



LA ISLA FOUNDATION

# Sickly Sweet

Human Rights Conditions for Sugar  
Cane Workers in Western Nicaragua



*A Draft Report by Y-Vonne Hutchinson*





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By Y-Vonne Hutchinson

10/28/2013

[www.laislafoundation.org](http://www.laislafoundation.org)

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## Human Rights Conditions for Sugar Cane Workers in Western Nicaragua

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## Executive Summary

Founded in 2008, La Isla Foundation (LIF) works to address the epidemic of Chronic Kidney Disease of Unknown Etiology (CKDu) affecting agricultural workers in Central America, particularly sugar cane workers in Nicaragua.

LIF believes that the increased prevalence and mortality rates of CKDu serve as an indicator of the poor living and working conditions in the region. Therefore, while those in the medical and public health communities work to determine causality, LIF has determined that a rights-based intervention, aimed at improving living and working conditions, is a critical component of any strategy aimed at reducing the prevalence and mitigating the impact of the disease. To that end, from August 2012 to June 2013, researchers designed a comprehensive compliance study meant to ascertain the nature and extent of rights violations negatively impacting sugar cane workers and their families.

In July of 2013, a pilot study of 29 current and former workers was conducted. This pilot study was developed to gain a preliminary understanding of rights issues affecting those working in

sugar plantations of western Nicaragua, while assessing the viability of the questionnaire tool. Researchers' preliminary findings suggest that sugarcane workers face severe issues both in their place of employment and at home, which constitute not only violations of domestic and international labor law, but also violations of fundamental constitutional protections and international human rights treaty obligations

Researchers discovered indications of fundamental rights violations, which, in this instance, refers to violations of basic protections found in the Nicaraguan Constitution, the Universal Declaration of Human Rights, and the International Labor Organization's (ILO) Declaration of Fundamental Rights at Work. Fundamental rights violations uncovered, included:

- Child Labor - Several respondents admitted to working for ISA as children. 34% of respondents knew child workers under the age of 14, and 83% knew child workers between the ages of 14 and 17. Respondents indicated that children are only involved in field-based occupations such as planting, cutting, weeding; and worked the same number of hours as adults. During the course of their work, respondents claimed child workers were exposed to a variety of hazards, including dust, fumes, gas, flames, extreme heat, dangerous tools, and agrochemicals. Additionally, 65% of respondents believed that ISA knew about the existence of child workers.
- Restrictions on Freedom of Association - Of those interviewed, no one belonged to a union, and one informant did not know what a union was. About one fourth of participants mentioned the threat of termination and being blacklisted as a deterrent to unionization. Additionally, 65% of respondents alleged that the unions operating within ISA had been bought by the company and received some form of financial assistance, while 58% believed the unions never defended their interests to their employer. Only one respondent could name a recent successful achievement of the unions.
- Inability to Access Judicial Mechanisms - In our study, 75% of respondents felt that their rights were not protected by the justice system. Of these, 40% mentioned that the police were a major problem citing corruption, ineffectiveness, and discrimination. Furthermore, 24% of respondents reported that they had filed a lawsuit of complaint against ISA, and of those, none received an answer. Complaints related to indemnification for contracting CKDu, illegal dismissal, and remuneration. Four respondents also mentioned that they were prevented from bring a claim against ISA by the company or the government. Five respondents claim that they were target by government or police forces for speaking out against the company.
- Threats and Intimidation- 17% of respondents reported that they had received threats from members of the local government or police for speaking out against the sugar mill. 20% of respondents had observed company, police, or government official presence at wakes or funerals in order to discourage protest through intimidation or bribery. 31%

reported that company management, the police, or government had told lies or insulted them or their family members.

Furthermore, researchers found pervasively dangerous working conditions which negatively impacted workers' health outcomes, and most likely contributed to the relatively high prevalence rate of CKDu amongst the affected population. 86% of respondents described working conditions as dangerous. On average, during the harvest season, respondents worked 12 hours a day in temperatures which climbed past 100F. 58% of respondents had been involved in an accident at work., whereas only 20% of all workers interviewed received any explanation of the safety conditions at work, and of those who received safety equipment, many complained that it was defective or insufficient. 34% of respondents reported access to first aid kits.

Finally, researchers discovered a dearth of basic social protections which left workers vulnerable to exploitation and exacerbated the impact of the disease. 17% of respondents reported salaries that fell significantly below the minimum wage for agriculture, which itself covers less than one fourth of an average family's living expenses. 41% of respondents reported incidents of salary withholding without cause or claimed that they were regularly underpaid. More specifically, 17% reported that they had wages deducted as punishment. None of the respondents interviewed that have been diagnosed with CKDu or reported a high creatinine level collect any form of social security, including disability assistance and subsidized medical care.

Ultimately, it was determined that more research is needed to capture the rights concerns of these workers in order to effectively inform future rights interventions. During the course of the study researchers also identified concerning trends in areas related to indigenous rights, dangerous child labor practices, financial barriers to care, and environmental contamination, all of which were outside of the scope of this study. In September of 2013, LIF completed a broader study of working conditions for two sugar mills in western Nicaragua, the results of which will be released next year. We believe this study will provide further insight into the specific challenges facing sugarcane laborers in the workplace and highlight potential risk factors for members of the population most affected by CKDu. Currently, legal team is also conducting a qualitative survey of child labor practices within two sugar mills which should be completed by December.



# I. Introduction

La Isla Foundation (LIF) was founded in 2008 to address the epidemic of Chronic Kidney Disease of Unknown Etiology (CKDu) affecting agricultural communities across Central America, particularly sugar cane workers in Western Nicaragua.

CKDu is a progressive degenerative condition characterized by gradual loss of kidney function. Because of limited treatment options and a higher likelihood of complications arising from available treatment options in Nicaragua, the disease is often fatal. Due to the gradual decline of renal function, death from CKDu is slow and painful. Since it appeared more than 20 years ago, prevalence and mortality rates have increased. It is estimated that across Central America, the disease has killed at least 20,000 men prematurely<sup>1</sup>. In the most severely impacted areas, such as the sugar cane communities of western Nicaragua, mortality rates are five times that of the national average.<sup>2</sup> According to the Pan American Health Organization, Nicaragua has the highest mortality rate from kidney disease in the Americas at 42.8 deaths per 100,000<sup>3</sup>.

Unlike the more familiar Chronic Kidney Disease (CKD) traditionally associated with obesity, hypertension and diabetes, CKDu is associated with strenuous labor in hot climate, particularly among industrial agricultural laborers. CKDu also presents at a much younger age than CKD. In the communities where LIF works, men as young as 19 have been diagnosed, and patients have succumbed to the illness as early as 21 years old.

Though CKDu is recognized as an occupational illness under Nicaraguan law, causality has yet to be determined. Investigators do, however, recognize the relationship between heat stress, volume depletion, acute kidney injury, and chronic kidney disease<sup>4</sup>. LIF believes that increased rates of CKDu serve as an indicator of the poor living and working conditions in the region. Specifically, researchers contend that refusal to observe and enforce the law negatively impacts the living and working conditions of sugarcane workers, exacerbating poor health outcomes and depressing socio-economic conditions.

On paper, legal protections for workers in Nicaragua are very strong. The state of Nicaragua has enacted many laws related to the protection of the workforce and classified CKDu as an occupational illness<sup>5</sup>. The Nicaraguan Constitution requires that working conditions guarantee

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<sup>1</sup> Catharina Wesseling et al., *The Epidemic of Chronic Kidney Disease of Unknown Etiology in Mesoamerica: A Call*  
<sup>2</sup> Id

<sup>3</sup> PAN AM. HEALTH ORG., CHRONIC KIDNEY DISEASE IN AGRIC. COMMUNITIES IN CENT. AM. 4 (2013).

<sup>4</sup> Daniel R. Brooks, Oriana Ramirez-Rubio & Juan Jose Amador, *CKD in Central America: A Hot Issue* AM J KIDNEY DIS. 59(4):481-484 (2012).

<sup>5</sup> Ley No. 456, 15 June 2004, Ley de Adición de Riesgos y Enfermedades Profesionales a la ley No. 185, Código del Trabajo [Law Adding Occupational Risks and Diseases to Law No. 185, Labor Code], art. 1, La Gaceta [L.G.], 8 July 2004 (Nicar.), available at <http://legislacion.asamblea.gob.ni/Normaweb.nsf/0/dff5d30488273f74062570a100583551?OpenDocument> (last visited Oct. 24, 2013).

health and reduction of occupational hazards<sup>6</sup>. More broadly, the constitutional also protects the rights to privacy, equal protection of the law, freedom of expression, and unionization, while recognizing the principles enshrined in the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights. Furthermore, the Nicaraguan Labor Code lays out extensive protections for the workforce, with Article 100 of the Nicaraguan Labor Code explicitly stating that all employers have an obligation to adopt those measures necessary to protect the life and health of their workers<sup>7</sup>. Finally, Nicaragua is also bound by international treaty obligations concerning workplace conditions. The state has ratified the fundamental treaties of the International Labor Organization (ILO)<sup>8</sup>, several other relevant ILO treaties, and the International Covenant on Economic, Social, and Cultural Rights<sup>9</sup>. Unfortunately, in the present context, none of these protections are fully enforced.

While those in the medical and public health communities work to determine causality, we believe that a rights-based intervention, aimed at improving living and working conditions, will be critical in reducing the prevalence and mitigating the impact of the disease.

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<sup>6</sup> Constitución Política de la República de Nicaragua [Constitution] tit. IV, ch. V, art. 82, L.G. 9 January 1987, *available at* <http://pdba.georgetown.edu/constitutions/nica/nica05.html> (last visited Apr. 11, 2012).

<sup>7</sup> Ley No. 185, Código del Trabajo [Labor Code], tit. V, ch. I, art. 100, L.G., 30 October 1996, *available at* <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/45784/65050/S96NIC01.htm#11t5c1> (last visited Apr. 11, 2013).

<sup>8</sup> These treaties include the Forced Labor Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182). *See* INTERNATIONAL LABOUR ORGANIZATION, NORMLEX INFORMATION SYSTEM ON INTERNATIONAL LABOUR STANDARDS, RATIFICATIONS FOR NICARAGUA, *available at* [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102780](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102780) (last visited Apr. 11, 2013).

<sup>9</sup> *See* International Covenant on Economic, Social and Cultural Rights, Arts. 6, 7(b), & 7(d), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), International Labour Organization Social Policy (Basic Aims and Standards) Convention, 1962, Art. 4(d) *available at* [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C117](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C117) (last visited April 11, 2013), and International Labour Organization Plantations Convention, 1958 Art. 43(1), *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312255:NO#A43](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312255:NO#A43) (last visited Apr. 11, 2013).



## II. Methodology

## *Rational*

This study was developed to gain a preliminary understanding of the nature and extent of legal compliance with social and labor protections for the populations working in sugar plantations of western Nicaragua, while assessing the viability of the questionnaire tool. This report is based on research conducted between August 2012 and July 2013.

## *Methodology*

From August of 2012 to May 2013, the LIF legal department conducted a comprehensive desk review of international, regional, and domestic legal mechanisms; regulatory and trade regimes; regulatory standards; third party certification standards; and proposed best practices applicable to manual laborers in the sugarcane industry. The department then developed a legal framework and set of guidelines against which compliance with labor and social protections could be assessed. In July of 2013, a questionnaire was developed on the basis of the legal framework and guidelines to serve as an assessment tool. This questionnaire was deployed in July of 2013.

The questionnaire was divided into four parts. Part one collects participant demographic data, including age, gender, marital status, household size and work history. Part Two examines general working conditions, such as, contractual arrangements, pay, working hours, and occupational health and safety. Part Three addresses fundamental rights at work, including forced labor, child labor, and freedom of association. Part Four assesses political and social rights protection.

For the pilot study, LIF interviewed 29 current and former Ingenio San Antonio (ISA) sugar cane workers living in Chichigalpa, Nicaragua. All of the interviews were conducted in person, using the questionnaire. Each interview team consisted of a community-based Nicaraguan staff member and an expatriate staff member, and lasted in duration one to one and a half hours. Interviews were conducted in private undisclosed, locations in the greater Chichigalpa/Leon areas.

