



# A Public Policy Framework for Advancing Responsible Labor and International Competitiveness: El Salvador

Prepared by BSR for the Government of El Salvador

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## About this Report

This report is the product of an extensive series of interviews and consultations with the Government of El Salvador, the leaders and associations of the private sector, and with civil society organizations, including labor unions, academic experts and non-governmental organizations. A list of those who gave generously of their time and expertise appears in the appendix.

While the Report reflects the innumerable and invaluable inputs from this extensive consultation process in El Salvador, it is ultimately the responsibility of BSR. The BSR project team included Aron Cramer, BSR President and CEO, Terry Nelidov, Project Manager, and Luis Garnier, Project Regional Director. The primary drafter of the Report was Richard Feinberg, senior adviser to BSR, and Professor at the University of California, San Diego. Highly competent research assistance was provided by Arturo Aguirre and Kimberly Ascoli. Carlos Zuniga served as our indispensable liaison with the Ministry of Labor and Social Prevision (MTPS). Rhina Reyes, executive director of FUNDEMAS, was a constant source of inspiration and vital assistance. Her colleague, Luis Enrique Ceron Ruiz, was most helpful in offering logistical support. BSR wishes to express special appreciation to Marjorie de Chavez for selflessly sharing her deep knowledge on El Salvador's labor laws and regulations. In the early days of the Funes administration, the Minister of Labor, Victoria de Aviles, the Vice Minister of Labor, Calixto Mejia, and the Minister of Economy, Hector Dada, took time from their hectic schedules to offer wise counsel and most kind support.

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The report is based on literature review as well as interviews with individuals listed in the annexes. The authors would like to thank the interviewees and tool developers for their review of this report for accuracy. Any errors that remain are those of the authors.

We welcome your comments or questions to Terry Nelidov, Project Manager, DR-CAFTA Responsible Competitiveness [tnelidov@bsr.org](mailto:tnelidov@bsr.org)

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A leader in corporate responsibility since 1992, BSR works with its global network of more than 250 member companies to develop sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. With six offices in Asia, Europe, and North America, BSR uses its expertise in the environment, human rights, economic development, and governance and accountability to guide global companies toward creating a just and sustainable world. Visit [www.bsr.org](http://www.bsr.org) for more information.

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## Executive Summary

The purpose of this Report is to assist El Salvador – its government, private sector, and civil society – to design a public policy framework, centered on positive incentives, to advance responsible labor practices in a manner that benefits private sector employees and also bolsters labor productivity and the international competitiveness of firms and, ultimately, the competitiveness and therefore the well-being of the entire nation.



Within corporate boards and industry associations, advocates of responsible labor practices must be able to make “the business case,” that responsible labor practices will, certainly in the longer run, rebound to the benefit of the firm, its reputation and financial bottom line. This requires a strong and coherent public policy framework that establishes a transparent incentive structure. It also requires a persistent communications strategy that persuasively articulates business benefits.

In El Salvador as elsewhere, the Ministry of Labor (MTPS) has primary responsibility for the enforcement of labor laws and regulations. Yet, despite some recent budget increments, the ministry suffers from seriously inadequate resources in comparison to its broad responsibilities. Clearly, it is critical to continue to strengthen the financial and human capacities of the Ministry of Labor. But it would be naïve to limit a strategy to enhance responsible labor practices to that single tactic, which can mature only over a very long time horizon.

*Rather, an effective strategy to build a strong regime for guaranteeing high labor standards in El Salvador requires a broader vision – one that looks to a wider range of public policy instruments. Only by looking beyond one under-resourced ministry can a public policy framework be established, that can present sufficient incentives to the private sector to adopt and sustain high quality responsible labor practices.*

The Ministry of Labor needs strong partners. It needs to build strategies and coordinate with other government ministries, regulatory agencies and the semi-autonomous entities. It needs to look to the private sector as welcome partners to be engaged. It needs to

wake up to the vast network of corporate codes of conduct and auditing practices that international brands already work throughout their supply chains in El Salvador. The ministry must also look to civil society, including labor unions and non-governmental organizations, as powerful partners and levers in advancing its social justice goals. Pulled together, these international and national actors can constitute a powerful coalition to advance responsible labor practices.

Beyond MTSP inspections, the Salvadoran government possessed a range of instruments for incentivizing private sector compliance with responsible labor standards. In recent years, the Salvadoran Congress has inserted labor clauses in a number of laws. If faithfully implemented, these labor clauses could make a difference in the economic sectors where they apply. With imagination, the less expansive decrees could be amended and converted into creative and positive incentives for inducing responsible labor practices in the private sector. Among these various mechanisms are: LACAP (government procurement), FOVIAL (highway maintenance), and the distinct laws governing the maquila (assembly) industries, international service free-trade zones, and mining sectors. In each case, various fiscal incentives – contracts, tax breaks, tariff exemptions – are offered as inducements to responsible labor practices. In addition to these incentives, we present a partial list of other available instruments, as examples of the sorts of creative policies that could compose a national strategy to advance responsible labor and promote international competitiveness.

The extensive consultations with a large number of leaders of Salvadoran society undertaken in the preparation of this Report yielded many proposals for building a positive public policy framework in order to advance responsible labor practices and the nation’s international competitiveness. Progress must be gradual and that not all reforms can be undertaken immediately. We offer these options for consideration by the government and citizens of El Salvador; we suggest that options 1 – 5 be addressed in the near term:

- 1 **Adopt a “whole of government” (gobierno en pleno) approach to advancing responsible labor.** The Ministry of Labor could lead an inter-agency action committee to design and drive a government-wide strategy. The action committee might operate, as a specialized subcommittee, in cooperation with the newly created Economic and Social Council (CES).

Among the most immediate tasks would be: improve information-sharing through a centralized data management system among relevant agencies, while assuring reliable safeguards for personal privacy and corporate confidentiality; review existing laws and regulations for incentive and compliance systems, and together create a coherent strategy for establishing a positive public policy framework; survey other instruments of public policy for possible inclusion in such a “whole of government” strategy to create a culture of compliance.

Additional “whole of government” measures could include, following international best practices, establishing voluntary corporate social responsibility reporting guidelines for firms, reinforced by a publicly visible reward system to incentivize high-quality transparency and accountability. El Salvador could also follow other Central American countries in ratifying the International Labor Organization’s Convention No. 94 that requires that pertinent public contracts include labor clauses protecting the general welfare of the workers.

- 2 **Strengthen existing forums and open new spaces for meaningful dialogues among key stakeholders.** Conflicts over labor standards are part of a much larger pattern of extreme social strife that El Salvador must overcome. The Tripartite Supreme Labor Council (CST) should be strengthened and broadened. A fortified CST might benefit from linkages to the new Economic and Social Council established as a space for open dialogue among social sectors.

- 3 **Build a Partnership for Labor Standards Enforcement (PLSE) between MTPS and global brands operating in El Salvador.** It is time to bring to the same table the two parallel auditing systems currently being operated separately by the public and private sectors. To open this timely dialogue, the Ministry should invite the brands to share methodologies and best practices, and to explore efficient modes of collaboration in advancing responsible labor practices.
- 4 **Focus on priority goals – such as the elimination of the worst forms of child labor and on gender equity.** Clear, attainable goals build credibility and enthusiasm. Allegations of child labor can threaten a region’s reputation and relationships with international buyers. It is time to reassess the 2007-2010 national plan to eliminate child labor. To counter gender discrimination, the executive could open Gender Equity Units in public sector entities, under the coordination of the Gender Unit recently opened within MTPS.
- 5 **Coordinate better among international donors and projects advancing responsible labor.** Currently, international donors are supporting an impressive number of projects in El Salvador advancing labor practices. Earlier promising MTPS efforts to convene a committee for the sharing of information, experiences and strategies among internationally-assisted projects could be reinvigorated; ideally, internationally-supported projects should fit into a coherent strategy and be aligned with national priorities. Needed is a broader awareness of the relationship between labor standards and international competitiveness.
- 6 **Establish a national system for monitoring and reporting measures of labor productivity and international competitiveness.** Reliable metrics are an important piece of making a persuasive business case for high labor standards. The responsible entity might be a public-private partnership with strong private sector leadership and contributions by experts from academia and labor unions. In an open dialogue over productivity and returns to labor, both employers and employees can become more aware of their respective rights and responsibilities.
- 7 **Foster public-private partnerships that strengthen responsible labor and corporate social responsibility.** Sector and cross-cutting PPPs give concreteness to and open spaces for stakeholder dialogues. PPPs can be forged on a sector basis, as for example exists in the sugar sector where positive progress has already been realized in the battle against illegal child labor. A technical commission should examine the public policy framework to remove any obstacles to forming PPPs.
- 8 **Enable a market for auditors.** The inspection teams of MTPS and ISSS, even if upgraded as they must be through more training and assisted with shared data bases, will fall short of needs for the foreseeable future. For their part, global brands wish to decrease, not increase, their teams of internal auditors. The resulting auditor gap can be filled by independent auditors, whether non-profit or commercial that would complement – and not seek to compete with or replace - the work of MTPS inspectors. A decision by private producers to seek certification via independent auditors would be on a purely voluntary basis.

