

REPUBLIC OF PANAMA

LABOR RIGHTS REPORT

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Executive Summary

This report examines the labor laws and practices of the Republic of Panama (Panama). It responds to the requirement of the *Trade Act of 2002* that the President provide a “meaningful labor rights report” concerning each country with which a free trade agreement is under consideration. It focuses on those labor rights identified as internationally recognized labor rights in Chapter 16 of the *United States-Panama Trade Promotion Agreement* (Panama TPA).

In Chapter 16 of the Panama TPA, the United States and Panama reaffirm their obligations as International Labor Organization (ILO) members. Both countries commit to adopt and maintain in law and practice the rights as stated in the *1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up* and agree not to encourage trade and investment by weakening relevant domestic labor laws. Both governments pledge to provide access to judicial tribunals for labor law enforcement; ensure that the enforcement process is fair, equitable, and transparent; and promote public awareness of their labor laws.

Panama’s legal and administrative frameworks for protecting internationally recognized labor rights are presented in Section Two of this report. In addition to an overview of relevant laws, the section summarizes the adjudicative, administrative, and consultative mechanisms available for application and enforcement of labor laws.

The report finds that Panama’s current laws and practices related to internationally recognized labor rights are largely consistent with relevant international standards after Panama took several important, positive steps to improve its labor laws. These changes address issues raised by the U.S. Government in discussions with the Government of Panama. Recent important reforms from 2009-2011 that resolve previous issues are discussed in detail in Section Three and include legislative and regulatory changes concerning:

- Workers’ rights protections in Export Processing Zones, Free Trade Zones, and Call Centers, including an employer’s duty to enter into a collective bargaining agreement, temporary workers’ rights protections, and mandatory conciliation prior to a strike;
- Employer’s duty to enter into a collective bargaining agreement and protections for temporary workers in the Special Economic Area of Barú;
- Enforcement of protections for temporary workers nationwide;
- Employer’s duty to enter into a collective bargaining agreement in companies less than two years in operation;
- Enforcement of maritime workers’ rights to organize, strike, and bargain collectively;
- Enforcement of subcontracted workers’ rights;
- Enforcement of laws prohibiting employer interference in unions, and efforts to prevent related practices;
- Limitations on direct negotiations between employers and non-organized workers; and
- Strike restrictions in essential public services.

Section Four of the report discusses the following Issue of Note:

- *Number of workers required to form a union:* The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has requested that Panama lower the minimum number of workers required by the Labor Code to form labor organizations in both the public and private sectors. Neither the main labor confederations nor the employer groups in Panama have supported lowering this requirement.

Section Five examines other relevant laws governing each of the six internationally recognized labor rights. The Constitution of Panama and the Labor Code provide workers and employers with the right to form unions for economic and social activities, bar discrimination on the basis of a worker's union-related activities, and establish the right to strike in Panama. The Labor Code provides for the right to collective bargaining. The Constitution and the Panamanian Penal Code afford protections against forced labor. The Constitution, Family Code, and Labor Code provide for minimum age for employment. The Labor Code prohibits workplace discrimination on the basis of race, nationality, disability, social class, sex, religion or political ideas. The Constitution calls for a national minimum wage and requires overtime rates to be paid for all work in excess of eight hours per day or 48 hours per week. The Labor Code requires employers to adopt health, safety, and other necessary measures to ensure a safe and clean working environment and to prevent workplace accidents and occupational illnesses and, to these ends, establishes a list of minimum protective and preventative health and safety measures that employers must adopt.

1. Introduction

This report on labor rights in the Republic of Panama has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(8) provides that the President shall:

[i]n connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.¹

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned his responsibilities under section 2102(c)(8) of the Trade Act to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the U.S. Trade Representative (USTR). The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the USTR, and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)).

Pursuant to this mandate, the report examines labor laws and practices in Panama, particularly as they relate to the labor rights identified as internationally recognized labor rights in the definition of “labor laws” under Chapter 16 of the *United States-Panama Trade Promotion Agreement* (Panama TPA).² These rights are:

- a. freedom of association;
- b. the effective recognition of the right to collective bargaining;
- c. the elimination of all forms of forced or compulsory labor;
- d. the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- e. the elimination of discrimination in respect of employment and occupation; and
- f. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Section Two of the report provides an overview of Panama’s legal and administrative frameworks for protecting labor rights, discussing in brief the laws covering labor rights and the mechanisms available to enforce them. Section Three describes several recent positive steps taken by the Government of Panama regarding its labor laws and regulations. Section Four of the report identifies a notable area of concern for the United States Government (U.S. Government), which has also been raised by the International Labor Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR),

¹ The Panama-TPA was signed under the *Trade Act of 2002*, which expired in July 2007.

² Panama TPA, Article 16.9; available from http://ustraderep.gov/assets/Trade_Agreements/Bilateral/Panama_FTA/Final_Text/asset_upload_file403_10354.pdf.

regarding an element of the Government of Panama’s labor law. Section Five examines the relevant laws governing each of the six internationally recognized labor rights noted above.³ A companion report mandated by section 2102(c)(9) of the Trade Act provides information on the extent to which Panama has in effect laws governing exploitative child labor.

³ This report relies on information obtained from Panamanian legal texts, U.S. Department of State reports, the U.S. Embassy in Panama City, a federal Labor Advisory Committee for Trade Negotiations and Trade Policy, international organizations and non-governmental organizations (NGOs). In addition, the report draws on a number of consultations held by U.S. Government interagency teams with Panamanian Government officials, representatives of worker and employer organizations, and NGOs and on a response from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to a *Federal Register* notice published at the outset of negotiations with Panama (U.S. Department of Labor (USDOL), “Request for Information Concerning Labor Rights in Panama and its Laws Governing Exploitative Child Labor,” 69 *Fed. Reg.* 35060 (June 23, 2004)).

2. Overview of Legal and Administrative Frameworks

Panama has labor laws addressing each of the internationally recognized labor rights enumerated in Chapter 16 of the Panama TPA. Panama also has a set of well-developed institutions designed to implement these laws. This section provides a brief overview of the legal and administrative frameworks, discussing the key laws and the primary institutions that exist for their enforcement. Section Five provides a more comprehensive examination of the laws and enforcement mechanisms related to labor rights in Panama.

2.1 Legal Framework for Labor Rights

Labor rights in Panama are set forth in its Constitution, Labor Code, Organic Law of the Panama Canal Authority and other sector-specific legislation, and executive decrees.⁴ Panama has also ratified international labor conventions, including all eight of the ILO fundamental conventions.⁵ The Labor Code is the most comprehensive specification of labor laws and rights in Panama, and it applies to most workers and employers in the national territory.⁶ Public employees are excluded from the Labor Code, except where application is expressly noted.⁷ Labor laws for “administrative career public servants” are contained in the Administrative Careers Act (ACA),⁸ and profession-specific laws for non-administrative career public servants, including for healthcare workers, teachers, police, social security employees, and others, generally build on the ACA. Similarly, labor laws governing employees hired directly by the Panama Canal Authority (*Autoridad del Canal de Panamá*, ACP), the legally autonomous entity that operates the Canal,

⁴ *Constitución Política de la República de Panamá de 1972* (1972 and amended in 1978, 1983, 1993, 1994 and 2004), Article 68; available from <http://pdba.georgetown.edu/Constitutions/Panama/constitucion2004.pdf>.

⁵ ILO, Ratifications by Country, accessed May 24, 2011; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>. The eight fundamental conventions of the ILO are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age for Admission to Employment, and Convention No. 182 on the Worst Forms of Child Labor.

⁶ The original Spanish and an unofficial translated English version of the Labor Code were used in the preparation of this report. The Spanish version is available electronically, but this electronic version is current through 1995 only. The full citation for the Spanish version is: Government of Panama, *Código de Trabajo*, (as amended through 1995); available from <http://www.leylaboral.com/panama/Normaspanama.aspx?bd=47&item=1>. Hereinafter, this version will be cited as *Código de Trabajo*. The English translation contains some notes on interpretation, including notes on how recent legislation (until mid-2005) has further amended the Code. The full citation for the English translation is: Government of Panama, *The Labor Code of the Republic of Panama and Selected Laws and Decrees Relating to Labor*, trans. and annotated by Barry J. Miller and Luis A. Shirley C. (Panama City: Panalaw Press, 2005); hereinafter, *Labor Code* (trans. by Miller and Shirley). When this version influenced substantially the presentation of the subject matter in this report, it is cited as well or instead.

⁷ *Código de Trabajo*, Article 2.

⁸ Government of Panama, *Por la cual se establece y regula la Carrera Administrativa, Ley No. 9*, (1994), as published in *Gaceta Oficial*, No. 22,562 (June 21, 1994), available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. It appears that the rights specified in the ACA that are not explicitly addressed in the profession-specific laws also apply to non-administrative career public servants. See also *Por la cual se establece y regula la Carrera Administrativa*, Article 2. See also U.S. Embassy- Panama City, Written communication in response to USDOL request for updated information (Email communication attachment, August 18, 2008).

are not contained in the Labor Code, but rather are found in the Organic Law of the ACP and elaborated upon in the Regulations on Labor Relations of the ACP.⁹

Other sector-specific laws establish sector-specific rules and requirements beyond those found in the Labor Code. For example, certain labor rights and employment conditions specific to workers engaged at sea and navigable waterways are detailed in Decree Law No. 8 on Maritime Employment (the Maritime Law).¹⁰ In addition, Panama adopted the ILO Consolidated Maritime Labor Convention (MLC) through Law No. 2 of 2009, which commits Panama to implement the provisions of that Convention.¹¹ Certain labor rights and employment conditions for workers in free trade zones (*zonas francas*) are contained in Law 32 of 2011, which creates a special regime for the establishment and operation of free trade zones. Free trade zones include existing export processing zones and some “call centers”.¹² Provisions related to labor rights and employment conditions are also found in separate legislation establishing specific economic zones.¹³ Consultations with officials of the Panamanian Government clarified that where these sector-specific labor laws do not address a particular right or obligation, the Labor Code applies.¹⁴

⁹ Government of Panama, *Por la cual se organiza la Autoridad del Canal de Panama, Ley No. 19* (1997), Articles 94-117, as published in *Gaceta Oficial*, No. 23,309 (June 13, 1997); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. This is referred to as the Organic Law of the ACP; an English translation is available from <http://www.pancanal.com/eng/legal/law/contents.html>. See also Government of Panama, Panama Canal Authority, *Por el cual se aprueba el Reglamento de Relaciones Laborales de la Autoridad del Canal de Panamá, Acuerdo No. 18* (1999); available from <http://www.pancanal.com/esp/legal/reglamentos/acuerdo18.pdf>. See also AFL-CIO, *Panama: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, Washington D.C., August 9, 2004, 8. The system detailed in this legislation includes a Labor Relations Board and an arbitration panel to resolve disputes.

¹⁰ Government of Panama, *Por la cual se reglamenta el trabajo en el mar y las vias navegables y se dictan otras disposiciones, Decreto Ley No. 8* (1998), as published in *Gaceta Oficial*, No. 23,490-A (Feb. 28, 1998); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

¹¹ Government of Panama, *Por la cual se aprueba el CONVENIO SOBRE EL TRABAJO MARÍTIMO, 2006 (MLC), adoptado el 23 de febrero de 2006, por la 94a Reunión (Marítima) de la Conferencia General de la Organización Internacional del Trabajo (OIT), Ley No. 2*, (2009), as published in *Gaceta Oficial Digital*, No. 26,200 (Jan. 13, 2009); available from http://www.gacetaoficial.gob.pa/index.php?id_gaceta=26200. Implications of Law 2 on the Maritime Law are still unknown, but its adoption makes the MLC now enforceable in Panama’s domestic courts, though the Convention has not been ratified by a sufficient number of ILO-member countries to be deemed “in force.”

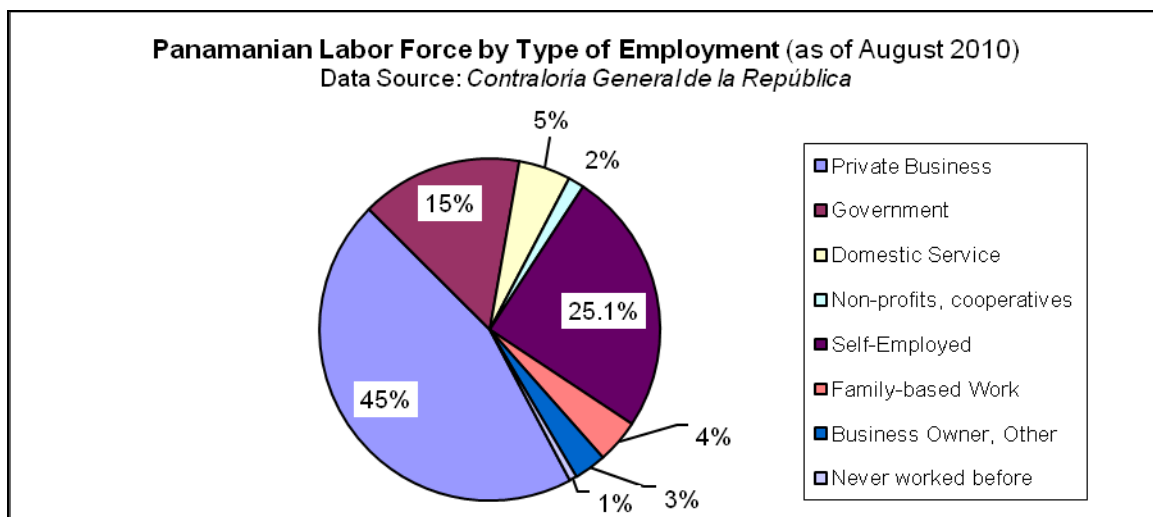
¹² Government of Panama, *Que establece un régimen especial integral y simplificado para el establecimiento y operación de zonas francas y dicta otras disposiciones, Ley 32* (2011), as published in *Gaceta Oficial Digital*, No. 26757-B (April 5, 2011); available from <http://www.gacetaoficial.gob.pa/buscador.php>. See also Government of Panama, *Por la cual se establece un régimen especial integral y simplificado para la creación y funcionamiento de zonas procesadoras para la exportación, Ley No. 25*, (1992) (as amended in 1996 and 1997), as published in *Gaceta Oficial*, No. 22,175 (Dec. 2, 1992); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. See also Government of Panama, *Por el cual se adiciona un artículo a la ley No. 25 de 1992, Por la cual se establece un régimen especial, integral y simplificado para la creación y funcionamiento de zonas procesadoras para la exportación, Decreto Ley No. 3* (1997), as published in *Gaceta Oficial*, No. 23,201 (January 11, 1997). “Call centers” are foreign company-owned operations that provide service and technical support to callers for their respective business services and products abroad.

¹³ Government of Panama, *Que crea un régimen especial para el establecimiento y operación del Área Económica Especial de Barú, Ley 29*, as published in *Gaceta Oficial Digital* No. 26552-B (June 10, 2010); available from <http://www.gacetaoficial.gob.pa/buscador.php>. See also Government of Panama, *Que deroga artículos de la Ley 29 de 2010, del regimen especial para el establecimiento y operación del Área Económica Especial de Barú, Ley 30*, as published in *Gaceta Oficial Digital* No. 26757-A (April 5, 2011); available from <http://www.gacetaoficial.gob.pa/buscador.php>.

¹⁴ U.S. Government consultations with Government of Panama, Washington, D.C., March 31-April 24, 2009. In those consultations, the Government of Panama explained that the Labor Code is a “general rule of law” and that Article 13 of

The Labor Code covers workers with written employment agreements as well as those with oral employment agreements, including notably farmworkers and domestic service workers.¹⁵ However, the Labor Code does not cover persons (nor their respective work agreements) who are engaged in home-based-manufacturing (or elsewhere as chosen by the person) without supervision or direction.¹⁶

According to a Comptroller General, Department of Statistics and Census household survey, as of August 2010 there were an estimated 1,557,047 persons above the age of 15 in the Panama labor force (economically active population). Of these, 67 percent were remunerated (cash or in-kind) employees mostly in private business, the Government, or domestic service. The remaining 33 percent of workers did not receive remuneration from an employer, and were mostly self-employed (see chart below).¹⁷



the Panamanian Civil Code provides that in the absence of a specific rule on a matter, the Constitutional Doctrine as well as the general rules of law and customary practices apply. See also *Código Civil, Ley No. 2 (1916)*, Article 13; available from <http://organojudicial.gob.pa/>. The Panamanian Government also explained that Article 4 of the Labor Code establishes that the provisions of the Code shall have immediate effect and shall apply to all labor relations existing from the date it enters into force, with the exception of norms that explicitly state the contrary. See also *Código de Trabajo*, Article 4. Various sector-specific laws reflect these concepts of legal interpretation.

¹⁵ *Código de Trabajo*, Article 67. Article 67 of the Labor Code designates five types of work that do not require written employment agreements: work in agriculture, domestic service, work of three months or less, work of 200 balboas or less, and certain work in areas with small populations. See also *Decreto Ejecutivo No. 24* (June 5, 2009), Article 4.

¹⁶ *Código de Trabajo*, Articles 62 and 82. A small business law from 1986 specifically excludes these persons from the category of “worker” but does preserve their right to receive social security benefits. See also Government of Panama, *Por la cual se dictan disposiciones laborales para promover el empleo y la productividad y se adoptan otras normas, Ley No. 1* (1986), as published in *Gaceta Oficial*, No. 20,513 (March 17, 1986), Article 7; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

¹⁷ Contraloría General de la República, Instituto Nacional de Estadística y Censo, *Encuesta Continua de Hogares, Estadísticas del Trabajo, Vol. I – Encuesta de Mercado Laboral, agosto 2010*, table 441-13; available from the “Catálogo de Publicaciones” link at <http://www.contraloria.gob.pa/inec/>. The labor force refers to the economically active population. For the definitions of these types of employment, through the same link see “publicaciones y explicaciones” (8). Chart and percentages were compiled by USDOL.

The Comptroller General estimates separately in March 2011 that there are 483,206 non-agricultural informal sector workers.¹⁸ A World Bank study estimates that 40 percent of the Panamanian labor force works in the informal sector (implied as agricultural and non-agricultural), and this may include many persons with oral employment agreements, who are covered by the Labor Code.¹⁹

2.2 Administrative Framework for Labor Rights

2.2.1 Ministry of Labor and Workforce Development

The Ministry of Labor and Workforce Development (*Ministerio de Trabajo y Desarrollo Laboral*, MITRADEL) is responsible for developing and implementing employment policies, promoting harmonious labor relations, and overseeing compliance with labor law in Panama.²⁰

The MITRADEL is divided into a number of functional departments.²¹ The General Directorate for Labor (*Dirección General de Trabajo*) oversees labor relations and seeks to prevent and resolve industrial disputes. It interprets and applies labor rights laws, regulations and rules; seeks to provide conciliation services to help resolve individual and collective conflicts; registers labor contracts; and carries out additional functions as prescribed by law.²² For example, Executive Decree 24 of 2009 directs that either the General or the Regional Directorate for Labor shall request the National Directorate of Labor Inspection to randomly inspect temporary (fixed-

¹⁸ Contraloría General de la República online document [last cited May 4, 2011] “Desempeño de la Economía Panameña” (11); available from http://www.contraloria.gob.pa/archivos_informesdelc/Informe_Contralora1ABRIL2011/01.htm. The source states that these informal workers who are those without social security, do not have a contract, and work in a business of less than 5 people; excluded from this figure are professionals and technicians who are self employed or independent workers.

¹⁹ Guillermo Perry et al., *Informality: Exit and Exclusion*, Washington, D.C.: World Bank, 2007, 29; available from <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:21345369~pagePK:146736~piPK:146830~theSitePK:258554,00.html>. See also ILO, *Key Indicators of the Labor Market*, 6th edition, 2009, Geneva, KILM 7; available from http://www.ilo.org/empelm/what/pubs/lang--en/WCMS_114060/index.htm. Perry et al. do not provide a definition of “informal sector” but state that in the Latin American context it can generally include “unprotected workers, excessive regulation, low productivity, unfair competition, evasion of the rule of law, underpayment or nonpayment of taxes, and work ‘underground.’” (p.21). The 40 percent estimate for Panama reflects the average of three estimated percentages of workers who are: 1.) unskilled self-employed, or salaried workers in a small private firm, or workers with no income; 2.) self-employed workers; and 3.) workers not covered by a pension scheme. (p.29).

²⁰ MITRADEL, *Historia: Antecedentes Históricos*, [online] [cited March 28, 2008]; available from <http://www.mitradel.gob.pa/html/Historia%20de%20Mitradel/HISTORIA.htm>. See also Government of Panama, *Por el cual se dicta la ley orgánica del Ministerio de Trabajo y Bienestar, Decreto de Gabinete No. 249* (1970), as published in *Gaceta Oficial*, No. 16,655 (July 27, 1970), Articles 1-5; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

²¹ MITRADEL, *Estructura Organizativa Actual*, [online] May 2007 [cited May 5, 2008]; available from <http://www.mitradel.gob.pa/html/Estructura/Estructura.htm>. See also *Por el cual se dicta la ley orgánica del Ministerio de Trabajo y Bienestar*, Articles 6-7.

²² Ministerio de Economía y Finanzas, *Manual de Organización del Sector Público de la República de Panamá, XII Edición* (2006), 225-226; available from [https://www.mef.gob.pa/Documentos-Interes/MANUAL%20DE%20ORGANIZACION%202006%20\(NOVIEMBRE%202006%20POST%20PUBLICACIÓN\).pdf](https://www.mef.gob.pa/Documentos-Interes/MANUAL%20DE%20ORGANIZACION%202006%20(NOVIEMBRE%202006%20POST%20PUBLICACIÓN).pdf).

term) contracts.²³ It also provides the procedural framework within which labor inspectors operate and establishes sanctions.²⁴

The General Directorate for Employment (*Dirección General de Empleo*) formulates and implements the Government's employment policies. This Directorate runs a national employment service to disseminate information about available jobs and assist workers with job placement. It also administers an initiative to assist disabled workers and is responsible for approving employment contracts for foreign workers with terms of over three months.²⁵

The Office of International Affairs (*Asesoría de Asuntos Internacionales*) coordinates international technical cooperation projects as well as programs, meetings, and events. The Office also collaborates with the ILO to ensure the effective application of ILO conventions that Panama has ratified.²⁶

Other divisions within the MITRADEL oversee ministry planning, conduct studies on labor issues, direct public relations, and provide legal guidance to the Ministry. The regional work of the MITRADEL is carried out through its nine regional offices.²⁷

2.2.2 Labor Inspectorate

The National Labor Inspectorate (*Dirección Nacional de Inspección del Trabajo*, DNIT) conducts labor inspections to monitor employer compliance with Panama's labor laws. The DNIT includes divisions that specialize in economic issues such as wages, hours and contracts; child labor; occupational safety and health; mine safety; and labor migration. The DNIT also conducts outreach and training to improve conditions in Panama's workplaces and maintains a database on workplace safety and health issues.²⁸ In 2010, there were 116 inspectors employed by the DNIT. They conducted 18,524 inspections, of which 11,150 were initial inspections;

²³ Government of Panama, *Por el cual se toman medidas para asegurar el cumplimiento y el ejercicio de los derechos laborales de los trabajadores y las obligaciones de los empleadores relacionadas con los trabajadores con contratos por tiempo definido*, Decreto Ejecutivo No. 24 (June 5, 2009), Article 1 as published in the *Gaceta Oficial Digital*, No. 26297-A (June 5, 2009); available from <http://www.gacetaoficial.gob.pa/buscadador.php>.

²⁴ MITRADEL, website links to *Dirección Nacional de Trabajo* (same as the *Dirección General de Trabajo*) (then see *Objetivos*) and *Dirección de Inspecciones* regarding the National Directorate of Labor's general authority to impose sanctions and the National Labor Inspectorate's recognition thereof and of its general responsibility to coordinate with other agencies [online] [cited March 10, 2011]; available from <http://www.mitradel.gob.pa/>.

²⁵ MITRADEL, *Dirección General de Empleo*, [previously online] [cited December 13, 2005]; available from <http://www.mitradel.gob.pa/dirgenempleo.asp> [hard copy on file]. See also U.S. Embassy- Panama City, Written communication in response to USDOL request for updated information (Email communication attachment, August 4, 2008).

²⁶ MITRADEL, *Asesoría de Asuntos Internacionales* [online] [cited March 10, 2011]; available from www.mitradel.gob.pa.

²⁷ MITRADEL, *Estructura Organizativa Actual*.

²⁸ MITRADEL, *Dirección Nacional de Inspección del Trabajo Antecedentes*, [previously online] [cited December 15, 2005]; available from <http://www.mitradel.gob.pa/INSPECCION/reseña.htm> [hard copy on file]. See also U.S. Embassy- Panama City, Written communication August 4, 2008.

