

Labor Rights Following the DR-CAFTA

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History/Human Rights 161

A) Executive Summary

Since the enactment of free trade agreements such as NAFTA and CAFTA-DR, there have been numerous accounts of labor violations in addition to a heavy presence of child labor in the member states of Central and Latin America. The U.S State Department's *Country Reports on Human Rights Practices* between 2002 and 2006 stated that workforce oppression was the third most frequently occurring violation in Latin America, occurring roughly fifty-two percent of the time in examined cases.¹ Although these accounts have been prevalent in most if not all of the member states of CAFTA, this analysis will also discuss violations occurring in Ecuador, Mexico, and Brazil due to similar violations. This research will focus on the most frequently occurring violations in the above mentioned countries, which have been divided into the following sections: Lack of Enforcement of Labor Policies, Labor Unions and Collective Bargaining, Foreign Corporations and Domestic Labor Laws, Health and Safety Hazards, Women in the Workforce, and Child and Slave Labor.

Lack of Enforcement of Labor Policies

Joshua M. Kagan in his *Workers' Rights in the Mexican Maquiladora Sector* argues that the problem regarding labor and human rights in Mexico and other countries is not with the law itself, but with its enforcement. No one in the member states of CAFTA-DR or NAFTA is holding governments responsible for labor policy violations, or for focusing solely on creating employment and foreign investment and the expense of human rights. Governments in these Central and Latin American countries are not willing to increase their labor standards, for fear of

¹ Hernandez, Agneta. "An Examination of Human Rights Violations in Latin America: 2002-2006." *Texas State University*, pg. 1-104, 2007.

driving the headquarters of multinational corporations elsewhere. Many governments justify their neglect of human rights by claiming that the only way to deal with the poverty and unemployment in their countries is through focusing on permanent employment rather than dealing with regulations that make sure violations do not occur.²

Labor Unions and Collective Bargaining

There has been a lack of workers receiving individual representation in Central and Latin America because of the anti-union measures taken by employers, leading to various restrictions placed on unions. The inability for workers to collectively bargain within member states of these trade agreements is often believed to be an effect of competitive manufacturing export industries.³ Collective bargaining would allow for workers to combine and increase their bargaining powers to influence both employers and legislation in their countries, something that has been missing. Many unions are also afraid to take action regarding the protection of their workers due to the threat of businesses leaving their countries for other developing countries. Finally, because unemployment is very high in these member states, workers who do end up coming together to strike for better conditions in their work environment are easily replaceable by others who are frantically searching for work to make ends meet.⁴

Foreign Corporations and Domestic Labor Laws

² Kagan, Joshua M. "Workers' Rights in the Mexican Maquiladora Sector: Collective Bargaining, Women's Rights, and General Human Rights: Law, Norms, and Practice." *Florida State Journal of Transnational Law and Policy*. vol. 15, no. 1, pg. 153-180, 2005.

³ Cisneros, Pedro. "Free Trade's Effect on Mexican and Brazilian Labor Law: Mexico's Reluctance to Relinquish Power Debilitates Workers' Access to Remedy." *Creighton International and Comparative Law Journal*. vol. 5, no. 1, pg. 76-87, 2013.

⁴ Kagan, "Workers' Rights in the Mexican Maquiladora Sector: Collective Bargaining, Women's Rights, and General Human Rights: Law, Norms, and Practice," 166.

