A. Summary:

Globally and in the Central American region, Costa Rica has a strong reputation as a peaceful country committed to environmental conservation. The country has ratified both international conventions on human rights – the International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social and Cultural Rights (ICESR). Nevertheless, the trade union movement has filed a series of complaints against Costa Rica at the International Labour Organization (ILO) regarding the core conventions on freedom of association and collective bargaining rights (Conventions 87 and 98). In response to the ILO recommendations, the Costa Rican government has implemented some and continues to develop additional changes to the labor justice system.

This document is intended to help clarify a series of questions regarding the rights encompassed in Conventions 87 and 98 in Costa Rica in order to strengthen the implementation and verification of the SA8000® standard in the country. The purpose here is to provide guidance for those employers who make the voluntary commitment to implement SA8000® standard in order to strengthen and continuously improve their compliance with the standard and their management systems. At the same time, the document provides a practical guide for SA8000® auditors working in the country.

SAI received a number of questions and critiques about how to verify compliance with SA8000® and other voluntary codes of conduct in the Costa Rican context; these can be summarized in three points:

- Are certain institutions or legal entities permitted under Costa Rican labor law and in current practice – e.g. permanent committees (PC), direct arrangements (DA), and solidarista associations (SC) – being promoted

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1 Costa Rica does not have a military and maintained peace during the revolutions and counter-revolutions that so significantly affected its neighboring countries during the 1980s.
as a substitute to Trade Union (TU) representation and their negotiation of collective bargaining agreements (CBA)?

- How can SA8000® auditors effectively verify workers’ rights to freedom of association and collective bargaining, in light of the historical context and pre-existing prejudices?
- How can employers effectively communicate to workers their respect for these rights?

In a longer version of this document SAI provides legal and historical background on these issues in Costa Rica as a form of additional orientation for SA8000® users: employers and auditors who seek to ensure that workers are able to freely choose how to organize without interference or influence – direct or indirect – of management. SAI believes employers can ensure workers’ rights to freedom of association and collective bargaining in Costa Rica, provided that management communications about workers’ rights correct for historical biases that have often favored PC over TU.

After extensive research and investigations, SAI has identified a series of recommendations, detailed below, to improve both the auditing and implementation of SA8000® in Costa Rica. Several certified producers have already implemented some of these measures. Others are in the process of strengthening their policies and communications concerning workers’ rights to organize and bargain collectively.

We note here that the implementation of the SA8000® standard is a voluntary commitment on the part of companies to hold themselves to a global standard, thus requiring the balancing of national and international perspectives. To date, all SA8000 certifications are in the agricultural sector in the production of bananas or pineapples for export.4 Nevertheless, this guidance could provide useful illustrations for any company seeking to adhere to the SA8000 standard requirements.

B. SA8000® Implementation:

Following from the above research, analysis, and historical context, some specific Guidance can be provided for SA8000® users in the country. We first address management guidance for SA8000® compliance and then auditor guidance in the same three categories.

The principles of non-interference and workers’ choice are fundamental to ensuring respect for workers’ rights to freedom of association and collective bargaining. Given the context in Costa Rica, employers need to consider carefully how they communicate and implement their commitment to respect these rights. The existence of these entities – SA, PC, DA – in a workplace, and any indication that employers prefer PCs as a vehicle for workers’ voice and self-representation – should be cause for additional investigations by the auditors. Although employers also cannot promote trade unions – as that too would constitute interference – employers do need to give trade unions an opportunity to present their services to workers.

For employers, there are three broad areas to consider: Management Communications; Workers’ Choice; and Workers’ Access to Information about various worker organizations.

4 The list of SA8000® certified facilities is maintained on the Social Accountability Accreditation Services (SAAS) website http://www.saasaccreditation.org/certfacilities.html.
Management Communications:
1. The company has a policy on Freedom of Association/Collective Bargaining and workers are familiar with it.
2. The employer states clearly to workers, and workers understand, that any existing permanent committee or solidarista association does not prevent workers from organizing in other ways, e.g. forming or joining a trade union.
3. Neither the company nor any company managers signal to workers that the company prefers to sign direct arrangements with the permanent committee and/or to avoid workers organizing a TU to seek a collective bargaining agreement.
4. The company is open to dialogue with trade unions, demonstrates good faith in bargaining with trade unions, and allows trade unions to inform workers about their work.
5. Neither the company, nor any managers or administrative staff, discriminate in any way nor promote or show any bias toward any specific type of worker organization or to workers from one organization or another.