5,177 inspections were conducted in response to requests; and 2,197 were re-inspections. Information on the number of citations issued was not provided.²⁹

When the workplace is a Panamanian-flagged ship, DNIT inspectors must first coordinate with the Panamanian Maritime Authority (*Autoridad Marítima de Panamá, AMP*), which has equal inspection authority within its area of competence as the DNIT, before inspections can occur.³⁰ The AMP is tasked with processing and inspecting all complaints of labor law violations alleged to have occurred on board national fishing boats, ships or other vessels, or on international Panamanian-flagged vessels worldwide.³¹ Panama has registered the most vessels in the world (eight percent, followed by Liberia with two percent).³² The DNIT is authorized to impose sanctions for labor law violations on all docked vessels, while the AMP's General Directorate of the Merchant Marine is authorized to impose such sanctions for vessels at sea.³³ In 2010, the AMP's Department of Labor Affairs attended to 28 complaints in national waters.³⁴ (See Section Five for more details on maritime labor issues.)

2.3 Conciliation Services and the Labor Justice System

Workers have the right to petition the labor justice system to make determinations on any matter in which they have an interest and to which the Labor Code or other labor law applies.³⁵ The MITRADEL supports the labor justice system through its National Directorate for Free Assistance and Representation to Workers (*Dirección de Asesoría y Defensa Gratuita a los Trabajadores, DADGT*), which provides free legal representation for Panamanian workers involved in claims before judicial and administrative authorities.³⁶

The labor justice system in Panama is composed of specialized courts and tribunals. Most cases begin in one of Panama's 19 Conciliation and Decision Boards (*Juntas de Conciliación y Decisión, JCD*). These boards adjudicate cases related to unjust dismissals, claims with an initial

²⁹ MITRADEL Official, Written communication to U.S. Embassy-Panama City Official in response to USDOL request for updated information (Email communication attachment, April 29, 2011, U.S. Embassy-Panama City), 3.

³⁰ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 3. The MITRADEL notes that the DNIT and AMP share and coordinate information as appropriate. See also, MITRADEL Official, Written communication to U.S. Embassy-Panama City, May 26, 2005.

³¹ U.S Embassy-Panama City, Email communication, April 4, 2007. See also Government of Panama, *Por la cual se reglamenta el trabajo en el mar y las vías navegables*, Articles 1 and 115.

³² United Nations Conference on Trade and Development Secretariat, *Review of Maritime Transport 2010*, Switzerland, 42-43; available from http://www.unctad.org/en/docs/rmt2010_en.pdf. The source states that as of January 2010, Panama continued to be the largest flag of registration of the world fleet, carrying 23 percent of global deadweight tonnage.

³³ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 3.

³⁴ *Ministerio de Comercio e Industrias (MICI)*, Office of the Vice Minister of International Trade Negotiations, Written communication to USTR Official in response to request for information (Email communication attachment, March 9, 2011, USTR).

³⁵ *Código de Trabajo*, Article 527.

³⁶ MITRADEL, *Departamento de Asesoría Legal Gratuita para las Víctimas del Delito*, [online] [cited May 12, 2008]; available from http://www.organojudicial.gob.pa/index.php?option=com_content&task=view&id=4488&Itemid=232. See also Panamá Tramita, *Ministerio de Trabajo y Desarrollo Social*, [online] [cited August 6, 2008]; available from http://www.panamatramita.gob.pa/guiaGob_det.php?idInst=TRA.

value of 1,500 balboas (\$1,500 USD) or less and all complaints filed by domestic workers.³⁷ Each board includes a representative of labor unions, employer organizations, and the Government, with the government representative presiding over hearings.³⁸ The boards are administered by the MITRADEL's Directorate of Conciliation and Resolution (*Dirección de las Juntas de Conciliación y Decisión*).³⁹ In 2010, the JCDs held 1,481 hearings, which resulted in 1,059 rulings and 377 conciliations.⁴⁰

Sectional Labor Courts (*Juzgados Seccionales de Trabajo*) handle most labor-related claims that do not involve unjust dismissal and all claims with an initial value of over 1,500 balboas.⁴¹ They also are authorized to hear cases referred to them by the JCDs when the losing party refuses to comply with a board's decision.⁴² In 2008, a total of 1,306 cases were filed with these courts.⁴³ Panamanian officials indicated that they do not maintain statistics on the resolution of these cases.⁴⁴

The Supreme Labor Court (*Tribunal Superiores de Trabajo*, TST) functions as the final appellate body for labor cases and is one of the three chambers of the Supreme Court of Justice.⁴⁵ According to MITRADEL, the Supreme Labor Court also has appellate jurisdiction over JCD cases, which may be appealed directly to the Supreme Labor Court.⁴⁶ The TST hears appeals from the sectional courts through its branches in Panama City and Santiago de Veraguas.⁴⁷ In 2010, 280 appeals were filed, of which 152 decisions were confirmed, 39 were revoked, 24 were modified, 11 were nullified, and two had the application stopped.⁴⁸ The TST is also responsible for naming the judges who serve in sectional labor courts.⁴⁹

Special Courts for Children and Adolescents (*Juzgados Seccionales de Niñez y Adolescencia*) have been established in Panama to deal with cases related to children's rights and welfare,

³⁷ Government of Panama, *Por medio de la cual se crean dentro de la jurisdicción especial de trabajo las juntas de conciliación y decisión*, Ley 7 (1975), as published in *Gaceta Oficial*, No. 17801 (March 18, 1975), Article 1; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. Panama's currency is dollar-based (a 1:1 ratio); we therefore do not provide hereafter the dollar equivalent amount when Panamanian balboas are noted. See <https://www.cia.gov/library/publications/the-world-factbook/geos/pm.html>.

³⁸ *Ibid.*, Article 2.

³⁹ *Ibid.*, Article 18. See also Government of Panama, *Que adiciona el Título XVII, sobre Jurisdicción Laboral, al Libro Primero del Código Judicial y dicta otra disposición*, Ley No. 59, (2001), as published in *Gaceta Oficial*, No. 24,447 (December 7, 2001), Article 460-L (Parágrafo); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁴⁰ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 4.

⁴¹ Órgano Judicial de la República de Panamá, *Jurisdicción de Trabajo*, [online] [cited August 26, 2008]; available from http://www.organismojudicial.gob.pa/index.php?option=com_content&task=view&id=5509&Itemid=438.

⁴² Government of Panama, *Creación de las Juntas de Conciliación y Decisión*, Ley No. 7, Article 14; available from <http://www.levlaboral.com/panama/Normaspanama.aspx?bd=47&item=227>.

⁴³ Ministry of Foreign Relations (*Ministerio de Relaciones Exteriores*, MRE) Official, Written communication to U.S. Embassy-Panama City Official in response to USDOL request for updated information (Email communication attachment, April 23, 2009, U.S. Embassy-Panama City).

⁴⁴ Órgano Judicial as cited by U.S. Embassy- Panama City, Written communication, August 4, 2008.

⁴⁵ *Código de Trabajo*, Article 1064. See also *Labor Code* (trans. by Miller and Shirley), footnote 348. See also Jorge Molina Mendoza, "Commercial Litigation in Panama," *Global Arbitration Review* [online] 2008 [cited August 26, 2008]; available from <http://www.globalarbitrationreview.com/handbooks/4/sections/8/chapters/56/panama>.

⁴⁶ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 4.

⁴⁷ Órgano Judicial de la República de Panamá, *Jurisdicción de Trabajo*.

⁴⁸ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 4.

⁴⁹ Órgano Judicial de la República de Panamá, *Jurisdicción de Trabajo*.

including cases involving child labor. Appeals relating to these cases are heard by the Supreme Court of Child and Adolescent Issues (*Tribunal Superior de Niñez y Adolescencia*).⁵⁰

Law No. 12 of 2009 provides procedures for Maritime Courts and arbitration procedures that, among other things, address all compensatory claims for maritime workplace accidents caused by an employer. All other labor matters are the responsibility of the general labor courts.⁵¹ The Maritime Law mandated in 1998 the establishment of two specialized maritime labor courts (*Juzgados Laborales Marítimos*) responsible for settling matters related to work at sea and in navigable waterways.⁵² However, these courts have not been established.⁵³

2.3.1 The Panama Canal Authority

The Organic Law of the ACP establishes a Labor Relations Board to oversee labor relations between the ACP and workers involved in the operation of the Canal and employed by the ACP. The members are designated by the President of the Republic from lists provided by the ACP and the workers' union representatives.⁵⁴ In labor relations matters involving the ACP, the Board has sole responsibility for resolving collective bargaining disputes, deciding claims of unfair labor practices, certifying appropriate bargaining units and recognizing representatives of labor organizations.⁵⁵ Decisions of the Board may not be appealed unless they are in conflict with the Organic Law; in such cases, the appeal must be brought before the Administrative Disputes Section of the TST, whose decision is binding.⁵⁶

Each collective bargaining agreement in the Canal sector must specify grievance procedures, including arbitration and alternate dispute resolution techniques.⁵⁷ Only the exclusive union representative or the ACP may invoke arbitration,⁵⁸ and such decisions may be appealed to the TST.⁵⁹

The jurisdiction of the Organic Law of the ACP over labor relations in the Canal does not extend to employees of contractors providing goods and services to the ACP. The Labor Code applies to such workers.⁶⁰ A recent example of a project contracted by the ACP is the expansion of the

⁵⁰ Órgano Judicial de la República de Panamá, *Jurisdicción de Niñez y Adolescencia*, [online] [cited August 6, 2008]; available from http://www.organojudicial.gob.pa/index.php?option=com_content&task=view&id=5505&Itemid=440.

⁵¹ Government of Panama, *Que Reforma la Ley de 1982 y Dicta Normas de Procedimiento Marítimo* (January 22, 2009), Article 15; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁵² *Por la cual se reglamenta el trabajo en el mar y las vías navegables*, Articles 121-128.

⁵³ In 2008, the ILO CEACR noted the continued absence of these courts, but also noted that disputes between ship owners and crew members may be submitted to the AMP, which has general authority over maritime matters, including the issuance of final decisions on claims and complaints brought before it. International Labor Conference, *2008 Report of the CEACR*, 673; available from http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf. See also Government of Panama, *Organic Law of the Panama Maritime Authority 1998*, Articles 4, 8 and 18(13); available from <http://www.amp.gob.pa/newsite/english/law7.pdf>.

⁵⁴ *Organic Law of the ACP*, Article 111. The article uses the term “exclusive representative” instead of “union representative;” however, Articles 95 and 97 indicate that an exclusive representative is envisioned to be a union representative.

⁵⁵ *Ibid.*, Article 113.

⁵⁶ *Ibid.*, Article 114.

⁵⁷ *Ibid.*, Article 104.

⁵⁸ *Ibid.*, Article 106.

⁵⁹ *Ibid.*, Article 107.

⁶⁰ U.S. Embassy-Panama, Email communication, February 13, 2008.

Canal. Law 28 of 2006 stipulates that all work related to the expansion and the construction of a third set of locks in the Canal is to be contracted out and subject to the Constitution and all related labor laws and regulations.⁶¹ For the 2010-2011 period (as of February 2011), the MITRADEL reports that it has registered 1,205 subcontractor contracts for the Canal expansion. The MITRADEL verifies for compliance the labor contracts in the Canal expansion zone for both national and foreign workers.⁶²

⁶¹ Government of Panama, *Que aprueba la propuesta de construcción del tercer juego de esclusas en el Canal de Panamá, sometida por el Órgano Ejecutivo, y dicta otras disposiciones, Ley No. 28* (July 2006), as published in *Gaceta Oficial*, No. 25,590 (July 18, 2006), Article 4; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁶² MICI, Office of the Vice Minister of International Trade Negotiations, Written communication to USTR Official in response to request for information (Email communication attachment, April 25, 2011, USTR).

3. Recent Developments in Resolving Issues of Note

The labor laws of the Republic of Panama are largely consistent with international standards governing the internationally recognized labor rights articulated in Chapter 16 of the Panama TPA. This has been achieved in part through several recent legislative and regulatory improvements to ensure protection for workers' rights to freedom of association, collective bargaining and other rights. Several of these changes address concerns that the U.S. Government raised during discussions with the Government of Panama in the context of the Panama TPA. This section discusses the most significant of those changes.

3.1 Workers' Rights Protections in Export Processing Zones, Free Trade Zones and Call Centers

The general law governing export processing zones (EPZs) exempted EPZ workers and workers from some call centers from Labor Code protections for collective bargaining, limited protections for temporary workers, and undermined these workers' right to strike.⁶³ A new Free Trade Zone (FTZ) law (Law 32 of 2011) replaces the general EPZ law and remedies such concerns.⁶⁴ According to the U.S. Department of State, in 2010 there were approximately 2,790 employees in EPZs and 8,830 employees in those call centers that had been subject to the EPZ law.⁶⁵ There are currently 89 businesses in Panama's 14 EPZs.⁶⁶

3.1.1 Employer Duty to Bargain Collectively

Prior to passage of Law 32, EPZ employers were exempted from the obligation to enter into collective bargaining agreements with unions, a duty that is established in the Panamanian Labor Code for employers elsewhere in the economy.⁶⁷ The exemption was repealed by the new FTZ law,⁶⁸ and now all collective bargaining provisions of the Labor Code apply to EPZ employers,

⁶³ *Por la cual se establece un régimen especial, integral y simplificado para la creación y funcionamiento de zonas procesadoras para la exportación* (1992).

⁶⁴ *Que establece un régimen especial integral y simplificado para el establecimiento y operación de zonas francas, Ley 32*, Articles 78. Law 32 establishes a comprehensive, simplified special system for establishing and operating FTZs, similar to the system established in the general EPZ law. Article 13 of Law 32 defines FTZs as free enterprise zones that are specifically demarcated and within which all infrastructure, installations, buildings, systems and support services are provided, along with the necessary operational organization and administrative management, so as to attract businesses from abroad. Articles 67, 70 and 74 also appear to call for the redesignation of all former EPZs in Panama as FTZs, but the precise legal status of call centers is still pending.

⁶⁵ Hereinafter, when this Report refers to EPZ employers or workers, it includes those of call centers that were covered by the EPZ law. There were additional workers (number unknown) in call centers that were registered with the Public Services Authority and which were *not* covered by the general EPZ law. See also, Department of State, "Panama," in *Country Reports on Human Rights Practices – 2010*, Section 7b, Washington, D.C., April 8, 2011; available from <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/index.htm>.

⁶⁶ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 6.

⁶⁷ *Decreto Ley No. 3* (1997), Article 49-A, Section B (9). *Código de Trabajo*, Article 401.

⁶⁸ *Que establece un régimen especial integral y simplificado para el establecimiento y operación de zonas francas, Ley 32*, Article 78.

including the requirement to enter into a collective bargaining agreement with a legally recognized union.⁶⁹

3.1.2 Minimum Period for Mandatory Conciliation Prior to a Strike

The 1992 EPZ law affirmed workers' right to strike but required employers and workers to attempt conciliation for a minimum of 36 days prior to a strike declaration.⁷⁰ Labor groups claimed that this mandatory conciliation period was excessive and constituted an undue restriction on the right to strike.⁷¹ Although the ILO has not determined an appropriate period of conciliation prior to a strike, it has observed that any such period should be "speedy."⁷² Mandatory conciliation in the EPZs was more than twice that required in the rest of Panama's economy. Law 32 repeals the 36 day conciliation provision⁷³ and affirms that EPZ and FTZ workers have the same right to strike as provided to other workers in the Labor Code, which requires conciliation for a minimum of 15 days before workers can strike.⁷⁴

3.1.3 Protections for Temporary Workers

The 1992 EPZ law exempted temporary workers in EPZs from the protections granted to other temporary workers in Article 77 of the Labor Code during the first three years of their employment relationships.⁷⁵ Temporary workers in EPZs were generally in a more vulnerable position than permanent workers, and faced challenges in exercising the rights of freedom of association and collective bargaining. The ILO has commented on the vulnerability of temporary workers generally, noting that such workers "[s]hould they wish to carry out trade union activities . . . could find themselves in a more vulnerable position than others by reason of their precarious status."⁷⁶ Law 32 repealed the exemption in the 1992 EPZ law from the Labor Code's protections for temporary workers, thereby making Article 77 applicable to temporary workers in the EPZs and FTZs on the same terms as elsewhere in the economy.⁷⁷ Generally, the Labor Code permits a temporary contract to be valid for up to one year and allows successive temporary contracts for a total of no more than two years (see Article 77-A below).⁷⁸ Article 77 prohibits the successive use of temporary contracts (also called "definite" or "fixed term" contracts) to conceal permanent ("indefinite") employment relationships and bans the use of temporary workers to perform the same work or specified tasks for which they were originally

⁶⁹ *Código de Trabajo*, Article 401. *Decreto Ley No. 3* (1997), Article 49-A, Section B(9).

⁷⁰ *Decreto Ley No. 3* (1997), Article 49-A, Section B(11-15). Although the text of this report refers to the 1992 EPZ law, the amending legislation will be cited where appropriate. See also *Por la cual se establece un régimen especial, integral y simplificado para la creación y funcionamiento de zonas procesadoras para la exportación* (1992), Article 55.

⁷¹ See Annual Survey of Violations of Trade Union Rights, 2009, Panama, available at <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=PAN&Lang=EN>.

⁷² See generally ILO *Digest of Decisions and Principles of the Freedom of Association Committee*, para. 551.

⁷³ *Que establece un régimen especial integral y simplificado para el establecimiento y operación de zonas francas, Ley 32*, Article 78.

⁷⁴ *Ibid.*, Article 55. See also *Código de Trabajo*, Article 443.

⁷⁵ *Por la cual se establece un régimen especial, integral y simplificado para la creación y funcionamiento de zonas procesadoras para la exportación* (1992), Article 17.

⁷⁶ ILO, 1994 *General Survey, Freedom of Association and Collective Bargaining*, para. 209.

⁷⁷ *Que establece un régimen especial integral y simplificado para el establecimiento y operación de zonas francas, Ley 32*, Article 78.

⁷⁸ *Código de Trabajo*, Articles 74 and 77-A. Successive contracts can occur for two years only if the work activity is for a new company or for new activities.

contracted after their contracts have expired. The Labor Code establishes that violations will result in permanent employment relationships for affected workers.⁷⁹

3.2 Collective Bargaining Rights and Protections for Temporary Workers in the Special Economic Area of Barú

Law 29 of 2010 established the Special Economic Area of Barú (SEAB) and provided incentives to employers to promote economic development in the region. The law exempted SEAB employers during the first six years of company operations from Labor Code obligations to enter into collective bargaining agreements, and exempted SEAB workers from certain protections for temporary workers. These provisions would have limited SEAB workers' collective bargaining rights and the right to strike. Law 30 of April 2011 repealed both of these exemptions, and now the Labor Code applies fully in the SEAB.⁸⁰

3.2.1 Employer Duty to Bargain Collectively

Prior to passage of Law 30 of 2011, Law 29 exempted SEAB employers, except for construction firms, during the first six years of company operations from the Labor Code duty to enter into collective bargaining agreements with legally recognized unions.⁸¹ The CEACR had stated that the discretion to deny collective bargaining requests in the SEAB “could imply in practice a denial of the right to collective bargaining” and had requested the Government “to repeal [Article] 7 of [Law] No. 29 of 29 June 2010 and to safeguard fully the right to collective bargaining of the workers in question.”⁸² Under Law 30 of 2011, Article 7 was repealed, and the relevant Labor Code provisions apply, thus requiring employers to enter into collective bargaining agreements with legally recognized unions.⁸³

3.2.2 Protections for Temporary Workers

Law 29 also denied temporary workers in the SEAB the protections in Article 77 of the Labor Code during the first three years of their employment by a SEAB company,⁸⁴ just as the former EPZ law had done for temporary EPZ workers. (See Section 3.1.3 on EPZs and FTZs.) Temporary workers could therefore be in a more vulnerable position in the SEAB than elsewhere in the economy, including if they attempted to exercise their right to freedom of association.⁸⁵

⁷⁹ Ibid., Article 77.

⁸⁰ *Que deroga artículos de la Ley 29 de 2010, del régimen especial para el establecimiento y operación del Área Económica Especial de Barú, Ley 30.* Note that this law from 2011 is not the same as Law 30 of 2010 (referred to in Section Three) which amends the Labor Code and other laws.

⁸¹ *Que crea un régimen especial para el establecimiento y operación del Área Económica Especial de Barú, Ley 29,* Article 7. See also *Código de Trabajo*, Article 401.

⁸² International Labor Conference, *2011 Report of the CEACR*, 134.

⁸³ *Que deroga artículos de la Ley 29 de 2010*, Article 1.

⁸⁴ *Que crea un régimen especial para el establecimiento y operación del Área Económica Especial de Barú, Ley 29,* Article 17.

⁸⁵ The U.S. Department of State for several years has raised concerns that temporary contracts were being used nationwide to circumvent labor law protections. See U.S. Department of State, “Panama,” in *Country Reports on Human Rights Practices – 2009*, Section 7b, Washington, D.C., March 11, 2010; available from <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136121.htm>. U.S. Department of State, “Panama,” in *Country Reports on*

Law 30 of 2011 repeals this provision, making Article 77 protections applicable to temporary workers in the SEAB.⁸⁶

3.3 Enforcement of Protections for Temporary Workers Nationwide

As noted above, temporary workers are generally in a more vulnerable position than permanent workers. Prior to 2010, the U.S. Department of State and labor groups expressed concerns that enforcement of Labor Code protections for temporary workers was not sufficiently robust and that employers were taking advantage of temporary workers in violation of the Labor Code.⁸⁷ In 2009, the Government of Panama issued two Executive Decrees to improve enforcement of Labor Code protections for temporary workers. Executive Decree 19 regulates Article 77-A of the Labor Code, which exempts for two years “new companies” and “new activities” from Article 77 limitations on the use of successive temporary contracts. The Decree requires employers to submit objective proof that they qualify for the Article 77-A exemption when registering a contract with the MITRADEL (registration is required by law for all written employment contracts).⁸⁸ For a new activity, employers must include a clause in each temporary contract describing the new activity. Employers must also acknowledge in each contract that if their justification for temporary status is not confirmed, the worker in question will be deemed permanent from the time he or she was first hired.⁸⁹ In addition, the Government reports, that the Department must receive a complaint in order for an inspection of the contract to occur and to verify the clause regarding a new activity. The Department of General Labor Inspection (within the Labor Inspectorate) is the unit that inspects such contracts for compliance with this Article and Decree, and its inspection forms have now been updated to reflect the mandate of this Decree.⁹⁰ The MITRADEL reports that in 2010, it attended to 2,607 complaints related to Article 77-A violations.⁹¹

Executive Decree 24 requires the MITRADEL to take specific steps to improve oversight of employers’ use of temporary contracts. The Decree requires that the MITRADEL conduct

Human Rights Practices – 2008, Washington D.C., February 25, 2009, Section 6b; available from <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119168.htm>. See also ICFTU, *Panama: Annual Survey of Violations of Trade Union Rights (2004)*, 126.

⁸⁶ *Que deroga artículos de la Ley 29 de 2010*, Article 2.

⁸⁷ U.S. Department of State, “Country Reports – 2010: Panama,” Section 7b. For example, due to provisions in laws that make it difficult to fire employees who have worked two years or more, employers frequently hired workers for one year and 11 months and subsequently laid them off. In the case of lower-skilled service workers, it is reportedly common for employers to repeatedly hire staff on three-month contracts, sometimes lay them off for a month and then rehire them to avoid union organizing. See also ICFTU, *Panama: Annual Survey of Violations of Trade Union Rights (2004)*, 126.

⁸⁸ *Por el cual se reglamenta el artículo 77-A del decreto de gabinete No. 252 de 30 de diciembre de 1971 (Código de Trabajo) Decreto Ejecutivo No.19* (May 20, 2009), Article 2, as published in the *Gaceta Oficial Digital*, No. 26285-A (May 20, 2009); available from <http://www.gacetaoficial.gob.pa/buscador.php>. See also *Código de Trabajo*, Articles 67 and 77-A. Article 67 requires employers to register a copy of all written employment contracts with the MITRADEL.

⁸⁹ *Decreto Ejecutivo No.19* (May 20, 2009), Articles 1 and 3. See also *Código de Trabajo*, Article 75.

⁹⁰ MICI, Office of the Vice Minister of International Trade Negotiations, Written communication to USTR Official in response to request for information (Email communication attachment, March 9, 2011, USTR). The Department reports that the majority of complaints it receives concern workers who are hired for six months and then are given a new contract for another six months in another branch of the same establishment but for the same economic activity.

⁹¹ MICI, Office of the Vice Minister of International Trade Negotiations, Written communication to USTR Official in response to request for information (Email communication attachment, April 25, 2011, USTR).

targeted inspections of companies that use temporary workers to ensure compliance with Article 77. It also requires inspectors to conduct a random sampling of all temporary contracts received by the MITRADEL to verify compliance. The Decree mandates that the General Directorate of Labor establish a mechanism for receiving oral and written complaints of labor law violations, including a timeframe for investigating and issuing a response to a complainant. It requires a free telephone hotline for employers and workers that offers advice and receives complaints regarding non-compliance with the Labor Code.⁹² Lastly, the Decree instructs the Panamanian Institute of Labor Studies (*Instituto Panameño de Estudios Laborales*, IPEL) to include within its annual workplan the dissemination of labor rights information for temporary workers, with special attention to workplaces and situations where the Labor Code does not require a written contract between the parties.⁹³

3.4 Employer Duty to Enter Into Collective Bargaining Agreements in Companies less than Two Years in Operation

A provision of Law 8 of 1981 had exempted employers nationwide from entering into collective bargaining agreements during the first two years of a company's operation, except for construction firms.⁹⁴ Employers could thus deny worker organizations collective bargaining rights during that period. The new FTZ law repealed this provision in Law 8,⁹⁵ and now all Panamanian companies, regardless of how long they have been in operation, must comply with the Labor Code obligation to conclude collective bargaining agreements with legally recognized unions.

