

**A Report on Fundamental Labor Rights
in the Export Processing Zones and Sugar Sector
of the Dominican Republic**

Part of a Series of Reports by the International Labor Rights Fund
on Fundamental Labor Rights in Latin America and the Caribbean

Conducted by Field Research in the Dominican Republic in 2003
by the Centro de Servicios Legales para la Mujer, Inc. (CENSEL)

January 2004

International Labor Rights Fund
733 15th St., Suite 920
Washington, DC 20005
202/347-4100
Contact: Bama Athreya
bama.athreya@ilrf.org

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
I. JUSTIFICATION AND OBJECTIVES OF STUDY	4
II. METHODOLOGY	4
A. Research Design	4
B. Study Area	5
C. Data Collection Methods	5
III. BACKGROUND ON THE EPZ AND SUGAR SECTORS IN THE DOMINICAN REPUBLIC	6
A. Description of EPZs	6
B. Incentive Laws in Dominican EPZs	7
C. Working Conditions in Dominican EPZs	7
D. Sugar Industry	8
IV. THE DOMINICAN LABOR CODE IN THE CONTEXT OF INTERNATIONAL AND NATIONAL LAW	9
A. The Dominican Constitution and its Clauses Regarding Labor Law	9
B. The Labor Code's Fundamental Principles of Labor Law	10
C. International Conventions: Significance and Application	10
D. Legal Framework of Fundamental Labor Rights in the DR	12
E. Obstacles to Compliance with Labor Laws	18
F. Supreme Court Decisions Regarding Fundamental Rights	19
V. ASSESSMENT RESULTS	23
A. Background Characteristics of Respondents	23
B. Fundamental Labor Rights in the EPZs and Sugar Sector	25
C. Case Studies and Testimonies from Workers	32
VI. CONCLUSIONS	37
BIBLIOGRAPHY	38

EXECUTIVE SUMMARY

The International Labor Rights Fund (ILRF) conducted an investigation with partners in the Dominican Republic to assess the condition of workers in the country's Export Processing Zones (EPZs) and sugar industry. Researchers analyzed the Dominican Republic's labor legislation and conducted quantitative and qualitative analysis from data obtained by actual workers in the sector. Findings from this investigation should be beneficial to policymakers in both the United States and in Dominican Republic as trade negotiations are conducted with countries producing exports for US markets.

The study, performed with 600 workers in five Export Processing Zones and two sugar mills, reveals the following:

- Workers in EPZs are not legally entitled to the national minimum wage. Their wages are generally set at a lower rate.
- The majority (58%) of workers in the EPZs work overtime, either because they are required to do so or because they need to supplement their meager wages.
- 33% of workers in the sugar industry are not paid punctually.
- Of those offered promotions in the sugar industry, only 2.9% are women.

Although the Dominican Republic has ratified both ILO's core labor conventions Nos. 87 and 98, which recognize the right to unionize and collectively bargain, this investigation reveals that union participation is low in the country. Testimonies provided by workers suggest that this is because workers both fear involvement with unions and lack confidence in their effectiveness. Specifically:

- 80% of respondents in the EPZs report no participation in unions, as compared to nearly 50% of respondents in the sugar industry.
- Only 8.9% of respondents in both industries admit that they would approach their company's union with problems in the workplace.

The abysmal working conditions in the EPZ and sugar sector, combined with a lack of union representation present a challenge for advocates of improved workers' rights in the Dominican Republic.

I. JUSTIFICATION AND OBJECTIVES OF STUDY

The International Labor Rights Fund (ILRF) is an advocacy organization dedicated to the just and humane treatment of workers worldwide. ILRF initiated this study as part of a series of reports on labor conditions and the violation of fundamental workers' rights in developing Latin American and Caribbean countries, particularly in export-producing markets.

The Centro de Servicios Legales para la Mujer, Inc (CENSEL), a social service institution that works to defend and promote the rights of Dominican women, coordinated the field research for this investigation working with lead labor lawyers, trade unions and social researchers. Since the economy of the Dominican Republic relies heavily on manufacturing products for export, notably sugar, CENSEL's research focused on the country's Export Processing Zones (EPZ's) and sugar industry. The US State Department's 2002 Country Report on Human Rights Practices also singled out the Dominican sugar and EPZ industries as two sectors characterized by particularly severe and persistent labor rights violations.

The goal of the research was to examine the existence of laws, procedures, and labor practices with respect to violations of fundamental rights of workers in these industries. The research also aimed to identify gender-based discriminatory practices in the workplace. ILRF released a supplementary report on the conditions of working women and sexual harassment in the EPZs of the Dominican Republic in May 2003.

Research for this study involved assessment of the Dominican Labor Code in the context of international and national law. In performing this research, CENSEL examined the practical application of labor laws, as well as obstacles to compliance with these laws. It also studied actual working conditions in the Export Processing Zones, including the treatment of women in the workplace, and the laws that provide incentives for employers to violate fundamental labor rights in that sector.

The objective of this study is to provide a general context of the condition of workers in industries manufacturing exports in the Dominican Republic. Data from this study can be used to supplement earlier reports and provide a comprehensive analysis of the violation of fundamental labor rights, including discrimination and sexual harassment, in developing countries throughout the world. This investigative research should prove crucial to policymakers and the general public as the United States develops its trade policy with countries producing exports for US markets.

II. METHODOLOGY

A. Research Design

Research for this study involved both quantitative and qualitative methods of data collection, as well as an analysis of government documents such as the Constitution and Labor Code. Specific objectives of the study include the following:

- Provide a general context of working conditions in the industries examined;
- Identify gender-based discrimination practices in the EPZs and sugar industry;
- Recognize weaknesses in the laws and labor procedures that facilitate the violation of workers' fundamental rights, particularly in the EPZs.

Quantitative data of workers in the EPZs and sugar industry was used to provide a practical context of working conditions in those industries. Qualitative data was obtained from a portion of these workers in order to acquire a more in-depth perspective on actual working conditions.

B. Study Area

The study population included five EPZs (San Pedro de Macorís, San Cristóbal, Villa Mella, and two in Santiago) and two sugar mills. The sugar mills include the Central Romana, in Romana province, and the Consuelo, in the San Pedro de Macorís province.

C. Data Collection Methods

Researchers used a sample size of 600 workers to obtain quantitative data from workers. Questionnaire surveys were distributed to these workers in order to gauge their perspective on various issues in the workplace. CENSEL researchers developed the questionnaire, chose the sample population, made initial site visits to study areas, and conducted the actual survey. Two independent samples were used, with a significance level of 0.045 and a confidence level of 95%. Researchers used two designs: one stratified, in the case of the EPZs, and the other by conglomerates, in the case of the sugar mills. The sample was distributed in the following manner:

<i>EPZs</i>	<i>Sample size</i>	<i>Rounded sample size</i>
Itabo, San Cristóbal	56	60
San Pedro de Macorís	89	90
Santiago 1 and 11	224	220
Villa Mella	11	10
<i>Total</i>	<i>380</i>	<i>380</i>

<i>Sugar industry</i>	<i>Sample size</i>	<i>Rounded sample size</i>
Boca Chica	48	48
La Romana	78	80
Ingenio Consuelo	94	96
<i>Total</i>	<i>220</i>	<i>224</i>

A qualitative study was also utilized in order to gather information and perspectives from people whose jobs and experiences allow them to give specialized insight into working conditions in this sector. Researchers used personal interviews with a smaller

number of workers to obtain this data. By asking open-ended questions, respondents were able to respond with the degree of precision and depth that they preferred. Interview subjects included:

- Union leaders in the EPZs
- Leaders of union federations
- Officials from the Secretariat of Labor
- Labor lawyers
- Judges from the labor courts in Santiago and the National District
- Judges from First Instance courts
- Judges from the Supreme Court Appeals Court

Researchers also incorporated several brief case studies and three more in-depth testimonies of workers in order to describe personal situations of labor rights violations, particularly abuses of the rights to associate and collectively bargain.

In addition to data collected from workers, researchers also examined national legal and constitutional documents, as well as international conventions and related documents in order to provide a legal context for labor legislation in the Dominican Republic.

III. BACKGROUND ON THE EPZ AND SUGAR SECTORS IN THE DOMINICAN REPUBLIC

A. Description of Export Processing Zones (EPZs)

The Dominican Republic defines an Export Processing Zone (EPZ) as “a clearly marked industrial space that constitutes an enclave of free trade with regard to a country’s commercial structure and tariff system, and where foreign or national companies that produce principally for export enjoy a certain number of economic incentives because of preferential quotas or tariff systems.”¹ EPZs generally entail a group of companies located in a special geographic or territorial zone, dedicated to exporting goods or services to international markets, especially to the United States. These areas are unique because the companies located there have the exclusive right to import primary materials for assembling or processing, and to export their product to international markets (especially to the US). These conditions are not given to the national producer that produces for the national market.