The increased presence of multinational corporations in the early 1900s has led to ongoing violations of human rights and labor rights of workers in factories, assembly lines, and plantations such as those in Ecuadorian banana plantations and the Mexican maquiladoras.⁵ Corporations like the Dole Food Company and Chiquita Brand enjoy privileges and immunity in Central and Latin American countries that they do not enjoy in their own home countries. Establishing headquarters in these developing countries allows these foreign companies to operate under lower standards, which unfortunately results in disregard of domestic labor laws and thus the mistreatment of workers. In addition, foreign corporations in Central and Latin American countries do not enforce the rights of workers granted by signed international laws and treaties such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights. Often times, these companies do not know the established domestic laws of the countries they are operating in.⁶ In addition, there is a lack of enforcement of international human rights laws because of the unwillingness of countries to give up their national sovereignty, making them less likely to enforce these international human rights laws in their countries.⁷ Many human rights activists are pushing for key players such as the United States to be responsible for holding these multinational corporations responsible for abiding by international and domestic law to protect the workers, and to provide unions and non-government agencies with tools to improve the social and economic standards of living for workers through better wages. Many Central and Latin American countries depend on these corporations for foreign investment, which comes at the expense of human rights. As argued by Pedro Cisneros in *Free Trade's Effect on Mexican and Brazilian Labor Law*, countries should

⁵ *Ibid*, 154.

⁶ *Ibid*, 167.

⁷ Hernandez, "An Examination of Human Rights Violations in Latin America: 2002-2006," 15.

strive for labor policies that value workers' rights while simultaneously promoting a competitive and flexible market.⁸

Health and Safety Hazards

Workers in plantations and assembly lines such as Mexico's *maquiladoras* face several health and safety hazards due to the lower standards foreign competitions are allowed to operate under. These workers are exposed daily to dust-born chemicals and gas or vapor exposure, which have resulted in many cases of birth defects in children born to past or present workers.⁹ Many times workers have reported not being trained on safety regulations of the machinery used in the factories and assembly lines, nor are they provided with proper updated safety equipment in the case of an emergency; many argue this is done by employers in an effort to improve the efficiency and speed of factory procedures.¹⁰ These workers have a right to favorable conditions under the UDHR, but are often neglected by employers and governments who fail to follow established labor policies. In addition, many workers in foreign companies have working hours that exceed what is legally mandated for a workweek, exceeding more than forty-five hours per week.¹¹ Excess work and the threat of losing jobs if efficient productivity is not kept creates a stressful environment for workers working in these substandard conditions, which make a negative impact on their health.

Women in the Workforce

⁸ Cisneros, "Free Trade's Effect on Mexican and Brazilian Labor Law: Mexico's Reluctance to Relinquish Power Debilitates Workers' Access to Remedy," 84.

⁹ Kagan, "Workers' Rights in the Mexican Maquiladora Sector: Collective Bargaining, Women's Rights, and General Human Rights: Law, Norms, and Practice," 161.

¹⁰ *Ibid*, 159.

¹¹ *Ibid*, 160.

Many female workers in factories, plantations and assembly lines in Central and Latin America face numerous cases of discrimination, especially when they are in the majority. Many female workers such as in the *maquiladoras* of Mexico reported being subject to frequent pregnancy tests where failure to comply could potentially cost their jobs. Those who are found pregnant while applying are prevented from receiving jobs, while those who become pregnant as workers are released without pay. Many female workers have also claimed that birth-control pills were distributed while on the job.¹² This is an attempt by these employers to avoid policies in Mexico that entitle female workers to six weeks paid maternity leave before and after their delivery dates as well as job security after in the form of their previous positions.

Child and Slave Labor

There have been numerous reports on child labor in the member states of the CAFTA-DR as well as NAFTA, where children as young as eight are exploited in the workforce.¹³ Time spent in these brutal work environments prevents these children from receiving a proper education, to which they are entitled to under the Declaration of Human Rights. According to ILO Worst Forms of Child Labor Convention No. 182, there are still 5.7 million children under minimum wage who are engaged in work in Latin America and the Caribbean.¹⁴ While most tend to work in agricultural sectors, others work in more risky environments where they are exposed to dangerous equipment and hazardous chemicals.¹⁵

¹² *Ibid.*, 164.

¹³ Skolmen, Kristiane. "The Tragedy of Trade: A Critical Look at the Ecuadoran Banana Industry through the Context of International Human Rights Legislation." *The Orator*. University of Washington, 2008.

