

THE TRANSFORMATION OF WORK: CHALLENGES AND STRATEGIES



Trade Unions Organizing Workers “Informalized From Above:”

Case Studies from Cambodia, Colombia, South Africa, and Tunisia



The Transformation of Work research series is produced by the Solidarity Center to expand scholarship on and understanding of issues facing workers in an increasingly globalized world. The series is a product of the Solidarity Center's USAID-funded Global Labor Program, which supports the efforts of the Solidarity Center and its consortium partners—the Rutgers University School of Management and Labor Relations and Women in Informal Employment: Globalizing and Organizing (WIEGO)—to document challenges to decent work and the strategies workers and their organizations engage to overcome those challenges.

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Trade Unions Organizing Workers “Informalized “From Above:” Case Studies from Cambodia, Colombia, South Africa, and Tunisia

Report to the Solidarity Center

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GENERAL INTRODUCTION AND LITERATURE REVIEW

This report is the second working paper from a five year study aimed at documenting the effects of globalization on the nature of work and on labor and employment relations around the world. In particular the research seeks to describe efforts by trade unions to organize workers in the informal economy in order to provide these workers the benefits attached to formal employment.¹ The process of globalization has dramatically increased the mobility of capital across national borders thereby increasing the interdependence of developed and developing countries and creating intensified competition across a broad range of markets – especially labor markets. Globalization has been a major factor behind significant changes in the employment and labor relations systems of both developed and developing nations on such basic characteristics as wage levels, labor deployment and labor standards. One major consequence of these changes has been a decline in trade union density in many countries.² This is a worrisome trend given that independent trade unions have long been viewed as one of the most important civil actors for the growth and maintenance of a robust civil society, an efficient and fair market economy as well as a healthy political democracy. Trade unions throughout the world are seeking to reverse this trend in various ways. Specifically, many trade unions have responded to these changes by seeking to organize workers outside their traditional base in the formal economy, though with mixed success. In this report we present findings from a number of cases where unions have achieved some level of success in organizing informal economy workers in a particular type of informal employment that we refer to as “informalized from above.”³

In our first report, based on a very broad sweep of the existing literature organized by regions of the world, we offered a number of observations and conclusions:

1. **The line of demarcation between formal and informal employment is blurring, and it appears that this trend is likely to continue in the foreseeable future.** This may reflect a permanent shift in the nature of work of the same magnitude as the shift from agrarian to industrial economies in the late nineteenth and twentieth centuries.
2. In most countries **the national legal frameworks governing employment and labor relations are geared to formal employment and standard jobs**, leaving a growing number of different types of work and workers excluded from the basic protections of the law.

¹ For this report we use the term “trade unions” to include sectoral unions at the national or local level and central labor confederations at the international, regional, national, provincial, or local level. Independent trade unions are governed by their members as opposed to employers or the state (where these are different).

² See e.g. Carola Frege, *International Trends in Unionization*. In Morley, M., Gunnigle, P. and Collings, D.G. (Ed.s), *Global Industrial Relations*. London: Routledge, 2006:221.

³ The term is taken from Jan Theron. “Informalization from above, informalization from below: the options for organization.” *African Studies Quarterly*. 112-3 (Spring, 2010) Theron describes “informalization from below” as “the expansion of self-employment and survivalist activities.”

3. **Informalization has a disproportionate impact on women in all countries and regions.** A majority of the precarious and informal sectors are populated by women. This “gendered” aspect of the informal economy has other major ramifications for virtually all other significant institutions in the societies such as families and communities.
4. **There is a strong correlation between globalization and migration and immigration and informal work as a survival strategy.** Immigrants present a particular challenge to national unions seeking to include informal economy workers.
5. **Organized labor movements throughout the world have faced common struggles in expanding the scope of their membership or constituencies.**
 - Throughout the world, unions have typically defined their membership as employees working for a particular employer or set of employers within an industry, or what can be called a “wage culture,” and the first position taken by most unions in regard to informalization was to oppose it and exclude the workers involved.
 - Many unions have moved past this position and started to develop new approaches for including non-standard and informal economy workers.
6. **Organized labor movements throughout the world have also faced common struggles in altering their structures.**
 - One of the central questions for trade unions is how best to relate to the non-governmental organizations (NGOs) or member-based organizations) such as cooperatives who have often taken the lead in organizing informal workers.
 - Unions at different levels—international, national centers/federations, and national unions--have different roles to play.
7. **Organized labor movements throughout the world have faced common struggles in expanding the scope of their membership or constituencies and altering their representational strategies.**
 - Traditional strategies--collective bargaining and participation in the political system either through alliance with a political party, through the institutions of social dialogue, or through other means - remain important.
 - Another important strategy for almost all types of informal workers is gaining access to various types of social protections, including employment law and social insurance.
 - Many informal workers need approaches (cooperatives, insurance, access to capital, and business skills) that address their needs as very small scale entrepreneurs. This aspect of representation of informal workers moves most traditional unions beyond their comfort zone.
 - Education and skill building of various kinds play a critical role in union strategies.
8. **Despite many similarities, there remain significant differences across regions and countries based on the role of the state and the law, the role and nature of employers, and the strength and nature of the unions themselves.** While there are particular differences between the approaches and needs in the global

north and south, there are also real opportunities for learning across those boundaries.

9. **Despite a growing literature on this topic, too little is known about what works for organizing informal economy workers.** Many examples of union organizing of informal workers have not been documented in reports or case studies, and the published literature often fails to provide sufficient details.

Based on these findings our goal in the second year of research was to conduct more in-depth research that would increase our understanding of several of these areas. We therefore decided to learn more about the particular segment of the informal economy that lies closest to the formal sector. To that end we chose to focus on “informalization from above” - employment that once would likely have been included in primary employers’ internal labor markets but has instead been externalized through subcontracting, privatization, or some other form of intermediary contracting arrangement in order to reduce labor costs and avoid regulations associated with formal employment. This type of informalization results in “a layer of workers ostensibly located in the formal economy to whom labor standards increasingly do not apply.”⁴ Informalization from above is achieved by implementing one or more of the types of labor market flexibility as outlined by Atkinson’s classic work: external numerical, internal numerical, functional, and financial (or wage) flexibility.⁵

We selected “informalization from above” based on our findings summarized in numbers 1,2, 4 and 6 above which suggest a working hypothesis that unions may find it easier to organize this type of informalized work because these workers represent a better fit with unions’ (and union members’) self-definition of the proper scope of their membership or constituency than do workers “informalized from below” (the truly self-employed, small scale entrepreneurs and subsistence seekers).⁶

We also decided to focus on “what works.” We therefore chose to examine cases of trade union organizing initiatives that have been at least partially “successful,” where success is defined as the implementation and consolidation of organizing campaigns that target non-standard workers and achieve the formalization of their work situation. We chose to focus on success based on our finding, (summarized in number 9 above) that the academic and practitioner literature has thoroughly documented the obstacles and barriers faced by unions and workers seeking to organize while the data on successful campaigns are rather thin. While understanding the formidable obstacles that exist is important, it is also important to learn how some unions have been able to overcome them. In particular, it is crucial to understand the implementation of a campaign in sufficient detail in order to ascertain whether general lessons can be transferred to other contexts. Our goal in this study is to contribute to the cumulative knowledge of effective organizing strategies and tactics in the context of informalization from above.

Within this segment of informalized work, we further sought to limit our focus to examples where trade union organizations have played a significant role in initiating the

⁴ Ibid.

⁵ J. Atkinson and N. Meager, *Changing Work Patterns: How Companies Achieve Flexibility to Meet New Needs*, Institute of Manpower Studies, National Economic Development Office, London, 1986.

⁶ We shall use the terms “informalized” or “externalized” workers interchangeably to refer to work and workers that fit Theron’s description of “informalized from above.”

effort to organize these workers (as opposed to the more plentiful examples where workers engage in self-organization and later affiliate with a trade union in some official manner). This criteria proved impossible to adhere to since most of the campaigns described in the most detailed case studies contain some aspects of worker self-organization either along with or prior to the involvement of a trade union, and in some cases with no support or even opposition from a union. However, in all the cases discussed in this report, the trade unions played a significant role in the campaign albeit at different stages of organizing.

Finally, given the disproportionate share of women who work in some part of the informal economy, we endeavored to illuminate the role that gender structures in national, sectoral, and occupational cultures play in trade unions' efforts to organize externalized workers. Here too we were less successful primarily due to the lack of examples that met our other criteria and in which gender was particularly salient. Nonetheless, we have paid attention to gender as an important variable throughout this study.

This report is organized as follows: the next section describes the process of "informalization from above" and then reviews a selection of existing case examples of unions' organizing campaigns in this type of labor market. The findings from these cases serve to highlight a number of unanswered questions as well as the experience unions gain from attempting to organize externalized work. This review of the existing literature is followed by four original case studies where unions are depicted as achieving promising results in organizing campaigns conducted in widely disparate national and sectoral contexts:

Cambodian Beer Promoters. In Cambodia, a campaign organized by international labor organizations and others led to the formalization of some beer promoters, bringing these workers under the protection of Cambodian labor law. More recently, the Cambodian Food Service Workers' Federations launched a campaign to formally represent beer promotion workers at Cambrew, a subsidiary of Carlsberg, a Danish global beer producer.

Colombian Port Workers. In Colombia, perhaps the most dangerous place in the world for workers and unions to organize, the port workers in Buenaventura, with support from transnational labor organizations, created a new union, Union Portuaria (UP), and with the help of the global trade union movement restored some elements of decent work for a small number of externalized workers.

South African Hospitality Workers. In South Africa the South African Commercial, Catering, and Allied Workers Union (SACCAWU) is attempting to apply the leverage gained and lesson learned from its success in organizing externalized work in wholesale and retail firms to organize workers in the hospitality sector.

Tunisian Public Service Workers. In Tunisia, following the revolution in 2011, the Union Général Tunisienne du Travail (UGTT) waged a successful campaign to restore formal employment to low-wage government workers whose jobs had been subcontracted during previous regimes.

Each of these cases provides as detailed a description as our research team was able to obtain about the background context in which the campaign emerged, the decisions that led to specific organizing strategies and tactics, the obstacles that in each case had to be surmounted, and the outcomes achieved. The outcomes in each of these cases are relatively modest. Yet each case demonstrates the potential for successful organizing and, taken together, the set of cases strongly suggest that there exists a great potential for trade unions to successfully organize this type of informalized work. Our final section will summarize these conclusions and make recommendations.

Unions Confronting the “Triple Threat” to Labor Rights - Flexibilization, Globalization and Privatization: a Review of Selected Cases⁷

Katherine Stone argues that three dynamics are “coalescing” in the 21st century to threaten labor rights in the United States: flexibilization, globalization, and privatization.⁸ One of the major conclusions from our first year’s research was that these dynamics are not limited to the U.S. but are taking place in most countries with substantial levels of formal employment. The broad effect is a decreasing number of workers with formal employment and an increase in those working in the informal economy. However, the term “informal economy” includes a wide range of enterprises, occupations and employment activities that are conceptually quite different from one another.

The ILO defines the informal economy as:

“all economic activities by workers or economic units that are - in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law which means that they are operating outside the formal reach of the law or they are not covered in practice which means that although they are operating within the formal reach of the law, the law is not applied or enforced; or the law discourages compliance because it is inappropriate, burdensome or imposes excessive costs.”⁹

Quantifying the extent of the informal economy is extremely complex; there is no database that measures informal economic activity for the entire world. The ILO recently introduced a conceptual framework for estimating informal economy activity that distinguishes between the “informal sector” which refers to enterprises that are not covered by the legal code, and “informal employment” which refers to jobs that may be either located in the formal sector but not covered by the law or in the informal sector.¹⁰ The latter may well supply labor to the formal sector. Employment in the informal economy is defined as “the sum of employment in the informal sector and informal employment found outside the informal sector” i.e. informalized employment in the

⁷ Katherine V.S. Stone, “Flexibilization, Globalization and Privatization: Three Challenges to Labor Rights in our Time,” *Osgoode Hall Law Journal*, 44 No. 1, (2006): 77-104.

⁸ Stone, 2006, 77.

⁹ <http://www.ilo.org/public/english/support/lib/resource/subject/informal.htm>

¹⁰ http://www.ilo.org/public/libdoc/ilo/2011/111B09_241_engl.pdf. Accessed 1-30-2013.

formal sector. In this study we are concerned with informalized employment whether the jobs are located in the informal sector and supplied to a formal employer or directly employed but designed to avoid the reach of the labor code. To date reliable estimates of total employment in the informal economy in any of these categories remain elusive. The ILO's data base covers only 44 countries with high concentrations of informal employment and does not include any Western European or North American data.

While the ILO framework is helpful, for purposes of this study it is more useful to divide informal employment into two overarching categories based on the fundamental nature of the employment relationship. The *first* category of informality stems from employers' global search for the opportunity to implement more flexible work arrangements than are typically permitted in the formal sector where compensation, hours of work and safe working conditions are covered by national labor codes and often further restricted by union collective bargaining agreements. By externalizing jobs to a labor intermediary (external numerical flexibility), modifying work schedules of directly employed workers to reduce hours (internal numerical flexibility), transferring employees to different tasks and locations (functional flexibility) or instituting individual rather than collective pay rates (wage flexibility), employers are able to achieve more flexible work organization practices. In the case of external flexibility this changes the nature of their relationship with workers from an employment to a commercial contract. Internal flexibility can be used to create work schedules that are not regulated by wage and hour laws. The *second* category of informality includes those more generally understood as constituting the informal economy: self-employed or 'own account' workers, small scale entrepreneurs, and those who engage in subsistence agriculture or other basic means of survival.

The key characteristic of the first category is that these workers remain "dependent" on an employer, despite the fact that the employment relationship may not be transparent, while those in the second category sell their goods, services or labor directly in a market. In fact, like all sociological ideal types, there is no bright line separating the two groups; nonetheless, careful analysis shows that some informal workers work under circumstances that more closely resemble traditional employment than do others. Often, what could be or once was a traditional employment relationship has been distanced or mediated by a subcontractor. In other cases, employees have been redefined – sometimes illegally – as "independent" (self-employed) contractors. In still other cases, the employment relationship has been "casualized" with workers employed for very limited time periods, including employment on a daily basis. Most of these arrangements have the effect of removing the workers from the protections of labor and employment laws and access to employment-based benefits like unemployment insurance or pensions. To complicate matters further, workers themselves often cross these work boundaries, sometimes on a daily basis, as they strive to put together a livelihood.¹¹

While these two types of informalized work can be distinguished conceptually, primarily due to legal definitions of "employment," they are nonetheless highly interdependent. In our previous report, we described a process in which firms introduce "flexible" work practices in previously formal work settings, thereby reducing their

¹¹ Celia Mather, "Informal Workers' Organizing", Research Report to the Solidarity Center, February 2012. http://www.solidaritycenter.org/Files/infecon_wiego_organizing_final.pdf

workforce and their fixed labor costs. Workers who lose their formal employment may well enter a growing secondary labor market, often termed “precarious,” characterized by unpredictable hours, low pay, few or no benefits, and little or no coverage by employment laws. The movement of additional workers from the formal sector into informal employment creates additional pressure on workers already competing in this market who are required to search for additional means of support. This search typically involves initiating “own-account” or subsistence activities thereby increasing competition and pressure in these labor markets. This creates a growing segment of workers who combine dependent work with self-employment sometimes even on a daily basis. The overall result of this process of flexibilization, globalization, and privatization is the steady erosion of formal employment with its attendant legal and contractual protections, and a decline in the economic return to many workers in all labor markets.¹² It is crucial to understand the relationship between these two broad types of informalized work for two reasons. First, unions and their members need to understand how this global process affects their own self-interest and why they should support organizing informalized workers in general. Second, to be successful, unions need to understand that the circumstances of dependent workers differs from that of self-employed or ‘own-account’ entrepreneurs in ways that are significant for unions’ organizing strategies and tactics. Yet much of the literature on informal work fails to differentiate between these two forms of employment.

The Goal: Decent Work with Seven Essential Securities

The broad ILO campaign for “decent work” describes seven essential securities: (i) labor marker security, (ii) employment security, (iii) job security, (iv) work security, (v) skill reproduction security, (vi) income security, and (vii) representation security.¹³ While work in the informal economy varies by both country and industry, most of these workers lack one or more of these types of security and efforts to organize informal workers have largely been predicated on obtaining greater access to these essential securities. Variations in labor market conditions at both the national as well as the industry level have led trade union organizing efforts to focus on providing workers with some securities more than others. In light of this, unions have employed various techniques and strategies in their campaigns to organize informal workers. The International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), recommended a number of strategies to its affiliates in an attempt to increase the effectiveness of their campaigns around informality:¹⁴

¹² Susan Schurman and Adrienne Eaton, “Trade union organizing in the informal economy: A review of the literature on organizing in Africa, Asia, Latin America, and Western, Central, and Eastern Europe,” Solidarity Center (2012): 1-84.

¹³ “Decent Work and the Informal Economy” (paper presented at the International Labor Conference 90th Session, 2002), <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>. Originally from Guy Standing, “Globalization, Labor Flexibility and Insecurity: The Era of Market Regulation,” *European Journal of Industrial Relations*, 3(1), (1997): 7-37.

¹⁴ Johnston Birchall, “Organizing workers in the informal sector: A strategy for trade union-cooperative action,” Geneva: Cooperative Branch International Labour Office, Working Paper 01-1, (2002): 1-38.

- Increase efforts to expand trade union recognition and bargaining coverage to both subcontractors and homeworkers, specifically for those producing inputs for firms.
- Organize in communities where access to workplaces has been denied through educational efforts.
- Begin educational and awareness programs for homeworkers.
- Connect union members with family members who are currently employed in the informal sector.
- Maintain communication with workers who are currently employed in the informal sector.
- Maintain communication with workers who were forced out of work in the informal sector.
- Assist informal sector workers in setting up union-associated structures as well as provide assistance in applying for government services and permits.
- Provide support for the development of mutual and worker cooperatives.

A 2002 ILO report outlines nine broad challenges that unions face in their efforts to organize informal economy workers.

1. Informal sector workers do not represent a single uniform group and may have obvious differences of interests among themselves.
2. Informal workers may not share common interests with the majority of current trade union members.
3. Informal workers tend to be focused on day-to-day struggles for survival and, therefore, are less inclined to join in collective action. Hesitancy to join the union is especially strong when the benefits of union membership are less salient.
4. The highly precarious nature of work in the informal sector means that these workers fear union membership will result in the loss of their job.
5. Legal barriers prevent organizing workers (both formal as well as informal).
6. Cost-pressures (time, resources, and finances) are associated with efficiently and effectively campaigning to organize workers in the informal economy.
7. The precarious state of informal workers makes it difficult for unions to retain their members.
8. No standard framework exists for campaigns to organize informal workers.
9. Resistance from current members (either formal or informal workers) acts as a deterrent to organizing additional members

Neither the ITUC's proposed organizing strategies nor the ILO's list of challenges clearly distinguishes between the two types of the informal economy work outlined above. It seems reasonable to hypothesize that unions are more likely to be successful in attempts to organize workers (and/or work) in the "dependent" category since this type of work more closely resembles the type of work they have historically organized. Therefore, the focus in the case review below is to examine the literature on unions' attempts to organize work and workers in this type of informal employment relationship. In addition to the selection criteria discussed earlier, we have excluded cases from North

America and Western Europe as these have been well documented in the literature.¹⁵ Furthermore, we limited the review to case study reports written in English. By narrowing our focus in this way, we learned that the case literature is quite small. The sample of cases was reduced even further by including only studies published since 2001 because the global context has changed substantially in this period as have unions' strategies. In addition we elected to retain only those cases containing at least some detailed description of the tactics used in the campaigns.