B. Incentive Laws in Dominican EPZs

What people typically think of today as Export Processing Zones are governed by Law 8-90, which encourages the establishment of companies dedicated to exports by creating an incentive program. Specifically, these companies are under the incentive

¹ This definition was adopted in a resolution by the Secretary of Labor (No. 5-2001, March 2001), which ratifies Resolution 1/2001, issued by the National Salary Committee on February 6, 2001.

system described in Law 299 (April 1968). The executive branch of the federal government sought a law to unify the different laws regarding EPZs. As such, it drafted a bill that created Law 8-90 (combining Law 4315 and its amendments, Law 299, Decree 895, and Decree 310-88).

The announcement of the creation of the Fronteriza EPZ came a few months after the National Salary Committee passed a resolution establishing a lower salary for EPZs located in border regions and/or economically depressed regions (even lower than salaries in other EPZs, which are already lower than the national minimum). On November 7, 2001, the Secretary of Labor held a referendum on Resolution 9/2001 issued by the National Salary Committee, which stated that the minimum salary in EPZs located in border zones or economically depressed regions would be RD\$1,690 per month (approximately US \$68.97).

C. Working Conditions in Dominican EPZs

The jobs generated by EPZs are generally characterized by long working hours, high labor mobility, and deplorable health and hygiene conditions. EPZs have a unique minimum wage that is lower than the national minimum. Worse, EPZ companies are exempt from legislation providing workers with bonuses and other benefits, which further lowers the compensation workers receive for their labor.

Work conditions are harsh. The intensive use of labor in the EPZs makes work shifts long and very intense. One female worker complained that, “I was like a machine, I sewed so fast and concentrated so much that I didn’t even stop to kill a mosquito that was biting me.” Workers often don’t even have time to go to the bathroom (for which they must have a ticket). Safety and hygiene conditions are precarious. There is usually a great deal of dust, excessive heat, intense noise, and dim lighting. Machines and electrical installations are usually in poor condition. Bathrooms generally are dirty and lack water and soap. Working overtime is obligatory for most workers in EPZs. In the past, and even today, employers have been known to lock workers in so they cannot leave until they have completed their shifts. Workers who refuse to work overtime risk losing their jobs.

Dominican labor legislation provides for *desahucio*, which allows employers to fire workers (or workers to leave their jobs) without reason. *Desahucio* is only prohibited in the case of workers with union protection, pregnant women or new mothers, and workers on vacation or leave.

Labor mobility in the EPZ companies is striking, and jobs are unstable. Companies shut down and reopen frequently in order to forgo payment to workers. It is not uncommon for hundreds of jobs in an area to be eliminated in a matter of hours. Between May 2001 and the end of 2002, more than 20 companies suddenly closed their doors, leaving more than 5,000 workers out on the streets, owing them salaries, medical benefits and maternity benefits.

Companies also tend to close as a way to avoid collective bargaining agreements. In these cases, workers’ contracts may be transferred to other companies to continue

production there. This happens with impunity given that it is practically impossible to document and prove a company's intention to transfer production.

The condition of women workers is particularly appalling in EPZs. Reasons include:

- gender-based discrimination, including sexual harassment;
- women typically earn less than men for similar work (the companies that pay higher wages, which are mainly located in the city of Santiago, are those that “coincidentally” employ more men);
- the intensive use of labor and excessively long work shifts;
- the violation of collective rights to unionize and collectively bargain;
- most women are found in lower paid positions, as operators, secretaries, filers, etc.;
- the lack of opportunities for intellectual growth and development.

Sexual harassment is another major concern for women workers in EPZs, as also documented by an earlier ILRF study conducted by Fundación Laboral Dominicana (FLD) in 2002. This is largely because these women are mostly young, poor, uneducated, which makes them vulnerable. Complaints about sexual harassment are frequent, but few are filed formally since the subject is taboo and because women fear they will lose their jobs for reporting incidents. In addition, in many cases it is difficult to prove that harassment occurred, and potential witnesses fear retaliation.

D. Sugar Industry

The Dominican Republic has the highest quota for sugar as established by the US tariff rate quota (TRQ) system, with 16.4% of the US 2002-2003 worldwide quota (USDA GAIN report). However, the sugar industry in the Dominican Republic operates under the same conditions as EPZs described above and are thus plagued by poor working conditions and ineffective labor laws.

The US State Department's 2002 Country Report on Human Rights Practices noted that working conditions were poor in the agricultural sector, and particularly in the sugar industry. According to the Dominican Human Rights Committee, working conditions in the sugar industry have worsened since it was privatized in 1999; workers are reportedly paid less, work longer hours, and have fewer benefits. In some sugar farm shantytowns, field guards confiscate workers' clothes, documents, or wages to prevent them from leaving (Section 6e).

Freedom of association is restricted in this sector. According to the US State Department report, the Caribbean Sugar Producer's Consortium laid off 150 workers who had formed a union at its sugar mill in Consuelo in 2000. While some of these workers received compensation through a court order, the original owners left the country, making it difficult to enforce the court's judgment. Retaliation against unionists takes other forms as well. The Dominican Solidarity Center alleges that sugarcane industry employers have

been responsible for the disappearances of over 150 union organizers or members since 1999 (Section 6e).

Child labor is also a problem in the sugar industry, despite government attempts to eliminate it. There continue to be reports that poor Haitian and Dominican teens work with their parents in the fields, with the knowledge of the employers. The State Department report noted that human rights groups reported a slight increase in the number of undocumented Haitian 14- and 15-year-olds working in the cane fields in 2002.

The sugar industry is also a major employer of migrant labor. Approximately 500,000 Haitian immigrants live in shantytowns or sugar cane work camps. Most lack electricity, running water, and the opportunity to attend school. In 2002, a Belgian priest, Pedro Ruquoy, visited facilities in Puerto Escondido that are used to house Haitians before they are taken to work in the sugar mills. He accused privatized sugar mills, as well as the army and migration officers, of smuggling the Haitian workers across the border, and estimated that 30,000 undocumented Haitians had been brought through those facilities.

IV. THE DOMINICAN LABOR CODE IN THE CONTEXT OF INTERNATIONAL AND NATIONAL LAW

A. The Dominican Constitution and its Clauses Regarding Labor Law

Although, the Dominican Republic had existed for several centuries, it did not become politically organized until 1844, when in November of that year, the first political Constitution was signed. The Constitution provides a legal framework to govern the nation and defines its political system and territory. The state of the Dominican Republic is defined as free, independent, sovereign, democratic, republican and representative.

The Dominican Constitution has been modified 39 times, most recently in 2002. All of the clauses regarding labor rights are found in Articles Eight and Nine of the Dominican Constitution. Other articles, added later, can be applied to working conditions. For example, Article 100 “condemns any privilege or situation that threatens the equality of Dominicans.”

Article Nine of the Constitution (Section F) states that “all persons have the obligation of dedicating themselves to a job they choose, in order to earn a livelihood for themselves and their families, to reach their highest potential and contribute to the well-being and progress of the society.” This article implies the freedom to work because the right to work and the freedom to work, freedom of association and right to strike are considered constitutional rights of permanent workers.

B. The Labor Code's Fundamental Principles of Labor Law

The Dominican Labor Code uses “principles” as the foundation of labor law, in order to describe the ideal way in which labor rights should be exercised in the country. There are eight principles with relevance to labor law, as described below:

- *Principle I* defines work as a function carried out with the protection and support of the State. Principle I essentially includes the content of the preamble for Article Eight of the Dominican Constitution, which states that, “the State's principal purpose is the effective protection of human rights and the maintenance of the means that allow people to progressively perfect themselves in a system of individual liberty and social justice.”
- *Principle II* establishes work as a voluntary action, providing citizens the freedom to choose any profession for themselves.
- *Principle III* refers to the conciliation of employers' and workers' interests. It considers the idea of cooperation between capital and work as the basis of the national economy. It regulates collective and individual labor relations established between workers, employers, and their professional organizations.
- *Principle IV* establishes the territoriality of the law by guaranteeing the rights of workers doing any kind of labor within the national territory.
- *Principle VII* prohibits any discrimination, exclusion or preference based on sex, age, race, color, nationality, social origin, political opinion, union activism, or religious belief.
- *Principle X* states that female workers have the same rights and responsibilities as male workers, and that women should only receive special protection in the case of maternity.
- *Principle XI* stipulates that minors cannot be employed in services that are inappropriate for their age or that prevent them from receiving obligatory schooling.
- *Principle XII* recognizes freedom of association as a fundamental labor right.
- *Principle XIII* guarantees workers and employers the creation of jurisdictions to resolve conflicts.

Other labor rights guarantees expressed in these principles include the following:

- Not renouncing or limiting legally recognized rights.
- The good-faith exercise of and respect for rights and obligations.

C. International Conventions: Significance and Application

The International Labor Organization (ILO), a global, democratic, and specialized institution created in 1919, serves as a foundation and inspiration for the establishment of national labor laws. From 1919 to 2003, the ILO has adopted 183 Conventions, of which 35 have been ratified by the Dominican Republic.