3.5 Enforcement of Maritime Workers' Rights

Prior to 2006, Article 75 of the Maritime Law exempted ship owners from the Labor Code obligation to enter into collective bargaining agreements with unions.⁹⁶ In 2006, the Panamanian Supreme Court ruled that this provision infringed on workers' constitutional rights to freely associate and to strike and affirmed these rights for workers on Panamanian-flagged vessels at

⁹² Government of Panama, *Por el cual se toman medidas para asegurar el cumplimiento y el ejercicio de los derechos laborales de los trabajadores y las obligaciones de los empleadores relacionadas con los trabajadores con contratos por tiempo definido*, Decreto Ejecutivo No. 24 (June 5, 2009), Article 1 as published in the *Gaceta Oficial Digital*, No. 26297 (June 5, 2009); available from <http://www.gacetaoficial.gob.pa/buscadador.php>.

⁹³ As noted earlier, Article 67 of the Labor Code designates five types of work that do not require written employment agreements: work in agriculture, domestic service, work of three months or less, work of 200 balboas or less, and certain work in areas with small populations. *Decreto Ejecutivo No. 24* (June 5, 2009), Article 4.

⁹⁴ Government of Panama, *Por la cual se deroga la Ley 95 de 31 de diciembre de 1976 (Por la cual se modifican algunos artículos del Código de Trabajo) y se dictan otras disposiciones*, Ley 8 (April 30, 1981), Article 12, as published in *Gaceta Oficial*, No. 19310 (May 5, 1981); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁹⁵ *Que establece un régimen especial integral y simplificado para el establecimiento y operación de zonas francas*, Ley 32, Article 78.

⁹⁶ Supreme Court of Panama, case #036-01, October 2, 2006. See also U.S. Embassy-Panama City, *reporting*, February 23, 2007.

sea and on navigable waterways.⁹⁷ As indicated by the ILO, the Maritime Law provision in practice led to employers’ refusal to negotiate collective agreements with workers.⁹⁸ Ministerial Resolution DH 126-2010 (2010) was issued to help safeguard maritime workers’ rights to organize, bargain collectively and strike.⁹⁹ The Resolution is consistent with and helps give effect to the 2006 Supreme Court decision and the protection of fundamental labor rights.

The Resolution mandates that the MITRADEL, through its General or Regional Directorate of Labor and in coordination with the National Directorate of Labor Inspection, take steps to improve protection of maritime workers’ right to freedom of association. The Resolution calls on the MITRADEL to create a mechanism to receive maritime workers’ complaints of labor law violations, including freedom of association issues, and a timeframe for investigating those complaints and issuing responses.

The Resolution also calls on the MITRADEL to establish a free phone line, through which workers can file such complaints and workers and employers can obtain advice and information.¹⁰⁰ The Resolution also tasks the IPEL with training maritime workers and employers on workers’ rights to organize, bargain collectively and strike.¹⁰¹ According to data from IPEL, in 2010 it provided training to 1,932 people at 26 events in Panama; information on the types of workers served was not provided.¹⁰²

Free 3-1-1 Phone Line to File Complaints

Since October 2010, the Government of Panama has piloted a free, 24-hour phone line (3-1-1) and website through which all individuals and organizations, including workers, unions, businesses, citizens and non-citizens, may file complaints and suggestions about labor issues (among other matters) and receive advice. Labor matters are referred as appropriate to the DNIT (MITRADEL). Between December 14, 2010 and April 25, 2011, the DNIT reports the following:

3-1-1 Complaints Sent to DNIT and Results

DNIT Department	Complaints	Sanctions
Labor	160	47
Migration	43	22
Safety & Health in Construction	8	3
Minors	2	0
Total	213	72

Source: MITRADEL, DNIT 311 Statistics Monitoring Program.

3.6 Enforcement of Subcontracted Workers’ Rights

Although Panama’s Labor Code provides protections against the illegitimate use of subcontracting to undermine workers’ right to organize, the ILO’s Committee on Freedom of Association (CFA) and workers’ groups raised concerns that mechanisms to enforce those

⁹⁷ *Constitución Política de la República de Panamá*, Articles 68 and 69. See also *Código de Trabajo*, Article 401. See also Supreme Court of Justice, Panama, *case #036-01*, October 2, 2006.

⁹⁸ International Labor Conference, *2007 Report of the CEACR*, 135-137.

⁹⁹ MITRADEL, *Por la cual se toman medidas para asegurar el cumplimiento de los derechos laborales de los trabajadores marítimos*, *Resolución Ministerial No. DH 126-2010* (April 19, 2010).

¹⁰⁰ *Ibid.*, Articles 1, 2, and 3. Source of information on 3-1-1 program: MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011. Begun in 2010, a 3-1-1 phone and web-accessible service for complaints began; it is unknown the extent to which particular types of workers are using this service. The direct website is to the *Centro de Atención Ciudadana*; available from <http://www.311.gob.pa/>. (See “Acerca de 3-1-1” and “[¿Para qué es el 311?](#)”.)

¹⁰¹ *Por la cual se toman medidas para asegurar el cumplimiento de los derechos laborales de los trabajadores marítimos*, Articles 1, 2, and 3.

¹⁰² IPEL, Written communication to U.S. Embassy-Panama City, April 29, 2011, 8.

protections were insufficient to prevent improper use of subcontracting to discourage such workers from union activities. The CFA cautioned that in some circumstances, subcontracting may be used as a way to evade in practice the rights of these workers to freedom of association and collective bargaining.¹⁰³ Executive Decree 17 of 2009 reinforces existing Labor Code protections for subcontracted workers by requiring that subcontracts include a provision setting out the obligation of subcontractors to comply with the Labor Code, while specifying that both the contractor and subcontractor remain jointly liable for subcontractor obligations to workers.¹⁰⁴ The Decree also requires regular targeted inspections of places where subcontracting is prevalent to ensure appropriate use of subcontractors,¹⁰⁵ and to prevent them from being used to substitute for permanent workers.¹⁰⁶ The Decree also empowers the National Directorate of Labor Inspection to summon users of subcontracted labor to verify their compliance with the Decree's labor obligations and provides that the Directorate may pursue administrative sanctions for violations.¹⁰⁷

3.7 Enforcement of Laws Prohibiting Employer Interference in Unions

Employer interference with union activity through employer direction or domination of unions undermines the right of freedom of association by denying workers' autonomy for their organizations. As expressed by the ILO, workers' organizations should have total independence from employers in exercising their activities.¹⁰⁸ Although Panama's Labor Code recognizes this principle and specifically bans employer interference in union activity,¹⁰⁹ there were concerns that existing mechanisms were insufficient to ensure effective enforcement of the law. Executive Decree 27 of 2009 seeks to reinforce the applicable Labor Code provisions by requiring labor inspectors to carry out inspections in response to alleged violations.¹¹⁰ It also requires the General Directorate of Labor or the Regional Directorates of Labor, with the support of the National Directorate of Labor Inspection, to establish a program to receive and respond to workers' and union leaders' complaints of employer interference and to specify a timeframe for

¹⁰³ ILO CFA, *Report 355 (November 2009)*, para. 625.

¹⁰⁴ Government of Panama, *Por el cual se reglamenta e Artículo 89 del Decreto de Gabinete No. 252 de 30 de diciembre de 1971 (Código de Trabajo) y se toman medidas en relación con los subcontratistas*, Decreto Ejecutivo No. 17 (May 20, 2009), as published in the *Gaceta Oficial Digital* No. 26285-A; available from <http://www.gacetaoficial.gob.pa/buscador.php>. See also *Código de Trabajo*, Articles 63, 82, 87, 89, 90, 94, and 95. Examples of criteria that an employer must meet to legally subcontract a worker include, among other things, 1.) ownership of the required capital, equipment, management and financial resources to carry out the work or service agreed to; and, 2.) the ability to meet all labor obligations binding employers with respect to the workers they hire. See Section Five for more details.

¹⁰⁵ *Ibid.*, Article 2.

¹⁰⁶ *Ibid.*, Article 3.

¹⁰⁷ *Ibid.*, Articles 4, and 5.

¹⁰⁸ ILO *Digest of Decisions of Freedom of Association* (2006), para. 855.

¹⁰⁹ *Código de Trabajo*, Articles 138 and 388. Article 138 prohibits an employer from compelling employees by coercion or any other means or restrict them such that they join or do not join a particular union or to withdraw from unions. Article 388 categorizes acts of interference by employers for the purposes of promoting the organization or control of employees' unions or the resignation from or non-affiliation with a union as an unfair labor practice.

¹¹⁰ Government of Panama, *Por medio de la cual se adoptan medidas destinadas a preservar la independencia y autonomía de las organizaciones sindicales de trabajadores*, Decreto Ejecutivo No. 27 (June 5, 2009), Article 1 as published in the *Gaceta Oficial Digital*, No. 26297-A (June 5, 2009); available from <http://www.gacetaoficial.gob.pa/buscador.php>.

investigating those complaints and issuing responses.¹¹¹ The Decree also calls on the IPEL to train workers and union leaders on the formation of unions and internal union democracy and autonomy.¹¹²

Panama's Ministry of Industry and Commerce (*Ministerio de Comercio e Industrias* (MICI)) reports that from 2010 to early 2011, the Labor Inspectorate received no complaints from unions regarding employer interference with workers rights to freely join or withdraw from a union, nor with unions' right to operate independently of employers.¹¹³

3.8 Limitations on Direct Negotiations between Employers and Non-organized Workers

Negotiation of employment agreements by employers with non-unionized employees in workplaces where there is a union can be used to bypass or avoid duly formed unions and thus undermine legitimate collective bargaining. As expressed by the ILO, Convention 98 calls for negotiation with workers' organizations to regulate terms and conditions of employment by means of collective agreements and provides that direct negotiations with workers should only be possible in the absence of trade union organizations.¹¹⁴ Some decisions by Panama's Supreme Court, however, have upheld "collective agreements" between employers and non-unionized workers as valid agreements, in two cases preventing a duly constituted union from negotiating a collective bargaining agreement until the collective agreement expired.¹¹⁵ Reacting to such Supreme Court decisions and in consideration of ILO standards, the Government of Panama issued Executive Decree 18 of 2009, as amended by Executive Decree 131 of 2010, to clarify that the Labor Code bans negotiation of agreements with non-organized workers when a duly constituted union exists in a workplace. The Decree further provides that when non-organized workers submit a request to the MITRADEL to register a collective agreement or a request to negotiate such an agreement, the MITRADEL must verify, before registering, that no union exists at the company at issue and that the agreement sought does not undermine the freedom of association rights of workers.¹¹⁶

¹¹¹ Ibid., Article 3.

¹¹² Ibid., Article 1.

¹¹³ MICI, Written communication to USTR, April 25, 2011.

¹¹⁴ ILO *Digest of Decisions of Freedom of Association* (2006), para. 945. See also ILO, *CEACR: Individual Observation concerning Convention No. 98, Right to Organize and Collective Bargaining, 1949 Colombia*, 2004, para. 2.

¹¹⁵ Supreme Court of Justice, Panama, *Acción de amparo de garantías constitucionales interpuesta por la firma Forense Alfaro, Ferrer, Ramírez y Alemán en Representación de Hotelera Panamá, S. A., contra la orden de hacer contenida en la Resolución de 21 de Octubre de 1999, expedida por el Director General de Trabajo del Ministerio de Trabajo y Desarrollo Laboral*, (January 31, 2000), 3. See also Supreme Court of Justice, Panama, *Acción de amparo de garantías constitucionales interpuesta por el Licenciado Jacinto Cerezo G. en Representación de Mister Klean Overseas International Inc. Contra La Orden de Hacer Proferida Por el Director General de Trabajo del Trabajo*, (June 15, 2000) available from

http://www.organojudicial.gob.pa/ver_fallo.php?id=41218&texto=Mirtza%20%26%20Hotelera%20el%20Panama%2C%20S.A.&exacto.

¹¹⁶ Government of Panama, *Por el cual se reforma el decreto ejecutivo No. 18 de 20 de Mayo de 2009 (May 3, 2010), Decreto Ejecutivo No. 131*, Article 1, as published in the *Gaceta Oficial Digital* No. 26527; available from <http://www.gacetaoficial.gob.pa/buscador.php>. See also Government of Panama, *Por el cual se reglamentan los artículos 398, 400, 401, 403, y 431 del Decreto de Gabinete No. 252 de 30 de diciembre d 1971(Código de Trabajo)*, modificado

3.9 Strike Restrictions in Essential Public Services

Panama's Labor Code allows the MITRADEL to compel the resolution of a labor dispute through arbitration in designated public services. It also requires minimum staffing levels (between 30 percent and 50 percent) during a strike in those services.¹¹⁷ However the Labor Code includes services beyond those the ILO has defined as essential. The ILO has stated the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.¹¹⁸ In Panama, the Labor Code definition of public services that are subject to the above strike limitations includes communication, transportation, gas, light and electricity, essential foodstuffs, and hospitals, among others.¹¹⁹ Executive Decree 25 of 2009, as amended by Executive Decree 132 of 2010, narrows the definition of transportation as a public service to public air, land and maritime transportation passenger services.¹²⁰ As a result, workers in private passenger transportation services and cargo transport are no longer subject to these strike restrictions.

por la Ley 2 de 1993, Decreto Ejecutivo No. 18 (May 20, 2009), as published in the *Gaceta Oficial Digital* No. 26285-A; available from <http://www.gacetaoficial.gob.pa/index.php?o=234bf92s>.

¹¹⁷ *Código de Trabajo*, Articles 452 and 486. See also *Por la cual se establece y regula la Carrera Administrativa*, Articles 152(14) and 185.

¹¹⁸ ILO *Digest of Decisions of Freedom of Association* (2006), para. 576.

¹¹⁹ *Código de Trabajo*, Article 486. Public services also include those involving the cleaning, supplying and distributing of water for public use, sanitation, and cemeteries.

¹²⁰ Government of Panama, *Por el cual se reglamentan los artículos 486 y 487 del Decreto de Gabinete No. 252 de 1971 (Código de Trabajo)*, modificado por la Ley 44 de 1995, Decreto Ejecutivo No. 25 (June 5, 2009), as published in the *Gaceta Oficial Digital*, No. 26,297-A (June 5, 2009); available from <http://www.gacetaoficial.gob.pa/buscador.php>, as amended by Government of Panama, *Por el cual se reforma el Decreto Ejecutivo No.25 de 5 de junio de 2009, Decreto Ejecutivo No. 132* (June 5, 2010), Articles 1, 2. See also, *Código de Trabajo*, Articles 486, and 487.

4. Issue of Note

Since the signing of the Panama TPA in 2007, Panama has made legislative reforms and issued executive decrees and ministerial resolutions that bring its labor laws into greater conformity with internationally recognized labor rights, as described in Section Three. However, labor rights groups and the CEACR have continued to express concerns about a particular aspect of Panama's labor laws, as described in this section. Tripartite agreement in Panama to not reduce the number required has precluded any change on the issue.

4.1 Number of Workers Required to Form a Union

Panama's Labor Code requires a minimum of 40 workers to establish and maintain a union of employees or professionals.¹²¹ In the public sector, the ACA establishes that 50 workers are needed to form a public sector association.¹²² The CEACR has found that these minimum worker requirements may obstruct the creation of these labor organizations, and has requested that Panama lower the minimum number of workers required to form labor organizations in both the public and private sectors.

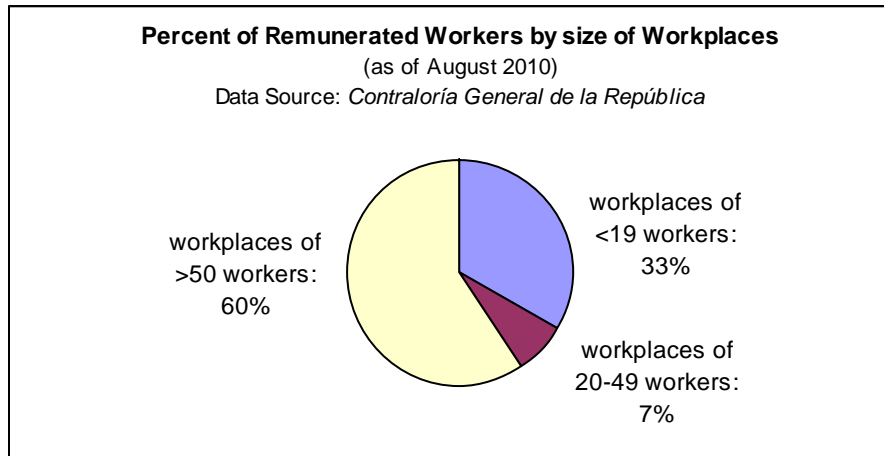
Effects of Legal Requirements: In the private sector, the 40-worker minimum for union formation prevents workers at many small and medium enterprises (including contractors and subcontractors) from establishing company-level unions (see section 5.2.1). Larger employers can also prevent their direct employees from organizing by subcontracting certain company functions to reduce their direct workforce to fewer than 40. As of August 2010, according to the Comptroller General, 40 percent (389,372) of all remunerated (cash or in-kind payments from an employer) Panamanians who were actively working (958,903) were employed at places with 49 or fewer employees (see chart below).¹²³ When combined with workers at larger places whose workforces are fragmented through subcontracting, the number of workers whose right to form a union could be undermined by the 40-worker minimum is significant. Similar concerns are raised by the ACA 50-worker minimum to form a public sector association.¹²⁴

¹²¹ *Código de Trabajo*, Article 344.

¹²² *Por la cual se establece y regula la Carrera Administrativa*, Article 182 (originally Article 177) as amended by Law No. 43 of 2009, *Que Reforma La Ley 9 de 1994, Que Desarrolla la Carrera Administrativa, y la Ley 12 de 1998, Que Desarrolla la Carrera Del Servicio Legislativo, y Dicta Otras Disposiciones*, as published in *Gaceta Oficial*, No. 26,336 (July 30, 2009), Article 16; available from <http://www.asamblea.gob.pa/busca/gaceta.html>. The ACA was amended in July 2009 to increase the minimum number of administrative career employees required to form a public sector association from 40 to 50, reversing a 2007 amendment that had lowered the minimum number from 50 to 40. Ibid.

¹²³ Contraloría General de la República, *Estadísticas del Trabajo, Vol. I – Encuesta de Mercado Laboral*, table 441-41. Chart and percentages by USDOL.

¹²⁴ *Por la cual se establece y regula la Carrera Administrativa*, Article 182 (originally Article 177) as amended by Law No. 43 of 2009.



ILO CEACR Concerns: Since the 40-worker requirement for private sector company-level union formation was established in 1995, the CEACR has consistently requested that the Government decrease the minimum membership required to form private unions and public sector associations, finding that the high threshold may obstruct worker organizing, especially in smaller enterprises.”¹²⁵ These high thresholds raise “problems with compliance with the Convention [on Freedom of Association and Protection of the Right to Organize (C87)].”¹²⁶ Although the CEACR does not suggest a specific minimum number nor offer a formula for determining a threshold, it asks for a “reasonable” level,¹²⁷ explained generally as follows:

The Committee considers that, while a minimum membership requirement is not in itself incompatible with the Convention, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed.¹²⁸

In specific cases, considering particular country conditions, the CFA has found that while a minimum of 30 workers to form a union may be too high, a minimum of 20 does not seem excessive.¹²⁹

Panama’s main labor confederations and employer groups have repeatedly expressed opposition to lowering the number of workers required to form a union. In 2011, the CEACR reported that, according to the Panamanian Government, consensus among stakeholders to address the minimum number of workers required for union formation has still not been reached.¹³⁰

¹²⁵ International Labor Conference, *2011 Report of the CEACR*, 131-132. See also prior annual CEACR reports.

¹²⁶ International Labor Conference, *2009 Report of the CEACR*, 144.

¹²⁷ International Labor Conference, *2010 Report of the CEACR*, 190.

¹²⁸ International Labor Conference, Report of the CEACR, 81st session, *1994 General Survey on the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), and the Reports on the Right to Organize and Collective Bargaining Convention (No. 98)*, para. 81, including mention of Panama in footnote 71. Available from <http://www.ilo.org/ilolex/english/index.htm>.

¹²⁹ ILO CFA, 327th Report, Case No. 2138, *Complaint against the Government of Ecuador presented by the Ecuadorian Confederation of Free Trade Union Organizations (CEOSL)*, (2002) para. 539. ILO CFA, 316th Report, Case No. 1996, *Complaint against the Government of Uganda presented by the International Textile, Garment and Leather Workers' Federation (ITGLWF)*, (1999) para. 662. Available from <http://www.ilo.org/ilolex/english/index.htm>.

¹³⁰ International Labor Conference, *2011 Report of the CEACR*, 134.

5. Relevant Laws Governing Internationally Recognized Labor Rights

5.1 Labor Code Reforms of 2010

In June 2010, the Government of Panama passed Law 30, which amended the Labor Code and several non-labor laws.¹³¹ In response to a subsequent mass protest, the Government convened a multi-stakeholder commission and as a result passed six new laws that replace Law 30.¹³² Of the six, Law 68 of 2010 addressed the main labor issues and most notably does the following:¹³³

- Allows employers to access the worksite during a strike (previously the Labor Code required complete closure of the enterprise) and to hire contract workers for non-production activities as deemed necessary by the MITRADEL to avoid irreparable damage to machinery and basic maintenance unless the union permits existing workers to perform such work.¹³⁴ The CEACR finds this to be satisfactory but continues to request that the Government ensure the right of entry of non-striking workers.¹³⁵
- Restores a Labor Code requirement for all union dues to be deducted from the paychecks of workers covered by a collective bargaining agreement, and now provides that the details of such deductions may be negotiated through collective bargaining.¹³⁶ The CEACR finds this to be generally consistent with international labor standards.¹³⁷
- Establishes a new labor union commission to create rules for designating labor representatives to the ILO (previously the law was not clear about the designation process).¹³⁸ The ILO has not commented on this provision.

¹³¹ Government of Panama, *Que dicta medidas para promover el desarrollo sostenible de la aviación comercial, reforma normas laborales y penales y adopta disposiciones para posibilitar la ejecución de proyectos de interés nacional, Ley 30* (2010), as published in *Gaceta Oficial Digital* No. 26556-A; available from <http://www.gacetaoficial.gob.pa/buscador.php>.

Note that Law 30 of 2010 is not the same as Law 30 of 2011 (referred to elsewhere in this report) which amends the SEAB law.

¹³² As background, Law 30 of 2010 was very controversial because of 1.) the highly expedited process that had been used to pass it through the National Assembly; 2.) the content of the labor amendments; and 3.) the immediate application of some of those amendments, which led to a large strike in the Bocas del Toro region. Concerns in the same region over the labor and other provisions affecting, for example, the environment and indigenous territories, were expressed in a peaceful street protest of over 10,000 people; subsequent protests, however, resulted in over 700 injuries and several fatalities. For a fuller account of these events, see U.S. Embassy-Panama City, *reporting*, June 14, July 8, July 12, July 13, July 20, August 4, October 25, November 9, 2010.

¹³³ Government of Panama, *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68* (October 26, 2010), as published in the *Gaceta Oficial Digital* No. 26651-A; available from <http://www.gacetaoficial.gob.pa/buscador.php>.

¹³⁴ *Ibid.*, Article 3. See also *Código de Trabajo*, Article 493.

¹³⁵ International Labor Conference, *2011 Report of the CEACR*, 133-134.

¹³⁶ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68*, Article 2. See also *Código de Trabajo*, Article 373.

¹³⁷ International Labor Conference, *2011 Report of the CEACR*, 134. The CEACR qualifies this by stating that the legislation should be further amended such that the level of dues required of covered non-members would not prevent their ability to pay additional normal dues for joining a union of their choice, if the worker should desire to do so.

¹³⁸ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68*, Article 7. See also *Código de Trabajo*, Article 1066.

5.2 Freedom of Association

Panama ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize on June 3, 1958, ILO Convention No. 98 on the Right to Organize and Collective Bargaining on May 16, 1966, and ILO Convention No. 11 on the Right of Association in Agriculture on June 19, 1970.¹³⁹

5.2.1 Right to Organize

The Panamanian Constitution and Labor Code provide workers and employers with the right to form unions for economic and social activities.¹⁴⁰ The Organic Law of the ACP extends this right to Panama Canal workers.¹⁴¹ Under the ACA, permanent administrative career public servants may form “associations” within their respective institutions, “which have the aim of promoting studies, training, improvement and protection of their members.”¹⁴² Such associations are similar to unions but subject to different rules and restrictions, including those governing their rights to strike and bargain collectively, as discussed in Section 5.2.2.1 on Public Service Workers and Section 5.3.1 on Right to Collective Bargaining.