The examples discussed below represent campaigns in Argentina, South Korea, South Africa, Kenya, and Ghana. The level of analysis ranges from campaigns at the national, industry, and individual firm level. They are drawn largely from organizational reports rather than from academic literature. There are many other case studies on organizing dependent contractors published as journal articles or book chapters, but most are set in the developed countries of Western Europe and North America. We do not claim that the set of cases reviewed here is exhaustive but we do think it is broadly representative.

Argentina

Background

The Argentinian economy has undergone a significant transformation over the past three decades. Over this time period, growth in informal, precarious work arrangements has outpaced much of the increase in formal employment situations.¹⁶ The shift from formal to informal workers meant that many employees suffered from a lack of guaranteed income, limited access to benefits, and a loose and/or triangulated employment relationship.¹⁷

The growth of the informal sector has led to various challenges for Argentinian unions. The response by trade unions to the shift away from formal workers and towards informal work arrangements has varied. A 2012 study by Elbert chronicled the response by the Food Industry Workers' Federation to the employment of informal contractual workers in a food processing plant in the city of Pacheco, Argentina.¹⁸ The food processing plant, owned and operated by a company Elbert labelled "K-Foods," employed two categories of non-standard workers: workers hired directly by K-Foods under temporary contracts and those employed through temporary help agencies. Even though some of these workers were covered by a collective bargaining agreement

¹⁵ For reviews see the chapters on Northamerica and Western Europe in Schurman and Eaton, 2011.

¹⁶ Rodolfo Elbert. "How do unions respond to nonstandard work arrangements? Relations between core and non-core workers in a food processing factory (Argentina, 2005-2008)." *Journal of Workplace Rights* 15, 3 (2010): 387-98.

¹⁷ Dorothy Sue Cobble and Leah F. Vosko. "Historical perspectives on representing nonstandard workers" in *Nonstandard work: The nature and challenges of changing employment arrangements.*, eds. Carre Ferber, L. Golden and S. Herzenberg, 291-312. Champagne, IL: Industrial Relations Research Association; (2000); Elbert (2010)

¹⁸ Rodolfo Elbert. "How do Unions Respond to Nonstandard Work Arrangements? Relations between core and non-core workers in a food processing factory", *Journal of Workplace Rights*, 14, 1 (2010):387-398.

negotiated by the FIWF, most of them received wages well below those received by formal full-time workers. The non-standard workers in this case demanded increased stability in their employment, fair compensation policies, and the elimination of non-standard employment policies.

Elbert delved deeply into the internal union politics important to the case. He found that union activism at the plant was divided among three different groups. The first group consisted of 30 representatives of the Buenos Aires branch of the FIWF. These representatives were employed by the company as full-time formal workers and were “aligned with the national union leadership.”¹⁹ The second group consisted of union activists, also core workers, but long opposed to the leadership of the national as well as regional unions, called the “Agrupacion 1° de Mayo.” This group won shop-floor union elections in 1993. The third group of workers that influenced union activism was composed of mostly non-core workers involved in a grassroots campaign against K-Foods’ nonstandard employment policies, which the union representing direct K-food employees had largely ignored. Collectively, these three groups worked to end the use of nonstandard contractual employees, implement an equitable compensation system, and provide greater security in employment relations.

The campaign to improve conditions for non-core workers began with an effort organized by activists from the union dissenter and grass roots groups to create solidarity among core and non-core workers. This effort centered on social events and formal meetings. There were essentially two phases to the campaign for the non-core workers. The first focused on a specific group of outsourced workers working for a single contractor. These workers implemented a strategy of “noncollaborative” work, whereby they refrained from working the hours for which they believed they deserved but for which they were not receiving extra pay. Elbert (2010) noted that solidarity among the core workers was essential for the success of this strategy since they had to promise not to fill-in for those on this partial strike. Later the non-collaborative workers escalated to full but brief work stoppages. These tactics enabled these workers to first improve their pay and eventually to be hired directly by K-foods.

The second phase focused on the needs of directly employed, temporary workers. In this case, solidarity was aided by the fact that temporary and permanent workers worked side by side. A subset of the temporary workers joined the activist group involved in the first phase of the campaign. This group organized a blockade of the highway where the plant is located; temporary and core workers participated in this action. As a result, management claimed it would have to lay-off a significant portion of the temporary workers due to a shortage of natural gas. Activist workers responded by breaking into the facility; a factory-wide strike ensued. Ultimately, most of the temporary workers were rehired as standard workers, thereby securing these workers with full contracts. Eventually, the activists that led these campaigns took over leadership of the union at the shop-floor level. This case demonstrates the importance of deliberate strategies to build solidarity between standard and non-standard workers, solidarity which in turn was crucial to successful direct actions by both groups of workers on behalf of nonstandard workers.

¹⁹ Elbert., 2011, 392.

South Korea

Background

Yun (2011)²⁰ described the growth of subcontracted, precarious employment in the South Korean auto industry and the complex reaction of unions in that industry. In this case, standard workers worked side by side on auto assembly lines with subcontracted precarious workers. The union that represented standard workers declined the opportunity to organize the subcontracted workers. Yun argued, “the issue at stake is whether regular workers and their unions regard precarious workers as ‘one of them’ or as outsiders, which in turn may influence trade unions’ responses towards them and whether the two worker constituencies can be united.”²¹ Yun explored this question through interviews and the examination of documents and survey results at plants of Hyundai and Kia Motors.

Yun reported that subcontracted workers generally had harder work assignments, were paid less and, of course, had less job security (3-6 month contracts) than regular workers. Furthermore, they were typically supervised by managers employed by the subcontracting company while the work process (assembly line) was under the overall supervision of the primary company. Not surprisingly, if subcontracted employees did form unions, the primary company “refuse[d] to bargain collectively on the basis that they [were] not a formal employer.”²² While the Korean Metal Workers Union bargained collectively for regular employees, shop stewards retained a great deal of power and engaged in fractional bargaining directly with line managers: “Shop stewards often agree with the manager about the use of subcontracted workers on their assembly lines, despite the opposition of the trade union to in-company subcontracting. ... [M]any shop stewards view the use of precarious workers as a way of lightening the workload of regular workers.”²³

In 2003 a subcontractor’s manager physically beat one of the subcontracted workers. The incident catalyzed subcontracted workers at the Hyundai plant to establish their own union. Established originally as a kind of organizing committee, threats by management to end the subcontract led to the formalization of the Hyundai Precarious Workers Union. Yun described a complex set of relationships between the precarious and the regular union over the next few years, with the regular union at times stepping up and wielding power on behalf of the precarious workers and working with the precarious union, yet at other times stepping back from that advocacy and cooperation. The precarious union itself filed legal charges against Hyundai for illegal temporary agency work (violating a two year limit on such work) and also conducted strikes and sit-ins. Although at one point the regular union was able to secure pay raises for regular *and* subcontracted workers, Hyundai management steadfastly refused to convert subcontracted workers to regular positions or to bargain directly with the precarious

²⁰ Aelim Yun, “Building Collective Identity: Trade Union Representation of Precarious Workers in South Korean Auto Companies”, *Labour, Capital and Society*, 44:1, pp. 155-178.

²¹ *Ibid.*, 157.

²² Yun., 2011, 161.

²³ *Ibid.*, 162.

union. Yun concluded, “the subcontracted workers’ union has struggled to represent precarious workers, in reality its effectiveness is measured by its relationship with the regular employees’ union.”²⁴

The situation at Kia was somewhat different. Here, the labor contract for the regular employees addressed subcontracting, requiring the employer to “obtain consent of the union when it outsources work” and to hire permanent employees from the subcontracted ranks. Nevertheless, subcontracted workers organized their own union at the Kwangju plant, the Kia Motors Subcontracted Workers Union, in 2011 when threatened with the termination of subcontracts with Kia. The regular union supported their struggle and ultimately negotiated the conversion of hundreds of subcontracted workers to regular or fixed contract employees of Kia. At the Hwasung plant, the organizing process was reversed: rank and file workers took the initiative and formed a group, the Workers Struggle Committee, which brought both types of workers together on behalf of the subcontracted workers’ struggles. Later, however, the subcontracted workers formed their own union after the regular union rejected them. Both the subcontracted workers’ and regular workers’ unions worked together in bargaining; however, the regular union abandoned the subcontractors after reaching agreement with Kia. Nonetheless, the subcontractors union in this case was able to obtain collective bargaining agreements with the subcontractor companies and later, a three-way agreement among the two unions and Kia. This agreement addressed both the preferential hiring of subcontracted workers and also their job stability when subcontractor contracts were changed by Kia. By 2008, the subcontractor union merged with the regular union.

From these cases, Yun developed a typology of union responses ²⁵ to subcontracted workers:

	Non-organizing	Organizing
Non-representation	Exclusion	Inclusion
Representation	Proxy	Integration

While *Exclusion* is fairly self-explanatory, the other categories require some elaboration. *Proxy* means that the regular union at times advocates for subcontractor worker interests even though they are not members of the union. *Inclusion* refers to the acceptance of subcontracted workers as union members, but at the same time it also accepts the subcontractors’ inferior status and conditions. *Integration* is full membership and advocacy of interests, which Yun argued happened only sporadically in the cases reviewed. Yun further identified three factors that explain these differing responses: the work relationship between subcontracted and regular workers, the leverage of subcontracted workers given their strategic placement in vulnerable places on the assembly line, and the initial response by the union to restructuring the employment of subcontractors. Yun concluded that the relationship between regular and precarious workers is key:

²⁴ Yun.,2011 167.

²⁵ Ibid., 171.

Here, the union leadership and strategies regarding labour flexibilization can provide leverage in the organization of precarious workers and eliminate competition between regular and precarious workers. As trade unions or shop floor leaders have attempted to frame issues of precarious employment so as to promote a sense of injustice, workers blame ‘others’ (i.e. employers). As workers’ awareness of injustice increases, motivation to join a union also grows. Furthermore, workers feel there is a chance to change the situation, as activity among organized precarious workers is on the increase.²⁶

South Africa

Background²⁷

Because South Africa, unlike most African countries, has long had a relatively large formal sector with a well-established trade union movement, efforts to organize workers in South Africa have received an immense amount of attention by trade unions, academics, and labor movement officials.²⁸ In 2000, the dominant union federation in the country, the Congress of South African Trade Unions, COSATU, committed its “affiliates to develop a strategy for recruitment of informal and “atypical” (non-standard) workers.²⁹ Subsequently several studies by academics, by the ILO and by the South African government, have examined union actions in the informal sector. Theron (2010) describes the challenges faced by South African unions in their efforts to organize informal economy workers and, based on the relative lack of success in campaigns involving the self-employed/own account category, proposes that trade unions are not the appropriate organizational form. Instead, he argues, the cooperative form of organization for the self-employed/own account category may be more effective.³⁰ There are however several case reports that meet our criteria where South African unions have sought to organize workers in the “dependent” category.

Organizing informalized workers in the construction industry

Goldman (2003)³¹ described the conditions of work and union organizing efforts in the South African construction industry as part of a series of reports on informal work in South Africa commissioned by the ILO. Like the construction industry throughout the world, construction in South Africa is characterized by short term business contracts, a web of subcontracting arrangements, and highly mobile and unstable work arrangements. In the 1990s and early 2000s, that mobility and instability grew through the use of what is

²⁶ Yun, 2011 174.

²⁷ A more detailed overview of the South African context is contained in the case study below.

²⁸ See e.g. Theron, 2010; Ryklief in last year’s report.

²⁹ Tanya Goldman, “Organizing in South Africa’s Informal Economy: An Overview of Four Sectoral Case Studies”, SEED Working Paper No. 60, International Labour Office, Geneva (2003a): 1-78.

³⁰ Theron, op cite

³¹ Tanya Goldman, “Organizing in the Informal Economy: A Case Study of the Building Industry in South Africa”, SEED Working Paper No. 38, International Labour Office Geneva, (2003b): 1-79,

termed “Labour Only Subcontracting.” Workers employed in these arrangements “perform a narrowly defined task, usually not requiring a great deal of skill, with materials supplied by the main contractor.”³² The work was typically informal in that it was not covered by any form of regulated labor standards or protections. Goldman estimated that as of 2001, 40% of the industry’s workers were informal.

Some of the bigger construction companies in South Africa employed casual labor through a system whereby the workers wait outside of worksites for offers to work either day-to-day or week-to-week.³³ Many of these workers depended exclusively upon a single employer while their employer in turn depends upon them, but refuses to provide employment security through a formal, indefinite employment contract. Instead, flexible, non-binding employment terms were established. In addition to the lack of employment security, these informalized contracts exposed casual laborers to inconsistent wages or even wage theft, employment by marginal subcontractors, and mandatory extended hours on job sites without being compensated for the overtime.

Union efforts to organize informal workers in the construction industry occurred within an overall context of low union density in the industry: Goldman reported that as of 2000, only 20% of formally employed workers belonged to a union, a rate much lower than other South African industries at the time. As such, union organizing, not surprisingly, focused first on the formally employed. One reason for this is that they present a better dues collection opportunity for the unions. Goldman argued that dues payment systems and the geographical location of most union- to-worker contacts in other sectors like manufacturing, did not match well with the highly casual nature of informal work in this industry

There were (and are) several unions operating in the construction industry in South Africa. The unions were not organized on a craft basis but rather differ in terms of their racial composition (at least partially a legacy of apartheid) and their national union federation affiliations and political alliances. The Building and Construction Workers’ Union, for instance, was originally a Black trade union aligned with what is now the National Council of Trade Unions, “historically aligned with Black consciousness and Africanist political organizations.”³⁴ Most members were general laborers working for large construction employers. Members of the Building Woodwork and Allied Workers’ Union of South Africa broke away from other unions to form the organization. Ninety percent of members were black and three quarters of general laborers with the rest semi-skilled or artisans. The union was not affiliated with any federation.³⁵ The National Union of Mineworkers is a COSATU affiliate and began representing construction workers when a smaller construction union merged with NUM in the late 1990s. The membership was largely black and work as laborers.³⁶

Goldman interviewed representatives from four specific unions about their strategies and structures. All reported that they accepted dues payments directly from informal workers (rather than through paycheck deductions) though, even so, not many

³² Goldman, 2003a, 2.

³³ Ibid, 33.

³⁴ Goldman, 2003b, 40.

³⁵ Ibid, 44.

³⁶ Ibid, 47-48.

paid dues. This had a downside, however: some informal workers reported “union officials” showing up at worksites to organize members and collect membership dues, never to be seen again. As a result, some individuals remained skeptical regarding the legitimacy of organized labor in the construction industry.

Each union studied reported some efforts to organize or attract informal workers though none described these workers as a primary focus. The Amalgamated Union of Building Trade Workers of South Africa (AUBTWSA) reported providing job placement assistance to members, something informal workers were keenly interested in. However, the union took a passive approach to this, waiting for companies to come to the union looking for workers. The Building and Construction Workers’ Union passed a resolution in 2001 to target organizing at smaller companies and contracts in the industry including informal ones in addition to larger firms. At the time of the case study, the decision had not been implemented. The Building Woodworkers and Allied Workers Union of SA claimed to recruit informal workers by “calling mass meetings that can be attended by member or non-members... in township halls, at the taxi ranks or on the grand parade in the centre of Cape Town.”³⁷ It also mentioned attempts to register, “unregistered” (informal) subcontractors while still allowing them to only gradually come under the provisions of the industry collective agreement. While Goldman’s interviewee reported that this did work occasionally, more often than not, the subcontractor would close the business and reopen under another name. The fourth union, the Construction and Allied Workers Union, had recently affiliated with the much larger National Union of Mineworkers at the time of the study and was “still in the process of developing a strategy for organizing informal workers.”³⁸

In addition to the specific problems described above, the unions faced other challenges in organizing informal workers. They found that workers were often deterred from joining the union by a fear of retaliation by the employer.³⁹ Perhaps even more troubling was that benefits to union membership were often not made salient to potential members. Informal workers interviewed for the project often identified themselves as unemployed and were interested in unions helping them to find employment.

Many organizing drives faced challenges associated with prejudices and biases against certain potential members. In one interview, Goldman noted that some construction workers in Johannesburg from other countries in Southern Africa felt they were not welcome in the unions.⁴⁰ These workers reported that such prejudices made it very difficult to join the unions or even seek help from them. Furthermore, little effort had been made to include women who constitute a small percentage of the construction workforce. Of the trade union campaigns investigated by Goldman, none had in place a system for including informal workers either in the current union structure or throughout their communication channels. The failure to adequately integrate informal workers into the trade union structure illustrates one of the self-induced challenges faced by many trade unions.

³⁷ Goldman, 2003b, 45.

³⁸ Goldman, 2003b, .51.

³⁹ Goldman (2003b) noted that several individuals interviewed expressed fear of being victimized as a result of their desire to join the union or because they had decided to join a union.

⁴⁰ Ibid, , 33.

Dues also represented a significant barrier. Since many of the casual workers earned so little, it was difficult for them to justify paying relatively high membership fees when struggling to feed either themselves or their families. Moreover, many expressed discontent over having to pay fees when the precarious nature of the construction industry meant that their jobs at worksites were so insecure.

While Goldman identified little real activity in actually organizing informal workers in the particular context studied, she did identify strategies that unions should consider in any attempt to attract informal workers. These include dues payment systems that were more workable for informal workers, provision of job services for the unemployed, holding meetings in residential areas, targeted work to attract women workers and in some areas, work to bring together different racial and ethnic groups. Goldman also detailed strategies to improve conditions for both formal and informal workers in the construction industry including various ways to attract informal *employers* in a way that would help them develop and become better employers. Despite the challenges and barriers to organizing efforts, AUBTWSA was able to achieve some limited success in its efforts to better represent workers in the South African construction industry. The union was able to establish union offices to better serve union members employed in the informal sector. While the union was successful in their attempt to establish these organizing offices, few of these offices remained operable.⁴¹

While Goldman's work is now a decade old, more recently the Labour Research Service, a Capetown-based NGO, produced a report on the multi-union project to promote decent work for and union organizing among non-standard workers involved in the construction of facilities for the 2010 World Cup.⁴² The project was called "Fair Games, Fair Play" and involved the National Union of Mineworkers (NUM), Building Construction and Allied Workers Union (BCAWU) and the South African Building Workers' Organization (SABAWO) in alliance with the Global Union Federation (GUF) Building Workers International, the Swiss union UNIA and Swedish union BYGNNADS, along with the Labour Research Service itself. The campaign involved numerous strikes and resulted in a 39% increase in union density in the industry although it is unknown how many members were retained once the construction came to an end. Gains for constructions workers themselves included production bonuses, transport, better facilities and health and safety improvements.

