

Labor Conditions in the Guatemalan Sugar Industry

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And the International Labor Rights Fund**

May 2005

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I. BACKGROUND ON THE SUGAR INDUSTRY IN GUATEMALA

In the year 1600, production of raw sugar in America was the largest industry in the world. Sugar production developed under the hacienda system and in the context of restricted local markets.

In the 19th century, the cultivation of sugar for export was more fully developed. In 1945, Guatemala had 12 sugar mills. In the 1950s, there were no important technological changes in sugar cultivation. The volumes of sugar being produced increased greatly in 1960.

During the 1960s, sugar prices rose on the international market. This price increase stimulated production in Guatemala and led to the establishment of four mills. Some sugar mills enjoyed efficient production, and competition led to increased production. The sugar companies also established the Asociación de Azucareros de Guatemala (ASAZGUA) which coordinates, commercializes, and administrates the exportation of sugar cane. ASAZGUA includes the participation of producers and company owners, who exercise power in the industrial, economic and political spheres.

Sugar cultivation covered 130 hectares in 1992.¹ Most of the crops belonged to independent farmers, while the rest belonged to the mills themselves. As a result of the increase in productivity, in 1999-2001 Guatemala was the seventh largest sugar exporter in the world, and the third largest in Latin America, after Brazil and Cuba.² Table 1 shows the dramatic growth of the Guatemalan sugar industry since the 1980s.

TABLE 1: GROWTH OF THE GUATEMALAN SUGAR INDUSTRY (1984/85 - 2002/03)³

Mill	Net production of sugar (thousands of quintals)		Increase %
	1984-85	2002-03	
[REDACTED]	526	6000	1041
[REDACTED]	252	1240	392
[REDACTED]	846	3834	353
[REDACTED]	817	3032	271
[REDACTED]	521	1923	269
[REDACTED]	472	1728	266
[REDACTED]	1090	3876	256
[REDACTED]	1150	3918	241
[REDACTED]	2021	6801	236
[REDACTED]	347	1081	212

¹ Sandra Herrera, *Azúcar y Transformación del Colonato como Práctica Económica-Social y Referente Identitario en Mozos de Rancherías de la Costa Sur de Guatemala*, thesis, USAC (1999), 6-7.

² Donald Mitchell, *Sugar Policies: Opportunity for Change*, World Bank Policy Research Working Paper 3222 (Feb 2004), 16.

³ Centro Guatemalteco de Investigación y Capacitación de la Caña de Azúcar (CENGICANA), *Boletín Estadístico*, Año 4(1), Dec 2003, 1.

Mill	Net production of sugar (thousands of quintals)		Increase
	1984-85	2002-03	%
[REDACTED]	408	1083	165
[REDACTED]	381	744	95
[REDACTED]	1481	2855	93
[REDACTED]	93	151	62
[REDACTED]	1034	1585	53
[REDACTED]	35	45	29
[REDACTED]	-----	1021	-----
TOTAL	11953	40917	242

Table 2 shows the constant increase in sugar production, due to the sector's dynamism and the demand of the international market. In the 1997-8 harvest, there was a substantial increase in production due to the 9,746 metric ton increase in the US import quota (for a new total of 63,440 metric tons).

TABLE 2: GROWTH OF THE SUGAR INDUSTRY, IN CULTIVATED HECTARES⁴

HARVEST	AREA (HECTARES)	GROWTH (HECTARES)	MILLED CANE (Tons) ⁵	INCREASE (Tons)
1990-91	120,000		10,798,824	
1991-92	130,000	10,000	11,307,582	508,758
1992-93	135,000	5,000	11,434,157	126,575
1993-94	140,000	5,000	11,791,275	357,118
1994-95	150,000	10,000	14,039,754	2,248,479
1995-96	165,000	15,000	14,166,855	127,101
1996-97	167,702	2,702	16,079,064	1,912,209
1997-98	181,218	13,516	19,202,357	3,123,293
1998-99	180,000	-1218	17,005,131	-2,197,226
1999-00	180,000	0	15,585,827	-1,419,304
2000-01	179,471	-529	16,493,510	907,683
2001-02	185,000	5529	18,369,823	1,876,313
2002-03	187,000	2000	18,069,428	-300,395

Factors that contributed to the increased productivity during this period include:

- A. Increasing agro industrial integration;
- B. technological and administrative changes; and
- C. changes in labor relations.⁶

⁴ Ibid, 2.

⁵ 'Ton' refers to one cut ton of cane, which is 20 quintales.

⁶ United Nations, *Guatemala: El Rostro Rural del Desarrollo Humano* (1999), 147-148.

II. MODERNIZATION OF THE SUGAR INDUSTRY

The process of modernization was part of an attempt by the sugar industries to face changes in the international market and local production conditions by increasing efficiency and competitiveness.⁷ In the early 1980s, changes were made in the [REDACTED] mill, the largest agro industrial sugar complex in Central America.

1. Increased Agro-Industrial Integration

Agricultural-industrial integration was necessary to guarantee the supply of cut cane to sugar factories. During the harvest period, cutting activities should be coordinated to supply the volume of cane needed by the industry. To ensure the correct sugar content of the product, transportation and waiting times need to be reduced. Therefore, the integration of the production, transportation, and exportation processes was imperative.⁸ This integration has resulted in a complex agro-industrial system that tends to blur the line between agriculture and industry.

At the same time, reacting to the risk of price fluctuations on the international market, the mills have diversified into other investment areas, including property, finance, transportation, and energy.⁹ They have shown a capacity to influence national policies, and have increasing power in the country's political structures.¹⁰ Similarly, the mills strengthened their influence through a concentrated oligopoly structure. They concentrated landholdings in the southern coast by buying or renting the lands of individual farmers. They increased their control of cultivated cane from 20% before 1980 to 79% in 1996-97.¹¹ As a result of their influence, the mills could assign quotas in the domestic market, according to their production capacities, and as an industry they could define and apply commercial policies to face the international market.

2. Technological and Administrative Change

The most important technological changes included the introduction of more productive cane varieties that matured earlier; new methods of cultivation, fertilization and pest control; a new type of machete; technical organization of labor; mechanization of loading; the introduction of new centrifuges; and other procedures to improve productivity in extracting sucrose in the factory. In some mills, cane-cutting machines were introduced, but generally the mechanization has not taken over given its high cost, the special conditions necessary for the equipment to function, and the abundance of cheap labor.¹² At the same time, administrative modernization was also introduced, based on management methods inspired by a vision of quality control, computerized information, and annual evaluations of the harvest in the company and industry.

⁷ Ibid, 148.

⁸ Ibid, 148.

⁹ 'Country Consolidates Lead in Sugar Production', *Newslink*, available at www.newslink-miami.com.

¹⁰ United Nations, *supra* n 6, 149.

¹¹ Ibid.

¹² Manuel Pérez y L Pratt, *Industria Azucarera en Guatemala: Análisis de Sostenibilidad* (1997), 4-5.

The expansion and diversification of the sugar industry marked a process of economic modernization for a region that covers almost all of the department of Escuintla, and parts of the departments of Suchitepéquez, Retalhuleu and Santa Rosa, whose lands are among the best in the country because of their geographic location. At the same time, the region's dependence on sugar and its susceptibility to changes in the international sugar market makes it vulnerable to large-scale recessions.¹³ In addition, the concentration of the industry in this area has environmental implications. The specialized and semi-permanent crop creates a monoculture system that damages biodiversity and creates a perfect habitat for disease. This leads to the excessive use of pesticides and fertilizers.¹⁴

3. Changes in Labor Relations

Changes in labor relations during the 1960s and 1980s were significant. In particular, the repression of unionists greatly impacted labor relations. The development of the Guatemalan union movement has been affected by the country's political cycles. Serious violations of workers' rights have impeded the normal growth of the unions.

The example of the incidents at the [REDACTED] mill illustrates the labor dynamics between the 1960s and 1980s. In the 1970s, workers at the [REDACTED] mill worked in three categories: permanent workers (*'rancheros'*), who lived at the farms; temporary workers in the region (*'voluntarios'*); and high plateau indigenous workers (*'cuadrilleros'*), who were contracted by intermediaries.¹⁵ Working conditions were different for each category. The *rancheros* had a permanent place to live, earned wages during the entire year, and enjoyed benefits such as vacations and social security. The *voluntarios* and *cuadrilleros* did not receive any benefits, worked for only four or five months, and then went to find employment at other farms.¹⁶ Given that it was possible to fire the *voluntarios* or refuse to re-hire them, the farm owners tried to decrease the number of *rancheros*.

Meanwhile, the Union of Sugar Workers at the [REDACTED] was formed. In the 1970s, it was part of the Central Nacional de Trabajadores ('CNT'), one of the founding groups of the Federation of United Sugar Industry Workers ('FETULIA'). The union received a lot of support from the workers,¹⁷ in their demands for salary increases, social benefits, and better working conditions. During the 1970s, the union achieved improvements for the *rancheros*, including free medicine, medical attention, rations of corn, beans, salt and sugar, and school materials. The union's actions culminated in a large cane workers strike in February and March 1980, which included the participation of more than 70,000 workers from the southern coast.¹⁸ During the strike, almost all of the mills

¹³ United Nations, *supra* n 6, 149.

¹⁴ *Ibid.*, 150.

¹⁵ Comisión para el Esclarecimiento Histórico (CEH), *Guatemala: Memoria Del Silencio, Anexo 1, Caso Ilustrativo No 109 - Desaparición Forzada de Miembros del Sindicato Azucarero Del Ingenio Pantaleón*, available at <http://shr.aaas.org>.

¹⁶ *Ibid.*

¹⁷ For example, of the 500 *rancheros* that worked for Pantaleón, 318 were affiliated to the union: *Ibid.*

¹⁸ *Ibid.*

were occupied, and one worker died when a policeman shot him. The result of the strike was a wage increase of 1 quetzal, bringing the new wage to 3.2 quetzales.

The employers' response to the unions varied for some time. First, the employers tried to weaken the unions by offering jobs and even houses to those who resigned from the union.¹⁹ But, over time, the employers began to promote the repression of union leaders and members.²⁰ The employers accused the unionists of being guerrillas, and many disappeared between 1980 and 1983.²¹ The few remaining leaders were afraid, and the collective bargaining negotiations became difficult and drawn-out. Meanwhile, the number of *rancheros* was decreasing and the owners of various farms made lists with the names of people they considered problematic or conflictive, to avoid hiring them. After the kidnappings and disappearances of union leaders in November 1983, an assembly of unionists who were still active decided that the rest of the leaders should abandon the mill because the risks were too great.²² In March 1984, without access to means of reparation,²³ all of the affiliates were fired or resigned. To ensure that they would not form new unions, the management established a "solidarity" organization of workers. According to the Commission for Historical Clarification, the repression of unionists and the denial of the right to association in the Pantaleón mill illustrated the repression common in all southern coast sugar mills.²⁴

The effects of these changes in labor relations continue today. Now, the salary system has changed from a daily wage to a piecework wage. Furthermore, there is no subcontracting system as before; now, contracting is direct between employers and workers.²⁵ In the structure of the labor market, migration from the high plateau continued, but the system now allows six-month contracts with migrant workers. As a result, seasonal migration is very important for the sugar cane harvests; residents of almost all of the towns in the center and south of Quiché and from Baja Verapaz supply the cane region.²⁶ In addition, the expulsion of workers living on the farms and the creation of large rural spaces of homogeneous crops has led to an increase in urban marginality in small cities on the southern coast.²⁷

It is still difficult to form unions, and there are few unionists at the mills. The only sugar union is the union of workers at the Palo Gordo mill in San Antonio Suchitepéquez, which is weak. This union has signed a collective bargaining agreement, but had to file a complaint with the Labor Inspectorate of Mazatenango, because the employers have not

¹⁹ Ibid.

²⁰ Ibid.

²¹ Including 14 members of the union leadership from the Palo Gordo and El Salto mills, 8 from the Madre Tierra mill and 4 from Santa Ana: Ibid.

²² Ibid.

²³ The workers were never reinstated because the companies only had to argue that they were facing bankruptcy and the court would decide in favor of the company, which would then become a new company: Ibid.

²⁴ CEH, *supra* n 15.

²⁵ United Nations, *supra* n 6, 149.

²⁶ Asociación para el Avance de las Ciencias Sociales en Guatemala (AVANCSO), *Regiones y Zonas Agrarias de Guatemala*, Cuaderno de Investigación No. 15 (2001), 79.

²⁷ United Nations, *supra* n 6, 149.

complied with the conditions specified therein.²⁸ It is almost impossible to form industrial unions due to the legal requirement that the membership total 50% plus one of the workers in the industry.²⁹

III. LOCATION AND ORGANIZATION OF THE AGROINDUSTRY

The sugar industry is located in the southern coastal region of Guatemala, in the departments of Escuintla, Suchitepéquez, Retalhuleu, Santa Rosa and the municipality of Amatitlán in the department of Guatemala. The sugar sector in Guatemala consists of mills affiliated to ASAZGUA, the institution that coordinates the strategic plan for the industry, operating through three specialized organizations:

- [REDACTED] This is the loading terminal that guarantees the competitiveness of Guatemala's sugar on the international market, through the effective, efficient and reliable management of sugar and its derivatives for export.
- [REDACTED]. This is the research center responsible for generating, adapting and transferring quality technology for the sustainable development of the sugar industry.
- [REDACTED]. This is the foundation in charge of designing and executing the Social Corporate Responsibility strategy.³⁰
- [REDACTED] Composed of 4 commercializing companies for the domestic sugar market. They have a system of warehouses all over the country to ensure the distribution and sale of the different qualities and types of sugar.³¹

In 2004, there were 16 mills affiliated to ASAZGUA.³²

The sugar sector has a General Assembly, with representation from each of Guatemala's mills (see Table 3). According to CENGICAÑA's 1996-1997 report, the general manager was [REDACTED].³³

1. Sugar Exports

The area of planted cane took up 187,000 hectares during the 2002-2003 harvests and produced almost 41 million quintals of sugar. Of this amount, 70% was exported and the rest was consumed domestically (see Table 4).

²⁸ Interviews, Federación Campesina y Popular, Fedecampo, 2004.

²⁹ *Labor Code*, article 215(c); Peter Buzzanell & Assoc, *Evaluation of Labor and Environmental Standards and Costs for the Cane Sugar Industries of Guatemala, Brazil and Florida* (2003) available at www.floridasugarlmc.com, 29.

³⁰ ASAZGUA, *Realidad del Azúcar en Guatemala* (2003), 1.

³¹ Pérez y Pratt, *supra* n 12, 13.