For security and confidentiality reasons, interviewees were chosen from or referred to by LIF's established contacts in the region. All interviewees work or had previously worked at Ingenio San Antonio, the largest sugar plantation in the country. No participants were offered an incentive for participation, although a protection fund was established to temporarily provide for interviewees in the case of employer reprisal or dismissal.

## *Concerns & Limitations*

The sample of participants used in this survey does not reflect the demographic spread of sugar cane workers in Nicaragua, nor is it large enough to be considered statistically significant. Furthermore, sampling methods used could have resulted in a more biased respondent pool.

Researchers were unable to use random sampling methods. During the conduct of prior research activities, random sampling methods used by LIF resulted in a widespread knowledge of our efforts and ultimately intimidation of those who cooperated in research. Participants had their jobs, the jobs of their families, and social benefits threatened. As a result of participant intimidation, respondent pools quickly became unviable and vulnerable to corruption. Therefore, to effectively ensure security, information integrity, and confidentiality; interviewees were chosen from or referred to by LIF's established contacts in the region. They, in turn, were encouraged to refer others.



### III. Contextual Background



## *Size of the Industry*

Sugarcane is the largest crop in Nicaragua, comprising about 4% of the GDP and currently employing 35,000 direct and 140,000 subcontracted workers<sup>10</sup>. The sugarcane industry is also rapidly expanding production. In the 2011/2012 season cane production was expected to have exceeded 603,727 metric tons, an 18% increase from the previous year. By 2015, The Sugar Commission of Nicaragua (CNPA) estimates that production will increase by 20%, amounting to over 735, 924 metric tons

The primary sugar cane producer in Nicaragua is National Sugar Estates Limited (NSEL), a subsidiary of the commercial conglomerate, Grupo Pellas, one of the largest corporations in Central America. NSEL owns and operates the Ingenio San Antonio (ISA) sugar mill, the site of the pilot study and the largest sugar refinery in the country, producing almost 17,000 metric tons of sugar per day, totaling more than 63% of the country's sugar<sup>12</sup>. The refinery also produces molasses and ethanol.

## *Foreign Direct Investment, International Trade, and Industry Growth*

The sugarcane industry in Nicaragua will only continue to grow as the country struggles to compete with higher Central American producers, like Guatemala and Honduras, for market share and to meet the rising international demand for sugar and ethanol. In an effort to facilitate the growth of the industry, meet international demand, and raise the amount of revenue received from sugar exported abroad; foreign direct investment in sugar producers and foreign trade in sugar and sugar by-products have rapidly increased.

The World Bank has been a key lender to the industry, even amidst controversy over work practices and environmental impact. On October 25<sup>th</sup>, 2006, the International Finance Corporation (IFC), the private lending arm of the World Bank, approved a \$55 million USD loan to NSEL to expand their sugar processing facilities and construct an ethanol production plant. Members of the communities surrounding ISA production facilities in Chinandega and Leon responded to news of the issuance with outrage. With the assistance of the Center for International Environmental Law, on March 31, 2008, they filed a complaint with the Office of the Compliance Advisor Ombudsman seeking redress for injuries to their environment, health, and livelihoods resulting from the failure of the IFC to comply with its own social accountability

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<sup>10</sup> Largaespada, Massiell, Sugar Ready for AA, El Nuevo Diario, 15 May 2013, <http://www.elnuevodiario.com.ni/economia/286064> (last visited Oct. 13, 2013)

<sup>12</sup> PASE & INTERNATIONAL LABOR RIGHTS FUND, LABOR CONDITIONS IN THE NICARAGUAN SUGAR INDUSTRY 10 (2005), available at [http://www.laborrights.org/sites/default/files/publications--and--resources/nicaragua\\_sugar.pdf](http://www.laborrights.org/sites/default/files/publications--and--resources/nicaragua_sugar.pdf) (last visited Apr. 11, 2013).

mechanisms in the issuance of the loan to NSEL. In November 2008, the office initiated a dialogue process to address these complaints<sup>13</sup>. The case was closed in June of 2013. Shortly thereafter, on June 27<sup>th</sup> 2013, the World Bank signed a \$15 million USD loan to the Montelimar sugar plantation, located 65km outside of Managua.

Throughout this period the country has also strengthened its bilateral and regional trade ties, beginning with the adoption of the US – Dominican Republic, Central American Free Trade Agreement (DR-CAFTA) in August 2004. DR-CAFTA is a regional reciprocal trade agreement between the US, Dominican Republic, Honduras, Guatemala, Cost Rica, El Salvador, and Nicaragua. Essentially, the agreement establishes a free trade area in which tariffs on certain goods are significantly reduced, if not eliminated. The agreement allows for liberalized trade in consumer and industrial goods, agricultural commodities, processed food products, apparel, and services<sup>14</sup>. Under the agreement, Nicaragua currently has a 25,080 MT quota allocation of sugar to export at a reduced tariff rate. At the time of its inception, the agreement was criticized by human rights groups for rolling back previous labor protections under US trade law through its exclusive emphasis on the effective enforcement of existing, and occasionally inadequate, domestic labor laws of trading partners, as well as lack of protections for historically marginalized groups<sup>15</sup>.

In 2013 the country began implementation of two key trade agreements with major importers of Nicaraguan sugar: a bilateral trade agreement with Venezuela and the EU Comprehensive Association Agreement between the EU and Central America. In May of 2013, Nicaragua began shipping sugar to Venezuela in accordance with bilateral agreements concluded under the framework of Alianza Bolivariana para los Pueblos de Nuestra América (ALBA). Under the rubric of this agreement, Nicaragua shipped 45,000 tons of sugar to Venezuela during the months of May and June 2013. In total, the government of Nicaragua exported a total of 80,000 metric tons of sugar to Venezuela within the first six months of 2013 alone<sup>16</sup>.

The EU Association Agreement was signed on June 29, 2012 and governs areas related to political dialogue, cooperation, and trade. The trade portion of the agreement took effect on August 1, 2013 in Nicaragua, Honduras, and Panama. Amongst other goals, it seeks to expand and diversify trade through the elimination and reduction of tariffs<sup>17</sup>. Although the agreement

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<sup>13</sup> For more information about the case see [http://www.cao--ombudsman.org/cases/case\\_detail.aspx?id=82](http://www.cao--ombudsman.org/cases/case_detail.aspx?id=82).

<sup>14</sup> For the full text of the agreement, see Office of the U.S. Trade Representative, CAFTA-DR, Final Text <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text>

<sup>15</sup> *DR-CAFTA Falls Short on Workers' Rights*, Human Rights Watch (July 27, 2005), available at <http://www.hrw.org/news/2005/07/26/dr-cafta-falls-short-workers-rights> (last visited Oct. 24, 2013).

<sup>16</sup> *Nicaragua concluyó exportaciones de azúcar a Venezuela*, LA PRENSA, **Sept. 9, 2013**, available at <http://www.prensa.com/uhora/economia/nicaragua-venezuela-exportacion-azucar/183478> (last visited Oct 24, 2013).

<sup>17</sup> For the full text of the agreement, see European Commission, Trade, EU-Central America association agreement, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689> (last visited Oct 24, 2013).

emphasizes labor protections and human rights, enforcement mechanisms for all but a few core labor standards are weak<sup>18</sup>. On August 14<sup>th</sup>, 2013, the president of Nicaragua's National Commission of Sugar Producers (CNPA) confirmed Nicaragua was prepared to send 40,000 tons of sugar to Europe as part of the agreement<sup>19</sup>.

Currently more than half of all sugar produced in Nicaragua is exported. In 2012, Nicaragua exported 383,909 million tons of sugar valued at \$209.8 million USD<sup>20</sup>. According to the CNPA, major importers of Nicaraguan sugar include Venezuela, the United States, Mexico, Taiwan, and Europe. Nicaragua also exports ethanol made from sugar by-product. In 2012, Ingenio San Antonio, the only refinery capable of ethanol production, shipped 10,000,000 liters of ethanol to the United States. Ethanol production and exports are also expected to increase in 2013<sup>21</sup>.

## *Regulatory Framework*

Under the rubric of Nicaraguan national law, workplace conditions and conduct related to the treatment of workers are regulated by a few key legal instruments. These include the Constitution of Nicaragua, the 1996 Labor Code, the Health Law, and the Social Security Law. Additionally, in May of 2013 a new Code on the Processes of Labor and Social Security was enacted to ease the process of settling labor disputes. Several ministries share responsibility for the development, implementation, oversight, and enforcement of legal and regulatory protections enshrined in these instruments.

*Ministry of Labor* - The Ministry of Labor (MITRAB) is the primary regulatory body charged with the development, improvement, and implementation of all laws related to work and the oversight of working conditions in the country. Specifically, the Ministry is empowered by the labor code to 1) formulate programs and create substantive bodies which have administrative authority; 2) issue regulations; and 3) implement administrative provisions<sup>22</sup>. Furthermore, according to the code the Ministry is also empowered to certify employee contracts<sup>23</sup>, monitor

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<sup>18</sup>Update on the Impact of the European Union – Central America Association Agreement on Women, Cent. Am. Women's Network, available at <http://www.cawn.org/assets/Update%20on%20EU-CA%20AA.pdf> (last visited Oct 24, 2013).

<sup>19</sup>Nicaragua Ready to Export Sugar to European Market, DIGITAL JOURNAL Aug. 14, 2013, available at <http://www.digitaljournal.com/pr/1412553> (last visited Oct. 24, 2013)

<sup>20</sup>Massiell Largaespalda E., *Azúcar lista para el AdA*. EL NUEVO DIARIO, May 15, 2013, <http://www.elnuevodiario.com.ni/economia/286064> (last visited Oct. 24, 2013).

<sup>21</sup>U.S. Department of Agriculture Foreign Agricultural Service, Global Agricultural Information Network Report : Sugar Annual Report, 2012 .

<sup>22</sup>Ley No. 185, Código del Trabajo [Labor Code].

<sup>23</sup>Labor Code, Art 23.

unsafe workplaces<sup>24</sup>, suspend the operation of companies that violate health and safety provisions<sup>25</sup>, hear labor disputes<sup>26</sup>, review union settlements<sup>27</sup>, and facilitate labor negotiations<sup>28</sup>. Finally, the Law of Organizations, Competencies and Procedures designates the Ministry of Labor to carry out functions which include the coordination and implementation of government policies related to labor, cooperatives, employment, wages, and health and safety training of the labor force; to exercise, perform, and fulfill the functions related to domestic and international laws, particularly the laws of the ILO; develop, in coordination with relevant entities, rules pertaining to occupation health, safety, and hygiene, and monitor their implementation; and provide free legal advice to workers involved in individual or collective labor disputes<sup>29</sup>.

The Ministry of Labor is also charged with overseeing Department of Labor Inspectorates, which operate on the regional as well as national level. The Department of Labor Inspectorates are authorized to monitor days of rest<sup>30</sup>, regulate exceptions to minimum wage laws<sup>31</sup>, issue fines in the case of violations of minimum wage standards<sup>32</sup>, address violations of trade union immunity<sup>33</sup>, hear appeals related to the refusal of union registration<sup>34</sup>, certify worker strikes<sup>35</sup>, and receive labor union demands<sup>36</sup>. The Labor Inspectorate for the Department of Chinandega, a regional area which spans over 4,926 sq km is home to 441, 300 people, and serves the city in which ISA is located. It is only staffed with four labor inspectors, one inspector for hygiene and occupational safety, two wage analysts, and one person responsible for collective labor law<sup>37</sup>.

Finally the Ministry of Labor oversees the Directorate of Trade Unions, which handles administrative matters related to union registration. The Directorate is empowered by the Labor Code to enroll union charters and bylaws<sup>38</sup>, grant and refuse trade union registration<sup>39</sup>, and cancel union registration<sup>40</sup>.

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<sup>24</sup> Labor Code, Art 54.