South African Transport and Allied Workers Union's (SATAWU) Taxi campaign

Barrett (2003)⁴³ provided a detailed account of efforts by the South African Transport and Allied Workers Union's (SATAWU) to represent taxi workers. SATAWU was established in May of 2000 following a series of "negotiations and smaller scale mergers

⁴¹ Goldman, 2003b, 39

⁴² For a summary, see Sahra Ryklief "The Informal Economy in Africa", in S. Schurman and A. Eaton, Trade Union Organizing in the Informal Economy: A Review of the Literature on Organizing in Africa, Asia, Latin America, North America, and Western, Central and Eastern Europe", report to the Solidarity Center, Rutgers University, January 2012: 20. The original report is M. Koen and A. Bahadur, "Fair Games, Fair Play: Evaluation of the BWI Decent Work Towards and Beyond 2010." Labor Research Service, 2011,

⁴³ Jane Barrett, "Organizing in the Informal Economy: A case study of the minibus taxi industry in South Africa," SEED Working Paper 39 (2003): 1-59

by unions in the transport industry.”⁴⁴ SATAWU described its mission as defending the interests of workers with respect to all matters of mutual interest between workers and employers with the hope of improving the standard of living for both union members as well as the working class in general.⁴⁵ In addition to these aims, the union also sought to provide job security for union members by fighting for job creation as well as resisting dismissals due to operational reasons. SATAWU also strove to eradicate all forms of unfair discrimination in the workplace, as well as throughout society, thereby building a more democratic worker controlled union based on the principles of non-racialism, non-tribalism, non-sexism, non-homophobic, and non-xenophobic agendas. Finally, the unions sought to build solidarity and foster unity, coordination, and, comradeship amongst all workers and the working class in South Africa.

In an effort to achieve these aims, SATAWU organized a campaign to cover informal workers in the taxi industry. Workers in the taxi industry were generally employed informally through short-term flexible contracts that provide little in terms of employment stability, protection, and quality of work life. In essence, many of these workers operated as dependent contractors for taxi companies that owned and maintained the cars although many of them had previously worked for employers who had subcontracted their work.

Barrett (2003) found that SATAWU’s organizing campaign was largely targeted at taxi drivers who had previously been formally employed. One union organizer noted that the attempt was to convince the taxi drivers that “they have a responsibility to take the sector from informal to formal. This approach proved effective because these informalized workers could compare their present conditions with the previous conditions of work.”⁴⁶ In addition, the union sought to involve the taxi workers in the activities of the organization. Rather than rely upon union officials to organize informational meeting and seminars, the union sought to empower the members themselves through involvement. Barrett (2003) noted that this approach to organizing members cultivated skill development and a culture of solidarity among the members. To encourage further involvement of taxi workers, SATAWU employed former taxi workers as union organizers. In doing so, the union was able to construct a team of union organizer who not only shared a common understanding of the industry, but also knew how to communicate the union’s message to potential union members. The union based its approach on the notion that, “the industry is scary to organize if you don’t know it, but it’s a walkover if you do. If you’ve been a driver or a marshal and you know the language of the work, then you’re okay... it’s tough out there. But if you’ve felt the pain then you know what to do.”⁴⁷ This case study highlights the potential impact of including both existing members with formal employment and also the informalized drivers in the activities as well as organizing efforts of the union.

In addition to the inclusion of both currently and formerly employed taxi drivers, SATAWU also tried to create an organizational structure based on transparency and

⁴⁴ <http://www.satawu.org.za/show.php?id=68>

⁴⁵ The aims and objectives are taken directly from the SATAWU website:
www.satawu.org.za/show.php?id=8

⁴⁶ Barrett, 2003, 33.

⁴⁷ Ibid, ,

accountability in its campaign to organize informal workers.⁴⁸ To achieve this, the union initiated open elections for shop stewards. Barrett also detailed initiatives by the union to strengthen their efforts to unionize informal taxi workers through the use of media tools as a means of improving the image of the union and of the drivers, and to mobilize support for future organizing campaigns. In addition to working closely with the media, SATAWU worked closely with both government officials as well as COSATU. These relations allowed the union to both influence public policy as well as establish well-grounded solidarity with other unions organizing workers in the transportation sector. Finally the union actively assisted workers in lodging both individual and collective workers' grievances with taxi owners.

In their efforts to organize informal taxi workers, the campaigns by SATAWU faced several challenges. First, intense industry competition made it difficult for the union organizers to influence employment relations at the regional level and specifically to enter into and enforce agreements with the taxi associations. Increased competition between taxi companies led many companies to contain costs, especially labor costs. Fearful that trade union recognition would result in increased labor costs, many companies were reluctant to cooperate with union organizers.⁴⁹

The union also suffered from a poor record of providing union members with job security. Throughout their organizing campaigns, SATAWU encountered many taxi workers who were former trade union members in one of the sectors in the formal economy. Many of these workers criticized unions as failing to provide job security and as "not have done enough to protect their formal jobs".⁵⁰ As a result, many taxi workers previously employed in the formal sector were disinclined to engage with union organizers. Former trade union members who had now become owners of taxi companies provided another set of challenges. In some instances, workers who were laid off due to redundancy in the workforce received 'redundancy packages' as a form of compensation. Barrett (2003) noted that some of the former trade union members used their 'redundancy packages' to buy into the taxi industry. As many of these owners understood the operations and objectives of the trade unions, they were also less likely to accept efforts to organize their workers.

In 2000, the union was successful in achieving marginal recognition of, and collective bargaining rights for, informal taxi drivers in the Vaal Triangle area. SATAWU instituted policies and provisions for regular meetings with union officials, fair procedures for discipline, and equitable pay structures for workers. However, the success was short-lived; by the time Barrett conducted her case study in 2003, the recognition of the union through the Vaal Triangle agreement had fallen apart and the bargaining agreement was no longer enforceable by the union. Despite these challenges faced by the union, at the time Barrett (2003) conducted the case study, SATAWU had a total membership of 100,000 workers, making it the seventh largest affiliate of COSATU, by membership.

⁴⁸ Ibid, 41.

⁴⁹ Barrett, 2003, 32.

⁵⁰ Ibid, 33.

South African Clothing and Textile Workers Union (SACTWU)

In 1999 SACTWU, a COSATU affiliated union, adopted a policy of organizing informal workers. Subsequently, SACTWU took the lead in organizing informal workers in reaction to restructuring in the clothing industry that led to many formal workers being reclassified as independent contractors or otherwise informalized workers. As part of the four-sector study funded by the ILO, Bennett examined SACTWU's initiatives.⁵¹ In 2001, SACTWU negotiated with employers "that a single nationally operative clothing [Bargaining Council] should be established to cover all areas of the country and include all categories of clothing workers – including workers in the informal economy."⁵² Whether the union could successfully enforce this agreement was unclear.

Bennet looked at SACTWU's "pilot" campaign to organize informal workers in Capetown, some of whom work in small, informal "factories" and others in their own or other's homes. SACTWU's campaign was focused on industrial homeworkers in Capetown who often "sew pre-cut work for the more formal manufacturers and retailers" and not those who are more truly self-employed--own account workers.⁵³

SACTWU was pursuing a two pronged strategy for these workers with an ultimate goal of formalization: 1). Create a register of homeworkers and then negotiate an agreement with the homeworkers' "customers" that they would only contract with the registered workers; 2). Negotiate an agreement with the customers that would set contracting and working conditions. In the 1990s SACTWU succeeded at both organizing and improving conditions for workers who had been brought together in a "hive" by the Small Business Development Corporation. The hive was a physical space in a township where industrial homeworkers could come together to share information and resources; this assemblage of normally dispersed workers made it easier for the union to organize them. The question of dispersion and work location was an important one for the union. The union's informal economy organizer in Capetown reported that "the first challenge in the pilot phase was to locate informal factories."⁵⁴ Even when initially located, operators often moved.

Aside from the challenges particular to this industry, SACTWU faced challenges common to the other sectors and unions in South Africa and beyond. Workers were afraid of retribution from the employer; they were often unclear on what the benefits of joining the union would be, they were reluctant to pay dues, and there was not an easy system of dues collection given the cash transactions dominating the sector.⁵⁵

The union was considering alternative internal systems of representation more appropriate for informal workers who, among other problems, would lose income if they took time away from work to engage in union activities. These alternatives included both union committees organized by residential areas and the pooling of worker funds to make

⁵¹ Mark Bennett, "Organizing in the Informal Economy: A Case Study in the Clothing Industry", International Labour Office, Geneva, SEED Working Paper 37, (2003): 1-57.

⁵² Bennett, 2003, 11.

⁵³ Tanya Goldman, "Organizing in South Africa's Informal Economy: An Overview of Four Sectoral Case Studies", SEED Working Paper No. 60, International Labour Office, Geneva, 2003a, p. 46. Bennett and Goldman also discuss the efforts of the Self Employed Women's Union to organize the more independent, micro-enterprise side of the sector.

⁵⁴ Bennett, 2003, 24.

⁵⁵ Bennett, 2003, 39.

whole representatives for time spent on union work. The union was also developing education programs for informal worker representatives. It's interesting to note that SACTWU had a heavily female membership even in the formal economy, and the union both actively developed women leaders and adopted a policy stating that it "attempts to ensure that there [were] adequate numbers of women represented on all constitutional structures."⁵⁶

Goldman argues that unions with strong formal sector membership, including SACTWU, bring important resources to the organization and advocacy of informal workers. She reports that "SACTWU ... committed substantial resources to organizing homeworkers and recognizes that there is always likely to be some level of cross-subsidization of organization work relating to the informal economy by formal members."⁵⁷ Unfortunately, this research was done at a fairly early point in the union's campaign and so could not evaluate longer term outcomes. Ryklief does report in 2012 that the union had "managed to include home-based workers in the statutory bargaining council's services, functions, and wages a concerted battle against employers who attempt to seek exemptions from extending agreements to cover home-based workers in micro-enterprises."⁵⁸

Ghana

Background

Since the 1980s, structural and economic reforms in Ghana have led to rapidly growing informal employment. Many of these reforms sought to provide flexible, informal labor markets to achieve economic growth. In response to these changes, trade unions have recruited workers from informal workers' associations and integrated these associations into their union structure.⁵⁹ In 1996, the Ghana Trades Union Congress moved to a policy of engagement with the informal sector, pushing its affiliates to organize informal workers and ally with informal sector associations. In a study published in 2001, Adu-Amankwah described the efforts of the Ghanaian unions to improve the conditions of informal work.⁶⁰ Overall, trade unions in Ghana have sought to organize informal workers by: (i) building the capacity of trade unions to handle the influx of informal workers, and (ii) coordinating trade union initiatives to address the needs of those in

⁵⁶ Ibid, 17.

⁵⁷ Goldman, 2003a, 55.

⁵⁸ Sahra Rykleif, "The Informal Economy in Africa", in S. Schurman and A. Eaton, Trade Union Organizing in the Informal Economy: A Review of the Literature on Organizing in Africa, Asia, Latin America, North America, and Western, Central and Eastern Europe", report to the Solidarity Center, Rutgers University, (January 2012): 21.

⁵⁹ Pat Horn, Christine Bonner and Elaine Jones, "Lessons from practical experiences of organizing workers in the informal economy in Africa, Asia, Latin America, and beyond: The world of work, livelihoods and socially and environmentally sustainable development," Campinas, Brazil: GLU Conference on Global Development: Challenges for Union Strategies, (2008): 1-25.

⁶⁰ Kwasi Adu-Amankwah, "Organizing informal workers requires nurturing dynamic links with the relevant public authorities and institutions, both national and international, that can provide the necessary support" in *Trade unions in the informal sector: Finding their bearings, Nine country papers*. Labour Education Working Paper 116 (2001): 1-148.

informal employment.⁶¹ Attempts by trade unions to organize these workers have seen mixed results.

Ghana Private Road Transport Union (GPRTU)

Ghana Private Road Transport Union (GPRTU) represents truck drivers. It includes among its members “hired drivers” (employees) in both formal as well as informal employment arrangements, owner-drivers, and vehicle owners. GPRTU’s approach, as described by Adu-Amankwah, differed significantly from those taken by more traditional trade unions: rather than focus on re-formalizing informal workers, the union – particularly at the national and regional level - often focused on assisting members as small business operators (i.e., government relations, financing owner-operators’ start-up cost). At the local level, the union represented the interests of owner-drivers. However, the majority of members of the union were actually hired drivers (employees).⁶² Many of these drivers operated on short-term commercial contracts with trucking companies that provided little employment security containing terms that ranged from daily to weekly. Many of the hired drivers were casual employees while many owner-drivers were dependent contractors of a single company.

GPRTU helped to resolve disputes among hired drivers and truck owners. The union also served as a channel of communication between public authorities and the members it represented, and advocated for members with the terminals and private road operators that set fee structures. For instance, the union provided assistance to members in obtaining required permits. Given the transitory nature of informal work in the transportation industry, the union created a welfare fund designed to provide financial support for members in distress. The union was also successful in acquiring vehicles and equipment for its members on credit.

In their efforts to organize informal workers in the transportation industry, the GPRTU sought to provide members with a transparent organizational structure. The union operated at the branch, regional as well as national levels. Adu-Amankwah (2001) found that the GPRTU succeeded in securing a strong relationship with local government officials. On occasion, the union was “consulted by the public authorities on many operational issues pertaining to the road transport sector.”

GPRTU was unable to provide various social protections desired by the vast majority of its members. It is likely that the union’s inability to provide this service to members stems from the financial burden it would place on both the union as well as the owners it represented. In fact, Adu-Amankwah concluded that the union did a better job representing the interests of owners than of hired drivers.⁶³

Timber and Woodworkers Union (TWU)

Efforts to organize informal workers in the timber and woodworker industry began in 1988 following the TWUs quadrennial conference in which a resolution was adopted for organizing woodworkers in the informal economy.⁶⁴ From 1988 to the time the case study

⁶¹ Adu-Amankwah, 2001, 13.

⁶² Adu-Amankwah, 2001 7.

⁶³ Ibid, 7.

⁶⁴ Adu-Amankwah 2001, 8

was written, organizing efforts were expanded to include all forms of trades associated with the timber and woodworking sector. In many instances, these workers were contracted to provide buyers with timber from the forests. Not formally employed by a single employer, these workers largely served as nominal independent contractors.

TWU had several objectives that served as a basis for their organizing activities⁶⁵. One of these was to promote the interests of members by securing united action on all issues pertaining to or likely to affect the interests of their members. These interests included, but were not limited to, employment security, forest sustainability, and greater access to markets. The union also sought to provide members with training on tree planting, felling, harvesting, and extraction techniques. Adu-Amankwah noted that, in addition to training, the union also provided members with educational seminars covering health and safety measures, timber laws and regulations, forest management practices, marketing, and financial as well as business management. Educational and training seminars helped to strengthen the members' ability to navigate the very informal nature of the timber and woodworking industry.

Beyond the role of training and education, the TWU offered to provide members with legal assistance. In the event union members requested legal assistance, the union intervened to help settle members' cases 'out of court.'⁶⁶ While many of the members were highly skilled in their craft, most lacked a formal education and, therefore, required assistance in resolving legal disputes. Adu-Amankwah (2001) noted that some of these disputes arose when contractors were not compensated for their work. Difficulty collecting payment for services provided had long plagued workers in this industry. Without the union, these workers faced limited means for which to collect payment.

TWU's emphasis on fair and equitable treatment of women in the workplace garnered significant recognition. Concerns regarding the exploitation of women in the timber and woodworking industry led the union to adopt specific measures aimed at eradicating these biases. In 2009, the General Secretary of the TWU, Joshua Ansah, expressed concerns that many women in the industry were being employed through short-term contracts or on a piece-rate basis and were also regularly paid less than their male counterparts.⁶⁷ The union vowed to enact policies aimed at combating these discriminatory employment practices.

One of the major constraints the TWU faced in its efforts to organize informal workers was the fact that most potential members had little or no previous experience with union organizing and, therefore, failed to see the value of joining the union.⁶⁸ Many workers therefore could not imagine the potential benefits that might outweigh the cost associated with joining a union. Adu-Amankwah argued that the union had failed to create a "package of benefits" that would attract members.

Despite these challenges, the union had been successful in both organizing as well as representing informal workers in the timber and woodworking industry. Adu-

⁶⁵ Ibid.

⁶⁶ Ibid, 9.

⁶⁷ Ghana News Agency article by Akyem Oda accessed on November 14, 2009, http://www.ghananewsagency.org/details/Social/Timber-and-Woodworkers-Union-concerned-about-exploitation-of-women-in-the-sector/?ci=4&ai=7494#.UKpM_YfAfQg

⁶⁸ Adu-Amankwah 2001, 9.

Amankwah (2001) noted that informal workers in the industry had developed “a sense of recognition,” and there were many examples of concrete though small scale victories the TWU had won. For instance, the union was successful in helping some of its members retrieve tools seized by public officials, thereby instilling a sense of social protection.

Other unions in Ghana

Ryklief (2012) reports that other Ghanaian unions have also organized informal economy workers. Though she does not distinguish between the two types of informal workers from the sectors discussed, we can assume that some of these efforts have been with the dependent category of informal workers. She mentions, for instance, that the Construction and Building Materials Workers Union “signed a Collective Bargaining Agreement (CBA) to cover both formal and informal construction workers, which includes wages and health and safety protections.”⁶⁹ Interestingly, the Maritime and Dock Workers Union actually created a company to employ “unemployed members who work as casual laborers.”⁷⁰ This apparently created a conflict of interest and undermined member commitment to the union. The union responded by developing a collective bargaining agreement and training worker-leaders.

Conclusions from the Literature Review

The set of cases reviewed here suggest that Yun’s (2011) explanation for differing union responses to informalization in the South Korean auto industry apply more broadly and suggest a set of important variables that should be examined in this year’s original case studies. First, in each of these cases the work relationship between informalized workers and regular workers plays a key role in whether or not both groups will decide to support an organizing campaign. Second, the initial response of the established union – whether to ignore, exploit or seek to represent the informalized workers - shapes how both its members in regular employment as well as informalized workers will respond. Third, campaigns that take advantage of the leverage informalized workers often have due to their placement in the production process can lead to successful outcomes. In each of the case studies that follow we sought to learn whether these factors played a role and, if so, to gain a detailed understanding of how unions’ organizing strategies and tactics took them into account. In addition we hoped to shed light on additional factors that shape a successful organizing campaign.

⁶⁹ Ryklief, 2012, 17.

⁷⁰ Ibid.