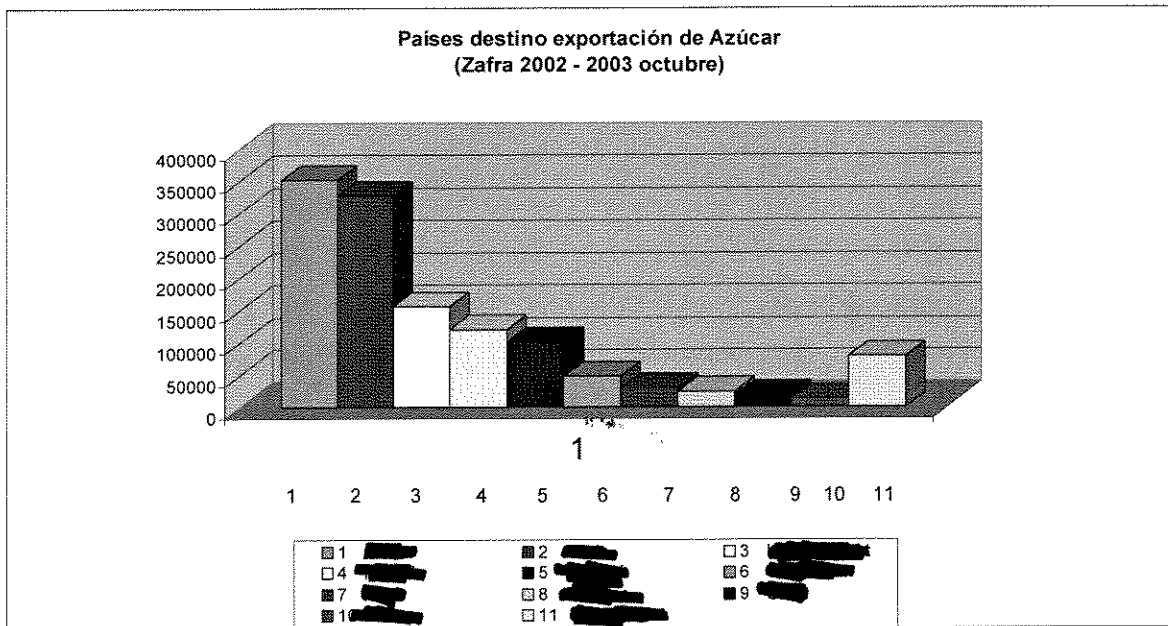
³² See Appendix B. Note that the [REDACTED] mill stopped operating in October 2003: Interview, Anonymous, ASAZGUA, May 12, 2004.

³³ Herrera, *supra* n 1, 42.

**TABLE 4: EXPORTS AND CONSUMPTION OF SUGAR IN GUATEMALA
(1990/91- 2001/02)³⁴**

HARVEST	SUGAR	
	EXPORTED	CONSUMED
1990-91	14,190,075	6,870,035
1991-92	15,816,038	7,400,066
1992-93	15,544,377	7,834,408
1993-94	16,204,118	8,343,683
1994-95	19,872,690	8,443,566
1995-96	19,582,209	8,582,555
1996-97	23,689,763	8,983,053
1997-98	28,936,000	9,464,000
1998-99	23,933,663	9,941,529
1999-00	26,223,892	10,328,662
2000-01	28,343,404	11,041,290
2001-02	29,023,005	11,979,220

Chart 1



As shown in Chart 1, many of the countries that import Guatemalan sugar are developing countries. This is consistent with a tendency in the world sugar market: the developing countries are becoming increasingly important in sugar consumption and imports.³⁵

³⁴ CENGICAÑA, supra n 3, 3.

³⁵ Mitchell, supra n 2, 18.

Another important observation in these charts is the quantity of sugar exported to the United States; in 2002-2003 it was three times more than the quantity exported for the quota. Most of the sugar imported by the US that exceeds the quota amount is part of the re-export program.³⁶ This program allows the importation of raw sugar by refineries as long as the sugar is re-exported within 90 days as refined sugar, products that include sugar, or used in the production of polyhydric alcohol. Guatemala covers 39% of the over-quota US sugar imports, more than any other country.³⁷

2. Domestic consumption

Thirty percent of national sugar production is consumed in Guatemala (see Table 4 above). In 2001, the Guatemalan government opened the market to sugar imports and established an import quota of 5,000 metric tons per year without tariffs. The tariff for imports that exceed this amount is 20%.³⁸ Domestic consumption has been included in the vitamin A fortification program since 1986.³⁹

IV. PRICES

The production goals, sugar prices, and mills' assignments for sugar production for the US quota are established by a committee that includes representatives from the Ministry of the Economy, sugar producers, and mills.⁴⁰ The prices are set using a formula based on market prices, while production assignments are based on past production, previous quotas, and the mills' capacities. The producers' prices are correlated to international prices, since Guatemala exports 70-75% of the sugar it produces.⁴¹ Policies regarding prices to consumers are established based on costs of production, and international supply and demand, which is related to fluctuations in the exchange rate. In 2004, Guatemalan consumers paid 1.9692 quetzales per pound of white sugar.⁴²

1. Environmental Risks

The extensive cultivation of sugar cane reduces the natural biodiversity of mammal, bird, insect, and plant species.⁴³ This reduction in biodiversity results in a high concentration of insects attracted to the crops, which turn into plagues if not controlled. Fumigation with chemicals also reduces the number of the plagues' natural predators and makes the crops even more susceptible. The chemicals also affect other insects, such as

³⁶ David W Skully, 'Auctioning Tariff Quotas for U.S. Sugar Imports', *Economic Research Service/USDA Sugar and Sweetener*, SSS-223, (May 1998), 20.

³⁷ *Ibid*, 21.

³⁸ Economic Research Service, USDA, *World Sugar Policy Review*, Sugar and Sweeteners Outlook, SSS-236 (31 January 2003), 13, 15.

³⁹ ASAZGUA, *supra* n 30, 1.

⁴⁰ Economic Research Service, USDA, *supra* n 47, 15.

⁴¹ *Ibid*.

⁴² In Brazil, primary producer in Latin America, the cost of sugar is 1,2072 quetzales per pound: ASAZGUA, *supra* n 30, 2.

⁴³ Pérez y Pratt, *supra* n 12, 8.

bees, which produce honey.⁴⁴ Furthermore, the cultivation of sugar increases erosion, which generates sedimentation in the rivers. This affects the ability of various fish species to survive.

The degeneration of some natural resources has hurt the region's inhabitants. Sugar production uses large amounts of water.⁴⁵ Water extraction can result in the incursion of saltwater in coastal zones, leading to the sterilization of irrigated lands. Additionally, residual water from the mills' washing processes is discarded and affects the quality of the water downstream.⁴⁶ There are impacts and risks for human health and ecosystems due to the industry's use of potable water.⁴⁷ The pesticides used in the cane fields also affect fishing downstream.⁴⁸

The industry has a serious effect on the quality of life of the people living near or in the fields. During the harvest period, the fields are burned, which affects workers and people living nearby. The soot is dispersed in the surrounding areas and the combustion of vegetable biomass releases CO₂, contributing to the greenhouse effect.⁴⁹ It is common to see workers with agrochemical-related illnesses: 27% of the intoxications attended to by IGSS in 1994 occurred in the cane fields (as a comparison, only 21% were from coffee fields, which is a larger industry than the sugar industry).⁵⁰

2. The Normal Quota

The office of the US Trade Representative determined that the sugar quota (raw, refined, and sugar-containing products) that could be imported to the US from Guatemala from October 1, 2003 to September 30, 2004 would be 50,546 MT.⁵¹

3. CAFTA

With respect to sugar, the general notes of the US tariff program say that the quota for Guatemala will be increased according to the following table:⁵²

⁴⁴ Ibid.

⁴⁵ In the washing process alone, in Guatemala 12 gallons of water are consumed per minute per ton of cane: Ibid, 8.

⁴⁶ Ibid.

⁴⁷ Ibid, 10.

⁴⁸ Ibid, 10-11.

⁴⁹ Ibid, 8.

⁵⁰ Ibid, 9.

⁵¹ USTR, *2003-2004 Allocations of the Tariff-rate Quotas for Raw Cane Sugar, Refined Sugar, and Sugar-Containing Products*, Federal Register Vol. 68 No. 160 August 19 2003, Notices, available at <http://www.ustr.gov/fr/2003/august.shtml>

⁵² *General Notes Tariff Schedule of The United States*, Annex 3.3-US Notes-5, available at <http://www.ustr.gov/new/fta/Cafta/final/index.htm>.

TABLE 8: ASSIGNED QUOTAS

Year	Quantity (Metric Tons)
1	32,000
2	32,640
3	33,280
4	37,000
5	37,740
6	38,480
7	39,220
8	42,000
9	42,840
10	43,680
11	44,520
12	47,000
13	47,940
14	48,880
15	49,820

After year 15, the assigned quota will increase by 940 MT each year.

Tariffs on imported products that exceed these quantities will be considered under the “most favored nation” standards. The program will apply to sugar products, including:

- sugar cane, raw and solid;
- solid beet sugar;
- pure, refined, and solid sugar cane and beet sugar;
- cocoa powder, sweetened with sugar;
- food prepared with flour, etc with 10% sugar;
- food prepared with milk solids with 10% sugar.

Most sugar exported to the US is under the re-export program. The US and Guatemala have agreed to exclude some candy products from the agreement. For example, products containing more than 65% sugar that are already prepared for final consumption are excluded. There is also a mechanism in CAFTA that allows the US to compensate exporters of products with high levels of sugar, instead of agreeing to eliminate tariffs.

V. METHODOLOGY OF THE FIELD INVESTIGATION

The manner in which research for the second phase was carried out was as follows:

1. Identification of institutions of key significance in the Guatemalan sugar industry. Relevant bodies included the Association of Guatemalan Sugar Cane Producers (ASAZGUA), the [REDACTED], union groups, other

social organizations such as key women's rights groups, and the sugar refining companies themselves.

2. Seeking and, where possible, conducting interviews with members of these key institutions. Non-governmental organizations, unions and other social organizations were very willing to share their insights and experiences on the industry. Groups that provided access to our request for information and support for this study included the [REDACTED] grassroots community development groups and campesino/peasant organizations such as [REDACTED] and [REDACTED] located in the sugar cultivating region. Union groups including the [REDACTED] an affiliate of [REDACTED] and [REDACTED] where the only union in the Guatemalan sugar cane industry [REDACTED] is an affiliate also provided information and access to those with valuable information for this project. [REDACTED] interviewed a representative of the [REDACTED] and sought interviews with refinery management (see note below). [REDACTED] met with various members of the [REDACTED]. In addition, [REDACTED] provided general statistics regarding health and safety practices in the regions in which sugar is cultivated, however, accurate data specifically related to the sugar industry is not kept and was therefore not available. [REDACTED] also met with governmental work inspectors from the Escuintla, Suchitepequez and Retalhuleu areas, whose responsibilities include monitoring the implementation of labor laws in the sugar refineries and plantations.
3. Analysis of the structure of the sugar industry and identification of the types of refineries that would be studied. From a preliminary study completed in May 2004, [REDACTED] recognized that the Guatemalan sugar industry consists of refineries of different sizes and different scales of production, which could be expected to exhibit varying labor conditions. Thus, as far as possible, [REDACTED] sought to ensure that the second phase included an analysis of conditions in a variety of refineries, from smaller scale refineries to some of the largest refineries. In addition, [REDACTED] contacted independent sugar cane producers who also form a small but important part of the Guatemalan sugar cane industry.
4. Analysis of the forms of labor in the sugar industry and identification of three distinct labor categories in which interviews would be conducted: field, refinery and transport.
5. Design of interview documentation for each labor category (See Appendix C for the sample field questionnaire).
6. Identification and commissioning of persons able to assist in contacting and interviewing laborers in the sugar industry. For the interview and survey phase of

the study [REDACTED] contracted two research assistants. The first was a union leader and activist and the second a rural community leader, both of whom are from the primary sugar growing regions of Guatemala. They conducted the majority of the direct interviews with workers. The majority of the interviews were held with workers after work hours. [REDACTED] was unable to receive access to refinery property or permission from refinery management to interview workers during their workday. Interviews were held confidentially in agreed upon locations. Workers interviewed were from the three different labor categories (agricultural field workers, sugar refinery workers, and transport workers). Also, given the importance of migrant labor in the sugar industry, [REDACTED] sought to interview not only local workers, but workers from departments distant from the sugar producing areas.

The final sample of workers interviewed was:

❖ Agricultural field workers	157
❖ Refinery workers	137
❖ Transport workers	<u>114</u>
TOTAL	<u>408</u>

7. Site attendance by the [REDACTED] team at various plantations and refineries in the departments of Escuintla, Suchitepequez and Retalhuleu. During these site visits, verification interviews were conducted by members of the [REDACTED] team with a cross-section of workers from the three labor categories and as many female workers as possible. In addition, the [REDACTED] team interviewed a number of small producers. The results of this study are presented in the following chapters.

Important note regarding contact with representatives of the Guatemalan sugar industry: Unfortunately, refinery owners, managers and sugar industry representative bodies demonstrated a lack of willingness to collaborate with [REDACTED] in this study. [REDACTED] approached individual refineries to arrange visits to their plants and fields. Various refineries responded stating that they were too busy. One refinery responded in writing for additional information. Once [REDACTED] provided the information the refinery responded that it would not provide access. This refinery suggested, given the nature of the study, it would be more appropriate to visit the refineries through [REDACTED]. In November of 2004 [REDACTED] was granted an interview with a representative of the Business Social Responsibility office of [REDACTED]. The representative explained the process underway in [REDACTED] of the social responsibility practices being undertaken. At this time [REDACTED] requested access to the refineries to which the representative responded favorably. Later, [REDACTED] was requested to provide more details on the nature and breadth of this study, specific objectives, and details of the organization(s) financing the study. [REDACTED] promptly responded in writing to this request, however, to date, [REDACTED] has not responded to our request to visit Guatemala's sugar refineries. [REDACTED] was only able to gain entry into individual sugar refineries and plantations by participation in the 25th International Society of Sugar Cane Technologists Congress, which was held in Guatemala in January 2005. Access to workers on plantations was also obtained by invitation of social activists and others who requested anonymity.

VI. DETAILED FINDINGS: FIELD DATA

1. General Statistics

The average field worker is a 37-year-old male cane cutter with a spouse and four children. Many field workers have a large number of dependents (40% have five or more dependents, with some workers having as many as nine children), with little or no money contributed by other family members. Almost 70% of field workers have had incomplete primary school education, with almost 20% receiving no education whatsoever.

There are approximately 60,000 workers directly employed in the Guatemalan sugar industry throughout the year, with this number increasing to 300,000 direct and indirect employees during the period of the harvest.⁵³ Well over half of all direct employees are cane cutters, approximately 50% of who are migrant workers from the Guatemalan highlands. In addition to cane cutters, there are fumigators, assistants, cane planters, irrigation workers and so on. Many workers perform a variety of jobs.