¹⁴ "ILO." Child Labour in Latin America and the Caribbean (IPEC). Accessed May 31, 2015. <http://www.ilo.org/ipec/Regionsandcountries/latin-america-and-caribbean/lang--en/index.htm>.

¹⁵ *Ibid.*

B) Historical Context

The Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) is a multilateral free trade agreement between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. The agreement establishes a free trade area between the United States and the six participant countries, providing the elimination of tariffs and other barriers to trade. CAFTA-DR was established by its member countries in 2004, and entered enforcement on a rolling basis by each member country between 2005 and 2007.¹⁶ In the United States, the Senate approved the CAFTA-DR on June 30, 2005, by a vote of 54–45, and the United States House of Representatives approved the agreement on July 28, 2005, by a vote of 217–215, with two representatives not voting.¹⁷ The implementing legislation became Public Law 109-053 when President George W. Bush signed it on August 2, 2005.¹⁸

In Central American, El Salvador was the first country to formally implement CAFTA. The agreement went into effect on March 1, 2006.¹⁹ On April 1, 2006, Honduras and Nicaragua implemented the agreement.²⁰ On May 18, 2006, Guatemala ratified CAFTA-DR. The agreement went into effect on July 1, 2006.²¹ The Dominican Republic implemented the agreement on March 1, 2007.²² The last country to implement CAFTA was Costa Rica. In a

¹⁶ “DR-CAFTA Overview”

¹⁷ “DR-CAFTA Overview”

¹⁸ “DR-CAFTA Overview,” “Central America-Dominican Republic Free Trade Agreement,” pg. 193

¹⁹ “Central America-Dominican Republic Free Trade Agreement”

²⁰ “Central America-Dominican Republic Free Trade Agreement”

²¹ “Central America-Dominican Republic Free Trade Agreement”

²² “Central America-Dominican Republic Free Trade Agreement,”

referendum held on October 7, 2007, Costa Rica narrowly backed the free trade agreement, with 51.6% voting "Yes."²³

Prior to CAFTA-DR, trade agreements within the Americas began as early as 1854, when the British acting on behalf of Canada and the United States entered into the Canadian-American Reciprocity Treaty.²⁴ This treaty affected the trade of raw materials, such as timber and fishing gadgets. Another agreement that many American countries have participated in is the NAFTA. NAFTA is an agreement between the United States, Canada, and Mexico. The agreement eliminates duties on half of all goods sent from the United States to Mexico, and slows down additional tariffs over five to fifteen year periods.²⁵ Further, NAFTA removes all non-tariff agricultural trade barriers between the United States and Mexico and all tariffs dealing with agricultural trade between Canada and the United States.²⁶ CAFTA-DR was introduced as an expansion of the North American Free Trade Agreement (NAFTA) and is considered to be a step towards the Free Trade Area Agreement (FTAA).²⁷ The FTAA negotiations began in December of 1994, but the agreement was postponed due to changing economic conditions and the impacts of the September 11, 2001 terrorist attacks on the United States.²⁸

Although, CAFTA-DR was passed, there was a great deal of opposition. Costa Rica was the most salient advocate against CAFTA-DR. Many voters in Costa Rica were uncertain about the agreement because they believed that the agreement could potentially drive farmers and small

²³ Wahlberg, "CAFTA from a Nicaraguan Perspective;" "DR-CAFTA Overview;" "Central America-Dominican Republic Free Trade Agreement," pg. 193

²⁴ Wade, Brandie Ballard, "CAFTA-DR Labor Provisions," pg. 647

²⁵ Wade, Brandie Ballard, "CAFTA-DR Labor Provisions," pg. 649

²⁶ "Top Ten Reasons to Oppose the Central American Free Trade Agreement"

