



UNIVERSIDAD DE CHILE
INSTITUTO DE ESTUDIOS INTERNACIONALES

**A COMPARATIVE STUDY OF
LABOR RIGHTS IN GUATEMALA
AFTER THE ENACTMENT OF DR-
CAFTA**

**Estudio de caso para optar al grado de
Magíster en Estrategia Internacional y Política Comercial**

COURTNEY ALEXANDRA THOMAS

Prof. Guía: Rodrigo Zegers Quiroga

Santiago, Chile
July 2016

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Abstract

In this study different variables proven to be correlated with labor rights to are used in a qualitative – descriptive study of the labor rights environment in the DR-CAFTA Latin American countries in order to determine if the current situation in Guatemala, subject of the first labor rights dispute under a free-trade agreement in United States history, is mirrored in each country, or is an environment unique to Guatemala. After a review of the variables this study concludes that Guatemala, Honduras, and Nicaragua all have similarly low levels of all the correlated variables studied, but that Guatemala does in fact present as having a political and legal environment that is less conducive to labor rights.

Key Words: labor rights, Latin America, DR-CAFTA, collective bargaining, unions, ILO

Introduction

Interest in studying the impact of the labor rights chapters in new free-trade agreements has grown as labor rights are more often included in new free trade agreements between member states of the World Trade Organization (WTO). Human rights in general and labor rights in specific have been established as outside of the purview of the World Trade Organization, and therefore trade negotiations have come to offer the “most direct route” for countries’ to resolve human rights conflicts and WTO rules. WTO rules only prohibit trade of products created by prison labor, and members are not permitted to take trade action against another member with the goal of protecting the citizens of the other member state without authorization from the United Nation’s Security Council; something that has only happened in the cases of South Africa and Somalia. While human rights issues have been discussed during new member accession to the WTO, and rarely, in trade policy reviews, a round of discussions at the WTO concluded that the ILO (International Labour Organization) is the most “competent body” for addressing human rights standards and enforcement. (Aaronson, 2008)

The United States first introduced labor rights as a side-agreement in the North American Free-Trade Agreement (NAFTA), and continued to introduce variations in all following bilateral trade agreements (Jordan, Chile). Each

following trade agreement sought to strengthen the provisions in the labor chapter, and in the free trade agreement with the Dominican Republic, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua known as the Dominican Republic – Central America Free Trade Agreement (DR-CAFTA). The labor rights chapter uses the concept of “effectively enforcing” each country’s own labor laws. The United States invested millions of dollars in the development and strengthening of each country’s infrastructure, equipment, training, and governance of each country’s territory with the goal of improving labor rights in the region. However, in 2015 the International Trade Union Confederation released their Global Rights Index and listed Guatemala as one of “the ten worst countries in the world for working people” for its lack of rule of law, murders of union organizers, and armed attacks on union organizers and demonstrators. Indeed, it has come to be taken for granted that labor rights in Guatemala are almost non-existent, and workers involved with organizing efforts have been murdered with impunity – 79 in Guatemala since 2009. However, as much bad press as Guatemala receives for these infractions, union organizers have also been murdered with impunity in Honduras, and Nicaragua is known to have a precarious respect for labor rights as well. (International Trade Union Confederation, 2015) Therefore, the question is whether Guatemala’s labor rights situation is unique or an

environment also reflected in its neighbors and co-signers to the DR- CAFTA. The objective of this study is to use a qualitative – descriptive method to study the labor rights situation in the six member countries of DR-CAFTA in order to establish if the current trajectory of labor rights in Guatemala is normal within the confines of the region or if it is an outlier. I hypothesize that while Guatemala might be receiving the majority of the international attention due to the labor dispute, the poor labor rights environment (or lack thereof) within Guatemala is reflected throughout the region, with the exception of Costa Rica, and that the indicators will show as all being equally low among the Latin American DR-CAFTA countries.

Background

2.1 The International Labor Organization

Established in 1919 and part of the United Nations, the International Labor Organization (ILO) has “maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.” There are currently 187 member nations, including all countries involved with DR-CAFTA. (International Labor Organization)

In its aim to further labor standards amongst its member nations the ILO drafted eight Fundamental conventions: international treaties that may be ratified by the member states and covering four “fundamental” principals and rights at work. The principles are:

- freedom of association and the effective recognition of the right to collective bargaining
- the elimination of all forms of forced or compulsory labor;
- the effective abolition of child labor
- the elimination of discrimination in respect of employment and occupation

The eight Fundamental Conventions are:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

(International Labor Organization)

Figure 1. Eight Fundamental Conventions Ratified by the DR-CAFTA Countries

Country	Freedom of Association		Forced labour		Discrimination		Child labour	
	C087*	C098**	C029	C105	C100	C111	C138	C182
United States	X	X	X	1991	X	X	X	1999
Guatemala	1952	1952	1989	1959	1961	1960	1990	2001
El Salvador	2006	2006	1995	1958	2000	1995	1996	2000
Honduras	1956	1956	1957	1958	1956	1960	1980	2001
Nicaragua	1967	1967	1934	1967	1967	1967	1981	2000
Costa Rica	1960	1960	1960	1959	1960	1962	1976	2001
Dominican Republic	1956	1953	1956	1958	1953	1964	1999	2000

Source: International Labor Organization

*Convention 87 - Freedom of Association and Protection of the Right to Organise – has the lowest rate (among the Eight Fundamental Conventions) at 153 member nations ratifying.

** Convention 98 - Right to Organise and Collective Bargaining Convention – has the second lowest rate at 164 member nations ratifying.

Chapter 16 of the DR-CAFTA begins by invoking the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration) which the ILO prefaces with “Adopted in 1998, the Declaration commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.” (The four categories being those listed above.) The United States is the only signing nation to DR-CAFTA that has not ratified the ILO Conventions (87 and 98) regarding freedom of association. However, ratification of the conventions is not being used here to correlate with non-compliance with labor rights, but

rather to set the stage for our study of the evolution of the right to freedom of association, organize, and to strike.

Chapter 16 of DR-CAFTA begins with a paragraph affirming the respect for the constitution of each member, and that while the right to adopt and modify its own laws is reserved to each country, they should “strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.8.” The sub-paragraph of this paragraph state that each member “shall not fail to *effectively* enforce its labor laws, through a *sustained or recurring course of action or inaction*, in a manner affecting trade between the Parties.” (Emphasis added). There are therefore three important points:

- each country must effectively enforce its labor laws.
- The action or inaction must happen more than once.
- The action or inaction must affect trade between the member countries.

(Dominican Republic-Central America Free-Trade Agreement) These three points will become the basis for the first trade dispute regarding labor statutes in a trade agreement in US history; against Guatemala. Therein also lies the question, “How much influence does a trade agreement have

on labor rights, and what, if any, has been the influence of said trade agreement?”

2.2 The Agreement

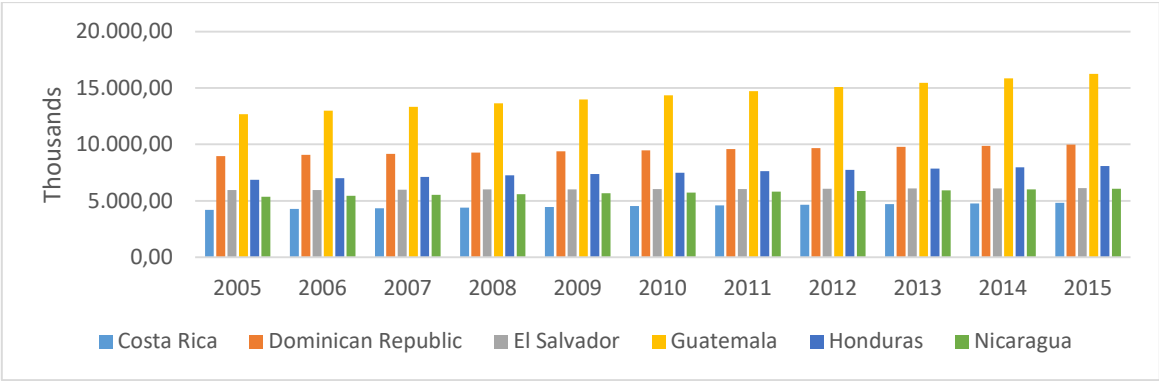
The Dominican Republic-Central America Free Trade Agreement (DR – CAFTA), the free-trade agreement between five Central American countries, the Dominican Republic and the United States, was signed into law in the USA in August of 2004 and put into effect March 1, 2006 after two years of negotiations. It was the first free-trade agreement between the United States and a group of developing countries, as prior FTAs were bilateral agreements (Chile, Jordan), or with a mix of developing and developed countries (NAFTA). (Office of the United States Trade Representative, 2016)

Implementation for the agreement varied between countries as it was either approved by each country’s legislature (El Salvador, Honduras, Nicaragua, Guatemala, and the Dominican Republic) or by a public vote (Costa Rica). El Salvador was first and implemented the agreement together with the United States on March 1, 2006, then came Honduras and Nicaragua on April 1, 2006, next Guatemala on June 1, 2006, followed by the Dominican Republic on March 1, 2007, and lastly by Costa Rica on January 1, 2009. Narrowly passing in Congress by one vote, DR – CAFTA’s successful passage hinged on the labor rights written into the 16th chapter. (Field, 2014).

2.3 A General Overview of the DR-CAFTA Latin American Countries

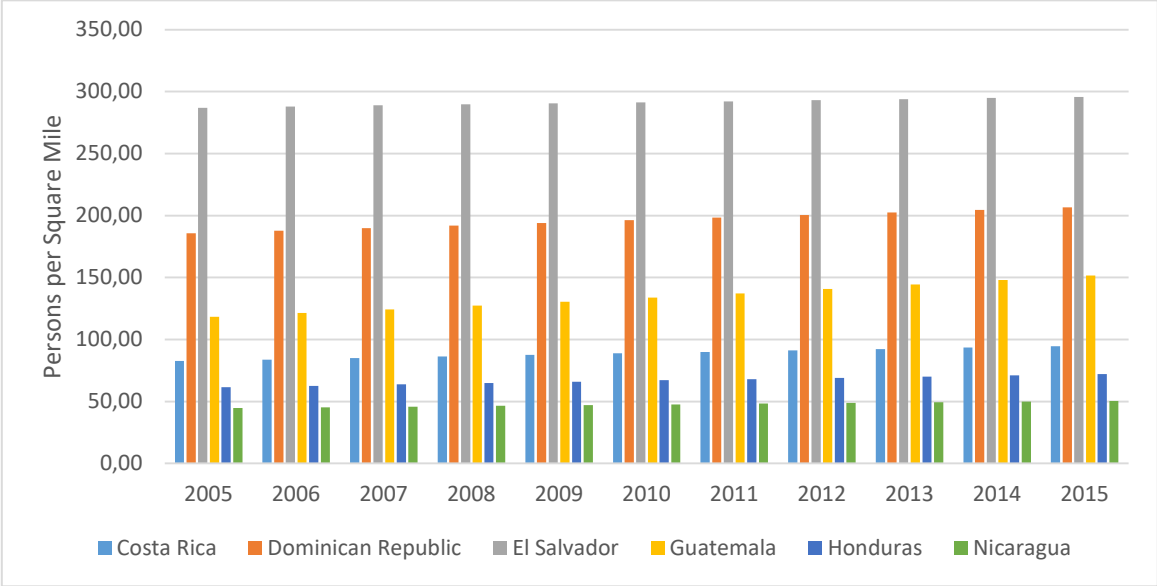
The six countries that comprise the Latin American signees of the DR-CAFTA Agreement are developing, third-world, small nations in Central America. Bordered by Mexico to the north and Panama to the south they are sub-tropical countries that mainly trade in agriculture and tourism. In Guatemala and Nicaragua roughly 11% of the population lives on less than 2 USD per day, while that number has gone as high as 24% in Honduras, and as low as 1.8% in Costa Rica and in the Dominican Republic 2.9%. El Salvador was as high as 7.2% in 2012, but has since dropped to 3.3 in 2013. (World Bank, World Development Indicators) The population for each country is stable, with only Guatemala showing an increase from 2005, which is shown in Figure 2, and therefore the population density has also remained stable, as shown in Figure 3 below.

Figure 2. Total population in the DR-CAFTA Latin American countries, 2016



Source: United Nations Department of Economic and Social Affairs, Population Division, “World Population Prospects”. Retrieved June 17, 2016, from <https://esa.un.org/unpd/wpp/>

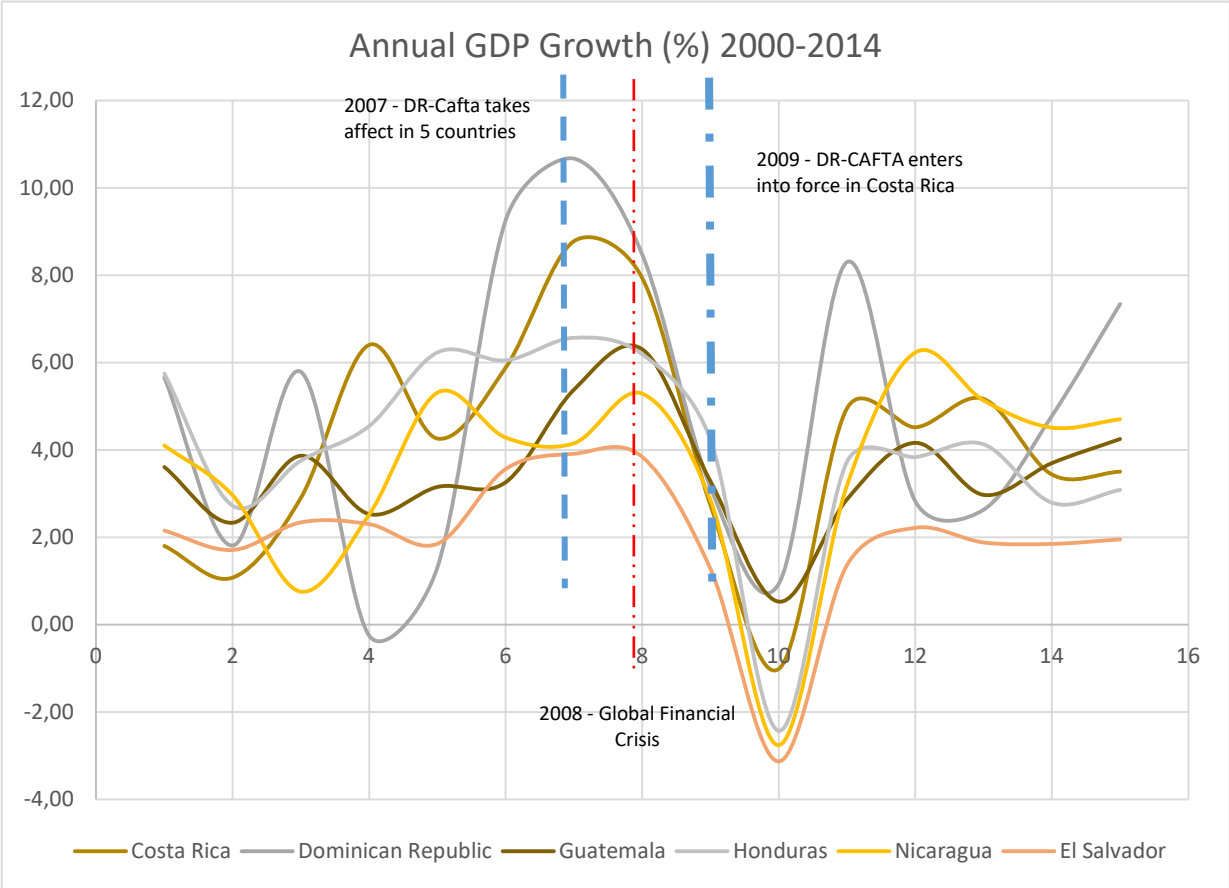
Figure 3. Population density in the DR-CAFTA Latin American countries, 2016



Source: United Nations Department of Economic and Social Affairs, Population Division, “World Population Prospects”. Retrieved June 17, 2016, from <https://esa.un.org/unpd/wpp/>

Their economies were deeply impacted by the 2008 financial crisis, as shown in the graph below, with Costa Rica, Honduras, and Nicaragua being the most affected, but were already steadily recovering in 2010.