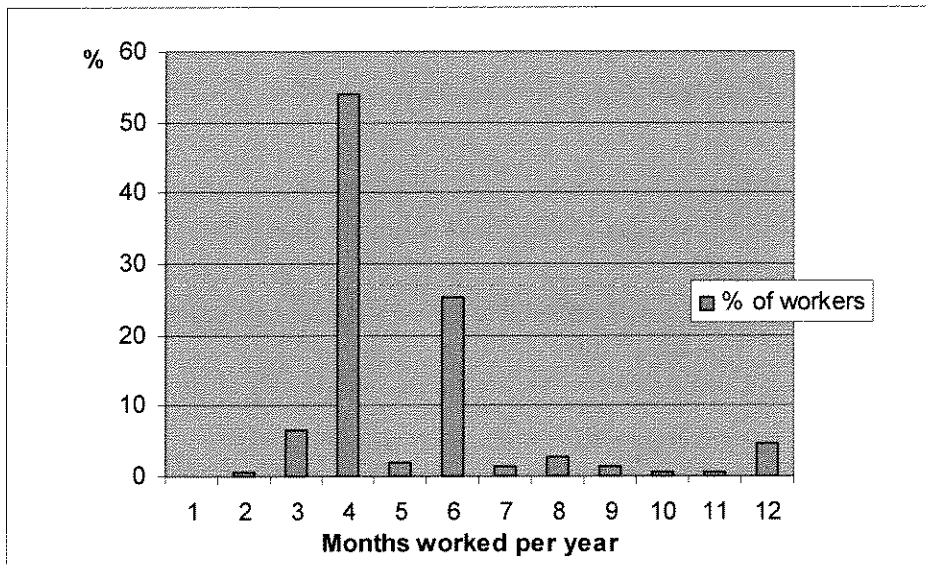
The great majority of field workers are employed for less than the full year, generally working between three and six months during the harvest, which takes place for a period of 100 to 180 days (varying by refinery) between November and May.

2. Legal status

More than 95% of field workers are employed on a temporary basis, usually working only during the period of the harvest (see Figure 1). Although their employment is temporary, most laborers work in the industry every year. Thus, it is not uncommon to find workers who have been employed in the sugar industry for thirty or more years, sometimes working for the same refinery throughout that period. Nevertheless, there is no security of employment; laborers must seek a new contract each and every year.

⁵³ Interview with Manager of Internal Relations [REDACTED], 17 November 2004, [REDACTED] Offices, Guatemala City.

Figure 1: Field workers - Number of months worked P/A in the sugar cane industry



The proportion of workers receiving written contracts varies by refinery or area. Those working in the Suchitepequez / Retalhuleu region were least likely to receive a written contract, whereas among the larger more modern refineries around Escuintla, workers were more likely to be employed using written contracts. However, even when written contracts were used, most workers 67% reported that they did not receive a copy of the contract. This means that very few workers are aware of the terms upon which they are contracted and are unable to insist on their contractual rights. During this investigation we received reports from workers that even if a copy of a written contract is provided; the refinery simply fails to fulfill its obligations under the contract. Thus, one worker said that while his contract specifies his entitlement to various benefits (such as weekly pay, a savings account, loans, death coverage, daily transport, and health services), those benefits had never been forthcoming.

While many cane workers are employed directly by the refinery, it is quite common for workers to be hired through third party contractors. The laborer's employment relationship in these circumstances is often quite ambiguous. The 'contratistas' are employed by the refineries to find sufficient labor to meet the year's harvest requirements. The contratistas may find workers from the villages near to the refineries, but also travel to the highlands to solicit workers with the promise of high wages and regular pay.

Contracts between refinery companies and contratistas contain information regarding the level of pay to be offered to field workers, the number of workers that must be located and the type of worker that the refinery is looking for. In a copy of one such contract obtained by ██████████ the rate paid per ton of burnt cane was Q7.75 for the first five tons, with slightly greater rates for larger amounts of cane cut. Interestingly, the contract states that while workers are entitled to seventh day payment, other payments are incorporated into the price paid per ton. It also misleadingly states that workers must work

a minimum of 150 days to be entitled to *aguinaldo* and holidays payments. The contract stipulates that the *contratista* is required to find 70 cane cutters, who must be able to cut 5 tons per day, cannot be less than 18 years old and cannot be more than 50 years old.

Where workers are employed through the use of third-party contractors, their legal relationship with the refinery is somewhat obscure, leading most workers to assume that the refinery has few or no duties toward them. Ordinarily, an employer-employee relationship may be determined by identifying who pays the employee, who assumes risks in relation to that employee's performance and to whom the employee has an obligation to obey. According to the contract obtained by [REDACTED] under various circumstances, the *contratista* must assume losses that would otherwise be incurred by the refinery (such as where a worker stops working for the refinery and has a debt to the refinery). For his or her services, the *contratista* receives Q0.50 per ton cut. Although it is not specified in the contract, often the refinery distributes salaries directly to workers; however, anecdotal evidence suggests that in other circumstances, the *contratista* pays the workers.

Given the manner in which the contract sets out the obligations of workers, *contratistas* and refineries, it is not entirely clear with whom the worker has an employer-employee relationship; that is, whether he or she is employed directly by the refinery and managed by the *contratista*, or whether he or she is a sub-contractor of the *contratista*. Partly as a result of this uncertainty, those employed by *contratistas* are generally in a more precarious position than those employed directly by the refineries; they often do not receive legal entitlements such as mandatory bonus payments or social security coverage and feel they have no legal recourse against the refineries. Compounding the problem with work contracts is the fact that very few field workers are aware of the internal regulations of the refineries. Almost 85% of field workers interviewed for this report stated that they did not know the internal regulations of their workplaces. Further, of the 15% who responded that they did know the internal regulations, almost all responded that the regulations were not displayed in a visible place and many thought that 'internal regulations' referred to the Guatemalan national Work Code.

The situation of women and children in the fields is even more tenuous than the legal status of adult male employees. While the major refineries publicize their policy of not employing women or children in the harvest of cane, women and children do work in the Guatemalan sugar cane harvest. We received many reports of women being employed in the planting of cane. Further, the employment of children between 14 and 18 years of age occurs with reasonable regularity in the sugar cane harvest. Of the 157 field workers interviewed for this report, 6% were less than 18 years old. Some of these minors worked for the largest refineries despite statements by those same refineries that the hiring of women and children in the harvest is prohibited. In addition, we spoke with children as young as 13 and sighted children as young as 10 working in the harvest, usually assisting their fathers or other family members in cutting cane. We also interviewed several 17 year olds who had worked as cane cutters before the age of 14.

In general, we found that children under 14 years were not *employed* by the refineries to undertake such work; the practice, particularly in fields not directly owned by

the refineries, is to employ and pay only the male head of the family, but to allow the entire family to assist in the cutting and collection of sugar cane.

3. Wages

a. Cane cutters

According to ██████████ most cane cutters receive Q9 per ton of cut cane and each worker can cut 6 to 8 tons per day, resulting in an average salary of Q1800 per month.⁵⁴ By contrast, according to workers, the median pay per ton of cut cane in the industry is Q8, with those at the larger refineries being paid considerably better.⁵⁵ The median number of tons for which cane cutters are paid is 4 tons per day, with some cutters only cutting 2 tons per day and others cutting as much as 8 tons per day.⁵⁶ Consistent with these figures, most cane cutters declared a take-home pay of approximately Q32 per day, or Q920 per month. By contrast, the minimum wage is Q38.60 per day (Q1158 per month) plus various bonuses. Overall, workers should receive a minimum wage of Q54.72 *per day or 1641.57 per month* inclusive of all bonuses. Clearly, the amount being received by sugar cane cutters is significantly less than this. Moreover, the minimum wage is based upon an 8-hour working day, compared with the much longer hours that cane cutters must work.⁵⁷

During the period that sugarcane is not harvested, most cane cutters either work on their own agricultural plots or in alternative agricultural industries. Those employed outside the sugar harvest earn an average of approximately Q950 per month.

A large proportion of workers interviewed for this report felt that the amount of pay they received did not accurately reflect the amount of sugarcane they cut; many interviewees stated that the refineries tended to under-represent the amount cut, sometimes by as much as 50%, resulting in a greatly reduced salary. This appears to be particularly problematic for workers employed as graneleros; while their pay is based on the weight of cane cut, the manner in which the quantity is estimated is by volume and is unavoidably inaccurate.

In order to try to determine whether there were significant differences between the amounts that workers said they earned and the amounts they were actually paid, ██████████ conducted a review of pay slips (where available). ██████████ noted that almost invariably workers declared that they cut more cane than was recorded on their pay slips. The analysis of pay slips showed that workers cut an average of 4.33 tons per day. By contrast, the workers involved declared that they cut an average of 7 tons per day. While the workers may simply have been wrong in their estimations, their statements regarding what they thought they cut were consistent with those of the management at

⁵⁴ Interview with Manager of Internal Relations, ██████████ 17 November 2004, ██████████ Offices, Guatemala City.

⁵⁵ Most workers at Concepción, for example, are paid closer to Q10 per ton.

⁵⁶ It must be noted that the number of tons that a cane cutter is capable of cutting in part depends upon whether the cane cutter is a 'granelero', 'maletero' or 'tramero' (see below for discussion of the differences).

⁵⁷ See discussion regarding hours below.

various refineries who said that workers generally cut 6 to 7 tons per day. Although the actual weight cut by a worker per day could not be independently verified, the discrepancy is consistent with the complaint by most workers that the refineries under-record the tonnage cut and consequently under-pay the cane cutters.

Almost all cane cutters receive their pay in cash. Most workers interviewed for the purpose of this report were contracted directly by the *ingenios*. In general, such workers reported that they receive a pay slip that indicates the number of tons cut, the amount paid per ton, bonuses paid and various deductions. However, the manner in which pay slips record these details is often confused, with details lacking. The fact that the basis for calculating pay is so obscurely recorded on pay slips means that it is virtually impossible for a worker to determine whether he or she has been under-paid. In effect, workers are therefore prevented from insisting upon their rights to the legally required bonuses.

All cane cutters are paid per ton of cut cane and none are paid for overtime. Nevertheless, there is significant variation in the quantity of pay that cane cutters receive per ton, depending upon the type of work performed and the manner in which they are contracted. There are three types of positions that cane cutters may occupy:

1. “Graneleros” – cutters whose task it is to simply cut the cane. These cane cutters use a heavy machete with an upturned edge and a curve in the blade, variably known as an Australian machete or Colombian machete. A tractor collects the sugarcane with a gripping mechanism. The amount cut by each cutter is estimated by the amount that the gripping mechanism is able to hold, such that two ‘collections’ in the gripping mechanism is roughly equivalent to one ton of sugarcane. The truck carrying the cane is then weighed when it reaches the refinery. These cane cutters are generally able to cut more tons than other cutters (on average approximately 4 tons per day),⁵⁸ but receive the least pay per ton, varying from approximately Q7 to Q10 per ton.
2. “Maleteros” – cutters whose task it is to cut cane as well as gather and stack the cane into discrete compact piles capable of being picked up by a tractor with a hook and deposited into a hauler. These cutters use a slightly longer machete with an upturned blade, known as a Cuma machete. The tractors collecting the sugarcane have a scale attached to the hook such that the parcel of cane can be measured as a unit. These cutters are not able to cut as much cane per day due to the time spent gathering and packaging the cane, however, they earn more (as much as Q18 to Q21) per ton. On average, they may cut 2 or 3 tons per day.
3. “Trameros” – cutters whose task it is to cut cane as well as gather and deposit the cane into metal bins that form a train behind a tractor. The cutters use a longer, plain machete. The sugarcane that is deposited in the metal bins is transported to

⁵⁸ This average is derived from information collected through surveys with sugar cane cutters as well as the revision of pay slips. By contrast, members of the administration and management of refineries tend to suggest that the average number of tons a worker will cut per day is in the region of 6 tons.

the *ingenio*, where the cane is weighed. These cutters receive approximately the same amount or slightly more per ton as maleteros.

In addition to the variation in pay that occurs for the type of work performed, salaries vary according to whether the worker is employed directly by a refinery or by a third party contractor.

b. Employees of refineries

In general, those who are employed by a refinery receive less pay per ton, but are told that they will receive the economic benefits required to be paid by law as well as coverage under IGSS. From our investigations it appears that most workers employed directly by the refineries did receive some of the legally required bonuses, however, not all bonuses were paid and the manner in which the bonuses were calculated was obscure and/or incorrect. Of particular concern was the irregularity with which the following were calculated:

- Incentive Bonus - Pay slips from several of the refineries state that the legally required incentive bonus of Q250 (which is required to be paid in addition to the minimum wage) forms part of the basic wage paid to the worker. Other refineries simply fail to pay this bonus at all
- *Septimo dia* - it is not uncommon for workers not to be paid the seventh day payment.
- Aguinaldo, Bono 14 and vacations – these rarely appear on any pay slips, perhaps on the basis that such payments will be made at the end of the harvest when most contracts are terminated. However, copies of final payment slips obtained by ██████████ show that these bonuses are underpaid.
- Sundays – payments for work performed on Sundays appear to vary from refinery to refinery. Some make no distinction regarding work performed on Sundays while others pay double the usual value per ton cut.
- IGSS contributions - Frequently, the amount discounted for IGSS is insufficient and/or has no clear relation to the wages paid. It is not uncommon for refineries to divide the amount paid per ton into a base wage plus various ‘quality’ or ‘productivity’ bonuses per ton. The refinery need only contribute a proportion of the base wage to IGSS.
- Equipment deductions - Payment for use of a machete and file was quite common although the amount deducted varied from refinery to refinery. Whereas workers at the largest refineries were provided use of a machete free of charge, many cane cutters in other refineries were required to pay between Q20 and Q60 for use of the machete and about Q7 for use of a sharpening file. Some workers reported that this

amount is deducted from their pay every fortnight. Others indicated that they needed to pay only if they broke the machete or file. Although the failure to provide tools

necessary for the performance of work is contrary to the law, many workers were required to provide their own machetes and files as the refinery or small producer provided no equipment.

- Funeral deductions - *Auxilio postumo* was another common deduction. This deduction provides

coverage for funeral costs in case of death to the worker or a member of his or her family during the period of employment. In general, this amount represented a deduction of Q2; however, in some cases the amount deducted was unusually large. One pay slip obtained by ██████ showed that the *auxilio postumo* was Q28, which was more than twice as much as the deduction for ██████.

- Medical deductions - Medicines obtained from refinery clinics are also commonly deducted from the pay of workers, as are consultation fees in some refineries. Despite the statements of some of the largest refineries that such medical services are free of charge, pay slips obtained by ██████ showed that medicines were deducted from the workers' pay.

The way in which a worker's earnings are recorded and the effect of not registering with ██████ the full amount earned by a worker can have devastating consequences. One cane cutter interviewed for the purpose of this report, Don Domingo (not his real name), is 68 years old and has been working as a cane cutter every year since the age of 12. During this period, he paid 4.83% of his base wage (excluding bonuses) to ██████, however this amount represented less than 50% of the total salary he was earning each month. Don Domingo is now arthritic and incapable of cutting substantial amounts of cane. The plantation owners are reluctant to hire him. Yet, he must continue to work because he is now unable to draw the retirement wage from IGSS that he would have been entitled to if his salary had been recorded to reflect his true earnings.

c. Employees of third party contractors

In contrast to the situation of employees of the refineries, those who are employed by third party contractors tend to receive the same or more pay per ton, but do not receive the legally required bonuses or coverage under ██████. This is despite the fact that failure to pay such bonuses and affiliation with ██████ is contrary to the law. As with cane cutters working directly for refineries, those working for contractors are not informed of the basis for their pay. A pay slip obtained by ██████ from a cane cutter working for a 'contratista' only declared a lump sum and clearly indicated that no amount was paid for Bono 14, *septimo dia*, public holidays or incentive bonuses. Nor had any amount been deducted for ██████. The pay slip provided no details of the basis for the payment and it was therefore impossible for worker to determine whether he had received the wages due to him.

d. Fumigators, field assistants and other field workers

Almost all field workers are paid in cash and receive some form of pay slip. Once again, however, the pay slips provided very little clear information. The majority of fumigators stated that their salary was calculated on a per-day basis although some were paid on the basis of the size of the area fumigated. In general, even those paid per day were required to fumigate a particular number of hectares within the day regardless of how many hours such work might take.