<sup>25</sup> Labor Code, Art 108.

<sup>26</sup> Labor Code, Art 370.

<sup>27</sup> Labor Code, Art 371.

<sup>28</sup> Labor Code, Art 377.

<sup>29</sup> Law of Organizations, Competencies and Procedures,

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/D029F5DDED635C34062570A60064217C?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/D029F5DDED635C34062570A60064217C?OpenDocument) Art 27 (a-j)

<sup>30</sup> Labor Code, Art 71.

<sup>31</sup> Labor Code, Art 131.

<sup>32</sup> Labor Code, Art 135.

<sup>33</sup> Labor Code, Art 232.

<sup>34</sup> Labor Code, Art 213.

<sup>35</sup> Labor Code, Art 250.

<sup>36</sup> Labor Code, Art 373.

<sup>37</sup> Ministerio del Trabajo, Delegaciones Departamentales, <http://www.mitrab.gob.ni/nuestro-ministerio/delegaciones-departamentales> (last visited Oct. 24, 2013).

<sup>38</sup> Labor Code, Art 210.

<sup>39</sup> Labor Code, Art 213.

<sup>40</sup> Labor Code, Art 219.

*Labor Courts* – There are currently eight district labor courts operating across the country. Falling within the broader scope of the judicial system, these labor courts are empowered by the labor code to hear cases related to breach of contract<sup>41</sup>, reinstatement of employees in cases of wrongful dismissal related to the exercise of their labor rights or lawful participation in union activities<sup>42</sup>, child labor<sup>43</sup>, and the dissolution of unions<sup>44</sup>. The labor courts in Nicaragua are undergoing a process of reorganization in order to address a crushing backlog of cases. As of 2012, the labor courts in Managua alone had a docket of 1,034 pending cases and backlog of 5000 cases<sup>45</sup>. The National Labor Court of Appeals, which hears cases referred from the district level, was created on Feb 16, 2011 by the National Assembly to replace the Superior Tribunal of Work<sup>46</sup>.

*INSS* – About 17.6% of the workers in Nicaragua<sup>47</sup> and 8% of the population of Chinandega is insured under Nicaraguan Institute of Social Security's (INSS) insurance scheme<sup>48</sup>. As mentioned earlier, INSS administers the state's contributive pension system, as well as health insurance, disability protection and work-related risk insurance. The department also oversees medical facilities and hospitals for those covered by its social security scheme, operating through private health care providers (Empresas Médicas Previsionales, or EMPs) from whom it procures services. Beyond these responsibilities, the Social Security Act also empowers the department to administer programs for the prevention of occupational accidents and illnesses, supervise and inspect workplace mechanisms for health and safety<sup>49</sup>, receive reports of occupational

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<sup>41</sup> Labor Code, Art 22.

<sup>42</sup> Labor Code, Art 46.

<sup>43</sup> Labor Code, Art 135.

<sup>44</sup> Labor Code, Art 219.

<sup>45</sup> Edgar Solórzano, *CNACJ autoriza creación de tres nuevos juzgados laborales*, PRENSA, Nov. 7, 2012, [http://www.prensa.poderjudicial.gob.ni/prensa/index2.php?option=com\\_content&task=view&id=2848&pop=1&page=0&Itemid=88](http://www.prensa.poderjudicial.gob.ni/prensa/index2.php?option=com_content&task=view&id=2848&pop=1&page=0&Itemid=88) (last visited Oct 24, 2013).

<sup>46</sup> Tribunal Nacional Laboral de Apelaciones, <http://www.poderjudicial.gob.ni/tnla/index.html> (last visited Oct. 24, 2013). See also Ley 755, 16 Feb. 2011, Ley de Reforma y Adiciones a la ley No 260, Ley Organica del Poder judicial y Creadora del Tribunal Nacional Laboral de Apelaciones [Judicial Power], tit. V, ch. I, L.G., 24 March 2011 (Nicar.).

<sup>47</sup> PAHO, HEALTH IN THE AMERICAS: NICARAGUA (2007), available at <http://www.paho.org/hia/archivosvol2/paisesing/Nicaragua%20English.pdf>, p512 (last visited Oct. 24, 2013),

<sup>48</sup> INSS, 2012 STATISTICAL YEARBOOK, 19 (2012), available at [http://www.inss.gob.ni/attachments/article/202/Anuario\\_2012\\_INSS.pdf](http://www.inss.gob.ni/attachments/article/202/Anuario_2012_INSS.pdf).

<sup>49</sup> Ley de Seguridad Social [Social Security Act], Ley No. 539, Aprobada el 12 de Mayo del 2005 Publicada en La Gaceta No. 225 del 20 de Noviembre del 2006, Art 75

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/C0D9072AD24378630625755B0076D0B9?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/C0D9072AD24378630625755B0076D0B9?OpenDocument) (accessed Oct. 24, 2013)

accidents<sup>50</sup>, operate rehabilitation centers and job training for workers<sup>51</sup>, and construct and improve popular housing for workers<sup>52</sup>.

*Ministry of Health* – The Ministry of Health (MINSA) is the primary provider of health services and lead institution in the sector, operating the public health care facilities which serve 82.4% of the workforce<sup>53</sup>. Generally, the Ministry of Health is empowered to propose plans and health programs, coordinate and direct the implementation of state health policy, promote environmental sanitation campaigns and dissemination hygiene standards amongst the general population, direct and administer the system of supervision and control of health policies and standards, and promote scientific research and dissemination, training, continuing education and professional health personnel<sup>54</sup>. Furthermore, the National Health Law enumerates the ministry's powers and duties in greater detail, authorizing it to impose administrative sanctions<sup>55</sup>, coordinate with state agencies for the prevention and control of occupational diseases<sup>56</sup>, establish technical standards for occupational health<sup>57</sup>, and conduct programs considered necessary for the prevention of occupational disease<sup>58</sup>.

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<sup>50</sup> Social Security Act, Art 78. Labor Code, Art 123.

<sup>51</sup> Social Security Act Art 81 (b).

<sup>52</sup> Social Security Act Art 81(d).

<sup>53</sup> PAHO Supra at 512

<sup>54</sup> Organization Law, Jurisdiction, and Law of the Executive Law 290

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/D029F5DDED635C34062570A60064217C?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/D029F5DDED635C34062570A60064217C?OpenDocument)

<sup>55</sup> National Health Law, Art 7 (15)

<sup>56</sup> National Health Law, Art 7 (28)

<sup>57</sup> National Health Law, Art 7 (28) (a)

<sup>58</sup> National Health Law, Art 7 (28) (c)



## IV. Study Results

## *Demographic Data*

For the purposes of this study, LIF interviewed 29 male current and former sugarcane manual laborers, ranging in ages from 19 to 56. The average age of the respondents was 28, the median age was 26. On average, respondents had one child and lived in households of 6 persons. The vast majority of respondents were literate, with 96% reporting that they could read and 93% reporting that they could write. Respondents reported working a variety of jobs both in the fields and in the processing facilities. These jobs included cutting cane, planting cane, weeding, storage, irrigation, welding, and applying pesticides and herbicides. The most common occupation of those interviewed was cane cutting, with 41% of respondents having worked in some form of cane cutting. Of those interviewed 73% were currently working or had formally worked as subcontractors.

Although this sample was not intended to represent the demographic characteristics of sugar cane workers throughout Nicaragua, the demographic distribution of the survey somewhat reflects the demographic characteristics of the manual workforce at Ingenio San Antonio, the site of our study. According to a 2005 report by PASE and the International Labor Rights Fund, 99.2% of field workers are men and 85% of workers are subcontracted.

There is a possibility that there is an overrepresentation of workers employed in areas related to cane cutting the pilot study sample. Researchers were unable to uncover recent data on the breakdown of field work functions in real numbers or by percentages. By comparing employment numbers for cane cutters in 2005/2006 harvest season, pulled from ISA employment records and cited in a 2012 Boston University<sup>59</sup>, with overall labor force estimates for ISA from the same period<sup>60</sup>; researchers have concluded that for that year, the most recent year for which data was available, about 37% of field staff were employed as cane cutters. However, it must also be noted that many respondents mentioned the prevalence of undocumented laborers, particularly child laborers and laborers working with false identification, whom to some extent would not be accounted for in official company records.

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<sup>59</sup> Ann Aschengrau, Daniel Brooks, Eloesa McSorley, Alejandro Riefkohl, Kate Applebaum, Juan Jose Amador, Oriana Ramirez Rubio, COHORT PILOT STUDY REPORT: Evaluation of the Potential for an Epidemiologic Study of the Association between Work Practices and Exposure and Chronic Kidney Disease at the Ingenio San Antonio, BOSTON U. SCHOOL OF PUB. HEALTH. (2012).

<sup>60</sup> PASE, NICARAGUAN SUGAR, at 12.

## *Working Conditions*

Researchers found that working conditions for field workers varied significantly across tasks and employment status. However, several general trends were observed. Disparities between subcontracted and directly employed labor will be addressed in subsequent sections of the report.

On average, workers reported working 12 hours a day during the zafra, the harvest season which lasts from November until May. During these months, working hours generally lasted from 5 or 6 am to as late as 8pm. The harvest season takes place during the hottest months of the year, when temperatures climb to over 100F in the fields. There are few options for shade. Most field workers are paid at piece rates, incentivizing a rapid pace of work, whilst making many reluctant to take breaks. Seed cutters and cane cutters are paid per ton of cane cut; while seed planters are paid per furrow planted. Researchers across disciplines recognize heat stress as a significant hazard for workers both in the field and in processing facilities<sup>61</sup>.

## *Preliminary Observations on Rights Violations*

If properly overseen and administered, the working conditions cited above, while harsh would not necessarily be seen as violating the law or fundamental human rights principles. However, we do not believe this to be the case. Researchers' preliminary findings suggest that sugarcane workers face severe issues both in their place of employment and at home, which constitute not only violations of domestic and international labor law, but also violations of fundamental constitutional protections and international human rights treaty obligations.

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<sup>61</sup> Michael McClean, Rebecca Laws, Oriana Ramirez-Rubio, and Daniel Brooks. *Industrial Hygiene/Occupational Health Assessment: Evaluating Potential Hazards Associated with Chemicals, and Work Practices at the Ingenio San Antonio (Chichigalpa, Nicaragua)*. BOSTON U. SCHOOL OF PUB. HEALTH. (2010).



a. *Unsafe Working Conditions*

*‘The night is very dangerous; they force us to work without stopping, sometimes for 36 hour shifts. On one occasion, we worked 48 hours because the factory had been closed and gave us pills so we did not go to sleep.’- m, 28*

Our researchers found that 86% of respondents described working conditions as dangerous. When asked why, respondents cited a litany of complaints that went beyond the risks associated with CKD, including dangerous machinery, lack of protective equipment, unqualified/ untrained workers, and the risk of getting hit by a vehicle. In the present study, researchers found that for many of those interviewed, the conditions of work and the safeguards put in place to protect workers were non-compliant with labor laws and occupational health and safety recommendations.

As mentioned earlier, conditions for manual laborers in the sugarcane fields are extremely harsh. At times, these conditions are also outside the boundaries of the law. Lack of legal compliance which exacerbates poor working conditions are particularly problematic in the present context, as working conditions have been tied to the epidemic of CKDu by both sugar producers and

external medical researchers. In 2001, Dr. Felix Zelaya Rivas, an internist and medical doctor who coordinates the social medicine program at Ingenio San Antonio, examined the key factors related to working practices that increase the risk of CKDu. He concluded that exposure to high temperatures in the absence of a comprehensive hydration program, as well as the constant use of anti-inflammatory medication necessitated by long working days spent in uncomfortable physical positions, were important factors in the onset of the disease. Furthermore, Zelaya recommended that Ingenio San Antonio shorten the workday to 8 hours, while providing each worker with 12 liters of water and 3 hydration solution packages<sup>62</sup>. Subsequent studies have affirmed the association hard labor in hot climates with an elevated risk of disease onset in Nicaragua and other countries impacted by the epidemic<sup>63</sup>.