As the responsible authority, the government must establish the basic framework for a market of auditors, for example by setting objective standards and providing training and certification. The Ministry could chair a dialogue among public and private auditors, to avoid misunderstandings and duplications and to promote efficiencies and cost-savings.

## Abbreviations

AAES	Asociación Azucarera de El Salvador
ANEP	Asociación Nacional de la Empresa Privada
DR-CAFTA	Dominican Republic - Central America – United States Free Trade Agreement
CES	Consejo Económico y Social
CNR	Centro Nacional de Registros
CSR	Corporate Social Responsibility
CST	Consejo Superior de Trabajo
FUNDEMAS	Fundación Empresarial para la Acción Social
FUSADES	Fundación Salvadoreña para el Desarrollo Económico y Social
GMIES	Grupo Monitoreo Independiente de El Salvador
GRI	Global Reporting Initiative
ILO	International Labor Organization
INSAFORP	Instituto Salvadoreño de Formación Profesional
ISSS	Instituto de Seguridad Social de El Salvador
LACAP	Ley de Adquisiciones y Contrataciones de la Administración Pública
“Libro Blanco”	<u>The Labor Dimension in Central America and the Dominican Republic: Building on Progress: Strengthening Compliance and Enhancing Capacity</u>
MTPS	Ministerio de Trabajo y Previsión Social (previously, MINTRAB)
PLSE	Partnership for Labor Standards Enforcement
RL	Responsible Labor Practices
SME	Small and medium-sized firms

## Conceptual Framework

El Salvador is gripped by a seismic, democratic political transition. After two decades of rule by a political party closely aligned with the private sector, on June 1, 2009 a new government took office that views the middle and working classes as its core constituencies. This historic moment poses opportunities and challenges: opportunities for a new government committed to improving working conditions, creating more jobs and alleviating poverty, to consider new initiatives; and challenges for the new government and the nation's productive private sector to find common ground that advances both public and private goals – without which neither sector can achieve its fundamental interests.

The purpose of this Report is to assist El Salvador – its government, private sector, and civil society – to design a public policy framework, centered on positive incentives, to advance responsible labor practices in a manner that benefits private sector employees and also bolsters labor productivity and the international competitiveness of firms and, ultimately, the competitiveness and therefore the well-being of the entire nation. The intent is to seize this unique moment in Salvadoran history to “reset” the nation's approaches to its integration into global markets, in order to better deliver productivity and dignity – with powerful echo effects on the nation's social harmony.

The potential “spillover effects” of responsible labor are great for the Salvadoran economy and polity. Improvements in management-labor relations can contribute to growing labor productivity and international competitiveness, to a more sustainable social compact that guarantees human rights, and ultimately to a more inclusive, prosperous and stable democracy for El Salvador.

In July, 2009 the Ministry of Labor and Social Prevision (MTPS) issued a mission statement that recognizes the contributions that responsible labor practices can make toward a more productive and harmonious society:

“Somos la Institución rectora de la administración pública en materia de Trabajo y Previsión Social, fundamentalmente encargada de potenciar las relaciones laborales, sustentados en el diálogo, la concertación social y la participación tripartita, teniendo como fin principal el mejoramiento del salario real, condiciones laborales y calidad de vida de las trabajadoras y trabajadores, así como la mejora de la producción y de la productividad en un marco de equidad y justicia social.”<sup>1</sup>

In the same spirit, when El Salvador signed and its Legislative Assembly ratified the Dominican Republic - Central America – United States Free Trade Agreement (CAFTA-DR) in 2004, it committed itself to “effectively enforce its labor laws, and to strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights.” (CAFTA-DR, Chapter 16).<sup>2</sup> Furthermore, the signatories recognized that “it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws.” Since the trade accord went into effect in 2006, El Salvador has been an active participant in a series of collaborative mechanisms that CAFTA-DR set up to promote responsible labor practices. Notably, the MTPS's 2009 mission statement (paragraph 7) proposes that El Salvador “armonizar y

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<sup>1</sup> Ministerio de Trabajo y Prevision Social, “Mision, Vision y Principales Politicas.” San Salvador, Julio, 2009.

<sup>2</sup> CAFTA-DR (Chapter 16) provides this definition of labor laws: “a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”

actualizar la legislación laboral con los tratados y convenios internacionales ratificados por el Estado Salvadoreño.”

### A Culture of Compliance and the Business Case

The strategic goal of this Report is to help El Salvador establish an extensive culture of compliance – consistent with CAFTA-DR’s chapter 16 on labor and with the MTPS’s 2009 mission statement wherein compliance with national labor standards and international conventions and best practices is the common norm. Sustainable cultures of compliance rely primarily on positive incentives – material and moral (although the availability of sanctions to address violations are also required to discipline outliers). Therefore, the proposed public policy framework will rely primarily on a battery of positive incentives - ranging from direct government payments and tax exemptions to more favorable treatment in government procurement to public recognition of best performers – that together construct an enabling environment for the private sector. Where sanctions are required to secure a level playing field for all competing firms, they should be forceful and predictable enough to impact upon a firm’s cost-benefit analysis, to induce compliance with the commonly accepted norms.

For a public policy framework to lead to a culture of compliance, private firms – where most labor is employed - must be persuaded and have evidence that responsible labor practices are in their self interest. In some instances, this mutuality of interests is self-evident: better treated workers will be more productive, less liable to commit operational mistakes, more likely to remain loyal to the firm. Workers who have benefited from training on labor standards will recognize that with rights come responsibilities. Frankly, however, some responsible labor practices may require investments that, in the short run, are costly to the firm; for example, the purchase of expensive protective gear that meets health and safety standards; some investments in labor, such as advanced training, may not be entirely appropriated by the firm, in the event that the worker quits before the full return on the investment is realized. In such cases, it is fully appropriate for the public sector, acting on behalf of the common welfare, to establish a framework of incentives to advance responsible labor practices that may involve resource transfers to the firm or directly to the workers (as in scholarships for vocational and professional skills training).

Within corporate boards and industry associations, advocates of responsible labor practices must be able to make “the business case,” that responsible labor practices will, certainly in the longer run, rebound to the benefit of the firm, its reputation and financial bottom line. This requires a strong and coherent public policy framework that establishes a transparent incentive structure. It also requires a persistent communications strategy that persuasively articulates business benefits. This educational mission is best implemented through an active partnership between public entities, private business associations, and industry leaders, with collaboration from interested civil society organizations. Fortunately, in El Salvador the components of such a vigorous public-private partnership already exist.

### Corporate Social Responsibility and International Competitiveness

Responsible labor is one component of a broader corporate social responsibility (CSR). While the exact definitions of CSR vary, they generally include aligning business operations with recognized social and environmental standards and expectations, fulfilling legal obligations but voluntarily going further to invest more in human capital and other public goods, environmental stewardship and, in developing countries, poverty alleviation and national competitiveness. Companies fulfill these responsibilities both through their daily operations and strategic planning – how they treat their employees, how they manage energy expenditures – and through their corporate philanthropy and their social investments on behalf of brand reputation and their stakeholders’ interests. Responsible labor suggests long-term investment in human capital and good jobs and wages that rise fairly in tandem with rising productivity.

In this Report, responsible labor (RL) is best envisioned as a component of a broader CSR agenda that includes environmental sustainability and community investment.<sup>3</sup> First, because the international CSR movement – which is well established in El Salvador - embraces all three sets of goals and many systems of performance indicators (including those of FUNDEMAS, El Salvador's leading CSR business association) cover all three issue areas. Second, because firms that score well on the other components of CSR are likely to score well on responsible labor – and on high quality management in general. And, third, because public attention today is fixed on environmental sustainability and (although perhaps to a lesser degree) on community development, such that it makes good tactical sense to link the advancement of labor standards to these other high-profile issues. In El Salvador, although labor standards enforcement has a much longer history, the public policy framework for environmental protection has recently gained ground, and offers complementarities for a responsible labor strategy.

Increasingly, high-quality corporate social responsibility is seen as a means to advance the international competitiveness of the firm and if adopted widely, of the country brand. International competitiveness is variously measured in terms of market share, the ratio of exports to total production, or the rate of growth of exports to production. How can RL/CSR improve international competitiveness? Responsible labor practices increase labor productivity while energy savings reduce the costs of production. RL/CSR may also facilitate access to international markets, when global brands take into account RL/CSR in their sourcing decisions. Furthermore, the free trade accord among Central American countries and the United States (CAFTA-DR) requires responsible labor practices among firms engaged in international trade, and allows for sanctions (monetary fines and in the last resort, the imposition of trade barriers) in the event of their demonstrable violation.

In so far as responsible labor practices increase a firm's international competitiveness, the business case for responsible labor is manifest.

### The Ministry of Labor: Reaching Out

In El Salvador as elsewhere, the Ministry of Labor and Social Prevision (MTPS) has primary responsibility for the enforcement of labor laws and regulations. Yet, despite some recent budget increments, the ministry suffers from seriously inadequate resources in comparison to its broad responsibilities and the very large number of firms and workers under its jurisdiction. During 2007, the ministry was allocated a budget of just \$6.7 million or 0.23 percent of the national budget. With 159 labor inspectors, the ministry was only able to audit firms employing 111,000 workers or 4.1 percent of the employed labor force.<sup>4</sup>

In El Salvador as elsewhere in Central America, the ministry of labor has traditionally lacked the political clout to gain a significantly higher share of the national budget, from a state that struggles to deliver the wide range of services demanded by the population and promised in the Constitution and mandated in numerous legislative decrees. Clearly, it is critical to continue to strengthen the financial and human capacities of the Ministry of Labor. But it would be naïve to limit a strategy to enhance responsible labor practices to that single tactic, which can mature only over a very long time horizon, in harmony with the gradual modernization of the Salvadoran polity.