The ILO considers eight of its conventions to be its “core” fundamental Conventions, because they refer to principles and rights that must be universally recognized

as applicable to all workers. The Dominican Republic (DR) has ratified all eight of these Conventions. They include the following:

- *No. 29 - Forced Labor Convention (1930)* – Ratified by DR in 1956. Article Two of this Convention describes forced labor as “any punishment or service demanded from a person under the threat of any punishment and for which this person did not voluntarily offer themselves, so that application of this type of work definitely falls outside of the labor sphere, except in very exceptional cases established in Article Two, adopting the pertinent measures established in that Convention” (see Articles 23 and 24). The failure to comply with these measures carries penal sanctions (see Article 25).
- *No. 87 - Freedom of Association and Protection of the Right to Unionize Convention (1948)* - Ratified by DR in 1956. This Convention establishes that all employers and workers, without distinction and without previous authorization, have the right to consult the employers’ and workers’ organizations that they find suitable, or affiliate themselves to these organizations as long as they observe their statutes. The workers’ and employers’ organizations have the right to draw up their statutes, and the public authorities should abstain from intervening and limiting this right.
- *No. 98 - The Right to Organize and Collective Bargaining Convention (1949)* – Ratified by DR in 1953. Article One of this Convention establishes that all workers should enjoy adequate protection against any act of discrimination that reduces freedom of association in the workplace. This protects against any act that aims to condition a worker’s job on his or her refusal to join a union, or that dismisses workers or otherwise hurts them because of their union affiliation or participation in union activities.
- *No. 100 - Equal Remuneration Convention (1951)* – Ratified by DR in 1953. This Convention requires equal pay and equal benefits for men and women for work of equal value. Compensation is defined as the basic or minimum salary and any other payment in money or kind by the employer, directly or indirectly, to the worker in compensation for his or her work.
- *No. 105 - Abolition of Forced Labor Convention (1957)* – Ratified by DR in 1958. Article One of this Convention states that each member of the International Labor Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labor -
 - (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
 - (b) as a method of mobilizing and using labour for purposes of economic development;
 - (c) as a means of labour discipline;
 - (d) as a punishment for having participated in strikes; or
 - (e) as a means of racial, social, national or religious discrimination.
- *No. 111 - Discrimination in Employment and Occupation Convention (1958)* - Ratified by DR in 1964. Article One of this Convention defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of

nullifying or impairing equality of opportunity or treatment in employment or occupation. Article Two establishes that: “Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”

- *No. 138 – Minimum Age Convention (1973)* – Ratified by DR in 1999. This Convention was established with the aim to abolish child labor.
- *No. 182 – Prohibition of the Worst Forms of Child Labor Convention (1999)* – Ratified by DR in 2000. The aim of this Convention was to prohibit activities that would endanger the health, safety and morals of all children under the age of 18.

D. Legal Framework for Fundamental Labor Rights

Given the Dominican Republic’s ratification of all eight of the ILO’s core conventions, it is necessary to consider the country’s own legislation in terms of the specific fundamental labor rights described above. This will include a consideration of intended governmental regulation of unions (the rights to organize, collectively bargain, strike), the right to equal opportunity, maternity protection, and protection against sexual harassment.

The Right to Unionize

The Dominican Labor Code separately regulates the rights to unionize and collectively bargain. Book V of the Dominican Constitution, titled “Unions,” includes Articles 317 to 394, which define unions and their purposes, capacities, registration process, functions, prohibitions, and dissolution. A union is defined by these Articles to be any workers’ or employers’ association established in compliance with this Code in order to study, improve, and defend the common interests of its members.²

According to the Labor Code, the goals of a union should include the following:

- to improve working conditions, efficiency in production, and the material, social, and moral conditions of its associates; and
- to promote fair and peaceful solutions to economic conflicts, in order to fulfill its members’ work contracts.

The Dominican Labor Code stipulates that workers’ unions can be organized in three ways: a company union, a professional union, or a union of the branch of activity.³

The following are some of the legal requirements for the formation of workers’ unions:

- there must be a minimum of 20 workers in the union, regardless of the type;

² Article 317 of the Dominican Constitution

³ Article 391

- statutes should be drawn up, which must contain the name, definition, and location of the union, as well as a description of its members and directors and their corresponding rights and responsibilities;
- the union should draw up an official report that includes the two previous elements, the place and date the union was created, the founding members and the election of leaders; and
- all of these signed documents related to the founding members, as well as the official announcement for the constitutive assembly must be turned in to the Secretary of Labor so that the authorities can award the corresponding registration number.

The registration of a union (by registration number) is what gives a union its legal status. A union obtains its registration through a resolution issued by the Secretary of Labor, who has 10 days after the submission of the above mentioned documents to return them if they need to be corrected.⁴ However, the same Code says that the request for registration can be rejected if: a) the statutes do not contain the essential clauses for the regular functioning of the association; or b) when one of the requirements demanded by the Code or the statutes is not fulfilled. In short, there is a wide range of reasons why a union's registration can be rejected.

Functioning of the union:

The Labor Code contains a series of clauses that place conditions on the exercise of freedom of association. The requirements to be met are relatively strict, such as a limit of 20 members. Further, workers are generally not informed about all of the legal requirements involved with forming a union. In addition to requiring the union to draw up statutes that will guarantee its functioning, Dominican law requires that the Directive Council must include at least three members. It also requires extensive paperwork, including a list of members (including names, surnames, professions, home address, and identity number), inventory of the union's property, an accounting book detailing income and expenditures, and Minutes from the general assembly, directive council, and others.

The Labor Code expressly prohibits unions from the following:

- acquiring property that is not necessary for the union's meetings, schools, libraries, or other works related to their objectives;⁵
- engaging in commerce, or activities contrary to the Constitution;⁶
- directly or indirectly restricting workers or employers from being members of the association.

The Labor Code also contains a series of articles intended to protect workers and unions from anti-union actions, both for authorities and employers. Article 318 stipulates that authorities are not to engage in any interventions that limit or hinder the exercise of freedom of association. Article 47 prohibits employers from using their influence to restrict

⁴ Article 375 of the Labor Code.

⁵ Article. 338 Labor Code

⁶ Article 339 Labor Code

workers' right to join or resign from a union, or from pressuring workers to vote for certain candidates in the election of union officials or representatives.⁷

The Labor Code also prohibits employers from engaging in practices that are contrary to professional work ethic, such as the following:

- demanding that job applicants join or not join unions;
- retaliating against workers for their union activities;
- firing or suspending workers for union membership;
- intervening in any way in the creation or administration of a union;
- refusing to deal with legitimate workers' representatives; or
- using force, violence, intimidation, threat, or any form of coercion against workers or workers' unions in order to impede their legal rights.⁸

Fuero Sindical (Protection for unionists)

In addition to the prohibitions mentioned, in 1992 the Labor Code introduced the idea of *Fuero Sindical*, which is defined as “the stability given to guarantee autonomy and the defense of the collective interest in the exercise of union functions.”⁹ *Fuero* protects up to 20 members of the committee that forms the union. These workers are protected for three months after the registration of the union. In addition, *fuero* protects up to 10 members (if the company has more than 400 workers; 8 if the company has 200-400 workers, and 5 if it employs fewer than 200 workers) of the union leadership, and three members of a negotiating commission.¹⁰ The leaders and negotiators are protected for eight months after the union's registration.

Fuero specifically protects against *desahucio*, which is the termination of a work contract without just cause. It does so by conditioning such dismissal on a prior authorization by the labor court, which should determine within five days whether or not the worker committed the alleged act. The court will refuse to authorize the dismissal if it determines that the worker did nothing wrong and that the request to dismiss was made as an attack on freedom of association.

The Labor Code makes no provisions for reinstatement of workers. If a worker is illegally fired, there is no special procedure designed to quickly reinstate the worker in his or her position.

In addition to these limitations, including the number of workers who can be protected by *fuero sindical* and the lack of a special procedure to reinstate illegally fired workers, the application of *fuero* is also conditioned on a notification by the union (or those working to develop a union, if it does not officially exist) to the company and the Secretary of Labor. This notification begins the application of *fuero*, and if it is not filed, or is done

⁷ Article 47, parts 4 and 5

⁸ Article 333 Labor Code

⁹ Article 389 Labor Code

¹⁰ Article 390 Labor Code

incorrectly, the worker is not protected from acts that the employer could use to impede the organization of the union.

Another limitation is found in Article 87 of the Rules for Applying the Labor Code (Decree 258-93), which states that if members or a founding group of a union who do not request registration of the union during the 30 days following the notification required by Article 393 of the Labor Code will lose their *fuero sindical* protection. Also, if a worker protected by *fuero sindical* is substituted in his/her job by another worker (disregarding cause and legitimacy), he/she immediately loses the protection.

The Right to Collective Bargaining

Dominican workers' right to collectively bargain is regulated by the second book of the Labor Code, which deals with Private Regulation of Work Contracts' Conditions (Articles 103 to 128). Article 103 of the Code defines collective bargaining agreements to be those made with the participation of representative organizations, both of employers and of workers, in order to establish the conditions that work contracts at one or various companies will be subject to.