While some fumigators stated that they are paid overtime, [REDACTED]'s review of pay slips failed to verify this. Moreover none of the workers interviewed were aware of the legal basis upon which overtime should be paid.

Some fumigators interviewed for this research stated that they received the minimum wage of Q38.60 per day. However, 67% stated that they received between Q30 and Q31 per day, which is significantly less than the minimum wage. It must be noted, however, that a couple of the pay slips obtained by [REDACTED] showed that workers who reported receiving only the minimum wage actually earned slightly more. Amongst other field workers, very few reported that they received the minimum wage.

Of particular concern is the fact that several of the pay slips obtained by [REDACTED] demonstrated that most of the refineries factor in the legally required Incentive Bonus into the base wage. Law cannot consider the Incentive Bonus a part of the minimum wage; it must be paid in addition to the worker's salary. Consequently, even those who thought that they were earning the minimum wage were often not receiving this at all; they were receiving approximately Q32 plus the incentive bonus.

Most workers indicated that they received the *septimo dia* payment, while only some said that they were paid the aguinaldo and other bonuses. Due to the lack of information on pay slips, it was not always possible to verify whether or not such payments had been correctly made. On some pay slips, however, it was clear that no bonuses had been paid or they had been factored into the basic wage rather than being paid as an additional amount.

The majority of field workers also indicated that [REDACTED] was discounted from their pay. As with the problem encountered by cane cutters, however, the calculation of the [REDACTED] deduction was often erroneous or difficult to verify. On other occasions the [REDACTED] deduction appeared to be based on 4.83% of the base wage, 7th day pay and any public holidays.

e. General observations

Several workers stated that they maintain their own record of the pay that should be due to them and that there is usually a discrepancy between their expected pay and the wages they receive. Further, a number of workers interviewed for this report believed the amount deducted from their pay for [REDACTED] did not coincide with the amount that their

employer passed on to IGSS. Indeed, some workers stated that the refineries maintain double books. These allegations could not be verified.

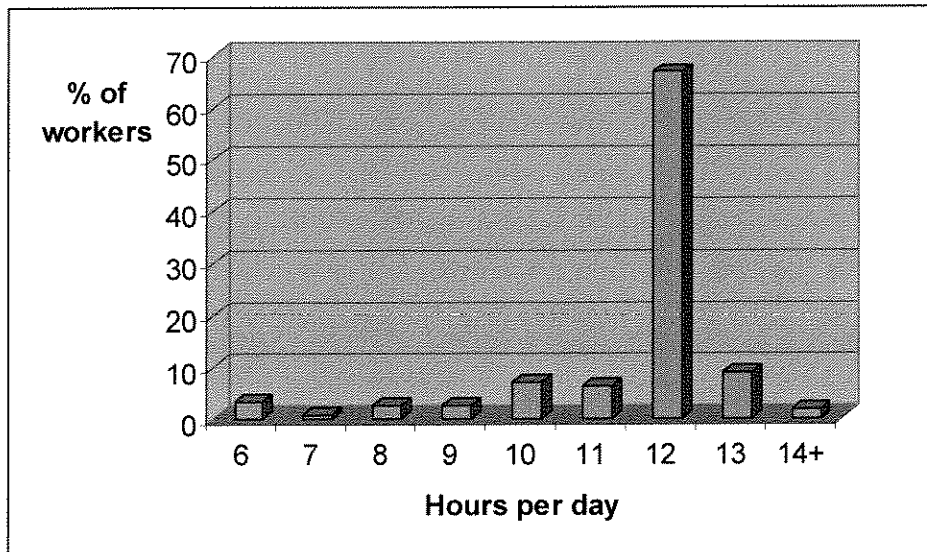
Regardless of the veracity of these assertions, it is clear that there is a complete lack of trust in the employer-employee relationship within the industry, with the overwhelming majority of workers lacking any confidence in the accuracy of their pay. Many field workers reported that the amount of money they earned in the sugar cane industry was insufficient to cover basic needs. One worker commented, “We only earn [enough] to eat”. Such comments are not surprising given that workers are most commonly supporting a family of five on Q960 per month. According to the Guatemalan National Institute of Statistics (INE), the Basic Food Basket for a family of five costs Q1416.66 while the Basic Needs Basket (which includes food, clothing, education, transport, health and other basic requirements) costs Q2585.15 per month.⁵⁹ Clearly, therefore, most field workers in the sugar cane industry receive a wage insufficient to enable families to afford the basic necessities of life. Most of these families therefore live in abject poverty. Frequently, these families are dependent on their children assisting in earning an income and are unable to send their children to school beyond the barest minimum.

4. Hours

The great majority of field laborers work 12 hours a day, seven days a week, taking less than 30 minutes for meal breaks, with some not taking any break at all. Over 93% of cane cutters, fumigators, assistants, and other field workers interviewed for this investigation reported that their average workday lasted more than 8 hours. One in four of all field workers work 12 or more hours per day and more than 85% work 7 days a week. The testimony of field workers regarding excessively long workdays was consistent with other evidence gathered for this report. A review of pay slips found that many workers worked seven days a week. Further, senior personnel at Pantaleón publicly stated that in the mechanical harvest they institute 11-hour day shifts (from 6am to 5pm) and 13-hour night shifts (5pm to 6am), with laborers working one week of each shift. They stated that when the turn-around between the day and night shift occurs, workers are required to complete 18-hour shifts.

⁵⁹ Sandra Martínez, “Gaste Sólo lo Necesario: Aumenta la Canasta Básica”, *Nuestro Diario*, 21 Jan. 2005, 16

Figure 2: Field workers - Average hours worked per day



Among workers there was a significant amount of misunderstanding as to what are the legal limits on work hours. Most workers interviewed for this report believed that a night shift was a 12-hour shift lasting from 6pm to 6am. In fact, the law limits ordinary night shifts to 6 hours per night. Further, 40% of workers indicated that they had worked shifts that lasted between 24 and 36 hours. Sixty-six percent of field workers interviewed said that they felt pressured to work overtime by their field manager, supervisor or contratista. The most common reason for being required to work shifts of up to 24 hours was that the sugar refinery required 'urgent' supply of cane. Workers who indicated that their longest workday was 36 hours generally stated that they felt compelled to perform the work out of economic necessity.

The work hours required of field workers in the Guatemalan sugar industry are contrary to the Guatemalan Work Code, which specifically prohibits workdays longer than 12 hours except in urgent and unavoidable situations. Moreover, the Work Code establishes an 8-hour dayshift and a 6-hour nightshift, with any additional hours being paid as overtime. However, as noted above, it is rare for field workers to receive overtime pay. Rather, it appears that the industry chooses to interpret the law such that the provision relating to overtime payment does not apply to work paid by piece or area. Thus, the overwhelming majority of field workers do not receive additional pay for working 12 hours. This is particularly problematic for field workers other than cane cutters. While cane cutters are paid by the ton and therefore receive some additional remuneration when they work longer hours, other field workers are paid a daily wage on the basis that a certain amount of work is fulfilled, regardless of whether that work takes 8 hours or 12. For example, women planting cane are required to plant 150 packets of cane in 5 to 6 rows. This work will usually take between 10 and 12 hours; however, the women are paid a flat rate of Q38 per day. Given that the minimum wage is based on an 8 hour day, the practice of paying a flat rate means that many cane workers receive less than the minimum wage when their salary is assessed per 8 hour period.

Aside from the illegality of such regularly excessive shifts, working such long hours seven days a week prevents Guatemalan field workers from being able to spend time with their families or in recreational activities. Added to the time spent in the field is the fact that many workers interviewed for this report stated that they must travel over an hour (usually by bicycle)⁶⁰ to arrive at their place of work. The average Guatemalan sugar cane field worker therefore leaves home before sunrise, rides his or her bicycle one hour to the fields, and works a 12-hour day, then rides an hour back home to arrive after dark at 6 or 7 pm. Not surprisingly, in the process of this investigation many workers expressed their dissatisfaction that their extremely long work hours prevented them from spending time with their families, including children.

5. Health and Safety

a. Cane Cutters

Almost three quarters of all cane cutters report that they have had accidents at work; the great majority being injuries sustained with the machete. Nevertheless, only 61% of cane cutters wear some form of Personal Protective Equipment (PPE). Further, even among those that do wear PPE, such 'equipment' consists primarily of a long sleeve shirt and boots.

Only 4 of the 101 cane cutters interviewed for this report wore gloves, 2 wore masks and 12 wore sun protective headwear. This compares with the policy espoused by some refineries such as Pantaleón of providing gloves, hats, a protective pad for the lower leg, boots and long sleeve shirts (with half the cost of the latter two items being paid by the worker).

Other risks to the health of cane cutters included muscle strain and respiratory problems. Many workers mentioned that the Australian (also known as the Colombian) machete used in cutting is very heavy and causes muscle strain and fatigue. The great majority of sugar cane cutters indicated that the smoke and soot produced by the burning



Figure 3: Machete cut causing nerve damage

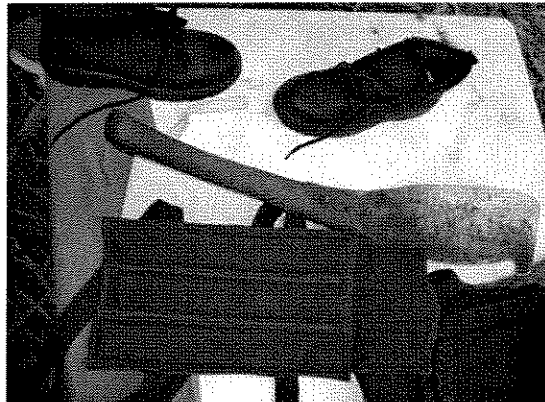


Figure 4: PPE and cane cutting tools ostensibly provided by a few of the largest refineries

⁶⁰ Note that some refineries such as Concepción provide bus transportation for their workers.

of the cane irritates their eyes and respiratory system. Some reported having a persistent cough brought on by their work in the fields. Despite this, workers are not given masks or protective lenses.

In addition to the dangers inherent in the process of cutting the cane, field workers are susceptible to accidents resulting from other aspects of the work. For example, some reported having been hit by heavy vehicles, such as those used to lift and transport the cane. There are also the dangers associated with the burning of the cane; in particular, the possibility that the fire will get out of hand and endanger workers in adjacent areas. Yet 93% of workers stated that there was no emergency evacuation procedure of which they were aware.

Given the physically exhausting nature of cutting cane and the intense heat and humidity of the plantation area, dehydration is another significant risk. Whereas some of the larger refineries state that they provide 1.5 liters of a rehydration serum to their workers each day, the situation in other refineries and on small plantations is significantly different. The majority of workers interviewed for this report in various refineries stated that they had to take their own water into the fields. Some stated that they retrieved water directly from nearby rivers, which may be contaminated with herbicide run-off from the fields. Others who stated that the refinery provided water or serum noted that it is only available once or perhaps twice a day. Consequently, some workers complained that they experienced light-headedness and other symptoms of dehydration while working. Aside from the detrimental effect that dehydration directly causes on the body, it increases the risk of accidents occurring with machetes and other tools.

When injuries do occur, workers have no immediate access to medical attention, as it is extremely rare for workers to be provided with first aid kits in the field. If they suffer an accident workers are most likely to be taken either to the local [REDACTED] clinic or a public hospital. Almost all field workers interviewed for this report indicated that they are affiliated with [REDACTED]. However, at least one worker commented that it is the policy of the plantation that if a worker attends the [REDACTED] clinic, he or she will not be given further work. Such policies discourage workers from seeking medical attention. Moreover, of those workers contracted by third party contratistas, the incidence of non-affiliation with [REDACTED] was significantly higher (almost twice as high).

In addition to the coverage provided by [REDACTED] some refineries have their own medical clinics. Some of these clinics provide tetanus inoculations, medical consultations, and basic medicines. However, the ability of field workers to obtain medical attention at these clinics varies markedly. For example, according to Pantaleón, the refinery clinic provides free consultations and medicines to Pantaleón workers. By contrast, some workers at other refineries state that they need to pay for the consultation and/or the medicine that they receive at the refinery clinic. Copies of pay slips obtained by [REDACTED] showed that some refineries do indeed deduct the cost of medical care directly from the workers' pay. During interviews, some workers noted that if they were required to pay for the medical attention, they would prefer not to attend the clinics as they found the costs prohibitive. Moreover, some workers demonstrated a general reluctance to attend

the refinery clinic given that the clinic was located within the confines of the mill area and most field laborers never entered this area.

b. Fumigators

One positive development in the Guatemalan sugar cane industry has been the move towards biological pest control as opposed to chemical pest control. However, the application of chemical herbicides and fertilizers remains a risk for workers. Despite the use by some refineries of trucks and tractors, the manual application of herbicides, fertilizers and maturing agents is very common in the Guatemalan sugar industry. Application is by way of a tank strapped to a fumigator's back. According to the refineries, the application occurs from 6am to 10am, or 4pm to 10pm, or throughout the night. However, a large proportion of the fumigators interviewed by ██████████ stated that they worked 12 hours per day, usually from 6am to 6pm. Many also stated that they had performed night shifts and those shifts were 12 hours in length. Many stated that they were required to perform 24-hour shifts during pertinent periods of the harvest.

Products used include:

- UIN – a nitrogen fertilizer;
- Pendimentalin;
- Acetochlor;
- MSMI;
- Lyphosite;
- Paraquat;
- 2-4D;
- Ametrin;
- Atrasin;
- Gramoxone;
- Duro;
- Turbostrin; and
- Emazapir.



Figure 5: Demonstration of fumigators using PPE

The greatest health concern among fumigators is that they are generally given no PPE. Demonstrations of fumigation at the largest refineries showed that their fumigators wear full protective clothing including rubber aprons, masks and boots (although neither gloves nor long sleeve shirts were used). However, our discussions with field workers reveal that they are very unlikely to get any form of protective equipment. Such equipment is not worn other than long sleeve shirts and occasionally boots. None of the fumigators we interviewed were provided with masks and only one wore gloves. One worker stated that he used a handkerchief as a form of PPE. As is the situation among cane cutters, no first aid kits are provided. Further, it appears that many fumigators receive no training, thus increasing the likelihood of excessive exposure to toxic substances.