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<sup>3</sup> For a similar treatment, see Foreign Investment Advisory Council (FIAS), Building a Framework for Corporate Social Responsibility as a Development Tool: El Salvador, Washington, D.C.: World Bank, 2006. BSR collaborated on this project, which focused on the apparel, sugar and coffee sectors.

<sup>4</sup> International Labor Organization, "El Salvador: Informe de Verificación de la Implementación de las Recomendaciones del Libro Blanco: Período Agosto 2007 – Enero 2008," April, 2008.

*Rather, an effective strategy to build a strong regime for guaranteeing high labor standards in El Salvador requires a broader vision – one that looks to a wider range of public policy instruments. Only by looking beyond one under-resourced ministry can a public policy framework be established, that can present sufficient incentives to the private sector to adopt and sustain high quality responsible labor practices.*

The Ministry of Labor needs strong partners. It needs to build strategies and coordinate with other government ministries, regulatory agencies and the semi-autonomous entities. It needs to look to the private sector not as the enemy to be penalized but as welcome partners to be engaged, and to reach out to the strong and respected business associations, especially those with a record of public service such as FUSADES and FUNDEMAS, ANEP and the Chamber of Commerce. It needs to wake up to the vast network of corporate codes of conduct and auditing practices that international brands already work throughout their supply chains in El Salvador – and which in large measure pursue the same stated goals as MTPS. The ministry must also look to civil society, including labor unions and non-governmental organizations, as powerful partners and levers in advancing its social justice goals. Pulled together, these international and national actors can constitute a powerful coalition to advance responsible labor practices.

El Salvador's Ministry of Labor and Social Security (MTPS)



## International Best Practices

In the pursuit of responsible labor practices, other governments have recognized the need to supplement the capacities of their ministries of labor with additional instruments and allies to advance responsible labor and the broader CSR agenda. BSR recently undertook a survey of seven such countries, in order to catalogue these pioneering initiatives, and to seek best practices and lessons that, notwithstanding varying levels of economic development, might be applicable and adapted to Central America.<sup>5</sup> The countries surveyed included Brazil, Canada, China, Mexico, Peru, Sweden and the United Kingdom. The research revealed that public policies targeting CSR are increasingly common and are often intended to augment national competitiveness.

The BSR survey research uncovered these common public policies:

**Government-created voluntary or binding standards were found in all seven countries surveyed.** Often such standards result from on-going dialogues by public entities with stakeholders. Standards tend to focus on transparency, accountability and labor rights, as well as the promotion of community involvement practices; some require public reporting. Mexico and Brazil offer public certifications to firms that put into practice the government's voluntary guidelines. Most recently, China has drafted CSR guidelines for both state-owned companies as well as foreign-owned firms operating in the country. For its part, in 2007 the Swedish government began to require that all state-owned companies report on social issues using the Global Reporting Initiative (GRI) as a framework. In China, the Communist Party recently enacted a new Labor Contract Law which requires companies to provide minimum protections to workers.

Public standards can include step-by-step instructions for companies on how to incorporate CSR into their business practices. However, the BSR research concluded, for public standards to be most effective in influencing corporate behavior, they must be part of a larger public policy framework which includes awareness-raising, industry buy-in, and implementation assistance.

**Official programs to promote CSR within the private sector are commonplace.** In Brazil, Canada and China, government agencies seek to promote CSR as a means to increase international trade and competitiveness. For example, in Brazil, the Brazilian Service of Support for Micro and Small Enterprises (SEBRAE) seeks to encourage the growth of small and medium enterprises by encouraging the adoption of responsible business practices. In Canada, the two federal agencies that oversee the business sector of the country, namely Industry Canada and Foreign Affairs and International Trade Canada, promote CSR both domestically and internationally as a means to increase growth of trade and foreign investment. Likewise, in China, on a federal level the Chinese Communist Party has adopted the Harmonious Society doctrine, which emphasizes social equity and responsible business practices as important principles in the quest for long-term economic growth.

**Some governments advance CSR practices by conditioning access to official finance on good CSR practices.** Financial incentives can emanate from various government entities, including ministries of labor, national development agencies, and national banks. For example, the Brazilian National Economic Development Bank (BNDES) requires that all funded entities comply with national labor codes, and the Bank's contracts include a social clause explicitly requiring compliance with child labor, forced labor and anti-discrimination laws: a violation can lead to suspension of the contract. In Mexico, the Ministry of Economy subsidizes CSR consulting services for SMEs, in cooperation with COMPITE, a local non-profit. In Sweden, the Business

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<sup>5</sup> Kimberly Ascoli and Tamar Benzaken, Public Policy and the Promotion of Corporate Social Responsibility. BSR: Business Brief, July, 2009.

Development Agency disburses funds to SMEs to promote CSR through the creation of relevant business development tools, cases studies and regional incubators. In sum, the BSR survey found that governments, developing and developed, in the Western Hemisphere and elsewhere, are expanding the scope of public policy in order to promote RL/CSR in their private sectors, to enhance standards and to gain international competitiveness. However, in no case was a government found to be implementing a comprehensive, coherent pro-RL/CSR strategy of the type considered in this Report. Also noted were the frequent absence of metrics to register the degree of implementation of RL/CSR standards and their impacts on productivity and competitiveness.

### Government Procurement Practices: The United States' Federal Acquisition Regulations (FAR)

A publication by a prestigious Washington, D.C. think tank, the Brookings Institution, and that draws on a conference attended by fifty international leaders from the public, private and non-profit sectors, made this statement with regard to the role of the private sector in development:

“Governments, development banks, export guarantee agencies, and development agencies can influence corporate behavior through their own requirements and guidelines for procurement and the provision of public finance and government support. Effective examples already exist in all these areas and could be emulated or scaled up.”<sup>6</sup>

In the United States, federal government procurement policies – which as in El Salvador account for a sizeable portion of the national product – are leveraged to ensure responsible labor practices in the contracting private sector. Procurement policies throughout the federal government are regulated through the detailed Federal Acquisition Regulations (FAR), even as individual agencies are permitted to issue supplemental regulations appropriate to their specific functions. FAR asserts: “Agencies shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as— (a) Safety; (b) Health and sanitation; (c) Maximum hours and minimum wages; (d) Equal employment opportunity; (e) Child and convict labor; (f) Age discrimination; (g) Disabled and Vietnam veteran employment; (h) Employment of the handicapped; and (i) Eligibility for employment under United States immigration laws.” The Department of Labor offers technical assistance to federal contractors and subcontractors to help them understand the regulatory requirements and review process, and encourages self-evaluations. When available information indicates that a labor standards investigation is warranted, the contracting government agency must investigate. Furthermore, the U.S. Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

Especially strict reporting requirements are set for federal construction contractors and subcontractors, and government agencies that issue construction contracts must file semi-annual reports on its own labor standards compliance and enforcement activities, including wages and safety standards. Federal construction contractors are mandated to pay not less than the locally prevailing wages and fringe benefits, as determined by the government, and to honor appropriate overtime rates.

In the U.S. federal system, states and municipalities also have the authority to regulate labor standards. For example, the City of Los Angeles, California, in its acquisition

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<sup>6</sup> Jane Nelson, “Leveraging the Development Impact of Business in the Fight against Global Poverty,” in Lael Brainard (ed.), *Transforming the Development Landscape: The Role of the Private Sector*. The Brookings Institution: Washington, D.C., 2006, p. 52.

procedures, requires that bidders agree to fully comply with all applicable Federal and State of California reporting requirements relating to employment, and to adhere to State and Federal wage requirements and non-discrimination guidelines. As with the Federal Acquisitions Regulations, violations may result in the suspension of the contract, and other penalties.

Many Salvadoran emigrants – as laborers, managers, perhaps even as government officials - have gained experience within these U.S. public policy frameworks, at the federal and local levels. Upon their return to El Salvador, these citizens constitute a valuable, if so far largely untapped, “technology transfer” of information that can inform national policy formulation.

Of relevance, President Mauricio Funes has signaled his interest in centralizing government procurement, albeit for the intention of gaining increased leverage in bargaining with suppliers. In this administrative reform, the Executive should consider the precedent of U.S. federal and local acquisition policies, as they leverage public sector procurement to incentivize responsible labor practices in the private sector.

### Public-Private Partnerships to Advance Responsible Labor

The BSR survey of international CSR practices discovered numerous public-private partnerships (PPPs) to advance labor standards. Among the best known PPPs is the long-standing Brazilian effort to eradicate the worst forms of child labor and forced labor in rural and mining areas; private firms forge partnerships with government agencies across a range of programs, including the placement of adolescents in new jobs (“First Job Program”). Child labor has been reduced enormously in key regions and by as much as 40 percent across the nation, and Brazil’s experiences are often cited as models to be emulated.