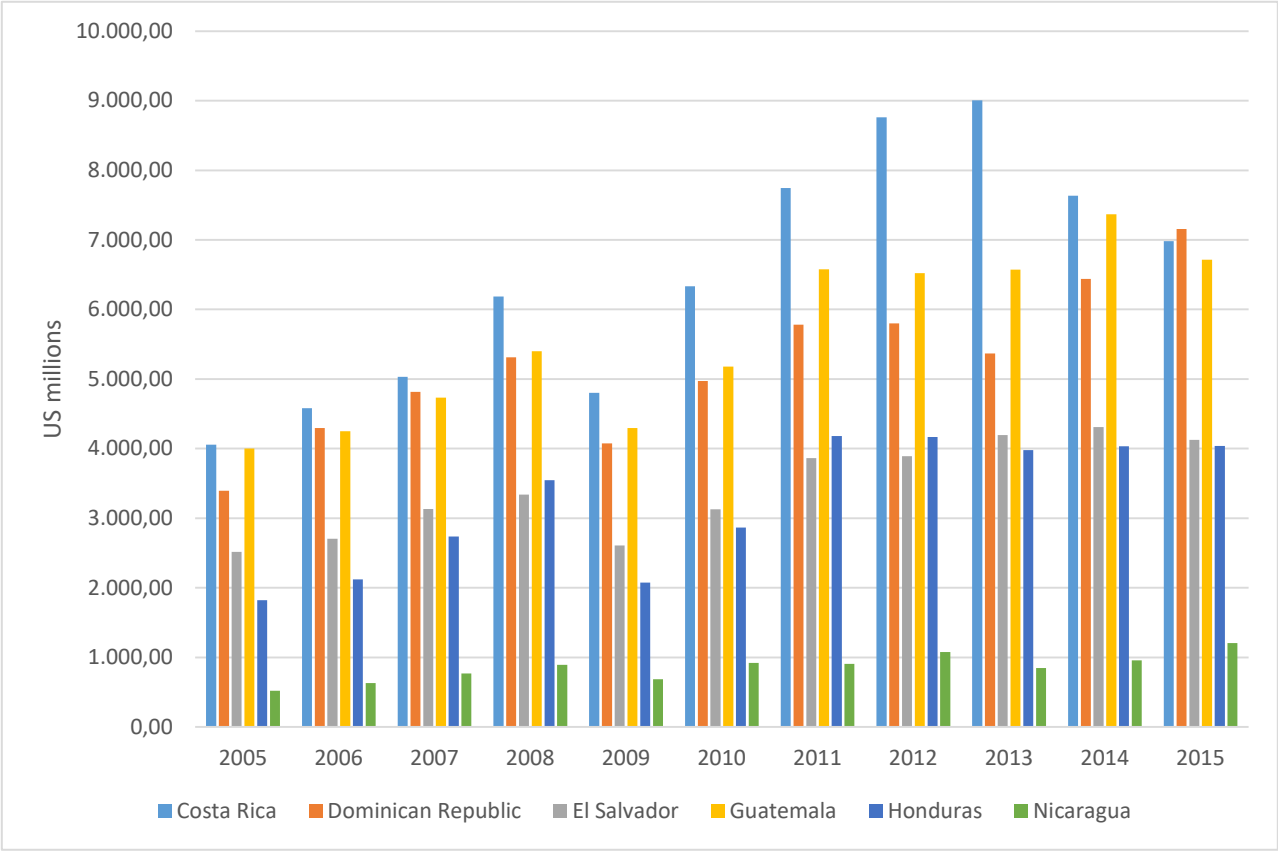
Figure 4. Annual GDP Growth (%) 2000-2014 in the DR-CAFTA Latin American Countries



Source: Own elaboration created from World Bank data, retrieved from <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG/countries/xj?display=graph>, June 15, 2016

In trade terms, imports from the DR-CAFTA countries has steadily increased since 2005, with imports from Costa Rica more than doubling from 2005 to 2013 before declining, the only exception being Nicaragua, which has maintained a low level of imports since 2005. (Figure 5)

Figure 5. Imports from the USA to DR-CAFTA countries in US millions

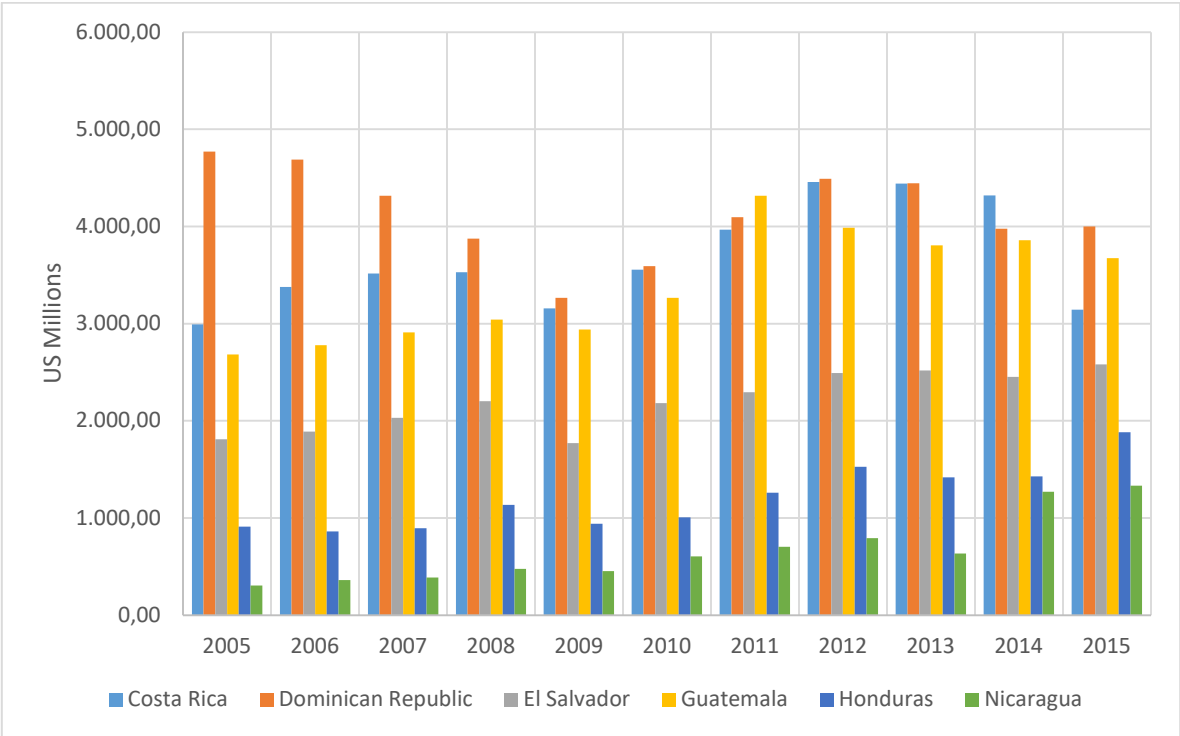


Source: International Monetary Fund (IMF), Direction of Trade Statistics, retrieved June 17, 2016 from <http://data.imf.org/?sk=9D6028D4-F14A-464C-A2F2-59B2CD424B85>, own elaboration.

In terms of exports to the USA from the DR-CAFTA countries, this number, aside from being affected by the 2008 financial crisis, has remained relatively low, with the main exporters in terms of value being Costa Rica, the Dominican Republic, and Guatemala, (Figure 6) which also reflects their relative rankings in imports. Honduras and Nicaragua export the least, with Nicaragua exporting a negligible amount until 2014 and 2015 when for the first time exports increased to almost 1,000 million USD. In Figure 6 the data shows that exports to the USA increased by roughly 1,000 US million, while in Figure 5 we see that imports from the USA increased from roughly 5,000

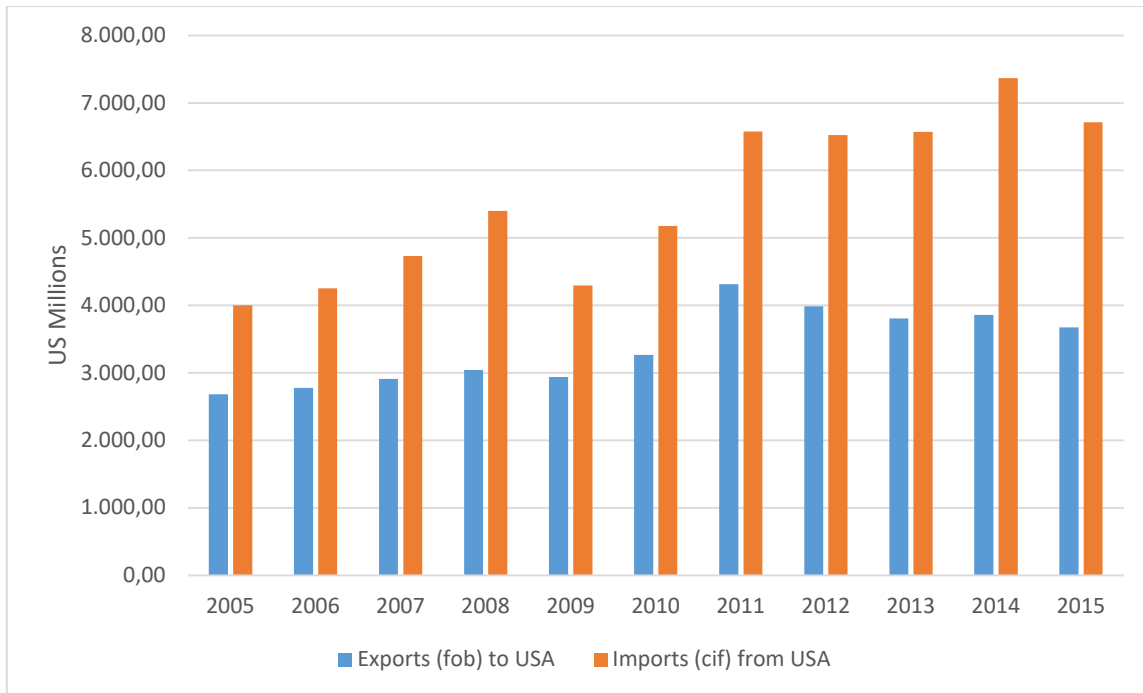
US million pre-2008 to 7,000 million in 2015, a 12% increase. In Figure 7 the data shows that after a dip that can be attributed to the 2008 financial crisis, Guatemalan exports jumped 1,000 USD millions to what became the new standard level nearly 4,000 USD millions, and exports increased roughly the same amount to 6,500 – 7,000 USD millions per year.

Figure 6. Exports to the USA from DR-CAFTA countries in US millions



Source: International Monetary Fund (IMF), Direction of Trade Statistics, retrieved June 17, 2016 from <http://data.imf.org/?sk=9D6028D4-F14A-464C-A2F2-59B2CD424B85>, own elaboration.