GAINING FORMALITY TO CREATE CHANGE: A CASE STUDY OF THE ORGANIZING CAMPAIGN BY THE CAMBODIAN FOOD SERVICE WORKERS FEDERATION AND THE BEER PROMOTER WOMEN OF CAMBREW LTD. IN CAMBODIA

Mary Evans

Introduction

Cambodia is a poor country with most of its citizen still living in the rural countryside. Since the end of the Khmer Rouge, it has gone through a period of economic recovery; however, due to globalization and a demand for cheap labor, working conditions remain poor and wages are too low for the average Cambodian worker to subsist on. Additionally, a large number of the country's workforce are engaged in informal employment. In 1997 the government implemented the Labor Code, a major piece of legislation that allowed for the formation of independent unions, but it only covered formal workers or workers with defined contracts with their employers detailing their working conditions, responsibilities, hours of work, and salary.

Only a small group of Cambodia's workers are covered under the Labor Code, unfortunately leaving a majority still excluded. This makes it difficult for unions to organize informal workers, since they are not formally recognized by the country's labor law. Informal workers can join associations,⁷¹ which, although beneficial, do not allow them to collectively bargain. For informal workers to be able to join a union, they would have to gain formal recognition. The Cambodian Food Service Workers Federation's (CFSWF) successful campaign to organize Cambrew beer promoters is unique in the context of Cambodia's Labor Code.

Beer promoters⁷² have gained a great deal of attention internationally and locally due to their precarious position and vulnerabilities in the workplace. Since the involvement of CFSWF, some of the promoters have had their status changed to formal workers, allowing them to gain coverage under the Labor Code. Lessons from their story may help other vulnerable, informal workers can gain formal employment status. The union needed to understand what differentiated a formal worker from an informal worker, which workers were covered by the Labor Code and how informal workers could gain coverage under the Labor Code in order to organize workers and to strategize ways in which these goals can be accomplished. It is also important to understand the workings of the informal economy in Cambodia along with the roles of unions to fully comprehend the task faced by the CFSWF union in their efforts to organize and gain formal

⁷¹ Worker associations provide support and education for workers that are normally excluded from joining unions. Associations are registered with the Ministry of the Interior, instead of with the Ministry of Labour.

⁷² "Beer promoters" and "beer promoter women" are used interchangeably. They are women who are hired to competitively promote a specific brand of beer.

recognition from Cambrew as a legitimate representative of the beer promoters at Angkor Beer.⁷³

This study first provides an overview of Cambodia's informal workers, their struggles and their attempts to gain formal recognition. It then focuses particularly on CFSWF's organizing campaign with the beer promoters of Cambrew Ltd illustrating the struggles of Cambrew beer promoters and other company beer promoters in gaining decent work and respectability within their workplace. Gender in the informal economy is one of the key issues highlighted in this case.

This study describes how the beer promoters of Cambrew went from informal to formal, recognized workers and provides details of the effect of the Angkor Beer strike in July 2011 on the beer promoters. This case highlights how CFSWF succeeded in getting Cambrew to formally recognize them as a union to be able to collectively bargain, even though they did not have the majority of union members within the company. This study also calls attention to the roles of international trade unions and non-government organizations and how they can pressure companies and governments into taking action.

Economic Gains, but No Improvement

Cambodia, a small country consisting of 14.1 million people, has experienced rapid growth and development since its initial emergence as a market economy in the late 1990s.⁷⁴ The development of a nation undergoing industrialization created a landscape for growth in manufacturing, construction and tourism. With the influx of new capital and foreign, direct investments, Cambodia's Gross Domestic Product (GDP) has been on the rise. Approximately 60 percent of the GDP can be attributed to the informal sector.⁷⁵ In the decade from 1993 to 2003, the GDP grew an average of 6 percent, while the period from 2004 to 2007 saw Cambodia's average growth almost double to 11.1 percent.⁷⁶ Although there has been an increase in the country's GDP, wages continue to be lower than the standard of living because the majority of jobs consist of nontraditional or informal employment.

Despite robust economic growth in the past two decades, wages remain low in comparison to other countries. While the standard of living has gradually increased for some workers, the majority of workers in the formal economy are paid a set salary that is too low for their daily consumption, forcing many of them to also engage in informal work in order to supplement their fixed income.⁷⁷ Although there has been an increase in educational access, a higher number of white collar jobs, a prolific period of national economic growth, political stability, higher potential income and a lower poverty rate, the

⁷³ Angkor Beer is a brand, owned by Cambrew Ltd.

⁷⁴ Ministry of Planning, National Institute of Statistics, *Cambodia Socio-economic survey report* (CSES) 2011. http://www.nis.gov.kh/nis/CSES/Data/CSES_Labour.html

⁷⁵ World Bank, World Development Indicators, latest figures from 2010. Also see: Heinonen 2008, *The Hidden Role of Informal Economy: Is Informal Economy Insignificant for Phnom Penh's Development?*

⁷⁶ UN in Cambodia, Country profile:

http://www.un.org.kh/index.php?option=com_content&view=article&id=47&Itemid=66

⁷⁷ The standard of living in Cambodia has increased overall due to the rise in income per capita. As more foreign investments, businesses, NGOs, and labor activists flood the country the salary of many educated English speaking workers have seen an increase.

average formal worker, working at least 6 days a week, earns an average wage equivalent to 50 USD per month.⁷⁸

Workers in formal employment include government workers, garment and industrial workers, administrators, office workers, and some tourism workers.⁷⁹ While salaries for a civil servant or police officer in Cambodia can be 50 USD per month, this amount is insufficient for an individual to subsist on with monthly expenses that include rent, electricity, food, and transportation.⁸⁰ These expenses increase if the income earner is a single head of household with multiple children. Such low wages force workers to find different means of generating money in order to supplement their main salary.⁸¹ This in turn creates a vehicle for corruption and bribery, and results in many formal workers participating in informal work in order for their family to subsist.

Currently the only established minimum wage of 66 USD per month exists in the garment industry. This includes 5 USD added in 2012 to help garment workers' pay for health expenses.⁸² Employers often use this minimum wage as a point of reference for employee salaries without taking into account their level of education, skill set, training, or occupational responsibilities. Meanwhile, even though most garment workers can earn more than 66 USD per month due to bonuses and overtime, they may still be unable to afford their living expenses:⁸³ "Approximately 90 to 120 USD are needed per month in order to provide for basic needs for workers."⁸⁴

Labor Force Composition

In recent years overall employment has increased throughout the country due to growth in garment manufacturing, tourism, and services while employment in agriculture has declined. Still, almost 60 percent of all workers are employed in the agricultural sector, producing rice as the chief export, which accounts for 36 percent of the GDP. The industrial sector (construction, mining and manufacturing) makes up 23.5 percent; the service sector makes up 40.3 percent; manufacturing as a subsector makes up 15.6 percent.⁸⁵ Only an estimated 15 to 20 percent of all actual employment can be categorized in the formal economy, having employment contracts and set wages.

In 2011 in Cambodia 87.3 percent of all people between the ages of 15 and 64 were employed.⁸⁶ An estimated 84.7 percent of all women and 90.2 percent of all men were employed, but more than 56.6 percent of all working women and 55 percent of all

⁷⁸ CSES 2011, *Income composition*

⁷⁹ The Cambodian Labor Code, 1997.

⁸⁰ The Police Officer salary was provided by police officers who were interviewed.

⁸¹ Police corruption is common. It is not unusual to be pulled over by the police, only to be asked for money. The author, the author observed and experienced the phenomenon more than a few times while doing field research.

⁸² Wage Indicator, 'Minimum wages in Cambodia', Wageindicator Network. Available at <http://www.wageindicator.org/main/minimum-wages/cambodia>

⁸³ Cambodia Institute of Development Study (CIDS) 2009. *Living wage Survey for Cambodia's Garment Industry*. Available at: http://www.fes.or.id/fes/download/Survey_Result_Cambodia.pdf

⁸⁴ Ibid. Also see: Kristof Racz and Samuel Grumiau, *Promoting Dencency?* Somo report, August 2012. Pp.14-16

⁸⁵ World Bank, latest figures from 2010

⁸⁶ National Institute of Statistics, Cambodian Socio-economic Survey (CSES) 2011. Ministry of Planning

working men were employed in the agricultural sector.⁸⁷ Women slightly outnumber men in the industry sector. This can be attributed to the existence of garment factories staffed mainly by women workers.

The service sector, of which tourism is the most significant subsector, employs a slightly higher percentage of men (28.7) than women (26) throughout Cambodia.⁸⁸ While both men and women can be found working in restaurants and hotels, very few women work in transportation. The majority of tuk-tuk drivers⁸⁹ and motorcycle drivers are men, attributing to a higher percentage of men than women in the sector.

The distribution of the workforce across different sectors differs by geographical location. For instance, in the capital city of Phnom Penh, the greatest percentage of employed workers shifts to the service sector, and the gap between the percentages of men versus women employed in the industry sector nearly doubles. As people migrate from rural areas to the city, most with very little education and few skills, they tend to seek jobs that require no skill or little training, such as in garment factories or in transportation as tuk-tuk drivers. Those who can speak a few words of English have an easier time finding employment and can find work in tourism and other service sub-sectors.

Table 1.

Employed population (15-64 years) by industrial sector (main occupation), geographical domain and sex								
Industrial sector (main occupation) by %	2011							
	Cambodia		Phnom Penh		Other Urban		Other Rural	
	Women	Men	Women	Men	Women	Men	Women	Men
Employed population, (thousand)	3958	3932	354	416	403	389	3201	3127
Agriculture (Primary)	56.6	55	2.1	2.3	23.4	18.5	66.8	66.6
Industry (Secondary)	17.5	16.3	31.6	17.5	14.9	15.8	16.2	16.2
Services (Tertiary)	26	28.7	66.3	80	60.7	65.7	17	17.2
Other/Don't know/Not stated			0.1					
Total	100	100	100	100	100	100	100	100

Data Source: 2011 CSES, NIS

A majority of the Cambodian workers are considered self-employed, with more women engaging in self-employment than men.⁹⁰ Typically, “self-employed workers earn low wages and unpredictable income in an unstable employment.”⁹¹ Approximately 58.8 percent of women are self-employed or own account workers in comparison to only 47.9 percent of men. Furthermore, a greater number of women have familial responsibilities that require work flexibility. The majority of women are in single head of family households, due either to divorce, being widowed, or because their husbands left

⁸⁷ Ibid

⁸⁸ Ibid.

⁸⁹ Tuk -tuk refers to a mototaxi, where the cabin is attached to the motorcycle. It is the most preferred type of transportation in Cambodia.

⁹⁰ Ibid.

⁹¹ United Nations Development Fund for Women (UNIFEM) 2004, *A Fair Share for Women: Cambodia Gender Assessment*: Phnom Penh, Cambodia, pp. 34-35, 117

the family.⁹² It is estimated that more than 25 percent of all Cambodian households are headed by single women, making them more susceptible to poverty.⁹³ As a result of lower levels of educational attainment, which is required in order to procure higher quality employment, women are less likely to be employed as a paid employee than men and are more likely to be employed in the informal economy. There are relatively few employment opportunities for women outside of agriculture, the garment industry, restaurants, hotels, and private households as domestic workers.

Table 2.

2011 Employment status by %			
Currently employed population 15-64 years and over			
Employment status	Women	Men	Both sexes
Paid employee	27.1	35.8	31.4
Employer	0	0	0
Own Account Worker/Self-employed	58.8	47.9	53.4
Unpaid family worker	13.9	16.2	15.1
Other	0.1	0.1	0.1
Total percent	100	100	100
Total number (in Thousands)	3959	3932	7891

Source: CSES 2011, NIS

Extent of Informal Work and Types of Informal Work

As in most countries, the exact scope and size of the informal economy is not definitive. It is estimated that the informal economy makes up approximately 80 to 90 percent of Cambodia's workforce, with over half of it women.⁹⁴ It contributes an estimated 60 percent to the GDP. Studies performed in the past differ on the exact definition of what is considered informal and how vast it truly is in Cambodia.⁹⁵ Due to the lack of consistent empirical measurements, the full impact and complete extent of the informal economy in Cambodia is not exactly known, although multiple attempts have been made to measure certain segments of it.⁹⁶ Informal work in Cambodia is not a temporary phenomenon, contrary to the definition that is used by the International Labor Organization (ILO).⁹⁷ Instead, it is growing steadily as a result of low wages and the disparity between wages and the cost of living.

⁹² UNIFEM 2004, *A Fair Share for Women*. pp 117

⁹³ Ibid.

⁹⁴ Economic Institute of Cambodia (EIC), 2006. *Handbook on Decent Work in the Informal Economy in Cambodia*

⁹⁵ Even within the government's own research, the number varies. Other research done by foreign scholars estimate between 60% to 90%, which is a wide variation gap on the statistics. Also see: Heinonen 2008, The Hidden Role of Informal Economy: Is Informal Economy Insignificant for Phnom Penh's Development? http://water.tkk.fi/English/wr/research/global/myth/10_Heinonen_Informal_Myths-of-Mekong.pdf

⁹⁶ Heinonen 2008

⁹⁷ Ibid

Informal workers have no social protections or benefits and are excluded from the coverage of collective bargaining agreements; they are also currently excluded from the scope of the labor laws.⁹⁸ Informal employment is characterized by the lack of security, job stability, job regulations, and subsistence pay. Changes in price fluctuation, the demand for their services, increases in competition, and economic shifts easily marginalize these jobs, leaving the workers incredibly vulnerable. Workers are further marginalized due to fierce competition of a saturated market of unskilled workers.

Workers are categorized as working in the formal economy when there is a defined contract with their employer that details their working conditions, responsibilities, hours of work, and set salary. Most formal workers are covered by either a Fixed Duration Contract (FDC) or an Unfixed Duration Contract (UDC). Workers with a FDC can be hired for a period of 6 months to 2 years. These contracts are either continually renewed or not renewed at all based on the discretion of the employer. After 2 years, an FDC must become a UDC or a permanent contract. Formal workers are normally covered by the country's social security system for health and insurance benefits. Conversely, informal workers are not covered by any contract and typically do not have any defined hours of work, set salary, or health and insurance benefits.

Informal work in Cambodia includes mostly own-account agrarian workers who reside in urban and rural areas. Due to rapid urbanization and the ensuing loss of land caused by development, an increasing number of workers began flooding into urban areas in search of employment. Many end up working as beer promoters, motorcycle drivers, tuk-tuk drivers, garbage collectors, bus drivers, street vendors, and domestic workers. Others are engaged in the many micro and small enterprises. Many formal jobs require skills that can be acquired through training and education, such as teaching, civil service, office work, and government work. Very few poor, internal migrants from rural areas qualify for formal jobs; they rely instead on low wages from informal employment to survive.

Informal workers do not receive the same amount of social benefits or protection as formal workers that are covered under the country's Labor Code. The majority of formal workers are covered while all informal workers are not.⁹⁹ Informality can be a result of the employer's choice to not register the business with the Ministry of Labor in order to procure licensing. The process of registering is associated with high costs, confusing paperwork that can be time consuming, as well as a likelihood of drawn out periods where modifications must be made to the business in order to meet standards and regulations. Registering also means that employers must then provide their employees with contracts, establish a set salary, provide benefits, and abide by the Labor codes, which opens up the possibility of workers organizing into unions.¹⁰⁰

Women and Informal Work

Informal employment is usually looked down upon by Cambodian society and not considered "respectable" work. Since a greater number of women work in the informal

⁹⁸ Labour law in this article refers to the *Labour Code of the Kingdom of Cambodia*.

⁹⁹ Labour Code

¹⁰⁰ Ibid.

economy and engage in informal employment than men, the issue of respectability in Cambodian culture plays a role in how the society views these women.

Despite the fact that many women are the head of their household, Cambodia is still a very traditional country in terms of gender equality. In general, women are still viewed as unequal to men. Cambodian culture and customs dictate what is expected from women in terms of behavior. The roles of women remain tied to the home where they are primarily expected to fulfill their roles as housewives and mothers while men are expected to provide for the family and act as protectors. If a woman is employed, her work is not usually valued as highly as a man's and her responsibility is still primarily to their family.

Women's behavior is dictated by society as to what is decent or indecent. Customarily, women are expected to remain home at night. If they are employed, there are strong views as to what constitutes a respectable and decent job. Women who work in any employment that generally operates at night, including beer gardens, karaoke bars, coffee shops, night clubs, and other night time jobs are looked down upon and are often assumed to be engaging in prostitution.¹⁰¹ They are labeled as, "indecent, unrespectable, loose and promiscuous."¹⁰² They are often viewed as amoral, even if they do not sell sex.

The sex industry in Cambodia is extensive. Aside from the direct sex workers in brothels, there are a great number of women working as beer promoters and in other service or entertainment sectors who are selling sex to their customers in order to supplement their low income.¹⁰³ Cambodia also has the highest prevalence of HIV in Asia. One out of five beer promoters are HIV/AIDS positive according to a government survey.¹⁰⁴

Men who work at night are not judged by society the same way that women are. It is generally understood and accepted that they can work at night, without being insulted or looked down upon. Men are generally employed as night time security workers and there is a preference by employers for men to be hired as restaurant supervisors, which requires them to work late in the evenings.¹⁰⁵

In the service sectors, tourism in particular, appearances plays an important role in whether women will be hired. Employers will typically hire young and attractive women in order to entice their male clientele. Women who can speak English and are attractive are more employable than women who are older or who do not speak any English at all. Men who are employed in service or tourism are not usually hired based on appearance. They are primarily hired based on skill and strength.¹⁰⁶

Women who are employed in the formal economy are viewed as intelligent and resourceful. They are generally educated, have experience and training. Approximately 30 to 40 percent of all office workers in the city are women, approximately 80 percent of

¹⁰¹ Interviews: with beer workers in Phnom Penh.

¹⁰² Interviews with Cambodian men and women in reference to women who work and how they are viewed.

¹⁰³ Michelle Green and Ian Lubek, *"Health, safety and security for Cambodian women beer sellers were substandard in 2009: Urgent actions are still required by all major brewers (AB/INBEV, Carlsberg, HEINEKEN/Asia Pacific Breweries, SAB/Miller, Guinness, San Miguel, Bavaria, Asahi, etc.)"* Prepared on Behalf of SiRCHESI, NGO # 704, Cambodia

¹⁰⁴ USAID, *Cambodia HIV/AIDS Strategic Plan 2002-2005*

¹⁰⁵ Interview with local business owner in Phnom Penh, Cambodia. October 2012.