Workers’ Choice:
6. Employer does not propose or initiate worker elections of PC members nor the negotiation of a direct arrangement on wages and hours.
7. Worker elections – whether for PC or TU – are independent and freely conducted by workers and for workers; worker participation in this process is voluntary.
8. The company does not provide financial assistance to any worker organization unless the workers requested such assistance and company ensures all workers understand that: 1) they can choose how to spend that financing; and 2) they can seek such financing for other worker organizations well, without fear of reprisal or bias from management.
9. Workers understand, and communications by management confirm, that the SA is distinct from the PC and that the SA is barred by law from negotiating contract terms on behalf of workers (Worker Protection Act of 2000).

Access to Information:
10. All worker organizations have equal opportunities to present their organization to the workforce.
11. Trade union representatives are allowed regular and reasonably free access to farms and workers during workers’ free time.
12. Workers have as much information about trade unions as they do about permanent committees and an understanding of the differences between the two (e.g. in terms of structure, what each has to offer, etc). This information should be made available by suitably independent outside service providers or by representatives of the organizations themselves. If representatives of one such organization are allowed access to explain their views, access should also be given for representatives of other forms of worker organizations in equal measure.

C. SA8000® Auditing:
Similarly, based on the research, analysis and history above, specific Guidance can be provided for SA8000® auditors in Costa Rica. As with all SA8000® requirements, auditors need to look for clear evidence of a company’s systemic compliance, and take additional auditing steps as needed given the local context. The same three areas
should guide auditors’ review process as they do managers’ implementation: management communications, workers’ choice, and access to information.

Given the context, SA8000® auditors should look for positive steps taken by employers in their communications to workers to correct for any historical bias. Gradually and necessarily, these steps will include more collaboration and constructive dialogue between employers and unions.

Management Communications:
1. Analyze, by specific inquiry and inspection, the extent to which the company has an open attitude towards workers’ different organizing choices:
   a. Are there workers in trade unions and if so, what’s their perspective on FoA and CB rights? What are unionized and non-unionized workers’ perspectives on the extent to which the employer’s communications with and about the different organizations (TU or PC) is neutral or non-biased?
   b. Are there work centers within the operation which have established trade unions and centers that have a PC? If so, how have managers behaved toward the unionized work center?
   c. Do workers report any worries or fears about joining a trade union? Do they believe managers discriminate against trade union members? It is important to identify any communications problems that may exist around these rights.
2. Conduct in-depth analysis of facts offered by workers claiming to have been discriminated against or fired for organizing or other trade union related activities.

Workers’ Choice:
3. Verify that any company financing or technical assistance to the permanent committee or any other worker association or organization is: managed directly by the PC or other receiving organization; and workers understand such financing could be available to any worker organization they choose to form.
4. Analyze workers’ understanding of the differences between the employer-supported SA and the PC. This is to avoid any implicit message to workers that there is company backing for the PC. Given that companies pay into the SA fund and sometimes the same workers represent the PC and the SA, auditors will need to look for positive evidence of effective communication clarifying that the company management does not support or prefer the PC as a form of worker representation. In cases where there is significant overlap between the representatives on the PC and those elected to head the SA, auditors should conduct an additional review of the election process and the system for worker training.

Access to Information:
5. Verify trade union representatives have been given the opportunity to present their organization during worker assemblies and at other times to workers and that they have access to their members during workers’ free time. Since workers often live on company property and farms are often guarded, auditors should learn how this is arranged.
6. Verify that workers are effectively informed about their right to choose how to organize.

In order to evaluate the above issues, auditors will need to conduct extensive worker interviews and establish a working relationship with local stakeholder organizations, including the various trade unions with a presence in the sector. Note, this is explicit in SAAS Accreditation Procedure 200 - 2.11, requiring certifiers to:

“have a documented and implemented process to effectively obtain, maintain and use in audit planning and audit process information about working conditions regularly gathered from regional interested parties, NGOs, trade unions and workers.”

Auditors should engage local Costa Rican labor rights NGOs in the future to provide expert opinion during and/or more frequently in between audits. Building informational relationships with these interested parties is an ongoing responsibility, not fulfilled by simply offering meeting dates with little advance notification. This communication needs to be ongoing and built on trust – such that stakeholders perceive the auditors to be responsive – in order for this engagement to effectively support the continuous improvement of SA8000®-certified facilities.

Finally, SA8000® accredited auditors are now committed and obliged to: 1) provide their contact information to interviewed workers and 2) respond directly to complaints or inquiries regarding the companies that they have certified. SAI and the affiliated SAAS designed these new auditor requirements to improve the communication between the auditors and problematic cases in their area of influence.

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5 SAAS Procedure 200, clauses 4.13 and 4.3