The Labor Code establishes four legal categories of unions for workers:

- trade unions, formed by individuals of the same profession, trade, or specialty (a “guild” or craft union);
- company-level unions, formed by employees of the same company;
- industrial unions, formed by individuals of various professions, trades, or specialties who are employed by two or more firms in the same industrial sector; and
- mixed unions, formed by individuals of various professions, trades, or specialties who are employed by different firms, when the number of workers in such professions, trades, or specialties in a given city, district, province, or region is less than 50.¹⁴³

Employers’ unions may be established by employers in the same industrial sector or economic activity or by employers in several sectors. They may be established with reference to a specific geographical area or may be national in scope.¹⁴⁴

The Labor Code requires a minimum of 40 workers to establish and maintain a labor union in the private sector (as discussed in Section Four) and at least ten employers to form an employers’ union.¹⁴⁵

¹³⁹ ILO, Ratifications by Country.

¹⁴⁰ *Constitución Política de la República de Panamá*, Article 68. See also *Código de Trabajo*, Articles 334-335. The Labor Code describes a “union” as an “association of employees ... for the study, improvement, protection and defense of its common economic and social interests.” *Labor Code (trans. by Miller and Shirley)*, Article 341.

¹⁴¹ *Organic Law of the ACP*, Article 95.

¹⁴² *Por la cual se establece y regula la Carrera Administrativa, Ley No. 9 (1994)*, Article 174.

¹⁴³ *Código de Trabajo*, Article 342.

¹⁴⁴ *Ibid.*, Article 343.

¹⁴⁵ *Ibid.*, Article 344.

Individual workers may not belong to more than one union of the same category, and only one company-level workers' union may be formed per company.¹⁴⁶ The ILO has stated that “provisions which require a single union for each enterprise, trade or occupation, are not in accordance with Article 2 of Convention 87.”¹⁴⁷

The Labor Code stipulates that two or more unions may freely form federations, and two or more federations can establish and join confederations.¹⁴⁸ Under certain circumstances, individual unions may also directly join confederations.¹⁴⁹ Panamanian labor organizations face no restrictions in affiliating with international organizations.¹⁵⁰

Once the required threshold for numbers of workers, unions, or federations is reached, the union, federation, or confederation may file an application with the MITRADEL to register. Registration establishes juridical personality.¹⁵¹ The MITRADEL has a non-extendable period of 15 days to record the registration.¹⁵² The Labor Code stipulates that if the MITRADEL does not respond to the initial application for registration within 15 days, the organization is to be automatically registered.¹⁵³ The MITRADEL is then required to issue a certificate and to enter registration information in the “registers of social organizations.”¹⁵⁴ However, the U.S. Department of State has reported that union leaders assert that such “automatic” registration does not always occur. It states that the MITRADEL attributes the delays for new registrations to insufficient resources and backlogs.¹⁵⁵

The MITRADEL may only object to a labor organization's application if the union, federation, or confederation at issue has fewer than the legal minimum number of members, has not submitted the required documentation or does not meet the definition and purpose of a union organization as defined in the Labor Code.¹⁵⁶ If the MITRADEL objects to an application, it must provide the petitioning organization an opportunity to respond.¹⁵⁷ If the MITRADEL finds the response deficient, it may deny the application.

The MITRADEL may also deny an application that seeks to establish a company-level union where one already exists or where the union, if established, would be controlled by an employer,¹⁵⁸ in violation of the Labor Code. The Labor Code bans employers from taking actions to promote or control a labor organization, including through financial incentives.¹⁵⁹

¹⁴⁶ *Código de Trabajo*, Articles 338 and 346.

¹⁴⁷ ILO *Digest of Decisions of Freedom of Association* (2006), para. 317.

¹⁴⁸ *Código de Trabajo*, Article 349.

¹⁴⁹ *Ibid.* The law uses both “confederation(s)” and “central(s).” In practice, the MITRADEL uses these terms interchangeably. For purposes of this report, the term “confederation(s)” is used hereinafter and refers to both.

¹⁵⁰ MITRADEL Official, Written communication to U.S. Embassy-Panama City Official in response to USDOL request for updated information (Email communication attachment, July 30, 2008, U.S. Embassy-Panama City).

¹⁵¹ *Código de Trabajo*, Article 351.

¹⁵² *Ibid.*, Article 352.

¹⁵³ *Ibid.*, Article 356. The Constitution, however, allows 30 days for a response to the initial application. See *Constitución Política de la República de Panamá*, Article 68.

¹⁵⁴ *Labor Code* (trans. by Miller and Shirley), Article 356. See also *Código de Trabajo*.

¹⁵⁵ U.S. Department of State, “Country Reports – 2010: Panama,” Section 7a. See also U.S. Department of State, “Country Reports – 2009: Panama,” Section 7a.

¹⁵⁶ *Código de Trabajo*, Article 354. “Unions” are defined in Article 341 of the Labor Code.

¹⁵⁷ *Ibid.*, Article 353.

¹⁵⁸ *Ibid.*, Article 355.

¹⁵⁹ *Ibid.*, Article 388.

Fines can be imposed on employers found to be engaging in such acts of interference, with the fines doubled each time an employer is found to repeat the act of interference.¹⁶⁰

According to Panama's Ministry of Foreign Relations, the principle of union autonomy prevents administrative authorities from inquiring, on their own initiative, about whether a labor organization is genuinely free from employer control. Rather, the MITRADEL must receive a complaint of such employer interference from a labor organization or from workers prior to inquiring.¹⁶¹ In 2008, the MITRADEL reportedly did not receive any such complaints.¹⁶² The MITRADEL administers a permanent union education program through the IPEL, which emphasizes, among other things, the need for labor organizations to be free from employer interference.¹⁶³

Union members may dissolve a union by a vote of two-thirds of their members taken at a general meeting.¹⁶⁴ Two or more trade unions may merge to form a new organization if they agree upon their respective dissolutions.¹⁶⁵

Labor organizations are free to elect their own leadership, provided that the elected leaders are Panamanian citizens.¹⁶⁶ Employers are prohibited from attempting to influence the results of a union election.¹⁶⁷ In 2011, the CEACR reiterated longstanding concerns with Panama's Constitutional provision that bans foreign nationals from serving as union leaders. The CEACR has stated that the categorical ban is inconsistent with ILO standards, and has suggested a "reasonable" time-limited period of residence in the country before foreign nationals are allowed to serve as union leaders.¹⁶⁸

As of the end of 2008, the MITRADEL reported that there were 738 unions, 64 federations and 12 confederations; of these, seven unions and one federation were newly registered that year.¹⁶⁹ Although the total number of public worker associations is unknown, the National Federation of Public Employees and Workers of Public Service Enterprises (*Federación Nacional de Empleados Públicos y Trabajadores de Empresas de Servicio Público (FENASEP)*) reports that it consists of 23 public worker associations and federations representing 43,000 workers.¹⁷⁰ Based on the Comptroller's August 2010 estimates detailed previously, this amounts to approximately 18 percent of all Government workers in the labor force.

¹⁶⁰ Ibid., Article 389.

¹⁶¹ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

¹⁶² Ibid.

¹⁶³ Government of Panama, *Por la cual se crea el "Instituto Panameño de Estudios Laborales," Ley 74 (1973)* as published in the *Gaceta Oficial* No. 17,443 (October 1, 1973); available from <http://www.asamblea.gob.pa/busca/legislacion.html>. For additional information about the MITRADEL's responsibilities to educate workers of their rights, see *Por el cual se crea el "Seguro Educativo" Decreto de Gabinete 168 de 1971*, as published in the *Gaceta Oficial* No. 16,913 (August 6, 1971) and *Código de Trabajo*, Article 380.

¹⁶⁴ *Código de Trabajo*, Articles 396-397. These procedures concern such issues as notification and post-dissolution distribution of assets.

¹⁶⁵ Ibid., Article 395.

¹⁶⁶ *Constitución Política de la República de Panamá*, Article 68.

¹⁶⁷ *Código de Trabajo*, Article 138.

¹⁶⁸ International Labor Conference, *2011 Report of the CEACR*, 132.

¹⁶⁹ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

¹⁷⁰ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 5.

There are notable discrepancies in figures on union affiliation across available sources,¹⁷¹ and there is confusion as to whether such figures include all those covered by collective agreements or solely union members.¹⁷² The Government and unions estimate that approximately 17 percent of the labor force is affiliated with or represented by unions.¹⁷³

5.2.1.1 Public Services

The ACA states that in the public sector there may be only one public employee association per government institution and one chapter of an association per province.¹⁷⁴ As mentioned in Section Four, a 2009 amendment to the Act requires at least 50 employees to form a public sector employee association, reversing a 2007 amendment to the ACA that had reduced the number from 50 to 40.¹⁷⁵ Thirty members are still required to form a chapter. The 2009 amendment also provides that at least three associations are needed to form a federation, reversing the 2007 amendment to the ACA that had reduced the number from three to two.¹⁷⁶ The ACA specifies that associations of public sector workers can join federations of public sector workers, grouped by class or sector of activity; these in turn may join public sector confederations.¹⁷⁷ Two federations are required to form a confederation.¹⁷⁸ Such federations and confederations can not join private sector workers' organizations.

The CEACR has requested for several years that the Government amend legislation that limits the number of public employee associations to one per institution and the number of chapters to one per province.¹⁷⁹ The CEACR had also raised concerns about the ban on public sector federations and confederations affiliating with organizations of private sector workers. The Government has not amended the pertinent legal provisions to explicitly allow such affiliation.¹⁸⁰

¹⁷¹ Documentation necessary to further investigate the sources of discrepancy was not available during the preparation of this report and likely does not exist.

¹⁷² MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 5.

¹⁷³ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

¹⁷⁴ *Por la cual se establece y regula la Carrera Administrativa*, Articles 174 and 178.

¹⁷⁵ *Ibid.*, Article 182 (originally Article 177) as amended by Law No. 43 of 2009, *Que Reforma La Ley 9 de 1994*, Article 16.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Por la cual se establece la Carrera Administrativa*, Article 176.

¹⁷⁸ Government of Panama, *Que modifica y adiciona artículos a la ley 9 de 1994, que establece y regula la carrera administrativa, y dicta otras disposiciones*, Ley No. 24 (2007), as published in *Gaceta Oficial*, No. 25,826 (July 3, 2007), Article 9; available from <http://www.asamblea.gob.pa/busca/gaceta.html>. See also *Por la cual se establece la Carrera Administrativa*, Article 177-178.

¹⁷⁹ ILO CEACR, *Observation, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87) Panama (ratification: 1958)* 2008 [online][cited September 4, 2008]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>. This observation reprises comments made in previous years. See also International Labor Conference, *2011 Report of the CEACR*, 131-132.

¹⁸⁰ ILO CEACR, *Observation, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No .87) Panama (ratification: 1958)* 2008. This observation reprises comments made in previous years. See also (regarding denial of registration of FENASEP to a private sector organization) CFA Report No. 321 (2000), Case No. 1967, "Complaint against the Government of Panama presented by the International Confederation of Free Trade Unions (ICFTU)"; available from <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&hdroff=1>.

5.2.1.2 Panama Canal Workers

The Regulations on Labor Relations of the ACP explicitly recognize the right of workers to form, participate in, and affiliate with unions or to refrain from so doing.¹⁸¹ According to the U.S. Department of State, the ACP employs approximately 9,500 workers.¹⁸² The Labor Relations Board of the ACP has the exclusive jurisdiction to determine and certify appropriate bargaining units and to “recognize, certify, and revoke certification” of a union as an exclusive representative of such a unit.¹⁸³ Upon certification as the exclusive representative, a duly elected union has the exclusive right to represent the bargaining unit workers in dealings with management, negotiate collective agreements covering all workers in the unit, handle grievances, and participate in the development and revision of regulations that affect working conditions.¹⁸⁴

In order for a bargaining unit to be certified by the Labor Relations Board as the appropriate bargaining unit, the unit must be a group of employees with an identifiable commonality of interests that will promote the efficiency of ACP operations and can deal effectively with the Administrative Authority.¹⁸⁵ The bargaining unit’s membership must constitute no less than 33 percent of permanent workers in the ACP unit for which the union is seeking certification.

Once the Board certifies a bargaining unit as an appropriate unit, it calls for a secret ballot election to be held within 60 days to select that unit’s exclusive bargaining representative based on a majority vote of the unit members.¹⁸⁶ A union other than that which petitioned for bargaining unit certification may intervene in the election, so long as that union has the support of at least ten percent of bargaining unit employees and fulfills other procedural requirements.¹⁸⁷ A union may challenge the certification of a bargaining unit’s elected exclusive representative if the challenging union has the support of at least 33 percent of workers in that unit and meets other requirements.¹⁸⁸ If the challenging union meets those requirements, the Board will call for another secret ballot election of workers in the bargaining unit to determine which union should be the exclusive bargaining representative.¹⁸⁹

5.2.1.3 Subcontracted and Temporary Workers

Panama’s labor laws restrict the use of subcontracting to undermine workers’ right to organize. The Labor Code defines a legitimate subcontractor as one whose workers perform work for the benefit of more than one third-party company and that has its own capital, equipment, management and other resources.¹⁹⁰ In addition, the Labor Code prohibits subcontractors from providing workers to a third-party for the performance of core business activities, except for periods not to exceed two months, with prior approval of the MITRADEL and subject to

¹⁸¹ *Por el cual se aprueba el Reglamento de Relaciones Laborales de la ACP*, Article 5.

¹⁸² U.S. Department of State, “Country Reports – 2010: Panama,” Section 7a.

¹⁸³ *Organic Law of the ACP*, Article 113.

¹⁸⁴ *Ibid.*, Article 97. See also *Por el cual se aprueba el Reglamento de Relaciones Laborales de la ACP*, Article 51.

¹⁸⁵ *Ibid.*, Article 26.

¹⁸⁶ *Ibid.*, Article 34. See also *Organic Law of the ACP*, Article 113.

¹⁸⁷ *Por el cual se aprueba el Reglamento de Relaciones Laborales de la ACP*, Article 38.

¹⁸⁸ *Ibid.*, Articles 39 and 40.

¹⁸⁹ *Ibid.*, Article 44.

¹⁹⁰ *Código de Trabajo*, Articles 89 and 90.

prescribed rules.¹⁹¹ The Labor Code also bans employers from fraudulently using subcontracting arrangements to obscure employment relationships and thereby deny workers the rights and protections legally due direct employees.¹⁹²

If the conditions for a legitimate subcontracting arrangement are not met, the subcontractor is deemed an intermediary and the workers are considered direct employees of the company for which they are performing work, with all of the accompanying rights and protections, including the right to form and join a company-level union.¹⁹³ In May 2009, the Government of Panama issued an Executive Decree setting out additional requirements for legitimate subcontracting and additional monitoring and enforcement activities to ensure that subcontracting arrangements do not undermine workers' rights. (See Section Three for more information on the Decree.)

An employment agreement (contract) can be for an indefinite (permanent) period of time or for a definite (temporary) period or for a specific piece of work.¹⁹⁴ Temporary contracts generally must be written and for no more than one year. For services requiring special technical skills, temporary contracts may last up to three years and may be extended twice if the skills are acquired at the expense of the employer.¹⁹⁵ Temporary contracts and contracts for specific pieces of work may not be used for filling positions that normally would be permanent, except as otherwise provided in the Labor Code.¹⁹⁶ In the case of temporary contracts, the Labor Code specifies that violations of this prohibition will result in the employment relationship at issue being deemed permanent.¹⁹⁷ Additional protections against abuse of temporary contracts and contracts for specific pieces of work are provided in Article 77, which enumerates those situations in which such contracts will be considered permanent, including where those contracts are intended to conceal permanent employment relationships.¹⁹⁸

5.2.1.4 Export Processing Zones and Free Trade Zones

As discussed in Section Three, the Labor Code provisions on freedom of association apply to workers in EPZs and FTZs.¹⁹⁹ However, CONATO claims that, in practice, union organizations cannot gain access to workers in EPZs as “the companies are surrounded by high walls and the entrance is guarded.”²⁰⁰ Panama's MICI has reported that there are no trade unions in Panama's

¹⁹¹ Ibid., Articles 94 and 95. These rules also provide that the company utilizing the services of the workers is jointly and severally liable with the company that hires the workers. *Código de Trabajo*, Article 95(2).

¹⁹² Ibid., Articles 92 and 93.

¹⁹³ Ibid., Articles 82, 87 and 89.

¹⁹⁴ Ibid., Article 73.

¹⁹⁵ Ibid., Article 74. Presumably, such extensions are for periods of three years each; however, the Labor Code is not specific on this issue.

¹⁹⁶ Ibid., Articles 76 and 75.

¹⁹⁷ Ibid., Article 75.

¹⁹⁸ Ibid., Article 77.

¹⁹⁹ *Por la cual se establece un regimen especial, integral y simplificado para la creación y funcionamiento de zonas procesadoras para la exportación* (1992), Article 55.

²⁰⁰ U.S. Embassy- Panama City, Written communication, August 18, 2008.

EPZs.²⁰¹ As noted in Section 3.1, in 2010 there were approximately 2,790 employees in EPZs and 8,830 employees in call centers covered by the EPZ law.²⁰²

5.2.1.5 Protections for Union Activities

Panama's Labor Code bars discrimination on the basis of a worker's union-related activities. Specifically, the Labor Code prohibits employers from firing, punishing, transferring, demoting, or otherwise discriminating against workers because they filed an individual or collective grievance, belong to a union, signed a statement of grievances, or participated in a lawful strike. The Labor Code also specifies "black listing" as an unfair labor practice. In this context, black lists are understood as lists of pro-union workers that are used by anti-union parties to discriminate against such workers.²⁰³ Employers are also prohibited from compelling workers to join, refrain from joining, or withdraw from a union.²⁰⁴ Before firing or demoting union members in a way that modifies the proportion of union to non-union employees, employers must obtain prior judicial permission. Without such permission, the workers fired are entitled to reinstatement with back wages.²⁰⁵ Infractions of the other anti-union discrimination provisions may be punished with a fine of between 100 and 2,000 balboas, depending on the severity of the violations.²⁰⁶

Protection from anti-union discrimination is also provided in certain sector-specific legislation. The Maritime Code, for example, prohibits anti-union discrimination against workers who are engaged at sea and navigable waterways.²⁰⁷ The Organic Law of the ACP also makes it illegal to discriminate against workers for union-related activities.²⁰⁸ It specifies eight unfair labor practices, including a prohibition on interfering with, restraining, or coercing an employee in the exercise of any rights provided by the Organic Law; encouraging or discouraging membership in any labor organization by discriminating against an employee in relation to appointments, job security or other employment conditions; disciplining or discriminating against a worker who has filed complaints; failing to bargain in good faith with a union; and failing to abide by procedures to resolve negotiating impasses.²⁰⁹

The Labor Code recognizes the concept of "union immunity," or *fuero sindical*, which provides temporary protection from dismissal and certain unilateral transfers or changes in working conditions for workers in the process of forming a union, for union representatives, and for leaders of labor organizations and their designated substitutes.²¹⁰ The duration of *fuero sindical* varies depending on the union-related status of the individual. Workers in the process of forming a union enjoy *fuero sindical* protection during the union formation process and for three months

²⁰¹ Ibid.

²⁰² Department of State, "Panama," in *Country Reports on Human Rights Practices – 2010*, Section 7b, Washington, D.C., April 8, 2011; available from <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/index.htm>.

²⁰³ *Código de Trabajo*, Article 388.

²⁰⁴ Ibid., Article 138.

²⁰⁵ Ibid., Article 388.

²⁰⁶ Ibid., Article 389. These fines may be repeatedly doubled if violations continue.

²⁰⁷ *Por la cual se reglamenta el trabajo en el mar y las vías navegables y se dictan otras disposiciones*, Article 26.

²⁰⁸ *Organic Law of the ACP*, Article 108.

²⁰⁹ Ibid.

²¹⁰ *Código de Trabajo*, Articles 381 and 383.

after the union is registered.²¹¹ Union leaders and their substitutes receive protection during their terms and for the following year.²¹² Candidates for union posts are covered from the month before they appear on a union ballot, provided that they have made their status as a candidate known to the employer or to the DNIT. Losing candidates enjoy *fuero sindical* protection for a month following the verification of election results.²¹³ Protected workers may not be dismissed without just cause and prior permission of the labor courts. Prior judicial approval is also required to transfer or unilaterally change the working conditions of workers enjoying *fuero sindical*, when such a change is not a part of the individual's regular obligations or when it will affect his or her ability to carry out union functions.²¹⁴

The 2007 amendment to the ACA grants certain public sector workers temporary protection (referred to as *fuero laboral*, which appears to be the conceptual equivalent of *fuero sindical* for unions) from dismissal and changes in their working conditions during the formation of a workers' association; during their tenure as association officers; and in the case of Secretary Generals, up to three months after the end of their tenure.²¹⁵ In 2009, the ILO CEACR stated that the provisions in this amendment addressed its concerns about anti-union discrimination in the formation of public sector associations and federations.²¹⁶

5.2.2 Right to Strike

The Constitution establishes the right to strike in Panama.²¹⁷ The Labor Code provides that strikes may be called to obtain improved working conditions, to reach a collective employment agreement, to demand compliance with a collective employment agreement or to obtain compliance with legal provisions that have been breached generally and repeatedly.²¹⁸ The Labor Code also permits solidarity ("sympathy") strikes, provided that they last no longer than two hours and support legal strikes in the same industry, activity, district or company.²¹⁹

The Labor Code does not provide for strikes in protest of government policies. The CEACR has noted that this omission effectively denies the right to strike to federations and confederations and has requested that the Government amend its legislation to provide such organizations with the right to strike against the Government's economic and social policies.²²⁰ The Government

²¹¹ *Ibid.*, Articles 384 and 385. See also *Labor Code* (trans. by Miller and Shirley). To activate the protection, a group of at least 21 workers must notify the Directorate of Labor in writing of their intention to form a union. Once this notification has been given, other interested workers may also register to receive protection. See also *Código de Trabajo*, Article 386.

²¹² *Código de Trabajo*, Articles 369 and 384. A union's governing board may not exceed 11 members, all of whom are entitled to this protection for unions of up to 200 members. Confederations, federations, centrals, and unions with more than 200 members may designate protection for as many (or fewer) substitutes as they have leaders, while unions with fewer than 200 members are limited by law to protection for only five substitutes. See Article 382.

²¹³ *Ibid.*, Article 384.

²¹⁴ *Ibid.*, Article 383.

²¹⁵ *Que modifica y adiciona artículos a la ley 9 de 1994*, Article 10.

²¹⁶ International Labor Conference, *2009 Report of the CEACR*, 146.

²¹⁷ *Constitución Política de la República de Panamá*, Article 69. See also *Código de Trabajo*, Title IV.

²¹⁸ *Código de Trabajo*, Articles 476 and 480.

²¹⁹ *Ibid.*, Articles 476, 480 and 483-484.

²²⁰ International Labor Conference, *2007 Report of the CEACR*, 136; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1a.pdf>. See also International Labor Conference, *2011 Report of the CEACR*, 133. However, federations and confederations may strike over issues related to collective bargaining agreements to which they are direct parties.

has responded to this criticism by asserting that granting the right to strike to confederations and federations would lead to trade union infighting and subject employers to strikes motivated by factors outside of their control.²²¹

The Labor Code requires workers to attempt to resolve differences with management through “conciliation procedures” (“*procedimiento de conciliación*”) before calling a strike. This conciliation is coordinated by the MITRADEL and focuses on issues identified by a union or unions, generally in a formal collective grievance petition.²²² Conciliation must terminate 15 working days after a grievance petition is filed, though both parties, with the consent of the conciliator, may agree to extend the conciliation.²²³ If a settlement is not reached within the conciliation period, the conciliator must file a report with the Regional or General Labor Directorate describing the extent to which agreements were reached and disputes remain.²²⁴

For 2008, the MITRADEL reported that it provided a total of 569 collective conciliation services. These were generated by 427 grievance petitions seeking collective bargaining agreements, of which 322 resulted in agreements; and, by 142 petitions alleging violations either of the law or of existing collective agreements, 88 of which resulted in collective agreements and 26 of which resulted in strike declarations.²²⁵

When conciliation fails to produce an agreement, workers have 20 working days from the completion of the conciliation proceeding to vote on whether to declare a strike. The declaration of a strike must be made at least five calendar days prior to the strike, or in the case of public services, eight calendar days.²²⁶ If the duration of the strike is not specified, it is deemed to be declared for an indefinite period.²²⁷ Notice of the declaration of a strike must be given to the DNIT or the Regional or General Labor Directorate, which must immediately notify the affected employer or employers.²²⁸

The Labor Code requires that any declaration of a strike must be done at a union general assembly meeting.²²⁹ The Labor Code establishes a two-thirds quorum requirement for a first union general assembly meeting to consider an issue such as a strike declaration. If the required quorum is not reached, a second meeting with a quorum requirement of 50 percent may be held. If that quorum is not reached, a third meeting may be called at which the issue at hand may be decided regardless of the number of union members present.²³⁰ In effect, this provision results in

²²¹ International Labor Conference, *2005 Report of the CEACR*, 90-91; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1a.pdf>. See also International Labor Conference, *2003 Report of the CEACR*, 294.