¹⁰⁶ Interview with business owners in Phnom Penh, Cambodia.

all employees in banks are women, and an estimated 40 to 50 percent of women are employees within hotels.¹⁰⁷

There have been efforts in the past few years to change the way women are viewed in Cambodian society. The Cambodian government has made an effort to encourage Cambodian society to respect and value women through a program called, “Neary Rattanak” or “Women are precious Gems,” but the change is gradual in a society that still holds traditional beliefs.¹⁰⁸

Labor Movement Size, Scope, and Role in the Economy

After the Paris agreement in 1991, The Constitution of the Kingdom of Cambodia was established in 1993 designating the country a constitutional monarchy. Formally, it was based on the principles of liberal democracy and pluralism.¹⁰⁹ Over the past 15 years, there has been political stability with the country adopting a parliamentary system and evolving into a quasi-democratic system. The Constitution of 1993 included provisions for the formation of unions for peaceful demonstrations.¹¹⁰

Past History. Trade unions in Cambodia prior to 1996 were very different from what they are today. Early trade unions were formed based on political ties. In 1980, the Kampuchean People’s Revolutionary Party (PRPK) trained by the Vietnamese, later becoming the Cambodian People’s Party (CPP), formed one trade union called the Cambodian Workers Union Federation (CWUF).¹¹¹ Created on the standard communist “transmission belt” model, their main function was to establish a mechanism of communication between the workers, the employers, and the government as a means to, “transmit government and party doctrine in order to create” an ideology to workers.¹¹² These government-affiliated unions could not strike, protest, or engage in other acts of militant defiance.¹¹³ Their purpose was solely to work together with the employer and government, which in many cases were the same. Thus, CWUF provided little assistance and social services to members, outside of limited death benefits.¹¹⁴ By 1990 there were 170,000 union members in Cambodian unions.

Many of the government-affiliated unions continue to represent the interests of the government and employers today. In response to workers’ dissatisfaction, in 1996 a different type of union emerged, completely independent from government and employer affiliations. These unions represented their members’ interest and pushed an agenda that

¹⁰⁷ Ministry of Planning, National Institute of Statistics, *CSES 2011*

¹⁰⁸ Translated from Khmer to English as “Women are precious Gems”.

¹⁰⁹ Joseph J. Zasloff, *Emerging Stability in Cambodia*. Asian Affairs. Vol. 28, No. 4 (Winter, 2002), pp. 187-200

¹¹⁰ Unions were a part of Cambodia as early as 1954, but very little is known about them before 1979. Also see: Veasna Nuon and Melisa Serrano, 2010 “*Building Unions in Cambodia: History, Challenges, Strategies*. Friedrich-Ebert-Stiftung Office for Regional Cooperation in Asia. pp 19

¹¹¹ Solidarity Center Cambodia, Country overview. http://www.solidaritycenter.org.kh/country-overview.html#_ftn1

¹¹² Sue Schurman and Adrienne Eaton, Rutgers University, 2012. Included in editing.

¹¹³ Joseph J. Zasloff, *Emerging Stability in Cambodia*

¹¹⁴ Veasna Nuon and Melisa Serrano, 2010 “*Building Unions in Cambodia*”.

defied the wishes of employers and government, not hesitating to use the strike as a way to get employers to the bargaining table.

Present. The current independent labor movement in Cambodia is still in its fledgling stages at less than two decades old. In 1997 Cambodia established a new and more liberal Labor Code that allowed workers the right to form independent unions. Aided by the 1999 trade agreement, manufacturing increased in the garment industry based on a gradually increasing quota system that stipulated continual monitoring and expansion of workers' rights.¹¹⁵ This resulted in a rapidly growing garment industry, where cheap labor became a competitive commodity.

As the number of overworked and underpaid garment workers grew, trade unions also grew in response to their work grievances. Workers realized that in order to counteract workplace abuses and improve their wages, they had to form unions.¹¹⁶ As the labor movement grew and gained more attention, other workers became inspired, resulting in a proliferation of union formation.¹¹⁷

There are a total of 8 major confederations that are a part of Cambodia's labor movement, with many individual union federations and associations under each confederation.¹¹⁸ Nuon and Serrano noted that the difference between associations and unions are that unions were legally created under the labor law framework, which includes only formal workers, while associations were created to represent informal and other workers who were not covered by the labor law.¹¹⁹ Associations cannot legally engage in collective bargaining with an employer.

Each of the confederations contains their own ideology and agenda. It is not uncommon to have many different unions within the same factory based on different political party alliances, personalities, and opportunism.¹²⁰ This creates a confusing environment for both workers and management as each union's demands and philosophy can differ drastically from one another. Multiple unions in a shared workplace have a tendency to compete against one another for the recruitment of new members. Union membership retention can be problematic as workers go from one union to another.¹²¹

There are two main confederations, the Cambodian Confederation of Trade Unions (CCTU) and the National Union Alliance Chamber of Cambodia (NACC)¹²² that are affiliated with the ruling government's party or the Cambodian People's Party (CPP).¹²³ Government affiliated unions are often much more reluctant to engage in

¹¹⁵ It expired in 2005, but ILO monitors continue to be active.

¹¹⁶ Solidarity Center in Cambodia, Country Overview. <http://www.solidaritycenter.org.kh/country-overview.html> accessed in November 2012.

¹¹⁷ Ibid.

¹¹⁸ Solidarity Center in Cambodia, Country overview.

¹¹⁹ Nuon and Serrano, 2010 "*Building Unions in Cambodia*". pp. 25

¹²⁰ Solidarity Center, Cambodia overview. Also see Nuon and Serrano, *Building Unions in Cambodia*.

¹²¹ Having multiple unions within a single workplace normally confuse the workers by creating doubt and create challenges for the independent non-affiliated unions.

¹²² “

Yellow unions” are important actors in Cambodian labor relations. They are usually identified as unions where the union leadership is also a part of the management's team, or where a sweetheart deal exists. NACC and CCTU in particular are considered “yellow unions” due to their affiliation with the government.

¹²³ Nuon and Serrano, 2010 "*Building Unions in Cambodia*".

strikes because management and union leadership frequently work together. It is not unheard of for the union leadership positions to be held by a company managers or government officials.¹²⁴

The opposition to the CPP affiliated unions are known as the Cambodian Confederation of Unions (CCU), which is affiliated with the SRP or Sam Rainsy's Party. Initially they were the first to organize strikes within the garment factories. The CPP and the SRP unions tend to have frequent conflicts and confrontations with one another.¹²⁵

The Cambodian National Confederation (CNC) was originally affiliated with the Cambodian's People's Party, but after the September 2010 garment strike for higher wages, which lasted for one week, it became an independent union confederation.

The main independent labor movement exists within the Cambodian Labor Confederation (CLC). The CLC is independent and unaffiliated with any political party. It claims 63,880 memberships from various federations in different sectors. There are seven associations and union federations within the CLC confederation: Cambodian Food and Service-Workers Federation (CFSWF); the Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU); Cambodian Tourism and Service-workers Federation (CTSWF); Independent Democracy of Informal Economic Association (IDEA); Cambodian Independent Civil-Servants Association (CICA); Farmers Association for Peace and Development (FAPD); Building and Wood Workers Trade Union Federation of Cambodia (BWTUC).¹²⁶ As suggested by their names, these federations, which are made up of local unions, focus on different economic sectors.¹²⁷

The Role of Unions

Unions have the potential to play an important role in Cambodia. Since the explosion of the garment industry, workplace improvements have been gradual and are owed mostly to the involvement of unions. They have been capable of opening up dialogue and facilitating exchanges between workers and their employers. Unions engage in collective bargaining for their members and, through the shop stewards and union representatives, they are instrumental in conflict resolution, representing members on local issues and grievances. Cambodia unions educate workers on their rights and provide training. They offer legal guidance and support, helping to navigate members through the complex judicial process. Through media, unions are able to educate the public about the workers' plight and inform them of numerous employers' unfair labor practices.

Unions have been instrumental to the success of the garment sector workers. Due to the effort of unions, wages have increased in garment factories and there have been gradual improvements in the workplace. Accomplishments gained by a union in one workplace have also been shown to be beneficial to other Cambodian workers as they also see their wages increase.

Cambodian unions have engaged in strikes to pressure employers to agree to member demands. From 2002 to 2010, a total of 680 strikes were held by workers in

¹²⁴ Sweetheart deals are common between management and unions where affiliations exists.

¹²⁵ Nuon and Serrano, 2010 "*Building Unions in Cambodia*".

¹²⁶ Cambodian Labour Federation website. Available at <http://clccambodia.org/en/history.html>

¹²⁷ It is unclear as to the exact number of local unions that it takes in order to be considered a federation since there are no definitive data on this.

Cambodia. The causes of the strikes have been numerous. The causes of strikes include disputes about short term contracts, holidays, leave, pay, abusive supervisors, unbearable work conditions, wrongful termination of union leaders, late payments of wages, low piece rates, discrimination against union members, and the failure by employers to follow the labor law and collective agreement.¹²⁸ These strikes have resulted in successful wage increases, remuneration for overtime and holiday pay, improved working conditions, better industrial relations and benefits for employees and employers, as well as an increase in workers being educated about their rights.¹²⁹

Union Density

As of January 2013, only 1 percent of the total workforce is organized into unions. The Cambodian labor movement claims over 489,516 union members.¹³⁰ With a total population of over 14.4 million people, at least 80 percent of them are engaged in informal work and are excluded from labor law coverage and benefits.¹³¹ The majority of union members work in the garment industry. Approximately sixty percent of all garment and footwear workers are organized by 30 unions and associations, with 429,753 members. Garment and footwear union members make up 88 percent of all total union memberships in Cambodia.¹³²

The exact number of members in various unions is not precise as these numbers vary according to who is asked.¹³³ There is no consistent method of tracking union membership. Membership increases and decreases on a daily bases due to new members joining, members switching unions, or members leaving employment, making it hard to track. Most of the documents that pertain to unions in Cambodia are limited to the garment industry.

Even though more men are employed in the formal economy, the majority of union members - approximately 80 percent - are women.¹³⁴ In the garment sector alone which is mainly populated by women, 90 percent of all union members are women. Conversely, more than 80 percent of all major union leadership roles are held by men.¹³⁵

According to a female union employee, “very few women [would] choose to become union leaders if they were able to get elected.” Cambodian society views women as the weaker sex and do not consider them capable of being good leaders.¹³⁶ Traditionally they are expected to take care of the children and the home. They face obstacles such as time constraints in trying to balance work and home. They often

¹²⁸ EIC, *Decent work in the informal economy in Cambodia*

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ NIS, CSES 2011 *Labour data*

¹³² The percentage was calculated from the total membership of garment and footwear workers divided by the total number of union memberships.

¹³³ Nuon and Serrano also noted this.

¹³⁴ Yon Sineat, former ACILSSOLIDARITY CENTER employee and currently employed with LO/FTF Council in Phnom Penh. Conversations via Skype on 1/09/2013 about the amount of women in Cambodia’s unions.

¹³⁵ Numbers were estimated by calculating the total number of union federation and confederation leaders who were male versus female.

¹³⁶ Yon Sineat

require permission from their family in order to accept the role of union leader or they could risk the loss of support from their family if they took on that role.¹³⁷

Labor and Employment Laws and the Industrial Framework

Cambodia had initially shown interest in adapting the international labor standards by joining the International Labor Organization (ILO) in 1969. It has since ratified over 13 ILO conventions, including all 8 core ILO labor conventions.^{138 139} Two of the core conventions that were ratified in 1999 are important for enabling the formation of an independent union.¹⁴⁰ Since joining the ILO, Cambodia has been subject to the ILO's regulatory system, which is responsible for guaranteeing that the conventions are applied and that Cambodia's labor policies are consistent with the international standards.¹⁴¹

In 1993, a new Cambodian Constitution was created and implemented. The Constitution is by far the most important piece of legislation in the country, with all other laws and regulations lower in priority. It established a constitutional monarchy;¹⁴² made provisions for the establishment of a Council of Ministries, a National Assembly and a Senate;¹⁴³ recognized the United Nations Charter and the Universal Declaration of Human rights;¹⁴⁴ recognized the right to form and be part of a union;¹⁴⁵ made provisions for the right to strike and hold demonstrations;¹⁴⁶ made provisions for a liberal multi-party democratic government;¹⁴⁷ had articles that dealt with discrimination, equal pay for equal work, and women's exploitation in employment.¹⁴⁸

Apart from the Cambodian Constitution, the Labor Code of 1997 is the next most important piece of legislation. The Labor Code sets the framework for labor and employment relationship by defining the rights and responsibilities of unions and employers. The Labor Code requires all unions and associations to register with the Ministry of Labor and makes provisions against discrimination for union activities and union member unfair dismissals.¹⁴⁹

¹³⁷ Ibid.

¹³⁸ These core labour conventions are considered the basic rights that everyone should universally be entitled to at work. They are: the freedom of association and protection of the right to organize; recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective elimination of child labour; and the elimination of discrimination in employment and occupation. International Labour Organization (ILO), *Ratifications for Cambodia*. Available online: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055

¹³⁹ Ibid.

¹⁴⁰ ILO, Convention 87 and 98. Also see Nuon and Serrano 2010, pp.29

¹⁴¹ ILO "How International Labour Standards are created." Available online:

<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm>

¹⁴² Chapter II and III of the Constitution

¹⁴³ Chapter VIII-Chapter X of the Constitution

¹⁴⁴ Article 31 of the Constitution of Cambodia

¹⁴⁵ Article 36

¹⁴⁶ Article 37

¹⁴⁷ Article 51 and Article 56

¹⁴⁸ Article 45

¹⁴⁹ Labour Code

It details regulations for the use of strikes and collective bargaining, and created a mechanism for dispute resolution.¹⁵⁰ Article 12 of the Cambodian Labor Code forbids forms of discrimination based on personal characteristics and beliefs, including political opinion and union membership or union activities. The current Labor code covers only formally recognized workers, and requires employers to collectively bargain only with unions that have achieved the “Most Representative Status” (MRS), or a majority of the workforce as members within one company.¹⁵¹ Unions must gain the MRS in order to be formally recognized by the company. Gaining the MRS is not an easy task as it requires a single union to have over 50 percent of all members within a workplace. Without formal recognition from the company, the local union branch is not allowed to register as a union with the authorities and thus cannot engage in collective bargaining. There is a proposed amendment to the Labor Code, strongly shaped by efforts of the Solidarity Center, currently awaiting approval from the Council of Ministries. This proposal, called the new Trades Union Law (TUL), will be discussed in greater detail below.

Arbitration Council

Disputes occur often within the workplace between unions and business owners, and employers and their employees. Normally disputes between employers and employees are first referred to the Ministry of Labor. When the Ministry of Labor cannot resolve the dispute it is deferred to the Arbitration Council.

The Arbitration Council was created in 2003 by a ministerial decree as a mechanism for dispute resolution between companies and their employees since labor courts do not currently exist in Cambodia. It has a tripartite structure, where each case is heard by three arbitrators. The unions and the employer each choose an arbitrator, who then chose a third arbitrator. The Arbitration Council is separate from the government and completely independent. It operates to fill the role of a labor court, contributing to the social dialogue within the workplace. Although it is not a court, it does have legal authority on the decisions regarding any labor dispute cases.¹⁵²

Before the beginning of the hearings, all parties are required to mutually accept the judgment as either binding or not. Its mission is to be as transparent as possible with its proceedings, reasoning, and rulings. It has been deemed highly successful by all parties, although the ability to enforce its judgment is lacking.¹⁵³ Even when the parties agree to a binding judgment beforehand, some employers have completely ignored it afterwards.¹⁵⁴

Social Protection under the Labor Code

¹⁵⁰ Nuon and Serrano 2010, *Building Unions in Cambodia*

¹⁵¹ There is a new Labour Code draft, called the New Trades Union Law (TUL) that has been created. It is currently awaiting approval from the Council of Ministries.

¹⁵² The Arbitration Council, <http://www.arbitrationcouncil.org/>

¹⁵³ Nuon and Serrano, *Building Unions in Cambodia*

¹⁵⁴ As was the case with Cambrew and the award letter by the Arbitration Council’s reward to CFSWF beer promoters for overtime wages.

The Cambodian Labor Code offers many protections for covered workers. For instance, covered workers are entitled to one day per week off in order to rest.¹⁵⁵ It is usually on a Sunday and must be for at least 24 hours. Overtime pay is generally double the formal worker's normal wages for work at night or on weekends. If overtime occurs during the weekdays, the pay would be calculated as one and a half times their normal wages.¹⁵⁶ Night shift work is compensated at 130% of the wage rate, down from 200% in 2007. Employees are entitled to certain public holidays each year with their full pay. Holiday pay is also set at double the normal wages if the employee chooses to work.¹⁵⁷

Workers are entitled to one and a half days of paid annual leave per month from their employer, or approximately eighteen days of paid annual leave per year. An additional day of paid leave is earned after 3 years of service. Most workers choose not to take the leave, either out of fear for dismissal if they do or because they can work and have their annual leave compensated in their pay in addition to their normal pay.¹⁵⁸

Although each worker is entitled to sick leave, they do not necessarily get paid during that time. They are allowed to take sick leave for up to 6 months without fear of dismissal so long as they have a certificate from a trusted doctor. After 6 months, the employer is allowed to dismiss the worker. Women are entitled to maternity leave after they give birth. For maternity leave, they are given 90 days or 3 months from the time that they deliver. They are also entitled to half their wages and benefits, which are calculated based on their average pay (including bonuses and seniority) during the past year, before their maternity leave. Discrimination against pregnant women also violates the Constitution.¹⁵⁹ Special leaves are granted for up to seven days during any event directly affecting the worker's immediate family. Very few workers utilize this out of fear that they will be terminated by their employer.

The law makes provisions for circumstances involving the disability of workers. In cases involving temporary disability that is work-related, the employer must provide all necessary medical assistance, treatments, medicine, hospital costs, and the worker's regular salary for the days not worked. If it is a case of permanent disability, the worker must be assessed by a doctor as to what percentage they are incapacitated. If they are more than 20 percent incapacitated, then they are entitled to an annuity as compensation. To date, there is no unemployment insurance available in Cambodia; however, should an employer terminate the worker, with the exception of a mass layoff, the worker is entitled to receive an indemnity from the employer as long as the worker has worked continuously between 6 to 12 months. The employer must pay an indemnity of seven days of wages and fringe benefits. If the worker has been employed for longer than one year, then that worker is entitled to 15 days of wages and fringe benefits for every year worked, with a maximum indemnity of up to 6 months of wages and benefits. This indemnity is paid only to UDC workers; an FDC worker will receive severance pay instead. Once an employee's FDC turns into a UDC (after 2 years), then he or she will also be paid an indemnity.

¹⁵⁵ Labour Code 141

¹⁵⁶ Labour Code 137 to 140

¹⁵⁷ Section 5 of the 1997 Labour Code

¹⁵⁸ Section 6, Article 166 of the 1997 Labour Code

¹⁵⁹ Labour Code, article 182 and 183

Research Methods

This case study of Cambodia focuses on the success of the CFSWF to organize beer promoters in Cambrew Ltd. and the union's campaign to gain its own formal recognition by the company. Since 2006, the beer promoters have been a subject of interest to the international humanitarian community due to their employment status, low wages, toxic work place, risk for HIV/AIDS, and their foreign employer's role in forming the Beer Selling Industry of Cambodia (BSIC). Pressure from Cambodian, Danish and international unions has been aimed at Carlsberg, the majority owner of Cambrew Ltd., to formally recognize CFSWF and for the Council of Ministries to approve of the new Trade Union Law.