Generally, the right to a safe and healthy work environment is recognized across domestic and international law. Article 82 (4) of the Nicaraguan constitution recognizes the rights of workers to safe and health working environments and the obligation of employers to utilize preventative measures to protect the health of their labor force is further enumerated in the Nicaraguan Labor Code<sup>64</sup>. The right to a healthy and safe working environment is also recognized in the International Covenant on Economic, Social and Cultural Rights<sup>65</sup>. Specific areas of non-compliance are discussed in greater detail below.

*Excessive Working Hours* - To begin with, workers on average worked far more hours than those allowable by law, exceeding previous estimates. The PASE/ International Labor Fund report estimates 8-12 hour working days for field workers<sup>66</sup>. The BU Industrial Hygiene report, often cited by ISA and the IFC/WB as an accurate representation of work practices breaks down hours by occupation, claiming that seed cutters are transported to the fields at 6am and are required to leave before 2pm; seed planters work from 6:00 am to 12pm; irrigators work either 9 or 12 hour shifts depending on the method of irrigation; that chemical applicators work between 5 and 12 hour shifts, and that cane cutters work between 5:30 am and 12 pm. In contrast, we found that while we could not completely disaggregate data by occupation, no worker reported leaving work before 3 pm, including cane and seed cutters. Those whose primary occupation was cane or

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<sup>62</sup> Zelaya, Felix Causas de enfermedad renal cronica en la poblacion laborel dell Ingenio San Antonio 2000-2001, Chichigalpa, Chinandega 2001; 19

<sup>63</sup> See Daniel R. Brooks, DSc, Oriana Ramirez-Rubio, MD, MPH1, Juan Jose Amador, MD, MPH CKD in Central America: A Hot Issue Am J Kidney Dis. 2012;59(4):481-484. See also Decreased Kidney Function Among Agricultural Workers in El Salvador Sandra Peraza, MSc, Catharina Wesseling, PhD, Aurora Aragon, PhD, Ricardo Leiva, MD Ramón Antonio García-Trabanino, MD, Cecilia Torres, MD, Kristina Jakobsson, PhD, Carl Gustaf Elinder, MD, and Christer Hogstedt, MD, Heat Exposure in Sugarcane Harvesters in Costa Rica Jennifer Crowe, MPH, Catharina Wesseling, MD, PhD, Bryan Román Solano, BS, Manfred Pinto Umaña, BS, Andrés Robles Ramírez, MS, Tord Kjellstrom, MD, PhD, David Morales, PhD, and Maria Nilsson, PhD

<sup>64</sup> Labor Code, Art 100.

<sup>65</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (ii)(b), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>66</sup> PASE, NICARAGUA SUGAR, at 26.

seed cutting reported a working day lasting between 9 and 15 hours, with the average working day consisting of 11.76 hours. However, the average working hours reported by respondents do correlate with findings cited in the 2009 report, *Agrofuels Industry in Central America*, which states that on average during harvest field laborers work 84 hours per week<sup>67</sup>. Finally, most respondents, particularly those who worked in the fields, reported only taking a break for lunch and one respondent reportedly eating lunch in secret

The Nicaraguan Labor Code requires that the working day should not be more than 8 hours and that the normal working week should not exceed for 48 hours<sup>68</sup>. For dangerous occupations, the workday is restricted to 6 hours. Overtime hours are not allowed for those working in unhealthy conditions<sup>69</sup>. For occupations where overtime is permissible, overtime must not exceed three hours per day or nine hours per week. The hours reported by respondents far exceed those allowable by law for those working in hazardous and non-hazardous conditions. Furthermore, the US Occupational Health and Safety Administration recommends that for heavy labor in temperatures above 82 F where there is no shade, workers are allowed a minimum break of 15 minutes for every 45 minutes that they work. The proportion of minutes rested to minutes worked increases as temperatures rise<sup>70</sup>. Given the psychically demanding nature of the work, the high temperatures in the fields, and the relationship between harsh conditions and disease onset; the commonality of these burdensome working schedules also suggest a blatant disregard on behalf of ISA of their obligations under Nicaraguan law to protect the life and health of their workers.

*Access to Water and Shade* - Respondents also reported limited access to water and shade during working hours. The majority of respondents brought their own water to the fields in pinchingas, water jugs that carry 2.5 to 5 Liters of water. Respondents reported access to water in the sugar processing factories but not in the fields. Furthermore, 24% of respondents complained about the quality of water provided by ISA, saying that they believed it to be contaminated because of its color smell and taste. Additionally workers reported only occasional access to shade during the course of their working day. Study results indicated that there were no shade areas designated for workers; rather, they took breaks in the shade where they could find it.

Given the intensity of the labor required and the high level of heat, sugar cane workers who do not consume adequate amounts of water or periodically rest in the shade are at a higher risk for

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<sup>67</sup> THE AGROFUELS INDUSTRY IN CENTRAL AMERICA PACIFIC ECOLOGIST (2009), available at <http://www.thefreelibrary.com/The+agrofuels+industry+in+Central+America.---a0199069777> (last visited Oct. 24, 2013).

<sup>68</sup> Labor Code , Arts. 51&53.

<sup>69</sup> Labor Code, Art.53.

<sup>70</sup> U.S. Dept. of Labor, Occupational Safety & Health Administration, About Work/Rest Schedules, [https://www.osha.gov/SLTC/heatillness/heat\\_index/work\\_rest\\_schedules.html](https://www.osha.gov/SLTC/heatillness/heat_index/work_rest_schedules.html) (last visited Oct. 24, 2013).

heat stress. National and international labor laws do not mandate specific requirements for the provision of shade and water in specific working environments. However, several standards have been developed to provide appropriate guidelines for employers seeking to reduce the risk of heat stress amongst their labor force, in compliance with legally mandated requirements to protect the overall health and safety of their workforce. The US Environmental Protection Agency (EPA) recommends that employers provide workers with between 5.68 and 9.46 liters of water per day; and that in severe heat stress conditions, where workers can lose up to 1.89 liters of sweat per hour and 3 gallons of fluid per day, all fluid lost through sweat should be replenished<sup>72</sup>. Additionally, OSHA recommends that employers provide fully shaded rest areas for workers<sup>73</sup>.

*Availability of Safety Training and Protective Equipment* - Several workers cited the lack of safety training and the unavailability of protective equipment as major safety concerns. Only 20% of all workers interviewed received any explanation of the safety conditions at work<sup>74</sup>, and of those who received safety equipment, many complained that it was defective or insufficient. According to respondents, ISA provides safety training and safety equipment only to directly employed workers. Subcontractors are not given safety training and often must provide their own protective equipment. A welder for the Ingenio reported that the company did not provide protective cables for welders working in high places because of budgetary constraints.

For the purposes of assessing workplace safety measures, responses related to chemical exposures were particularly illuminating: 65% of respondents reported that they had worked with chemicals, pesticides, herbicides, or fertilizers. Of those, 63% were given some form of protective clothing. However, only 2 respondents in total reported receiving adequate equipment and one worker claimed that employees are required to work one month before receiving protective clothing. Of those who handled chemicals, fertilizers, herbicides or pesticides, only 26% had been told the risks of handling such products.

About half of the respondents who had worked with chemical agents were also able to report the names of the agents with which they had contact. Though the determination of the intensity, frequency, and duration of exposure necessary to establish a causal linkage between occupational exposure and CKDu was outside of the scope of this study; several agents were identified as being toxic and/or connected to kidney damage. The most common agents cited were 2-4-D, Gamoxone (Paraquat), Urea, Ametrina, and Glyphosate. Of those; 2-4-D, Gamoxone, and

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<sup>72</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, A GUIDE TO HEAT STRESS IN AGRICULTURE (1993).

<sup>73</sup> U.S. Dept. of Labor OSHA, *supra* note 70

<sup>74</sup> This percentage closely matches similar findings in the PASE/ILRF study which found only 20% of workers were trained for the jobs that they do. *See* PASE, *supra* note 13, at 56.

Glyphosate have been linked to kidney damage<sup>75</sup>. Supposedly, Gamoxone, a moderate to highly toxic herbicide, is no longer in use<sup>76</sup>. Though ISA denies using Gamoxone after 1994, respondents who began working at ISA as late as 2002 claim to have been exposed. Researchers also obtained a list of chemicals used during the 2005 to 2006 harvest season. At least four of the chemicals listed – Comanche, Diuron, Ethrel, and Karmex – have been linked to kidney damage. Three of those (Comanche, Diuron, and Karmex) contain the active ingredient, Diuron, the use of which has been banned in France, restricted in Australia, and more tightly regulated in the United States<sup>77</sup>.

Reported low levels of provision of safety equipment and training and the disparity in the provision of these services to direct and subcontracted employees indicate a broad lack of compliance on behalf of ISA and subcontractors with national laws concerning occupational health and safety. Generally, Nicaraguan law requires employers to provide safety equipment and instruction on workplace hazards to their workforce. Article 103 of the Nicaraguan Labor Code obligates employers to provide protective equipment for employees<sup>78</sup>. Article 105 of the Labor Code requires that workers receive information about inherent risks related to dangerous tasks and sufficient training before operating hazardous machinery or undertaking dangerous work<sup>79</sup>. Employer obligations related to health a safety are enumerated in greater detail in the Law of Occupational Health and Safety which requires employers to take measures to ensure individual and collective protection and to give workers appropriate information to effectively avoid risks<sup>80</sup>; to ensure subcontractor compliance or risk joint liability for breach of the law<sup>81</sup>; to provide free protective equipment to workers and repair such equipment as needed<sup>82</sup>; and to provide free, appropriate training by qualified accredited teachers on hygiene, health, and safety in the workplace<sup>83</sup>.

Aside from their general duty to provide their workforce with a safe and healthy work environment, LIF contends that sugar cane producers are uniquely obligated to protect workers

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<sup>75</sup> McClean at al, Supra Note 61, pg 25 - 29

<sup>76</sup> Id at 30

<sup>77</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, REREGISTRATION ELIGIBILITY DECISION (RED) FOR DIURON (2003), available at [http://www.epa.gov/oppsrrd1/REDS/diuron\\_red.pdf](http://www.epa.gov/oppsrrd1/REDS/diuron_red.pdf) (last visited Oct. 24, 2013); AUSTRALIAN PESTICIDES AND VETERINARY MEDICINES AUTHORITY, DIURON PRODUCT REGISTRATIONS AFFIRMED WITH SIGNIFICANT USE CHANGES, Nov. 28, 2012, [http://www.apvma.gov.au/news\\_media/media\\_releases/2012/mr2012-13.php](http://www.apvma.gov.au/news_media/media_releases/2012/mr2012-13.php) (last visited Oct. 24, 2013).

<sup>78</sup> Labor Code, Art. 103.

<sup>79</sup> Labor Code, Art. 105.

<sup>80</sup> **LAW OF OCCUPATIONAL HEALTH AND SAFETY ACT No. 618**, Adopted on April 19, 2007 4( c ) ( 6-7) Ley No. 816, 19 Apr.2007, Ley General de Higiene y Seguridad del Trabajo [General Law of Work Health and Safety] [Health and Safety Act], tit. II, ch. I, L.G., 13 July 2007 (Nicar.), available at [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/16624DBD812ACC1B06257347006A6C8C?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/16624DBD812ACC1B06257347006A6C8C?OpenDocument) (last visited Oct. 24, 2013).

<sup>81</sup> Health & Safety Act, Art. 18 (9).

<sup>82</sup> Health & Safety Act, Art 18 (14).