²²² The petition must also identify between two and five representatives of the organization to take part in the resolution of the dispute. The ILO CFA has noted that this number should be determined by the parties, rather than being fixed by legislation. A grievance petition may seek collective bargaining or may simply seek to address other collective disputes that are “legal or that relate to rights” or that are “economic or relate to interests,” which appear to be broad categories as defined in the Labor Code. See *Código de Trabajo*, Articles 417-22, 427, 437, and 476. See also ILO CFA, *Report 310 (June 1998)*, paras. 503-504; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb272/gb-5.htm>.

²²³ *Código de Trabajo*, Article 443.

²²⁴ *Ibid.*, Article 444.

²²⁵ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

²²⁶ *Código de Trabajo*, Article 490.

²²⁷ *Ibid.*, Article 491.

²²⁸ *Ibid.*, Article 492.

²²⁹ *Ibid.*, Article 489.

²³⁰ *Ibid.*, Articles 363 and 364.

a voting process through which a strike declaration may be approved by the majority of workers at the third general assembly meeting.²³¹ The CEACR reports that there is consensus among the Government, worker organizations, and employer organizations that this refers to a simple majority of the members who vote.²³² Workers who are not organized into a union are also permitted to strike, provided that the strike is approved by a majority of the affected workers who vote.²³³ A prior declaration of the legality of a strike is not required for a strike to commence.²³⁴

After notice to the MITRADEL and the employer, the enterprise's production activities are suspended. Within the first 24 hours after a strike begins, an employer may request that the MITRADEL count the number of strikers to confirm that the majority of company workers are represented. Only if the strike count demonstrates that the majority of workers in the company support the strike shall the productive activities remain suspended.²³⁵ Workers who joined the company after the strike declaration, temporary workers and "employees in a position of trust" are not counted for purposes of such a strike count.²³⁶ Workers can request reconsideration or appeal of a MITRADEL finding that a majority of workers do not support the strike.²³⁷

If the above MITRADEL vote count results in the employer having to suspend production activities indefinitely, the employer can seek to re-open the enterprise by having a court declare the strike illegal. If the employer pursues such an action, striking workers may remain on strike until a court rules. In the absence of such a complaint, the strike is automatically considered to be legal.²³⁸ If a court rules that the strike is illegal, workers must return to their jobs within 24 hours or risk being fired with cause.²³⁹ A strike can be ruled illegal, among other reasons, if despite being supporting by a majority of participants in the strike vote, the strike is ultimately

²³¹ *Código de Trabajo*, Articles 363, 364 and 489. Details on voting procedures are set forth in individual union bylaws. See also Embassy of Panama, Washington D.C., Written communication in response to USTR questions on labor law issues (Email communication attachment, April 18, 2009).

²³² International Labor Conference, *2007 Report of the CEACR*, 135.

²³³ *Código de Trabajo*, Article 489.

²³⁴ *Ibid.*, Article 476.

²³⁵ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68*, Article 3. See also *Código de Trabajo*, Article 3(5). See also *Por el cual se Reglamentan los Artículos 487 (Huelga en los Servicios Públicos), 493 y 495 (Efectos de la Huelga) del Código de Trabajo, Decreto Ejecutivo No. 32* (August 10, 1994); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. Executive Decree 32 provides that "[f]or the purpose of determining a majority, of employees who support the strike, only employees of the company or companies or of employers who agree at the time of the count shall have the right to vote, whether or not they belong to the organization that raises the conflict." Thus, both union and non-union employees participate in a strike count. See also Embassy of Panama, Washington D.C., Written communication, April 18, 2009. See also MITRADEL Official, Written communication to USTR in response to USTR request for information on labor issues (Email communication attachment, April 22, 2009).

²³⁶ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68*, Article 3(5). See also *Por el cual se Reglamentan los Artículos 487 (Huelga en los Servicios Públicos), 493 y 495 (Efectos de la Huelga) del Código de Trabajo, Decreto Ejecutivo No. 32*, para. 4.2. An "employee in a position of trust is one who performs services involving management, supervision or representation for an employer, when these services are of a general nature within the normal scope of activities of the employer or when so provided in a collective employment agreement." *Código de Trabajo*, Article 84.

²³⁷ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68*, Article 5. See also United States Government consultations with Government of Panama, March 31-April 24, 2009. See also *Código de Trabajo*, Article 507. See also Embassy of Panama, Washington D.C., Written communication, April 18, 2009. See also MITRADEL Official, Written communication, April 22, 2009.

²³⁸ *Código de Trabajo*, Article 500.

²³⁹ *Ibid.*, Article 507.

not supported by a majority of company employees, or in the case of a strike by a trade union or industrial union, by 60 percent of the union's members.²⁴⁰

Law 68 of 2010 amended the Labor Code to permit employers and certain other specified individuals to access an enterprise during a strike.²⁴¹ Law 68 further requires the productive activities of an enterprise to cease once a strike begins and the contracts of striking workers to be suspended.²⁴² As part of that process, the Labor Directorate or Regional Directorate is charged with ensuring compliance with these requirements throughout the strike.²⁴³ Further, employers are not allowed to hire new workers to replace strikers and resume suspended activities unless the MITRADEL deems such hiring necessary to prevent irreparable harm to machinery and basic infrastructure and the strikers do not authorize such work by existing personnel.²⁴⁴

At any point during a strike, workers may ask a labor court to determine whether a strike is “just” (“attributable to the employer”). Strikes may be considered to be attributable to the employer when an employer has not responded to workers’ grievances, refuses to take part in conciliation or violates other legal requirements governing the right to strike, such as by unlawfully hiring replacement workers or preventing allowable strike activities.²⁴⁵ When a strike is ruled to be just, employers must continue to pay the salaries of all employees affected by the strike.

The MITRADEL reports that in 2008, there were 26 declared strikes that were initially “presumed legal,” seven of which were actually carried out and four of which were explicitly declared legal after employer challenges of legality; 15 days were lost due to the strikes, which affected 362 workers.²⁴⁶ Statistics on illegal strikes could not be obtained and do not appear to be kept.²⁴⁷

5.2.2.1 Public Service Workers

According to the Organic Law of the ACP, employees of the ACP provide an essential international service and are therefore not permitted to strike.²⁴⁸ ACP workers must submit all

²⁴⁰ *Ibid.*, Article 498. Article 498 provides that a strike may be declared to be unlawful only if: (1) it fails to meet the requirements in Articles 476, 477, 484, 487 or 489 of the Labor Code or (2) for acts of physical violence during the strike. Article 476 requires *inter alia* that for a strike to be lawful a majority of employees of a company must support it, and Article 489 provides that a union may only declare a strike at a general assembly meeting. Article 477 sets out the requirement that 60 percent of a trade or industrial union must support a strike for it to be lawful, and Articles 484 and 487 address sympathy strikes and strikes in essential services respectively.

²⁴¹ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68, Article 3(3).*

²⁴² *Ibid.*, Article 3(2).

²⁴³ *Ibid.*, Article 3(1). See also *Código de Trabajo*, Article 493.

²⁴⁴ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones, Ley 68, Article 3(4).*

²⁴⁵ *Código de Trabajo*, Articles 510 and 511. Other legal requirements for employers are listed in Articles 493 and 496.

²⁴⁶ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009. Strikes that are not challenged are presumed legal. The three of the seven not explicitly declared legal were apparently not challenged.

²⁴⁷ U.S. Embassy-Panama City, Written communication, August 18, 2008.

²⁴⁸ *Organic Law of the ACP*, Article 109.7.

collective conflicts to mandatory arbitration.²⁴⁹ A case challenging the constitutionality of these provisions has been pending before the Supreme Court since 2001.²⁵⁰

The Labor Code generally permits workers providing public services, including public services provided by private companies, to strike subject to the same requirements set forth for strikes for other employees.²⁵¹ Labor Code Article 486, however, requires that minimum operational services be provided in the case of strikes in certain “public services,” defined as including providers of utilities, communication, transportation, essential foodstuffs, and public hospitals.²⁵² As noted in Section Three, Executive Decree 25, as amended by Decree 132, specifies that transportation in the context of Article 486 is limited to public (not private) passenger services on land, air and sea.²⁵³ Striking workers in the designated public services must give their employers at least eight days notice prior to strike declaration and must inform the Regional or General Directorate of Labor about arrangements made for emergency shifts in the centers affected by the strike to prevent their complete closure.²⁵⁴ In such cases, between 20 to 30 percent of the total employees of the company, establishment, or business in question must participate in such shifts; in cases of strikes by trade unions, between 20 to 30 percent of the total number of employees in the same trade or profession within each company, establishment, or business must participate.²⁵⁵ The Regional or General Directorate of Labor may mandate 30 percent participation if it deems that a lesser percentage is insufficient, and according to Executive Decree 26 of 2009, may do so in situations involving risk to life, safety and health of the population; potentially grave effects on the normal life of citizens and/or economic, social or political crises of grave consequences; or danger to the source of the workers’ employment and of the enterprise.²⁵⁶

The ILO CFA has found that defining the appropriate level of minimum operational services in such cases should involve a tripartite process, with workers and employers, not solely the Government.²⁵⁷ Specifically in the case of Panama, the CEACR has commented that the minimum service level required in the case of strikes in the public services articulated in Labor Code Article 486 should be the result of tripartite negotiations.²⁵⁸

²⁴⁹ Ibid., Articles 92 and 109. See also *Constitución Política de la República de Panamá*, Article 322.

²⁵⁰ Supreme Court of Justice, Panama, *Demanda de inconstitucionalidad presentada por Lcda. Anayansi Turner, en representación del Confederación Nacional de Unidad Sindical Independiente (CONUSI), contra varios artículos y expresiones en la Ley 19 de 1997*, (submitted December 5, 2001). See also U.S. Embassy-Panama City, Written communication, August 4, 2008.

²⁵¹ *Código de Trabajo*, Article 485.

²⁵² Ibid., Articles 486 and 487. See also ILO, *Principios y derechos fundamentales en el trabajo: un estudio sobre la legislación laboral en Panamá* (2004), 14; available from <http://www.ilo.org/public/english/dialogue/download/panama.pdf>. The latter document is available in Spanish only.

²⁵³ Government of Panama, *Por el cual se reforma el Decreto Ejecutivo No. 25 de 5 de junio de 2009, Decreto Ejecutivo No. 132* (June 5, 2010), Articles 1,2.

²⁵⁴ *Código de Trabajo*, Article 487.

²⁵⁵ Ibid., Article 487.

²⁵⁶ Ibid., Article 487; Government of Panama, *Por el cual se establecen los parámetros a tomar en consideración en relación con el porcentaje de trabajadores que laboraran en los turnos de los servicios públicos durante la huelga en estos, de acuerdo con lo establecido en el artículo 487 del Código de Trabajo, Decreto Ejecutivo No. 26* (June 5, 2009), Article 1.

²⁵⁷ ILO *Digest of Decisions of Freedom of Association* (2006), paras. 609 and 610.

²⁵⁸ See International Labor Conference, *2001 Report of the CEACR*, 296. See also International Labor Conference, *2011 Report of the CEACR*, 133; International Labor Conference, *2009 Report of the CEACR*, 145.

The Labor Code authorizes the Regional or Labor Directorate of Labor to order a strike affecting the public services listed in Labor Code Article 486 to be resolved through binding arbitration. The decision to order arbitration can be appealed to the MITRADEL, and if the decision is upheld, the striking workers must return to their jobs during the arbitration process.²⁵⁹ The CEACR has observed that binding arbitration in the context of strikes in such services is only acceptable if requested by both employers and workers.²⁶⁰

The ACA allows public servants, defined as workers in the executive, legislative, or judicial branches or in municipalities or autonomous or semi-autonomous state entities, the right to strike according to the terms of the Act.²⁶¹ The Act requires that in the first instance, the originating agency's administrative authorities and the board of directors of the employee association attempt to resolve the collective conflict at issue within ten days of a formal request for direct negotiations. In the event that the conflict is not resolved, the association may petition a Board of Appeals and Conciliation that is provided specifically for the public sector. If the matter remains unresolved, it may be forwarded to an Arbitration Tribunal, also provided specifically for the public sector. The matter may be submitted either by the Board of Appeals, the employer agency or the employee association that petitioned the case before the Board. The Tribunal's ruling must be issued within ten working days of the final hearing and is final and binding on all parties. If the public entity fails to comply with the arbitral ruling, the association may choose, among other things, to declare a strike according to the limits of the law.²⁶²

For institutions covered by the ACA, a minimum staffing level of at least 25 percent must be maintained throughout the duration of strikes by workers providing non-essential public services at public institutions, and at least 50 percent of the workforce must remain on the job in public institutions providing services considered essential. For purposes of the ACA, essential services in Panama include food provision, transportation, postal service, civil registry, water distribution, electricity, telecommunications, public revenue collection, air traffic control, and firefighting. Employees who refuse to continue working during a strike in any such services may be fired legally.²⁶³ The CEACR has found these minimum staffing requirements excessive in sectors that are not strictly essential as defined by the ILO.²⁶⁴ Although what is meant by essential services depends on the particular circumstances in a country, based on the ILO's findings in other contexts, the following services in Panama may not be considered strictly essential: the supply and provision of food (except food for children), transportation, postal services, civil registry, telecommunications (except for telephone service), and certain forms of public revenue collection (specifically, computer services for the collection of excise duties and taxes).²⁶⁵ The

²⁵⁹ *Código de Trabajo*, Article 452.

²⁶⁰ See International Labor Conference, *2001 Report of the CEACR*, 296. See also International Labor Conference, *2011 Report of the CEACR*, 133; International Labor Conference, *2009 Report of the CEACR*, 145.

²⁶¹ *Asamblea Legislativa Ley No. 9*, Articles 2 and 135(21).

²⁶² *Ibid.*, Articles 181-183 and 192.

²⁶³ *Por la cual se establece y regula la Carrera Administrativa*, Articles 152(14) and 185. See also ILO, *Principios y derechos fundamentales en el trabajo: un estudio sobre la legislación laboral en Panamá*, 14.

²⁶⁴ ILO, *CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and the Right to Organize, 1948 Panama*, 2007, para. 2(e); available from

<http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?hdroff=1>. See also ILO *Digest of Decisions of Freedom of Association* (2006), para. 576. The ILO has defined essential services as "services the interruption of which would endanger the life, personal safety or health of the whole or part of the population."

²⁶⁵ ILO *Digest of Decisions of Freedom of Association* (2006), paras 582, 585 and 587.

CEACR further noted that workers and employers in non-essential services should be permitted to negotiate minimum staffing levels to meet basic public service needs and that in the event of disagreement over such levels an independent body should resolve the matter.²⁶⁶ The CEACR requested that the provisions allowing summary dismissal of employees who refuse to continue working be abolished.²⁶⁷

5.3 Effective Recognition of the Right to Collective Bargaining

As discussed, Panama ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining on May 16, 1966.²⁶⁸

5.3.1 Right to Bargain Collectively

The Labor Code defines a “collective employment [bargaining] agreement”²⁶⁹ as a written agreement relating to conditions of labor and employment negotiated by an employer or group of employers or one or more organizations of employers with one or more unions, federations, or confederations.²⁷⁰ Such collective bargaining agreements may last between two and four years.²⁷¹ Within three months of the end of an agreement’s term, employers or employees may request that the agreement be renegotiated. Individual clauses of an agreement may be modified at any time where there is mutual agreement between the parties.²⁷² The Labor Code states that collective bargaining agreements apply to employees of the company or companies covered by the agreements, unless the agreements explicitly state otherwise.²⁷³

Under the Labor Code, employers are required to enter into collective bargaining agreements when requested by recognized unions.²⁷⁴ An employer’s refusal to negotiate is grounds for a legal strike.²⁷⁵ Since the passage of Law 32 of 2011, all employers nationwide, including in EPZs and FTZs, have had such a duty to bargain collectively from the time their operations begin. Under the Organic Law of the ACP, workers in the Panama Canal also enjoy the right to bargain collectively,²⁷⁶ though generally not on security and scheduling matters.²⁷⁷

Public servants in Panama do not enjoy the same right to collective bargaining as private sector workers covered by the Labor Code. In practice, however, public associations have been able to

²⁶⁶ See International Labor Conference, *2011 Report of the CEACR*, 133

²⁶⁷ International Labor Conference, *2001 Report of the CEACR*, 297-298. See also International Labor Conference, *2009 Report of the CEACR*, 145.

²⁶⁸ ILO, *Ratifications by Country*.

²⁶⁹ The Labor Code uses the term “collective employment agreement” to refer to what is commonly understood to be a collective bargaining agreement between a union and an employer. For clarity, this report uses the term “collective bargaining agreement” to refer to a “collective employment agreement.” This report uses the term “direct agreement” to refer to an agreement between employers and non-unionized workers.

²⁷⁰ *Código de Trabajo*, Article 398.

²⁷¹ *Ibid.*, Article 410.

²⁷² *Ibid.*, Article 416.

²⁷³ *Ibid.*, Article 404.

²⁷⁴ *Ibid.*, Article 401.

²⁷⁵ *Ibid.*, Article 401.

²⁷⁶ *Organic Law of the ACP*, Article 108.

²⁷⁷ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

make collective gains through negotiated agreements. A 2007 amendment to the ACA expands coverage of any such agreement negotiated by a public association or federation to all public servants at the institution in question who fall in the category or categories covered in the agreement, even if the public servants are not members of the association or federation.²⁷⁸ The ILO CEACR in its 2011 report on Panama pointed out that public servants may not, generally, be excluded from the right to collective bargaining.²⁷⁹

Direct agreements between employers and groups of non-organized workers are legal in Panama as long as no union exists in the workplace at issue and the agreements do not undermine workers' right to freedom of association. As discussed in Section Three, the Government of Panama issued Executive Decree 18 of 2009, as amended by Executive Decree 131 of 2010, to clarify that in cases where non-organized workers request the MITRADEL to register a direct agreement or a request to negotiate such an agreement, the MITRADEL must verify, before registration, that no union exists at the company in question and that the agreement would not undermine the freedom of association rights of workers.

If an employees' union or group of employees asserts a collective dispute, including one that requests the signing of a collective bargaining agreement, it may file a statement of grievances with the Regional or General Labor Directorate.²⁸⁰ The Labor Code provides that if in the same enterprise two or more statements of grievances are filed at the same time, they are to be merged into a single statement and the employees of the establishment affected by the dispute are to designate a single group of representatives.²⁸¹ If a group of representatives is not selected within a period of two days, the negotiation is to be conducted by the most representative union or the group of employees that represents the majority of workers at the enterprise. If the statements are related to a collective bargaining agreement, the procedures established in Labor Code Article 402 for addressing simultaneous and conflicting collective bargaining requests apply with respect to which union should conclude the requested agreement.²⁸²

²⁷⁸ *Que modifica y adiciona artículos a la ley 9 de 1994*, Article 11. The extent to which the lack of regulation impedes implementation of this right is unknown.

²⁷⁹ International Labor Conference, *2011 Report of the CEACR*, 135.

²⁸⁰ *Código de Trabajo*, Article 426.

²⁸¹ *Ibid.*, Article 431.

²⁸² *Ibid.*, Article 402. The article establishes procedures in the event that several employees' organizations request the signing of a collective employment agreement at the same company and do not agree among themselves.

Copies of private sector collective bargaining agreements must be filed with the MITRADEL.²⁸³ The MITRADEL reports the following for 2010:²⁸⁴

Type of Agreement	New Registrations in 2010	Workers Covered
Collective bargaining agreements (normal submissions)	51	13,516
Collective bargaining agreements made through conciliation efforts	14	3,880
Collective bargaining agreements awarded through arbitration	4	560
Direct agreements with non-organized workers	10	1,142
TOTAL	79	19,098

In 2009, there were no collective bargaining agreements in the EPZs but there was one agreement with non-organized workers in call centers, covering 139 workers.²⁸⁵ The Government also reported that in 2008, there were five existing collective bargaining agreements in the ACP, covering approximately 9,698 workers.²⁸⁶

5.4 Elimination of All Forms of Forced or Compulsory Labor

Panama ratified ILO Convention No. 29 on Forced Labor and ILO Convention No. 105 on the Abolition of Forced Labor on May 16, 1966.²⁸⁷

Panama has no laws that explicitly prohibit the use of forced or compulsory labor. However, the Constitution of Panama, as well as the Panamanian Penal Code, afford related protections that prohibit forced labor. The Constitution states that no one may be deprived of his or her liberty and guarantees that all people are free to perform any profession or office.²⁸⁸ The Penal Code prohibits depriving a person of his or her freedom and punishes the offense by one to three years imprisonment or fines.²⁸⁹

²⁸³ Ibid., Article 399.

²⁸⁴ MITRADEL Official, Written communication to U.S. Embassy-Panama City Official in response to USDOL request for updated information (Email communication attachment, May 18, 2011, U.S. Embassy-Panama City). This information does not include agreements that were registered up to four years ago and that are still in effect.

²⁸⁵ MRE Official, Written communication to U.S. Embassy-Panama City Official, April 23, 2009.

²⁸⁶ Ibid.

²⁸⁷ ILO, Ratifications by Country. For information on forced labor in Panama, please see the U.S. Department of Labor's 2009 Trade and Development Act (TDA) Report and the Trafficking Victims Protection Reauthorization Act (TVPR) reports available at: <http://www.dol.gov/ilab/highlights/if-20101215.htm>. The 2010 TDA and TVPR reports are expected to be published in September 2011.

²⁸⁸ *Constitución Política de la República de Panamá*, Articles 21 and 40. See also U.S. Embassy- Panama, E-mail Communication to USDOL Official, April 20, 2011.

²⁸⁹ *Código Penal, Adoptado por la Ley 14 de 2007, con las modificaciones y adiciones introducidas por la Ley 26 de 2008, la Ley 5 de 2009, la Ley 68 de 2009 y la Ley 14 de 2010*, Article 149; available from http://www.oas.org/juridico/mla/sp/pan/sp_pan-int-text-cp.pdf.

Panamanian law does not prohibit trafficking for forced labor. The Penal Code only prohibits trafficking for commercial sexual exploitation and punishes those who facilitate, promote, recruit, or organize human trafficking for sexual purposes.²⁹⁰ Penalties increase for the trafficking of children for commercial sexual exploitation.²⁹¹ It is noted, however, that legislation explicitly banning trafficking for the purpose of forced labor is currently pending.²⁹²

Penal Code provisions penalize the sale of children for the purposes of forced labor or sexual exploitation.²⁹³ The Family Code guarantees children protection against being kidnapped, sold, or trafficked for any purpose, but does not include penalties.²⁹⁴ (For more information on child labor, see Section 5.5.)

The Public Ministry and the Ministry of Labor are charged with enforcement of forced labor laws.

Forced child labor in domestic service is a problem in Panama.²⁹⁵ However, research has not identified investigations of forced labor crimes in Panama.²⁹⁶

The Panamanian National Police Sex Crimes Unit is responsible for investigating trafficking cases.²⁹⁷ The Department of Judicial Investigations also operates a unit of five staff dedicated to investigating trafficking in persons for sexual exploitation.²⁹⁸

Panama is a source, transit, and destination country for the trafficking of women and children for commercial sexual exploitation. Panamanian victims are principally trafficked within the country for sexual exploitation.²⁹⁹ Weak controls along the borders make Panama a transit country for irregular migrants who enter the country voluntarily, but are vulnerable to becoming trafficking victims.³⁰⁰ In 2010, the Government investigated 51 cases of trafficking in persons.³⁰¹

The U.S. Department of State has determined that Panama does not fully comply with the U.S. *Trafficking Victims Protection Act's* minimum standards, citing the lack of a legal prohibition on trafficking for forced labor and weaknesses in law enforcement and victim protection efforts. As

²⁹⁰ *Código Penal*, Article 181.

²⁹¹ *Ibid.*

²⁹² U.S. Embassy- Panama, *reporting*, March 10, 2011. See also Mendoza, Eduardo. "Ejecutivo analiza proyecto sobre la trata de personas" *La Prensa*, March 3, 2011; available from <http://mensual.prensa.com/mensual/contenido/2011/03/03/hoy/panorama/2521853.asp>. See also U.S. Embassy- Panama, E-mail Communication to USDOL Official, April 20, 2011.

²⁹³ *Código Penal*, Article 207.

²⁹⁴ *Código de la Familia*, (1994), Article 489 (18); available from http://www.legalinfo-panama.com/legislacion/familia/codfam_Iiprem.pdf.

²⁹⁵ U.S. Department of State. "Panama (Tier 2 Watch List)." *Trafficking in Persons Report- 2010*. See also U.S. Embassy- Panama, *reporting*, February 23, 2010.

²⁹⁶ U.S. Embassy- Panama, *reporting*, February 22, 2011. See also *ibid.* See also U.S. Embassy- Panama, E-mail Communication to USDOL Official, May 11, 2011.

²⁹⁷ U.S. Embassy- Panama, *reporting*, February 23, 2010.