Figure 7. Guatemalan trade with the United States of America (exports and imports) in US millions, 2005 - 2015



Source: International Monetary Fund (IMF), Direction of Trade Statistics, own elaboration from data retrieved June 17, 2016 from <http://data.imf.org/?sk=9D6028D4-F14A-464C-A2F2-59B2CD424B85>

2.4 Guatemala: A Special Case

In April of 2008 the AFL-CIO together with six Guatemalan labor organizations submitted a complaint to the US Department of Labor claiming that the Guatemalan government was not effectively enforcing its own labor laws. They stated that the Guatemalan government failed to protect workers' legally guaranteed rights (freedom of association, collective bargaining, and safe workplace conditions) by not conducting inspections, registering unions, or ensuring compliance with court orders. The Department of Labor subsequently released a report in January 2009 finding "significant weaknesses in Guatemala's labor law enforcement" and making

recommendations for improvement. (Department of Labor, 2009) In July 2010 the United States requested consultations with the Guatemalan government after insufficient improvement was found in regards to the issues raised in the 2009 report. The consultations failed, and in August 2011 an arbitration panel was requested and established later in 2012, but later suspended while both governments worked on an “Enforcement Plan” meant to specifically indicate which points Guatemala needed to improve upon in regards to the enforcement of its labor laws. The “Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala” was signed in April 2013, but after a year of little to no advances in any of the points outlined in the plan, the US requested the re-formation of the arbitral panel. A final report by the panel was expected in the first half of 2016, but as of June 2016 no findings have been issued. As stated previously, this is the first labor case that the United States has brought to dispute under a trade agreement. (Office of the United States Trade Representative)

At the same time, and not un-relatedly, the political situation in Guatemala has been far from stable. In 2007 the United Nations at the behest of the Guatemalan government established the International Commission Against Impunity in Guatemala (CICIG). Its two-year mandate was renewed three times and now currently expires in 2017. As an independent, international

body it aims to investigate “clandestine” groups that may have infiltrated government institutions and to help strengthen the rule-of-law in Guatemala. (UN.ORG) In late 2015 the president and vice-president of Guatemala were arrested for corruption and are now in prison while they wait for their respective trials after the commission established that they had colluded with various high-ranking customs officials in a corruption scheme that came to be known as “La Linea” (The Line, in English). ("La Prensa Libre", 2016)

2.5 Honduras, El Salvador, the Dominican Republic, Nicaragua

El Salvador, Honduras, Nicaragua, and Guatemala were the first four of the Latin American countries to sign and enact DR-CAFTA in 2006 with the Dominican Republic following a year later in March 2007. However, Nicaragua has not seen an increase in either its imports or exports with the United States, and the other countries have seen only modest gains. (International Monetary Fund)

2.6 Costa Rica

Costa Rica was the last country to ratify the agreement in a contested public referendum that ended with 51% approval on October 7, 2007. The agreement took effect January 1, 2009. DR-CAFTA was fiercely debated within the country, with groups mobilizing for and against its ratification in large

numbers, however research has shown that DR-CAFTA has been economically beneficial for Costa Rica, with both exports and foreign direct investment increasing since the agreement's enactment. (Koehler-Geib and Sanchez, 2014)

Review of the Literature

Much of the current literature focuses on the linkage between the broader topic of human rights and trade, but as more data is compiled and the passage of years gives academics more data points to work with, there have been important steps made in establishing how to study the effect of labor rights legislation on the actual labor rights situation of a country.

When speaking of labor rights, the majority of studies use three specific rights as measures of the whole: i.) freedom of association and the right to establish and join unions and other working groups, ii.) right to collective bargaining, and iii.) the right to strike.

Luce and Heintz in their *Labor Standards and Trade Agreements: The Impact of Trade Negotiations on Country Adoption of Freedom of Association and Collective Bargaining* (2012) state that measures of labor standards should consider both “positive” and “negative” variables when considering the impact of trade legislation on labor rights. Positive aspects are the passing of

laws and regulations in support of labor rights, and whether a country provides real protections to workers exercising those rights (both via legal routes, i.e. fining employers found to be in breach of conduct, etc., and protection from harm, threats, etc.) Negative aspects are measured in the ways that the government or employers interfere with the workers attempting to exercise their rights (for example, an employer refusing access to a labor inspector, or firing workers on strike). However, they make clear that there is no consensus within the academic community in regards to which exact measures should be used. They do highlight that The Committee on Monitoring International Labor Standards at the National Research Council has concluded that the best way to measure compliance with labor rights is via these three dimensions: the legal framework, how well the government has implemented the legal framework, and overall outcomes. (Luce, Heintz, 2012)

There is research that establishes a positive connection between higher labor standards and foreign direct investment, but a negative correlation between labor standards and trade openness. (Mosley, 2007) In addition, Mosley also establishes that the level of likelihood or history of civil unrest, population (greater population equals greater likelihood of possibilities of labor disputes), and that the developing countries with greater per capita incomes are also negatively correlated with labor rights. Democracy levels are positively

associated with labor rights, a finding corroborated by Dewan (2014). Another study establishes that labor rights decline in developing countries until a certain level of rule-of law and democracy is established. (Aaronson, 2008)

In a working paper issued by the Inter-American Development Bank in 2014 the researchers established a positive correlation between trade agreements and an increase in labor rights as measured by the amount of labor inspections performed and number of labor inspectors per country per year. In their studies many countries lacked adequate capacity in terms of financial resources, inspectors, and technical skills, and that these indicators all improved after the signing of a free-trade agreement with the United States. (Dewan and Ronconi, 2014) However, a different working paper from the same organization has not shown any relationship in Mexico, Chile, Costa Rica, El Salvador and Peru between the signing of a free-trade agreement and labor rights, but rather that any change was brought about by the host government without any intervention or aid from the United States (Samet, 2011).

There is other research not directly focused on any linkage between free-trade agreements and labor rights that also provides possible indicators and variables to measure when considering labor rights. Economic crises have been shown to have a negative effect for up to five years after the crisis ends

on labor rights practices (but not the laws themselves). (Blanton et. al., 2015)
A high level of informal or shadow economy also reduces labor unionization rates (Vuletin, 2008), and societies largely based on agriculture and other low-skill export sectors have lower labor rights indexes. (Elliott, 2011)

The Kucera Index created by David Kucera of the International Labor Organization is an often cited list of variables to study when considering labor rights, and was most recently revised in 2011. The index is comprised of 37 “evaluation criteria” separated into six groups:

“(F)reedom of association/collective bargaining-related civil liberties; right to establish and join unions and worker organizations; other union activities; right to bargain collectively; right to strike; and export processing zones.

The criteria jointly addressed de jure violations (the problem of non-compliance of the national legislation with ILO Conventions), as well as de facto violations (non-compliance with the country’s own national legislation in practice) and was applied only to violations committed with respect to workers’ organizations.” (Sari and Kucera, 2011)

The U.S. State Department Annual Reports on Human Rights Practices, the International Labor Organization Committee of Experts on the Applications of

Conventions and Recommendations, and Committee on Freedom of Association reports, and the International Confederation of Free Trade Unions (ICFTU) Annual Survey of Violations of Trade Union Rights are also often cited as sources for statistical data. (Mosley and Uno, 2007).

Methodology

The difficulty in studying the current state of labor rights in the Latin American, DR-CAFTA countries is that statistical data is essentially nonexistent. The ideal would be to use the statistics used in the previously discussed publications, such as number of unions, number of strikes, number of labor department investigators, etc., but these statistics are not available for the countries we are interested in aside from Costa Rica. The ILO's ILOSTAT only contains information for three of the countries (Guatemala not being one of them), and that data is limited and does not cover all years. The countries themselves have published statistics on certain variables, such as number of unions but the information is not complete, nor could it be considered an unbiased information source. (Guatemala has information published for the years 2010 – 2012 on the *Instituto Nacional de Estadística* (National Statistics Institute) - Guatemala's website, but this information was not used for this study as it was deemed too small of a range and to rule out bias from the data.)

The EU maintains its own database that contains statistics and data on labor rights in the Community, as does the OECD for its member nations, but the six member countries of DR-CAFTA are developing countries with little to no data available. With this in mind, for the purposes of this paper fifteen variables that had previously been established as indicators of labor rights and/or freedom were used to create a picture of the current situation in the six countries; in effect illustrate labor rights in each country by focusing on the factors that detract or encourage labor rights. We can then assume that the strength, or lack thereof, of these indicators signal the status of the labor rights environment in each country. The variables are either indicators of democracy (as established by Dewan higher levels of democracy are correlated with higher levels of labor rights), trade openness (Mosley; negative correlation between trade openness and labor norms), rule of law (Aaronson; decreased labor rights until a certain level of rule of law is reached), and the final economical factor of percent of the labor pool employed in agriculture as Elliott established in his 2011 paper that there is a positive/negative correlation between employment in agriculture and labor rights.

Variables were extracted from five sources: The Bertelsmann Stiftung's Transformation Index (BTI); Heritage Index of Economic Freedom; World

Development Indicators from the World Bank; The Worldwide Governance Indicators; and the CIRI Human Rights Data Project.

CIRI Human Rights Data Project

- Independence of the Judiciary
- Worker's Rights

Heritage Index of Economic Freedom

- Labor Freedom
- Freedom from Corruption

The Worldwide Governance Indicators

- Rule of Law
- Voice and accountability
- Government Effectiveness
- Political Stability and Absence of Violence/Terrorism

The Bertelsmann Stiftung's Transformation Index (BTI)

- Association / assembly rights
- Stability of democratic institutions

- Commitment to democratic institutions
- Liberalization of foreign trade
- Civil rights

World Development Indicators (World Bank)

- Employment in agriculture (% of total employment)
- Percent of children aged 5-14 engaged in the workforce

ILOSTAT Global Wage Report (International Labour Organization)

- Statutory nominal gross monthly minimum wage

Ratified ILO conventions have sometimes been used to measure labor rights in previous studies, but as it has already been established that all Latin American members of DR-CAFTA have already ratified all eight of the Fundamental conventions, that variable has been discarded from the data set.

The second issue that presented itself with the variables is the lack of coherent data among the databases. Some, such as the CIRI database, go back as far as 1980, but ends in 2011, which means that only the first half of the trade agreement being in effect is covered. The Bertelsmann Stiftung's Transformation Index only covers every other year, which reduced the data set

to five points for the purposes of this study. The World Development Indicators from the World Bank has incomplete information available for Guatemala, making this variable less useful when studying that country in particular, but was useful when studying the other five countries.

It must also be noted that each database has its own criteria and methodology that went into its creation; therefore, when choosing the variables care was taken to choose the variables most related to the underlying variables established by previous investigation in the field. They are all also aggregates of many variables pooled and compiled into one, unified rating. Below, each variable is described, but you can find the exact variable descriptions as published by each organization in Appendix A.

CIRI Human Rights Data Project:

This database is compiled from a revision and coding of the information in the United States Department of State's Country Reports on Human Rights Practices. Each country on a scale of 0-2, 0 indicating little to no presence of the rated variable, 1 indicating partial presence, and 2 indicating a strong presence. Independence of the Judiciary is the extent to which the judiciary operates independently of the government, military, or another branch. This variable has been included in an effort to measure the effectiveness of

the judiciary, as a case may be decided in favor of the union or worker, but ineffective and/or corrupt courts not enforcing the rulings and/or collecting the imposed fines would render the ruling moot. Worker's Rights shows the extent to which the ILO's four main labor rights are restricted (freedom of association, collective bargaining, forced or compulsory labor, minimum age requirements and acceptable work conditions).

Heritage Index of Economic Freedom

Labor Freedom is “a quantitative measure that considers various aspects of the legal and regulatory framework of a country's labor market, including regulations concerning minimum wages, laws inhibiting layoffs, severance requirements, and measurable regulatory restraints on hiring and hours worked, plus the labor force participation rate as an indicative measure of employment opportunities in the labor market.” (HERITAGE INDEX, 2016) *Freedom from Corruption* considers the extent that corruption is perceived in the country and derived from Transparency International's Corruption Perceptions Index (CPI). Corruption is used here as an indicator of a stable democracy and Labor Freedom is actually a negatively correlated variable, as increased labor protection and legislation would mean a lower ranking on the scale.

The Worldwide Governance Indicators

The WGI are “composite governance indicators based on over 30 underlying data sources.” These data sources are rescaled and combined to create the six aggregate indicators using a statistical methodology known as an unobserved components model. (The World Bank, 2016) As the indicators are aggregates they also include margins of error in order to account for variations between the sources. They are indicators of *perceptions* of the levels of each variable as the data sources are majority surveys or official assessments released by other government or non-government organizations.

Rule of Law measures the strength of the rules of society and the likelihood of crime and violence. *Voice and accountability* measure perceptions of how well citizens are able to participate in selecting their government, as well as freedom of expression, association, and free media/press. This variable is an aggregate of forty sources, of which five are explicitly freedom of expression and assembly. *Government Effectiveness* measures the quality of public services, the civil service and its freedom from political pressures, and policy making, their implementation, and the government’s commitment to these policies.

Political Stability and Absence of Violence/Terrorism measures the perceived political stability in a country and the likelihood of politically motivated violence. This variable in particular is useful as an indicator of possible murders and/or retaliations against union leaders and activists.

The Bertelsmann Stiftung's Transformation Index (BTI)

This index measures the “transformation” of developing countries towards democracy and a market-based economy, and the four variables taken from this index are from the “Status Index” which measures political and economic transformation and is based on the aggregation of 17 different factors. *Association / assembly rights* is the extent to which the people are able to use their rights of association and assembly without retaliation by the government or other body (for example a company). *Performance of democratic institutions* measures the extent to which the government of a country is able to pass and enforce its laws and whether this is free of “friction”. *Stability of democratic institutions* measures how well a government is capable of performing its duties without undue disruption from outside forces. Liberalization of foreign trade is a quantitative analysis of trade barriers such as import and export taxes, subsidies, etc. put in place by the government. The first three variables are indicators of

democracy and the fourth variable deals with trade openness. And finally, Civil Rights is the measure of the extent to which these rights are “guaranteed and protected” and if citizens are able to seek redress for any infringement.

World Development Indicators (World Bank)

Employment in agriculture (% of total employment) is the percentage of the total labor population employed in the agriculture sector and employed here as societies largely based on agriculture and other sectors of export of low ability have lower rates of labour rights. (Elliott, 2011) The child labor statistic is the percentage of children aged 5-14 who perform some kind of paid or unpaid labor, and is included as a variable because although it is not one of the explicit rights being studied in this paper, it will be indicative of the relative strength (or lack thereof) of other labor rights as it can be reasonably assumed that they are indicative of other institutional problems, such as a weak democracy or lack of rule of law.

ILOSTAT Global Wage Report (International Labour Organization)

Statutory nominal gross monthly minimum wage is included as a higher standard minimum wage can be considered a measure of stronger labor rights within a country.

Results

Any discussion of the results of the study of the variables must first discuss the issue of the margin of error within the datasets that are an aggregate of other datasets. The World Governance Indicators compiles the scores given to a country in a certain area and uses that information to publish an average score, but they also publish the margin of error for each data set as well, and it is important to keep that in mind when analyzing their data and that of the other indexes. That is not to say that no inferences can be drawn from the data – barring any drastic changes or glaring errors, major trends will appear over time.

In regards to the CIRI database, the data shows very little change over time in the studied countries. The small scale leaves little room for variation, but it does show two main trends: the strength of Costa Rica in both categories and the weakness of the other countries. In Independence of the Judiciary, Costa Rica shows six years at level 2, or strong presence, until dropping to a 1 in 2011. The other countries never reach a 2, except for the Dominican Republic

which quickly drops to a 1 after one year. Honduras and Nicaragua never rise above a 0 starting in 2006.

Figure 8. The variable “Independence of the Judiciary” in the DR-CAFTA Latin American countries.