<sup>83</sup> Health & Safety Act, Arts 19-22.

from agrichemical exposures given the possible relationship between agrichemical exposure and CKDu. As mentioned earlier, some of the most common agents to which respondents were exposed have been linked to acute kidney damage. Although the link between acute kidney damage and CKDu is yet to be determined and further research must be done to gauge the extent of occupational exposure, medical researchers still consider agrichemical exposure to be a possible risk factor in the onset of the disease.



b. *Child Labor*

*I began when I was 15 and they should have refused to let me work. There are many boys that need the work and it is good that they work but not here - they have no rights. – m, 30*

According to the US department of State and the Nicaraguan Centre for Human Rights, the latest estimates for child labor place the number of children under 17 working in Nicaragua at about 322,000<sup>85</sup>. Because of the dangerous nature of field work in sugar cane, child workers can be considered to be engaged in one of the most hazardous forms of labor, and therefore one of the most explicitly prohibited practices of child labor<sup>86</sup>. The prohibition against child labor is considered a fundamental international labor and human rights principle<sup>87</sup>. The International Covenant on Economic Social and Cultural Rights emphasizes the protection of children from exploitation, declaring that "employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law"<sup>88</sup>. The Convention on the Rights of the Child recognizes the right of children to be free from economic exploitation and prevented from performing work that will likely be hazardous or harmful to the child's physical, mental, spiritual, moral or social development. Additionally the convention requires states to establish minimum ages for admission into employment, provide appropriate regulation of the hours and conditions of employment, and provide appropriate penalties or sanctions for enforcement of legal protections<sup>89</sup>. The ILO Minimum Age Convention 138 prohibits admission to hazardous employment for children under the age of 18, and in special cases under the age of 16. The ILO Worst Forms of Child Labor further requires that states take immediate measures to prohibit and eliminate the worst of forms of child labor, of which dangerous work is a part<sup>90</sup>.

Nicaraguan law also regulates child labor. The minimum working age is 14; however the Labor Code prohibits children under the age of 18 from working in unhealthy occupations<sup>91</sup>. The Ministerial Agreement on the Prohibition of Hazardous Work for Young People goes even farther, expressly prohibiting tasks that require physical strain due to repetitive activities with upper and lower limbs and trunk, working outdoors in temperatures higher than 37C, environmental exposure to ultraviolet rays, and work with herbicides<sup>92</sup>. In all circumstances, the law requires that working children are protected from occupational hazards, work less than 6

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<sup>85</sup> U.S. Dept. of Labor, Nicaragua, <http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/nicaragua.htm#1210> (last visited Oct. 24, 2013).

<sup>86</sup> International Labour Organization, Worst Forms of Child Labor Convention (No 182), June 17, 1999. *available at* [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182) (last visited Oct. 24, 2013).

<sup>87</sup> International Labour Organization, Declaration on Fundamental Principles and Rights at Work, Art 2(c), June 1998, *available at* <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm> (last visited Oct. 24, 2013).

<sup>88</sup> ICESCR Art 10

<sup>89</sup> Convention on the Rights of the Child, art. 32. Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>90</sup> ILO, *Supra* 87 Art 1-3

<sup>91</sup> Labor Code, Arts 133 & 136.

<sup>92</sup> 2 July 2010, Acuerdo Ministerial sobre la Prohibición de trabajos peligrosos para las personas adolescentes [Ministerial Agreement on the Prohibition of dangerous work for adolescents], Art 6, L.G., 14 Nov. 2006, *available at* <http://www.mitrab.gob.ni/news/2010/mitrab-emite-acuerdo-ministerial-sobre-la-prohibicion-de-peligrosos-para-las-personas-adolescentes/?searchterm=temperatura%20alta> (last visited Oct. 24, 2013).

hours per day, receive social security benefits, and are given access to union participation<sup>93</sup>. The welfare of children is governed by the Ministry of Labor and the Department of the Labor Inspector<sup>94</sup>.

ISA claims that though children as young as ten worked in the fields in the past, the minimum working age for cane cutters is now 18<sup>95</sup>. Unfortunately, though not previously thought of as a significant problem within the sugar plantations of Western Nicaragua, researchers discovered a climate of pervasive use of child labor at Ingenio San Antonio. Several respondents admitted to working for ISA as children<sup>96</sup>; 34% of respondents knew child workers under the age of 14, and 83% knew child workers between the ages of 14 and 17. Respondents indicated that children are only involved in field-based occupations such as planting, cutting, weeding – where company supervision is less intense – and worked the same number of hours as adults. During the course of their work, respondents claimed child workers were exposed to a variety of hazards, including dust, fumes, gas, flames, extreme heat, dangerous tools, and agrochemicals. Additionally, 65% of respondents believed that ISA knew about the existence of child workers. A few respondents asserted that child labor was generally discouraged by the company and that children were fired as soon they were discovered. However, others alleged that ISA doesn't do more to combat child labor out of fear that such measures would draw undue attention. No respondent knew of any supervisory mechanisms in place for child workers.

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<sup>93</sup> Labor Code, Art 134.

<sup>94</sup> Labor Code, Arts 135 & 137.

<sup>95</sup> McClean at al. Supra Note 61, 35

<sup>96</sup> Similarly Yale researchers found field workers from Goyena who began working in the fields at the age of 15. See The People of León and Chinandega's Complaint Regarding the Operations of Nicaragua Sugar Estates Limited S.A. International International Finance Corporation Project 25331 at 14 (March 31, 2008).



c. *Remuneration*

*Sometimes they rob you of your salary and pay you less and tell you that you that it will be received during the next payment schedule.-m, 25*

According to the Nicaraguan Institute of Information and Statistical Development, for the month of June 2013, the latest month for which information was available, the basic basket, the price estimate for a bundle of goods and services used to estimate the cost of living for an average family, was an estimated 11,298.23 cordobas (approximately 455 USD) per month<sup>97</sup>. As of September 1, 2013, the approved monthly minimum wage for Nicaraguans working in

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<sup>97</sup> Government of Nicaragua, Canasta Básica [Basic Basket], <http://www.inide.gob.ni/CanastaB/CanastaB.htm> (last visited Oct. 24, 2013).

agriculture was 2566.89 cordobas (approximately 103.50 USD) per month<sup>98</sup>. Meaning, a family of 4 with two income earners making a minimum wage salary in agriculture would earn less than half of the amount necessary to support itself. Even where companies are compliant with minimum wage laws, the disproportionate cost of living in Nicaragua means that individuals earning a minimum wage are highly impoverished, leaving them vulnerable to exploitation, unable to afford basic necessities, and incentivized to engage in overly strenuous work practices to supplement their earnings.

Generally, the right to a living wage is recognized in international and regional human rights law. The International Covenant on Social, Economic and Cultural Rights and the Additional Protocol to the American Convention on Human Rights requires that as part of the right to just conditions of work, all workers have the right to remuneration which guarantees dignified and decent living conditions for workers and their families<sup>99</sup>. However, in addition to broad concerns about the suitability of the state's minimum wage scheme for agricultural workers, researchers also uncovered severe violations of fundamental domestic and international laws which protect the basic right of wage protection and remuneration. They are detailed below.

*Payment Below Minimum Wage* - Of those we interviewed, 17% of respondents reported salaries that fell significantly below the minimum wage. A respondent who had worked at ISA since 2008 reported receiving 40 cordobas (less than 2 USD) per day for herbicide application. However, minimum wage violations were primarily reported by those working on a piece-rate system, particularly during the winter harvest.

On average, salaries ranged from 300 to 2000 cordobas per week. Subcontracted employees made less than direct employees. Planters tended to make the least, mechanics and management made more. Directly employed cane cutters, earning about 20 cordobas (0.9 USD) per ton of cane cut, and working 15 days straight reported making between 3000-4000 cordobas every two weeks. To reach the higher end of this scale, workers had to cut at least 13 tons of sugar cane per day.

Failure to pay minimum wage violates both national and international law. The International Labor Organization's (ILO) Social Aims and Policy Convention, to which Nicaragua is a party, requires that workers are not paid less than determined minimum wage rates and that workers

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<sup>98</sup> Nicaragua Minimum Wages from March 1, 2013 to February 28, 2014, <http://www.wageindicator.org/main/salary/minimum-wage/nicaragua> (last visited Oct. 24, 2013).

<sup>99</sup> ICESCR, Art. 7 (a) (ii); Organization of American States, Additional Protocol to the Am. Convention on Human Rts in the Area of Econ., Social, and Cultural Rights "Protocol of San Salvador," Nov. 17, 1988, O.A.S.T.S. No. 69, 1144 U.N.T.S. 123, Art 7(a).

paid less than those rates be provided with a legal mechanism to recover lost wages<sup>100</sup>. Nicaraguan labor law leaves little ambiguity regarding minimum wage requirements for employers, even where a piece-rate system is in place. The Nicaraguan labor code states that though employers are free to establish remuneration schemes on a time or piece rate basis, compensation should never be less than the legal minimum<sup>101</sup>. The code goes on to further define minimum wage as the lowest compensation to be paid to an employee for services rendered during a normal working day to which every worker is entitled<sup>102</sup>. Therefore, companies which fail to pay workers a minimum wage for a full day's work, regardless of the applicable remuneration scheme, would be in violation of the law.

*Withholding Pay* – Generally, 41% of respondents reported incidents of salary withholding without cause or claimed that they were regularly underpaid. Many of those complained that they were generally paid less than what they earned with a promise that their wages would be supplemented the following week. More specifically, 17% reported that they had wages deducted as punishment. One employee reported being threatened with termination if he complained about his reduction in pay. Another claimed that workers were robbed at the scale, where the amounts of cane cut are weighed to determine compensation.

Repeated failure to pay legally mandated earned wages whilst implicitly or explicitly threatening workers who complain constitutes a form of forced or coercive labor practices. ILO Convention No. 29 broadly defines forced labor as “all work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.”<sup>103</sup> In subsequent guidelines for compliance with Convention No. 29, the ILO explores the components of this definition, citing the threat of penalty, including financial penalties, and the influence such penalties have on the provision of consent that workers give to continue working under a certain set of conditions<sup>104</sup>. The withholding of pay could be considered both a threat mechanism and a non-consensual condition of labor. The workers that we interviewed repeatedly stated that they felt compelled to work under such conditions out of fear of losing their jobs with the primary employer in the region.

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<sup>100</sup> International Labour Organization, Social Policy (Basic Aims and Standards) Convention, art. 10 (2) & (4), June 22, 1962, ILO No. 122.

<sup>101</sup> Labor Code, Art 81-83.

<sup>102</sup> Labor Code, Art 85

<sup>103</sup> ILO, Forced Labor Convention (No 29) , 1930

[http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029) ( last visited Oct 13, 2013).

<sup>104</sup> ILO, COMBATING FORCED LABOUR: A HANDBOOK FOR EMPLOYERS & BUSINESS (2008), available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_101171.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_101171.pdf) (last visited Oct. 27, 2013).

Outside of the scope of coercive or forced labor, failure to pay earned wages also directly violates national and international labor laws. Article 17(a) of the Nicaraguan Labor Code requires that employers pay wages for work in the manner and time agreed upon with the worker. Article 86 of the Nicaraguan Labor Code states that salaries should be paid in the amount agreed upon for at most every 15 days of work performed. Where salaries are delayed, employers are required to pay affected workers an additional amount for each week of delay<sup>105</sup>. Regarding the deduction of wages as punishment, both the Protection of Wages Convention (No. 95) and the Plantations Convention (No. 110) governed by the ILO and to which Nicaragua is a party prohibit the deduction wages outside of the extent prescribed by the law<sup>106</sup>.

*Failure to Pay Overtime* – As previous analysis pertaining to working hours has shown, the majority of laborers work far in excess of the 6 to 8 hours mandated by law. Although every worker interviewed reported working more than 8 hours per day and 48 hours per week, only 27.5% reported that they had ever received overtime. Of the workers we interviewed, only 3 respondents had ever received a day off with pay from their employer, and only 2 had ever had a vacation. In contrast, several others reported being punished for taking holidays off.

Nicaragua law requires that overtime work is paid at double the normal salary<sup>107</sup> and that for every 6 days of continuous work or the equivalent hours, employees are entitled to a 7<sup>th</sup> day of rest with full pay<sup>108</sup>. For those that choose to work the 7<sup>th</sup> day, the 7<sup>th</sup> day will be treated as overtime<sup>109</sup>. Additionally the Labor Code requires that employers provide workers with fifteen continuous days off as paid vacation for every six months of uninterrupted work in the service of the same employer<sup>110</sup>. The harvest season lasts for six to seven months during the period between November and May, making almost all of ISA's workforce eligible to receive vacation time or vacation pay.