Another significant health risk is the practice of aerial spraying. Refineries use aerial spraying for ripeness inductors and blooming inhibitors such as glyphosate (using 400-600g per Ha), phosphate butyl (using 60-85g per Ha) and CP721312. Some of the spraying takes place during the period of the harvest from November to February, which is the period of greatest concentration of workers in the field. Some workers commented that they had been in the field during aerial spraying. In the most technologically advanced refineries, the avoidance of human flags for aerial spraying occurs 50% of the time through the use of GPS systems. In all other refineries and for the other 50% of the time in the most advanced refineries aerial spraying involves the use of human flags, therefore resulting in direct exposure of workers to sprayed chemicals.

A few of the workers interviewed for this report stated that they did receive a blood test at the beginning of the harvest, however, it was entirely unclear what this test was for. Nor was there any information as to what would happen if a negative result was recorded.

c. Field assistants, cane planters and others

Other field workers also face many of the health and safety issues facing cane cutters. As with cane cutters, most other field workers receive no PPE or first aid kits. In addition to injuries resulting from the use of machetes, common injuries include cuts from the sugar cane leaves, and snake and insect bites.

6. Living conditions of workers

In addition to the health and safety issues faced by workers in carrying out their jobs, there are significant concerns regarding the conditions in which workers and their families live while employed in the sugar cane harvest. Whereas many workers live in the immediate vicinity of the plantations upon which they work, others are employed to work on plantations a significant distance from their homes. Those who are not from the areas in which they work fall into two broad categories; migrant workers (generally from the highland areas) and workers who ordinarily live 25-50 km from the plantations and are not able to travel to and from their homes each day.

Migrant workers employed directly by some refineries may be given free accommodation in areas owned or leased by the refinery. According to the major refineries, the conditions of the accommodation are exceptional and workers are provided with food meeting nutritional requirements. The refineries do not encourage families of migrant workers to travel and live with them. Of the migrant workers interviewed by us, all from the Quiché region, almost all agreed that the conditions of accommodation provided by the refineries were generally fair. However, the refineries in the manner represented by them provided not all of the facilities. For example, from our own observations and the responses of workers, it was not uncommon for the rooms to lack fans and mosquito protection and for the beds to lack mattresses.

Workers who are employed by third party contratistas are not given access to the housing available in some refineries. Contratistas allow workers and their families (including children) to camp on the plantations in which they are working. The conditions of the makeshift housing are extremely poor. The shelter consists of plastic sheeting strung over poles. Bedding consists of either a hammock to avoid snakes and insects or a blanket on the earth. If a river is nearby, the family will use it for all their water needs. Neither potable water nor sanitary facilities are available. While the family is living and working on the plantations there is no access to education for the children.

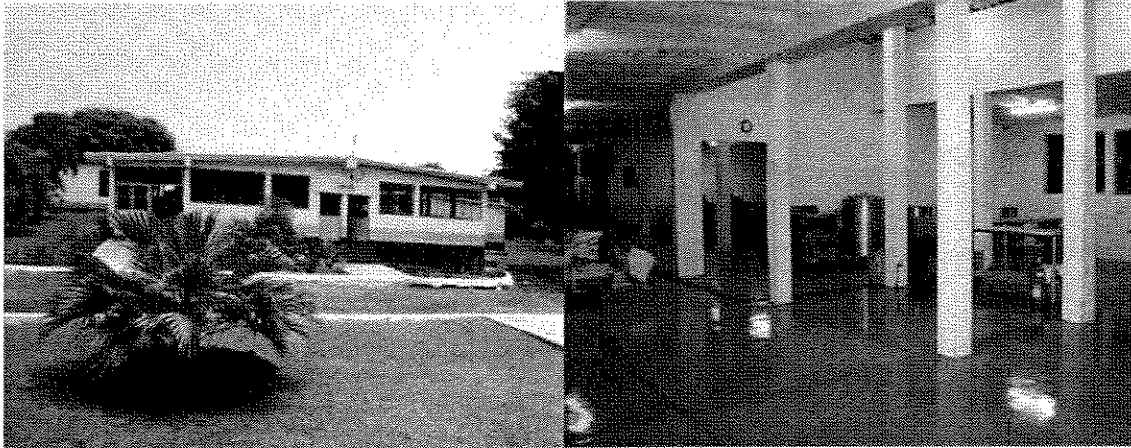


Figure 6: Living conditions as represented by major refineries



Figure 7: Living conditions on plantations

7. Treatment of workers [Discrimination and Abuse]

A common complaint registered by workers in the process of this investigation was the poor treatment they receive at the hands of foremen and other supervisors. Sixty-three percent state that they have been the victims of some form of abuse. Primarily, the abuse of workers takes the form of verbal threats. Workers report being treated “like dogs” and with a complete lack of respect by supervisors. In addition, however, 39% of all workers interviewed *say* they have been the subjects of physical abuse. Very few workers stated that they were aware of a sanctions procedure to which they had recourse.

For women, the level of abuse is significantly higher, with the proportion of workers experiencing some form of abuse rising to almost 100%. Anecdotal evidence suggests that sexual harassment is widespread, with some reporting that they have been pressured to engage in sexual activities with field supervisors in order to continue to obtain work. While independent verification of these claims was not possible, discrimination and harassment of women in Guatemala is well documented.⁶¹

Over 67% of workers felt they had been discriminated against on the basis of their ethnicity (i.e. for being indigenous), economic status (i.e. for being campesinos), religion, or political opinion. Some say that this discrimination is manifested by lower wages, while others say that they are given either less work or the worst forms of work.

8. Freedom of Association

There are no unions that represent field workers in the Guatemalan sugar industry. Some refineries have *solidarista* groups; however, there is general skepticism among workers as to the extent to which such groups reflect the concerns of laborers as opposed to management. Other than these organizations, there are some campesino groups that seek to represent the general interests of campesinos, including their interests as workers. In addition to advocating for land rights, such groups provide training to members of the groups.

Not one of the field workers interviewed for this report stated that they felt they were free to organize. Some of the workers interviewed are members of campesino groups; however these workers generally hide the fact of their campesino affiliation from their employers for fear of reprisals. Indeed, the great majority of workers stated that they were discouraged from organizing for fear of repercussions from their employers. For example, several workers interviewed by us stated that they were wary of making complaints regarding their pay. Many stated that they or people they know had tried to complain about the pay they receive and the way in which pay slips fail to contain details of calculations. According to the workers, however, the refineries maintain blacklists and those who complain about their wages are not only fired from the refinery, but are unable to obtain

⁶¹ There is ample documentation of discrimination and abuse suffered by women. For example see: pp. 85-88, *Del Hogar a la Fábrica, Discriminación Sexual en la Fuerza Laboral Guatemalteca*, Human Rights Watch, New York, 2002

work in other refineries. Consequently, workers do not generally complain to management or to the government work inspectors.

9. Women

The situation of women in the Guatemalan sugar industry has been very difficult to ascertain. Twenty-two (14%) of the 157 field workers interviewed for this report were women. In addition, we conducted informal discussions with 10 other female workers. While it appears that relatively few women work in the fields, many workers interviewed for this report stated that there are women who plant cane, or work as fumigators, cane cutters or assistants. The most common response was that women work in the planting of cane. This was consistent with the interviews [REDACTED] conducted with women, all of whom planted cane. The most significant issues facing the women we contacted were their wages and hours, sexual harassment and lack of access to maternity or other benefits. All of the women we interviewed worked planting sugar cane, generally for 4 to 6 months of the year. Some had previously worked cutting the cane (in preparation for planting) and several had worked in applying fertilizer. Of those we were able to interview, the average female worker was 30 years old, Catholic and indigenous (Quiché). She had either no schooling at all or incomplete primary schooling (generally less than 3rd grade), with three dependents. Most women were in de facto relationships in which their spouses contributed Q800 to Q900 per month.

a. Wages and hours

As mentioned above, most women who work in the field are paid on a per day basis for performing a set piece of work. Frequently, this pay works out at less than the minimum wage. Moreover, economic benefits required by law are simply not paid. Not one of the women interviewed by us was contracted in writing. The refinery contracted most verbally, while others said they were contracted by third party contratistas. Nevertheless, were paid by the refineries. As mentioned earlier, we were informed that some women are not employed directly by the refineries at all, but assist their husbands or other male family member in the harvesting of the cane. These women are therefore further disempowered by the fact that they do not directly receive any remuneration for their work. Consequently, they are entirely reliant on the male breadwinner being responsible for the family's income.

As is the situation among male workers in the sugar cane industry, most women work extremely long hours; an average of more than 12 hours per day, commencing at 5:30 am, seven days a week. Most also travel at least 45 minutes to and from work by bicycle or bus. In addition, however, female workers are expected to continue to be responsible for the maintenance of the children and family home.

b. Sexual harassment

Several of the women interviewed for this investigation stated that field managers had sexually harassed them, with one woman stating that she had been raped. Most of the women had not made a complaint for fear of being dismissed. Of those who had made a complaint, stated that there had been no resolution of the problem; rather, the complaint had languished in the hands of other managers.

c. Maternity and other issues

It appears that if a woman is pregnant while working on the plantations, she is not given access to the benefits provided by [REDACTED]. This is particularly the case for women working for contratistas, who rarely provide [REDACTED] coverage. Several of the women interviewed for this report noted that if a woman becomes pregnant while working in the fields, she is forced to resign. None of the women interviewed indicated that they received any of the other legally mandated maternity benefits such as paid maternity leave and paid breaks to undertake breastfeeding.

d. Community impact

This is one of the least studied impacts of employment patterns in the Guatemalan. In discussions with one important women's group in Guatemala, [REDACTED] learned that there is significant effect on women in highland communities when the majority of the men leave for months at a time to seek seasonal work in the sugar industry. These women must take on even greater responsibilities in the home while also finding sufficient funds to continue to feed their families while their husbands are away.

10. Children

Clearly, the law forbids the employment of minors less than 18 years of age from being employed in physically harmful work. The harvesting of cane is work that involves the use of a heavy machete and, as noted above, there is a high incidence of injuries even among adult cane cutters. Children who work as cane cutters are also frequently injured. A doctor working in the emergency department of a hospital in one of the sugar growing regions of Guatemala encountered three children injured by machete cuts in the process of cutting and collecting cane.⁶² All three were aged between 13 and 15 years old. Given the physicality of the work and the inherent risk of injury with heavy machetes, it must be questioned whether the employment of any minor in the sugar cane harvests can be considered consistent with the law. The work is physically dangerous. Moreover, given the long hours that many cane cutters are required to work, the employment of children of school age in the sugar cane injury often prevents those children from attending school.⁶³

⁶² Dr. José Antonio Perdomo C, "Cortadores de Caña", *Prensa Libre*, Opinión de los lectores, 11 Feb 2005, 17.

⁶³ It should be noted that [REDACTED] spoke with one mother who said that the children were given time in the afternoons to attend school and/or they worked on the weekends. Even in such instances, however, the

Even if one accepts that the employment of children over 14 in the sugar industry is not necessarily physically harmful and therefore consistent with the law, the manner in which that employment is carried out is in clear breach of the law. The legal restriction on the employment of minors for longer than 7 hours a day is simply ignored in the Guatemalan sugar industry. All of the children interviewed by us were employed directly by the refineries (including the largest refineries – ██████████), and most worked 12 or more hours per day, seven days a week. Many indicated that the field managers into performing overtime pressured them; they were required to complete the cutting of a particular area of the cane fields before they were permitted to leave.

Children working in the sugar cane industry are open to being exploited. The pay received per ton by minor cane cutters employed by the refineries is generally equal to that received by adults although they are generally less able to cut the same quantity of cane as rapidly as an adult. Consequently, some minors who receive Q7.5 per ton are only able to cut 3 tons per day and receive just Q24.5 per day. No overtime is paid. Further, ██████████ also received reports of children sowing cane and earning 25 centavos per packet of cane, compared with the 40 centavos usually paid to adults. Under the law, these children should at least be receiving the minimum wage and should be receiving it for work performed within 7 hours per day.

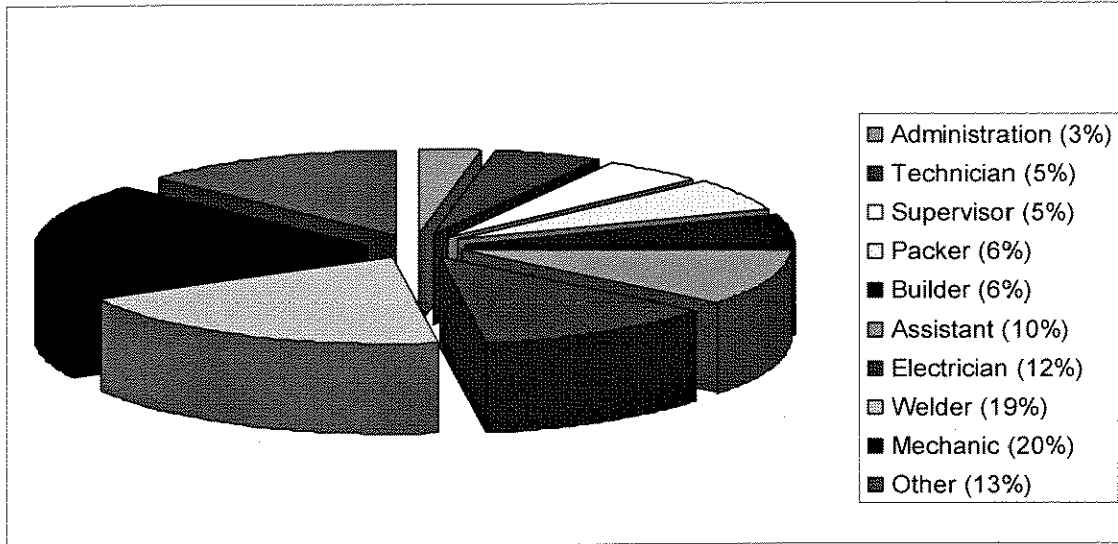
VIII. DETAILED FINDINGS: REFINERY WORKERS

1. General statistics

The positions occupied by those interviewed varied significantly, as shown in Figure 8, nevertheless, there are several commonalities among all of the mill workers interviewed. In particular, the majority of persons working in the mills are significantly more educated than those who work as drivers or as field workers. Almost half of all persons interviewed had completed basic primary schooling and almost 15% had completed diversified secondary school (the equivalent of matriculating from high school). While there are more women present in the mills (often in the administrative and laboratory areas), the great majority of workers are male. The average worker is a 35-year-old ladino, who is married with four dependents, and is almost equally likely to be Catholic as Protestant. More than 20% of workers interviewed had 5 or more children, with several workers having more than eight children. Nevertheless, over 15% of workers with children were assisted by an additional source of income of approximately Q750 per month from either their spouse or one of their children.

physically demanding nature of the work would result in the children being exhausted by the time they attend classes.

Figure 8: Variety of positions held in mills



2. Legal Status

The legal status of workers in the mills is in stark contrast to the situation for most employees in the fields or in transportation, who must vie for their employment contracts each year. Almost 55% of all mill workers interviewed for this report were employed with the refineries for the full year and on an indefinite basis. Seventy per cent of respondents indicated that they had written contracts with the refineries; however as in other areas of the sugar industry, few workers received a copy of their contract (less than 43% of those employed in writing). Moreover, only a third of all respondents indicated that they were aware of the refinery's internal regulations. The lack of knowledge of internal regulations was consistent throughout each of the refineries, in which the interviewees worked, except in [REDACTED] (the only refinery with a union), where the level of knowledge was significantly better.