	2005	2006	2007	2008	2009	2010	2011
Costa Rica	2	2	2	2	2	2	1
Dominican Republic	2	1	1	0	0	0	0
El Salvador	1	0	0	0	0	0	0
Guatemala	1	0	0	0	0	1	0
Honduras	1	0	0	0	0	0	0
Nicaragua	1	0	0	0	0	0	0

Source: CIRI Human Rights Data Project, own elaboration from data downloaded from <http://www.humanrightsdata.com/>

Guatemala performs worse in regards to Worker’s Rights; never rising above zeros in the entirety of the seven-year range studied. Costa Rica also fairs poorly, dropping to zero in 2008 and 2009 and only returning to a one in 2010 and 2011.

Figure 9. The variable “Worker’s Rights” in the DR-CAFTA LATAM countries.

	2005	2006	2007	2008	2009	2010	2011
Costa Rica	1	1	2	0	0	1	1
Dominican Republic	1	1	1	0	1	1	0
El Salvador	0	0	0	0	1	1	1
Guatemala	0	0	0	0	0	0	0
Honduras	0	0	0	0	0	0	0
Nicaragua	1	1	0	0	1	1	0

Source: CIRI Human Rights Data Project, own elaboration from data downloaded from <http://www.humanrightsdata.com/>

Taken as a whole the CIRI database shows a region where the judicial system is weak and worker’s rights are weak to non-existent, but there does not also seem to be a persistent pattern, with some countries improving while others worsen and yet others remain the same.

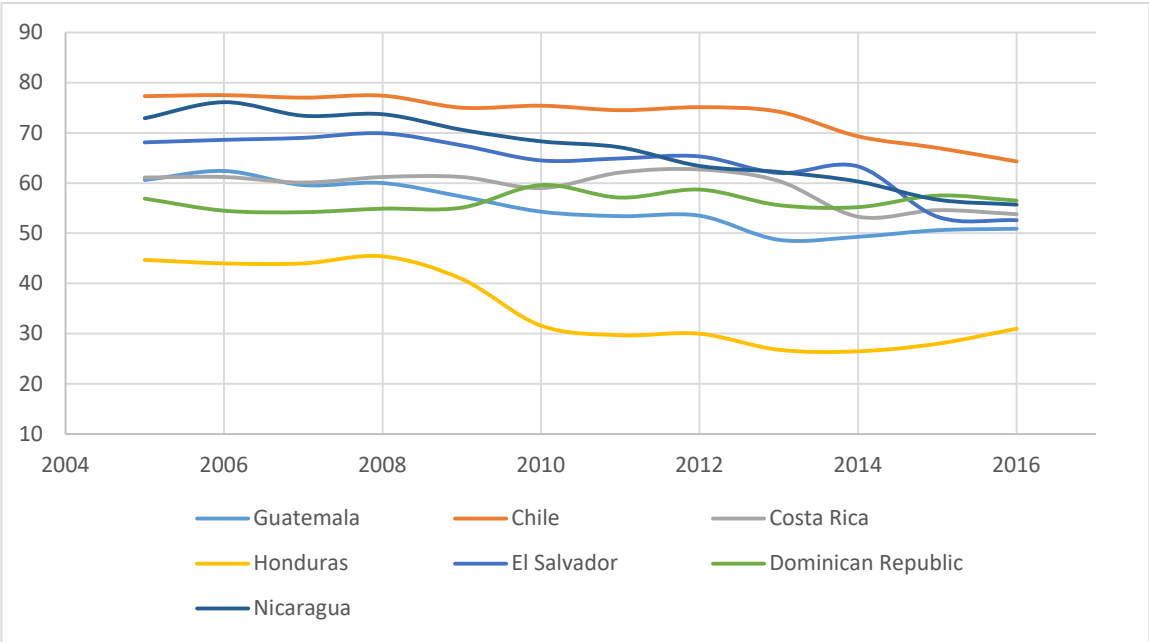
In contrast, analyzing the data in the Heritage Index of Economic Freedom shows a slight downward trend in Labor Freedom and a slight upward trend in Control of Corruption.

This scale measures countries on a scale of 0-100, and in the graphs below you will see that Chile has been included as a reference point for the other countries. As the index only studies developing countries, data for the USA is not included, but considering Chile's status as part of the OECD and as one of the more economically and politically stable South American countries, it serves as a reference point for its neighbors to the north. It should also be noted that data from before 2005 was not available for the Labor Freedom variable.

The data graphed below shows a clear, albeit slight downward trend in Labor Freedom for all of countries studied, including Chile, except for the Dominican Republic, which has remained roughly the same. Counterintuitively this actually signals better labor rights within each country as this indicator is based on the freedom to do business within a country in regards to the constraints placed on businesses. For example, Chile's decline begins in 2012-2013 which could be traced to new laws providing for extended maternity. While this means tougher standards and higher costs for the company, in terms of labor rights this new law is very favorable for female

workers. Without delving too deeply into the individual reasons for why each country may have reduced labor freedom, it can be said that this should negatively correlate to greater labor rights, however we are not able to say that it definitively shows an increase in the right to organize and to collective bargaining but rather an improvement in the labor rights environment in general.

Figure 10. The variable Labor Freedom from the Heritage Index of Economic Freedom for the Latin American DR-CAFTA countries and Chile.

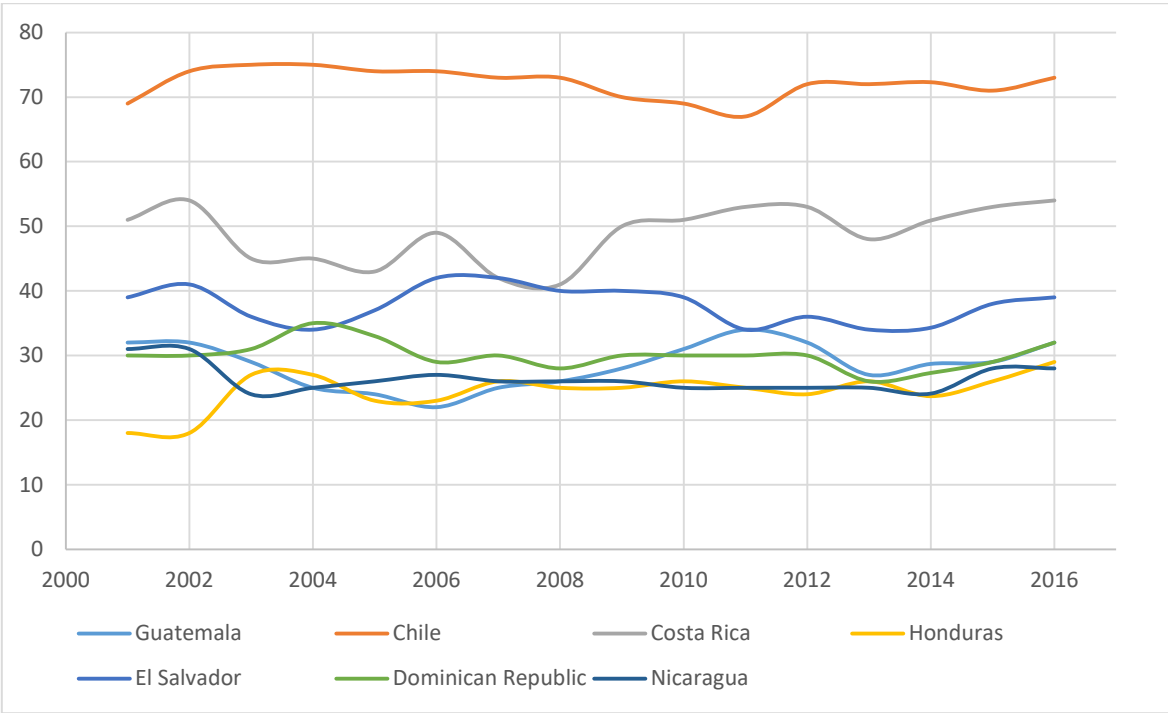


Source: Own elaboration from the Heritage Index of Economic Freedom

In the second variable, Control of Corruption, we once again see Chile at the top of the scale, varying between 65-75 over the fifteen-year period, and Costa Rica a distant second hovering at 50. No general trend is observed, however more fluctuation is seen here than with Labor Freedom, most likely due to the

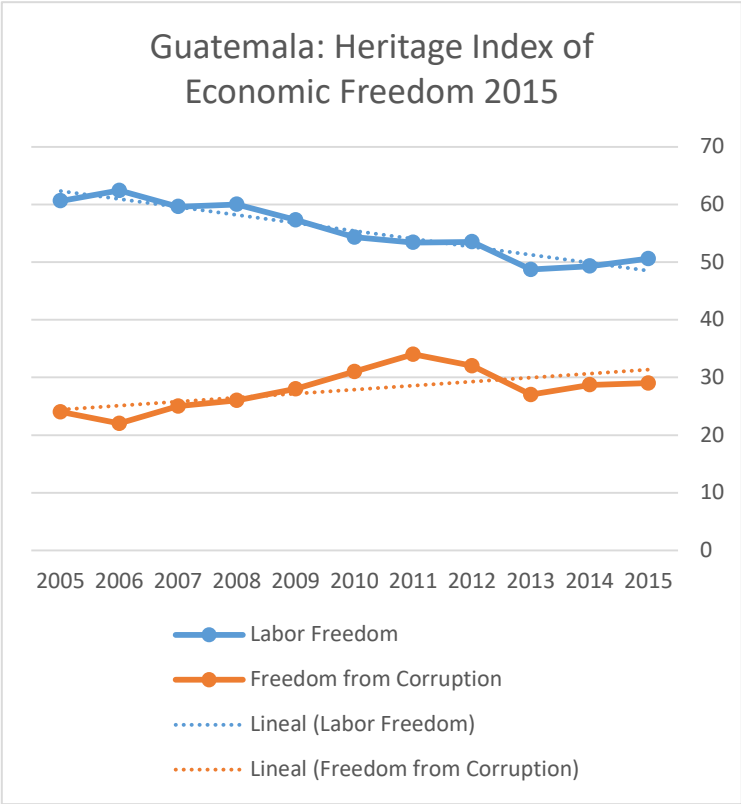
slow law-making process inherently tied to that variable. In the graph below, however, we can clearly see that Guatemala itself shows a slight trend towards less corruption and less labor freedom (which is to say more restrictions on companies and their doing business in the country).

Figure 11. The variable Control of Corruption from the Heritage Index of Economic Freedom for the Latin American DR-CAFTA countries and Chile.



Source: Own elaboration from the Heritage Index of Economic Freedom

Figure 12. The variables Control of Corruption and Labor Freedom from the Heritage Index of Economic Freedom for Guatemala.



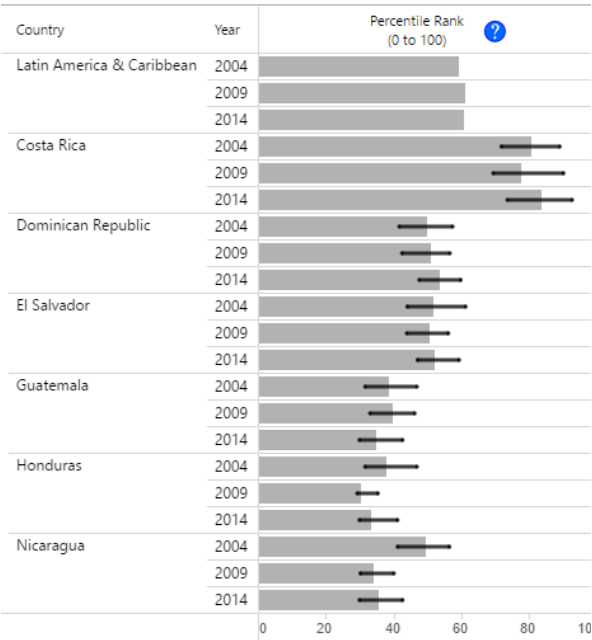
Source: Own elaboration from the Heritage Index of Economic Freedom

The variables from the Worldwide Governance Indicators show a somewhat different story in regards to democracy and rule of law in the DR-CAFTA countries. The four variables studied are rule of law and three indicators of democracy, all of which have been shown to be correlated to improvements in labor rights. In all of the variables studied, Costa Rica continues to be the most stable and democratic country with an average rank of 80 among the other countries in the world. The Dominican Republic is second in all of the indicators within the 6 countries, and Guatemala, Honduras, and Nicaragua continuously fall in the bottom three in each variable, with scores ranging

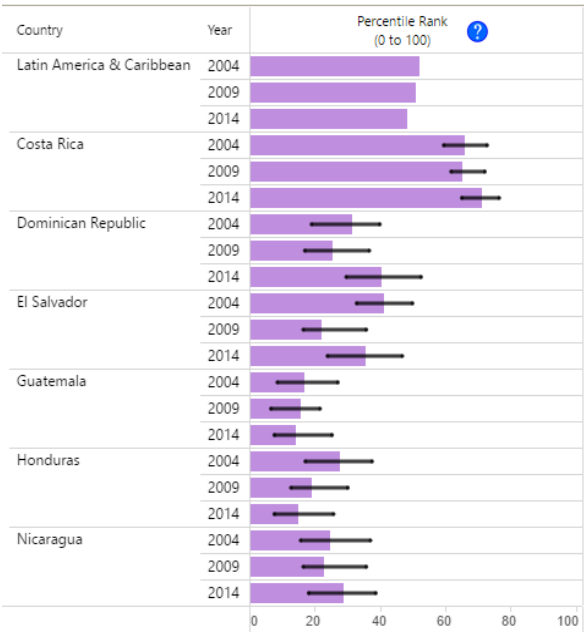
from 25-30 for all variables except Political Stability and Absence of Violence where Nicaragua reaches just above 40th place for the first time, and where Guatemala is firmly in last place in the group.

Figures 13-14. The Worldwide Governance Indicators the Latin American DR-CAFTA countries.