A union must have the absolute majority of the company's workers as members in order to legally be able to collectively negotiate.¹¹ The ILO Expert Committee on the Application of Norms and Conventions considers this to be excessive, restricting rather than facilitating the right to collective bargaining. This Committee has suggested that the Dominican Republic modify this clause.

Employers are supposedly obligated to collectively bargain once a union has proven that it has the required number of affiliates to do so. Section Four of Article 333 prohibits employers from denying without just cause the participation in negotiations for collective bargaining agreements regarding working conditions. However, this implies that the employer has accepted the petition presented by the union.

Furthermore, refusal to negotiate a collective bargaining agreement constitutes an economic or legal conflict, which is the main requirement to be able to call a strike. Article 395 of the Labor Code establishes that, "Economic conflict is that which occurs between one or more workers' unions and one or more employers' unions, in order to establish new working conditions or modify the existing conditions."

The Right to Strike

As previously noted, workers in the Dominican Republic are legally guaranteed the right to strike under the Constitution.¹² The Labor Code agrees that striking is a method that workers can use to pressure for improvements in the working conditions through a

¹¹ Article 319 Labor Code

¹² Article. 8, Constitution de la Republic

collective bargaining agreement. In that context the right is defined as: “the collective voluntary suspension of work by workers in defense of their common interests.”¹³

However, strikes and work stoppages are not permitted in essential services, on the basis that the interruption of which could endanger the life, health, or security of people or things.

Workers are required to follow certain procedures when declaring a strike, notifying the Secretary of Labor by presenting a statement with the following elements:

- evidence that the objective of the strike is to resolve an economic or legal conflict that affects workers’ collective interests;
- demonstration that the conflict has been unsuccessfully submitted to conciliation procedures, and the parties have not designated arbitrators;
- verification that more than 51% of the workers in the company or companies voted in favor of the strike; and
- evidence that the strike will not affect essential services.

Workers are permitted to strike ten days after providing such notification.

The Right to Equal Opportunity, Equal Treatment, and Protection from Discrimination

Workers are legally entitled to equal pay for equal work under the Labor Code. Article 194 states that: “Equal work, in identical conditions of capacity, efficiency, and seniority, will always correspond to equal pay, regardless of who performs the work.”

However, an ILO Commission of Experts noted that there is a restrictive element to the requirements established in Article 194, notably that equal pay should correspond to equal work *only* under certain conditions. The Dominican government took note of this critique and restructured the clause to introduce the concept of “equal value,” replacing the phrase “equal work in identical conditions of ability, efficiency, or seniority, always corresponds to equal pay.” The Consultative Labor Council approved this language and a bill was written to modify Article 194 using the concept of work of “equal value.”

The Right to Maternity Protection

According to Article 231 of the Labor Code, women should enjoy the same rights and have the same responsibilities as men in terms of labor laws, with only the exceptions established by the clauses that aim to protect maternity.

Maternity protection in the Dominican Republic includes the following:

- prohibiting firing or demotion based on pregnancy or motherhood;
- the right to appropriate working conditions;
- pre-and post-natal leave with compensation; and

¹³ Article 401, Labor Code

- nursing and medical leave.

Dominican labor legislation is designed to prevent employers from firing or demoting women who are pregnant or nursing. If a dispute should arise, Article 233 requires prior authorization from a local authority (such as the Director of Labor) proving that the firing or demotion was based on poor performance, rather than a worker's pregnancy or status as a mother. Protection against firing (*desahucio*) starts the moment that the worker communicates her pregnancy to the employer.¹⁴

Employers are also required to maintain adequate working conditions for pregnant women so that they can work without endangering the health of themselves or their babies. Employers are prohibited from demanding that a pregnant worker perform tasks that require physical effort that is inappropriate due to her pregnancy.¹⁵

Further, if as a result of the pregnancy or birth, the job becomes harmful for the mother or baby, the employer is required to transfer the worker to another position, or else provide her unpaid leave.¹⁶

The Labor Code also provides women workers with pre- and post-natal leave with benefits. Pregnant workers have a right to six weeks of rest before giving birth, and six weeks of rest after birth. During this period of rest, workers are "guaranteed" 100% of their salary, 50% to be paid by the company and 50% to be paid by the social security system. If, for some reason, a woman is not entitled to social security, her company is required to pay 100% of her salary.¹⁷

This leave can be extended in cases proven by medical reports where a worker cannot work due to health problems related to the pregnancy or birth. However, an extended leave is not required to be paid.

Workers are also entitled to nursing and medical leave during and after their pregnancies. While nursing, workers have the right to three paid breaks during work hours, of at least 20 minutes each, in order to nurse. However, in reality this "protection" is inadequate since 20 minutes is not enough time for a worker to go home or to a childcare center outside of the workplace, nurse the baby, and return to work. Through collective bargaining, workers in some companies have been allowed to combine their three breaks into one break in the middle or end of the shift, so that they have enough time to nurse their babies. However, few workers in the country have collective bargaining agreements, so this measure does not have a significant impact on the conditions of pregnant women or new mothers.

Some workers also have the right to a maternity subsidy equivalent to three months' of their salary. To be entitled to this, a worker must have been contributing to the social

¹⁴ Article 233.

¹⁵ Article 234.

¹⁶ Article 236.

¹⁷ Articles 236-240.

security system for at least eight of the twelve months prior to giving birth, and not perform paid work during that period. This benefit exempts companies from the obligation of salary payments referred to in Article 239 of the Labor Code.

Chapter III of Law 87-01 establishes protection for minors by creating childcare centers to attend to workers' children (from 45 days of age to five years old) and to give equal opportunities and treatment to workers with family responsibilities (at least in terms of caring for children under the age of five). Additionally, mothers are entitled to one half day of leave each month to seek pediatric attention for their children.

Protection against Sexual Harassment

The Labor Code, as modified in 1992, prohibits employer from exercising, supporting, or not intervening in actions that could be considered sexual harassment. Specifically, Article 47 (subsection nine) provides workers who have suffered sexual harassment to end their work contract by resigning. Alternatively, they may file a legal complaint for damages when they are fired or forced to resign due to sexual harassment.

Anti-violence Law 24-97 defines sexual harassment as a punishable crime. The law states that, "any order, threat, pressure or offer intended to obtain sexual favors, committed by a person (man or woman) that is an abuse of their authority, constitutes sexual harassment." The generic punishment for sexual harassment, as defined by the law, is one year in prison and a fine of 5,000-10,000 pesos (about US\$140-290).

However, like the Labor Code, Law 24-97 provides only minimal protection. It merely stipulates that victims are allowed to resign from their positions. In a country where it is a privilege to have a job, it is hard for a woman to decide to resign. As such, many victims prefer to quietly suffer harassment rather than leave their jobs.

E. Obstacles to Compliance with Labor Laws

The previous section detailed all the protections workers are afforded in the Dominican Republic in accordance with the ILO's core conventions. However, in reality, there are various obstacles that impede workers' realization of these rights. Similar to many other developing countries, this situation is especially critical in the Export Processing Zones. Conversations with labor specialists, labor justice administrators, and labor lawyers revealed the following principal obstacles to workers' ability to fully exercise their fundamental rights in the Dominican Republic:

- Cases filed in the labor courts typically experience delays, which often result in workers losing interest in cases;
- The legal process of filing a case in a labor court is often prohibitively expensive for the working poor. Costs that workers are typically unable to recover include transportation, writing and photocopying documents, and notification;
- Delays in obtaining court decisions. Even though the Labor Code stipulates that judges are required to issue decisions within one month in the case of an

individual conflict (and within two months in the case of a collective conflict), in practice, this is not complied with;

- Workers' ignorance of their labor rights;
- Lack of credibility in the application of justice;
- Lack of special procedures to investigate cases of sexual harassment;
- Lack of political interest from various state entities;
- Laws designed to protect workers are weak. For example, Article 87 ("protecting" workers' freedom of association) stipulates that a committee creating a union must notify the Labor Secretary within one month of forming the union. This means that an employer is made aware of a union and can begin acting against it.
- Lack of job opportunities (which is an obstacle because it makes workers afraid to defend their rights); and
- A recent trend of companies using special lawyers to bribe workers to resign from unions or to stop pursuing legal complaints.

F. Supreme Court Laws Regarding Fundamental Rights

One of the fundamental labor principles which is included in the Dominican Labor Code is the fact that the legally recognized rights of workers cannot be removed or limited, and therefore any agreement contrary to these rights is null.¹⁸ For situations unaddressed by law or where there is some lack of clarity, the Supreme Court is responsible for standardizing the criteria that are generated by different lower level courts, in order to prevent each judge from having a different opinion on a given issue. As such, the Supreme Court has issued several decisions related to the violation of workers' rights.

However, in reality the laws are not consistent. For example, a 2000 Supreme Court decision established that "this prohibition is limited to the contractual context, and does not apply after the finalization of the work contract, so that all payments after the termination of the contract are valid if the worker did not express his complaint about the payment at the time of receiving it, even if a difference is later discovered that favors the worker."¹⁹

Further, Article 669 of the Labor Code states that "any renunciation of workers' rights recognized by labor court decisions is prohibited" but Article 96 from Law 258/93 (Oct 1, 1993) says that this is only applicable to sentences that have the irrevocable authority of the Court, which means that during the period between the termination of the work contract and the issuing of the court decision with the aforementioned conditions, worker's rights can be transgressed or rescinded.²⁰

The Supreme Court has intervened in a number of cases regarding workers' rights. While in some cases this has been beneficial, in other cases it has created inconsistencies.