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<sup>105</sup> Labor Code, Art 86

<sup>106</sup> Int'l Labour Org., Protection of Wages Convention, July 1, 1949, ILO No. 95; Plantations Convention, June 24, 1958, ILO No. 110.

<sup>107</sup> Labor Code, Art 62.

<sup>108</sup> Labor Code, Art 64.

<sup>109</sup> Labor Code, Art 65.

<sup>110</sup> Labor Code Art 76.



d. *Health*

*The sick man cannot get help.—m, 22*

Generally, respondents' answers indicated a diminished access to care and a lack of awareness of available medical treatment options that contradicts Ingenio's claims and stands in possible violation of the law. Ostensibly, employees at Ingenio San Antonio have access to onsite medical facilities. According to a 2009 study by Boston University,

*ISA has its own hospital, which is directed by Dr. Alejandro Marin and employs eight general practitioners and 24 specialists. As part of its contract with the Social Security Institute, the hospital only provides care to ISA workers and their families (including subcontracted workers) except in emergencies. In the case of an emergency, any patient will be attended to, including residents of Chichigalpa who do not work for ISA....The hospital is also in charge of providing the medications and medical supplies for the first aid kits used in fields where temporal*

*ISA employees work. Contractors are responsible for maintaining first aid kits for jobs that are conducted by subcontracted workers.*<sup>111</sup>

In contrast, researchers found that respondents believed that only directly employed workers were entitled to or able to receive care at the ISA hospital and only 34% reported access to first aid kits.

The lack of efficient and effective health care for sugar cane workers with CKDu has had a tremendous impact on the sugarcane communities of western Nicaragua.<sup>112</sup> Of those we surveyed, 13% had been diagnosed with CKDu. Sick workers were primarily employed in field-based occupations such as irrigation, planting, weeding, collecting the seeds, and bundling cane. Many of those we interviewed echoed feelings that they faced a difficult choice between starvation and sickness. For example, when considering whether to leave the fields for some other form of work, one respondent, a twenty-eight (28) year old male with CKDu, explained that he has thought about leaving his cane-cutting position because he feared exacerbating his symptoms and not living long enough to see his daughter grow up. The consequences of CKDu and the absence of effective health care have upset the balance of many sugar cane workers' lives, transcending the work place, and entering the home as a looming reality of what the future might bring.

Under international law, the International Covenant on Economic, Social, and Cultural Rights<sup>113</sup>; the Convention on the Rights of the Child<sup>114</sup>; and the Additional Protocol to the American Convention on Human Rights<sup>115</sup> all recognize the right of everyone to enjoy the highest attainable physical and mental standard of health. Domestically, the Constitution of Nicaragua protects the rights of all Nicaraguans, without distinction to health<sup>116</sup> and the General Law on Health promises access to health services with priority given to vulnerable members of the population<sup>117</sup> In addition to the states' duty to protect the health of the population, under Nicaraguan law companies also have a duty to protect their workforce. Article 100 of the Labor Code declares that all employers have the responsibility to adopt preventative measures to protect the life and health of their workers. Finally, it could be argued that as part of the employer's obligation to its employee, employers should treat the risk of causing or contributing to occupational related illnesses as a potential barrier to accessing health care.<sup>118</sup> Although a

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<sup>111</sup> McClean et al, Supra Note 61 at 12

<sup>112</sup> Brooks et al.

<sup>113</sup> ICESCR, Art 12(1)

<sup>114</sup> Convention on Rts. of the Child, Art 24

<sup>115</sup> Additional Protocol Am. Convention on Human Rts, Art (10)

<sup>116</sup> Nicar. Const., Art 59

<sup>117</sup> Ley No. 423, 14 March 2002, Ley General de Salud [General Law on Health] [Law on Health] tit. I, ch. I, art. 5 (3) & (8), L.G., 17 May 2002 (Nicar.).

<sup>118</sup> UN Guiding Principles on Business and Human Rights, 16 June 2011, available at: <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples> (last

definitive factor has yet to determine to cause the illness, sugar cane employers have a responsibility to take proactive steps in providing support to prevent its workers from developing CKDu.<sup>119</sup>

Regarding the specific conduct of ISA, researchers found in place a system of policies and practices which limited and, in some cases, impeded employee's access to care, particularly for those suffering from CKDu and, therefore, most in need of care.

*Inability to Access Medical Records* - The survey results also demonstrated a deficiency in communication and access given by ISA to workers' about their medical condition and in turn, a lack of workers' understanding of CKDu. The importance of bridging this communication gap lies in the nature of the disease itself. CKDu is a progressive disease, meaning that if it is not caught within the first two stages of development, it becomes a chronic condition<sup>120</sup>.

Furthermore, medical records are required of any employee seeking to apply for disability after contracting the disease. ISA conducts mandatory screening of ISA workers for high levels of creatinine, an indicator of CKDu, before the start of every harvest season and again in January. Workers with higher levels of creatinine are, at times, asked to repeat the test, or determined to be ineligible for work. Once the results are returned, employees are only told if they can or cannot work. When asked if their medical records were shared with them, seventy-percent (70%) of direct employees and sixty-eight percent (68%) of subcontracted employees answered that medical records were not shared with them after their exam. During the course of the study, researchers found that although four respondents said that they were diagnosed with CKDu, three additional respondents noted high creatinine levels that suggest that they actually have the disease.

Where ISA or ISA-sponsored facilities serve as health care service providers, they are bound by the laws governing health services in Nicaragua. In cases where it does not breach confidentiality, the right to health-related information is considered to be a component of the right to health<sup>121</sup>. Article 8(4) of the General Law on Health elucidates the right of patients to be informed in a complete and continuous manner about their diagnosis, prognosis, and treatment

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visited Oct 27, 2013); International Finance Corporation, Performance Standards Labor Conditions Standards, Jan. 1, 2012, Standard (2)23, *available at*:

[http://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/2408320049a78e5db7f4f7a8c6a8312a/PS2_English_2012.pdf?MOD=AJPERES) (last visited Oct. 27, 2013); IFC: Performance Standards, Community Health Safety and Security Requirement, Standard 4.

<sup>119</sup> Id.

<sup>120</sup> EDWARD F. FOOTE AND HAROLD J. MANLEY, Chpt. 48 Hemodialysis and Peritoneal Dialysis by pg. 109

<sup>121</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), *available at*: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En) (last visited Oct. 27, 2013).

options<sup>122</sup>. Where medical records are required as proof of occupational illness or injury; the refusal to provide them could also constitute a violation of the right to health, particularly the rights to equitable access to care, the prevention of occupational illness, restitution for occupationally-related illness or injury, and appropriate medical treatment. Furthermore, where ISA or ISA-sponsored medical facilities share employee health records with state authorities, the subject of those records has the right to such information<sup>124</sup>.

*Improper Handling of Workplace Accidents-* Of the respondents interviewed, 58% had been involved in a workplace accident. Reported injuries included, falls, a hernia from carrying too much weight, machete cuts, electric shock, heat exhaustion, and impalement by sugar cane. Of those, four were sent to the hospital and only one respondent reported receiving financial assistance, a subsidy of 350 cordobas every two weeks. Otherwise, reported employer responses to accidents varied. Several respondents reported being sent back to work prematurely, and one respondent reported that his employer deducted three times his estimated daily wage per day of his absence.

Generally, the high reported accident rate indicates an overall deficiency in the health and safety conditions in the workplace and a failure on behalf of ISA to adopt the necessary measures to protect the life and health of their workforce in violation of Nicaraguan law<sup>125</sup>. However, interviewees' responses also indicate widespread non-compliance with domestic laws and procedures concerning employer responsibilities in the case of workplace accidents. Though only four respondents involved in a workplace accident reported being given transportation to a medical facility, Article 124 of the code obliges employers to transfer injured employees to a medical center in all cases of a workplace accident. According to Boston University's Industrial Hygiene Report, company policy requires all workers injured during the course of their employment to be taken to the ISA hospital after the provision of first aid<sup>126</sup>. Furthermore, Article 122 of the Labor Code requires employers to inform the Ministry of Labor within 24 hours of an accident and to submit a report to the Nicaraguan Social Security Institute. The inability of worker's to receive compensation for medical care expenses and lost wages implies that workplace accidents are not being properly recorded and communicated to the government actors charged with workers protection. Finally, Article 113 of the Labor Code requires that in the event of an occupational accident or illness, employers are obligated to notify and assist in any investigation of the accident; compensate workers for accidents or illness that occur during

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<sup>122</sup> General Law on Health, *available at*: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/FF82EA58EC7C712E062570A1005810E1?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/FF82EA58EC7C712E062570A1005810E1?OpenDocument) (last visited Oct. 27, 2013).

<sup>124</sup> Nicaraguan Constitution, Art 26 (4)

<sup>125</sup> Labor Code, Art 100.

<sup>126</sup> McClean et al, *Supra* Note 61 at 11

the course of their work that are not covered by the social security regime; and provide immediate assistance, free food and free medicine to sick workers.

e. *Inability to Access Social Security*

*I'm sick, I can't continue working and I have paid "contributions" but they have denied me. – 34, m*

The Nicaraguan Institute of Social Security (INSS) administers the state's contributive pension system, as well as health insurance, disability protection and work-related risk insurance. The state of Nicaragua currently has around 2 million workers in its labor force. The majority of those, about 1.4 million, are informal workers and therefore not covered by social security<sup>127</sup>. Of the 530,000 workers that contribute to the Institute's medical scheme 500,000 are covered by medical insurance, which covers medical care and disability benefits for sick workers<sup>128</sup>. Currently, 86,000 receive social security payment for disability, old age, family death benefits, and work-related accidents<sup>129</sup>. According to a 2013 report by the UN Economic Commission for Latin America and the Caribbean, the percentage of the economically active population contributing to the general pension scheme declined from 4% in 1998 to 3% in 1997, while the percentage of the economically active population receiving a pension marginally increased from 3.1% to 3.5% during that same time period. The same study estimates that in the years 2005-2006, one of the few years for which data is available, between 12 and 18% of the population over the age of 65 received a pension<sup>130</sup>.

As a condition of future financial agreements, the government is currently under pressure from the International Monetary Fund to reform the pension system by gradually raising the retirement age, aligning pension benefits to amount and length of contribution time, and raising contribution rates<sup>131</sup>. The government's most recent proposal developed in response to these conditions raises the retirement age from 60 to 65 years, increases the minimum years worked from 15 to 30, and doubles the number of weekly contributions from 750 to 1500<sup>132</sup>.

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<sup>127</sup> Nicaragua: Contentious Debate Over social Security Reform, New Politics, <http://newpol.org/content/nicaragua-contentious-debate-over-social-security-reform>. (last visited Oct. 27, 2013).

<sup>128</sup> Manuel Israel Ruiz Arias, On Social Security the IMF has Little to Tell Us and Lot to be Told. (Sept. 2010), <http://www.envio.org.ni/articulo/4240> (last visited Oct. 27, 2013).

<sup>129</sup> Id

<sup>130</sup> Juliana Martínez Franzoni, Social protection systems in Latin America and the Caribbean: Nicaragua [http://www.eclac.org/publicaciones/xml/7/49367/2013-119\\_Social\\_NICARAGUA\\_WEB.pdf](http://www.eclac.org/publicaciones/xml/7/49367/2013-119_Social_NICARAGUA_WEB.pdf) p. 17

<sup>131</sup> International Monetary Fund, Country Report No. 12/256 (2012), 20 available at: <http://www.imf.org/external/pubs/ft/scr/2012/cr12256.pdf> (last visited Oct. 27, 2013).

<sup>132</sup> New Politics, supra note 132.