²⁹⁸ U.S. Embassy- Panama, *reporting*, February 22, 2011.

²⁹⁹ U.S. Department of State. "Panama (Tier 2 Watch List)." In *Trafficking in Persons Report- 2010*. Washington, DC, June 14, 2010; available from <http://www.state.gov/g/tip/rls/tiprpt/2010/142761.htm>.

³⁰⁰ *Ibid.*

³⁰¹ U.S. Embassy- Panama, E-mail Communication to USDOL Official, April 29, 2011.

noted above, legislation that explicitly bans trafficking for the purpose of forced labor is pending.³⁰²

The National Commission for the Prevention of Commercial Sexual Exploitation (*Comisión para la Prevención de la Explotación Sexual Comercial*, CONAPREDES) is the lead agency in coordinating government anti-trafficking efforts.³⁰³ In 2010, the Government continued to operate a special trafficking victims unit inside the National Immigration Office. This unit provides protection and legal assistance to trafficking victims and oversees prevention efforts, such as education campaigns.³⁰⁴

5.5 Effective Abolition of Child Labor, A Prohibition on the Worst Forms of Child Labor, and Other Labor Protections for Children and Minors

Panama ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment and ILO Convention No. 182 on the Worst Forms of Child Labor on October 31, 2000.³⁰⁵

Panama's Constitution, Family Code, and Labor Code set the minimum age for employment at 14 and at age 15 for children who have not completed primary school.³⁰⁶ Similarly, the Law on Education mandates that children under the age of 15 cannot work or participate in other activities that deprive them of their right to attend school regularly.³⁰⁷

The Constitution allows children below the minimum age to work under conditions established by laws.³⁰⁸ The Family and Labor Codes appear to allow for light work in agriculture that does not prejudice school attendance starting at age 12,³⁰⁹ but provisions regarding hours of work are not well defined. The Labor Code states that minors 12 to 15 years of age may be employed in agriculture if the work is outside regular schooling hours.³¹⁰ Similarly, the Family Code permits children between the ages of 12 and 14 to perform agricultural labor as long as the work does not

³⁰² U.S. Department of State. "Panama (Tier 2 Watch List)." *Trafficking in Persons Report- 2010*. See also Mendoza, Eduardo. "Ejecutivo analiza proyecto sobre la trata de personas" *La Prensa*, March 3, 2011.

³⁰³ U.S. Embassy- Panama, *reporting*, March 11, 2011.

³⁰⁴ U.S. Embassy- Panama, *reporting*, February 23, 2009, para. 4. See also U.S. Embassy- Panama, *reporting*, February 22, 2011.

³⁰⁵ ILO, *Ratifications by Country*. For information on the prevalence and nature of child labor in Panama, enforcement of child labor laws, and policies and programs on the issue, please see the U.S. Department of Labor's 2009 Trade and Development Act (TDA) Report and the Trafficking Victims Protection Reauthorization Act (TVPRA) reports available at: <http://www.dol.gov/ilab/highlights/if-20101215.htm>. The 2010 TDA and TVPRA reports are expected to be published in September 2011.

³⁰⁶ *Constitución Política de la República de Panamá con reformas hasta 2004*, Article 70. See also *Código de la Familia*, (1994), Article 508; available from http://www.legalinfo-panama.com/legislacion/familia/codfam_index.htm. See also *Código de Trabajo* (1971), Article 117(1) and (2).

³⁰⁷ Government of Panama, *Ley Orgánica de Educación* (1946), Article 46; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁰⁸ *Constitución Política de la República de Panamá*, Article 70.

³⁰⁹ *Código de Trabajo*, Article 119. See also *Código de la Familia*, Article 716.

³¹⁰ *Código de Trabajo*, Article 119. See also Paula Antezana Rimassa, *Trabajo Infantil en la Agricultura*, ILO, 2007, 40-41.

interfere with schooling.³¹¹ Neither provision sets limits on the total number of hours that children may work, nor define the kinds of light work that children may perform in agriculture. The CEACR has noted that neither the Family nor the Labor Codes provide clear regulations for the conditions under which children age 12 to 14 may engage in light agricultural work.³¹²

Various laws and an executive decree govern hazardous work by children. The Family Code and the Labor Code prohibit children less than age 18 from certain activities and types of hazardous work, including work in venues where alcohol is sold, in public transport, with electricity, with toxic substances, and underground.³¹³ Both the Labor Code and Penal Code establish penalties for employing children in hazardous or illegal occupations.³¹⁴ Panamanian law also penalizes the use of children in certain activities involving illegal substances.³¹⁵

Executive Decree No. 19 of 2006 provides a comprehensive list of the hazardous work for children, banned both by the Labor and Penal Codes. The Decree clarified the types of work considered hazardous for children under age 18, including work under water or on ships, with pesticides, involving exposure to extreme weather conditions, with heavy equipment or dangerous tools, involving carrying heavy loads, in the transport of goods or people, and in trash recycling.³¹⁶ The Decree indicates that existing laws are to be used to sanction violations, although it is unclear whether in practice either the Labor or Penal Codes are being applied against employers hiring children to perform the hazardous work identified in the Executive Decree.³¹⁷

The MITRADEL is charged with enforcement of child labor laws. In 2010, the Government of Panama established the National Bureau against Child Labor and for the Protection of Adolescent Workers within the MITRADEL, replacing the previous department charged with the

³¹¹ *Código de la Familia*, Article 716. There is some conflict between the provisions of the laws discussed above and the Agriculture Code. That Code prohibits children under 14 years of age from paid work in agriculture, even with parental permission. However, because the Family Code repeals or amends any laws referring to family or minors that are inconsistent with the Code, and the Agriculture Code was passed in 1962, this age limitation presumably controls in case of discrepancy. See Government of Panama, *Por la cual se aprueba el código agrario de la República* (1962), as published in *Gaceta Oficial*, No. 14,726 (August 21, 1962), Article 403; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. See also *Código de la Familia*, Article 838. See also *Código de Trabajo*, Article 119.

³¹² ILO Committee of Experts, *Individual Direct Request concerning Minimum Age Convention, 1973 (No. 138) Panama (ratification: 2000)*, [online] 2006 [cited April 26, 2010]; available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=18523&chapter=9&query=%28C138%29+%40ref+%2B+%28Panama%29+%40ref&highlight=&querytype=bool&context=0>. See also *Código de la Familia*, Article 716. See also *Código de Trabajo*, Article 119.

³¹³ *Código de Trabajo*, Article 118; available from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/42679/67564/S95PAN01.htm>. See also Government of Panama, *Código de la Familia*, Article 510; available from http://www.legalinfo-panama.com/legislacion/familia/codfam_index.htm.

³¹⁴ *Código de Trabajo*, Article 125. See also *Código Penal de la República de Panamá Adoptado por la Ley 14 de 2007, con las modificaciones y adiciones introducidas por la Ley 26 de 2008, la Ley 5 de 2009, la Ley 68 de 2009 y la Ley 14 de 2010*, (April 26, 2010), Article 198; available from http://www.oas.org/juridico/mla/sp/pan/sp_pan-int-text-cp.pdf

³¹⁵ *Código Penal*, Article 203.

³¹⁶ Government of Panama, *Que aprueba la lista del trabajo infantil peligroso, en el marco de las peores formas del trabajo infantil, Decreto Ejecutivo No. 19*, as published in *Gaceta Oficial* No. 25,569, (June 12, 2006); available from http://www.asamblea.gob.pa/legispan/PDF_NORMAS/2000/2006/2006_548_0012.pdf.

³¹⁷ Creative Associates International, Inc., *Destino: Combating Exploitive Child Labor through Education in Panama* (El Destino hacia la Educación: Disminuyendo y Erradicando el Trabajo Infantil para Nuevas Oportunidades), Government Performance Results Act Reporting, Washington, D.C., September 16, 2008, 2.

enforcement of child labor laws.³¹⁸ In 2010, the MITRADEL employed 124 labor inspectors, all of who were trained to identify child labor violations.³¹⁹

In 2008, an estimated 7.3 percent of children ages 5 to 14 years were working in Panama. The majority of working children were found in the agricultural sector (73.4 percent), followed by services (22.8 percent), manufacturing (2.9 percent), and other sectors (0.9 percent).³²⁰ In 2008, 93.2 percent of children ages 5 to 14 were attending school. Although data is not available for analysis in this report, a newly-released government survey indicates that the number of children working in Panama decreased from approximately 89,000 in 2008 to 61,000 in 2010.³²¹

Children in Panama work primarily in agriculture where they are exposed to pesticides, often carry heavy loads, and work in extreme weather conditions. Children cultivate coffee and, to a lesser extent, sugarcane; limited evidence indicates that children also cultivate melons, corn, yucca, tomatoes, and onions.³²² Children from indigenous communities frequently migrate with their families to work in agriculture.³²³ According to the Government of Panama, the rate of child labor among indigenous children is approximately three times the national rate.³²⁴

In urban areas, children work on the streets selling goods, shining shoes, washing cars, and assisting bus drivers, activities which require high physical exertion and exposure to densely transited areas.³²⁵ Many children, mostly girls of indigenous descent, work as domestic servants, where they are vulnerable to abuse.³²⁶

The Committee for the Eradication of Child Labor and the Protection of Adolescent Workers (*Comité para la Erradicación de Trabajo Infantil y la Protección del Trabajador Adolescente*, CETIPPAT) is the lead entity for coordinating Government efforts to combat child labor,

³¹⁸ http://white.oit.org.pe/ipec/documentos/decreto_creacion_direccion_trabajo_infantil_panama_2010.pdf. See also U.S. Embassy- Panama, *reporting*, February 22, 2011.

³¹⁹ U.S. Embassy- Panama, *reporting*, February 22, 2011.

³²⁰ Data provided are based on UCW analysis of ILO SIMPOC, UNICEF MICS, and World Bank surveys, *Child Economic Activity, School Attendance, and Combined Working and Studying Rates*, 2005-2010. Data provided are from 2008.

³²¹ UCW analysis of ILO SIMPOC, UNICEF MICS, and World Bank surveys, *Child Economic Activity, School Attendance, and Combined Working and Studying Rates*, 2005-2010. See also Government of Panama, *Comentarios de la Encuesta de Trabajo Infantil*, 2010, 9.

³²² Casa Esperanza and Creative Association International, *Situación del Trabajo Infantil en Zonas Agrícolas Productoras de Melón de Exportación, Tomate Industrial y Cebolla*, June 2006, 37, 40, 60. See also ILO-IPEC, *Prevention and Elimination of Child Labour and Hazardous Work in Panama, PHASE II*, Project Document, Geneva, September 15, 2006, 9. See also U.S. Embassy- Panama, *reporting*, February 23, 2010.

³²³ U.S. Department of State, "Panama," in *Country Reports on Human Rights Practices- 2010*, Washington, DC, April 8, 2011; available from <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm>.

³²⁴ Instituto Nacional de Estadística y Censo, *Comentarios de la Encuesta de Trabajo Infantil, Octubre 2010*, 2010, 12; available from <http://www.contraloria.gob.pa/inec/Publicaciones/05-03-33/Comentario.pdf>.

³²⁵ ILO-IPEC, *Trabajo Infantil Urbano Peligroso en Panamá: Un Estudio de Línea de Base*, May 2005, 62-65; available from http://www.oit.org.pe/ipec/documentos/oit_linea_web.pdf. See also U.S. Embassy- Panama, *reporting*, February 23, 2010. See also U.S. Embassy- Panama, *reporting* February 22, 2011. See also Government of Panama, *Comentarios de la Encuesta de Trabajo Infantil*, 2010, 11; available from <http://www.contraloria.gob.pa/inec/Publicaciones/05-03-33/Comentario.pdf>.

³²⁶ ILO-IPEC, *Trabajo Infantil y Pueblos Indígenas*, 2006, 42, 44; available from <http://www.oit.org.pe/ipec/documentos/panama.pdf>. See also ILO, *Give Girls a Chance*, 2009, 3; available from <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=10290>. See also Instituto Nacional de Estadística y Censo, *Comentarios de la Encuesta de Trabajo Infantil, Octubre 2010*, 11.

including the implementation of the country's National Plan of Action against Child Labor.³²⁷ In 2010, Panama adopted the Roadmap towards the Elimination of Child Labor, which aims to achieve the goals of the National Plan to eliminate the worst forms of child labor by 2015 and all child labor by 2020 by strengthening anti-poverty, health, and educational programs and policies.³²⁸

There are additional protections in the Panamanian Penal Code against the worst forms of child labor. The Penal Code prohibits soliciting and paying for prostitution with a minor and benefiting from the proceeds of child prostitution.³²⁹ Additionally, the Penal Code provides comprehensive prohibitions against child pornography, including its production, distribution, possession, or promotion. Child sex tourism is also prohibited.³³⁰ Trafficking of minors domestically and internationally for sexual purposes is punishable with prison and fines.³³¹

The Penal Code does not include a ban on trafficking for forced labor, but prohibits the sale of children and provides for penalties that are increased if actions result in sexual exploitation, forced labor, or servitude of children.³³² Panama also has no laws that explicitly prohibit the use of forced or compulsory child labor, although the Constitution of Panama, as well as the Panamanian Penal Code, afford related protections that can be used to prohibit forced labor.³³³ The Family Code guarantees children protection against being kidnapped, sold, or trafficked for any purpose, but does not include penalties.³³⁴ (For more information on forced labor, see Section 5.4.).

Panama does not have armed forces and therefore has no laws regulating the minimum age of conscription.³³⁵

As described in Section 5.4, the Panamanian National Police Sex Crimes Unit is responsible for investigating trafficking cases, including cases of child trafficking.³³⁶ The Department of Judicial Investigations also operated a unit of five staff dedicated to investigating trafficking in

³²⁷ Comité para la Erradicación de Trabajo Infantil y la Protección del Trabajador Adolescente, *Plan Nacional de Erradicación del Trabajo Infantil y Protección de las Personas Adolescentes Trabajadoras 2007-2011*, June 2006, 39-40; available from http://www.oit.org.pe/ipecc/documentos/plan_nacional_cetippat_completo.pdf.

³²⁸ Comité para la Erradicación de Trabajo Infantil y la Protección del Trabajador Adolescente and ILO-IPEC, *Hoja de Ruta para hacer de Panamá un país libre de trabajo infantil y sus peores formas*, 2009, 4, 6, 8, 11, 12; available from <http://white.oit.org.pe/ipecc/alcencuentros/interior.php?notCodigo=1769>.

³²⁹ *Código Penal*, Articles 176 and 182.

³³⁰ *Ibid.*, Articles 180, 181, and 183-186.

³³¹ *Ibid.*, Articles 177 and 179. See also ILO Committee of Experts, *Individual Direct Request concerning Forced Labour Convention, 1930 (No. 29) Panama (ratification: 1966)*, [online] 2010 [cited April 26, 2010]; available from <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=23934&chapter=9&query=%28C029%29+%40ref+%2B+%28Panama%29+%40ref&highlight=&querytype=bool&context=0>.

³³² *Código Penal*, Article 207.

³³³ *Constitución Política de la República de Panamá*, Articles 21 and 40. See also *Código Penal*, Article 149. See also U.S. Embassy- Panama, E-mail Communication to USDOL Official, April 20, 2011. See also Mendoza, Eduardo. "Ejecutivo analiza proyecto sobre la trata de personas. "

³³⁴ *Código de la Familia*, Article 489 (18); available from http://www.legalinfo-panama.com/legislacion/familia/codfam_Iprem.pdf.

³³⁵ *Constitución Política de la República de Panamá con reformas hasta 2004*, Article 310. See also Coalition to Stop the Use of Child Soldiers, "Panama," in *Child Soldiers Global Report 2008*, London, 2008; available from http://www.childsoldiersglobalreport.org/files/country_pdfs/FINAL_2008_Global_Report.pdf.

³³⁶ U.S. Embassy- Panama, *reporting*, February 23, 2010.

persons for sexual exploitation.³³⁷ There are 14 attorneys specializing in the prosecution of commercial sexual exploitation of children and trafficking cases nationwide.³³⁸

In Panama, girls are trafficked domestically for the commercial sexual exploitation.³³⁹ Children are also victims of commercial sexual exploitation, particularly in rural areas and in the city of Colon.³⁴⁰ During the reporting period, the Government investigated 15 cases of child pornography, seven cases of facilitating child prostitution, 11 cases of child sex trafficking and 17 cases of payment for prostitution with a minor.³⁴¹

As discussed in Section 5.4, CONAPREDES is the lead entity for the coordination of government efforts to combat the commercial sexual exploitation of children, as well as the government's anti-trafficking activities. CONAPREDES is charged with the implementation of the National Plan for the Prevention and Elimination of Commercial Sexual Exploitation of Children and Adolescents.³⁴²

The Government's National Secretariat of Children, Adolescents, and Family implemented programs to identify children engaged in the worst forms of child labor and commercial sexual exploitation to remove them from exploitative situations and provide them services.³⁴³ The Government also provided shelter and other services and funded NGOs specifically to assist child victims of commercial sexual exploitation and trafficking.³⁴⁴

5.6 Elimination of Discrimination in Respect of Employment and Occupation

The Government of Panama ratified ILO Convention No. 100 on Equal Remuneration on June 3, 1958, and Convention No. 111 on Discrimination (Employment and Occupation) on May 16, 1966.³⁴⁵

5.6.1 General Legal Framework

Law No. 11 of 2005 complements the Labor Code by prohibiting workplace discrimination on the basis of race, nationality, disability, social class, sex, religion or political ideas.³⁴⁶ However,

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ U.S. Department of State, "Panama (Tier 2 Watch List)," in *Trafficking in Persons Report- 2010*, Washington, DC, June 14, 2010; available from <http://www.state.gov/g/tip/rls/tiprpt/2010/142761.htm>.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Comisión Nacional para la Prevención de los Delitos de Explotación Sexual, *Plan Nacional para la Prevención y Eliminación de la Explotación Sexual Comercial de Niños, Niñas y Adolescentes*, 2008, 30-38; available from http://white.oit.org.pe/ipec/documentos/plan_nacional_pana.pdf. See also U.S. Embassy- Panama, *reporting*, February 22, 2011.

³⁴³ U.S. Embassy- Panama, *reporting*, February 22, 2011.

³⁴⁴ U.S. Department of State, "Trafficking in Persons Report- 2010: Panama."

³⁴⁵ ILO, *Ratifications by Country*.

³⁴⁶ Government of Panama, *Que Prohíbe la Discriminación Laboral y Adopta Otras Medidas, Asamblea Nacional Ley No. 11*, (2005) as published in *Gaceta Oficial* 25,287 (April 27, 2005), Articles 1-3; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. See also Executive Decree No. 17 (May 11, 1999). as

the Labor Code specifies that each employer must guarantee that at least ninety percent of his or her “ordinary” (non-specialized or non-technical) employees are Panamanian, have a Panamanian spouse or have ten years of residency in Panama. No more than 15 percent of all employees may be specialized or technical foreign personnel, unless authorized by the MIDES.³⁴⁷ Law No. 11 also specifically prohibits the publication, advertisement or transmission of paid job offers that require a particular age of the prospective employee.³⁴⁸

The Labor Code sets out the permissible grounds for termination of an employment relationship, and discrimination is not included.³⁴⁹ An indefinite employee who has received notification of dismissal may petition the JCDs, or the labor courts where a Board does not exist, for reinstatement or an indemnity payment if that worker believes the dismissal was unjustified.³⁵⁰ If reinstatement is ordered, the worker must be reinstated to his or her original position within two business days after judgment is rendered, with back pay.³⁵¹ In the case that an indemnity is ordered, an employee will be paid according to a formula defined in the Labor Code, based on the duration of the employment relationship.³⁵² An employee working under a fixed-term employment agreement or an agreement for performance of specific work who is dismissed without cause is entitled to the wages he or she would have received had the agreement been completed.³⁵³

According to the U.S. Department of State, the Government allegedly did not effectively enforce legal prohibitions on discrimination.³⁵⁴ The MITRADEL is responsible for enforcing Law No. 11 and imposing sanctions against violators.³⁵⁵ The DNIT receives complaints from workers about workplace and employment discrimination and conducts inspections to investigate the allegations.³⁵⁶

The following sections provide information on the law and practice facing certain protected worker groups in Panama, where further specific information is available.

published in *Gaceta Oficial*, No. 23,798 (May 18, 1999); available from

<http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁴⁷ *Código de Trabajo*, Article 17. Violators of these provisions are subject to fines between 50 to 500 balboas, in addition to the immediate dismissal of unauthorized foreign employees. *Ibid.*, Article 20.

³⁴⁸ *Que Prohibe la Discriminación Laboral y Adopta Otras Medidas, Asamblea Nacional Ley No. 11*, Articles 1-3.

³⁴⁹ *Código de Trabajo*, Article 213. See also *Labor Code (trans. by Miller and Shirley)*, footnote 158 for additional legal references.

³⁵⁰ *Código de Trabajo*, Article 218. Article 214 of the Labor Code requires employers to give prior written notice indicating the date and specific cause for dismissal. The U.S. Department of State reports that some employers avoid giving the required two weeks notice by dismissing some employees one week before a holiday. See also U.S. Department of State, “Country Reports – 2010: Panama,” Section 7b.

³⁵¹ *Código de Trabajo*, Article 220.

³⁵² *Ibid.*, Article 225.

³⁵³ *Ibid.*, Article 227.

³⁵⁴ U.S. Department of State, “Country Reports – 2010: Panama,” Section 6.

³⁵⁵ *Que Prohibe la Discriminación Laboral y Adopta Otras Medidas, Asamblea Nacional Ley No. 11*, Article 4.

³⁵⁶ As of 2007, there were no reported discrimination cases in the TST. U.S. Embassy-Panama City, *reporting*, August 15, 2007, Section 2. See also Government of Panama, *Por el cual se Reglamenta Ley No. 4 de 29 Enero de 1999, Por la cual se Instituye la Igualdad de Oportunidades para las Mujeres, Decreto Ejecutivo No. 53 de 25 de Junio de 2002* as published in *Gaceta Oficial*, No. 24,589 (July 5, 2002), Article 41; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

5.6.2 Gender

The Labor Code prohibits sexual harassment in the workplace by employers and employees, and such acts by an employee may be grounds for termination.³⁵⁷ Law No. 4 of 1999 establishes a broad framework of equal rights for women in Panama and sets out a policy of anti-discrimination based on a person's gender.³⁵⁸ The labor provisions of Law No. 4 establish that the Government must strive to reduce women's unemployment rate and gender-based segregation in the workforce and improve working conditions for women.³⁵⁹ The Government is responsible for promoting employment programs that support women in the informal sector, designing and implementing skills training programs to help women qualify for well-paying jobs, and helping to promote the integration of women with disabilities.³⁶⁰ Law No. 4 also requires the Government to eliminate discrimination with respect to access to, and promotions within, the public sector and to study and prevent sexual assault and harassment in the workplace. The Government must also promote increased participation and leadership of women in unions; education regarding domestic workers' legal rights and responsibilities; and conditions of work that meet basic needs, including services related to hygiene, health, food, and children.³⁶¹

Law No. 4 also specifies that the Government has obligations to promote equal opportunities for indigenous and Afro-Panamanian women, and to promote the development and employability of rural women.³⁶² For Afro-Panamanian women, the Government must support public education or awareness activities and research the manifestations of racism that diminish their dignity and rights.³⁶³

The Constitution obligates the Government to protect pregnant employees, and the Labor Code places specific limitations on their dismissal. In particular, an employer must obtain prior authorization for dismissal of a pregnant employee from the appropriate judicial labor authority by demonstrating cause for such employee's dismissal. If a pregnant worker is fired without such prior authorization, the employee must be reinstated immediately and awarded accrued wages if she produces medical certification of her pregnancy within 20 days of her dismissal.³⁶⁴ The Constitution further prohibits the dismissal of an employee during the first year following return from maternity leave; however, the Labor Code allows for dismissal after the first three months for cause and with prior judicial authorization.³⁶⁵

³⁵⁷ *Código de Trabajo*, Articles 127, 138, and 213.A.15.

³⁵⁸ Government of Panama, *Por la cual se Constituye la Igualdad de Oportunidades para las Mujeres Ley No.4 de enero de 1999*, as published in *Gaceta Oficial*, No. 23,729 (February 6, 1999); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁵⁹ *Ibid.*, Article 4(9).

³⁶⁰ *Ibid.*, Article 6.

³⁶¹ *Ibid.*, Article 11.

³⁶² *Ibid.*, Articles 25-27.

³⁶³ *Ibid.*, Article 27.

³⁶⁴ *Código de Trabajo*, Articles 105 and 106. See also *Constitución Política de la República de Panamá*, Article 68, and *Código de Trabajo*, Article 107, which entitle pregnant employees to mandatory paid leave.

³⁶⁵ *Constitución Política de la República de Panamá*, Article 68. See also *Código de Trabajo*, Article 113.