¹⁸ Principle V.

¹⁹ BJ 1073, April 5, 2000, pages 16-24.

²⁰ BJ 1073, April 5, 2000, pages 16-24.

Relevant cases involving Supreme Court intervention include those regarding Christmas bonuses, commissions as a form of payment, work contracts, collective bargaining agreements, union protection, overtime, posting bonds “judicatum solvi”, and maternity protection. These are briefly described below.

Christmas Bonus

Christmas bonuses are considered a right to workers in the Dominican Republic.²¹ The Supreme Court says that the payment of the proportion of the Christmas bonus is a right instituted to benefit the worker, and that enjoyment of this right does not depend on the cause of a terminated work contract.

Commission as a Form of Payment

Various Supreme Court decisions state that commissions are a form of salary payment based on units of output,²² that they are applicable to work contracts and that they are part of the ordinary salary.²³ They should be considered part of the ordinary salary if they are earned for tasks done during the ordinary shift, and used in the calculation of redundancy pay.²⁴

Work Contract

A 2001 Supreme Court decision established that the proof of an existing work contract gives workers the right to enjoy annual vacations and a Christmas bonus, and that employers must demonstrate that they have respected these rights.²⁵ An earlier Supreme Court decision established that, “it doesn’t matter how a person enters; if there are services provided, payment, and subordination, then there is a work contract.”²⁶ These two Supreme Court decisions are interesting because EPZ and sugar sector workers do not enjoy these rights.

Job stability for union negotiators

With regard to union protection and collective bargaining, the Supreme Court has issued a decision stating that, “the negotiating commission for a collective bargaining agreement does not receive protection for being delegates, but rather for confronting the employer in the negotiations.” This clause indicates that:

The workers who are members of the negotiating commission for a collective bargaining agreement are union delegates elected by the general assembly, and are therefore protected by the clause that

²¹ BJ. No. 1072, March 8, 2000.

²² BJ 1052, July 22, 1998, pages 856-862.

²³ BJ 1064, July 7, 1999, pages 508-517.

²⁴ BJ 1055 Oct. 7, 1998, pages 458-463.

²⁵ BJ 1084, March 28, 2001, pages 679-686.

²⁶ BJ 1070, January 19, 2000, pages 402-407.

provides job stability for such delegates. Obviously this protection does not apply to the other delegates, and the application of this protection to some representatives is not because they are delegates, but because of the tasks that they will have to carry out as negotiators, which could lead to confrontations with the company, which is why there is a need for union protection.²⁷

This decision means that collective bargaining agreements are applicable to those who are in leadership or inspection positions, if the company agrees. This court decision supports Article 119 of the Labor Code.

One Supreme Court decision in particular, with regard to collective bargaining agreements, can be considered contradictory. Judicial Bulletin 1046 stipulates that, “for a collective agreement on working conditions to go into effect, it should be previously authorized by the organizations most representative of employers and workers.”²⁸ It is also established this way in Article 105 of the Labor Code.

There is another extremely interesting court decision regarding collective bargaining agreements, which says that if the conditions established in the collective agreement are more favorable for the workers, and a labor conflict starts between employers and workers, the rights established by the agreement must be applied.²⁹ This is because of the eighth principle in the Labor Code, which states that, “in the case of a coincidence of various legal or conventional norms, the one most favorable for the worker will prevail.” In other words, if there is doubt regarding the interpretation or scope of the law, it will be decided in the way most favorable for the workers.

The Dominican Supreme Court has gone even further with regard to the collective bargaining agreements. They indicated that the simple termination of the collective bargaining agreement means that the employer is still obliged to comply with its clauses regarding working conditions.³⁰

Union protection (fuero sindical)

Another one of the fundamental rights that the Dominican Labor Code guarantees workers is *fuero sindical*, as established by Article 391. This Article states that “the firing of any worker protected by *fuero sindical* must first be submitted to the labor court, so that the court can determine within five days whether or not the cause is related to union activities or functions. When the employer does not follow this formality, the dismissal is null and cannot end the contract.” The Supreme Court has repeatedly decided that the

²⁷ BJ 1049, April 1, 1998, pages 261-266.

²⁸ BJ 1046, January 22, 1998, pages 315-324.

²⁹ BJ 1057, Dec. 16, 1998, pages 524-531.

³⁰ BJ 1065, August 11, 1999, pages 481-488.

firing of a worker protected by *fuero* is null if it is not previously submitted to the Labor Court for revision.³¹

Overtime Pay

It is widely known that overtime work should be paid. However, in order for a court to order overtime hours to be paid, the number of hours worked and the circumstances under which they were worked must be indicated.³² The payment for these extra hours is claimed during the last year prior to the termination of the contract (according to Article 704 of the Labor Code); although an inconsistency presents itself. Article 701 of the Labor Code says that the time frame for filing a claim for overtime is one month, and Article 704 says that the time frame for doing so starts with the termination of the work contract, but that it is possible to claim these rights during the last year prior to the termination of the contract.³³

Bonds on “judicatum solvi”

“Judicatum solvi” bonds are money that foreigners must pay if they sue another party (according to Article 16 of the Dominican Civil Code). However, this has little application since Principles IV and VII of the Labor Code state that the labor laws apply to Dominicans and foreigners without distinction. Specifically, Principle VII prohibits any discrimination, exclusion, or preference based on sex, age, race, color, and nationality (except for the exceptions in the law that aim to protect workers’ rights). This makes the previously mentioned Article 16 of the Civil Code inapplicable, because to file suit a Dominican does not have to present bonds on “judicatum solvi” but they can require that foreigners comply with this clause. This would be in conflict with Principle VIII and the Convention of Belen Do Para.³⁴

Despite this 1997 Supreme Court decision, in 1999 the same Court said that if a court sets the bond and this has the authority of the court, it is obligatory to loan this to the foreigner so that the case is not declared inadmissible.³⁵ It appears that the magistrate who heard this case was unaware of fundamental Principle VII of the Labor Code and of international conventions, and therefore issued a decision setting the bond; as the sentences have a definitive character, it should have been contested to avoid it becoming irrevocable.

Given that most plaintiffs are workers who are poor, the requirement to pay this bond in order to file a complaint to defend their rights often means workers cannot follow through with their cases. The Supreme Court acknowledged this predicament in BJ 1042, deciding that if an employer contracts a foreigner, he cannot ask for the bond, as he would

³¹ See decision from BJ 1061, April 21, 1999, pages 892-898 and BJ 1066, September 29, 1999, pages 836-843.

³² BJ 1054, September 30, 1998, pages 1004-1010.

³³ BJ 1082, January 24, 2001, pages 679-687.

³⁴ BJ 1042, September 17, 1997, pages 265-271.

³⁵ BJ 1064, July 28, 1999, pages 858-863.

be violating the law. There are special regulations for hiring foreigners, and if the employer does not comply with these regulations, the foreigner cannot be made to pay the bond.³⁶

Maternity Protection

Pregnant women are protected both by international conventions and by Dominican law. The protection period for a pregnant woman begins when she notifies her employer of her pregnancy, and ends six months after giving birth.³⁷ The protection for pregnant women prevents employers from exercising *desahucio* (firing without reason) during the three months following the birth, or ending the contract by mutual consent.³⁸

The special limits and regulations that the Labor Code has regarding the termination of pregnant workers' contracts aim to protect maternity and avoid the loss of employment for women in that situation. If a pregnant worker consents through any agreement to give up this legally protected right, it becomes invalid.

The Supreme Court has gone further on this issue. Earlier courts decided that employer cannot allege that they are unaware of a pregnancy when it is evident, and if an employer fires a woman when she has not presented notification of her pregnancy, the employer has to comply with that established in Article 233 of the Labor Code. But the Supreme Court has gone further by saying that when the employer is unaware of the woman's pregnancy, and s/he is sued in the conciliatory phase (a required phase in labor-related cases), the employer has the obligation to reinstate the worker or else pay an additional indemnization of four months' salary.³⁹

IV. ASSESSMENT RESULTS

Researchers for this study disseminated surveys and conducted in-person interviews with a pool of 600 workers in the Dominican EPZs and sugar industry. Roughly two-thirds of respondents were workers in the EPZs, and the remaining one-third work in the sugar industry.

A. Background Characteristics of Respondents

In order to effectively analyze responses from the surveys distributed to workers in the sector under consideration, it is important to first make note of demographic characteristics of the respondents, including gender, age, level of education, and marital status.

³⁶ BJ 1042, September 17, 1997, pages 265-271.

³⁷ BJ 1075, June 14, 2000, where Articles 232 and 233 of the Labor Code establish it as such.

³⁸ BJ 1063, June 2, 1999, pages 831-837.