Access to social security serves as an important determinant in a worker's ability to access certain treatment options and to supplement their income after they've become too ill to work. However according to respondents, social security, particularly disability claims for occupational illness are difficult to obtain. Four of the respondents surveyed received some form of social security payments. No respondents that have been diagnosed with CKDu or reported a high creatinine level collect any form of social security -- one of these respondents worked directly under ISA for nineteen (19) years, before getting fired in 2012 for developing the illness.

Notably, many respondents specified that the biggest challenge in getting social security were the requirements set out by the state. In order to qualify for disability, former workers who suffer from CKDu must show proof that they were well before beginning sugar cane work and became sick during the course of their work in sugarcane; have worked a total of more than 107 weeks; and have worked 26 weeks in the past year. The "famous twenty-six weeks" as one respondent put it, hinders many workers' ability to collect. The Zafra is only six (6) months – usually twenty-four (24) weeks, leaving a worker unable to apply for social security at the end of the season. The survey results support the conclusion that the time requirement has a very real impact on the worker's ability to apply for social security. For example, one respondent noted how because he got sick before finishing his twenty-six (26) weeks, he could not collect social security.

Restricted access to employment and health records also prevents workers from qualifying for social security. If ISA or a subcontractor removes or does not register its workers with INSS, then those workers will not receive their social security including access to certain types of medical care. As outlined above, medical records are often not shared with employees. Furthermore in order to qualify for social security, workers must prepare documentation of their medical records, a declaration of the accident or illness, proof that the worker is not covered by social security, an official medical opinion, and documents that prove that the worker actually worked for employer. Only seven directly employed employees and two subcontracted employees thought that their employer shared their medical records with INSS. Three respondents noted their employers as a major obstacle in qualifying to collect social security.

The Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights recognizes the right to social security including social insurance<sup>136</sup>. For those workers suffering from occupationally related injury or illness, in the case of earnings International standards also provide that a state should ensure that the administrative process for claiming social security benefits is not overly burdensome to the applicants.<sup>137</sup> This includes

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<sup>136</sup> Universal Declaration of Human Rights, Art 22 (Dec. 12, 1948); ICESCR, Art. 9.

<sup>137</sup> IACHR, Amilcar Menéndez, Juan Manuel Caride, et al. Case N° 11.670. Report N° 03/01.

vetting unnecessary obstacles in the immediate fulfillment of the worker's right to social security.<sup>138</sup>

As an occupational illness, the Social Security Law<sup>139</sup>, the Labor Code<sup>140</sup>, and Law on Additions to Professional Risks and Sickness<sup>141</sup> state employers are required to give employees with CKDu either permanent or temporary disability. Moreover, if social security does not cover the worker, the Labor Code requires the employer to provide medical care and compensation.<sup>142</sup> The Social Security Code requires that those suffering from a permanent disability receive a pension based on 60% of the average monthly salary of the worker.<sup>143</sup> Additionally, in the case of permanent disability or death, employers are required to pay 620 days worth of compensation from the day of death or disability determination on the same pay schedule as the affected worker's previous salary<sup>144</sup>. Despite this, none of respondents suffering from CKDu or disabled by high creatinine levels reported receiving compensation for their illnesses.

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<sup>138</sup>ICESCR, General Comment 19 on Social Security. Article 65.

<sup>139</sup> Social Security Act, Art 63

<sup>140</sup> Labor Code, Art 111

<sup>141</sup> Additions to Risks and Sickness, Art 1

<sup>142</sup> Labor Code, Art 114

<sup>143</sup> Social Security Act, Article 68

<sup>144</sup> Labor Code, Art 121



f. *Unionization*

*The company always buys the unions out, the unions agree with the company and leave things with the workers exposed. – m, 26*

*They'll fire you for participating in unions, so everyone is scared of participating or believing in unions.-m, 26*

As of 2005, there were five unions representing workers within ISA. At the time, the Ronald Altimarano Union was comprised of 160 affiliates equaling 32% of the permanent workforce. The four remaining unions were organized by the Confederación de Unidad Sindical (CUS) and, in total, covered 210 affiliates<sup>145</sup>. That study also found that almost 85% of the workers interviewed from ISA felt that their freedom to organize was restricted<sup>146</sup>.

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<sup>145</sup> PASE supra note 12 at 13

<sup>146</sup> Id at 48

According to a 2012 analysis by Freedom House, freedom of association is protected by Nicaraguan law, but its observance has come under increased pressure<sup>147</sup>. In its 2012 Investment Climate Statement, the US Department of State cites the routine violation of collective bargaining agreements with impunity, illegal dismissal of workers for participation in union activities, and the use of company affiliated or “yellow” unions to disrupt independent unionization as impediments to the right to organize.<sup>148</sup>

Some analysts also believe that the reliance on subcontracted labor discourages unionization in the sugar industry. As mentioned earlier, 85% of workers in the sugar cane industry, and 100% of the field workers employed at ISA are subcontracted. Subcontracted laborers are hired through third party intermediaries. Generally, subcontracted laborers communicate only with their assigned foreman during the course of their work and there is very little interaction between these workers and ingenio management<sup>149</sup>. Traditionally, labor relations for subcontractors are considered to be between the third party contractor and the subcontracted employee. Where third party contractor operations are small or conducted on an individual basis, and subcontractors work on sugar plantations only temporarily, employees may be less incentivized to unionize.

Researchers found disturbing trends related to intimidation of independent union organizers at ISA. Of those interviewed, no one belonged to a union, and one informant did not know what a union was. Though no workers were currently involved in union activities, several participants mentioned that they had known others who had been punished for union participation or advocating for their rights. About one fourth of participants mentioned the threat of termination and being blacklisted as a deterrent to unionization. One respondent was terminated for asking for more water while working in the fields.

Additionally, the majority of workers believed that the unions currently operating within ISA were biased and/or corrupt. Respondents stated that the leaders of these unions were chosen by company management. 65% of respondents alleged that the unions operating within ISA had been bought by the company and received some form of financial assistance, while 58% believed the unions never defended their interests to their employer. Only one respondent could name a recent successful achievement of the unions. Another respondent stated that when his cousin attempted to file a claim for wrongful death in the workplace, the union refused to look for the substantiating paper work and he had to open a case directly with the mayor’s office

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<sup>147</sup> FREEDOM HOUSE, FREEDOM IN THE WORLD,; NICARAGUA, <http://www.freedomhouse.org/report/freedom-world/2012/nicaragua> (last visited Oct. 27, 2013).

<sup>148</sup> .S. Dept. of State, *2012 Investment Climate Statement – Nicaragua* (2013), <http://www.state.gov/e/eb/rls/othr/ics/2012/191209.htm> (last visted Oct. 27, 2013)

<sup>149</sup> SPECIALIZED TECHNOLOGY RESOURCES, NICARAGUAN SUGAR: A MACRO VIEW OF TODAY’S INDUSTRY (2008), 15.

Internationally, the freedom of association and the right to collectively bargain are recognized by the ILO as one of the four fundamental rights and freedoms at work<sup>150</sup>. Article 22 of the International Covenant on Civil and Political Rights guarantees the general freedom of association, including the right to form and join trade unions<sup>151</sup>. Furthermore, the right to organize without prior authorization<sup>152</sup>, to form independent unions and protection from interference with union activities<sup>153</sup>, and to be protected from anti-union discrimination<sup>154</sup> are also protected by international law.

Nicaraguan law also sets out strong protection of unions. Articles 49, 53, 87 and 88 of the Nicaraguan Constitution recognize the rights of workers to independently organize, peacefully assemble, and collectively bargain<sup>155</sup>. Article 30 of the Constitution protects freedom of expression. Finally, the 1996 Labor Code protects the rights of workers to organize and aims facilitate the procedures for unionization<sup>156</sup>.

#### g. *Treatment of Subcontractors*

*They [direct employees] have direct benefits, they give them more protection and protective equipment, the salary is not equal and the risk is different. – m, 21*

According to the International Labor Rights Forum, “Labor rights protections are being undermined worldwide as workers are seeing permanent, regular jobs being replaced by contract labor and temporary, unstable work,<sup>157</sup>” contributing to increased informalization of the labor force and an increased presence of precarious work environments. When discussing subcontracted labor in agricultural contexts, the International Labor Organization argues that two trends have clearly emerged; 1) globally, there is an increasing reliance on subcontracted labor

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<sup>150</sup> ILO Declaration on the Fundamental Principles and Rights at Work, art 2(a) (1998).

<sup>151</sup> Id at Art 22 (1-3)

<sup>152</sup> Freedom of Association and Protection of the Rights to Organize, 1948 (Convention 87), Article 2; ILO Declaration on the Fundamental Principles and Rights at Work (1998), Article 2 (a); Plantations Convention, 1958 (No. 110), Article 54; Universal Declaration of Human Rights, Article 23 (4); American Convention on Human Rights, Article 16 (1); C144 - Tripartite Consultation (International Labor Standards) Convention, 1976 (No. 144), Article 1

<sup>153</sup> Plantations Convention, 1958 (No. 110), Article 63 (1); C135 - Workers' Representatives Convention, 1971 (No. 135), Article 3; C144 - Tripartite Consultation (International Labor Standards) Convention, 1976 (No. 144), Article 3 (1)

<sup>154</sup> Right to Organize and Collective Bargaining Convention, 1949 (Convention 98), Article 1; Plantations Convention, 1958 (No. 110), Article 58; Tripartite Declaration of Principles Concerning MNE's and Social Policy, Article 42; Declaration Of Philadelphia Article III (e);

<sup>155</sup> Nicar. Const, Arts. 49, 53, 97, & 88.

<sup>156</sup> See Ley No. 185, Código Del Trabajo *Supra* note 19 At Capítulo 10, Artos 203---252.

<sup>157</sup> International Labor Rights Forum, Contract Labor and Precarious Work, <http://www.laborrights.org/end-violence-against-trade-unions/contract-labor-and-precarious-work> (accessed Oct. 24, 2013).

and, in some cases, labor contracting has become the primary form of employment relationship, and 2) increased subcontracting is spawning a variety of labor rights abuses<sup>158</sup>. Across countries, subcontractors find themselves working without written contracts, access to social protection schemes, and the ability to unionize as employers seek to defer responsibility for worker protection and governments struggle to regulate and monitor more fluid and casual employment entities.

Because subcontracted labor comprises an overwhelming majority of ISA's workforce, LIF contends that their treatment of subcontracted labor reflects their labor policies generally. Almost half of the workers interviewed said that subcontractors had fewer rights than direct employees. Across rights issues, researchers found that subcontractors were less likely to receive a contract or to be given medical attention in the event of an emergency. They were unable to receive protective equipment or training, or participate in union activities. Subcontractors were also paid less and had restricted access to social benefits.

Despite popular perception, Nicaraguan law does hold employers responsible for the condition of work, where third party intermediaries are involved. The General Law of Health and Safety establishes joint liability for the obligations to employees under the Labor Code and Social Security Act for those employers who employ service contractors or subcontracted labor<sup>159</sup>. Article 119 of the Labor Code also states that when recruiting through intermediaries employers are responsible for occupational risks affecting workers<sup>160</sup>.

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<sup>158</sup> ILO, Decent Work in Agriculture, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/publication/wcms\\_161567.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161567.pdf), 2003.

<sup>159</sup> General Law of Health and Safety, Art 34

<sup>160</sup> Labor Code, Art. 119.



h. *Intimidation and Extra-judicial Violence*

*One time at ISA, a security guard killed a 13 year-old boy for looking for scrap metal, they said that the boy was pleading with the security guard not to shoot because they shot him in the arm, and he begged not to be killed. While this was happening, his uncle was hiding from the security. After they killed the boy they tried to hide the child in a tube.*

Researchers found that violations to the rights to organize, protest, and speak freely about working conditions were compounded by threats of dismissal in the workplace and an overall culture of intimidation that extended beyond the workplace into the private activities of those living in the sugarcane communities surrounding the plantation. These threats not only pertained to termination of employment, but also the revocation of benefits, threats of bodily harm, and threats against family members.