Research for this report consisted of secondary literature reviews, 12 days of field research in Phnom Penh, focus group interviews, individual interviews, phone and Skype interviews, as well as email correspondence with individuals, including key actors involved. Interviews were based on guided questions, which were translated into Khmer and read aloud, while the field researcher took notes in English.¹⁶⁰ Each person interviewed within the focal groups was given a copy of a consent statement and the guided questions. Communication between the field research and those interviewed was established afterwards via email communications, online Skype interviews and follow-ups.

Interviews were conducted with representatives of the local independent unions CFSWF and IDEA, beer sellers, mainly from Cambrew and CBL, tuk-tuk and motorcycle drivers, vendors, business owners, the Ministry of Labor, Solidarity Center in Cambodia, LO/FTF Denmark, ITUC, reporters and various researchers who have covered informal employment and labor relations in Cambodia.

How many and who were interviewed:

Multiple focus groups were held with beer promotional workers from different brands. A group interview was held with CFSWF union elected officials, which consisted of two men and one woman. Another focus group was held with CFSWF organized beer promoters from Cambrew (4). A group interview was held with the president and vice president of IDEA, while all field interviews were individually conducted. Once back in the United States, the rest of the interviews were conducted via Skype in accordance with Cambodia's time zone and work hours, while other contacts were made via email.

Local Unions and Associations

- Mr. Mora Sar- President of CFSWF
- Mr. Kri Suntha- Secretary General of CFSWF
- Ms. Kinh Sopheap- Deputy Secretary General of CFSWF

¹⁶⁰ Although the field researcher is fluent in Khmer, it was much more productive to have some else read aloud the lengthy statement, guidelines and questions; this enabled the field researcher to concentrate on taking accurate notes and data during focus groups.

- 1 female CFSWF beer promoter representative (Angkor/ Cambrew)
- 3 female CFSWF activists for beer promoters (Angkor/ Cambrew)
- 1 female Shop steward for CFSWF beer promoters (CBL beer/ Tiger beer)
- 1 male union representative for CFSWF gas station attendant worker (Caltex)
- Mr. Vorn Pao- President of IDEA
- Vice President of IDEA
- IDEA tuk-tuk drivers and motorcycle drivers (10 males)
- IDEA Vendor and sellers (3 females and 1 male)

International Unions and Associations

- Mr. David John Welsh, Solidarity Center in Cambodia's Country Director
- Mr. Jeff Vogt, ITUC
- Miss Yon Sineat, LO/ FTF Council and former employee of Solidarity Center in Cambodia
- Mr. Jens Erik Ohrt of LO Denmark

Cambodian Government Official

- Minister of Labor

Research and Reporters

- Mr. Shane Worrell, reporter covering labor issues for Phnom Penh Post
- Mr. Sam Grumiau, researcher and field investigator on the beer girls and beer companies, SOMO report "Promoting Decency?" 2012
- Ms. Melisa Serrano, co-author of *Building Unions in Cambodia*.
- Mr. Veasna Nuon, co-author of *Building Unions in Cambodia*.

Focus Groups

There were three focus groups held at different times with the beer promoters. The first focus group had all 8 promoters present, while the second only had the union activists and leader. The third and last focus group held a combination. All 8 beer promoters who were interviewed are female and represented various beer companies. They were commissioned and salary workers. In order to maintain confidentiality, any information that might be linked to them or that could identify them has been removed or altered. They are known as Beer Promoter number 1 through 10, or BP1 to BP8.

- BP1, commissioned beer promoter (Angkor Beer/ Cambrew Ltd.)
- BP2, commissioned beer promoter (Angkor Beer/Cambrew Ltd.)
- BP3, commissioned beer promoter (Angkor Beer/Cambrew Ltd.)
- BP4, commissioned beer promoter and former yellow union member (Angkor Beer, salary beer promoter (Angkor Beer/ Cambrew Ltd.)
- BP5, salary beer promoter (Tiger Beer/ CBL)
- BP6, commissioned (Heinken)
- BP7, commissioned (San Migel)
- BP8, commissioned (Tiger Beer/ CBL)

Others¹⁶¹

- Business owners of small and micro businesses in Phnom Penh
- Beer garden owners (interviewed while filed researcher posed as customer)
- Police officers
- Restaurant and beer garden customers
- Restaurant wait staff
- Hotel owners

Documents and Secondary Literature

At present, Cambodia does not have many economic statistics available. Most data before 1969 were destroyed, while data afterwards are limited. There is not much research or empirical data available on the unionization of the informal economy or informal employment in Cambodia. Most research on Cambodian workers focuses on the garment industry. Nuon's and Serrano's overview of the labor movement in Cambodia was an important source for understanding the past and present history of unions in this study.¹⁶² Other research by NGOs and academics on the informal economy and informal workers gave invaluable insight in understanding the need for unions and change in the workplace.¹⁶³ Newspaper such as the Phnom Penh Post and the Cambodian Daily were used to provide background to the study.

The Beer Industry and the Beer Promoters

The beer industry in Cambodia has been growing rapidly for the past two decades. Due to globalization there has been a rise in the consumption of foreign owned beer brands in Cambodia. A small number of breweries exist within country. The two major breweries are owned by Cambrew Ltd., located in Sihanoukville, and Cambodia beer in Phnom Penh. The major beer companies that distribute products in Cambodia are Asia Pacific, Cambodia Brewery Limited (CBL), Cambrew Ltd., Carlsberg, Guinness, and Heineken International.

Cambrew Ltd. is a major beer brewer and beer distributor in Cambodia. Carlsberg, a major Danish beer producer, owns the majority of the company. It produces Black Panther, Bayon Beer, Sting, Klang, Angkor Beer, and has licenses to the brands Pepsi, Seven Up, Mirinda, and Aqua Fina Water in Cambodia. CBL produces Tiger Beer, ABC Stout, Anchor Beer, and Gold Crown Beer. Currently, Cambrew holds the number 1 position in the beer market in Cambodia. One of the Cambrew beer brands, Angkor Beer, currently holds the number one spot in the Cambodian beer market.¹⁶⁴ It employs approximately 600 beer promoters and has been organized by two different unions. It currently operates a brewing plant in Sihanoukville, two hours from Phnom Penh.

Since Cambrew is a privately owned company in Cambodia, information about the company's operation and profits are very difficult to find. It is difficult for outsiders

¹⁶¹ All others interviewed were male.

¹⁶² Nuon and Serrano, *Building Unions in Cambodia*

¹⁶³ See, for instance, *Promoting Decency?* By Racz and Grimaud, which was released by SOMO in August 2012 and research by Ian Lubek on the conditions of the beer promoters and the beer companies.

¹⁶⁴ Carlsberg Annual Report 2011

to even get inside the buildings. Managers do not seem inclined to speak outside of the company and are unwilling to answer any questions. The company tends to be very secretive in the release of its information. The precise amount of profit it generates is not exactly known. Cambrew is a key member of the Beer Selling Industry Cambodia (BSIC) and produces Angkor Beer, where CFSWF beer promoters are employed.

Cambrew and other beer companies that operate in Cambodia employ beer promoter women to sell their brand to customers. Beer promoters are important to the profit of their brands, as they increase the total amount of product sold. Overall there are an estimated 6000 beer promoters working in Cambodia.¹⁶⁵

Beer promoter women are hired based on personal appearance and youth, important traits to their male clients. They normally wear the company colors, consisting of a top with the brand's logo and either black or matching bottoms. Their job is to pour and sell as much of the beer brand as possible. They normally work in bars, restaurants, and beer gardens late in the evenings, against the rules of what society deems as decent hours or decent workplaces – especially for women.

For over a decade, the beer promoters in Cambodia have been of interest to the international community due to their precarious position and vulnerabilities within the workplace. Issues such as respectability, low wages, toxic work places that promote alcohol abuse and sexual harassment by customers are characteristic of their daily work environment.¹⁶⁶ Approximately 80 percent of the beer promoters have dealt with unwanted sexual contact, while another 40 percent have been subjected to forced sex.¹⁶⁷

Beer promoters often have very little control over their workplace, getting frequently harassed by customers and forced to perform other serving duties by the local business owner. Most beer promoters try to avoid getting complaints by the restaurant or bar owners to their supervisor, since this will cause them to be transferred to a less busy location where they will earn less.¹⁶⁸

Customers often associate them with sex workers and view them the same as prostitutes, often inappropriately touching, insulting, physically attacking, and verbally abusing them. They often receive proposals while working by men to have sex with them in exchange for gifts or money. Many of them become drunk during working an effort to get customers to drink more of their beer, and suffer from alcohol dependency.¹⁶⁹

A few beer promoters have been threatened with guns by customers who abduct them and rape them afterwards.¹⁷⁰ Others have reported that they have been told by management and restaurant owners that, “their job requires them to sell as much beer as possible and that they must do everything they can to appease the customers, including sometimes having sex with them.”¹⁷¹ They usually are told to accommodate customers who sometimes insult them and grope their buttocks or breasts repeatedly throughout the

¹⁶⁵ Yon Sineat, Mora Sar, via email in December 2012.

¹⁶⁶ Horng Vuthy, *Challenges for Organizing the Beer Promotion Women in Cambodia*, Asia Monitor Resource Centre. Available online: www.amrc.org.hk/node/1086

¹⁶⁷ CARE International report on beer promoters, 2005.

¹⁶⁸ Interview with Beer promoters, BP1 through BP8, Phnom Penh, Cambodia. September 2012.

¹⁶⁹ CARE report on Beer Promoters, 2005

¹⁷⁰ BP3 relating a story that she witnessed.

¹⁷¹ Beer promoters focal group 1. Also see CARE International survey on beer promoters.

night. Some beer promoters have said that complaints to management about a customer usually get ignored, or they are told that they are “beer girls, what did they expect?”¹⁷²

All of the beer promoters are female, and the company drivers are male. Most of these females have migrated from the rural countryside to Phnom Penh in order to look for work. They usually have attended school for a short period of time, and they are responsible for providing for their families back home in the village. Many women from the garment industry, due to the recent economic crisis that left so many workers unemployed, decided to become beer promoters. These women normally have a low level of education, if any at all. This makes it hard for them to find decent work that pays well outside of working in the garment sector or selling beer.¹⁷³

Beer promoters are paid by commission (based on the amount of boxes or cases of beer that they are able to sell) or by a set salary per month. Set salary beer promoters receive a fixed amount of 80 USD per month, despite how much they are able to sell. Commission based beer promoters are paid based on what they sell. They normally are paid 2 USD per case of beer that is sold. In some companies, beer promoters who are commission based can also receive a set minimum wage of 50 USD and are paid an additional 2 USD for each case of beer that they manage to sell over their target amount. Out of 6000 beer promoters, it is estimated that at least 3000 of them are commissioned beer promoters.¹⁷⁴ The exact status of the beer promotion workers is a unique one, in that some are considered to be formal workers and others are informal workers.¹⁷⁵

Beer promotion workers who are signed to a contract with an employer are formal workers while those who do not have a contract are informal.¹⁷⁶ While at one time all beer promoters were informal, in the past few years there has been an increase in the number of individual contracts that have been signed with the employers. The contracts are normally done on an individual basis and could last from six months to a year or longer. Commission based workers are still considered informal, while salary based workers are considered formal. Companies that offer set salaries are: Cambrew, CBL, Guinness, San Migel, Kingdom Beer, Phnom Penh Beer, Heineken, and Cambodian Beer. Other beer companies offer only commission based salaries.

According to Veasna Nuon, an expert on unions in Cambodia, under the Labor law, the work contract is divided into two: short term and long term (FDC & UDC). There has been contention as to whether after two years of service, the contract will automatically become long-term or permanent workers. There are different interpretations between the parties on this. A long term contract would give workers more benefits, financially or other types.”¹⁷⁷

As described above, the benefits that formalized workers are entitled to include a day of rest per week, 18 days of annual leave, sick leave, maternity leave, overtime pay, and disability, as well as other guarantees that are covered by the labor law and the

¹⁷² Interview with beer promoters, September 2012.

¹⁷³ *Handbook on Decent Work in Cambodia*, EIC

¹⁷⁴ Interview with Mora Sar, via Skype January 2013

¹⁷⁵ According to conversations with Yon Sineat; Sam Grumiau; Veasna Nuon

¹⁷⁶ Yon Sineat, Lo/ FTF.

¹⁷⁷ Expert on unions in Cambodia and co-author of “*Building Unions in Cambodia*”.

Constitution. Thus, there are substantial advantages to beer promoters if they can be formalized.

International Attention

Initially beer promoters began receiving international attention due to their risk for HIV/AIDS. In the late 1990s, NGOs and public health advocates had taken an interest in sex workers and their risk for HIV/AIDS, but little was known about the beer promoters since they were not directly selling sex as an occupation. Prostitutes and brothel workers were the main focus until 2002, when Ian Lubek and a few other researchers began writing about the beer promoters, their working conditions, their low wages and their high vulnerability to HIV/AIDS.¹⁷⁸

Also in 2002, USAID increased financial and technical resources to Cambodia in order to help actively reduce the transmission of HIV. CARE international, a health advocacy NGO that focuses on vulnerable women, released another survey of the number of beer promoters who were infected with HIV/AIDS shortly after. The survey determined 21 percent of all beer promoters were positive for HIV due to unprotected sex. The study found that beer promoters were engaging in unprotected sex more often than prostitutes, based on a false assumption that they were safer because they were in control of selecting their customers. However, another factor was the fact that they often engaged in unprotected sex in an intoxicated condition after drinking with customers.

In 2005, a summit was held in Cambodia that was attended by beer promoters, NGOs, and beer company representatives in order to change the way beer promoters were viewed and improve their working conditions.¹⁷⁹ In the meantime, Ian Lubek also published a paper on the consequences of the low wages paid by beer companies and the incentives low pay created to drive beer promoters to do whatever it took to sell more beer and keep the customers happy. The media began to focus on the exploitation of the beer promoters, which attracted the attention of the most powerful Australian union.

In the spring of 2006, the Australian Council of Trade Unions (ACTU) launched a campaign to lift wages of beer promoters in Cambodia through its humanitarian arm APHEDA.¹⁸⁰ It began partnering with CFSWF in order to organize the Cambodian beer promoters. APHEDA had already made efforts in organizing garment and hotel workers in Cambodia and also began an effort to get mandatory work contracts for “beer girls”. It still continues to provide support to CFSWF.¹⁸¹

¹⁷⁸ I.Lubek, et al., “Collaboratively confronting the current Cambodian HIV/AIDS crisis in Siem Reap: a cross-disciplinary, cross-cultural "Participatory action research" project in consultative, community health change. *Asian Psychologist*, Vol 3, No. 1 (2002): 21-28. See also Boston Globe, “Sex trade lures Cambodia's 'beer girls',” September 22, 2002: A8 or <http://www.fairtradebeer.com/reportfiles/bgc220902.html>.

¹⁷⁹ It is not clear who organized the Summit. It may have been CARE International.

¹⁸⁰ ABC News, *ACTU looks to help Asian beer sales girls*, posted May 27, 2006. Available online: www.abc.net.au/news/2006-05-27/actu-looks-to-help-asian-beer-sales-girls/1763554

¹⁸¹ ACTU website: www.actu.org.au/Campaigns/International/News/MediaCoverageReCambodianBeerPromotionWomen.aspx

The Actors

The Union and the Association

Registered as a union federation in 2007 with the Ministry of Labor, CFSWF represents employees within the food and service sectors. This includes breweries, gas station workers and food and service companies. CFSWF is led by the union's president, Mora Sar. There are a total of 2,165 union members in CFSWF.¹⁸² It has a total of 727 members working in gas stations, with 320 female and 407 male.

CFSWF began working with the beer promoter women in Cambrew and CBL in 2006, but was not recognized as a federation until 2007 by the Ministry of Labor. It receives support from ACTU through APHEDA as well as the ILO Workers Education Programme, the U.S.-based Solidarity Center, the International Trade Union Confederation (ITUC) and the sectoral global union federation, the International Union of Foodworkers (IUF). CFSWF had 5 local unions in various sectors before becoming a federation. These sectors are gas station workers, beer industry workers, garbage collectors, whole sellers, and bakery workers. Currently they have 9 local unions within their federation.¹⁸³

The legitimacy of the local CFSWF unions that represent the beer promoters in Cambrew and other beer companies is based on being able to gain the majority of union memberships within a single workplace. CFSWF has been actively organizing beer promoters in various beer companies since 2006.¹⁸⁴ Within the beer industry, CFSWF has a total of 443 members throughout the country, all female. In Cambrew Ltd., membership totals 176 in which 141 are located in Phnom Penh and 35 are located in Siam Reap. Approximately 70 of its members are employed in Angkor beer. In Cambodia Brewery Limited (CBL), there are 188 members comprising 163 members in Phnom Penh and 25 members in Siam Reap. Khmer Beer in Siam Reap had a membership of 21 people. Heineken has a total of 8, with San Migel having a total of 35 and Guinness with a total of 15 members within CFSWF.¹⁸⁵

According to CFSWF, it is, "working to empower beer promoters to protect their rights through organizing and raising awareness through activities."¹⁸⁶ Its activities include: organizing workers through outreach, holding union meetings, providing educational training, aiding in the formation of new unions, providing workers with protection in the workplace through dispute resolution, providing legal assistance and training, providing OSH training on awareness of HIV/AIDS, educating workers about alcohol abuse and where to seek help, educating workers about work violations and how to deal with sexual harassment. They also provide advocacy and support in instances where there are strikes, through campaigns, and through networking with other

¹⁸² Data on CFSWF membership given by Mora Sar.

¹⁸³ Mora Sar, president of CFSWF. Interview contacted on October 2, 2012 in his office. Phnom Penh

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

likeminded unions and social movements.¹⁸⁷ They have been instrumental in trying to get the beer companies to recognize all their beer promoters and to get them to follow regulations regarding what workers are entitled to by law.