²⁷ Scott Wilson, "NAFTA's Legacy," pg. 572

²⁸ Wade, Brandie Ballard, "CAFTA-DR Labor Provisions," pg. 651

business owners into bankruptcy. Many Costa Rican voters also believed that the agreement would limit the country's sovereignty. Further, it was believed that the trade agreement would hurt the country's middle and poor sector. As a result of the voters' skepticism, the government launched a major government campaign. In fact, the government through private financing spent approximately 10 million dollars on the "yes" campaign.²⁹

Another country that was highly skeptical of CAFTA-DR was Nicaragua. In Nicaragua prior to the agreement, many Non-Governmental Organizations (NGOs), labor and agriculture associations, and a couple of farmers' cooperatives believe that CAFTA could increase the unequal trade between the United States and Central America.³⁰ Also, many citizens were fearful that CAFTA-DR was going to have the same negative effects North American Free Trade Agreement (NAFTA) had in Mexico. In Mexico, NAFTA put many small and medium producers out of business and it increased unemployment in the manufacturing sectors. Some claimed that CAFTA-DR would have even worse effects in the Central America as they are less industrialized and their skill levels are significantly lower than in Mexico.³¹

CAFTA-DR originated with the purpose to liberalize trade in goods and services, government procurement, intellectual property and investment, and addresses labor and environment issues. Under CAFTA-DR, some tariffs have been removed on many different goods and services. Duties on more than half of U.S. agricultural exports have been eliminated. Also, there has been an increase of imports by CAFTA-DR countries of key United States exports, such as petroleum

²⁹ Wedekind, "CAFTA and the Politics of Fear" pg.

³⁰ Wahlberg, "CAFTA from a Nicaraguan Perspective," pg. 5

³¹ Wahlberg, "CAFTA from a Nicaraguan Perspective," pg.1

products, machinery, grains, plastics, and medical instruments. The United States has imported many CAFTA-DR exports including coffee, sugar, fruits and vegetables, cigars, and petroleum products. Other provisions of CAFTA-DR were designed to give the United States greater access to Central American markets in banking, telecommunications, media, insurance, and other service sectors, as well as to Central American and Dominican government purchases.³² The trade agreement included measures to ensure transparency and efficiency in all transactions and to protect workers' rights and the environment.

According to the International Monetary Fund, once these Central American countries joined CAFTA-DR, they enjoyed average economic growth rates above five percent in 2006 and 2007, the highest growth rate since the early 1990s.³³ Further, the Dominican Republic achieved growth in 2006 and 2007 rates approaching ten percent.³⁴ These improvements were not due to any one factor, but it be clearly seen that growing trade and investment are paying benefits for the region. Under CAFTA-DR, Central American and Dominican exports to the United States rose by about ten percent between 2005 and 2008. This is less vigorous growth than seen in U.S. exports to Central America and the Dominican Republic, but the six countries have succeeded in one key trade goal they envisioned under CAFTA-DR, namely, diversifying their exports.

Despite the economic and security benefits promoted by CAFTA-DR, CAFTA-DR has faced great opposition from sugar producers, as well as environmental, human rights, and labor organizations. Human Rights organizations and labor unions opposed to CAFTA-DR primarily

³² The Editors of Encyclopedia Britannica, "Central America–Dominican Republic Free Trade Agreement (CAFTA-DR)"

³³ "CAFTA-DR"

³⁴ "CAFTA-DR"

due to the weak labor provisions within the agreement. These weak provisions allow participant countries to continue to destroy unions and deprive workers of their rights. Under CAFTA-DR, the labor provisions ignored standards set by the International Labor Organization and instead allow countries continue to enforce existing domestic labor laws, regardless of how inadequate these laws may be. This then allows for extensive labor violations by the participant countries.³⁵

In order to understand the human rights violation, the labor provision within CAFTA-DR must be understood. The labor provisions under CAFTA-DR can be found under Chapter sixteen. Under Article 16.1, it states that all parties to CAFTA-DR are members of the International Labor Organization (ILO) and are committed to meeting their obligation under the ILO Declaration.³⁶ Further, each country under this Article is required to attempt to guarantee that the international rights and principles are acknowledge and protected by domestic law. However, it does not give any timeline or deadline for when the participant countries should have these international rights and principles within and protected by their domestic legislation.