34% of respondents reported that they thought their employer had an influence on their personal life. All cited restrictions on the freedom to unionize, protest, and associate with certain individuals as the reason for this belief. 17% of respondents reported that they had received threats from members of the local government or police for speaking out against the sugar mill. 20% of respondents had observed company, police, or government official presence at wakes or funerals in order to discourage protest through intimidation or bribery. 31% reported that

company management, the police, or government had told lies or insulted them or their family members. Many stated that these false accusations were used as a false pretext for firing or as punishment for protest. Several respondents reported collusion between the police and the company in the promulgation of false accusations related to allegations of criminal activity. Only three respondents thought that the police were neutral.

Furthermore, respondents reported that this atmosphere of intimidation extended to extrajudicial violence perpetrated by sugar mill security forces against community members. 58% of respondents thought that company security officials had used excessive force when dealing with community members. Respondents recounted several instances of community members that had been killed or assaulted by security forces for alleged involvement in petty criminal activity. Many mentioned the confirmed 2011 incident in which a young boy was killed by security forces for stealing scrap metal. There were also several other disturbing allegations that researchers were unable to confirm. Two workers mentioned an incident in which fishermen had been killed for fishing on company property and two others recounted that a boy had been killed by security forces for resisting arrest. Another worker cited an incident in which security forces killed a boy who brought his cows on company property to graze and later intimidated his family.

Beyond violations of workers' rights of association, free speech, and assembly, the aforementioned intimidation tactics violate the rights of workers and their families to privacy. Article 17 of the International Covenant on Civil and Political Rights states, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation", and requires protection of the law in the case of such interference or attacks. The Universal Declaration of Human Rights<sup>161</sup> and the American Convention on Human Rights<sup>162</sup> also protects citizens' rights to privacy and provides for protection for inappropriate attacks on a person's reputation. Finally, the Nicaraguan constitution protects the rights of persons and their families to privacy and to their honor and reputation.

The reported extra-judicial violence perpetrated by company private security forces constitutes a severe violation of the fundamental rights to life, due process, fair trial, and equality before the law. Internationally, these rights are enshrined in the International Covenant on Civil and Political Rights<sup>163</sup>, the Universal Declaration of Human Rights<sup>164</sup>, and the Convention on the Rights of the Child<sup>165</sup>. Article 23 of the Nicaraguan Constitution also protects the right to life and Article 25 of the constitution recognizes the rights of persons to individual freedom, security, and

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<sup>161</sup> UDHR, Art 12

<sup>162</sup> Am. Convention on Human Rts, Art 11

<sup>163</sup> ICCPR, Arts. 6, 9, 10, 14

<sup>164</sup> UDHR, Arts. Art 3, 6, 7, 8, 11

<sup>165</sup> Rights of the Child Arts 6,37, 40

recognition of legal capacity. The Constitution also guarantees protection from arbitrary detention and establishes the right to a fair trial<sup>166</sup>. Finally the constitution recognizes the right of respect of physical integrity and prohibits torture and cruel or inhuman treatment<sup>167</sup>.

## *Enforcement*

*If you fight for a right that they do not agree with, they discriminate against us and they ignore us.—m, 43*

The State of Nicaragua has enacted extensive regulatory and legal mechanisms for the protection of its workforce generally, and agricultural workers specifically. Furthermore, the Labor Code and the Constitution both recognize the state's duty to implement international standards<sup>168</sup>. However, like many developing states, Nicaragua lacks either the capacity or willingness to implement them fully. In the absence of full implementation and enforcement of protections, researchers observed that laws and regulations were violated with seeming impunity and victims of these violations had few options for recourse. The following section examines mechanisms for labor and social protection, reported gaps in enforcement, and responses related to access to justice for those victimized.

## *Inspections*

The Ministry of Labor (MITRAB) has designated two departments responsible for labor inspections: the General Labor Inspectorate, which monitors conditions of work, hours, wages, disciplinary issues, and social security; and the Director General of Hygiene and Security at Work, which monitors occupational health and safety<sup>169</sup>. Inspectorates are organized at the regional, departmental, and municipal level<sup>170</sup>. Labor Inspectors are authorized to conduct several different types of inspection including: 1) agreed upon inspections announced with prior notice to the employer and employees; 2) ordinary inspections performed without prior notice; 3) extraordinary inspections conducted at the request of a party, authority, or the Minister of Labor to investigate a specific situation or complaint; 4) re-inspection to assess compliance after a previously ordered inspection; and 5) special inspections performed by the Labor Inspectorate in areas related to child labor, collective labor rights, trade unions, temporary suspension of

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<sup>166</sup> Nicar. Const. Arts. 33, 34 (1) & (2)

<sup>167</sup> Id at Art 36

<sup>168</sup> Id at Art 46, See also, Labor Code Preliminary Art IX.

<sup>169</sup> [http://www.ilo.org/labadmin/info/WCMS\\_156053/lang--en/index.htm](http://www.ilo.org/labadmin/info/WCMS_156053/lang--en/index.htm)

<sup>170</sup> Ley No. 664, 26 June 2008, Ley General de Inspección del Trabajo [General Work Inspection Law], ch. II, art. 7, L.G. 19 Sept. 2008 (Nicar.),

[http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/58F5F2ED6CAB86C6062574FF0054B96E](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/58F5F2ED6CAB86C6062574FF0054B96E)

employment contracts, and non-payment of minimum wages or social benefits. In the case of violations, inspectors are authorized to advise and recommend measures to promote proper compliance, inform the Institute of Social Security about the situation so that measures may be taken to ensure social protection for affected workers, order the immediate and temporary suspension of work activities, and levy economic sanctions.

As of 2007, inspections conducted by the Ministry of Labor to monitor compliance with occupational illness and accident reporting only covered 6.4% of the working population<sup>171</sup>. According to the US State Department,

*During the first six months of the year, MITRAB reported conducting 1,276 health and safety inspections and registered 6,820 workplace accidents, including 13 registered deaths. In 2011 MITRAB reported 9,942 registered labor accidents and 46 deaths. According to data submitted to the ILO, the government reported that in 2011, labor inspectors conducted 9,749 inspections and 481 reinspections, imposing fines totaling approximately 423,000 cordobas (\$17,700) in 34 cases.*

As of 2010, the rate of labor inspections decreased by 0.4%<sup>172</sup>. Additionally, according to the State Department, the Ministry of Labor lacked the adequate resources to enforce child labor laws. In the first six months of 2012, the Ministry of Labor conducted 2,546 special child labor inspections, resulting in the removal of 759 children under the age of 14 and the identification of 4,509 adolescent workers. The most recent national survey of child labor approximates that there were 239,000 children between the ages of five and 17 working in Nicaragua<sup>173</sup>.

Almost 38% of respondents interviewed had seen a labor inspection taking place at ISA. Respondents had observed inspectors from Institute for Social Security (INSS), the Ministry of Labor, and internal company management. According to these workers, the INSS inspectors inquired about water intake and inspectors from the Labor Ministry investigated hydration, treatment of the workers, and the availability of certain tools. Four workers mentioned that they had been given prior warning before inspections and told to alter their behavior or to bring protective clothing from home.

The State of Nicaragua has not ratified the 1947 Labor Inspection Convention (No. 81) or the 1969 Labor Inspection (Agriculture) Convention (No. 129). However, the preamble to the

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<sup>171</sup> PAHO p512

<sup>172</sup> ILO, Statistical Data by Country [http://www.ilo.org/ilostat/faces/home/statisticaldata/data\\_by\\_country/country-details?\\_afzLoop=44132758149909&country=NIC&\\_adf.ctrl-state=1mw61qoo5\\_171](http://www.ilo.org/ilostat/faces/home/statisticaldata/data_by_country/country-details?_afzLoop=44132758149909&country=NIC&_adf.ctrl-state=1mw61qoo5_171)

<sup>173</sup> U.S. Dept of State, Country Reports on Human Rights Practices for 2012 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper> (last visited Oct. 27, 2013).

General Law of Inspections recognizes that labor inspections must meet the criteria set out in 1947 Labor Inspection Convention<sup>174</sup>

### *Access to Justice*

District Courts, Labor Courts, and the National Labor Court of appeals are empowered to hear cases related to labor rights violations. The newly enacted 2013 Labor and Social Security process code aims to simplify the process of case adjudication while addressing the backlog of labor and social security cases currently facing courts around the country. However, in its present form, the justice system remains difficult for many to access. According to Freedom House, overall, the judiciary suffers from a lack of independence from political influence and corruption<sup>175</sup>. Specifically, those courts which deal exclusively with labor claims suffer from structural deficiencies and issues of impartiality which impeded access to justice for workers. As mentioned earlier, case backlog is a concern, but there issues concerning long wait times and complicated procedures have also been identified<sup>176</sup>. The US State Department claims that MINTRAB boasted of a 98% rate of favorable rulings for workers; however according to the International Labor Organization (ILO), fines were only imposed in 0.84% of cases and that these penalties were not significant enough to prevent violations<sup>177</sup>.

In our study, 75% of respondents felt that their rights were not protected by the justice system. Of these, 40% mentioned that the police were a significant issue, citing corruption, ineffectiveness, and discrimination as major problems. Furthermore, 24% of respondents reported that they had filed a lawsuit of complaint against ISA, and of those, none received an answer. Complaints related to indemnification for contracting CKDu, illegal dismissal, and remuneration. Four respondents also mentioned that they were prevented from bring a claim against ISA by the company or the government. Five respondents claim that they were target by government or police forces for speaking out against the company.

Domestically, the Constitution protects the right of everyone to equal protection under the law<sup>178</sup> and the state protection of their inherent human rights in accordance with international law<sup>179</sup>. In the case of international human rights law, states not only have the obligation to respect the

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<sup>174</sup>Ley No. 664, 26 June 2008, Ley General de Inspección del Trabajo [General Work Inspection Law], L.G. 19 Sept. 2008 (Nicar.), *available at*: [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/58F5F2ED6CAB86C6062574FF0054B96E](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/58F5F2ED6CAB86C6062574FF0054B96E) (last visited Oct. 27, 2013).

<sup>175</sup> Freedom House, Countries at Crossroads: Nicaragua <http://www.freedomhouse.org/report/countries-crossroads/2012/nicaragua> (last visited Oct. 27, 2013).

<sup>176</sup> US Department of State, *Supra* 123

<sup>177</sup> *Id.*

<sup>178</sup> Nicar. Const., Art 27

<sup>179</sup> Nicar. Const., Art 46

rights of citizens, but also to provide a mechanism for redress when those rights are violated. Article 2(3) of the International Covenant on Civil and Political Rights requires States Parties to ensure that 1) a person whose rights have been violated has the right to an effective remedy; 2) any person claiming such a remedy shall have right to have his/her case heard before a competent authority; and 3) competent authorities enforce remedies when granted. General Comment 31 of the Human Rights Committee further elaborates that, in accordance with the obligations enumerated in the Covenant, State Parties must also take appropriate measures to punish investigate or redress harms caused by private persons or entities<sup>180</sup>.

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<sup>180</sup> General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant : . 05/26/2004. CCPR/C/21/Rev.1/Add.13. (General Comments), <http://www.unhcr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f>

# V. Conclusion



Overall, researchers were surprised at the breadth and extent of rights violations impacting sugarcane workers and the communities in which they live. Many of the narrative and qualitative responses given by participants prompted additional questions rather than providing concrete answers. Researchers additionally identified concerning trends in areas related to indigenous rights, child labor practices, financial barriers to care, and environmental contamination, all of which were outside of the scope of this study.

In September of 2013, LIF completed a broader study of working conditions for two sugar mills in western Nicaragua, the results of which will be released next year. We believe this study will provide further insight into the specific challenges facing sugarcane laborers in the workplace and highlight potential risk factors for members of the population most affected by CKDu. Currently, the legal team is also conducting a qualitative survey of child labor practices within two sugar mills which should be completed by December.

Going forward, researchers recommend continued interdisciplinary approaches to research across medical, legal, and scientific disciplines that aim to establish the nature of rights violations and examine their possible connection to increased disease prevalence rates, in an effort to identify alternative approaches to incidence and prevalence reduction.