Independent Democracy of Informal Economy Association (IDEA)

CFSWF works closely with the Independent Democracy of Informal Economy Association (IDEA) in order help the beer promoters. IDEA is a 4300 member association that organizes and works with informal workers.¹⁸⁸ IDEA mainly organizes tuk-tuk, motorcycle drivers, street vendors, pull cart workers and restaurant employees. IDEA was created in 2005; they originally had applied to register as a union with the Ministry of Labor, but had been rejected due to the informal status of their members. Instead, they are now registered with the Ministry of Interior as an association.¹⁸⁹

Some of IDEA's works includes educating members on their legal rights, constitutional rights, and land rights. They provide education on work and traffic laws and negotiate with local authorities on behalf of their members. They often negotiate for lower fees for street vendors. They also prepare complaints when violations against their members are committed by often wealthy opponents, in order to gain compensation for damages. They often help the beer promoters through organization and education. Approximately 30 percent of IDEA's members are women. IDEA has worked with the beer promoters since 2005.¹⁹⁰

Trade Union Workers' Federation of Progress and Democracy (TUWFPD)

The Trade Union Personnel Workers' Progressive of Angkor Beer is a member of TUWFPD (Trade Union Workers Federation of Progress Democracy), which is a member of the NACC. The union is the most representative trade union organization at Cambrew. It is also a member of the global union federation, IndustriALL.¹⁹¹ TUWFPD is a government affiliated union federation. It has organized the majority of Cambrew Ltd. beer promoters, with 430 members. The management of Cambrew Ltd. is also head of the TUWFPD union.¹⁹² TUWFPD is widely viewed as a "yellow" union - a union that is set up and controlled by the employer.¹⁹³

Cambrew currently has a Memorandum of Understanding (MOU)¹⁹⁴ with TUWFPD and not with CFSWF. The company is also extremely secretive about what is

¹⁸⁷ Ibid.

¹⁸⁸ Interview with Mr. Pao Vorn, president of IDEA. Phnom Penh, Cambodia October 2012.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ IndustriALL Global Union represents 50 million works in 140 countries. Online Access: www.industriall-union.org/about-us

¹⁹² Interview with Mora Sar, October 2012. Phnom Penh, Cambodia.

¹⁹³ Interviews with Beer Promoters, Mora Sar, Phnom Penh, Cambodia. October 2012. Also see Kristoff Koczoc and Sam Grimiau, Promoting Decency.

¹⁹⁴ A memorandum of understanding (MOU) is a written agreement between two or more parties. This document is not as binding as a contract, but it outlines a commitment between the parties to work together towards a common goal.

contained within their MOU agreement with Trade Union Workers' Federation of Progress and Democracy (TUWFPD).

Beer Selling Industry Cambodia (BSIC)

Late in 2006, major beer producers in Cambodia came together to form the Beer Selling Industry Cambodia (BSIC). Membership of BSIC is comprised of Asia Pacific Breweries, Cambodia Brewery Limited (CBL), Cambrew Ltd. /Carlsberg, Guinness & Heineken International. BSIC developed a Code of Conduct for its member companies, which sets voluntary industry standards (discussed further below).

The Campaign

Beer promoters have been around for over a decade in Cambodia. In 2005, beer promoters in Cambodia began trying to shed their tarnished image as sex workers, through the initiative of CARE international, a US based NGO.¹⁹⁵ Tired of negative assumptions about what they did to make a living, beer promoters everywhere in Cambodia were looking to gain a more respectable social status.¹⁹⁶ The initiative by CARE and other organizations and researchers like Ian Lubek, to "sensitize" the social view of beer promotion workers by spotlighting media attention on workplace exploitation of beer promoters, resulted in the formation of BSIC by the main beer producers in late 2006.

In 2007, faced with international pressure and negative media associated with their brands from the exploitation of beer promoters,¹⁹⁷ BSIC began the implementation of their voluntary labor standards through their various members.¹⁹⁸ These standards included:

1. Employment contracts according to Cambodian labor law
2. Fixed basic salary
3. Clear supervision structures and grievance procedures
4. Decent, branded uniforms
5. Transportation and driver policies
6. "Selling Beer Safely" and life skill training
7. Zero tolerance harassment approach and policies
8. No alcohol during working hours, including training why and how to avoid
9. Annual monitoring of compliance and impact by an independent party.¹⁹⁹

BSIC relies mostly on CARE to provide training and workplace education on health and sexual harassment. In comparison to beer companies that are not a part of BSIC, BSIC members have a lower incidence of drinking in the workplace and fewer incidents of beer promoters selling sex.²⁰⁰

¹⁹⁵ CARE international relief and development NGO.

¹⁹⁶ Karen Hawkins, *NGO Seeks Cultural Makeover of 'Beer Girls'*. Cambodia Daily, June 2005.

¹⁹⁷ Union Aid Aboard, APHEDA website: www.apheda.org.au

¹⁹⁸ Ian Lubek and Michelle Green "Health Safety and Security for women beer sellers" 2010

¹⁹⁹ Beer Sellers Industry Cambodia (BSIC), 2007. *Code of Conduct for Beer Promoters*.

²⁰⁰ Sam Grumiau, "Promoting Decency?" SOMO August 2012 report.

After much interest and campaigning from NGOs and international labor unions, such as ACTU and the local union, CFSWF,²⁰¹ in 2007 many beer promoters gained contracts and formal status and coverage by the Labor Code.²⁰² Many also moved from a commission based pay system to a fixed base salary, with incentive systems that could be added to top of the basic salary. Others (around one half) chose to remain on a commission basis. However, since BSIC had also set a minimum wage of 50 USD per month for all beer promoters regardless if they met their target amount of cases sold, commissioned workers also moved to formal status within their member companies. This created the legal conditions for a union to have the ability to organize them.

BSIC brands account for more than 80 percent of the Cambodian beer market with 20 percent or less from other brands.²⁰³ Of approximately 6000 beer promoters in Cambodia, 600 work for Cambrew Ltd. CFSWF has been able to organize 176 of Cambrew beer promoters in Phnom Penh and Siam Reap, with 70 of them employed under the Angkor Beer brand. The remaining 424 beer promoters in Cambrew are organized by TUWFPD.²⁰⁴ CFSWF has a total of 443 beer promoters as union members including those at Cambrew and at CBL, Khmer Beer, Heineken, San Migel, and Guinness. The exact union density within the beer industry is unknown since approximately half of them are commission-based,²⁰⁵ many with brands that are not part of BSIC and that do not offer a set minimum wage or a contract, thus lacking coverage by the Labor Code.²⁰⁶

Despite the lack of written contracts and formality before 2007, all beer promoters were able to associate with a trade association. Many were affiliated with IDEA and were aided by that organization with various issues including cheated wages, grievances, and workplace abuses. IDEA mainly organized in the informal sectors, but helped to bring about the education of workers on their rights and distributed educational material to beer promoters. IDEA also initially tried to facilitate dialogue between workers and their employers and authority. They help a number of beer promoters with filing workplace grievances.

In 2006, CFSWF began trying to organize beer promoters. Since the union did not have contact information for the beer promoters, CFSWF had to approach workers directly at their restaurant and bar garden workplaces. Mora Sar, CFSWF's president, and a few other union members would, in the beginning, visit 5 to 10 restaurants and other food and beer outlets. They would drink at the bar and began initiating conversations with the promoters. Since most workers had never heard of CFSWF or other independent unions, the first course of action was to build trust. The easiest way to build trust was give them an outlet to vent their frustration and to listen to them talk about their problems.²⁰⁷ CFSWF activists would also find workers at the beer company's offices where the beer promoters would gather for their daily company meeting before

²⁰¹ CFSWF website: www.cfswf.wordpress.com

²⁰² Lubek and Green, Health Safety and Security for Beer Sellers

²⁰³ Ibid.

²⁰⁴ "Promoting Decency?" SOMO report

²⁰⁵ Mora Sar, via Skype December 2012

²⁰⁶ Ibid.

²⁰⁷ Ibid.

they were dropped off at different places to sell or on the street where beer promoters were known to get transportation back home.²⁰⁸

Beer promoters were afraid to talk to the union at first, due to the assumption that all unions were government affiliated and promoted only the government's own interest. According to a beer promoter that was interviewed, she initially assumed that all unions were "bad and not interested in workers' rights, but were a way for the government to control the workers."²⁰⁹ Her assumption was based on the fact that she had no prior knowledge of what an independent union was or what they actually did. The beer promoters would eventually trust the union enough to give them their contact and information, which enabled the union to maintain contact after they left the bars and restaurants.

Workers would eventually be invited to the CFSWF office to attend free vocationally related educational classes or meetings. In order to convince them to come, the union offered to cover their transportation costs (approximately 2 USD), which was more than what they made in one day. Free English classes were particularly good at generating interest from the beer promoters, many of whom wanted to learn English in order to make it easier for them to sell to foreigners.²¹⁰

Once the beer promoters were more informed about their rights through workshops and training sessions, they gained confidence. They began to organize with the intention of forming a union and eventually branched out to organize others within their workplace, despite the restaurant owner's disapproval and Cambrew's displeasure.²¹¹ As the number of beer promoters who were interested in joining the union grew, CFSWF established enough local unions with members from various companies in food service to file with the Ministry of Labor as an independent union federation in 2006.²¹²

The Ministry of Labor gave CFSWF approval for the formation of a federation of food service workers in early 2007. After they received the approval letter, the union approached Cambrew to inform them that they were a union and that they wished to engage in collective bargaining on behalf of their members. Cambrew repeatedly refused to recognize CFSWF due to the presence of another union that had MRS status, TUWPD (the Trade Union of Progressive Workers), the local union of the "yellow" TUWFPD.

Many beer promoters did not realize that they were part of TUWFPD because it was a government affiliated union, with members automatically enrolled in the union and dues collected from their paychecks without them becoming aware. Some beer promoters in TUWFPD claim that they were forced to join the government affiliated union without their knowledge, while others claim that they didn't even know that they were part of the union until they saw that the union dues were taken out of their wages.²¹³

Cambrew continued refusing to meet CFSWF for years. From 2007 until 2010, CFSWF tried sending letters to Cambrew to demand that they pay the Angkor beer

²⁰⁸ Ibid.

²⁰⁹ BP1 on why she was initially afraid to talk to Mora. Interview in Phnom Penh, September 29, 2012.

²¹⁰ Beer promoters during the first focal group. Phnom Penh, Cambodia. Sept 29th 2012.

²¹¹ Beer promoters during first focal group.

²¹² Mora Sar, Phnom Penh, Cambodia. October 1st 2012.

²¹³ Interview with former TUWFPD members.

promoters the overtime pay for the all the extra days and hours that they worked. Cambrew would order the staff to refuse to sign and they would either ignore any attempts by CFSWF to engage them. According to article 118 and 139 of the Labor Code, workers were entitled to at least one day off per week and any holidays that they worked, they were entitled to double the pay. Many of the beer promoters who had been with the company before 2006 also claimed that that they were never paid overtime for any of the Sundays that they had worked throughout their entire employment. Under the labor law, the company was only obligated to pay formally recognized workers the overtime. This included all the beer promoters who received a written contract from Cambrew since BSIC implemented their industry wide standard for the beer industry since 2007.

As reports circulated about the success of the Cambrew brands in the beer market, having gained the top market position for Angkor Beer in Cambodia in 2011, the beer promoter women were fighting for the company to pay them 2 USD extra for the overtime that they worked. Finally frustration mounted as Cambrew continued to slight the independent union. CFSWF beer promoters and TUPWFP beer promoters in Cambrew also clashed at the workplace.²¹⁴ The atmosphere was tense and words were exchanged between the two unions.²¹⁵ With the help of C.CAWDU and CFSWF, the local union of beer promoters working at Angkor Beer took Cambrew to the Arbitration Council on June 15th 2011 over the unpaid wages. By June 7th of 2011, the verdict from the Arbitration Council ruled in favor of CFSWF and the beer promoters.

By July 2011, Angkor beer promoters were getting ready to strike. CFSWF called for a national strike and boycott of the Angkor beer, with support from international press and support from the International Union of Food workers (IUF).²¹⁶ The management at Cambrew threatened to fire any beer promoter that participated in the strike. Many of the beer promoters were forced by management to thumb print (an alternative to a signature for illiterate workers) a document that stated “they would not participate in the strike and would be fired if they did.” Management told workers that the document was necessary for work.²¹⁷

In purported “good timing,” it was announced that a report by Care Cambodia and Solidarity Association of Beer Promoters in Cambodia about the exploitation of beer promoters was going to be released and, bring added attention to the beer promoters who were about to go on strike.²¹⁸ Local media joined the cause by providing coverage on the women.

On July 25, 2011, approximately 30 of the beer promoters went on strike in front of Angkor Beer’s distribution center in Phnom Penh. Originally 200 or more people had planned to show up, but due to fear of what the police might do, many were absent.²¹⁹ The leader of the local CFSWF union of Angkor beer promoters was offered a

²¹⁴ BP2, BP3, BP4 all stated that they had threats and other workers trying to dissuade them from joining the union.

²¹⁵ Beer promoters Focal group 3.

²¹⁶ CFSWF is currently applying to become a member of the IUF.

²¹⁷ Beer Promoter Focus group 2

²¹⁸ Mom Kunthear and Vincent MacIsaac, Phnom Penh Post, July 22, 2011. Pp. 2

²¹⁹ Khuon Leakhana, Phnom Penh Post, July 26, 2011. Pp. 5

management position and an increase in pay by Cambrew if she abandoned the strike.²²⁰ She refused and the strike continued.

By August 1, 2011, Cambrew had threatened to fire the beer promoters for joining a union and for striking, while Carlsberg the parent company of Cambrew Ltd. investigated the situation. By August 5th, the Phnom Penh deputy governor asked the Angkor beer promoters to suspend their strike for one week as a resolution was sought between the workers and Cambrew.²²¹

On August 30th, Cambrew finally agreed to pay the overtime wages that were owed to not only the beer promoters who went on strike, but also to all 600 beer promoters at Cambrew.²²² The amount ranged from \$200 to \$300 USD for each beer promoter who was affected, depending on the worker's seniority.²²³

After the Strike

The beer promoters in CFSWF were successful due to the help and support that they received from the local unions, the media, the international labor community, and NGOs. Their strike led to Carlsberg taking interest and notice of the CFSWF union and the beer promoters. It also led to the government being forced to intervene in order stop the strike and demand that Cambrew and CFSWF resolve the issue of overtime wages quickly. As the union with an MRS, TUWFPD does have an agreement with Cambrew, but the exact terms are not known, as they have refused to share the information with other trade unions or interested parties, citing that there is “competitive” information included in the documents.²²⁴

Currently CFSWF is attempting to gain formal recognition at Cambrew in order to legitimately represent the beer promoters. CFSWF is the only trade union organization that organizes workers in more than one brewery within the BSIC membership group. The CFSWF has unionized the following number of members distributed throughout six breweries; Cambrew 176, CBL: 187, Khmer Beer: 21, Heineken: 8, San Miguel: 35 and Guinness: 15. CFSWF is a member of the CLC and is applying for membership of the IUF.

Pressure from international organizations may have caused Carlsberg, as the parent company of Cambrew, to reevaluate how they deal with unions in Cambodia. In fall of 2011, the ITUC had asked the Danish union federation, LO, to contact Carlsberg about the issues in Cambodia. The ITUC has recently partnered with the LO to help increase dialogue between CFSWF and Cambrew and to focus on issues that affect the beer promoters in Cambodia. In fact, Carlsberg and LO signed a MOU in 2012, outlining:

- Steps to create collaboration between management and employees, including the establishment of effective social dialogue at Cambrew between management and trade union representatives from TUWFPD *and* CFSWF.

²²⁰ Interview with the union leader of CFSWF at Angkor Beer.

²²¹ Phnom Penh Post, August 5th, 2011.

²²² Mora Sar, interviewed in October 2012.

²²³ Third focus group with Beer promoters, at their home in Phnom Penh.

²²⁴ Interviews done in Cambodia with ACILS SOLIDARITY CENTER, in trying to obtain the MOU between Cambrew and TUWFPD

- What can be done to improve working conditions, including health and safety in general for beer promoters in Cambodia.
- BSIC's Code of Conduct in relation to the ILO core conventions, OECD guidelines for multinational corporations and the UN Global Compact.
- The right to freedom of association and collective bargaining in the sector and country as a whole and how it can be facilitated.
- How to address the negative view of beer promoters and the stigma attached to them.

LO has been working with Carlsberg in order to help CFSWF get formal recognition from Cambrew as well as encouraging CFSWF and TUWFPD to work together. CFSWF has expressed wariness in LO Denmark's efforts to open up dialogue since they do not consider TUWFPD to be a legitimate workers' representative: "working with TUWFPD would not be possible, since as a yellow union, it would only be used as a tool for Carlsberg and Cambrew to weaken real workers unions [like CFSWF]." ²²⁵ CFSWF has also expressed their desire to have Carlsberg/ Cambrew recognize them as a legitimate union, but feels that the presence of TUWFPD will only be used to hinder them. In an email to CFSWF, LO has asked what steps were needed in order for Cambrew to formally recognize CFSWF. Mora Sar replied, "CFSWF is the only union that has members from different beer companies in Cambodia and we are willing to move forward in order to organizing the entire beer industry. Carlsberg/Cambrew should show their support by eliminating the use of such harmful deceptions, such as yellow unions, and start recognizing CFSWF as a partner in negotiations for workers interest and industrial relationship with Cambrew. We also want Cambrew to reduce the membership fee for our union, and also stop all the types of threat and union busting of CFSWF local union members. This is the first step that we want to see happen with Cambrew, in recognizing CFSWF as a union."

In the meantime, Cambrew still continues its attempts to discipline the members of CFSWF union. After the strike, CFSWF reported that 21 of the beer promoters who participated in the strike were transferred to different locations where they suffered a decrease in income due to the lack of business. ²²⁶ A few of the beer promoters were left with no choice but to accept the company's money and leave Cambrew.

CFSWF recently met with the production workers, drivers and beer promoters in the other beer companies. Their strategy is to organize other workers starting in 2013. CFSWF claims that their strategy is supported by their federation leaders with the international unions providing technical and financial support. ²²⁷

New Trade Union Law

Another major collaboration between the international community and the local labor community was the drafting of the new Trade Union Law (TUL). In the spring of 2011,

²²⁵ Interview with Mora Sar, online using Skype. January 2013.

²²⁶ Simon Lewis and Kuch Naren, *Beer Promoters Allege Bias Following Strike*, Cambodian Daily, February 29, 2012. Pp. 21

²²⁷ Mora Sar, interview via Skype January 2013

the government of Cambodia released a draft of a new Trade Union law that could benefit informal workers the most. The current draft contains specific language for the inclusion of all workers to have the ability to form a union and not just associations, regardless of formal status.²²⁸ The associations for workers excluded from the current labor law will be able to act as unions under the proposed TUL.²²⁹ The American Center for Labor Solidarity, Solidarity Center has been especially instrumental in reformulating the drafts of the TUL to include informal workers.” The TUL is a separate piece of legislation not part of the current Cambodia labor law; its purpose is to work in together with the current Labor Code in order to extend coverage to workers who were not previously covered.

If the TUL passes, all informal workers would gain the benefits, protections, and social security under the new labor law. They will also have the ability to negotiate for better working conditions. The new law also has the potential to formally recognize the informal workers and grant them coverage under a Collective Bargaining agreement, as well as giving them access to benefits that the formal workers currently receive. This would be the first trade union law to include worker associations that are not formally recognized as a union.

The TUL would have a huge impact on women, since most women work informally either in agriculture or the service sectors where they have been excluded from the country’s labor laws. It would also be important for workers who have no education, skill, or training. This would allow them to collectively bargain and receive training that they normally would not receive.