Article 16.1.2 goes on to explain the duties of each participant country in regards to its national legislation and internationally recognized labor rights.³⁷ This obligates participant countries to enforce the set of labor laws they already have in place. As with article 16.1.1, article 16.1.2 does not require the participant countries to have labor standards consistent with the internationally recognize labor rights set out in Article 16.8, nor does it require the parties to improve upon those standards. Article 16.1.2 simply asks that the parties attempt to make sure that their

³⁵ Wade, "CAFTA-DR Labor Provisions," pg. 644

³⁶ Wade, "CAFTA-DR Labor Provisions," pg. 647

³⁷ "Chapter 16," pg. 16-1

domestic laws allow for labor standards to be in harmony with the rights within article 16.8, and that the parties try to improve upon those standards.³⁸ In the event of a party violating any of the labor provision articles, the country is sanctioned; the maximum fine the countries will have to pay is capped at fifteen million dollars.³⁹ In addition, any fine paid by a violating party could potentially end up being paid back to the violating country in case they need the countries need assistance for meeting their obligations under CAFTA-DR.

Although labor provisions have been established in CAFTA, many of the countries have fail in numerous areas. The agreement has allowed countries to continue inadequate and ineffective enforcement of domestic labor laws. In Costa Rica, the government has failed to bring its laws about union membership into complete compliance with internationally recognized labor rights. After CAFTA-DR was enacted, Costa Rican officials found over 72,000 children between the ages of five and sixteen to work within the country. During the negotiations of CAFTA-DR, the Costa Rican government introduced a proposal to modify its Labor Code so that working hours would be measured on a year-long calendar, which could allow violations of international forced labor standards.⁴⁰

In El Salvador, its government has failed to strictly enforce the Labor Code rights regarding the organization and bargaining collectively for workers in the prove sector. There have been numerous complaints and chargers against the government as being biased towards labor and erecting substantial hurdles to the exercise of these rights.⁴¹ Further, the number of children

³⁸ Chapter 16,” pg. 16-2;16-6

³⁹ Wade, “CAFTA-DR Labor Provisions,” pg. 647

⁴⁰ “Petition from Int'l Labor Rights”

⁴¹ Wade, “CAFTA-DR Labor Provisions,” pg. 647

between the ages of five and thirteen working was more than 220,000 according to ILO/IPEC research, with 30,000 children performing hazardous activities. In Nicaragua, child labor is an issue in Nicaragua in both rural and urban areas, and inadequate enforcement of the laws perpetuates the problem.⁴² Further, workers complain of being forced to do overtime without pay, working in poor conditions, and of being told when or if they may go to the restroom.

C) Case Analysis

We've repeatedly highlighted that CAFTA has benefitted one country over the others and disproportionately impacted working class and poor individuals in the latter countries, but it's also important to note that these people have not taken the situation lightly. As previously mentioned, before signing the CAFTA-DR was met with much opposition from both the political and social sectors of its signatory countries. In El Salvador (the first country to sign onto CAFTA), two groups of resistance rose: Critic Negotiators and Transgressive Resisters.⁴³ Each group while fighting the same battle had different strategies for engaging with the new piece of legislation.

Critic Negotiators as identified by Spalding engaged with the limited space they were allowed in the decision making process. This type of resistance attempts to work within a system and change legislation directly through negotiation. What this meant was that once at the table, critic negotiators did not immediately refuse CAFTA, in fact they were open to the idea of free trade, but they wanted it to come with consideration for the Central American people and not USA

⁴² Wade, "CAFTA-DR Labor Provisions," pg. 666

⁴³ Spalding, Rose J. "Civil Society Engagement in Trade Negotiations: CAFTA Opposition Movement in El Salvador." *Latin American Politics and Society* 29, no. 4 (2007): 85-114. Accessed May 14, 2015. <http://www.jstor.org/stable/30130825>.