³⁹ BJ 1047, December 30, 1998, pages 727-732.

One of the variables of the investigation was the gender of the survey participants. This characteristic is important because it indicates how well women are represented in the EPZ and sugar sector.

Table 1: Gender Distribution of Respondents

<i>Gender</i>	<i>EPZs</i>	<i>Sugar industry</i>
Female	52.1%	8.7%
Male	47.9%	91.3%
<i>Total</i>	<i>100%</i>	<i>100%</i>

The age of workers in the sector is also significant. The difference in age distribution in the sugar sector, with over half of workers being over 50 years of age, can be explained by the fact that the survey was applied in the settlements where sugar workers live.

Table 2: Age Distribution of Respondents

<i>Age</i>	<i>EPZs</i>	<i>Sugar industry</i>
0-29	53.9%	6.7%
30-39	33.8%	18.7%
40-49	5.8%	23.4%
50+	6.5%	51.2%
<i>Total</i>	<i>100%</i>	<i>100%</i>

The level of education of respondents is also worth considering since it demonstrates the quality of workers employed in these industries.

Table 3: Education Level of Respondents

<i>Level of education</i>	<i>EPZs</i>	<i>Sugar industry</i>
No grades completed	3.1%	51.5%
Partial elementary	22.3%	29.5%
Completed elementary	17.1%	10.5%
Partial secondary	29.4%	4.5%
Completed secondary	17.6%	3.2%
University	10.5%	0.8%
<i>Total</i>	<i>100%</i>	<i>100%</i>

The marital status of the respondents is also important to take into account, since it demonstrates whether most workers are working for a double-income or to support themselves.

Table 4: Marital Status of Respondents

<i>Marital status</i>	<i>EPZs</i>	<i>Sugar industry</i>
Married	14.5%	23.8%
Single	46.5%	37.9%
Partnered	29.0%	33.1%
Separated	5.0%	1.2%
Divorced	5.0%	4.0%
<i>Total</i>	<i>100%</i>	<i>100%</i>

B. Fundamental Labor Rights in the EPZs and Sugar Sector

Laws and international conventions establish intrinsic rights for workers, including those employed in EPZs and the sugar sector. These rights include medical leave, breaks, childcare facilities, double salary, and protection against discrimination. Researchers surveyed workers to find out which rights are complied with in various companies. The results are displayed in Table Five.

Table 5: Existence of Rights in the Workplace for Respondents

<i>Rights in the Workplace</i>	<i>% of workers in EPZs who claim to exercise this right</i>	<i>% of workers in sugar industry who claim to exercise this right</i>
Double salary	96.4%	79.3 %
Leave	92.4%	75.0%
Discrimination	67.3%	48.6%
Child care facilities	54.9%	69.3%
Breaks	91.3%	69.3%
Bathrooms	81.8%	49.3%

Protection in the workplace:

Considering the various harms to workers in the manufacturing (EPZ) and sugar industries, it is important to consider whether workers are protected on the job. All workers should have their physical and mental health protected while working. Table 6 details respondents' perception of whether or not they are offered protection on the job.

Table 6: Protection at the Workplace

<i>Protection</i>	<i>EPZs</i>	<i>Sugar industry</i>
Yes, there is protection	85.0%	70.2%
No, there is not protection	14.2%	27.4%
(No response)	0.8%	2.4%
<i>Total</i>	<i>100%</i>	<i>100%</i>

For those who reported having protection, Table 7 details the type of protection offered to workers in the sector. Workers responded to as many of the types as they had encountered.

Table 7: Type of Protection Provided

<i>Type of protection</i>	<i>% of workers in EPZs offered this type of protection</i>	<i>% of workers in the sugar industry offered this type of protection</i>
Potable water	88.1%	85.4%
Masks	46.2%	29.2%
Footwear	34.3%	38.5%

Compensation:

In terms of compensation received for hours worked, while still below the minimum wage, workers in the EPZs typically earn more than workers in the sugar industry. Among respondents, wages in the EPZs ranged between 740 and 4000 pesos (US\$21.25 to \$115). In the sugar industry, wages ranged from 60 to 2400 pesos (US\$1.70 to \$70).

Surprisingly, the majority of workers in both industries reported being paid punctually by their employers. Table Eight shows these results.

Table 8: Punctuality of Payment for Respondents

<i>Punctuality of payment</i>	<i>EPZs</i>	<i>Sugar industry</i>
Punctual	93.2%	67.1%
Not punctual	6.8%	32.9%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Table Nine shows how regularly workers are typically paid in these industries. It is interesting that the vast majority of workers in the EPZs are paid weekly.

Table 9: Pay Schedule of Respondents

<i>Pay schedule</i>	<i>EPZs</i>	<i>Sugar industry</i>
Daily	0%	6.3%
Weekly	87.1%	32.5%
Every 15 days	5.5%	51.2%
(No response)	7.4%	10%
<i>Total</i>	<i>100%</i>	<i>100%</i>

It is interesting to note the considerably high non-response rates for this and several other survey questions. It is likely that some workers felt uncomfortable being honest with researchers for fear of losing their jobs.

Work hours and overtime:

Article 146 of the Dominican Labor Code established that “the work shift is the time that the worker can not use freely, because he/she is at the disposition of his/her employer; the working hours cannot exceed 8 hours in a day and 44 hours in a week, unless the Secretary of Labor says otherwise in a resolution that responds to the needs and requirements of certain companies or businesses and certain social and economic needs in different parts of the country, having consulted the workers’ representatives.”⁴⁰

Table 10, below, shows that a slight majority of workers in the EPZs report working overtime, and a slight minority of workers in the sugar industry report working overtime.

Table 10: Overtime Worked by Respondents

<i>Overtime</i>	<i>EPZs</i>	<i>Sugar industry</i>
Do work overtime	57.6%	40.5%
(Do not work overtime)	42.4%	59.5%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Of those who report working overtime, Table 11 illustrates the amount of overtime worked by hour by respondents.

Table 11: Amount of Overtime Worked for Respondents

<i>Amount of overtime</i>	<i>EPZs</i>	<i>Sugar industry</i>
1 hour	19.6%	2.0%
2 hours	30.0%	12.7%
3 hours	19.2%	5.9%
4 hours	7.3%	26.5%
5 hours or more	5.0%	6.9%
(No response)	18.9%	46%
<i>Total</i>	<i>100%</i>	<i>100%</i>

A slight majority of workers in both industries report performing these overtime hours by their own will. This is likely due to the extremely low wages offered to workers in the sector, who feel they have to supplement their regular hours with extra pay.

Table 12: Obligatory Nature of Overtime Work by Respondents

<i>Nature of overtime work</i>	<i>EPZs</i>	<i>Sugar industry</i>
Mandatory	14.5%	25.0%
Voluntary	56.8%	18.3%
(No response)	28.7%	56.7%
<i>Total</i>	<i>100%</i>	<i>100%</i>

⁴⁰ Articles 146-. Dominican Criminal Code.

It is not surprising that workers are not fairly compensated for their overtime labor in this sector. Over one-fourth of workers in the sugar industry report not being paid at all for overtime.

Promotion:

Researchers also considered whether or not respondents knew of promotions being offered to workers of their level in the EPZs and sugar industry. Their responses are provided in Table 14. It was surprising to learn that promotions are offered to a majority of workers in the EPZs. However, researchers did not discover further information about the extent of these promotions.

Table 14: Knowledge of Promotions among Respondents

<i>Existence of promotions</i>	<i>EPZs</i>	<i>Sugar industry</i>
Yes, there are promotions	65.0%	27.0%
No, there are not promotions	27.1%	43.7%
(No response)	7.9%	29.3%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Many consider it a fundamental labor right for workers to have the potential to be promoted for hard work in the company where they are employed, when there are vacancies. Table 15 shows the gender distribution among respondents of those who are most frequently offered promotions.

Table 15: Gender Distribution of those Promoted

<i>Gender</i>	<i>EPZs</i>	<i>Sugar industry</i>
Men	25.1%	72.1%
Women	12.1%	2.9%
Both	56.3%	1.5%
(No response)	6.5%	23.5%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Researchers went further by surveying respondents on their suspected reasons for workers being offered promotions in the EPZs and sugar sector. In doing so, surveyors asked respondents to chose the most likely reason for promotion among seven qualities of workers, plus whether or not vacancies existed or if there were no promotions to be offered. In both industries, workers indicated that working well with others was the quality most frequently desired by employers. Table 16, below, displays these results.

Table 16: Reasons for Promotion from the Perception of Respondents

<i>Quality</i>	<i>EPZs</i>	<i>Sugar industry</i>
Dynamic personality	1.8%	1.9%
Works well with others	63.5%	41.1%
Professionalism	8.7%	0%
Efficiency	4.0%	3.7%
Good behavior	5.4%	0%
Good relationship with the boss	5.8%	9.3%
Standing out from other workers	2.5%	8.4%
Vacancy	0.4%	0.9%
No vacancy	2.2%	19.6%
(No response)	5.7%	15.1%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Union activity:

One of the fundamental rights for workers established by the Dominican Constitution and labor legislation is freedom of association. Table 17, below, shows that the majority of respondents report that unions do exist in their workplaces.