“In Real Life, There Are No Superheroes”



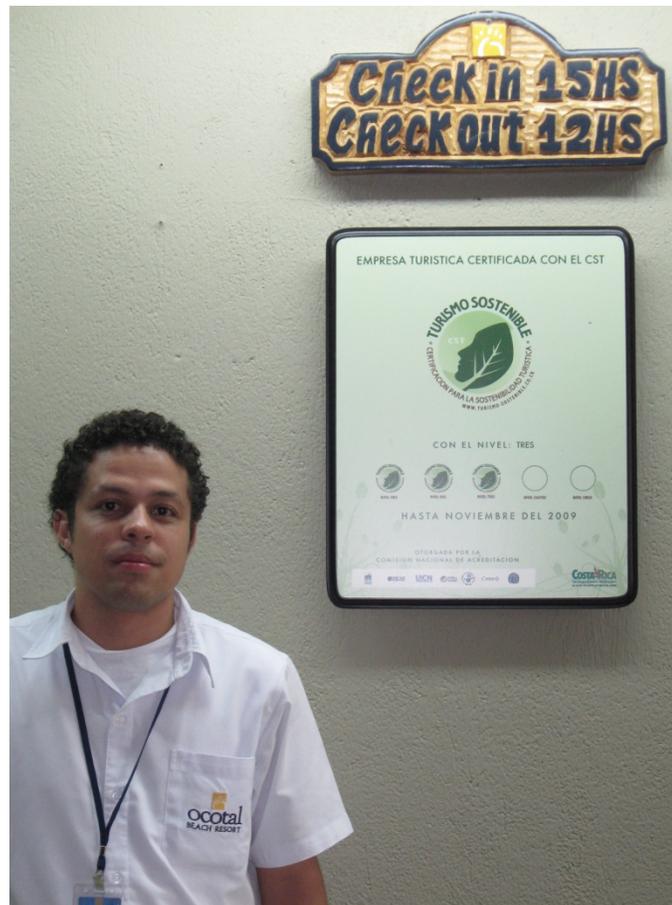
Another illustrative partnership is Singapore’s Workplace Safety and Health Council - composed of representatives from government, business, employees, communities and professional experts – which seeks to advance worker health and safety in key sectors of the national economy including construction, manufacturing, petrochemicals, shipping and logistics. The multi-stakeholder WSH Council sets safety and health standards, helps build capacity in participating firms, and publicly recognizes industry leaders. It publicizes its goals through edgy public posters (see above) which can be readily downloaded from the web and posted in workplaces. The Council’s target metric is to bring down the national fatality rate to less than 1.8 per 100,000 workers by 2018 – and thereby to brand Singapore as not only one of the most efficient but also one of the safest business locations on the planet.

## Costa Rica's Certificate of Sustainable Tourism

A public-private partnership closer to home is Costa Rica's Certificate of Sustainable Tourism. In the late 1990s, to promote sustainability and branding among hotels (and now tour operators), Costa Rica's Institute of Tourism (ICT) launched the voluntary Certificate of Sustainable Tourism. Auditors use an evaluation questionnaire (available on the ICT's web site) that covers firm's internal operations, environmental impact, and community involvement. Firms are expected to comply with national labor laws and auditors inspect the firm's books to ascertain compliance. Tour operators, many offering adventure eco-tourism, must implement employee safety measures.

The Certificate is awarded by a public-private body, the National Accreditation Commission, whose membership includes the private-sector National Tourism Chamber (Canatur), the University of Costa Rica, the business school INCAE, and the Ministry of Environment and Energy. ICT staff work actively with firms to bring their practices into line with audit standards, and firms are granted rankings from 1 to 5. Continuous improvement is encouraged, and some firms are making investments in sustainability to raise their rankings. Positive incentives for participation include listings on the ICT web site and official tourism maps and promotion at trade fairs. In addition, firms report internal financial incentives such as reduced energy costs and more efficient waste management and water conservation. Employee morale gains from training programs that promote a civil culture of community solidarity and national pride and of service to a green-conscious clientele.

Prominent Display of Certificate of Sustainable Tourism, Ocotal Hotel, Guanacaste, Costa Rica



## El Salvador: Partnership to Eradicate Child Labor on Sugar Plantations

Several years ago, El Salvador was publicly criticized for employing child labor on its sugar cane plantations by the International Labour Organization (ILO) and the NGO Human Rights Watch. In response, the Asociación Azucarera de El Salvador (AAES) partnered with government agencies and the ILO to develop and implement a strategic long-term plan to reduce and eventually eradicate child labor.

By 2008, the Ministry of Education estimated that the number of children working in sugarcane fields had decreased by 70% over the previous five years. The partnership was working successfully to increase public awareness of the deleterious effects of child labor. The partnership also brought increased unity to the country's sugar industry; the industry association has drafted its own Code of Conduct. In the long-term, El Salvador expects to eliminate child labor in the sugar industry, as well as institutionalize relevant programs and decrease reliance on the ILO.

The reduction of child labor has led to an improved image and reputation abroad for El Salvador's sugar industry. Mr. Tomas Regalado of the Compañía Azucarera Salvadoreña (CASSA), the largest sugar producer in the country, reported that new markets have opened to the industry. Ms. Olga Reyes of Coca-Cola confirmed that "labor and environmental issues represent the competitive edge of the 21st century".

## Global Brand Supply Chains: An Opportunity for Partnership

Over the last decade, leading international firms that source in developing countries have developed extensive systems for ensuring responsible labor practices throughout their supply chains. In El Salvador, in such important economic sectors as apparel, coffee, and sugar, global brands engage with local producers and include as contractual obligations adequate compliance with their codes of corporate conduct. These increasingly detailed corporate codes typically address both labor and environmental issues. Brands regularly conduct audits – whether through their own internal or external, independent auditors or both – to certify compliance with these norms.

Remarkably, there is typically a large gap between these private systems and existing public systems for ensuring labor standards in developing countries. While national labor ministries dispatch official inspectors, global brands send auditors to many of the same factories and farms – but rarely do these two auditing systems come together. Increasingly, however, there is a convergence of resources in the private sector; international brands operating in the same industry, such as toys and electronics, are coming together to set industry standards and reap economies of scale of combining codes of conduct and auditing practices.

The lack of communication between public and private auditing systems is especially lamentable because the two systems are pursuing the same basic goals: more stringent and sustainable enforcement of labor standards; functioning compliant and worker management remediation systems; and, better conditions for workers, their families and communities. While national labor laws and regulations and corporate codes of conduct are never identical, there is typically broad overlap, and corporate codes usually begin with an endorsement of domestic labor laws and international conventions.

It is time for national ministries of labor and for global brands to break out of their silos and engage in dialogue in search of synergies. Engagement between these two actors would help to avoid duplication of efforts, increase coverage of workers, share resources, enhance efficiencies and reduce costs.

## Diagnostic of Responsible Labor Practices in El Salvador

In El Salvador as in many other developing countries, shortfalls in responsible labor practices in the private sector cannot be attributed primarily to weak labor laws and regulations. In very many respects, on paper, El Salvador's Labor Code conforms to international standards. El Salvador has ratified many ILO conventions and incorporated them into its Labor Code. The Constitution (Section 2, Article 37) asserts: "Work is a social function, enjoys the protection of the State, and should not be considered as a mere commodity." Section 2 of the Constitution details many labor protections which are further elaborated upon in the Labor Code (laws and regulations). Some lawyers interviewed for this Report argued that the Labor Code is in need of a good scrubbing and consolidation, but some union leaders fear that any major revision of the Labor Code could precipitate modernizing reforms to make labor markets more flexible, removing some traditional protections and benefits (such as generous severance packages).

But the main point is that drafting constitutional clauses and legislative decrees that guarantee rights on paper is not the same thing as marshalling the administrative capacities and financial resources to affect those guarantees. **The Salvadoran Constitution guarantees many other social and economic rights that are far from being realized - despite on-going efforts by public and private sectors and a gradual improvement in social indicators - as state capacity still falls far short of legal aspirations.**

No doubt, there remains a substantial gap between legal aspirations and actual practices, despite important progress in some areas. In recent years, a number of studies have marshaled evidence that documents this continuing gap in responsible labor practices in El Salvador, although the evidence is typically anecdotal and we know of no comprehensive, authoritative study; certainly, there is no robust empirical survey that encompasses industry, agriculture, construction and the diverse and expanding service sectors (e.g., finance, tourism, retail, professional services).

### The White Book Verification Project

In 2005, during the official negotiations and public debates that led to the ratification of CAFTA-DR, the Inter-American Development Bank, on behalf of the region's ministers of commerce and labor, submitted a report, The Labor Dimension in Central America and the Dominican Republic: Building on Progress: Strengthening Compliance and Enhancing Capacity, which came to be known as "The White Book" ("Libro Blanco" in Spanish). The White Book contained recommendations applicable to the entire region as well as country-specific recommendations. For El Salvador, key recommendations were as follows:

- » Improve protections for trade union and collective bargaining: evaluate procedures for union registration, reform articles 211 and 248 of the Labor Code.
- » Modernize the Ministry of Labor: increase the Ministry's baseline budget, establish additional regional labor offices and local tripartite forums.
- » Strengthen the administration of labor law justice: undertake a needs -assessment for more labor courts; establish a permanent capacity building program for agents involved in the administration of labor law justice; consider establishing a unified alternative dispute resolution mechanism; expedite the procedures for enforcing sentences.
- » Eradicate gender discrimination: establish an office within the Ministry of Labor on gender and employment discrimination issues; implement a public awareness program with the participation of various social players.