Voice and Responsibility



Rule of Law



Source: The World Bank: Worldwide Governance Indicators, retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

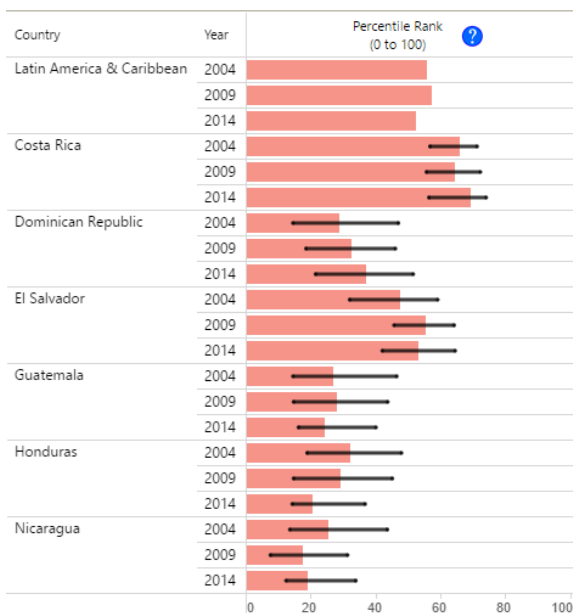
In Voice and Responsibility, which measures freedom of expression and citizen participation, all countries experience slight improvements in ranking since 2004 except for Guatemala, and the same result is replicated for Rule of Law in Guatemala and Honduras, but here is where the margin of error is important to take into consideration.

The Government Indicators are aggregates of other databases or indexes rescaled into one index in order to give a general view of the state of each variable in each country, but the margin of error shows the range of ratings each country received, from the lowest to the highest. Therefore, when studying the two graphs above it's important to note that the margin of error for Guatemala in Rule of Law places it on par with Nicaragua and the Dominican Republic at the high end of the scale, and Honduras as being below all other countries at the low end of the scale.

The margin of error is much more important when studying the variables Government Efficacy, Political Stability and Absence of Violence: the margins are much wider, and in the case of Government Efficacy the country ratings are almost equal. This indicator is especially important because it measures the ability of a country to enforce its own laws and the rulings of the courts, something explicitly stated in DR-CAFTA and important in regards to protecting laborers and labor rights.

In the figures below we can see that government efficacy for Guatemala, Honduras, and Nicaragua are and have been low, even when taking into consideration the margin of error for each country. Costa Rica, which has so far shown to be the strongest country in democracy indicators in the region, also shows to be weaker in this area and in Political Stability, although its

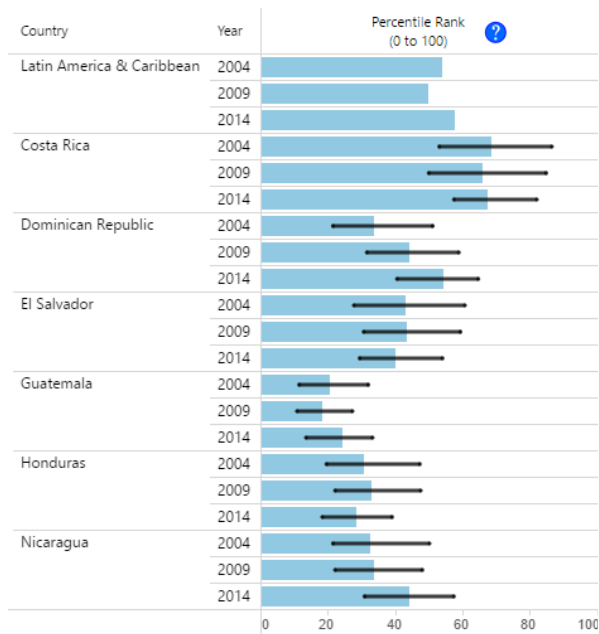
margins of error in this second indicator bring it up to the 90's where we will see later places it with other, more developed countries in the world. It is important to note that each country shows a slight change between 2004 and 2009 in Government Efficacy, which could be attributed to either the DR-CAFTA signing and enactment or the economic crisis in 2008. All countries except Guatemala show improvement in 2014, but not to 2004 levels. Political Stability shows a general trend of improvement in all countries except Honduras, however Guatemala even with its improvements falls squarely in last place, which falls in line with the reported murders of union leaders in the country. These murders are also the reason that this variable was included in the study; as such numbers are hard to find and whether a person is murdered for connections to a union is sometimes debated, the overall likelihood of politically motivated murders in a country will obviously be a strong indicator of the likelihood of this occurring, and Guatemala is indeed the weakest in this area, just slightly behind Nicaragua.



Figures 15-16. The Worldwide Governance Indicators the Latin American DR-CAFTA countries.

Government Efficacy

Political Stability and Absence of Violence/Terrorism

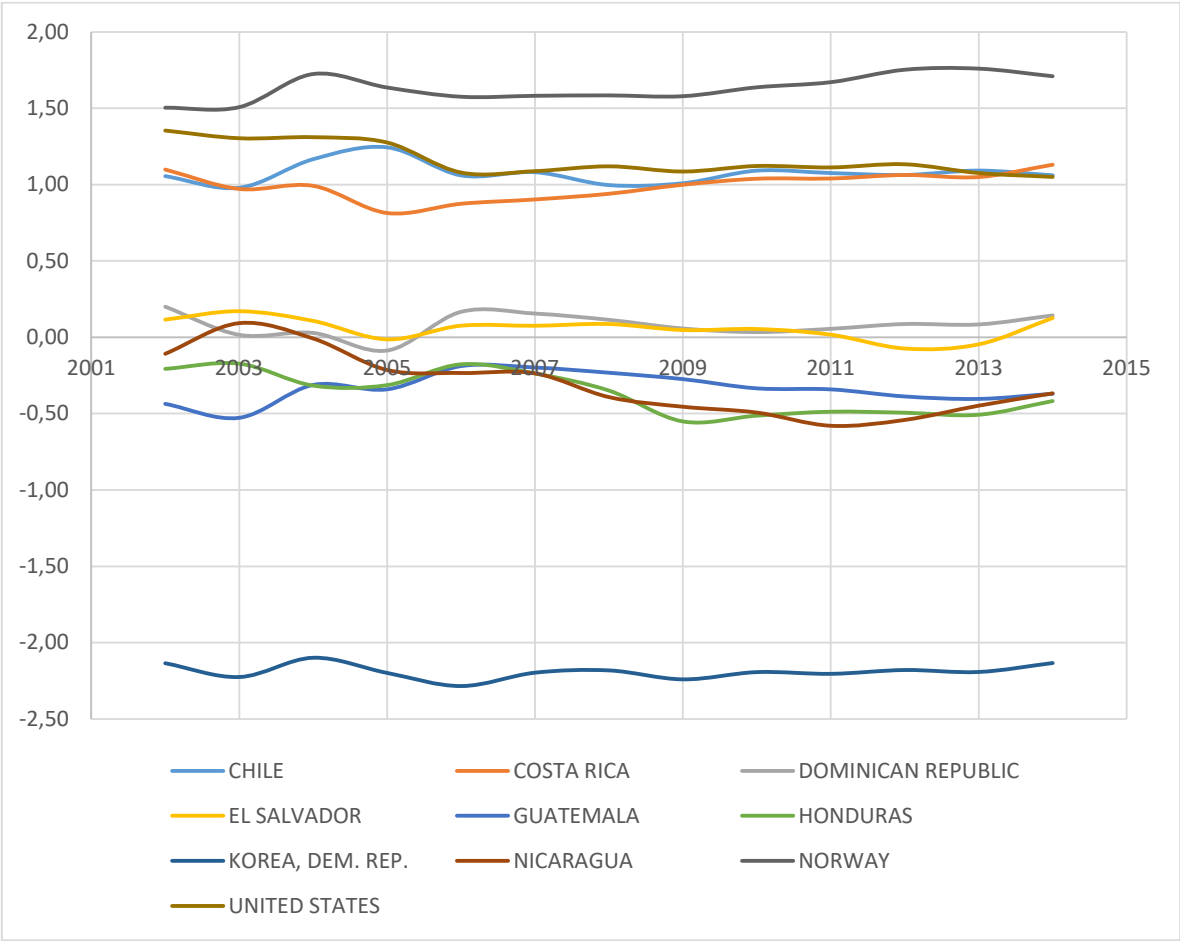


Source: The World Bank: Worldwide Governance Indicators, retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

The indicators themselves are scored on a ranges from -2.5 (weak) to 2.5 (strong), and in the graph below we see the seven DR-CAFTA countries graphed along with other example countries: Norway (strong rights), The People’s Democratic Republic of Korea (North Korea and weak rights), the United States of America, and Chile (LATAM example). The example countries help to give perspective to the ratings of the DR-CAFTA countries, and one can see that they fall in the middle of the range for Voice and Accountability. North Korea, a dictatorship, falls squarely at the bottom with the weakest freedom of expression and citizen participation, and Norway, the United States, Chile, and Costa Rica are consistently scored between 1.0 and

1.5. As seen above, no large spikes or changes are present in any of the countries, and the five other Latin American countries are all very similar.

Figure 17. The Worldwide Governance Indicators: Voice and Accountability, the Latin American DR-CAFTA countries, Norway, North Korea, the United States, and Chile.

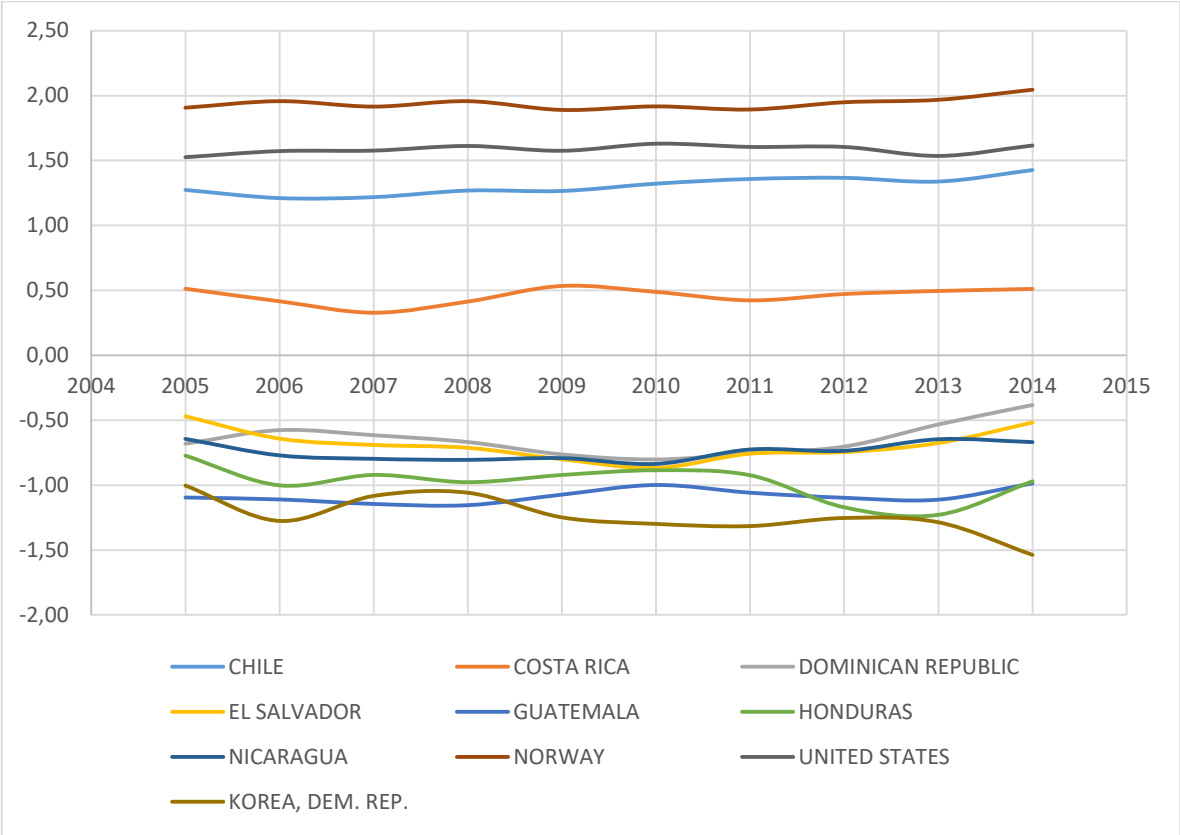


Source: The World Bank: Worldwide Governance Indicators, from data retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

In Rule of Law below, we see that Norway, the United States, and Chile continue being rated above 1.0, but Costa Rica has fallen out of the high

grouping to 0.5, which is still a full step above the other Latin American countries and North Korea (where presumably a dictatorship lends itself to a stronger rule of law when the abuses are not considered). Again, no major changes are seen in the five other DR-CAFTA countries, but Honduras and Guatemala remain at the bottom.

Figure 18. The Worldwide Governance Indicators: Rule of Law, the Latin American DR-CAFTA countries, Norway, North Korea, the United States, and Chile.