Since 2007, the ILO CEACR has addressed claims of discrimination against pregnant women raised by the FENASEP. According to the FENASEP, certain women who were pregnant while working in the public sector under temporary contracts were dismissed from their positions or their contracts were not renewed. In 2007, the Government provided information on progress made in resolving these individual cases,³⁶⁶ but in 2010 the CEACR reported more such cases raised by FENASEP. In 2011, the CEACR noted that the United Nations Human Rights Committee has also expressed concern at the practice of requiring pregnancy tests as a condition for access to employment.³⁶⁷ Reiterating its 2008 comments, in 2011, the CEACR again urged “the Government to take the necessary measures to prevent discrimination on the ground of pregnancy, especially with regard to access to employment and job security and to ensure that temporary contracts are not used as a means to discriminate against [women] based on pregnancy.”³⁶⁸ The CEACR further stated in the context of the Maternity Protection Convention (No. 3) that “fixed-term contracts should not be used to circumvent the legislation protecting pregnant women or women on maternity leave.”³⁶⁹

The MIDES is responsible for public policy related to the promotion of equal opportunities for women.³⁷⁰ Its National System for Training on Gender (*Sistema Nacional de Capacitación en Género*) provides capacity building to governmental and non-governmental institutions to strengthen their ability to formulate, implement, continue, and evaluate public policies, programs, and projects on gender-related issues.³⁷¹ Additionally, the MITRADEL, in conjunction with private sector organizations and major unions, is required to implement a policy of equal opportunities in employment and occupation for women, along with a corresponding action plan.³⁷²

As of August 2010, there were 1,256,851 women and 2,450,374 men in the Panama population. Nearly 48 percent of all women over the age of 15 and 80 percent of men over the age of 15 were in the labor force (economically active population); among these, female unemployment was 8.5 percent and male unemployment was 5.3 percent.³⁷³

As of August 2010, women made up nearly 38 percent of the total labor force.³⁷⁴ Of those working, the main occupations held by women were mobile street vendors (113,012), services and sales clerks (111,230), office employees (108,251), and professionals (83,946) (see chart).³⁷⁵

³⁶⁶ International Labor Conference, *2007 Report of the CEACR*, 312-313.

³⁶⁷ International Labor Conference, *2011 Report of the CEACR*, 460 (citing the report).

³⁶⁸ *Ibid.* See also International Labor Conference, *2008 Report of the CEACR*, 403.

³⁶⁹ International Labor Conference, *2010 Report of the CEACR*, 723.

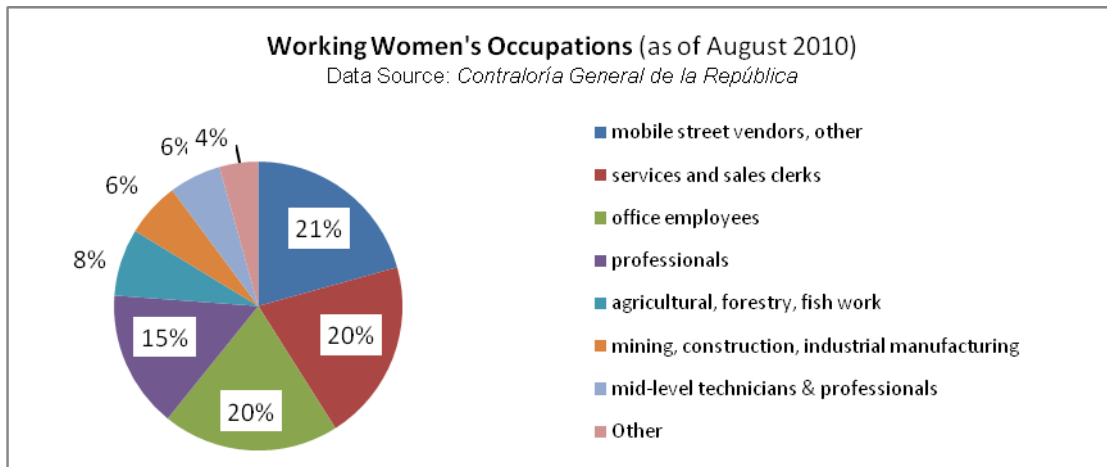
³⁷⁰ *Por la cual se Constituye la Igualdad de Oportunidades para las Mujeres Ley No. 4 de enero de 1999*, Article 5.

³⁷¹ Government of Panama, *Por el cual Se Crea el Sistema Nacional de Capacitación en Género, Decreto Ejecutivo No. 31* (2001), Article 1, as published in *Gaceta Oficial* No. 24,284, (September 7, 2004); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁷² *Por el cual se Reglamenta Ley No. 4 de 29 Enero de 1999, Por la cual se Instituye la Igualdad de Oportunidades para las Mujeres*, Article 47.

³⁷³ Contraloría General de la República, *Estadísticas del Trabajo, Vol. I – Encuesta de Mercado Laboral*, table 441-04. The unemployment rate for each gender is the percentage of the respective gender’s economically active population.

³⁷⁴ A United Nations Development Program publication on women’s labor force participation reported that from 1991 to 2003, women made up 34 to 37 percent of the labor force. See United Nations Development Program, *Economía y Género en Panamá: Visibilizando la Participación de las Mujeres*, 2005, 60; available from http://www.undp.org.pa/_pnud/Documents/PERFIL%20DE%20G%C3%89NERO%20-1.pdf.



Hourly wages were similar for men and women. In August 2008, women's median hourly wage was 2.5 balboas compared to 2.4 balboas for men. Women worked 38.4 hours per week, on average. Men averaged 42.3 hours of work per week.³⁷⁶

5.6.3 Indigenous People

On June 4, 1971, the Government of Panama ratified ILO Convention No. 107 on Indigenous and Tribal Populations.³⁷⁷

As noted earlier, Panamanian labor law and Panama's Constitution prohibit racial discrimination.³⁷⁸ The Constitution also states that companies, foundations and associations founded on the idea of racial or ethnic superiority and those that promote racial discrimination will not be recognized by the Government.³⁷⁹ It further requires the Government to give special attention to indigenous communities with the purpose of promoting their economic, social and political participation.³⁸⁰

Several Government offices and advisory bodies have been established to promote the development of indigenous people and communities and protect indigenous rights. For example, Law No. 18 of 1952 created the Office of Indigenous Policy (*Dirección Nacional de Política Indigenista*) within the Ministry of Government and Justice (*Ministerio de Gobierno y Justicia*),³⁸¹ which has as its objective the promotion of the overall development of indigenous

³⁷⁵ Contraloría General de la República, *Estadísticas del Trabajo, Vol. I – Encuesta de Mercado Laboral*, table 441-21. Chart and percentages by USDOL.

³⁷⁶ ILO, *LABORSTA Internet*, [online] [cited March 22, 2011]; available from <http://laborsta.ilo.org/>. According to the International Labor Office, these statistics describe workers who are at least 15 years old and were compiled using data from the Panama Continuous Household Survey (*Encuesta Continua de Hogares*).

³⁷⁷ ILO, *Ratifications by Country*.

³⁷⁸ *Que Prohíbe la Discriminación Laboral y Adopta Otras Medidas, Asamblea Nacional Ley No. 11 (2005)*, Article 1. See also *Constitución Política de la República de Panamá*, Article 19.

³⁷⁹ *Constitución Política de la República de Panamá*, Article 39.

³⁸⁰ *Ibid.*, Article 124.

³⁸¹ Government of Panama, *Ministerio de Gobierno y Justicia*, [online] [August 7, 2008]; available from <http://www.mingob.gob.pa/> (last visited Jan. 14, 2011). See also Economic Commission for Latin America and the Caribbean (ECLAC), *Los Pueblos Indígenas de Panamá: Diagnóstico Sociodemográfico a Partir del Censo 2000*,

people and their participation in national social programs.³⁸² The Office is required to study the situation of indigenous workers with respect to agriculture, property and leasing.³⁸³ The National Council of Indigenous Development (*Consejo Nacional de Desarrollo Indígena*) in the Ministry of the Presidency was created by Executive Decree in 2000 with the purpose of ensuring respect for human rights, indigenous rights and multiculturalism in Panama.³⁸⁴

According to the 2010 Census, Panama has a population of 3,405,813, of whom 12.3 percent are indigenous.³⁸⁵ The U.S. Department of State notes that indigenous people comprise 19 percent of the poor, and 34 percent of the extreme poor.³⁸⁶ It has also reported that according to the ILO, indigenous workers are paid 32 percent less than non-indigenous workers in comparable positions.³⁸⁷

The U.S. Department of State has reported that the majority of workers in sugar, coffee and banana plantations are indigenous persons, and these workers labor in overcrowded and unsanitary conditions.³⁸⁸ It has reported widespread social and employment discrimination against indigenous people, noting that employers of indigenous workers frequently violate labor laws concerning minimum wage, social security benefits, termination pay, and job security.³⁸⁹ However, due to staff constraints, the MITRADEL has provided limited oversight of working conditions in remote areas.³⁹⁰

Low school completion and illiteracy among the indigenous population may also have an impact on employment and wages,³⁹¹ given the relationship between education and labor market opportunities and outcomes. Poor access to schooling has been widely recognized as a problem for indigenous people. In 2003, the Indigenous Assemblies and Organizations of Panama (*Congresos y Organizaciones Indígenas de Panamá*) informed the CEACR that indigenous

Santiago de Chile: June 2005, 17-18; available from <http://www.eclac.org/publicaciones/xml/7/22277/LCW20-panama.pdf>.

³⁸² Inter-American Development Bank, *Panamá – Compilación de Legislación sobre Asuntos Indígenas*, (2004); available from <http://www.iadb.org/sds/IND/lev/pdocs/Panama.pdf>. See also Government of Panama, *Por la cual se Desarrolla el Artículo 94 de la Constitución Nacional y se dictan otras medidas*, *Asamblea Nacional Ley No. 18*, (1952); as published in *Gaceta Oficial 11,717* (February 25, 1952); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁸³ *Por la cual se Desarrolla el Artículo 94 de la Constitución Nacional y se dictan otras medidas*, Article 5.

³⁸⁴ Government of Panama, *Por el cual se crea el Consejo Nacional de Desarrollo Indígena, Decreto Ejecutivo No.1* (2000), Article 1, as published in *Gaceta Oficial 23,980* (February 1, 2000); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. Calculation by USDOL.

³⁸⁵ Instituto Nacional de Estadística y Censo, *Censos Nacionales 2010*, “Resultados Finales Básicos” (Dec. 15, 2010), table 20; available from “Tabulados Finales Básicos” link at <http://www.censos2010.gob.pa/Resultados/>.

³⁸⁶ U.S. Department of State, “Country Reports – 2009: Panama,” Section 6.

³⁸⁷ U.S. Department of State, “Country Reports – 2008: Panama,” Section 5.

³⁸⁸ U.S. Department of State, “Country Reports – 2010: Panama,” Section 6.

³⁸⁹ U.S. Department of State, “Country Reports – 2010: Panama,” Section 6.

³⁹⁰ U.S. Department of State, “Country Reports – 2010: Panama,” Section 6.

³⁹¹ Data from the 2000 census indicate that indigenous persons 20 years and older had an average of 3.8 years of formal schooling; non-indigenous persons in the same age group had nine years of schooling, on average. Country-wide, 38 percent of the indigenous population 15 years and older was illiterate; among the non-indigenous population this rate was six percent. Illiteracy rates were higher in the *Comarcas*, ranging between 43 and 52 percent among indigenous persons and 19 to 26 percent among the non-indigenous. ECLAC, *Los Pueblos Indígenas de Panamá: Diagnóstico Sociodemográfico a Partir del Censo 2000*, 59, 62, 68.

communities had fewer opportunities to access formal education than the rest of the population.³⁹²

5.6.4 People with Disabilities

People with disabilities in Panama have the right to economic and social security, a decent standard of living, and remunerated employment and the right to form or join unions and workers' organizations.³⁹³ In addition, the Law on Equal Opportunities for People with Disabilities establishes extensive rights and services in the public and private sectors for the disabled. The law bans employment and workplace discrimination based on disability and defines discrimination as exclusion or restriction based on a person's disability, including the failure to provide accommodations and to make the necessary adaptations to ensure the recognition, enjoyment or exercise, in equal conditions, of the rights of the disabled.³⁹⁴ The Law on Equal Opportunities provides that policies and programs regarding hiring and promotion, conditions of work, remuneration, work environment, and job retention if injured at work must be equitable and not discriminate against disabled persons.³⁹⁵ The law also requires that any violations are to be reported to and investigated by the DNIT and provides for sanctions for violators.³⁹⁶ The Labor Code gives mental or physical disability as a reason for dismissing an employee with cause only when "[t]he mental or physical disability of an employee, properly verified, or his loss of the qualifications required by law for the exercise of his occupation, that [sic] makes the fulfillment of the essential obligations of the [employment] agreement impossible."³⁹⁷

The Law on Equal Opportunities charges the Government with developing policies, programs and services that support equal access to employment opportunities,³⁹⁸ as well as providing professional and occupational development services,³⁹⁹ such as vocational training workshops and vocational rehabilitation for disabled persons. Each government agency must, according to its ability, guarantee the full rights of the disabled.⁴⁰⁰ The Government, private enterprises, civic and non-governmental organizations together are required to promote labor market-based

³⁹² ILO CEACR, *Direct Request, Indigenous and Tribal Populations Convention, 1957 (No. 107), Panama (ratification: 1971)* [online] 2005 [cited September 8, 2008]; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

³⁹³ Government of Panama, *Por la cual Se Protege a las Personas Discapacitadas Auditivas, Se Modifican los Artículos 19 y 20 de la Ley No. 53 de 30 de Noviembre de 1951 y Se Adoptan Otras Medidas, Asamblea Legislativa Ley No.1* (1992), as published in *Gaceta Oficial*, No. 21,964 (January 31, 1992), Article 9; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁹⁴ Government of Panama, *Por la cual Se Establece la Equiparación de Oportunidades para las Personas con Discapacidad, Asamblea Legislativa Ley No. 42* (1999) as published in *Gaceta Oficial* No. 23,876 (August 31, 1999), Article 3.5, 54; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁹⁵ *Ibid.*, Article 41

³⁹⁶ *Ibid.*, Article 54. See also Government of Panama, *Por Medio del cual Se Reglamenta la Ley No. 42 de 27 de Agosto de 1999, por la cual Se Establece la Equiparación de Oportunidades para las Personas con Discapacidad, Decreto Ejecutivo No. 88* (2002), as published in *Gaceta Oficial* No. 24,682 (November 18, 2002), Article 53; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

³⁹⁷ *Labor Code* (trans. by Miller and Shirley), Article 213.B.4. See also *Código de Trabajo*.

³⁹⁸ *Por la cual Se Establece la Equiparación de Oportunidades para las Personas con Discapacidad*, Articles 3.7 and 6.

³⁹⁹ *Ibid.*, Article 18.

⁴⁰⁰ *Ibid.*, Article 8.

training programs in education centers for the disabled in order to ensure their access to the labor market.⁴⁰¹

Executive Decree No. 103 established the National Secretariat for the Social Integration of Persons with Disabilities (*Secretaría Nacional para la Integración Social de las Personas con Discapacidad* (SENADIS)) within the Ministry of the Presidency in 2004.⁴⁰² Law No. 23 of 2007 made the SENADIS an autonomous entity with its own budget.⁴⁰³ The SENADIS is responsible for, among other things, convening and presiding over meetings of the National Advisory Council for the Integration of People with Disabilities (*Consejo Nacional Consultivo para la Integración Social de las Personas con Discapacidad*).⁴⁰⁴ This large public-private multi-sector Council is responsible, in part, for promoting the rights of the disabled in employment, proposing strategies to ensure their integration in the workplace and labor market more broadly, and including disabled persons' needs in the MITRADEL's modernization process.⁴⁰⁵

The Law on Equal Opportunities for People with Disabilities states that disabled job applicants who are as qualified as others should be given priority in hiring.⁴⁰⁶ Each employer of 50 or more workers is legally required to have no less than two percent of its workforce consist of properly qualified people with disabilities.⁴⁰⁷ The MITRADEL is responsible for monitoring compliance with this requirement and for investigating complaints and sanctioning violators.⁴⁰⁸ Employers who violate the two percent requirement are to be fined daily the minimum salary for each disabled person that the employer is lacking in its workforce for as long as the shortage exists. The funds collected from such fines are to be deposited in an account that will support, among other things, vocational courses for the disabled.⁴⁰⁹

Some reports suggest that employer reluctance to hire persons with disabilities is a problem in Panama. For example, in November 2007, only eight of 100 invited companies attended a MITRADEL-sponsored job fair that aimed to facilitate employment of workers with disabilities.⁴¹⁰ A 2005 SENADIS report also notes that private businesses and governmental

⁴⁰¹ Ibid., Article 23.

⁴⁰² Government of Panama, *Por el cual Se Crea la Secretaría Nacional para la Integración Social de las Personas con Discapacidad y el Consejo Nacional Consultivo para la Integración Social de las Personas con Discapacidad, Decreto Ejecutivo No. 103* (2004), as published in *Gaceta Oficial* No. 25,131 (September 7, 2004), Article 1; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. The Ministry of the Presidency is one of thirteen ministries within the Executive Branch of the Government of Panama.

⁴⁰³ Government of Panama, *Que Crea la Secretaria Nacional de Discapacidad, Asamblea Nacional Ley No. 23* (2007), as published in *Gaceta Oficial Digital* No. 25,824 (June 29, 2007); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. See also U.S. Department of State, "Panama," in *Country Reports on Human Rights Practices – 2007*, Section 5, Washington, D.C., March 11, 2008; available from <http://www.state.gov/g/drl/rls/hrrpt/2007/100648.htm>.

⁴⁰⁴ *Que Crea la Secretaría Nacional*, Article 3.

⁴⁰⁵ Ibid., Article 7.6. See also National Secretary of Disability, *Política de Discapacidad de la Republica de Panama*, Panama: April 2009, available from <http://www.senadis.gob.pa/wp-content/uploads/Políticas.pdf> (last visited Jan. 14, 2011).

⁴⁰⁶ *Por la cual Se Establece la Equiparación de Oportunidades para las Personas con Discapacidad*, Article 41.

⁴⁰⁷ Ibid., Article 44.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid., Article 45.

⁴¹⁰ U.S. Department of State, "Country Reports – 2007: Panama," Section 5.

institutions do not comply with the two percent hiring rule.⁴¹¹ The results of a SENADIS survey, reported in 2005, revealed that 358 persons with disabilities were employed by 15 governmental agencies.⁴¹² The total number of governmental workers in that same year was 183,218 persons,⁴¹³ suggesting that persons with disabilities made up roughly 0.2 percent of total employees.

The MITRADEL and the Board of the Panama Institute of Rehabilitation Provisions (*Patronato del Instituto Panameño de Rehabilitación Especial*) are responsible for promoting the integration of rehabilitated persons into the workforce through the use of a registry and job placement service. The MITRADEL is responsible for maintaining a record of those persons with disabilities who have found work through the placement service.⁴¹⁴

Law No. 59 of 2005 prohibits all forms of workplace and employment discrimination against, and protects the rights of all workers (national or foreign) with chronic illnesses and involuntary or degenerative diseases that produce work-related disabilities. Such workers have the right to maintain their jobs in conditions equal to those prior to the medical diagnoses and may not be lawfully fired if they are able to perform work responsibilities that are assigned appropriately for their status, strengths, aptitudes, preparation, skills and new physical conditions.⁴¹⁵ Exerting pressure on or persecution such workers that leads to their job resignation is prohibited.⁴¹⁶ Such workers may only be dismissed with just cause and prior judicial authorization from the labor courts or from the appeal and conciliation boards that handle matters regarding public servants.⁴¹⁷

According to the 2010 Census, three percent (100,643) of Panamanians are disabled.⁴¹⁸ Using data from the 2000 Census, the SENADIS estimated there were roughly 52,000 people with disabilities, or 1.8 percent of Panama's population of approximately 2.9 million.⁴¹⁹ The SENADIS estimated that among the population of Panamanians with disabilities the unemployment rate was 18 percent,⁴²⁰ as compared to 13.5 percent for the non-disabled population in that same year.⁴²¹

⁴¹¹ President of the Republic, *Plan Estratégico Nacional para la Inclusión Social de las Personas con Discapacidad y sus Familias: 2005-2009*, 18, Panama: August 2005; available from <http://senadis.gob.pa/wp-content/uploads/documentos/plan-estrategico-nacional.pdf>.

⁴¹² *Ibid.*, 18. See also U.S. Embassy-Panama City, *reporting*, August 15, 2007, Section 3.

⁴¹³ Instituto Nacional de Estadística y Censo, *Volumen II. Empleo: Sectores Público y Privado: Año 2005*, Panama: December 2006; available from <http://www.contraloria.gob.pa/inec/>.

⁴¹⁴ *Por la cual Se Protege a las Personas Discapacitadas Auditivas, Se Modifican los Artículos 19 y 20 de la Ley No. 53 de 30 de Noviembre de 1951 y Se Adoptan Otras Medidas, Asamblea Nacional Ley No. 1* (1992), Article 12.

⁴¹⁵ *Ibid.*, Article 2.

⁴¹⁶ *Ibid.*, Article 3.

⁴¹⁷ *Ibid.*, Article 4.

⁴¹⁸ *Censos Nacionales 2010*, "Resultados Finales Básicos" (Dec. 15, 2010), table 17.

⁴¹⁹ *Plan Estratégico Nacional para la Inclusión Social de las Personas con Discapacidad*, 14-15.

⁴²⁰ *Ibid.*, 16. In a 2001 report, the MIDES estimates that this rate could be 40 percent in Panama Province (*la Provincia de Panamá*), the Panamanian province that contains the capital and largest city, Panama City.

⁴²¹ ILO, *LABORSTA Internet*

5.6.5 HIV/AIDS

Law No. 3 of 2000 protects workers who are infected with, or are carriers of, sexually transmitted diseases and workers with HIV/AIDS from discrimination, stigmatization, and segregation in the workplace.⁴²² It also provides such workers with the right to confidentiality about their health, except in circumstances established in the Law regarding risky behavior.⁴²³ No employer in the public or private sector, whether national or foreign, may request medical evidence from a worker regarding his or her HIV status for the purpose of hiring or retaining that worker. A worker's infection status is not cause for job dismissal.⁴²⁴ A worker is not obligated to inform his or her supervisor nor work colleagues of his or her infection status. When it is necessary to communicate such status, the worker may inform his or her supervisor, who should keep such information in confidence and, if necessary, change the work conditions so the worker can fulfill his or her functions according to medical advice.⁴²⁵ Law No. 3 states that the following employment-related violations are subject to sanctions: an illegal request by an employer for a diagnostic test of an employee or prospective employee; improper use of test results for purposes of employment discrimination; and violation of a worker's right to confidentiality of test results as protected under this Law.⁴²⁶ Applicable sanctions are found in Law No. 3, as well as the Health Code and the Criminal Code.⁴²⁷

The U.S. Department of State reports that discrimination against persons with HIV/AIDS in employment is common due to ignorance of the law and a lack of compliance mechanisms.⁴²⁸

5.7 Acceptable Conditions of Work

5.7.1 Minimum Wage

On June 19, 1970, the Government of Panama ratified ILO Convention No. 26 on the Creation of Minimum Wage-Fixing Machinery and ILO Convention No. 95 on Protection of Wages.⁴²⁹

The Constitution calls for a national minimum wage to be established to provide a decent standard of living for workers in Panama.⁴³⁰ The Labor Code assigns responsibility for setting minimum wage rates to the executive branch, which must take into consideration the recommendations made by the tripartite National Commission on the Minimum Wage (*Comisión Nacional de Salario Mínimo*).⁴³¹ Minimum wage rates are established based on industrial, commercial or agricultural activity, and factors considered in determining such rates include

⁴²² Government of Panama, *General sobre las Infecciones de Transmisión Sexual, el Virus de la Inmunodeficiencia Humana y el SIDA*, Asamblea Nacional Ley No. 3, Articles 31 and 37 (2000), as published in *Gaceta Oficial*, No. 23,964 (January 7, 2000); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁴²³ *Ibid.*, Article 34.

⁴²⁴ *Ibid.*, Article 37.

⁴²⁵ *Ibid.*, Article 38.

⁴²⁶ *Ibid.*, Article 45.

⁴²⁷ *Ibid.*, Article 46.

⁴²⁸ U.S. Department of State, "Country Reports – 2010: Panama," Section 6.

⁴²⁹ ILO, Ratifications by Country.

⁴³⁰ *Constitución Política de la República de Panamá*, Articles 65 and 66.