- » Eliminate worst forms of child labor: increase resources for institutions working on eliminating child labor and improve inter-institutional coordination; design a new national plan to eliminate child labor by the end of the decade.
- » Promote a culture of compliance: with regard to Free Trade Zones, disseminate the circular emphasizing the rights and prohibitions found in the Labor Code; strengthen the Superior Labor Council and broaden participation; institutionalize a permanent program of public education on labor rights, with tripartite involvement.

To accelerate follow-up on these recommendations, CAFTA-DR governments teamed up with the International Labor Organization to establish a Verification Project, based in the ILO's regional offices in San Jose, Costa Rica. To prepare its periodic country reports, the Verification Project experts consult within tripartite mechanisms, gathering opinions, disseminating information and promoting national dialogue.

A recent Verification Project's report for El Salvador (for the period February – July 2008) notes progress in some areas but repeats many of the original recommendations. The update makes these specific comments, among others, for accelerating implementation of the White Paper:

- » Give priority to strengthening the tripartite Superior Labor Council and the new Special Unit on Gender within MTPS, and to inspections with the Free Trade Zones.
- » Increase MTPS's budget, to intensify inspections and conciliation tasks and to finance permanent training and dissemination programs in labor rights.
- » Adopt more effective measures for dealing with the backlog of labor trials.
- » Develop inter-institutional protocols to provide attention to under-age persons identified in child labor.
- » Complete the design of the public policies for "Promoting Responsible Labor in El Salvador," (This Report!), which "will improve the working conditions and competitiveness of the labor force."

The White Book and the follow-up Verification Project – pioneering in some respects - suffer from a number of shortcomings. They tend to focus heavily on legal and administrative procedures, failing to give adequate attention to economic incentives facing the private sector. They focus primarily on the Ministry of Labor and labor courts, ignoring many other public policy instruments that might be marshaled on behalf of responsible labor practices. Ironically in light of their CAFTA-DR origins, they pay little attention to the presence of international markets – global brands and their supply chains – and their important impacts on labor standards. Nevertheless, the White Book and the periodic reports of the Verification Project do provide authoritative evidence that, despite some progressive reforms, there is still much work to be done before responsible labor practices are fully realized in El Salvador, and provide some useful, if incomplete, guidelines for future action.

## Survey of Salvadoran Public Policies and Responsible Labor

In consultations with many public and private sector experts on labor standards, most perceived that beyond MTPS inspections (themselves too few and too reactive), the Salvadoran government possessed few if any instruments for incentivizing private sector compliance with responsible labor standards. Yet, on closer examination, in recent years the Salvadoran Congress has inserted labor clauses in a number of laws. If faithfully implemented, these labor clauses could make a difference in the economic sectors where they apply. With imagination, the less expansive decrees could be amended and converted into creative and positive incentives for inducing responsible labor practices in the private sector. Among these various mechanisms are: LACAP (government procurement), FOVIAL (highway maintenance), and the distinct laws governing the maquila (assembly) industries, international service free-trade zones, and mining sectors. Of course, CAFTA-DR (chapter 16) is an over-arching commitment that forcefully links labor standards compliance with international commerce and continuing access to the preferential market access embedded in the regional trade accord.

**LACAP (Ley de Adquisiciones y Contrataciones de la Administración Pública).** Decreed in 2000, LACAP regulates the procurement programs of the range of public sector institutions, including autonomous agencies and the Social Security Institute (ISSS). La Unidad Normativa de Adquisiciones y Contrataciones de la Administración Pública (UNAC) pertains to the Ministerio de Hacienda (Treasury), under the principle of strategic centralization and operational decentralization: UNAC oversees and coordinates the decentralized operational procurement units (UACI) housed within each agency of the public administration. LACAP requires bidders on government contracts to show evidence that they are current with payments to social security (ISSS) and employee pensions (Administradoras de Fondos de Pensiones, AFPs). Without doubt, LACAP has focused more attention on these important components of responsible labor. Interviews and consultations for this Report, however, raised a number of questions: Is there a clear mechanism for continued verification of these standards throughout the contract period (most interviewees said “no”)? Where continuing verification may pertain, whether firms in violation can pay fines rather than come into compliance? Do the procurement agencies verify the bidder’s compliance documents with the ISSS and AFP? Is there sufficient transparency during the bidding process to guarantee public confidence in the procurement process?

With its labor clause, LACAP set an important precedent for broadening public sector procurement powers to take into account other responsible labor practices of contractors; further, to give some weight to other components of corporate responsibility, including environmental protection, energy savings and carbon footprint, and community development. LACAP, which is currently under reconsideration, could be amended to develop a point system whereby firms that excel in these areas are given additional points – either based on past performance or promised results, as appropriate to the situation - that improve their standing in the bidding process. Such a positive point system could help to correct the current practice whereby firms are encouraged to offer lowest-price bids, which endangers both quality of product as well as standards of labor practice (as well as often leading to expensive cost overruns). For the new grading process that is suggested here to avoid dangers of unfair favoritism and outright corruption, it would have to be objective and transparent. It would require a credible auditing system to assure that firms live up to their RL/CSR commitments.

The International Labor Organization’s Convention No. 94 speaks to labor clauses in public sector contracts (Costa Rica and Guatemala have ratified this convention but El Salvador has not). Article 2 requires that pertinent public contracts guarantee working conditions no less favorable than those prevailing in other local industries and professions. Moreover, the government agency should guarantee the health and safety and welfare of the workers. To ensure compliance, ILO Convention 94 reads, an

adequate inspection system, including a registry recording hours and wages, should be established.

**FOVIAL** is a public-private partnership between the Ministry of Public Works and representatives of the private sector, whose function is to contract out the maintenance of the national highway system. Funds derive from a gasoline tax. In accordance with LACAP, all bids must present the ISSS and AFP clearances. During the bidding phase, FOVIAL works with potential contractors to ensure compliance with LACAP. Upon selection, a contractor must again show up-to-date clearances. However, consistent with LACAP, FOVIAL does not further preoccupy itself with the labor practices of contractors – despite the widespread perception that abuses of the Labor Code are commonplace in the construction industry (especially where migrant labor is present). Some national companies allege that foreign-owned contractors seek competitive advantage through below-Code labor practices.

**The Free Trade Zone Law** requires that evidence of payments on social security and pensions be presented, for the fiscal incentives to be applied to a commercial transaction. Significantly, in 2007 the law was amended, such that beneficiary firms must now comply with “condiciones de trabajo aceptable con respecto a salario mínimo, horas de trabajo, salud y seguridad ocupacional, y todas aquellas necesarias para el buen desenvolvimiento del trabajador en el desarrollo de sus labores” (Article 29). In addition, the law now explicitly reaffirms the rights of association and unionization and prohibits child labor and forced labor. Also, severance payments must now be made in the event of partial or complete shutdown of the commercial establishment. In that these amendments are quite recent, we are not cognizant of the degree of enforcement. But this is an interesting case of the use of fiscal incentives to advance responsible labor practices in an important industrial sector where violations have been all too commonplace. This extension of the Free Trade Zone Law sets a precedent for considering the amendment of other instruments in the hands of public administration, such as LACAP, to cover a wider range of RL/CSR ground.

Similarly, in 2007 the Congress passed the **Law for International Services** to govern administration and fiscal incentives (including exemptions from trade tariffs and national and municipal taxes) for free-trade zone parks and centers specializing in international services. Article 47 requires firms operating in these zones to “cumplir con las leyes, reglamentos y otras disposiciones legal de caracter labor y de seguridad social, a favor de los trabajadores,” reaffirms the rights of unionization and prohibitions on forced labor, and repeats the expansive language regarding “condiciones de trabajo aceptables” inscribed into the Free Trade Zone Law. Failure to adhere to Article 47 is categorized as a “grave infraccion” (infraccion grave”). The Ministries of Economy and Finance (Hacienda), that jointly sponsored the Law for International Services, framed it as part of a long-term strategy to bolster the nation’s future international competitiveness in promising growth sectors such as call centers, back-office services, software design, medical services, aircraft and shipping maintenance, international finance and logistics.

**The Mining Law (Ley de Minería)** (Article 25) requires that mining firms comply with applicable labor legislation, with special reference to establishing programs in mining safety. The Law also calls upon mining companies to “prevent, control, minimize and compensate” for negative impacts on persons and the environment. Firms are required to train technical persons of Salvadoran nationality.

Together, these laws cover significant portions of the El Salvadoran economy, including government procurement, assembly (apparel), highway construction, mining and international services. In each case, various fiscal incentives – contracts, tax breaks, tariff exemptions – are offered as inducements to responsible labor practices. If properly implemented, and expanded where the law is narrow, the decrees could provide the public administration with practical tools to advance labor standards. These initial steps also provide informative precedents and valuable ingredients for the broader goal of building a public policy framework of positive incentives to advance responsible labor practices in El Salvador.