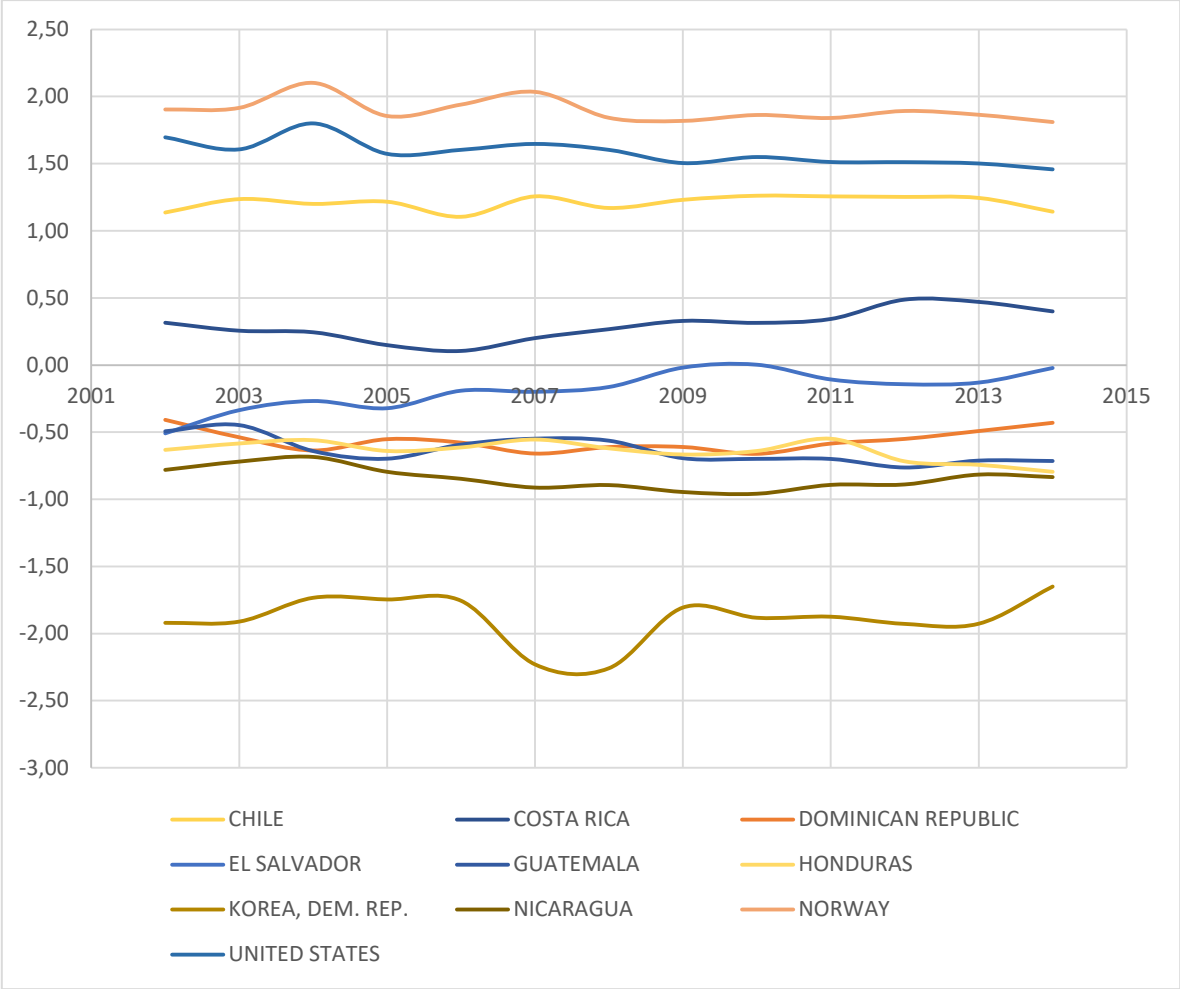


Source: The World Bank: Worldwide Governance Indicators, from data retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

In Government Effectiveness we see once again that Norway is rated the highest, followed by the United States and Chile. Following its ranking in

Rule of Law, Costa Rica is again rated lower at an average of 0.5, and Nicaragua is the worst performing of the DR-CAFTA countries followed by North Korea at -2.00. However, El Salvador does show a slight upward trend, ending at 0.0 from -0.5. Guatemala and Honduras are again very similar in ratings and changes over time.

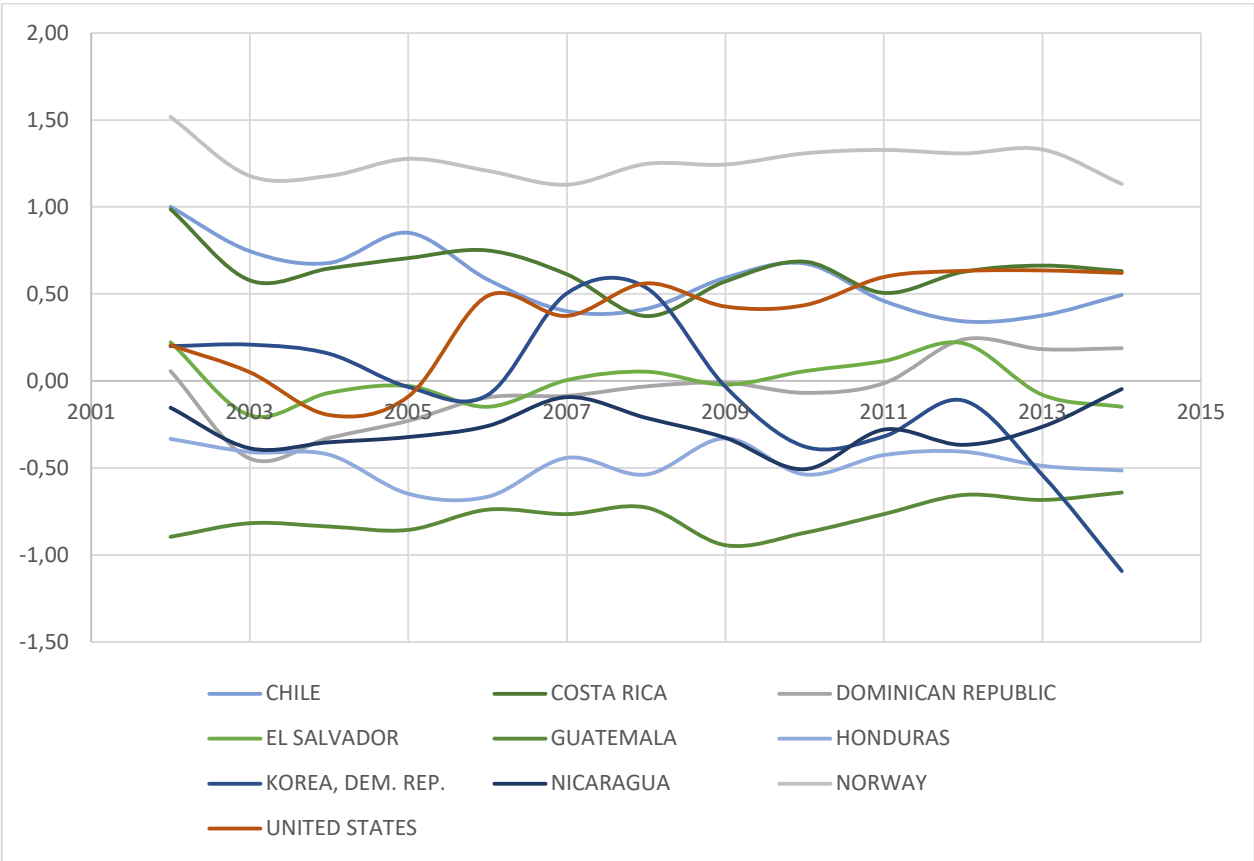
Figure 19. The Worldwide Governance Indicators: Government Effectiveness, the Latin American DR-CAFTA countries, Norway, North Korea, the United States, and Chile.



Source: The World Bank: Worldwide Governance Indicators, from data retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

In Political Stability and Absence of Violence and Terrorism we see a much different world picture than in the previous four graphs. Firstly, Norway is still the high performer of the group, but falls from 1.5 in 2003 and never regains the same rating. Costa Rica and Chile shows a similar fall from 1 to 0.5, while the United States, presumably still recovering the 9-11 attacks and the aftermath increases from just above 0 to 0.5. However, it is Guatemala's position at the bottom that represents the biggest change as even North Korea performs better in this indicator for the majority of the years, only falling below in 2014. It's also important to note that there is also very little variation in Guatemala's rating over the twelve-year period, nor does that of Honduras change much either. Taken together this variable does support the idea that Guatemala does have a worse labor rights environment, as politically motivated attacks and murders are more prevalent, but it is important to note that this was already apparent in the years before the enactment of DR-CAFTA and the 2008 economic crisis.

Figure 20. The Worldwide Governance Indicators: Political Stability and Absence of Violence/Terrorism, the Latin American DR-CAFTA countries, Norway, North Korea, the United States, and Chile.

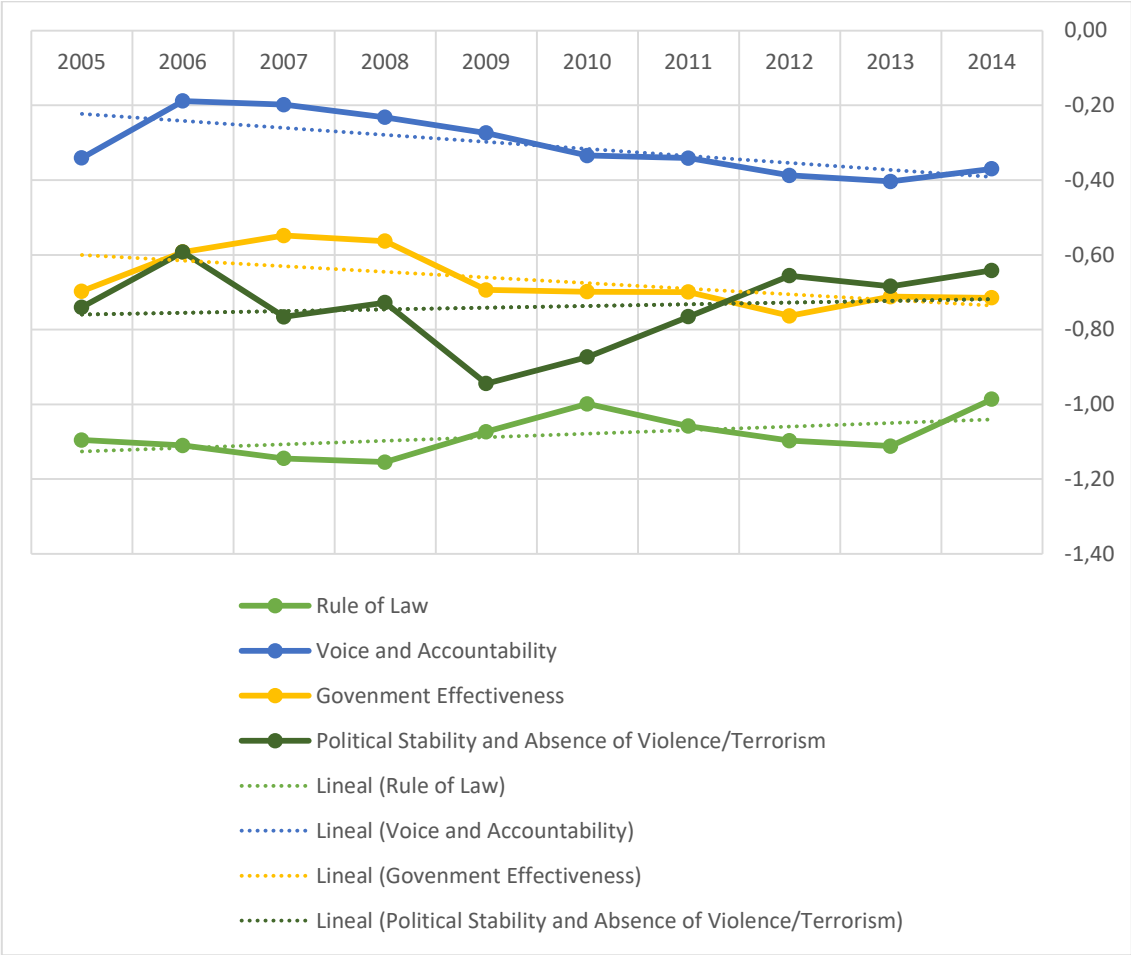


Source: The World Bank: Worldwide Governance Indicators, from data retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

Now that we have established the relative position of Guatemala among its peers and the international community we can look directly at the trends within Guatemala itself. In the graph below all four indicators have been charted along with their tendency lines, which allows us to see that while Guatemala might be performing worse in the region, internally it is improving in two of the four indicators. The almost one-point gain in Political Stability and Absence of Violence since 2009 is also notable, as is the more modest

gain in Rule of Law. On the other hand, Voice and Accountability and Government Effectiveness have both decreased, with Voice and Accountability losing the most ground with -0.5 points. These two variables are directly related to the labor rights in that freedom of expression and effectiveness of the government are two key bases for the ability to exercise those rights. Based on the information shown in these variables, it does support the idea that labor rights within Guatemala are weak.

Figure 21. The Worldwide Governance Indicators: Guatemala

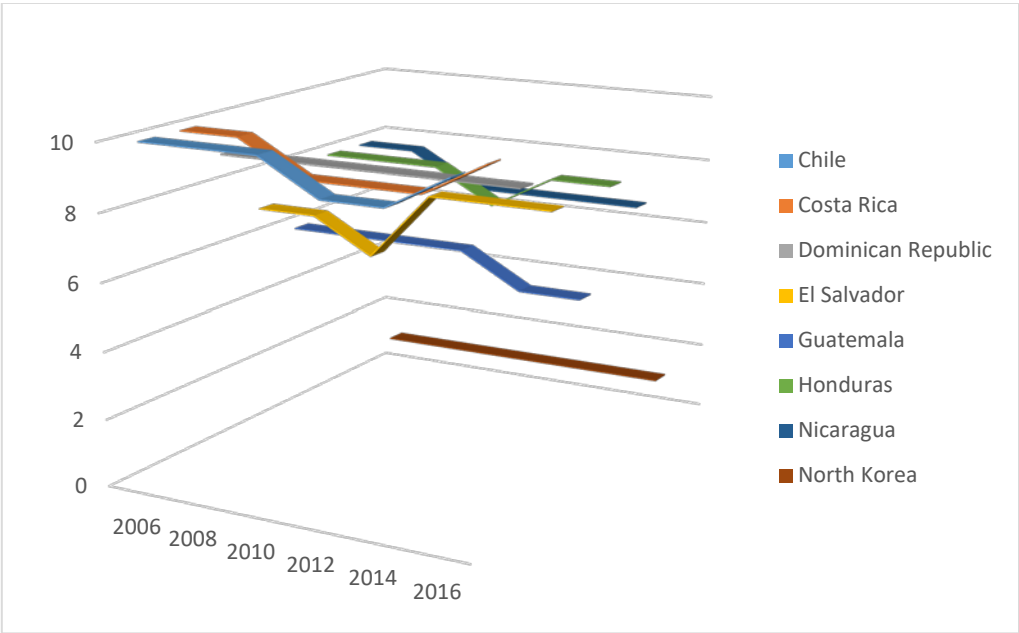


Source: The World Bank: Worldwide Governance Indicators, from data retrieved from <http://info.worldbank.org/governance/wgi/index.aspx#reports>, June 2016

The next set of variables, The Bertelsmann Stiftung's Transformation Index, releases its results every even year, and therefore the data graphed has been smoothed in order to better show trends, but the years listed on the X axis are those years where data was released. This index measures the rate of change in developing countries towards democracy and a market economy, and therefore information for the United States and Norway is not included in the dataset, however North Korea and Chile have both been included as before in order to provide context.

In the graph below we see that the North Korea is predictably the base-line poor performer, something that will be repeated in every variable for the BTI, but it also shows a worsening performance by Guatemala in 2016 in addition to it being the lowest rated of the group. Chile and Costa Rica are predictably at the top of the scale, and El Salvador improved to a 10 in the last few years. This supports the idea that the right to unionize in Guatemala is not protected, as the freedom of association is the foundation of the right to organize and join groups. However, the new drop in Guatemala's ratings happens after 2012, which does not imply that the change is related to the signing of the DR-CAFTA.