⁴³¹ *Código de Trabajo*, Articles 174.

regional cost differences, nature of the work and conditions of employment.⁴³² Executive Decree No. 13 of 2006 established that the minimum wage for government workers is to be determined according to the rates established in Executive Decree No. 7 of 2006 for the private sector.⁴³³

The most recent adjustment of minimum wage rates took place on December 21, 2009. The hourly base rates range from 1.06 to 2.0 balboas, with the lowest rate applying to workers in small agricultural businesses (with ten or fewer employees) and the highest rate applying to workers in various other sectors, including construction, transportation, and telecommunications.⁴³⁴ The previous hourly base range established in December 2007 was 1.01 to 1.87 balboas.⁴³⁵ For domestic service workers, the minimum salary is set between 145 and 160 balboas (previously 121 to 134 balboas) per month.⁴³⁶

Fines for violating laws relating to the minimum wage vary from 100 to 500 balboas and can be doubled for repeated violations.⁴³⁷

Most workers who are legally employed in the formal sector in urban areas receive at least the minimum wage. However, workers in the informal sector can earn far below the minimum wage. The U.S. Department of State reports that the Government is less likely to enforce minimum wage laws in most rural areas, where many workers earn only three to six balboas per day.⁴³⁸

5.7.2 Hours of Work

The Government of Panama ratified ILO Conventions No. 30 on Hours of Work (Commerce and Offices) on February 16, 1959, and No. 89 on Night Work (Women) on June 19, 1970.⁴³⁹

The Constitution requires overtime rates to be paid for all work in excess of eight hours per day or 48 hours per week.⁴⁴⁰ The Labor Code establishes additional requirements for shifts involving

⁴³² Ibid., Articles 172 and 174. The minimum wage rates are to be updated at least every two years and are to take into account regional cost differences, the national economic situation, employment and fiscal policies, as well as workplace hazards, working conditions, and occupational differences, when appropriate.

⁴³³ Government of Panama, *Por la cual se Establece el Salario Mínimo Legal para los Servidores Públicos en Todo el País, Decreto Ejecutivo No. 13* (2006), as published in *Gaceta Oficial*, No. 25,535 (May 2, 2006); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. See also Government of Panama, *Por Medio del cual se Fijan las Nuevas Tasas de Salario Mínimo en Todo el Territorio Nacional, Decreto Ejecutivo No. 7* (2006), as published in *Gaceta Oficial*, No. 25,501 (March 10, 2006), Article 7; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>. See also MITRADEL Official, Written communication to U.S. Embassy-Panama City, February 9, 2007.

⁴³⁴ Government of Panama, *Por Medio del cual se Fijan las Nuevas Tasas de Salario Mínimo en Todo el Territorio Nacional, Decreto Ejecutivo No. 263* (2009), as published in *Gaceta Oficial*, No. 26,431-B (December 21, 2009), Article 2; available from <http://www.gacetaoficial.gob.pa/buscador.php>.

⁴³⁵ Government of Panama, *Por Medio del cual se Fijan las Nuevas Tasas de Salario Mínimo en Todo el Territorio Nacional, Decreto Ejecutivo No. 46* (2007), as published in *Gaceta Oficial*, No. 25,938 (December 12, 2007), Article 2; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁴³⁶ *Por Medio del cual se Fijan las Nuevas Tasas de Salario Mínimo en Todo el Territorio Nacional, Decreto Ejecutivo No. 263* (2009), Article 4. *Por Medio del cual se Fijan las Nuevas Tasas, Decreto Ejecutivo No. 46* (2007), Article 7.

⁴³⁷ *Código de Trabajo*, Article 180.

⁴³⁸ U.S. Department of State, "Country Reports – 2010: Panama," Section 7e.

⁴³⁹ ILO, Ratifications by Country.

⁴⁴⁰ *Constitución Política de la República de Panamá*, Article 66. The Constitution also establishes seven hours as the maximum number of night hours.

work at night. During a night shift, overtime must be paid after seven hours per shift or 42 hours per week. Mixed work schedules that involve both day and night work require overtime pay after seven and a half hours daily or 45 hours per week.⁴⁴¹ Employees cannot be obliged to work overtime except under specific conditions, such as during catastrophes or when required by a collective agreement.⁴⁴²

For daytime overtime work, a worker is to be paid an additional 25 percent over that worker's normal wage. The employer must pay 50 percent over the normal wage when overtime occurs during a nighttime work period and 75 percent over the normal wage for an extended mixed schedule that began at night.⁴⁴³ If employees work more than three hours of overtime in one day or more than nine overtime hours in a week, excess overtime hours must be paid at an additional 75 percent over the normal wage, notwithstanding additional penalties that may be imposed on the offending employer.⁴⁴⁴ Violators of overtime laws and regulations may be fined 50 to 500 balboas by the MITRADEL or the labor courts.⁴⁴⁵

Special provisions concerning overtime hours and rates are made for work in EPZs and FTZs, in the SEAB, on special construction sites and in construction that serves the national interest, in small businesses, and in the maritime industry. In the EPZs and FTZs, there is a single overtime wage rate of 25 percent over the normal wage for work in excess of eight hours per day; overtime hours are limited to three per day.⁴⁴⁶ In the SEAB, overtime must be paid at a rate of 40 percent over the normal wage.⁴⁴⁷ Workers engaged in construction that either serves the national interest or takes place on special construction sites such as highways, bridges, mines, ports, and dams may also not work more than three overtime hours per day. In the event that this limit is exceeded for any reason, an offending employer must pay the worker an additional 75 percent over the normal wage on the excess hours and may face additional penalties. For this group of construction workers, overtime is defined as time that is beyond ordinary work hours,⁴⁴⁸ even if such work is less than eight hours. Small business workers are to be compensated by a single overtime rate of an additional 25 percent over the workers' normal wages.⁴⁴⁹ For seafarers, overtime hours, their limits per month, and overtime pay are set out in enrollment

⁴⁴¹ *Código de Trabajo*, Articles 30, 31, and 33. The *Código de Trabajo* describes two periods of work: day work from 6 a.m. to 6 p.m. and night work from 6 p.m. to 6 a.m.

⁴⁴² *Ibid.*, Article 35.

⁴⁴³ *Ibid.*, Article 33.

⁴⁴⁴ *Ibid.*, Article 36. See also the MITRADEL website links to *Dirección Nacional de Trabajo* (then see *Objetivos*) and to *Dirección de Inspecciones* regarding the National Directorate's general authority to impose sanctions and the DNIT's general responsibility to coordinate with other agencies, available from <http://www.mitradel.gob.pa/>.

⁴⁴⁵ *Ibid.*, Article 38.

⁴⁴⁶ *Que establece un régimen especial, integral y simplificado para el establecimiento y operación de zonas francas y dicta otras disposiciones*, Ley 32 (2011), Article 64. These are the same provisions as previously contained in the General EPZ Law. See also *Por el cual se agiliza el trámite para el establecimiento de empresa en las zonas procesadoras*, Article 11. See also Dayra Berbey de Rojas, "Régimen Especial de las Zonas Procesadoras Para la Exportación," in *Contratos y Regímenes Especiales de Trabajo*, Panama: Juris Textos Editores, 2002, 54-55.

⁴⁴⁷ *Que crea un régimen especial para el establecimiento y operación del Área Económica Especial de Barú*, Ley 29 (June 8, 2010), Article 15.

⁴⁴⁸ Government of Panama, *Por la cual se toman medidas relacionadas con los contratos de trabajo en la construcción que se refieran a obras especializadas o de interés nacional*, Ley No. 5 (1982), as published in *Gaceta Oficial*, No. 19,521 (March 10, 1982), Articles 2 and 5; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

⁴⁴⁹ Government of Panama, *Por la cual se dictan disposiciones laborales para promover el empleo y la productividad y se adoptan otras normas*, Ley No. 1 (1986), as published in *Gaceta Oficial*, No. 20,513 (March 17, 1986), Articles 1-3; available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

agreements signed by the workers and ship owners, though such agreements may not violate the constitutional requirement that, at a minimum, overtime rates be paid for all work in excess of eight hours per day or 48 hours per week. Compensation for overtime worked may take the form of a cash payment that is no less than an additional 25 percent of base wages, exemption from work or leave, or another form of compensation.⁴⁵⁰ In lieu of additional cash payment for overtime hours, crew members aboard commercial fishing ships who are paid on the basis of production are granted one day of additional shore rest for every eight days of work aboard a vessel.⁴⁵¹

The CEACR has objected to the absence of an official annual limit on cumulative overtime hours of work, as required by ILO Convention No. 30, and called upon the Government to change Article 36 of the Labor Code accordingly to come into full compliance with the Convention.⁴⁵² The Government report submitted to the Committee in 2007 and the findings of a February 2006 ILO technical assistance mission indicated that tripartite consensus had not been achieved concerning an annual limit of overtime hours. The Committee in 2008 reminded the Government of its primary responsibility for compliance with international labor standards and full application of ratified Conventions and called upon the Government to resolve the issue without delay in order to ensure its legislation is in line with ILO Convention No. 30. The Committee further requested that the Government indicate the limits on daily and annual hours of overtime work that apply to the public sector.⁴⁵³

The Constitution requires all employers to provide for a weekly rest period and to offer paid vacation days.⁴⁵⁴ The Labor Code stipulates that workers are entitled to a day of rest each week, with preference given to Sundays, and provides a list of mandatory days of rest comprising ten national holidays and two days of national observance.⁴⁵⁵ An employee who works on a Sunday or another normal rest day is to be paid an additional 50 percent above the normal daily wage and is to be given an alternative rest day.⁴⁵⁶ For work on a national holiday, the worker is to be paid 150 percent over the normal daily wage (for a total of 2.5 times the normal wage) and given a day off.⁴⁵⁷

Panamanian law makes other special provisions concerning work on weekly days of rest, holidays and days of national observance for certain categories of workers. EPZ and FTZ employees are paid an additional 50 percent for work on scheduled days off, which may occur on a fixed or rotating schedule, and are to be given an alternative rest day.⁴⁵⁸ Law No. 5 of 1982 provides a system by which workers engaged in certain construction projects may defer up to three weekly days of rest for use at a later date and receive additional compensation for time

⁴⁵⁰ *Por la cual se reglamenta el trabajo en el mar y las vías navegables y se dictan otras disposiciones*, Articles 41 and 68.

⁴⁵¹ *Ibid.*, Articles 94, 95 and 99. Wages for these workers are understood to include payment for weekly days of rest, holidays, days of national observance and additional days of rest granted as compensation for overtime worked.

⁴⁵² See e.g. International Labor Conference, *2010 Report of the CEACR*, 648-649.

⁴⁵³ International Labor Conference, *2008 Report of the CEACR*, 581; see also International Labor Conference, *2006 Report of the CEACR*, 354-355; available from <http://www.ilo.org/public/english/standards/reim/ilc/ilc95/pdf/rep-iii-1a.pdf>. See also International Labor Conference, *2005 Report of the CEACR*, 405.

⁴⁵⁴ *Constitución Política de la República de Panamá*, Article 70.

⁴⁵⁵ *Código de Trabajo*, Articles 40, 41 and 46.

⁴⁵⁶ *Ibid.*, Article 48.

⁴⁵⁷ *Ibid.*, Article 49.

⁴⁵⁸ *Que establece un régimen especial, integral y simplificado para el establecimiento y operación de zonas francas y dicta otras disposiciones*, Article 63.

worked on Sundays or weekly days of rest; it is at employers' discretion to use this system.⁴⁵⁹ Field workers employed by small businesses must receive an additional 50 percent of their normal wages for work occurring on a holiday or day of national observance.⁴⁶⁰ Workers aboard commercial fishing ships have the right to claim one day of shore rest for each day of weekly rest and each public holiday worked during a voyage.⁴⁶¹

5.7.3 Occupational Safety and Health

The Government of Panama ratified ILO Convention No. 81 on Labor Inspection on June 3, 1958, and ILO Convention No. 120 on Hygiene in Commerce and Offices on June 19, 1970. On June 4, 1971, it ratified ILO Convention No. 68 on Food and Catering (Ships' Crews) and ILO Convention No. 92 on Accommodation of Crews Convention (Revised). It ratified ILO Convention No. 167 on Safety and Health in Construction on January 31, 2008.⁴⁶²

The Constitution entrusts the Government with the responsibility of regulating and monitoring workplace health and safety.⁴⁶³ The Labor Code requires employers to adopt health, safety, and other necessary measures to ensure a safe and clean working environment and to prevent workplace accidents and occupational illnesses and, to these ends, establishes a list of minimum protective and preventative health and safety measures that employers must adopt.⁴⁶⁴ For example, dangerous substances must be safely stored, and employers must provide workers with the protective clothing and equipment necessary to safely perform their job functions,⁴⁶⁵ such as boots, helmets, gloves, special clothing, or other similar equipment.⁴⁶⁶ Employers are also obligated to notify employees of the hazards associated with operating machinery, provide them with instructions for the safe operation of machinery and install safety devices in machines.⁴⁶⁷ Fines for violating the Labor Code's industrial health and safety standards vary from 50 to 500 balboas; the severity of the violation and the number of people affected by it are taken into account when determining the appropriate penalty.⁴⁶⁸

Employers are forbidden from requiring employees to perform work that endangers their health or lives.⁴⁶⁹ The U.S. Department of State has reported, however, that in practice, workers generally have not been permitted to leave their workstations when faced with an immediate threat to their health and safety.⁴⁷⁰ Those who request inspections of the safety and health conditions of their work environment are protected by law from retaliatory dismissal.⁴⁷¹ In addition, workers who have suffered workplace injuries are entitled to return to their jobs when they are healthy, or they are to be given other responsibilities if their condition does not permit

⁴⁵⁹ *Por la cual se toman medidas relacionadas con los contratos de trabajo en la construcción*, Articles 1 and 3.

⁴⁶⁰ *Por la cual se dictan disposiciones laborales para promover el empleo*, Article 2.

⁴⁶¹ *Por la cual se reglamenta el trabajo en el mar y las vías navegables y se dictan otras disposiciones*, Article 99.

⁴⁶² ILO, Ratifications by Country.

⁴⁶³ *Constitución Política de la República de Panamá*, Article 110.

⁴⁶⁴ *Código de Trabajo*, Articles 128, 282, 292 and 295.

⁴⁶⁵ *Ibid.*, Articles 283 and 284.

⁴⁶⁶ *Ibid.*, Article 134.

⁴⁶⁷ *Ibid.*, Article 286.

⁴⁶⁸ *Ibid.*, Article 290.

⁴⁶⁹ *Ibid.*, Article 138.

⁴⁷⁰ U.S. Department of State, "Country Reports – 2010: Panama," Section 7e.

⁴⁷¹ *Código de Trabajo*, Article 138.

them to carry out their former duties.⁴⁷² Injured workers or their survivors are also entitled to receive compensation related to workplace injuries, illnesses, and fatalities.⁴⁷³

The responsibility for inspecting workplaces for occupational safety and health violations is shared by the MITRADEL's DNIT and the Social Security Administration (*Caja de Seguro Social*, CSS), except for workplaces that are regulated and inspected by the AMP. MITRADEL officials report that the DNIT and the CSS have equal authority and operate independently within their own competencies, and coordinate information as appropriate. Inspectors from the MITRADEL respond to complaints and carry out preventative inspections related to, for example, salaries, overtime, and working conditions. Inspectors from the CSS conduct preventative inspections of firms for compliance with social security requirements, for example, the number of workers, required payment of CSS fees, and health and safety issues.⁴⁷⁴ In addition to their technically trained inspectors, the CSS employs doctors, nurses, psychologists, and other technicians who specialize in workplace health issues and carry out studies of specific workplaces.⁴⁷⁵ The Government reported that in 2008 there were 27 inspectors at the DNIT dedicated to occupational health and safety.⁴⁷⁶

For 2010, the DNIT conducted 3,239 health and safety inspections.⁴⁷⁷ The Government has stated that it does not have data on whether these inspections led to sanctions.⁴⁷⁸ In 2010 the DNIT conducted 1,713 inspections in the construction industry, approximately half of which were due to requests.⁴⁷⁹ In 2010 the majority of workplace accidents were in the construction industry.

Provisions in Law 68 of 2010 provide for increased monitoring to ensure construction workers' safety. The new law requires the on-site engineer of a construction project to guarantee compliance with safety measures and the proper use of equipment and tools. Businesses in non-compliance will be fined from 1,000 to 10,000 balboas, and the on-site engineer could face suspension and possible criminal sanctions.⁴⁸⁰ Law 68 also requires the promoter, constructor or contractor to pay for the monthly salary of an on-site safety official from the MITRADEL. Non-compliance will result in immediate suspension of the project and a fine of 1,000 to 20,000 balboas, based on whether the employer is a first-time or repeat offender and the value of the

⁴⁷² Ibid., Articles 326-327.

⁴⁷³ Ibid., Articles 304-325. The amounts to which these individuals are entitled are detailed in the *Código de Trabajo*.

⁴⁷⁴ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 3.

⁴⁷⁵ MITRADEL Official, Written communication to U.S. Embassy-Panama City, May 26, 2005.

⁴⁷⁶ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009. This source reports that 627 inspections were conducted but does not specify a year.

⁴⁷⁷ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011.

⁴⁷⁸ See also MITRADEL Official, Written communication to U.S. Embassy-Panama City, July 30, 2008.

⁴⁷⁹ U.S. Embassy-Panama City Official Email communication, February 24, 2011.

⁴⁸⁰ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones*, Article 8. This law authorizes the same on-site safety official as had already been called for in Executive Decree 15 of 2007. See Government of Panama, *Por el cual se Adoptan Medidas de Urgencia en la Industria de la Construcción con el Objeto de Reducir la Incidencia de Accidentes de Trabajo*, Decreto Ejecutivo No. 15 (2007), Articles 1 and 2, as published in *Gaceta Oficial*, No. 25,827 (July 4, 2007); available from <http://www.asamblea.gob.pa/main/LegispanMenu/Legispan.aspx>.

project.⁴⁸¹ The MITRADEL reports that there are 46 safety officers that stay permanently on the construction site, and that visits from inspectors occur separately.⁴⁸²

In 2007, based on information provided by the Government, the CEACR noted that generally in Panama there seemed to be a delay in the reporting of accidents and cases of occupational disease to MITRADEL inspectors, who at times received notice only after cases had been reported to an insurance fund.⁴⁸³ The U.S. Department of State reports in 2010 that the MITRADEL and CSS do not adequately enforce health and safety standards in hazardous worksites, particularly in the construction industry.⁴⁸⁴ It also reports that in the construction industry, training for workers and inspectors is needed regarding new technologies, and that old, broken or inadequate safety equipment is not being replaced due to cost concerns.⁴⁸⁵

5.7.3.1 Maritime Sector

The AMP processes complaints of health and safety violations and conducts inspections for national fishing boats, ships or other vessels and international Panamanian-flagged vessels worldwide.⁴⁸⁶ As noted previously, Panama has registered the most vessels in the world (eight percent, followed by Liberia with two percent).⁴⁸⁷ Maritime employees can file health and safety-related complaints confidentially with the AMP or, if abroad, through Panamanian consulates.⁴⁸⁸ As mentioned in Section Three, a 2010 Ministerial Resolution has also made available to maritime workers a free MITRADEL phone line (also available to the general public) with which to file complaints alleging violations of labor laws, such as for dangerous work conditions; when a complaint is received through the phone line, the DNIT is to respond to the worker and to conduct an inspection.⁴⁸⁹ The DNIT is authorized to impose sanctions for labor law violations on all docked vessels, while the AMP's General Directorate of the Merchant Marine is authorized to impose such sanctions for vessels at sea.⁴⁹⁰

Decree Law No. 8 of 1998 requires that ships have sufficient crew members to “guarantee the safety of human life at sea” and “avoid the excessive fatiguing of [c]rew [m]embers.” In order to be employed on a Panamanian ship, a worker must possess a medical certificate that indicates he or she is fit to perform the maritime work his or her job requires. The Decree Law also defines

⁴⁸¹ *Que modifica artículos del Código de Trabajo y dicta otras disposiciones*, Article 9.

⁴⁸² MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011.

⁴⁸³ International Labor Conference, *2007 Report of the CEACR*, 374.

⁴⁸⁴ U.S. Department of State, “Country Reports – 2010: Panama,” Section 7e. See also U.S. Department of State, “Country Reports – 2007: Panama,” Section 6e; available from <http://www.state.gov/g/drl/rls/hrrpt/2005/61736.htm>. See also MITRADEL, *Noticias, Obrero accidentado no usaba implementos de seguridad*, [online] September 13, 2007 [August 7, 2008]; available from <http://www.mitradel.gob.pa/html/Noticias/Noticias.htm>.

⁴⁸⁵ U.S. Department of State, “Country Reports – 2010: Panama,” Section 7e.

⁴⁸⁶ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

⁴⁸⁷ United Nations Conference on Trade and Development Secretariat, *Review of Maritime Transport 2010*. The source states that as of January 2010, Panama continued to be the largest flag of registration of the world fleet, carrying 23 percent of global deadweight tonnage.

⁴⁸⁸ MRE Official, Written communication to U.S. Embassy-Panama City, April 23, 2009.

⁴⁸⁹ *Por la cual se toman medidas para asegurar el cumplimiento de los derechos laborales de los trabajadores marítimos*, Article 1.

⁴⁹⁰ MITRADEL Official, Written communication to U.S. Embassy-Panama City, April 29, 2011, 3. See also the MITRADEL website links to *Dirección Nacional de Trabajo* (then see *Objetivos*) and to *Dirección de Inspecciones* regarding the National Directorate's general authority to impose sanctions and the DNIT's general responsibility to coordinate with other agencies, available from <http://www.mitradel.gob.pa/>.

ship owners' responsibilities concerning crew quarters and food provisions and their inspection. In addition to inspections carried out by the AMP, a ship's captain must perform inspections of food and water supplies and storage and preparation facilities during the course of a voyage.⁴⁹¹

In 2008, the AMP conducted 923 inspections of national fishing and other vessels and 148 inspections of crew certifications (licenses) on such ships. The majority (157) of violations were for lack of proper crew certifications (licenses), followed by 18 cases of insufficient food, though the AMP reported that the most common complaints involved allegedly unpaid employee benefits, broken contracts, and salary disputes.⁴⁹²

The ILO CEACR reports that the Government has yet to adopt sufficient laws or regulations to carry out the provisions of Convention 68, including regarding inspections of food and other measures necessary to ensure the health and well-being of crews.⁴⁹³

⁴⁹¹ *Por la cual se reglamenta el trabajo en el mar y las vías navegables y se dictan otras disposiciones*, Articles 59-64, and 97.

⁴⁹² U.S Embassy-Panama City, Email communication, April 4, 2007.

⁴⁹³ International Labor Conference, *2007 Report of the CEACR*, 535.

LIST OF ACRONYMS

ACA	Administrative Careers Act
ACP	Panama Canal Authority <i>Autoridad del Canal de Panamá</i>
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AMP	Panamanian Maritime Authority <i>Autoridad Marítima de Panamá</i>
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CETIPPAT	National Commission for the Elimination of Child Labor and the Protection of the Adolescent Worker <i>Comité para la Erradicación del Trabajo Infantil y Protección de la Persona Adolescente Trabajadora</i>
CFA	Committee on Freedom of Association
CONAPREDES	Commission for the Prevention of Commercial Sexual Exploitation <i>Comisión para la Prevención de la Explotación Sexual Comercial</i>
CONATO	National Council of Organized Workers <i>Consejo Nacional de Trabajadores Organizados</i>
CONEP	National Council of Private Companies <i>Consejo Nacional de la Empresa Privada</i>
CSS	Social Security Administration <i>Caja de Seguro Social</i>
DADGT	National Directorate for Free Assistance and Representation to Workers <i>Dirección de Asesoría y Defensa Gratuita a los Trabajadores</i>
DNIT	National Labor Inspectorate <i>Dirección Nacional de Inspección del Trabajo</i>
ECLAC	Economic Commission for Latin America and the Caribbean
EPZ	Export Processing Zone
FENASEP	National Federation of Associations and Organizations of Public Servants <i>Federación Nacional de Empleados Públicos y Trabajadores de Empresas de Servicio Público</i>
FTZ	Free Trade Zone <i>Zona Franca</i>
ICFTU	International Confederation of Free Trade Unions
IFARHU	Institute for Human Resources, Capacity Building, and Vocational Training <i>Instituto para la Formación y Aprovechamiento de Recursos Humanos</i>

ILO	International Labor Organization
INAFORP	National Institute for Professional Development <i>Instituto Nacional de Formación Profesional</i>
IPEC	International Program on the Elimination of Child Labor
IPEL	Panamanian Institute of Labor Studies <i>Instituto Panameño de Estudios Laborales</i>
ITUC	International Trade Union Confederation
JCD	Conciliation and Decision Boards <i>Juntas de Conciliación y Decisión</i>
MEF	Ministry of Economy and Finance <i>Ministerio de Economía y Finanzas</i>
MICI	Ministry of Industry and Commerce <i>Ministerio de Comercio e Industrias</i>
MIDES	Ministry of Social Development <i>Ministerio de Desarrollo Social</i>
MITRADEL	Ministry of Labor and Workforce Development <i>Ministerio de Trabajo y Desarrollo Laboral</i>
MLC	(Consolidated) Maritime Labor Convention of the ILO
MRE	Ministry of Foreign Relations <i>Ministerio de Relaciones Exteriores</i>
NGO	Non-governmental Organization
SEAB	Special Economic Area of Barú <i>Area Económica Especial de Barú</i>
SENADIS	National Secretariat for the Social Integration of Persons with Disabilities <i>Secretaría Nacional para la Integración Social de las Personas con Discapacidad</i>
TDA	Trade and Development Act
TPA	Trade Promotion Act
TST	Supreme Labor Court <i>Tribunal Superior de Trabajo</i>
TVPRA	Trafficking Victims Protection Reauthorization Act
USDOL	United States Department of Labor