## Corporate Responsibility and Worker Education Training

A central tenet of RL/CSR is that firms treat their workers not as mere commodities of commerce, as the Salvadoran Constitution affirms, but rather as assets worthy of investment and continuous training and as valuable stakeholders whose interests must be served. El Salvador has a number of laws and programs consistent with this modern theory of the firm.

The Salvadoran **income tax code** (Ley de Impuestos Sobre La Renta) provides for tax exemptions for corporate and individual donations to those non-profits that benefit the public welfare, with specific enumeration of non-profits that promote social assistance, sports, and education and instruction. Thus, firms face positive incentives to donate to and even to establish non-profit foundations that assist their employees to gain professional skills and raise their productivity – with obvious potential benefit to the firm.

The **Law of Professional Formation** (Ley de Formacion Profesional) established the Salvadoran Institute for Professional Training (Instituto Salvadoreño de Formacion Profesional, INSAFORP), with tripartite participation. On the board of directors, the private sector has four and the workers have three representatives; the three government seats are filled by MTPS, the Ministry of Education and the Ministry of Foreign Affairs. An internal research office, El Observatorio de Mercado Laboral, seeks to forecast the needs of the labor markets, so that INSAFORP can offer courses that will prepare workers for good jobs. The INSAFORP training budget of roughly \$15 million is supported by a one percent payroll tax as well as international assistance (from Switzerland and Spain); the costs of individual courses are apportioned 70 percent by INSAFORP and 30 percent by the interested firms, although there are allegations that firms do not always fully meet these obligations. As is the case in many Latin American countries with similarly structured vocational and skill development training programs, the private sector reports that, as the result of political and bureaucratic considerations and plain inertia, courses are sometimes divorced from the requirements of the labor market. INSAFORP needs to demonstrate to the private sector that its courses are indeed raising worker productivity – that INSAFORP instruction is a good investment. Surprisingly, INSAFORP does not conduct training on CSR, according to one official, because the institute feels that CSR does not directly impact competitiveness.

Within the private sector, there is disagreement on the quality and responsiveness of INSAFORP programs. Continual innovation, in response to evolving labor market requirements, is a challenge. A broad review of INSAFORP programming strategies and course offerings would be useful.

In 1986, the Salvadoran private sector created its own non-profit educational institute, La Fundacion Empresarial para el Desarrollo Educativa (FEPADE), which today offers a variety of courses in engineering and business administration, and provides assistance to business start-ups. FEPADE, which has received strong support from the Inter-American Development Bank, is an example of the leadership and capacity that the Salvadoran private sector can apply to education, when it is persuaded that its legitimate interests will be served.

In addition to these structured programs, many Salvadoran firms advance CSR through specific programs that support the education of their employees and their families and communities. Many businesses offer scholarships or provide direct support to local schools.

Ultimately, quality education is the key driver to development, to rising labor productivity and better living conditions and to international competitiveness. El Salvador offers firms a number of incentives to raise the capacities of their employees. But no doubt more could be done.

## Other Public Policy Instruments

On paper at least, the government of El Salvador is a strong state with many actual or latent powers to frame private behavior through targeted incentives and sanctions. In addition to those incentives discussed above, we present a partial list of other available instruments, as examples of the sorts of creative policies that could compose a national strategy to advance responsible labor and promote international competitiveness:

- » The Commercial Code requires firms to register with the National Registry (Centro Nacional de Registros, CNR), and to update their registries on a yearly basis (although reportedly compliance is spotty). To strengthen RL practice, registration requirements and updates could address certain responsible labor issues.
- » The Social Security Institute (ISSS), with only 70 inspectors to ensure nation-wide compliance with payments and services, relies heavily on employee complaints. In 2008 the Institute spearheaded a campaign which encouraged employees to denounce employers who are failing to make payments on their behalf to the ISSS. Also in 2008, the ISSS began to publish a list of delinquent companies, and the list is now published twice yearly in major newspapers. To further foster a culture of compliance, this “naming and shaming” tactic could be complimented with a positive list of firms that have a particularly good record with ISSS programs.
- » Government financial institutions that provide loans and guarantees to private firms could take labor practices into account in their approval and oversight procedures. In El Salvador as elsewhere, financial institutions commonly seek to promote certain social goals, such as assisting small businesses, local firms and communities, minorities and women. In extending loans and guarantees, good labor practices could be rewarded in their own right, and as indicators of high quality, reliable management. The continuous training of employees could warrant special recognition.
- » Regulatory agencies provide licenses and other benefits vital to the operations of firms within their jurisdictions. Application and renewal processes could require certifications of responsible labor practices, and where appropriate regulatory agencies could give positive points for exemplary performance.
- » The Consumer Protection Agency (Defensoria del Consumidor) permits the recognition of firms for good performance. In calling attention to beneficial products, the agency could not only reference the final product but also the production process and within that, the protection of workers’ rights (and the environment). This is the concept behind the “Fair Trade” labeling that is increasingly common in coffee, bananas and other commodities, and that allows pro-active brands to differentiate their products. The Consumer Protection Agency has already undertaken inspections of hotels and beverage establishments, and might add certain labor standards to its check lists.
- » The Salvadoran government subsidizes the costs of fuel for bus companies (transportistas). Yet, the health and safety conditions of drivers are too often ignored, placing their passengers at risk. Fuel subsidies could be conditioned upon compliance with good working conditions of bus drivers.
- » The Ministry of Agriculture partners with the private sector across a range of programs, and some of these partnerships could incorporate responsible labor practices into their guidelines. Specifically, Minister Manuel Sevilla has indicated an interest in building a national brand for coffee exports; compliance with high international labor standards could enhance the competitiveness of such a branding campaign. Minister Sevilla wants to focus special attention on the health and safety of agricultural workers.

Upon careful consideration, some of these instruments and incentives may prove impractical or too costly or may meet strong opposition by stakeholders. In each case, stakeholders should be consulted and costs and benefits duly weighed. Both the

consultations process and the policies themselves should be fully transparent, and policy innovations should be reviewed periodically for effectiveness.

## Policy Options

The extensive consultations with a large number of leaders of Salvadoran society undertaken in the preparation of this Report yielded many proposals for building a positive public policy framework in order to advance responsible labor practices and the nation's international competitiveness. At the same time, participants from all sectors suggested that progress must be gradual and that not all reforms can be undertaken immediately. Continuous improvement is the goal. In the spirit of continuing dialogue among stakeholders, we offer these options for consideration by the government and citizens of El Salvador; we suggest that options 1 – 5 be addressed in the near term:

- 1 **Adopt a “whole of government” (gobierno en pleno) approach to advancing responsible labor.** While the Ministry of Labor must continue to have primary responsibility for ensuring compliance with the Labor Code, MTPS could reach out to build strategies with other government ministries, regulatory agencies and the semi-autonomous entities. In coordination with the Ministry of Economy, and perhaps the presidency, MTPS would lead an inter-agency action committee to design and drive a government-wide strategy. Core membership would include agencies with responsibility for public works, health, education, agriculture, and the environment and natural resources, as well as the ISSS and INSAFORP.<sup>7</sup> Participation by the Ministry of Finance (Hacienda) would be useful as well. The action committee might operate, as a specialized subcommittee, in cooperation with the newly created Economic and Social Council (CES).

Among the most immediate tasks would be: improve information-sharing through a centralized data management system among relevant agencies (MTPS, ISSS, AFPs, Ministry of Finance, Central Nacional de Registros), while assuring reliable safeguards for personal privacy and corporate confidentiality; review existing laws and regulations (LACAP, FOVIAL, Free Trade Zone Law, Law of International Services, Mining Law) for incentive and compliance systems, and consider whether they could be modernized and expanded, and together create a coherent strategy for establishing a positive public policy framework; survey other instruments of public policy, as illustrated earlier in this Report, for possible inclusion in such a “whole of government” strategy to create a culture of compliance; when designing incentives, consider allocating public resources when private short-term costs will be incurred to pay for improvements, and fix sanctions as a last resort and sized to positively influence behavior; in drafting this strategy, consult step-by-step with the interested private sector associations and other civil society organizations, and make certain that policies stimulate rather than discriminate against SMEs; and once established, explain the new strategy through an extensive and permanent public awareness campaign.

Additional “whole of government” measures that could be considered include: following international best practices, establish voluntary corporate social responsibility reporting guidelines for firms, private and public, beyond a certain size, and providing for periodic review and upgrading, reinforced by a publicly visible reward system to incentivize high-quality transparency and accountability; in response to recommendations from the White Book, open Gender Equity Units in

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<sup>7</sup> This recommendation is consistent with the MTSP's 2009 mission statement, paragraph 7: “Articulación Institucional y Política Sectorial: Crear mecanismos y canales que permitan coordinar e integrar la agenda del Ministerio con las distintas carteras del órgano Ejecutivo y otras instituciones del Estado, en la resolución de problemas comunes, con el objeto de maximizar el uso de los recursos y elevar el nivel de impacto de los planes impulsados: Asamblea Legislativa. Ministerio Público. Órgano Judicial; Gobiernos Municipales; Otras Carteras de Estado; ISSS; INSAFORP y otras instituciones oficiales autónomas; Instituciones Adscritas (INSAFOCOOP, Fondo de Lisiados); Superintendencia de Pensiones; Organismos Internacionales; ONG's y otras instituciones donde se tiene representación del Ministerio de Trabajo y Previsión Social; Sector Laboral; Sector Empleador.”

public sector entities, under the coordination of the Gender Unit recently opened within MTPS. El Salvador could also follow other Central American countries in ratifying the International Labor Organization's Convention No. 94 that requires that pertinent public contracts include labor clauses protecting the health and safety and general welfare of the workers.