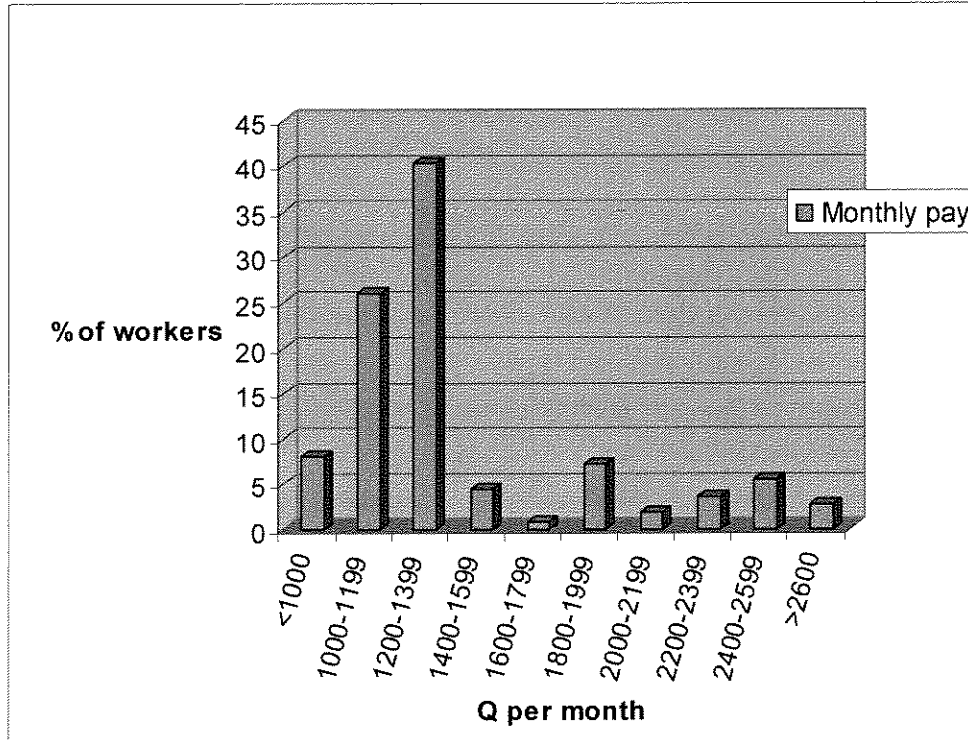
3. Wages

Despite mill workers generally receiving better wages than field workers and transport workers, the average wage remains low and many workers indicated they had not received a pay increase in many years. The median monthly base wage for workers in the mills was Q1200, which is more than the base minimum wage.⁶⁴ Most mill workers also received their legally required bonuses, with 71% receiving the aguinaldo and Bono 14 payments, 93% receiving the seventh day payment and 69% receiving the incentive bonus. Further, 74% said they were free to enjoy their vacations. Almost all the mill workers interviewed said that they received payment for overtime. Further, in contrast to the situation in the field and in transportation, the majority of workers were well aware of the manner in which

⁶⁴ From a review of pay slips, it appears that most mill workers who were questioned about their monthly pay responded with the amount of their base wage excluding legally required bonuses.

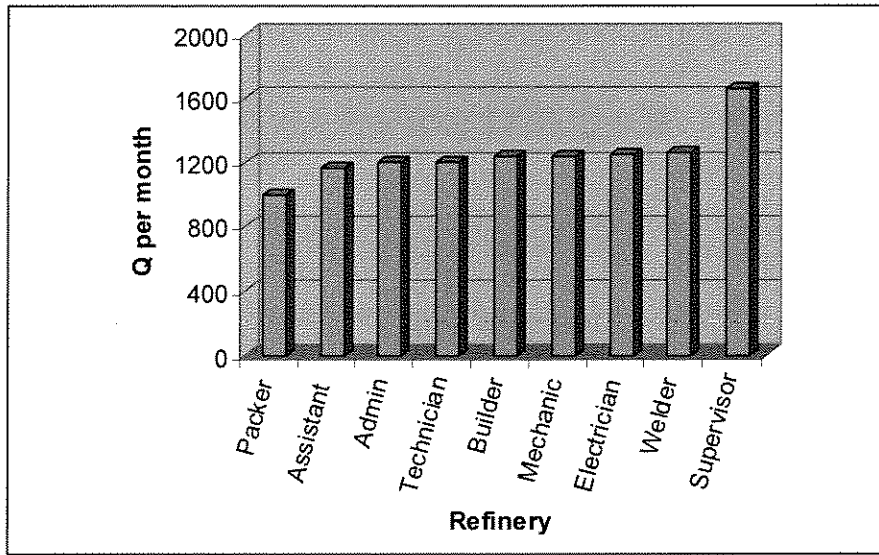
overtime should be calculated (that is, 1.5 times the usual hourly rate). Nevertheless, some workers stated that the amount paid to them did not accurately reflect the hours worked.

Figure 9: Refinery workers' monthly base wage



There was significant variation in the levels of wages paid to mill workers, with some workers earning as much as Q4000 per month and others earning just Q900 per month, depending on the type of work being performed and the refinery in which the worker was employed. Those working, as packers were the poorest paid among workers in the sugar mills, with managers and supervisors receiving the highest monthly wages. Between refineries, there was significant variation in the median number of hours being worked, which had an effect on the amount being paid to workers in the same field. For example, the median base pay for welders at ██████████ was Q1200 per month for 9 hours work per day (less meal breaks). By comparison, the median pay at other refineries was Q1800 per month; however, welders usually worked 10 hours per day (less meal breaks). Further, whereas the ██████████ workers indicated that they received all of their legally mandated bonuses, the welders at the other refineries did not.

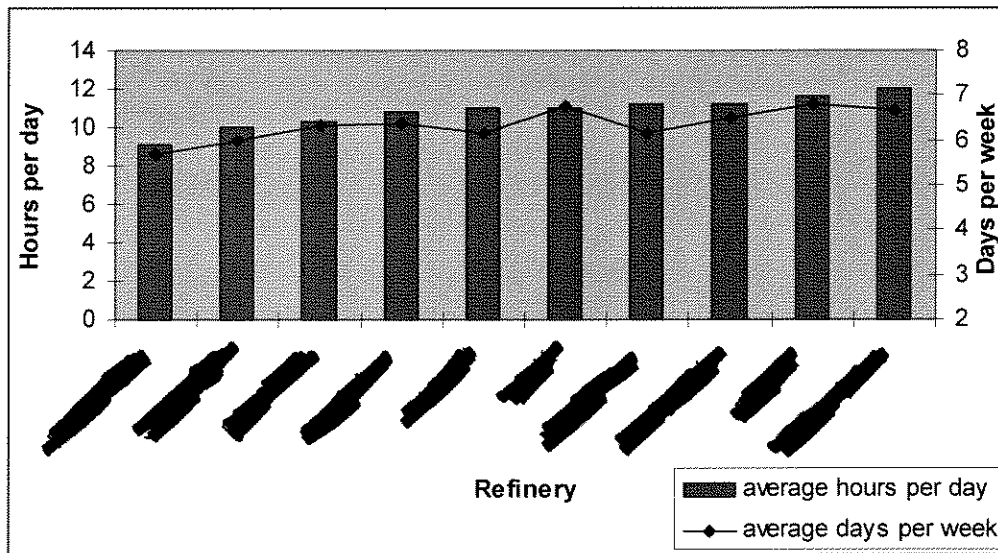
Figure 10: Median monthly base wage by job description



4. Hours

There is significant variation in the hours worked by mill workers in different refineries (see Figure 12 below). Clearly, mill workers at Palo Gordo have far more reasonable hours than those at all other refineries involved in this investigation. Most interviewees in the Palo Gordo mill worked 9 hours per day (less meal breaks). By contrast, workers at most other mills reported working 11 to 12 hours per day.

Figure 11: Average work day and work week by refinery



Weekend work at the mills also varied by refinery with workers at [redacted] indicating that if they worked on a Saturday it was for four hours. By contrast, Saturday

shifts at other refineries generally lasted between nine and twelve hours. Workers at [REDACTED] were most likely to comment that they had little time to spend with their families given the long hours they work, seven days a week.

Only 48% of workers indicated that overtime was voluntary. Many workers stated that such work was a result of pressure from supervisors or administrators. Several workers stated that the longest day they had worked exceeded twelve hours, with the average being 17.5 hours. Most workers stated that the cause of their longest days was excessive production, while many others said it was due to a change in the shift (that is, from day to night or vice versa). Thus, these excessive hours were not generally a result of any emergency situation or unforeseen event, but rather, tended to be related to the normal operations of the refinery.

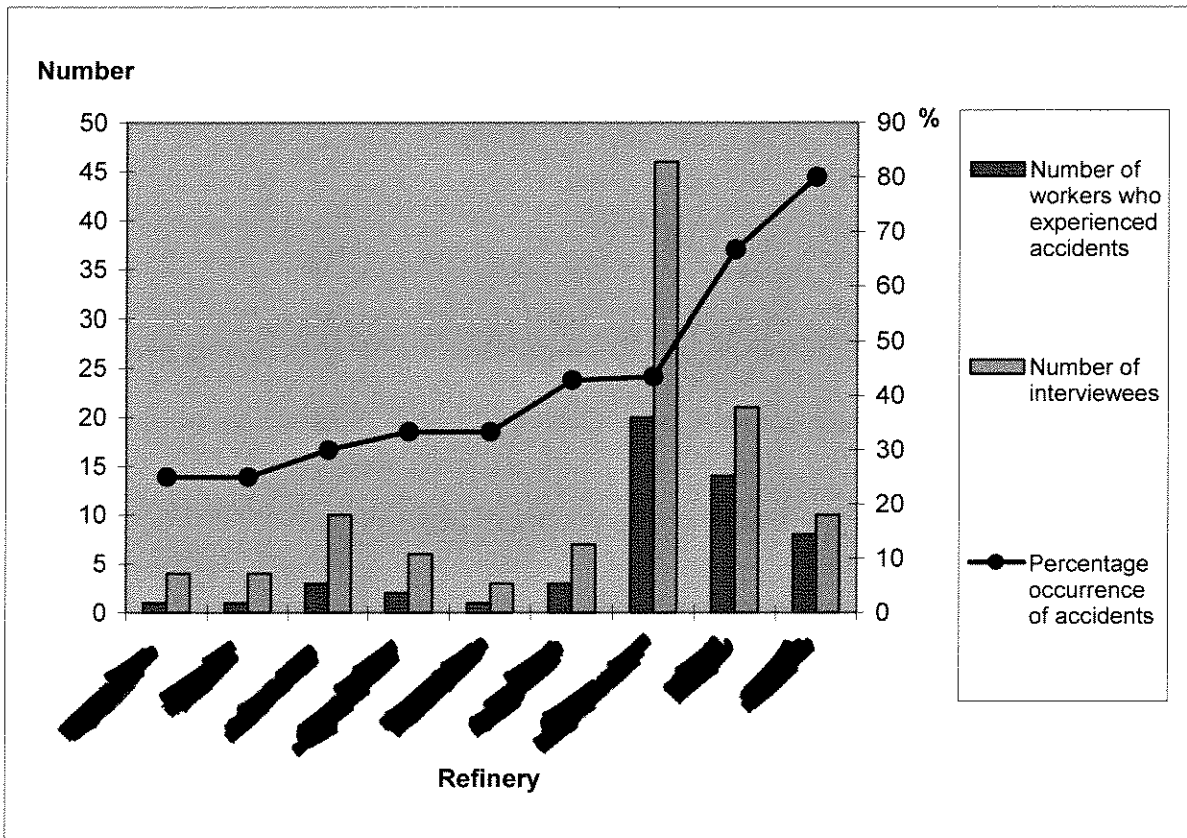
5. Health and Safety

The accidents that occur in the Guatemalan sugar mills are considerable both in number and in severity. Forty-seven percent of workers interviewed for this report had experienced a workplace accident. Many of the injuries were burns resulting from the processing of the cane or from the welding of machinery. In particular, workers stated that the heating cauldrons were particularly dangerous as they can explode if the pressure and temperature are not carefully maintained. Others involved fractures resulting from falls from equipment or from scaffolding constructed to allow welders access to equipment. One welder reported falling 15 meters from scaffolding. Another worker received spinal fractures and two other workers had had a finger amputated as a result of workplace injuries. During the last harvest, a single incident at Magdalena refinery resulted in 2 deaths and 6 injuries. The deaths and injuries were caused by asphyxiation and the blows sustained when 250 sacks of sugar being piled up by the workers came tumbling down upon them.⁶⁵

Despite the common occurrence of injuries, workers informed us that there are no precautionary measures taken by the refineries and training is not provided regarding the use of protective equipment necessary for work in the mills. Only 16% of workers indicated there was a first aid kit in their workplace. Some said that the workers had to purchase the contents of the first aid kits. Only 5% of workers had been trained in first aid, 19% in the use of fire-extinguishers, 1.5% in the effect of chemicals used in the refinery, and only 10% were aware of an evacuation procedure at the mill. Twenty-five percent of mill workers interviewed for this report indicated that they lacked PPE. Most said they lacked industrial work boots, but at times the lack of PPE was essential to the type of work performed. For example, a welder in the Escuintla area said that he had no protective glasses, gloves or a mask. Similarly, an electrician from the Retalhuleu area said that he received no eye protection, rubber boots or gloves.

⁶⁵ Claudia Palma, "Tragedia en el Ingenio Magdalena: Dos Muertos", *El Periódico*, 7 Nov 2004, 3.

