced the National Strategic Plan for the Eradication of the Worst Forms of Child Labor in the Dominican Republic (2006-2016).⁶⁴ Under this plan, agriculture, commerce, services and livestock are identified as sectors where child labor is more prevalent. The agricultural sectors identified as priority concerns are coffee, cocoa, banana and rice production. Notably, the plan does not identify sugarcane as a sector for attention, thereby confirming that child labor is not considered to be a particular concern in the sector.⁶⁵

The ILO has also worked with the Dominican Republic to create a roadmap⁶⁶ towards the elimination of the worst forms of child labor by 2015 and all other types of child labor by 2020. The roadmap calls for joint action from all stakeholders including government, NGOs, unions and employers. In this context the roadmap positively highlights the work done by CAEI's parent company on child labor concerns.⁶⁷

D. Institutional Enforcement Mechanisms

A National Inspection Directorate coordinates labor inspections across the country. Labor inspectors must have a law degree, and are hired in a competitive selection process. The Government of the Dominican Republic reported that there were over 72,000 labor inspections conducted in 2011 to verify compliance with labor laws. If child labor is found, the children must be removed from the work site, and after an evaluation the children will be referred to appropriate shelters. Inspectors are also required to report to the Ministry of Education if any children are not attending school, irrespective of nationality.

In 2005 the Ministry of Labor began a new program focused on compliance enforcement in the sugar sector. The program assigned dedicated inspectors to the sugar industry to inspect plantations and issue compliance reports on their findings.

Since 2008, none of the labor inspections performed by the Ministry of Labor has reported forced labor or child labor in the sugar industry. These findings have been confirmed by the Minister of Labor in a recent interview.⁶⁸ The Minister of Labor has, however, recently confirmed that child labor has been found in the rice production areas of the Nagua region, and that 57 violations were filed against employers and legal proceedings initiated against them.⁶⁹

⁶⁴ ILO, *Strategic National Plan to Eradicate the Worst Forms of Child Labor (2006-2016)*, (2006) available at: http://www.set.gov.do/documentospdf/Trabajoinfantil/Plan_estrategico_PFTI.pdf (last visited Aug. 2, 2013).

⁶⁵ *Id.* at 28.

⁶⁶ ILO, *Roadmap to Make the Dominican Republic a Country Free of the Worst Forms of Child Labor*, (2006) available at: <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=12092> (last visited Aug. 2, 2013).

⁶⁷ *Id.* at 88.

⁶⁸ Nikaury Arias, Maritza Hernandez: "The Ministry of Labor is directly addressing child labor", *DiarioLibre.com*, July 22, 2013, at *Diálogo Libre* available at: http://www.diariolibre.com/noticias_det.php?id=393962&l=1 (last visited Aug. 2, 2013).

⁶⁹ *Id.*

E. Migrant Population Challenges

Despite notable progress, there are continued challenges posed by a large population of Haitian-origin migrants in the country, many of whom are undocumented. Nevertheless, improvements do exist and the courts have issued opinions to advance the rights of migrant workers. The Supreme Court of Justice held that a foreign worker without proper immigration documentation has the right to take legal action to make a claim against an employer for the violation of labor rights.⁷⁰ The Court has also protected the right of migrant workers to bring a legal action without posting court bonds.⁷¹

The law similarly upholds migrant labor rights. The Dominican Labor Code prohibits discrimination in employment based on economic status, race or gender, furthering the rights of the large Haitian-migrant population. In 2009, the Dominican Republic also created the first National Action Plan Against Trafficking and the Unlawful Smuggling of Migrants, 2009-2014. This plan builds upon existing activities and provides a roadmap, a plan of action, and benchmarks for strengthening efforts to combat trafficking.

Nevertheless, it is recognized that due to the scale of Haitian migration, the Government has had challenges to effectively regulate and protect the rights of foreign workers. However, many governments face the same challenges when it comes to undocumented workers.

⁷⁰ Supreme Court Ruling, September 17th, 1997, B.J. 1042, at 270-271 (Rep. Dom.).

⁷¹ *Id.*

V. CONCLUSION

The Dominican Sugar Industry remains steadfast in its commitment to upholding labor rights. The Government of the Dominican Republic has similarly remained committed to supporting a progressive labor-reform agenda and ensuring compliance with existing laws.

Father Hartley's complaint does not present evidence of any violations of labor obligations of the CAFTA-DR. There is no basis to allege any violation of international labor standards or obligations under the free trade agreement. Despite the allegations in the submission:

- There is no evidence of existing human trafficking or forced labor in the industry;
- There is a zero-tolerance policy on child labor that is effectively enforced;
- There have been no retaliatory firings of workers for affiliation with or attempts to organize labor groups or unions, and/or for their participation in legal proceedings;
- The conditions with respect to work are generally compliant with national standards with regard to compensation, benefits, safety and health, and other working conditions;
- Living conditions in the *bateyes* and other local communities are continually improving, which also reflects the commitment by the industry to support housing, essential infrastructure, education, medical and other social services for the work force consistent with both their legal rights and the dignity to which all people are entitled.

The Dominican sugar sector welcomes comments and suggestions regarding improvements in the industry, however, in order to be impactful such suggestions should focus on systemic issues and not anachronistic concerns, or isolated or aberrational incidents. The submission of Father Hartley does not take into account the improvements made over more than a decade, including with the full privatization of the industry. As a result, Father Hartley's submission grossly mischaracterizes the labor and living conditions for the workforce in the Dominican sugar sector.