- 2 **Strengthen existing forums and open new spaces for meaningful dialogues among key stakeholders.** Conflicts over labor standards are part of a much larger pattern of extreme social strife and widespread mistrust that El Salvador must overcome. As the White Book proposes, the tripartite Supreme Labor Council (CST) should be strengthened and broadened. It needs a larger budget and staff. In the negotiations for a free trade agreement, the European Union is requiring the establishment of a wider consultative council that reaches beyond the private sector and labor unions to include civil society – to broaden representation and increase transparency. A fortified CST might benefit from linkages to the new Economic and Social Council established as a space for creative and open dialogue among social sectors.
- 3 **Build a Partnership for Labor Standards Enforcement (PLSE) between MTPS and global brands operating in El Salvador.** It is time to bring to the same table the two parallel auditing systems currently being operated separately by the public and private sectors. MTPS and brands should, voluntarily, examine ways to make the whole larger than the sum of these parts. To open this timely dialogue, the Ministry should invite the brands to share methodologies and best practices, and to explore efficient modes of collaboration in advancing responsible labor practices.

One possible division of labor: brands could focus on their larger, first-tier strategic suppliers through targeted training, developing management systems, productivity enhancement and waste reductions, creating supplier ownership, while MTPS could focus more attention on monitoring the small and medium-sized firms further down the supply chain.

MTPS could target its scarce resources to the areas of most need and brands would benefit by not having to worry so much about the reliability of upstream subcontractors. MTPS could also begin to look after the badly neglected informal and service sectors – where as many as half of urban workers are found. Interviews suggested the need for more attention to the construction trades and to the rapidly expanding private security services.

- 4 **Focus on priority goals – such as the elimination of the worst forms of child labor and on gender equity.**<sup>8</sup> Clear, attainable goals build credibility and enthusiasm. Allegations of child labor can threaten a region's reputation and relationships with international buyers. It is time to reassess the 2007-2010 national plan to eliminate child labor which created three committees (child labor, commercial sexual exploitation, and human trafficking); some experts argue that the institutional framework for the campaign would benefit from an inter-agency protocol to assist under-age persons identified in child labor.

As a positive example, the Asociacion Azucarera de El Salvador (AAES) has lead an effort to eliminate child labor from sugar cane plantations. As part of the "CAFTA-DR Responsible Competitiveness Project," BSR and FUNDEMÁS are working with the Association to identify and disseminate best practices, so that other companies and industries struggling with child labor can replicate these practices.

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<sup>8</sup> The MTPS's 2009 mission statement also includes the elimination of child labor and gender equity among its priorities.

- 5 **Coordinate better among international donors and projects advancing responsible labor.** Currently, international donors are supporting an impressive number of projects in El Salvador advancing labor practices; the U.S. government alone has well over a dozen under way (see appendix B). Some projects support institutional capacity building, others focus on worker education and public awareness – and many are working to advance the goals discussed in this Report. Earlier promising MTPS efforts to convene a committee for the sharing of information, experiences and strategies among internationally-assisted projects could be reinvigorated; ideally, internationally-supported projects should fit into a coherent strategy and be aligned with national priorities. Needed is a broader awareness of the relationship between labor standards and international competitiveness. Information-sharing with projects fostering environmental protection – that can also enhance international competitiveness and build the business case – should be considered.
  
- 6 **Establish a national system for monitoring and reporting measures of labor productivity and international competitiveness.** Policy makers and the public need to know whether public policy measures are generating the hoped for results. Reliable metrics are an important piece of making a persuasive business case for high labor standards. The responsible entity might be a public-private partnership with strong private sector leadership and contributions by experts from academia. From the outset, labor unions should be consulted, to ensure credibility with workers who may fear manipulation of data and may not fully comprehend the relationship between labor productivity and real wages. In an open dialogue over productivity and returns to labor, both employers and employees can become more aware of their respective rights and responsibilities.

This statistical exercise would be consistent with the purposes of the Western Hemisphere Competitiveness Forum and the Pathways to Prosperity in the Americas, in which El Salvador actively participates.

- 7 **Foster public-private partnerships that strengthen responsible labor and corporate social responsibility.** Sector and cross-cutting PPPs give concreteness to and open spaces for stakeholder dialogues. PPPs can be forged on a sector basis, as for example exists in the sugar sector where positive progress has already been realized in the battle against illegal child labor. Other PPPs can focus on cross-sector issues, as exemplified by the Singaporean Workplace Safety and Health Council. Global brands operating in El Salvador are experienced in PPPs and can bring their expertise and resources to partnerships while international donor agencies will be eager to assist. A technical commission should examine the public policy framework to remove any obstacles to forming PPPs; the Inter-American Development Bank and the World Bank Institute, among other international agencies, offer expertise in assisting member states in building government capacity to foster effective PPPs.
  
- 8 **Enable a market for auditors.** Systems of incentives require information and feedback. The inspection teams of MTPS and ISSS, even if upgraded as they must be through more training and assisted with shared data bases, will fall short of needs for the foreseeable future. For their part, global brands wish to decrease, not increase, their teams of internal auditors. The resulting auditor gap can be filled by independent auditors, whether non-profit (e.g., the Grupo de Monitoreo Independiente de El Salvador, GMIES) or commercial (e.g., PriceWaterhouseCooper), that would complement – and not seek to compete with or replace - the work of MTPS inspectors. A decision by private producers to seek certification via independent auditors would be on a purely voluntary basis.

As the responsible authority, the government must establish the basic framework for a market of auditors, for example by setting objective standards and providing training and certification. The Ministry could chair a dialogue among public and private auditors, to avoid misunderstandings and duplications and to promote

efficiencies and cost-savings. This collaborative national system can draw on international auditing and reporting mechanisms (Global Reporting Initiative, Fair Labor Association, SAI) but must be adopted to local circumstances, and should encourage self-evaluations. As part of a Central American regional system, FUNDEMAS has developed indicators and performance measurements worthy of consideration.

Beyond monitoring, as many interviewees asserted, an active civil society is a critical component of a culture of compliance. Responsible watchdog activists make information available, raise public and consumer awareness, and bring pressure to bear on outlier firms or negligent government entities.

- 9 **Review the labor practices governing public institutions.** The Labor Code and practices governing the public sector has lied outside the scope of this Report. However, during the process of interviews and consultations, it was often stated that the government should get its own house in order. Review of the civil service code (Ley de Servicio Civil) as well as relevant clauses in the Constitution requires urgent attention.

The common goal of these proposals is to enable El Salvador to build a multi-sector framework for responsible labor, in the context of corporate responsibility and international competitiveness. If implemented faithfully, such a comprehensive strategy could help set El Salvador on a more inclusive, sustainable growth path – and to become an enviable model for other countries in Central America and beyond.

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## Appendices

### A. List of individuals consulted for this Report

#### Public Sector

Name	Organization
Amaya, Edgardo	Ministerio de Justicia y Seguridad Pública
Aristides, Carlos	Consejo Nacional de la Judicatura
Battle, Fernando	Centro Nacional de Registros
Cardoza, Mauro	Instituto Salvadoreño de Formación Profesional
Dada, Hector	Ministerio de Economía
de Aviles, Victoria	Ministerio de Trabajo y Previsión Social
de Lemus, Alejandrina	Comisión Nacional de la Micro y Pequeña Empresa
de Paz, Lely	Ministerio de Educación
García, Michelle	Ministerio de Trabajo y Previsión Social
Gomez, Ana Ella	Ministerio de Medio Ambiente y Recursos Naturales
Guzmán, Miguel	Ministerio de Hacienda
Jovel, Mauro	Ministerio de Hacienda
Liborio, Sandra	Ministerio de Economía
Lopez, Erica	Corte Suprema de Justicia
Marquez, Luis Adolfo	Centro Nacional de Registros
Mejia, Calixto	Ministerio de Trabajo y Previsión Social
Melendez, Walter	Ministerio de Hacienda
Núñez, Ena Lilián	Corte Suprema de Justicia
Ortiz, Oscar Samuel	Alcaldía Municipal de Santa Tecla
Perdomo, Salvador	Instituto Salvadoreño del Seguro Social
Perla, Mirna	Corte Suprema de Justicia
Pohl, Lina	Ministerio de Medio Ambiente y Recursos Naturales
Quintana, Moises	FOVIAL
Rodezno, Jose Carlos	Ministerio de Obras Públicas
Rodolfo Villamariona	Ministerio de Economía
Sagastume, Yamira	Ministerio de Educación
Sandoval, Mauricio	Fondo de Inversión Social para el Desarrollo Local
Sevilla, Manuel	Ministerio de Agricultura
Tizama, Beatriz	Ministerio de Educación
Trejo, Mauricio	Consejo Nacional de la Judicatura
Valazar, Rene	Ministerio de Educación

Zepeda, Juan	PROESA (Promoviendo Inversión en El Salvador)
Zuñiga, Carlos	Ministerio de Trabajo y Previsión Social