Figure 12: Occurrence of accidents at mills



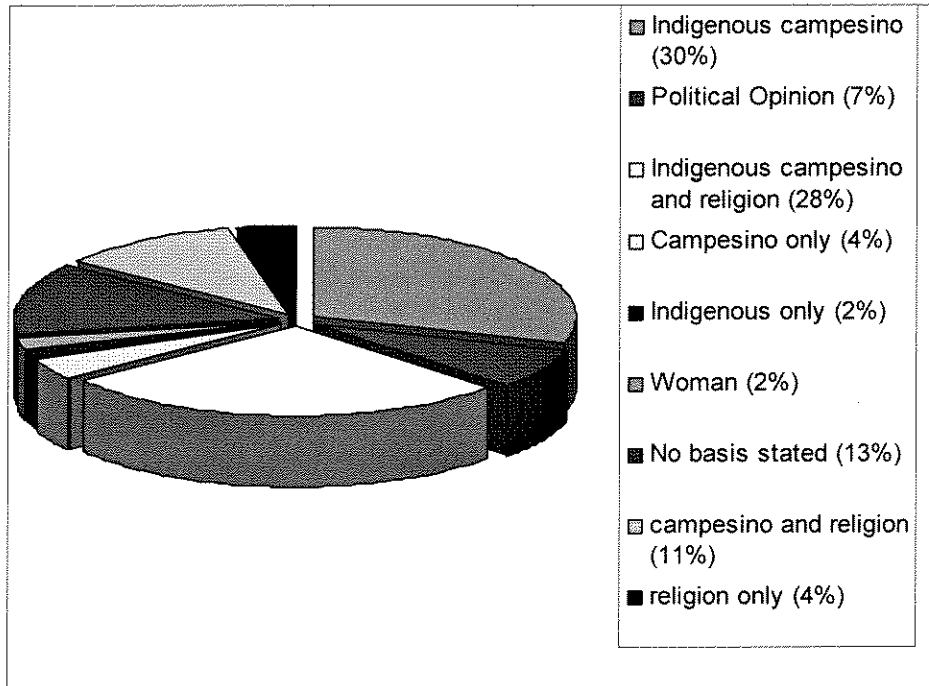
When accidents occur, almost all workers 90% indicate that they are likely to be taken to the [redacted] clinic. Given the importance of the [redacted] clinic to the health of workers, it is essential to note that almost 95% of mill workers are affiliated with [redacted]. Most workers at [redacted], [redacted], [redacted], and [redacted] also stated that they might be taken to the refinery clinic in the case of an emergency. By contrast, workers at [redacted] [redacted] tended to consider the refinery clinic as open only for their children, but not for workers themselves. Workers at [redacted] and [redacted] indicated they would not be taken to a refinery clinic in case of emergency. There is an interesting correlation between the high proportion of accidents at these latter refineries and the lack of access to a refinery clinic in case of emergency, perhaps indicative of a failure to appreciate the importance of workplace safety.

6. Treatment of Workers [Discrimination and Abuse]

Approximately 37% of mill workers indicated that they felt discriminated against. This figure is remarkably better than the situation in the fields and among transport workers, although it remains unacceptably high. The majority of workers who felt discriminated against said that the basis for the discrimination was due to their being indigenous and campesinos. Interestingly, a small proportion of workers who felt they had been discriminated against said that such discrimination was on the basis of their political

opinions. Of those who felt this, only one was a union affiliate at [REDACTED]. A number of interviewees indicated that this discrimination manifested itself in threats to job security and in the giving of the worst types of jobs to those being discriminated against.

Figure 13: Bases of discrimination within sugar mills



About 30% of workers in the mills had had also been the victim of verbal abuse at work, usually at the hands of the immediate supervisor. About 18% of interviewees had also been the subjects of physical abuse.

7. Freedom of Association

The only workers to indicate that they felt that they were free to organize were workers in the refinery [REDACTED], which is the only refinery in Guatemala to have a union. This union represents technical workers within the refinery, such as welders, industrial mechanics, builders and carpenters. It has approximately 560 members, out of a workforce of 700. Importantly, one of the principles established in the collective bargaining agreement is that all workers are automatically made members of the union. Most of those who choose to leave the union do so for personal reasons or due to their holding positions where they encounter confidential information pertaining to the business. By contrast, all workers in other refineries responded that they had no such liberty, with some specifically stating that the refineries do not allow unions and that the only permitted form of organization was the solidarista movement created by the mills. One stated, “A poor person can not be in an organization because if so, they [the refineries] would not give him work”. Others also noted that the refineries only clean up the mills when it is anticipated that government work inspectors are about to visit. Some workers say that due

to the long work hours there is no time to attend meetings and become involved in labor organizations.

Of those refinery workers that ██████████ interviewed who belong to the ██████████ union; all indicated that they felt the union operated to their benefit. Indeed, 25% stated that the union functioned very well. However, a high proportion (69%) considered there was significant room for improvement, stating that it functioned averagely, sometimes failing to communicate well with the workers and failing to resolve problems encountered by workers. Of great concern to many of the union members were that the refinery failed to abide by the collective bargaining agreement (only 53% considered that the refinery complied with the CBA). Indeed, as at the time of writing, the union was in the process of negotiating a new CBA.

8. Women and Children

In conducting a visit to one of the refineries, we noted that there tended to be women working in the laboratory areas. Workers with whom we spoke also indicated that women worked in the administration of the mills. We received no information pertaining to children fewer than 14 working in the mills and the youngest worker with whom we had contact was 19 years old.



Figure 14: Women working in a refinery laboratory

VII. DETAILED FINDINGS: TRANSPORT WORKERS

1. General statistics

All of the 114 transport workers interviewed for this report were male drivers. The average driver is a 41-year-old ladino in a de facto relationship with 3 children. He has had incomplete primary schooling, having attended school for less than 3 years. In general, he is the sole breadwinner for the family. On average, he drives haulers carrying raw sugar cane for the complete period of the harvest (generally 6 months per year) and earns a monthly average of Q2190 during the harvest.

2. Legal Status

While we were able to speak to a contratista who indicated that he employed drivers on behalf of the refineries, all of the drivers contacted for this report were employed directly by a refinery. Whereas ██████████ says that the transportation of sugar cane is performed by private companies and is therefore beyond the control of ██████████,⁶⁶ our interviews with workers suggests that most drivers work for the refineries. Similarly, ██████████ says that workers for the refinery carry out all of its transporting. It may be that the refineries establish subsidiary companies to carry out transportation;⁶⁷ nevertheless, it would be disingenuous to suggest that the operations of these companies are independent of the refineries and of ██████████.

Around 92% of workers we interviewed were contracted on a temporary basis. Almost 85% of drivers are contracted verbally for an average of 4 to 6 months. Guatemalan law only allows verbal contracts for temporary contracts of less than 60 days for non-agricultural workers such as those involved with transport. As such, the practice of verbally contracting truck drivers in the sugar cane industry is a practice that is contrary to the law. Of the 15% of workers contracted in writing, almost 60% did not receive a copy of the contract. Further, only 11% of drivers stated that they knew the refinery's internal regulations.

3. Wages

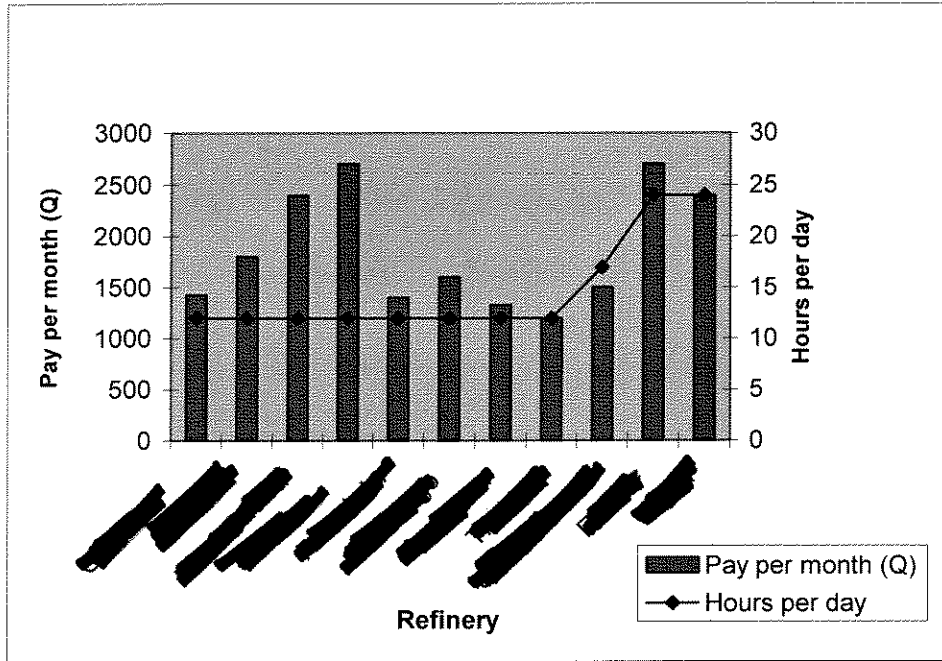
Wages, bonuses and discounts vary significantly more among refineries than in other sectors of the sugar cane industry. Almost all drivers earn their wage on the basis of the number of trips they undertake. However, some drivers reported earning just Q1050 per month (working 12 hours a day and completing two trips per day), while others earned Q2700 for the same work in a different refinery. The wage paid varies among the different refineries (see Figure 15 for median pay among refineries). It appears that some refineries pay a flat rate per trip that the driver completes, while others pay an amount per ton of cane

⁶⁶ Interview with Manager of Internal Relations, ██████████, 17 November 2004, ██████████ Offices, Guatemala City.

⁶⁷ As suggested in interviews with workers at ██████████

transported. Regardless of the manner in which the pay is calculated, drivers are not paid any overtime. Interestingly, [REDACTED] (the only refinery with a union), pays the best rate for a 12 hour day.

Figure 15: Pay versus hours in various refineries

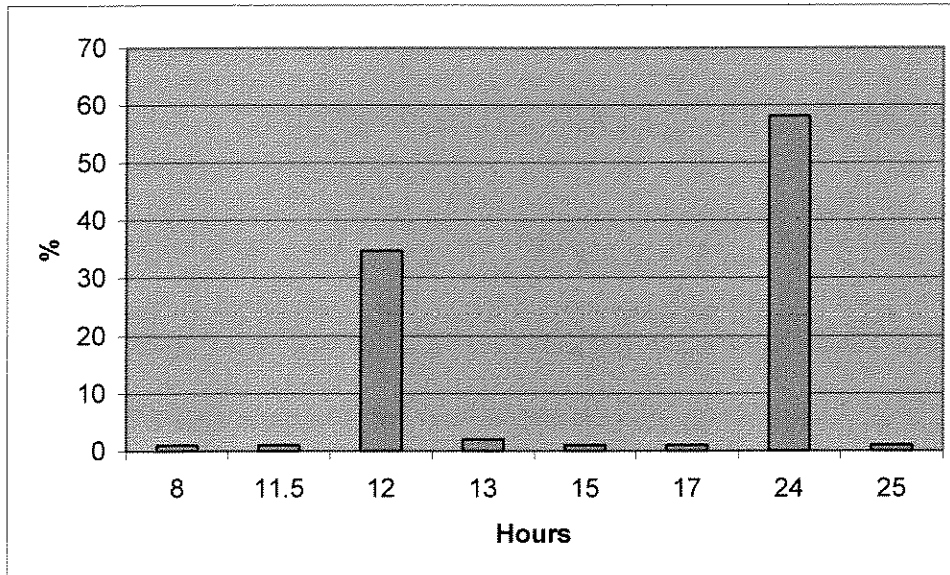


In some refineries drivers are required to pay for items that would ordinarily be considered the responsibility of the refinery. Observations of processes at [REDACTED] showed an extremely well established vehicle repair shop. Several workers in other refineries, however, stated that they were required to pay for repairs and were not provided with essentials such as spare tires. Others said that the cost of their uniform was discounted from their pay.

4. Hours

The most significant issue facing truck drivers in the sugar industry is the extremely long shifts they are required to complete and the consequent effect this has on safety issues. Generally, the shortest of these shifts is 12 hours, with many drivers working 24-hour rotational shifts (24 hours work, 24 hours rest).

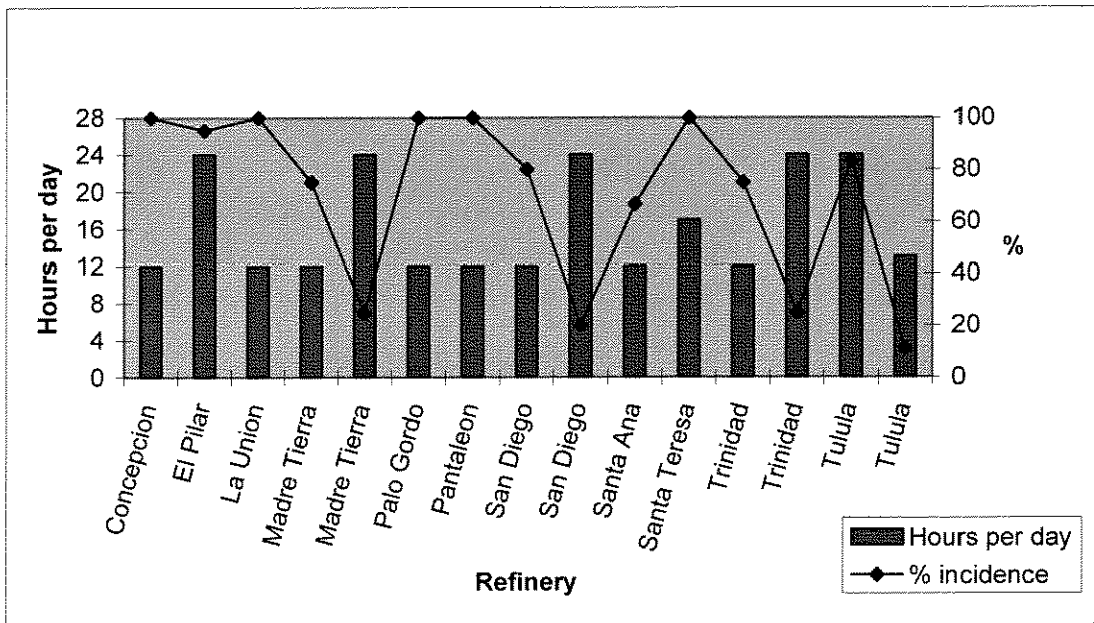
Figure 16: Transport: Average Hours Worked



Of the 114 transport workers we contacted, 35% regularly worked 12 hour shifts (whether in the day or night), while almost 60% worked 24 hours or longer. Both 12 and 24-hour shifts are contrary to the law. Aside from the fact that 12-hour day shifts are only supposed to occur in emergency situations, the Work Code specifically forbids shifts longer than 12 hours.

Only a few of the drivers indicated that they worked more reasonable shifts, with these drivers primarily working at one of the larger refineries. Nevertheless, long shifts were prevalent in the majority of refineries about which we obtained information:

Figure 17: Incidence of long shifts at various refineries



Moreover, all drivers indicated that they had worked even longer shifts than their usual hours, often as a result of a change in shifts (such as from day to night) and generally under pressure from supervisors. Thus, among those that ordinarily worked 12-hour shifts, most had worked an 18-hour shift, while those who ordinarily worked 24-hour shifts had worked 48 hours. As a result of the long hours and the undoubted fatigue that follows, several drivers complained that they had no time to spend with their families, particularly with their children.

5. Health and Safety

Given the extremely long hours that truck drivers work, it is not uncommon for them to take stimulants to ensure that they stay awake during their shift. Indeed, 47% of drivers interviewed admitted to taking some form of stimulant. One of the most common stimulants used is No Doze. Others said they took thiamin or flu remedies, which in excessive quantities could produce a stimulant effect.

Aside from the detrimental health impact of such long hours and the regular taking of stimulants, the practice causes great concern for the safety of other drivers on the roads. Although many of the refineries have extensive internal road systems on their plantations to expedite the delivery of cane to the mill, the trucks must at some stage travel on public roads. Several of the drivers contacted stated that they had been involved in accidents and those accidents more commonly occur when the truck is over-loaded, such as when too many trailers are attached to the chassis (see Figure 18).