Table 17: Existence of Unions

<i>Existence of unions</i>	<i>EPZs</i>	<i>Sugar industry</i>
Existence	58.4%	65.1%
No existence	37.4%	30.6%
(No response)	4.2%	4.3%
<i>Total</i>	<i>100%</i>	<i>100%</i>

For those who report a lack of union presence, Table 18 shows respondents' suspected reasons for this void.

Table 18: Reasons for Lack of Union Presence

<i>Reason</i>	<i>EPZs</i>	<i>Sugar industry</i>
Prevented by company	38.5%	1.7%
Fear of being fired	2.2%	1.7%
No need	4.4%	1.7%
Had not been considered	9.9%	11.9%
Previous union demise	1.1%	0%
(No response)	43.9%	83%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Researchers also asked respondents if they had directly participated in union activity in their industries. Table 19 shows that only one-fifth of respondents in the EPZs report participating in union activity, while slightly over half of respondents in the sugar industry report being active in unions.

Table 19: Respondents' Participation in Union Activity

<i>Participation</i>	<i>EPZs</i>	<i>Sugar industry</i>
Does participate	19.8%	50.6%
Does not participate	80.2%	49.4%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Of those who reported not being active in unions, Table 20, below, shows these respondents' reasons for doing so.

Table 20: Respondents' Reasons for Lack of Union Participation

<i>Reason</i>	<i>EPZs</i>	<i>Sugar industry</i>
Lack of initiative	26.6%	14.1%
Prevented by company	40.1%	34.6%
Perceived lack of importance	18.1%	30.8%
Perceived lack of need	20.9%	9.0%
(No response)	5.7%	11.5%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Since the purpose of unions is to represent the interests of workers, researchers were interested in assessing the level of confidence that workers have in such organizations. To gauge their perceptions, the survey asked respondents whether or not they would have or would approach their company's union with problems in the workplace. Specifically, the question asked, "Who do you go to when you have a problem?" Table 21 details responses to this question.

Table 21: Entity to whom Respondents Approach with Problems in the Workplace

<i>Entity</i>	<i>Respondents (in both industries)</i>
Union	8.9%
Immediate supervisor	46.3%
Administration	13.9%
(No response)	26.3%
<i>Total</i>	<i>100%</i>

Table 21 shows that less than 10% of workers in both industries feel confident in approaching their unions with problems in the workplace. This data helps to explain why there is such low union participation among respondents, and reflects the government's attitude toward union activity and workers' fear of consequences from union involvement.

As such, the majority of workers prefer to approach their immediate boss to solve specific problems.

The type of responses given by surveyed workers makes it appear that the unions are not fulfilling their role as prescribed by the Labor Code. The fact that only 8.9% of respondents had confidence in unions to solve workplace issues makes it clear that there are many limitations and obstacles to union activity and effectiveness in the Dominican Republic.

In-depth interviews with union leaders revealed more information about several of these obstacles. They largely spoke of business owners' negative reaction to the formation of unions in their companies. It is not uncommon for workers who participate in unions to suffer physical aggression from employers. Testimonies from workers (next section) reveal their permanent fear of approaching those promoting a union.

Incentives for workers in EPZs and sugar industry:

Given that the work conditions are harsh and hours are long in the EPZs and sugar industry in the Dominican Republic, many employers have begun to offer incentives to their workers to relocate there to work for them. Table 22 shows the distribution of workers in the sector who are offered incentives.

Table 22: Percentage of Respondents Who Receive Incentives

<i>Existence of incentives</i>	<i>EPZs</i>	<i>Sugar industry</i>
Do receive incentives	38.9%	34.1%
Do not receive incentives	55.3%	53.9%
(No response)	5.8%	12.0%
<i>Total</i>	<i>100%</i>	<i>100%</i>

Of those who report being offered incentives, Table 23 shows what these incentives typically consist of. Some respondents report being offered more than one incentive.

Table 23: Types of Incentives Offered

<i>Type of incentive</i>	<i>% of workers in EPZs who are offered the following type of incentive</i>	<i>% of workers in the sugar industry who are offered the following type of incentive</i>
Access to education	52.7%	23.3%
Promotion	35.0%	24.4%
Housing	10.0%	76.7%
Other (ex: bonds)	52.2%	66.7%
Money	30.4%	25.0%

C. Case Studies and Testimonies from Workers

This section provides case studies and actual testimonies of violations against workers of the rights to freely associate and collectively bargain in the EPZs of the Dominican Republic. These case studies are designed to demonstrate the actual working conditions of workers in this sector.

CASES OF LABOR RIGHTS VIOLATIONS

Case Study 1

In November 2003, a group of workers at a company decided to form a union, and asked the General Director of Labor of their company to register it. The union filled the requirements established by the Labor Code, including: a) the express desire of 20 or more workers to form a union; b) proof that these workers approved the statutes; c) demonstration that these statutes contained the necessary data about the organization, its functioning, and the rights and responsibilities of its members; d) evidence of a Constitutive Assembly that resulted in an act signed by all of the founders; and e) verification that there was a prior official announcement for the Assembly.

Despite these qualifications, the Director General refused to register the union, on the grounds that various workers had resigned from a previous union in the company. Even if that was true, that did not legally invalidate their acceptance of the new union. Further, the Director does not have the legal authority to decide whether a union can exist.

The number of requirements listed in the Labor Code means that, in most cases, unions function at the margin of the legal regulations. This makes them extremely vulnerable to business owners, especially those who take advantage of this situation to take legal action to prevent unions from functioning or negotiating. Most lawsuits aimed to cancel a union's registration or nullify an assembly, filed by companies or by workers manipulated by the companies, are based on a union's violations of these Labor Code conditions.

Case Study 2

In September 2002, more than 80 workers were fired without reason from a company located in the EPZ of Santiago. This "desahucio" was massive and selective. All of those fired were leaders or members of the company's union, which had written out a collective bargaining proposal to present to the company. The company alleged that the fired leaders did not have fuero sindical (union protection) because the company had fewer than 400 workers, and therefore only eight unionists could have been protected by fuero sindical.

The company's response to the union's initiation of collective bargaining was to bribe the key union leaders through the well-known practice of "union-breaking committees" which have been denounced multiple times by the union movement and labor authorities. They ultimately fired all union leaders and members, including several who were protected by fuero sindical and four pregnant women. Fifteen of these fired workers decided to file a legal complaint.

Case Study 3

On Feb 17, 2003, in a company in Hato Nuevo, a worker (and suspected union affiliate) was savagely beaten by the son of the company's owner. Three months later, in March, all seven of the union leaders were illegally suspended. The complaints that they filed are currently under examination by the Labor Court, 5th Court of the Peace, and the criminal court, National District.

Case Study 4

A company in the Industrial EPZ of Villa Mella transferred most of its warehouses to a multinational company. In the process of the transfer, all of the pregnant workers and union leaders were fired without reason.

Case Study 5

On July 14, 2003, a company fired various founders and members of its union in a clear act of union persecution. At the same time the company also asked the National District Labor Court permission to fire the workers who had union protection. Because this request was illegal, the court refused. A total of seven workers were fired due to their union activities.

Case Study 6

On September 18, 2003, a company located in the EPZ in San Pedro de Macorís, illegally fired all members of the union's leadership, even those who had union protection protection, in order to impede freedom of association and collective bargaining. A total of 12 leaders were fired.

Case Study 7

On September 30, 2003, in a company in Santiago, five union leaders and founders were fired for their union activities, even though they were protected by fuero sindical.

Testimonies of abuses and violations from workers

Testimony 1: Kata, textile machine operator
Company: Textile factory
Time employed by the company: 4 years
Date of the incident: October 2002

They fired me. I was helping to create a committee to form a union in the company. I was protected by fuero sindical, but they fired me anyway. When the notification from the Labor Secretary arrived, the company found out who was in the union. The company didn't want a union, because unions demand that companies comply with labor laws. Since the

company doesn't comply with these laws, what is beneficial for the workers isn't beneficial for them. A strong union can achieve better working conditions.

They also fired other people who were working to form a union. Now I don't have a job. I need my job because I don't have an alternative. I have looked for work in other companies, but when they realize I was in a union, they don't give me a job - they return my documents and tell me that they don't need me.

Some companies give my identification card to the guard at the gate and tell him: "find out who she is." There are files with names of union participants. Some of our fired coworkers have visited 15 factories looking for work and haven't gotten a job.

We took the case to the courts and are waiting for a decision. The federation FENATRANOSA, which is trying to help us get our jobs back, helped with this process. The Secretary General has given us good news and bad news. The good news is that we can be reinstated in our jobs, and they will pay us our salaries. The bad news is that the president of the "M" group has been unwilling to allow this to happen. The M group is the name given to the group of these companies.