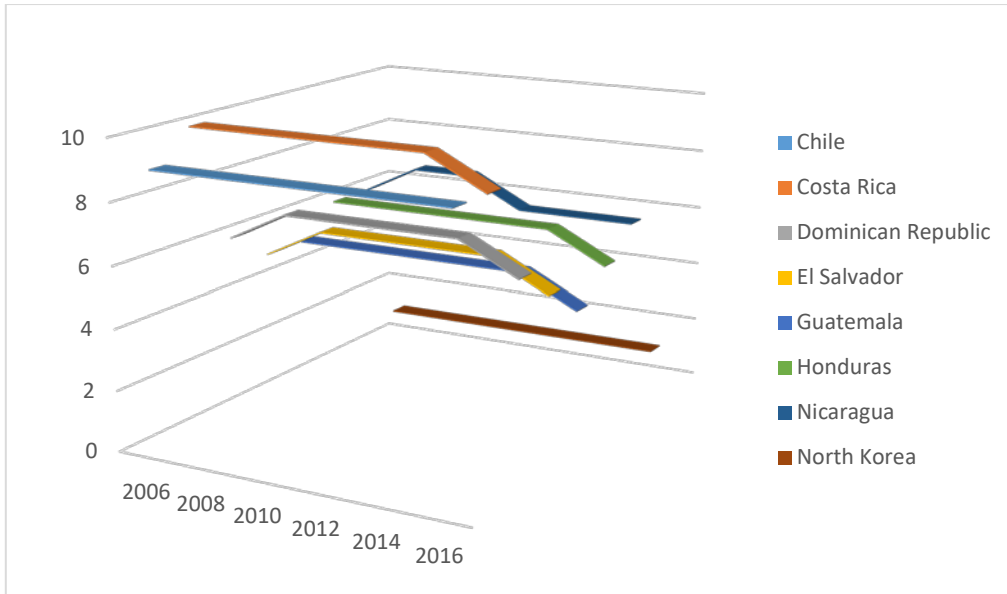
Figure 22. Bertelsmann Stiftung’s Transformation Index: Association and Assembly Rights, the Latin American DR-CAFTA countries, Norway, North Korea, and Chile.



Source: Bertelsmann Stiftung’s Transformation Index, The. (2016). Own elaboration from data retrieved June 17, 2016, from <http://www.bti-project.org/en/home/>

In the figure below we see that Civil Rights have declined in most countries where they could decline, except for Chile, after a period of relative stability.

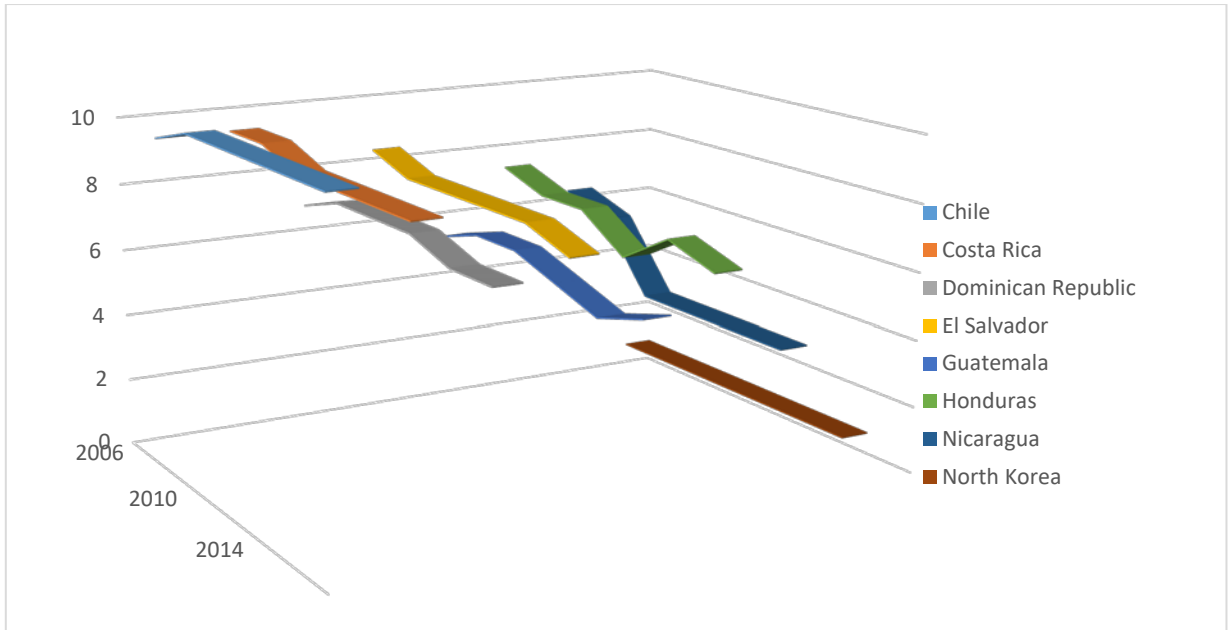
Figure 23. Bertelsmann Stiftung’s Transformation Index: Civil Rights, in the Latin American DR-CAFTA countries, Norway, North Korea, and Chile.



Source: Bertelsmann Stiftung's Transformation Index, The. (2016). Own elaboration from data retrieved June 17, 2016, from <http://www.bti-project.org/en/home/>

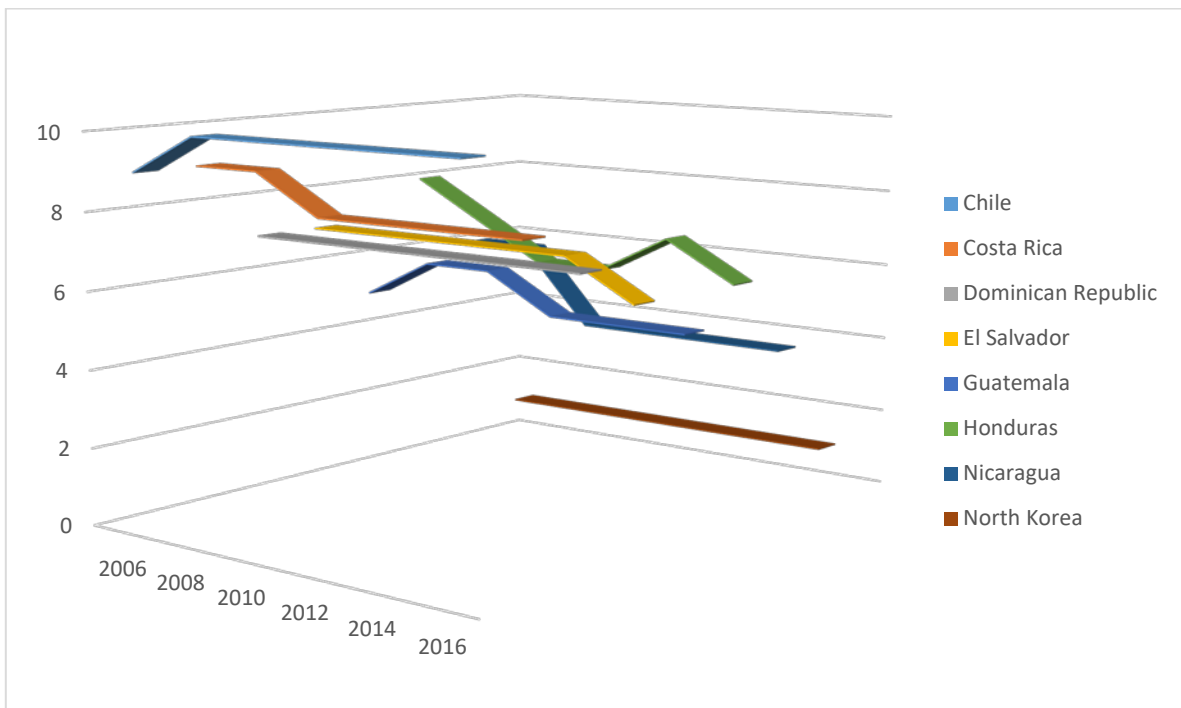
Stability of Democratic Institutions shows a large drop in Nicaragua's rating to a 4 in 2010, and Guatemala shows ups and downs while maintaining an average 5 rating. Chile and Costa Rica are at the top with ratings of 9 and 8 respectively, which shows the large gap between them and the low performers of Guatemala and Nicaragua. The same drop is seen in the Performance of Democratic Institutions for Guatemala and Nicaragua, which makes sense considering that unstable institutions will find it hard to perform well.

Figure 24. Bertelsmann Stiftung's Transformation Index: Stability of Democratic Institutions, in the Latin American DR-CAFTA countries, Norway, North Korea, and Chile.



Source: Bertelsmann Stiftung's Transformation Index, The. (2016). Own elaboration from data retrieved June 17, 2016, from <http://www.bti-project.org/en/home/>

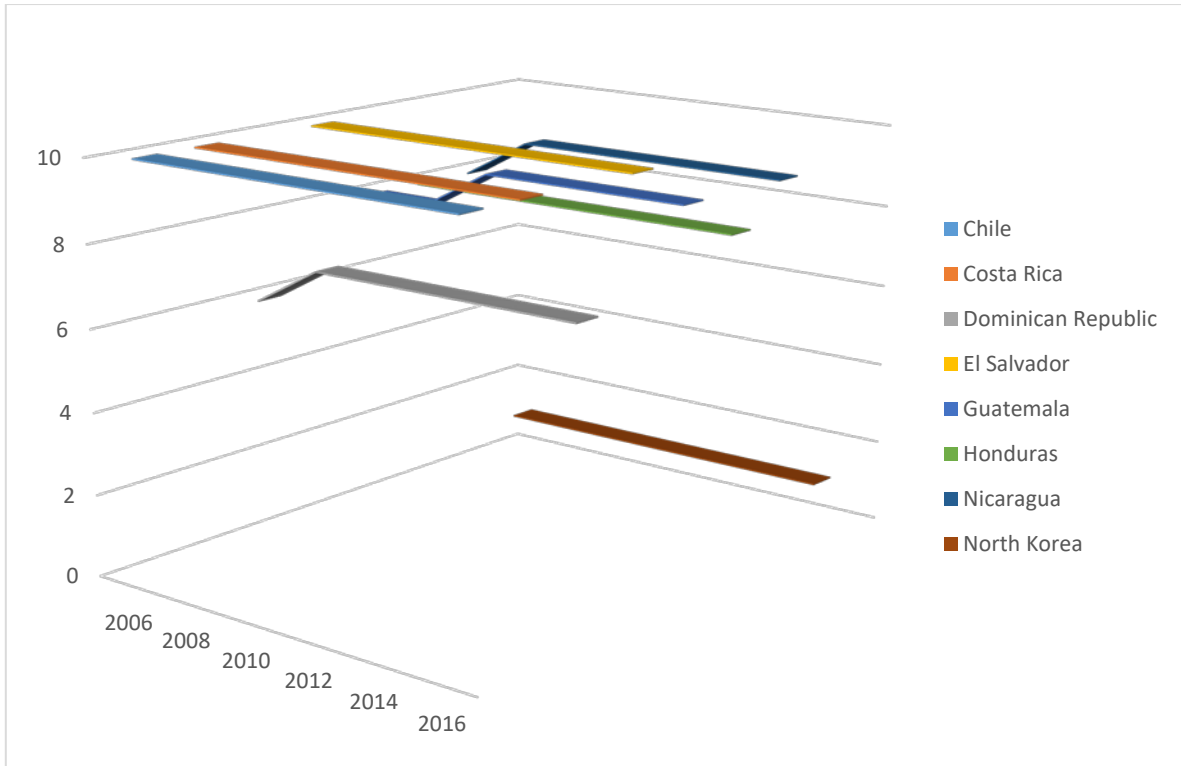
Figure 25. Bertelsmann Stiftung's Transformation Index: Performance of Democratic Institutions, in the Latin American DR-CAFTA countries, Norway, North Korea, and Chile.



Source: Bertelsmann Stiftung's Transformation Index, The. (2016). Own elaboration from data retrieved June 17, 2016, from <http://www.bti-project.org/en/home/>

In the last variable, Liberalization of Foreign Trade, small increases are seen in the year 2008 for Guatemala, Nicaragua, and the Dominican Republic, which correlates with the enactment of DR-CAFTA, however it's interesting to note that Costa Rica and El Salvador already scored a 10 on the BTI scale for liberalization. As the liberalization has been shown to be correlated with poor performance of labor rights in a country, it's important to note that both countries have been statistically better performers in terms of democracy, stability, and rule of law according to the results already discussed in this paper.

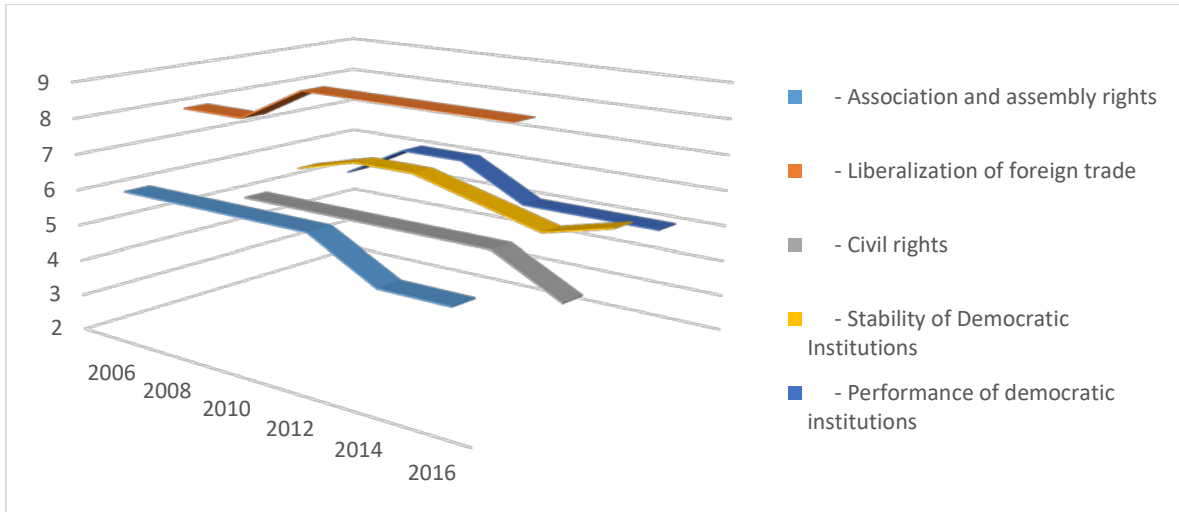
Figure 26. Bertelsmann Stiftung's Transformation Index: Liberalization of Foreign Trade, in the Latin American DR-CAFTA countries, Norway, North Korea, and Chile.