Figure 18: Excessively long cane haulers on public roads



Drivers also stated that if a refinery requires more than one trip a day to be made by several trucks, these trucks often cause traffic congestion and have difficulty passing each other on the narrow roads, which can lead to accidents (see Figure 19). In the last harvest period alone, there have been several incidents involving sugar cane trucks, which have led to the deaths of other road-users. For example, on 12 January 2005, 8 people were injured and the road was blocked for six hours when the driver of a truck carrying 110 tons of cane fell asleep at the wheel and lost control of the vehicle, which crashed into four trucks and cars before overturning.⁶⁸ On 1 February 2005, 2 people traveling in a pickup were crushed to death when a petrol truck swerved to avoid a sugar cane hauler that crossed the road without stopping to allow oncoming traffic to pass.⁶⁹ Such accidents occur with relative frequency during the harvest.

Figure 19: Public bus forced to leave the road to allow sugar cane hauler to pass



⁶⁸ Fredy Rodas, "Ocho Heridos", *Nuestro Diario*, 13 Jan. 2005, 6.

⁶⁹ Daimairo Castillo and Mario Morales, "Tragedia en [redacted]", *Nuestro Diario*, 2 Feb 2005, 5.

Despite the risks involved in driving the haulers, very few of the drivers carried first-aid kits. A doctor interviewed by [REDACTED] at the [REDACTED] [REDACTED] stated that, prior to the beginning of the harvest drivers are trained in road safety and first aid by [REDACTED] and [REDACTED]. However eighty-four percent of drivers interviewed for this report indicated that they had received no training in road safety, defensive driving, first-aid or the use of fire-extinguishers. Nevertheless, such training was more common among those that worked at the larger refineries. Across the board, while most drivers are affiliated with [REDACTED], many drivers object that they do not receive any form of life insurance. Some drivers complained that despite their affiliation with [REDACTED], the refinery management refused to give the requisite certificate relating to injuries in order to attend the [REDACTED] clinic.

6. Treatment of Workers [Discrimination and Abuse]

As with other areas of the sugar cane industry, workers often reported a significant amount of verbal abuse and disrespect on the part of managers and supervisors. Fifty-eight percent of respondents indicated that they had experienced discrimination, most commonly on the basis of being an indigenous campesino of a particular religion. Seventy-two percent of respondents who felt they were discriminated against on the basis of their religion were Catholic. Sixty-two percent of transport workers had experienced some form of abuse, including a large proportion that had experienced physical abuse (54% of all drivers interviewed).

7. Freedom of Association

Consistent with the experience of workers in other areas of the sugar cane industry, most transport workers state that they do not have liberty to associate. Generally, there is a fear that if drivers organize, they will be blacklisted. For example, one person stated that he did “not want to join an organization because [he] won’t get work”. Other workers noted that the solidarity groups established by the refineries do not function well. Indeed, it appears that at least one of the solidarista groups established by the refinery never has meetings although the cost of being part of the group continues to be deducted from workers’ pay.

8. Women and Children

Women and children do not appear to be employed in the transportation of sugar cane. The youngest person we came across working in transportation was 18 years old.

IX. OTHER ISSUES: ENVIRONMENTAL IMPACT

As was recognized earlier in this report (section 3.1), the sugar industry can and does have an impact on the environment. In particular, the burning of cane fields, the use and release of water during the processing phase and the release of smoke from processing plants are all issues of concern for the environment and communities living in the immediate vicinity. Several of the largest refineries state that they have instituted

environmental programs to reduce emissions and to ensure that the burning of fields occurs during appropriate wind conditions so as to ensure that communities in the immediate vicinity are not affected. They also stated that burning did not take place during the daytime. However, many of the communities visited by ██████████ lived within meters of cane fields that had clearly been burned. During several visits during the day, smoke could be seen and black soot rained down upon the villages. Children played with the falling soot as one would play with snow.



Figure 20: Children playing with soot

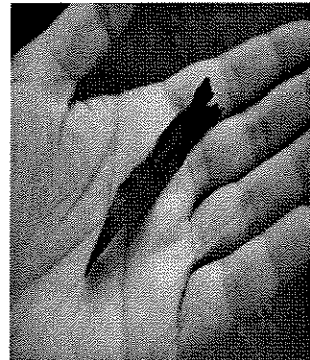


Figure 21: Soot (holin)

In addition, at least one community we visited had brought a complaint against the nearby refinery for polluting its river. To date the case has yet to be resolved in the judicial system. ██████████ took samples from this and other rivers that flow through sugar growing areas. One water sample taken from a river in the Escuintla area and analyzed at a laboratory was returned with the diagnosis that the water was unsanitary, containing an unacceptably high level of e-coli.

Figure 22: Pollution of waterways



X. APPENDIX A: GUATEMALAN LEGAL STANDARDS

1. Contracts

Article 27 of the Work Code states that it is permissible to have verbal contracts in relation to agricultural work and temporary contracts of less than 60 days. At the time of commencing work, however, the employer must provide the worker with a card that contains information regarding the date on which the contract starts and the stipulated salary. Further, at the end of each pay period, the employer must provide a pay slip detailing the number of days, shifts or type of work realized.

Article 28 of the Work Code requires a written contract to be used in all other circumstances. A copy of the contract must be provided to the employee. Work contracts that involve children less than 14 years of age must be signed by their parents or guardians (Art. 32 Work Code).

2. Internal work regulations

In addition to the contractual obligations and rights that workers might have, workers are governed by the internal regulations of the business for which they work. According to Guatemalan law,⁷⁰ businesses are required to elaborate and put into place their respective internal work regulations so as to make clear the norms to which workers are required to subject themselves whilst employed. Businesses must clearly display the regulations in at least two locations in the workplace or, failing that supply a printed copy of the regulations to their workers.

The internal regulations must specify the administrative and technical rules of the business, including those relating to health and safety, first aid measures, means of avoiding workplace risks, hours of work (including the times for lunch or other breaks), types of salaries and categories of work, the place day and time of pay, and processes for disciplinary procedures.

3. Wages

Article 103 of the Work Code indicates that the minimum wage must be paid regardless of whether a salary is paid according to unit of time or unit of work. The minimum wage in Guatemala is set at Q38.60 in agricultural industries and Q39.67 in non-agricultural activities. This amount represents an increase from Q31.90 and Q34.20 respectively, (21% and 16%) which was the minimum salary prior to July 2004. The declared increase in the minimum wage included a statement to the effect that agricultural workers who earn their wage by unit of work are entitled to an increase of 21% in the amount paid per unit if they did not work a full workday.

⁷⁰ Art 58 Work Code.

Various economic benefits must also be paid according to the law. These are:

1. **Aguinaldo** (as required under art 102(j) of the Constitution and Decree 74-78 Ley Reguladora del Aguinaldo), which is a month's salary Christmas bonus paid proportional to the number of months worked in the year (such that if a person works 6 months of the year, he or she will receive 50% of one month's salary);
2. **Bono 14** (as required under Decree 42-92 Ley de Bonificación Anual), which is an annual bonus equivalent to a month's salary paid proportional to the number of months worked in the year;
3. **Incentive Bonus** (as required under Decree 78-89 Ley de Bonificación Incentivo) of Q250 per month;
4. **Indemnity** (as required under art 102(o) of the Constitution and art 82 of the Work Code), which is paid in the event of the unfair dismissal of a worker and is equal to one month's pay for every year worked;
5. **Paid Vacations** (as required under art 102(i) of the Constitution and art 130 of the Work Code), which is 15 days paid annual leave at the end of every year worked calculated on the basis of the average pay per day multiplied by 15;
6. **Seventh Day Pay** (as required under art 102(h) of the Constitution and art 126 of the Work Code), which is pay for one day's rest each week paid on the basis of the average of the amount earned in the preceding six days;
7. **Paid Public Holidays** (as required under art 102(h) of the Constitution and art 127 of the Work Code); and
8. **Sundays** - (art 128 & 129 of the Work Code) –workers are entitled to be paid for the seventh day regardless of whether they work, however if they do work, they are entitled to payment as overtime. Consequently, those who work on Sundays are entitled to payment at a rate of 2.5 times the normal rate.

In addition, employees are entitled to coverage under the [REDACTED]. The [REDACTED] system provides workers with medical care in the case of accidents or illness during their work as well as 2/3-salary indemnity. In case of incapacitation the worker is paid a full or partial salary depending on the Invalidity, Retirement and Survival regulations. Workers are required to contribute 4.83% of their wage to IGSS, while employers are required to contribute an additional 10.67% (15.5% in total).

When all bonuses are factored in, an agricultural worker receiving the minimum wage plus bonuses less [REDACTED] should earn Q1641.57 per month (Q54.72 per day).

4. Hours of work

Article 102 of the Constitution and articles 116, 117, 121 and 122 of the Work Code stipulate that the ordinary work day:

- during the day consists of 8 hours work between 6am and 6pm, with a maximum of 48 hours per week;

- during the night consists of 6 hours work between 6pm and 6am, with a maximum of 36 hours per week; and
- as a mixed shift is limited to 7 hours per day, with a maximum of 42 hours per week.

The ordinary working week is 45 hours per week, except that agricultural workers working for agricultural businesses employing less than 500 workers have an ordinary working week of 48 hours.

The law stipulates that any work conducted after the hours of the ordinary working day must be considered and paid as overtime and must be paid at a rate at least 50% higher than the normal salary.

The Guatemalan Work Code includes an ambiguous provision (art 124) that states that the provisions relating to limitations on the ordinary working day does not apply to workers who perform labor that “by its unquestionable nature” is not subject to a working day. It is entirely unclear what forms of labor this article contemplated. However, it appears that the Guatemalan sugar industry has assumed that this provision allows them to exclude field workers who are paid by unit (as opposed to those who are paid per hour) from the requirement to limit shifts to 8 hours. Without limits that circumscribe the ordinary working day, there is no “overtime” as such. Consequently, sugar industry representatives openly admit that cane cutters, for example, do not receive payment for work performed in excess of 8 hours per day.

Despite this interpretation, the law does maintain that in *all* cases, a working day cannot exceed a total of 12 hours per day, except in very limited cases (such as where an imminent risk would endanger the harvest) and only when it is not possible to replace the existing workers.

5. Treatment of workers

Art 61(c) of the Work Code provides that it is an obligation of employers to ensure due consideration is given to their employees, abstaining from physical and verbal mistreatment.

Employers must give to their workers the tools and materials necessary for the execution of their work and must replace the tools and materials once they are no longer in good condition (art 61(d) Work Code).

Art 61(j) requires employers to procure all means to achieve the literacy of their workers. The Constitution (art 4) and the Work Code (arts 14 bis and 137 bis) guarantee equality of opportunities and responsibilities to men and women. The law also specifically provides for freedom from discrimination in relation to obtaining work.

6. Health and Safety

The Constitution (art 93) recognizes that the enjoyment of health is a fundamental right, while the Work Code (art 197) requires employers to adopt whatever precautions are necessary to protect the life, health and safety of their workers. In addition, the General Health and Safety at Work Regulation specifies detailed health and safety requirements, such as requiring the provision of masks, protective lenses, helmets and gloves, as required (art 94).

7. Freedom of Association

Both the Constitution (arts 34 and 102) and the Work Code (arts 10 and 62) recognize the rights to freedom of association and freedom to unionize. These rights are to be exercised without fear of discrimination. The law prohibits:

- the dismissal of a workers for participating in the formation of a union;
- the taking of reprisals against a worker for the purpose of impeding his or her enjoyment of these rights;
- an employer from requiring a worker to resign from a union to which he or she belongs.

8. Women's rights

Articles 4 and 102(k) of the Constitution guarantee equality of rights, dignity, opportunities and responsibilities between men and women. More specifically, these articles prohibit discrimination on the basis of marital status in relation to employment and guarantee working mothers paid maternity leave during the 30 days prior to, and the 45 days after, giving birth. Employers are also required to take all precautions to ensure that the pregnancy of female workers is not endangered. In addition, during the period in which a mother is breast-feeding, employers must provide two daily breaks to allow her the opportunity to feed her child. Article 52 of the Constitution also provides special protection to pregnant workers and requires the strictest adherence to the law in relation to their rights.

Article 147 of the Work Code stipulates that the work undertaken by women must be appropriate to their physical condition and prohibits employers discriminating on the basis of marital status or familial responsibilities. Articles 151 to 155 expand the rights of pregnant workers and working mothers established in the Constitution. In particular, it prohibits the dismissal of pregnant workers except in very limited circumstances and forbids pregnant workers from performing heavy manual labor in the last trimester. Article 152 also increases paid maternity leave to 30 days prior to, and 54 days after, childbirth. Similarly, the Work Code establishes that new mothers are entitled to two paid half-hour breaks during their workday for breastfeeding for up to 10 months. Further, any employer who has more than 30 female workers must provide a child daycare center.

9. Employment of Minors

Articles 51 and 102(l) of the Guatemalan Constitution guarantee the rights of minors to food, health, education, security and social protection. It prohibits minors from being engaged in work that may be physically dangerous or morally questionable. It also prohibits the employment of children less than 14 years of age, except as permitted by law. Articles 31, 147, 148 and 149 of the Work Code require that work undertaken by minors be appropriate to their age and development. These articles specifically prohibit minors from working night shifts or overtime. The Work Code also establishes that minors over 14 years old are only permitted to work a maximum of 7 hours a day, up to 42 hours per week. The employment of children less than 14 years of age is illegal unless special authorization is obtained from the General Inspector of Work. Where such permission is obtained, children under 14 years of age are only permitted to work up to 6 hours per day, to a maximum of 36 hours per week.

XI. APPENDIX B: MILLS OF GUATEMALA⁷¹

MILL	MUNICIPALITY/DEPARTAMENT	REPRESENTATIVE
[REDACTED]	Escuintla. (Escuintla)	[REDACTED]
[REDACTED]	Sta. Lucía Cotzumalguapa. (Escuintla)	[REDACTED]
[REDACTED]	Cuyotenango. (Suchitepéquez)	Does not appear on the list
[REDACTED]	La Gomera. (Escuintla)	[REDACTED]
[REDACTED]	Cuilapa. (Santa Rosa)	[REDACTED]
[REDACTED]	Sta. Lucia Cotzumalguapa. (Escuintla)	[REDACTED]
[REDACTED]	Sta. Lucía Cotzumalguapa. (Escuintla)	[REDACTED]
[REDACTED]	Sta. Lucía Cotzumalguapa. (Escuintla)	[REDACTED]
[REDACTED]	La Democracia. (Escuintla)	[REDACTED]
[REDACTED]	San Antonio Such. (Suchitepéquez)	[REDACTED]
[REDACTED]	Siquinalá/ Sta. Lucia Cotz. (Escuintla)	[REDACTED]
[REDACTED]	Escuintla. (Escuintla)	[REDACTED]
[REDACTED]	Escuintla. (Escuintla)	[REDACTED]
[REDACTED]	Villa canales. (Guatemala)	[REDACTED]
[REDACTED]	Masagua. (Escuintla)	[REDACTED]
[REDACTED]	San Andrés Villa Seca (Retalhuleu)	[REDACTED]
[REDACTED]		[REDACTED]

⁷¹ Ibid, 41-42.

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