The company got rid of us by force. They hired two hit men who tried to blend in with us. The company paid them, as if they were just two more employees, but it was done under the table. One afternoon they gave one of our fired coworkers, Mr. Ortiz, a blow to the back. The police took the three of them prisoner. Mr. Ortiz received a call from the manager, who said that he would get rid of us somehow, one by one. Mr. Ortiz came to the company to tell us what had happened, and told us to be careful. When he left, the contracted hit men attacked him again.

The following Monday, the boss (the representative from the M group) and the head of security for the M group called my coworkers and me. They offered us money to resign from the union and leave the company. We said that we were not in it for the money, but rather to defend the workers. So they told us that they were going to implicate us in the incident that happened in the street. We didn't want to take their money. They told us that they would give us time to think it over, and that we should consider the consequences. Then we went back to work.

The following Wednesday at 2 pm they called us again and told us that we were going to be detained and interrogated. There were three policemen waiting for us. They told us we would return right away. When we got there, they told us we were going to be taken prisoner. The deputy asked, "Are you the M-I unionists that are going around killing people? There is a lawsuit, that you were going to kill someone." I said: "We are not delinquents, they took us away from our work."

We were held prisoner for five days. My family hired a lawyer and they let me go. Nothing like that had ever happened to me before, and I do not regret what I have done. I ultimately returned to the company, but after being there for only a month they told me they didn't have any more work in the company. I was fired.

In terms of reactions from my coworkers, there is a lot of fear. There are meetings with the different units, excluding the unionists. That is where they tell the workers not to meet with us. I know, because I went to those meetings before I belonged to the union. Anyone who defends the unionists is kicked out. So the workers don't express their opinions because they don't want to lose their jobs.

Testimony 2: Juan, textile machine operator
Company: textile factory
Time working for company: 4 years
Place: San Pedro de Macoris
Date of incident: September 2003

We created a union, registered it, and fulfilled all the legal requirements. We had 50% plus one of the workers affiliated. We had started the collective bargaining process, had a negotiation in the capital, and everything was going very well.

Then the administrator found a lawyer, Ramón, who worked to eliminate unions. This lawyer was bribing four of the union leaders with money. They were forcing me to resign from the union and they offered me RD\$40,000 plus the benefits that corresponded to me for the three years and eight months I had worked in the company. They were forcing me to leave the union, and they put RD\$73,000 on the table. Some took the money and left.

We held an assembly and assigned the vacant positions to new leaders. We followed the correct legal procedures, and went to the Secretary of Labor to notify them of the new leadership. Immediately after they received notification of the new leadership, they threw the group onto the street by force, using the guards. The next day when I arrived at the company, there were four guards in the doorway, and they did not let me pass. Eleven people were fired. I have been without work since then. Everything was going fine until they started to bribe those leaders.

They not only fired union leaders, they also fired a group of workers who were affiliated with the union. Others were told that if they did not resign from the union, they would be fired. They pressured them, making them sign a contract. They called an assembly and forced other workers to sign the contract. The company has convinced people that the union is bad, that it destroys the company. We want to show the people that that is not true. There was a union before I came to the company, but it also dissolved.

Now the company wants to form a yellow union. It is said that they did it after firing us. They haven't publicized it, or registered it; it is only inside the company.

In most companies, when talk starts about a union, they start the hunt. The business owners just hear the word "union" and start firing people. They fear unions. They don't want workers to defend their rights or the money they are owed, or to complain if the bathrooms are dirty. They want people to do what they tell them to do.

Now we are in the courts, waiting for a hearing. We are hopeful, because everything they have done is illegal. We have the report of the offense and there is no evidence that we

have committed a crime in the company. Inspectors from the Labor Secretary came, and they did not find documents that supported the action.

Before the cancellation, the company had asked for an inspection, to show that we were not working. When the inspector came, he found us working and noted that in his report.

Why does this happen? They stop production sometimes; one time we endured six months like that, and they didn't want to pay us. We filed a complaint about that and they had to pay us. We requested an inspection and the inspector came and observed. That is when people started to trust us and joined the union. The company fired women who were three months pregnant, so we filed another complaint and won that one too. The company subjects women to pregnancy tests, and if they find out women are pregnant, they don't hire them.

It is also a common practice in the company that when women give birth they are not reported to social security. Therefore they do not receive their pre- and post-natal benefits. The workers are paying for social security but the company does not register them. There are women who have given birth two or three times and never received their maternity benefits. They don't complain because they are afraid of being fired.

Testimony 3: Midonia, Marineli, and Felicia
Company: textile factory
Location: Villa Mella in the province of Santo Domingo.
Time employed in the company: 7-8 years

Felicia:

I found out that there was a union, and that it was kind of clandestine because the bosses didn't want it. I went to meetings and workshops, and I became the Secretary General of the union.

Midonia:

I ended up holding various positions. I became a unionist within a year of arriving. We didn't do many activities because there weren't many women supporting us.

Felicia:

There were union leaders in each of the warehouses of the company. The company suddenly switched names. When it said it was closing, those of us who stayed in the union were split. When they closed, they went first to the union, and they said: "We are sorry, but there is no work for you, the company has decided to close."

The firings were because of the union because the company continues to operate. Now it operates under a new name, but it is in the same place.

Marianeli:

They fired me, saying that the company was going to close. They dismissed those in the union; none were left. It was because the company was in new hands, and this new company did not want a union. We went to the federation and filed a complaint in the

courts. We are hopeful, but the process is very slow. We want them to give us compensation for being fired, to pay us what we are owed, and to reinstate us in our positions.

After they fired us, no one has formed a union. We were the only ones who dared. We were courageous. Furthermore, as operators, we knew what our rights were.

At the time we were fired, we had activities planned, including an assembly to incorporate more people and elect new leaders. We didn't get around to discussing the collective bargaining agreement, because we hadn't been able to affiliate the majority of the employees to the union. Many people did not join the union.

Before all this, there were many women who wanted to be in the union, but they were afraid because they believed they would be fired. One time, the boss found a worker reading a union pamphlet, and he took it from her, tore it up, and fired her. So people were afraid. They threatened them, saying they would burn their papers, damage their resumes. The workers were afraid of being fired.

The women had the initiative to create the union. The men did not participate. Women made up 90% of the union. The men were mechanics and engineers.

They fired us for being unionists.

VI. CONCLUSION

The quantitative data from a large pool of workers combined with the qualitative data from experts has enabled researchers to gain a practical understanding of the condition of workers in the Export Processing Zones and sugar industry of the Dominican Republic. Analysis of the labor legislation as compared to actual conditions has revealed discrepancies between how workers are supposed to be treated and how they actual are. Policymakers should abide by the international conventions the country has ratified and make its own policies consistent with the values upheld in those conventions. This, along with practical enforcement, should improve the plight of workers in these industries.

BIBLIOGRAPHY

Labor Code and Complementary Norms
Impresora Gráfica Comercial
Santo Domingo, Dominican Republic.

Suarez, Julio Anibal
Jurisprudencia Dominicana de Trabajo
Ediciones Jurídicas Trajano Potentini
First Edition, November 2001.

Constitution of the Dominican Republic
August 14, 1994.
Impresora Metropolitana, Santo Domingo, Dominican Republic

Consejo Nacional de Zonas Francas de Exportación.
Guía para instalar y operar en Zonas Francas
Dpto. de información comercial y estadísticas.
Santo Domingo, Dominican Republic

Law 8-90 on Export Processing Zones and the Application Regulations
August 29, 1997
Santo Domingo, Dominican Republic

Los Derechos de la Mujer Trabajadora
Centro de Planificación y Acción Ecuménica,
Unidad en la Diversidad

Law 24-97 on Intrafamily violence
Secretaría de Estado de la Mujer
Sixth Edition, May 2002
Santo Domingo, Dominican Republic

Sexual Harassment in the Export Processing Zones of the Dominican Republic
Investigation sponsored by the International Labor Rights Fund (ILRF)
Washington DC, February 2003
Fundación Laboral Dominicana, Inc.

Derechos Fundamentales en el Trabajo, breve esbozo.
Dra. Maribel Batista, Consejo Nacional de Unidad Sindical

International Labor Norms
3rd revised edition
International Labor Organization (ILO), 1992.

Sánchez, José Marcos
Negociación Colectiva y Código de Conducta

International Labor Organization (ILO), 2000.

Resolution 4505 on Freedom of Association

July 21, 1956.

Gaceta Oficial 8010, August 1, 1956.

Convention no. 138, on the eradication of child labor.

Convention no. 29, on forced labor. ILO, June 1930.

Diccionario para Juristas

Juan Palomar de Miguel Editora

México, May 1981

Análisis de las Políticas Migratorias en la República Dominicana en los últimos 20 años, en ponencia del Dr. Plinio Ubiera.

La Industria Azucarera en la República Dominicana: Situación Actual y Perspectivas

<http://www.inazucar.gov.do/situacionyperspectiva.html>

2002 Country Report on Human Rights Practices

U.S. State Department Bureau of Democracy, Human Rights, and Labor

March 31, 2003

USDA Foreign Agricultural Service

Dominican Republic Sugar Semi-Annual 2003.

GAIN Report Number DR3022

September 26, 2003.