### Private Sector

Name	Organization
Arce, Rene	Ernst & Young
Chavez, Luis	Asociación Nacional de la Empresa Privada
Colocho, Claudia	Guandique Segovia & Quintanilla
Daboub, Jorge Jose	Cámara de Comercio e Industria de El Salvador
de Sola, Diego	Inversiones Bolívar
Flamenco, Alvaro	Banco de América Central
Guerrero, Napoleón	Asociación Salvadoreña de Industriales
Hasbun, Jorge	Cámara de Comercio e Industria de El Salvador
Hernández, Federico	Cámara de Comercio e Industria de El Salvador
Jiménez, Waldo	Asociación Nacional de la Empresa Privada
Magaña, Jose Mario	Cámara de Comercio e Industria de El Salvador
Melara, Raul	Asociación Nacional de la Empresa Privada
Munoz, Carmen Aída	The American Chamber of Commerce El Salvador
Nieto, Maria Cristina	Industrias La Constancia
Rivera, Fatima	Evergreen El Salvador
Romero, Roberto	Romero Pineda & Asociados
Vidal, Juan Hector	Casals & Associates
Zelaya, Roxana	Fundación Empresa y Desarrollo

### Civil Society

Name	Organization
Cerón, Luis	FUNDEMAS
Chamorro, Edgar	Sistema de la Integración Centroamericana
Chávez, Sergio	Comité Nacional Laboral
Chicas, Francisco	Grupo de Monitoreo Independiente de El Salvador
Cuellar, Benjamin	Grupo de Monitoreo Independiente de El Salvador
de Benitez, Emma	FUNDEMAS
de Chavez, Marjorie	FUSADES
Dueñas-Paschall, Sandra	Pact
Escobar, Francisco	FUNDEMAS
Jiménez, Jose Martín	Confederación Sindical de Trabajadores de El Salvador

Martínez, Gerson	Funde
Molina, Maricarmen	Confederacion Sindical de Trabajadores de El Salvador
Moreno, Ledy	Organización de Mujeres Salvadoreñas por la Paz
Nolasco, Ismael	Cámara Salvadoreña de la Industria de la Construcción
Pineda, Carolina	FUNDEMÁS
Reyes, Rhina	FUNDEMÁS
Rivera, Mario	Cámara Salvadoreña de la Industria de la Construcción
Rodriguez, Rosa Vilma	FundAzucar
Trigueros, Alvaro	FUSADES
Umaña, Claudia Beatriz	FUSADES
Valencia, Astrid	Grupo de Monitoreo Independiente de El Salvador
Zaldaña, Marta	Federación de Asociaciones y Sindicatos Independientes de El Salvador

#### Other

Name	Organization
Laidlaw, Phil	US State Department
Thompson, Jami	US State Department
Roth, Michael	US State Department
Lehrer, Jeffrey	US Agency for International Development
Cuellar, Irene	International Labour Organization
Dada, Carlos	Periódico Virtual El Faro
Reyes, Sigfrido	Frente Farabundo Martí para la Liberación Nacional

B. United States technical assistance to advance labor practices in El Salvador, of as July, 2009

USG Agency	Project	Countries	Goals
US Department of Labor	Comply and Win I & II	CAFTA-DR (except CR)	<ul style="list-style-type: none"> <li>▪ Increase understanding of target audience in each country about national labor laws and norms, including particular emphasis on gender discrimination in the maquila sector.</li> <li>▪ Build more effective and reliable Labor Ministry Inspection Systems to enforce</li> </ul>

		<p>labor laws, including particular emphasis on gender discrimination.</p> <ul style="list-style-type: none"> <li>▪ Increase and improve the use of mediation and conciliation to solve labor conflicts.</li> </ul>
Worker Rights Centers	CAFTA-DR	<ul style="list-style-type: none"> <li>▪ Provide advice to workers about the scope and applicability of relevant labor laws, and when necessary, provide legal services explaining the procedural and documentation requirements to exercise those rights.</li> </ul>
Strengthening the Civil Service within the Labor Inspectorates	El Salvador, Honduras, Guatemala	<ul style="list-style-type: none"> <li>▪ Support the professionalization of inspectors and develop career tracks for MOL civil service.</li> </ul>
Ensuring Benefits in the Formal Sector	El Salvador	<ul style="list-style-type: none"> <li>▪ Improve the enforcement capacity of appropriate Government of El Salvador Agencies (Social Security and Ministry of Labor)</li> <li>▪ Educate workers about how to verify that SS payment have been made, and where to go if they discover problems with payment</li> <li>▪ Increase awareness among employers regarding the process, and consequences of non-payment</li> </ul>
Comply and Win for Inspections	CAFTA-DR	<ul style="list-style-type: none"> <li>▪ Improve the capacity of the Ministries of Labor to more effectively manage and oversee inspection and mediation functions; better target labor inspections; and carry out inspections and other enforcement initiative in targeted sectors and/or for targeted labor violations</li> </ul>
Labor Justice Training	CAFTA-DR (except CR)	<ul style="list-style-type: none"> <li>▪ Strengthen labor justice, at the administrative and judicial level, so as to advance in the effective compliance of Internationally recognized labor standards and how they correspond with national law.</li> <li>▪ Create a deeper knowledge of Internationally Recognized Labor Standards within Law Schools and legal representatives of Central American and the DR.</li> </ul>

			<ul style="list-style-type: none"> <li>Strengthen case preparation, legal writing, admission of evidence, and oral litigation skills.</li> </ul>
	Verification/Benchmarking	CAFTA-DR	<ul style="list-style-type: none"> <li>Assess progress in implementing and enforcing labor laws and procedures in an efficient, transparent and sustainable manner.</li> </ul>
	Regional IPEC Project	CAFTA-DR	<ul style="list-style-type: none"> <li>Prevent and withdraw children from commercial sexual exploitation through education, capacity-building with national and local governments, and collaboration with the private sector.</li> </ul>
	Timebound Program	El Salvador, DR	<ul style="list-style-type: none"> <li>Support government efforts to eliminate the worst forms of child labor</li> </ul>
USAID	Modernize Labor Ministries	CAFTA-DR (except CR)	<ul style="list-style-type: none"> <li>Identify key problems such as antiquated systems, lack of professional personnel, and underutilization of management information through a diagnostic of use of information communication technologies.</li> <li>Develop an integrated management systems that will better serve internal and external clients</li> </ul>
	Administration of Labor Justice	CAFTA-DR	<ul style="list-style-type: none"> <li>Train court personnel on oral procedures, conciliation, and other topics, and strengthen judicial schools and other training institutions;</li> <li>Improve court infrastructure improvements in all countries except Costa Rica and the Dominican Republic;</li> <li>Strengthen the legal system by introducing case management and jurisprudence information systems in selected countries.</li> </ul>
	Citizen's Access to Labor Justice	CAFTA-DR	<ul style="list-style-type: none"> <li>Provide disadvantaged workers access to the judicial system;</li> <li>Examine legal/regulatory barriers to alternative dispute resolution;</li> <li>Train government staff in developing procedure manuals, case management, record-keeping, statistics and</li> </ul>

			<p>indicators.</p> <ul style="list-style-type: none"> <li>Enhance the capacity of civil society organizations</li> <li>Strengthen the skills of labor unions' management reps'.</li> </ul>
	Reduce Gender and Other Forms of Discrimination	CAFTA-DR (except CR)	<ul style="list-style-type: none"> <li>Train managers in textile and apparel factories;</li> <li>Train civil society organizations that support women and other vulnerable groups;</li> <li>Sensitize judges and public defenders</li> </ul>
	Support Alliances to improve Labor and Environmental Standards	CAFTA-DR	<ul style="list-style-type: none"> <li>Streamline the work of existing alliances / certifying organizations that serve US buyers and promote expansion of best practices in labor standards and environmental protection;</li> <li>Attract multinational and local businesses to private/voluntary process and certification regimes;</li> <li>Encourage partnerships between governments and the private sector.</li> </ul>
Department of State	Supporting Responsible Competitiveness	CAFTA-DR	<ul style="list-style-type: none"> <li>Promote responsible labor standards and practices, as well as regional dialogue around responsible labor;</li> <li>Work with local producers to implement practical improvements and disseminate lessons.</li> </ul>
	Best Practices in Employer and Worker Organizations	CAFTA-DR	<ul style="list-style-type: none"> <li>Enhance the organizational capacity of worker and employer's organizations.</li> <li>Increase reporting capability and individual case representation capacity.</li> </ul>
	Strengthening Worker Organizations	CAFTA-DR	<ul style="list-style-type: none"> <li>Generate awareness about basic labor law and international labor instruments;</li> <li>Enhance unions' administrative capacities and improve internal effectiveness and accountability.</li> </ul>
	Promote Tripartite Social Dialogue	CAFTA-DR	<ul style="list-style-type: none"> <li>Strengthen national tripartite institutions and mechanisms for social dialogue and social to increase compliance with labor laws.</li> <li>Improve coordination among</li> </ul>

	Promoting a Culture of Labor Rights Compliance	CAFTA-DR	<p>workers and employers.</p> <ul style="list-style-type: none"> <li>▪ Work through consultative mechanisms at the national level to train leaders and labor advocates;</li> </ul>
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Source: U.S. Government