corporations. Their goal was a ‘good commercial treaty’ that would aid in the “development of [their] economy”.⁴⁴

Transgressive Resisters on the other had focused on more fundamental change, operating from outside the negotiating table and mobilizing for action. These group of leaders viewed the CAFTA as an “unmitigated source of loss and destruction” and used physical forms of oppositions. Their main tactics included blockades, marches, and physical takeover of legislative chambers. An important note about these critics is that most of them members of the Foro Mesoamericano, a coalition based on collective action throughout the region not just El Salvador.

What is learned from this two way approach to opposition is that different forms of activism receive different results. Ultimately the CAFTA-DR was approved with no victories for the Salvadorian public other than new systems of resistance. Working within a system put the general public at the negotiating table, but did not result in the concessions they wished for. This lead for the the the ground action and demonstrations, that while unsuccessful in the negotiating of this trade agreement have had victories elsewhere. The same forms of collective action in El Salvador did lead to the end of privatization of health care and social security.⁴⁵

In Costa Rica, we see a similar pattern of resistance with a slightly different result. Costa Rica was the last country to ratify the CAFTA-DR, which is ultimately a loss, but it did so just narrowly. In fact only about 52% of the voters were in favor of its ratification making the real

⁴⁴ Spalding, pg 90.

⁴⁵ Spalding, pg. 98.

point of interest the rise of social movement. Just like in El Salvador, Costa Rica had two approaches, political and social opposition.⁴⁶ The political rejection of the treaty as noted, was seen in the small margin victory it had as well as the referendum it experienced before being approved. In Costa Rica social leaders understood that opposition to CAFTA would come from various perspectives and that their best strategy would be to bring each of those perspectives together under a common goal: “protecting the motherland”.⁴⁷

This strategy is something we see in social movements today, not just in Central America but the globe. When the WTO meeting were occurring in Seattle in 1999, organizations of all types joined together outside for a common cause. We’ve also seen that today with the movement of Palestine, Ayoztinapa, and Ferguson. These are three distinct incidents put together to call for actions against cultures of impunity. What we are witnessing is transnational solidarity and we begin to see it in the opposition to CAFTA. What makes this movements strong is the bonding of different issues for a common goal. While acting in two different countries the opposition was similar in both. The topic of international solidarity is important to this class because it is a fundamental reason to the creation of Human Rights.

Without transnational solidarity for the Jewish people, The Universal Declaration of Human Rights could not have been written. The world had experiences a moment of great tragedy and to ensure that this would “never again” happen, we took action. Solidarity with the Jewish people also meant solidarity with any disempowered people. While the UDHR does have its flaws, the

⁴⁶ Frajman, E. "The People, Not the Movement: Opposition to CAFTA in Costa Rica, 2002-2007." *Latin American Perspectives* 39, no. 6 (2012): 116-32. doi:10.1177/0094582X12456679, pg. 117.

⁴⁷ Frajman, pg. 121.

principle of its conception is what is important to the moment we see ourselves in today and those in opposition to CAFTA saw themselves in then.

Tieing in another issue discussed throughout this course, migration owes much to CAFTA. As the executive summary emphasized, the ratification of CAFTA resulted not only in poor labor conditions for worker, but also low wages. Low wages result in the saturation of the work force because employees need to work more (either longer hours or double jobs) to make enough to sustain their families. This leads to cases like Enrique in Sonia Nazario's book where heads of house must leave their families behind to ensure their survival.

This also leads to children working at younger ages and the increased violence in the neighborhoods of these families. While CAFTA may have had some positive results on a statistics board the consequences are very much felt by the lower end of the economical spectrum. It was noted that most of the signatory countries saw an economic growth in the last year without noting that the US has also seen immigration growth rates. Corralation does not always mean causation, but it seems really difficult to argue otherwise in the cause of labor rights and international migration.

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