Source: Bertelsmann Stiftung's Transformation Index, The. (2016). Own elaboration from data retrieved June 17, 2016, from <http://www.bti-project.org/en/home/>

Now that we have studied Guatemala in the context of the region and other developing nations, the results for just Guatemala show a downward trend in all indicators except for the liberalization of foreign trade. While the changes are small, they are all that much more important considering that the former levels were already low.

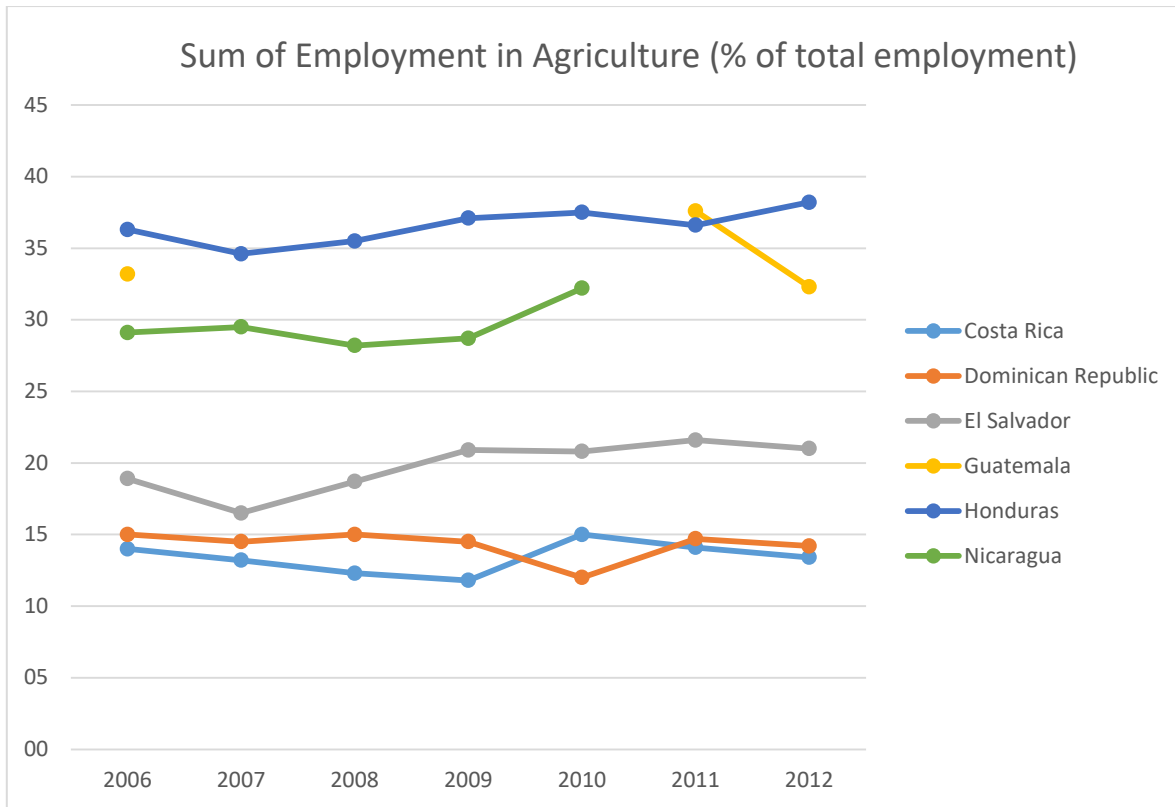
Figure 27. Bertelsmann Stiftung's Transformation Index: all variables 2006-2016 in Guatemala



Source: Bertelsmann Stiftung’s Transformation Index, The. (2016). Own elaboration from data retrieved June 17, 2016, from <http://www.bti-project.org/en/home/>

The sum of employment in agriculture was included in this study in order to give us an idea as the workplace “landscape” of the country, as a higher rate of employment in the agriculture sector correlates to lower labor rights in a country as previously discussed. We do see higher rates of agriculture employment in Honduras, Guatemala, and Nicaragua, which supports their consistently low performance in all of the previous indicators. (Data is inconsistent for Guatemala and Nicaragua, but it is assumed that no large changes in the percentages for these two countries in the missing data years.) Costa Rica, the Dominican Republic, and El Salvador have the lowest rates, which also supports their positions as the higher-functioning countries in the previous charts.

Figure 28. Sum of Employment in Agriculture (% of total employment) in the Latin American DR-CAFTA countries

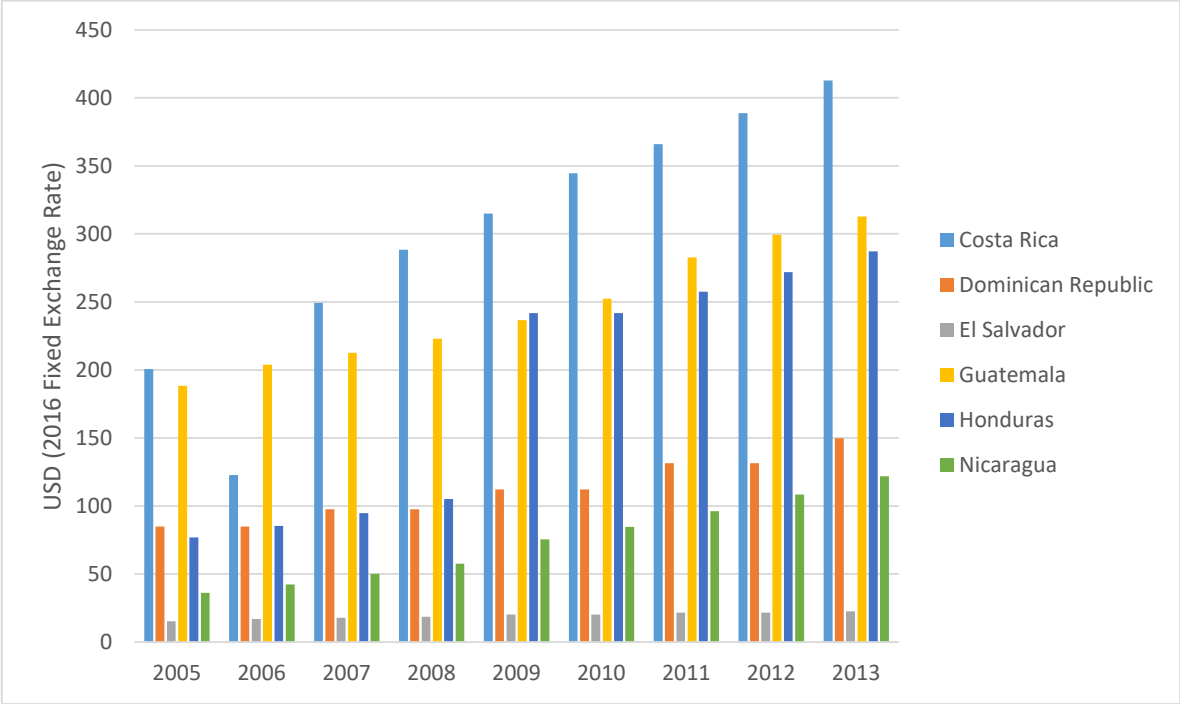


Source: The World Bank. (2016). *World development indicators*. Washington: World Bank. Own elaboration from data retrieved from <http://data.worldbank.org/data-catalog/world-development-indicators>

What's interesting is that while Costa Rica has the highest minimum wage of the DR-CAFTA countries, Guatemala has the second-highest, with Honduras taking third place after a jump in 2009. Typically, higher minimum wages would correlate to stronger union presence, but as already shown in the previous graph, 30% of employment is in the agricultural sector where abuses such as withholding and non-payment of wages is most common. Therefore, Guatemala and Honduras may report relatively high minimum wages, but the reality may be that the majority of workers do not receive this rate, or are even paid at all. This is even more likely when considering that the previous

variables depict an ineffective judiciary branch and government which means few avenues of recourse for workers denied wages.

Figure 29. ILOSTAT Global Wage Report: Statutory nominal gross monthly minimum wage in the Latin American DR-CAFTA countries

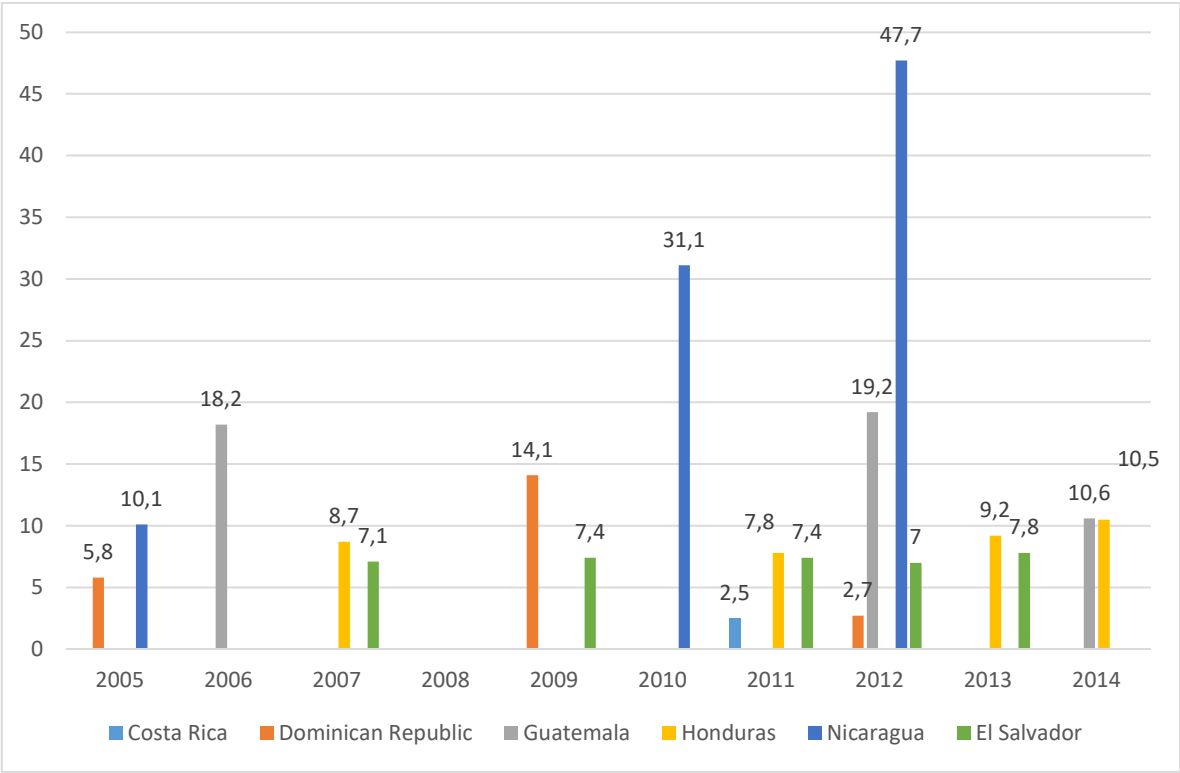


Source: ILOSTAT Global Wage Report database, Retrieved April 24, 2016, from <http://www.ilo.org/ilostat/faces/home/statisticaldata>, own elaboration

The data is incomplete for the child labor data, but inferences can still be made using the data. The percentage of child labor was expected to correlate strongly with the countries with higher rates of agriculture employment, and Guatemala and Nicaragua do have the highest percentage among the countries, with Costa Rica showing the lowest, which correlates to its low participation in the agriculture sector. However, Honduras shows as having relatively low rates of child labor although it has a high participation rate in

agriculture. Considering the inconsistencies in the graph below, no conclusions can be drawn regarding the other labor rights in these countries.

Figure 30. Children in employment, total (% of children ages 7-14) in the Latin American DR-CAFTA countries



Source: The World Bank, World Development Indicators, from <http://data.worldbank.org/indicator/SL.TLF.0714.ZS>, own elaboration

Conclusions

Through examining variables already established to be correlated with labor rights this paper tried to understand the state of the rights to unionize and collective bargaining, if any change appeared after the enactment of DR-CAFTA, and if the same results were repeated in the neighboring countries and fellow signers of the agreement. My hypothesis was that Guatemala

would not present with outstanding levels of democracy and stability and therefore not possess a rights environment conducive to strong labor rights, but that the neighboring countries would also have similar, if not worse levels, except for Costa Rica which has a long history of stable democracy.

Overall, the findings only partially support the hypothesis: the conditions seen in Guatemala are also seen in Honduras and Nicaragua, but Guatemala does rate lower in terms of its rule of law and political stability, and research in the field has already demonstrated that these are positively correlated with labor rights, therefore the low levels present in Guatemala would correlate with similarly low levels of the people being able to exercise their rights to unionize and bargain collectively.

In regards to the labor dispute currently ongoing between the United States and Guatemala, the same conditions that are contested in the dispute are most likely also present in Honduras and Nicaragua as the data consistently placed them at the bottom of the group with Guatemala, but the fact that Guatemala is a bigger trade partner with the USA than the other two countries probably played an important role. Guatemala also has the largest population, and as discussed in the literature section, Mosley established that larger populations are correlated with more labor disputes. (Mosley, 2007) In addition, the unstable political arena as demonstrated by the presence of the UN's anti-

corruption committee and arrest of the President and Vice President is likely to have a destabilizing effect on the country and therefore its judiciary, democracy, and rule of law.

More extensive data gathering and research is needed in each of the six countries studied, and hard data on strikes, unions, and collective bargaining agreements should be not only requested from the governments of each country, but also studied and established by an independent body in order to avoid bias in the data. Supporting each country in its efforts to strengthen the rule of law, the judiciary, and stabilize its governments will most likely help future efforts to improve labor rights within each country.

Overall, no major influence was noted in the six Latin American countries after the enactment of DR-CAFTA apart from increased trade liberalization rates, but once the panel releases its findings in the Guatemala case new studies should be done in the years to come evaluating the level of effect of any actions resulting from its decision.

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