At the time this report was written the TUL had not moved since reaching the Council of Ministries in November of 2011. It is believed to be delayed by the Ministry of Commerce, but it has not been rejected.²³⁰

Concluding Remarks

Informal employment in Cambodia is complex and often vague. Workers can often be employed in both the informal and the formal sectors; however, only workers who are currently defined as formal have coverage under the present Labor Code. The new Trade Union Law contains language that is inclusive of all workers regardless of status. The effect of this new law would have a tremendous impact on women since they are disproportionately employed in the informal economy as more men are employed as formal workers. This would allow them to collectively bargain and entitle them to social security, health benefits, and any insurance that is provided for under the Labor Code. Gaining respect for women working in informal employment requires overcoming culturally socio-gender associated roles. This case reveals that a primary step can be taken by making changes in the workplace.

²²⁸ ITUC-interview with Jeff Vogt, November 14th, 2012

²²⁹ David Welsh, ACILS SOLIDARITY CENTER country director in Cambodia. Interview October 5, 2012.

²³⁰ Ibid.

In CFSWF's campaign to organize beer promoters employed by Cambrew, a series of events have led to their formalization, beginning with visits to the worksites by the union's leaders and activists and extending to increasing international pressure and attention with the assistance of international labor organizations and NGOs. Although initially, prior to 2006, in order to gain the trust and support of the beer promoters, CFSWF avoided taking a leadership role in coordinating the NGOs, health activist groups, and international unions involved in the broad campaign. The union has since been key to the ability for beer promoters to gain decent work conditions and protections. Since 2006, CFSWF has worked steadily to advance the agenda of the beer promoters and has been instrumental in bringing their exploitation in the workplace to the attention of the international unions and NGOs, who have more political leverage. Due to CFSWF's lobbying, along with evidence from CARE and research done by health activists, such as Ian Lubek, media attention focused on the beer promoters. The international unions and organizations like Solidarity Center, working with CFSWF, have been able to exert pressure on the international beer breweries at their own headquarters in order to help the beer promoters.

The members of BSIC then concluded that the beer promotion women should no longer be considered as part of their marketing, but should be considered direct employees, stipulating that they must have written contracts and receive benefits covered under the Labor Code. Once the beer promoters were able to obtain contracts, they were reclassified as formal employees. This allowed them to form unions instead of an association and to begin receiving benefits to which all formal workers are entitled. It enabled CFSWF to organize them as a union and the arbitration council to hear their case. Due to their formal recognition in 2007, the Labor Code began covering them that same year, granting them the right to overtime pay for work done normally on their weekly day of leave.

To date CFSWF has been unable to get management at Cambrew to formally recognize them as the official union representing the beer promoters, due to the presence of the union that is run by management. Many workers are afraid to join CFSWF, report a grievance, or question the company fearing retaliation facilitated by the employer-dominated union. . That union has also been able to take much of the credit for the gains achieved by CFSWF. The collusion between management and the other union makes it difficult for the CFSWF's members to enter into collective bargaining which could potentially have prevented the strike.

Media played a role in getting the government of Cambodia involved in order to resolve the overtime disputes and force Cambrew to pay the beer promoters. The support of the international community brought the strike to Carlsberg's attention, resulting in the involvement of the ITUC and LO Denmark and resulted in a dialogue between Cambrew and CFSWF and improved working conditions for the beer promoters.

The beer promoters represent a truly unique case. The negative cultural view of beer promoters and their struggle to change the image of themselves in order to gain respect and dignity in the workplace have attracted multiple international organizations. Their story attracts the attention of many NGOs and international union groups due to their exploitation by the beer companies in order to increase profits

International unions are interested in the beer promoters because they work for well-recognized, profitable beer brands that come from countries known for their

progressive views on social equality where the terms and conditions these women work under would never be tolerated.

Clearly, this case demonstrates what can be achieved when NGOs, unions, companies, and the international labor community combine to support workers' freedom of association rights to form or join independent unions. The adoption of the new Trade Union Law would bring a dramatic change in living standards not only for the beer promoters but for the other informal economy workers in Cambodia.

THE FORMALIZATION AND UNIONIZATION CAMPAIGN IN THE BUENAVENTURA PORT, COLOMBIA

Daniel Hawkins

Introduction

The privatization of Colombia's port sector in 1993 inaugurated a process of pervasive employment flexibilization. The thousands of port workers, previously unionized on a mass scale and protected by collective bargaining agreements and indefinite employment contracts, witnessed a rapid transformation in their working conditions, highlighted by the explosion of non-standard work contracts, informal hiring and firing, and the gradual asphyxiation and/or transformation of labor unions. In Buenaventura, home to the country's busiest seaport terminal, the flexibilization of labor relations took on a decidedly robust form. A multitude of large, medium, small, and even one-person firms sprang up within the port, many of which specialized in nothing more than creating and expanding lines of labor intermediation: hiring out low-paid, temporal workers to the formally constituted port operating firms to undertake the numerous tasks and services required to ensure that the country's import/export market functioned accordingly.

In the two-decades following privatization, the working conditions in Buenaventura's principal port became even more degraded and precarious. In response, the embattled worker unions, bereft of space for collective bargaining and faced with a dwindling pool of formally contracted workers, began to mimic many of the labor intermediation practices of other firms. Before long, the conversion process was complete: for all practical purposes these unions had become intermediary firms and their registered members merely workers used as pawns for landing service contracts. As this small Pacific Ocean-dwelling town grew at a staggering rate, unemployment reached untenable proportions. Intermediary labor firms responded by further intensifying the extensive exploitation of workers, lowering wage rates, hiring workers on day-based or even task-based verbal contracts, most of which were entirely informal and without adhering to the stipulations of laws regarding social security benefits.

Faced with such deplorable working conditions, a group of long-time port workers in Cartagena came together six years ago to discuss the founding of a new and novel union, one that would represent workers by pressuring the principal port operating firms--in Cartagena, Santa Marta, Barranquilla and Buenaventura--to end labor intermediation and directly hire workers via fixed-employment contracts with all the associated legal social security benefits. This union, Union Portuaria (UP), formed with the support of the Solidarity Center, was registered as a national union in 2009 with local offices in these four main ports as well as the port set up in one of Colombia's preeminent banana-growing regions, Turbo, Antioquia. The UP in Buenaventura began with a double-pronged campaign to affiliate port workers and also pressure for the formalization of work at the port. After 15 years of employer-enforced indecent and often illegal working conditions and no formal response from a union, 2012 saw the recommencement of worker protest and strike actions, leading to the direct hiring of approximately 80 previously subcontracted machinery operators and the promise of future employer-union negotiations. But the capital kick back has been both furtive and

assertive. New types of companies replaced the now outlawed, fictitious cooperatives, which had been the preferred manner of evading the existing strong norms but weak enforcement of them by Colombian labor law, while leading firms continued their anti-union practices, looking to fire or blacklist any worker affiliated with the UP.

Alongside the worker-capital struggle, played out on the docks of Buenaventura, the long-stalled FTA between Colombia and the USA, provided the political dynamite necessary to begin a major reshuffling of the manner in which the Colombian state regulated the labor market, after decades of state ambivalence, at best, and connivance, at worst, regarding the horrific practice of unionist murder and its association with the gradual extermination of union organizations. Pressured to more assertively protect and guarantee union rights and worker protections, the Colombian President, Juan Manuel Santos, signed a Labor Action Plan with President Obama. Along with various normative reforms, this Plan focused on improving the situation for workers in five key economic sectors, one of which was the port industry in Colombia.

This report describes the multiple regulatory problems still evident in the actual labor relations and forms of contracting at the Buenaventura port, focusing on the still prevalent practice of anti-union tactics adopted by many port-based firms and the ambivalent role adopted by the Colombian Labor Ministry which, although significantly revamped through the Labor Action Plan, still remains out-of-touch with the multiple and concrete problems unionized and informal workers face throughout the country. The report first provides a brief overview of the economic, social, and labor contexts in Colombia, and then illustrates the manner in which labor intermediation takes place, both normatively and in practice. This is followed by a detailed analysis of the UP's worker protest campaign for the formalization of work contracts and the termination of anti-union practices at the port. The report concludes with reflections on both the successes and failures or limitations of the UP-led worker formalization campaign as a means of more clearly outlining some of the structural and contextual problems that still constrain the promotion of decent working conditions and the protection of core labor rights both in the Colombian port industry and in the wider economy.

Colombia's Recent Economic and Labor Market Performance

In recent years, the economy of Colombia, Latin America's third most populous country, has displayed a worrying trend of sustained economic growth, measured by an increase in its Gross Domestic Product (GDP), alongside a labor market plagued by high levels of unemployment and informality. Indeed, while the economy grew 4% and 5.9% for two years, 2010 and 2011 respectively, the unemployment rate was 11.1% and 10.8% for the same period, rates that are way above the regional average.²³¹ Alongside such high and ingrained levels of unemployment, leading to a situation of economic hysteresis,²³² the massive amount of labor informality throughout the country has meant that unprotected

²³¹ According to CEPAL, in 2011 the regional unemployment average for Latin America was 6.8%. See: Cepal (2012), Balance preliminar de las economías de América Latina y el Caribe.

²³² Hysteresis refers to a situation when a significant proportion of a country's workforce finds itself stuck in unemployment, effectively becoming permanently unemployed.

employment²³³ and “indecent work” have become the norm for many of Colombia’s workers.

According to the National Department for Statistics (DANE),²³⁴ in Colombia’s 13 metropolitan areas in 2011, 51.3% of all occupied people worked in the informal economy, an increase of 4.3% from the 2010 levels.²³⁵ What’s more, if a national informality rate was available this would, no doubt, show a considerable increase, due to the extensive spread of informal labor relations in Colombia’s rural zones. In terms of the manner in which informal work is concentrated per economic sector or activity in the 13 areas studied, the three most informalized sectors for 2011 were commerce, hotels, and restaurants where the port industry is located with a rate of 69% informality); transport, storage, and communications (with 62.7%); and construction (with 59.8%).²³⁶ Only two sectors scored percentages of labor informality lower than 10%: financial intermediation and the provision of electricity, gas, and water.

Apart from the prevalence of informal economic activity measured per economic sector in terms of the percentage of firms with five or fewer workers, Colombia’s precarious levels of social security coverage beleaguer its labor market. According to official data, only 37.7% of the total occupied workforce contributes to a private health insurance plan and an even smaller percentage of workers (30.6%) contribute to a retirement plan. Such statistics, together with similar low levels of affiliation to the other three main realms of social security,²³⁷ paint a worrisome picture of the general precarity faced by the majority of Colombia’s more than 20 million active workers.

Of course, such a consolidated lack of basic protections available to the majority of the country’s workers is not just a recent trend. Rather, poor quality jobs, characterized by low-income levels, a lack of job security, and widespread exclusion from social security have been the norm, especially in the last decade, due to the consolidation of neoliberal economic policies. Indeed, alongside the controversial two-term presidential Democratic Security program of the Uribe Governments (2002-2010), which intensified the military offensive against the country’s guerrilla groups (The FARC-EP and ELN) as a means of opening out and safeguarding “new” territories for capital (particularly foreign), the government-led campaign to further deregulate the labor market and flexibilize labor relations led to strengthening a decidedly pro-capital politico-economic model.

Uribe enacted two major reforms (Labor Reform, Law 789 of 2002 and Pension Reform, Law 787 of 2002) in the initial months of his first presidential term, setting the tone for the following eight years. The labor reform law followed from the flexibilization

²³³ Numerous labor market and labor studies scholars have highlighted the links between informal work and unprotected work; see especially: Portes, Alejandro. 1994. “By-passing the rules: the dialectics of labor standards and informalization in less developed countries. *International Labor Standards & Economic Interdependence*. N. Sensuburger & D. Cambell. Geneva: Institute for Labor Studies: pp.159-176; Chen, Marta. A. 2005. “Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment”. Helsinki, Finland: EGDI and UNU-WIDER.

²³⁴ Departamento Administrativo Nacional de Estadística, www.dane.gov.co

²³⁵ See: ENS (2012), *Informe Nacional de Trabajo Decente*, Ediciones ENS: Medellín.

²³⁶ DANE, *Gran Encuesta Integrada de Hogares*.

²³⁷ Respectively, (ARP) Professional Risk Insurance; *Cesantias* (Severance pay); and *Cajas de Compensación* (Family benefits program).

begun with Law 50 in 1990.²³⁸ Uribe, one of the Senators who most vigorously promoted the legislative passing of this law had, as president, a wider political berth, and he made certain that he would take advantage of this. Law 789 was enacted under the auspices that it would generate employment via more deregulation. It reduced labor costs in a dual manner: initially, by extending the working day without penalty rates (from 5pm to 9pm), and secondly, by minimizing costs associated with overtime and reducing employer costs related to unfair dismissal.

In terms of the general panorama within which Colombia's union movement is located, one could contend that after a period of extreme repression and harassment during the Uribe years, which continued the decades-long repression of the union movement, the present climate pervading the country's unions is one of fragile respite, reprieve, and perhaps even a glimmering of newfound potential organizational possibilities. Nevertheless, in order to more accurately locate this recent flicker of opportunity for union consolidation and indeed expansion, a brief synopsis of the systematic exclusion of Colombia's union movement, both from the workplace and, more generally, from the formal spheres of politics, must be offered.²³⁹ It has been argued that internationally, less effort is generally devoted to the protection of *enabling* rights, such as freedom of association (FoA) rights, than to the upholding of minimum labor standards.²⁴⁰ In the case of countries with long and pervasive anti-unionist violence, such as Colombia, FoA rights are even more tenuous and require more state enforcement mechanisms to ensure their protection.

The Historical Legacy of Anti-unionism

In Colombia the union movement has experienced historical constraints of a severity more pronounced than in any other country of the world. While many unionists across the globe face harassment, employer and even state repression, as well as the structural hostilities wrought by neoliberal labor market flexibilization processes, unionists in Colombia have had to confront similar issues in a socio-political and cultural climate of extreme anti-unionist practices. The number of trade unionists killed in Colombia more than doubles that for the rest-of-the-world combined. Between 1979 and 2010, 2,944 Colombian unionists were murdered, 229 disappeared by force, and a further 280 had

²³⁸ This labor reform took the first step towards flexibilizing Colombia's labor regime as it eliminated the retroactivity of a worker's severance payments (*cesantias*), moving towards a regime that liquidated these payments each year into a remuneration fund. Furthermore, this reform reduced workers' protection from unfair dismissal and restructured the possible contractual period, legalizing contracts for periods of less than one year (which could be renovated on three occasions), against the pre-existing "indefinite" contractual period. See: Estrada, Jairo. Á. 2004. *Construcción del Modelo Neoliberal en Colombia 1970-2004*. Colombia, Ediciones Aurora, pp.74-75.

²³⁹ For an historical overview of anti-union violence in Colombia, see: ENS & CCJ (Comision Colombiana de Juristas). 2012. *Imperceptiblemente nos encerraron: Exclusion del sindicalismo y logicas de la violencia antisindical en Colombia, 1979-2010*. Bogota: CCJ.

²⁴⁰ See: Anner, Mark. 2008. "Meeting the challenges of industrial restructuring: Labor reform and enforcement in Latin America". *Latin American Politics & Society* 50(2), pp.33-65; and, Mosley, Laura. 2011. *Labor Rights & Multinational Production*, USA: Cambridge University Press.

attempts made on their lives.²⁴¹ Such flagrant targeting of the unionist population implies a profound degree of constraint on union activity entirely foreign to unionists in other countries. Workers must contend not only with fear of losing their jobs when they embark on union creation and organizational processes, but also fear for their personal safety.

In the face of such victimization, the Colombian union density and collective bargaining coverage have declined precipitously in recent decades. For 2010, less than 390,000 Colombian workers were beneficiaries of a Collectively Bargained Agreement (CBA),²⁴² of a total occupied workforce of more than 19 million,²⁴³ giving CBA's in Colombia a total firm-wide coverage of only 2.08%.²⁴⁴ In terms of union density, for 2011, this came to only 4.4%, one of the lowest rates of unionization in the entire continent.²⁴⁵ Colombia's industrial relations framework is extremely fragile in terms of the spaces open to worker organizations. To create a union, there must be a minimum of 25 workers in the firm, and to negotiate a CBA, the union (or unions when they agree to negotiate collectively) must group together at least one third of the company's employees. In Colombia, unions are not permitted to negotiate CBAs per industry or sector, a factor that significantly lowers the rate of CBA coverage across the economy as well as limiting unions' practical influence in terms of thwarting destructive inter-firm wage rate competition.

The union movement in Colombia is institutionally divided into three Confederations: Unitary Confederation of Workers (CUT), General Confederation of Workers (CGT), and the Confederation of Colombian Workers (CTC). The CUT is the largest of the three and was founded in 1985-1986.²⁴⁶ The CUT is the most leftist of the Colombian union confederations and groups together the largest union federations of Colombia (Fecode, Fenasibancol, Funtraminenergetica). It is the only Colombian confederation that has direct membership-based elections to decide the conformation of the Departmental and National CUT leaders. The CGT, created in 1971, is numerically the second largest confederation and groups together 20 relatively small union federations. Lastly, the CTC, the oldest confederation with a history of 77-years, was created during the initial period of welfare-like political openings during the first Alfonso Lopez Pumarejo Government (1934-1938). The CTC has 17 affiliated union federations, all of which are relatively small both numerically and in terms of their political influence. Like organized labor across the world, Colombia's unions are most present in the public

²⁴¹ Information taken from: ENS & CCJ. 2012. Op cit., pp.37-43.

²⁴² ENS. 2011. *Informe de Trabajo Decente, 2010. De giros discursivos a realidades contradictorias*. Ediciones Escuela Nacional Sindical: Medellin, October, p.90.

²⁴³ In 2010, according to the DANE, the total national occupied population in Colombia came to 19.279,000 people.

²⁴⁴ ENS. 2011. op cit., p.94.

²⁴⁵ ENS. 2012. *Informe de Trabajo Decente, 2011*, Agencia de Informacion Laboral, revised document for the Colombian press, October 2012, p.28.

²⁴⁶ See: Cárdenas, Mauricio. 2006. Treinta Años de Sindicalismo en Colombia: Vicisitudes de una Transformación. *En La Encrucijada: Colombia en el Siglo XXI*. F. L. Buitrago. Bogotá, Grupo Editorial Norma/CESO de la Universidad de los Andes: 233-260.

sector, with total union membership divided 54-46% between public and private sector workers.²⁴⁷

Unlike most of its Latin American neighbors, the Colombian union movement has not maintained official partisan ties to either of the two traditional parties (Conservative and Liberal Parties). From the 1950s to the 1980s, the largest confederation at that time, the Union of Colombian Workers (UTC) declared itself non-partisan²⁴⁸ and the CUT, since being founded, has maintained a staunch position of opposition to every national government in office. In terms of their influence on wage policy, the three union confederations form part of the tripartite Council, The Permanent Commission for Salary and Wage Policies,²⁴⁹ in which employers and union representatives attempt to agree upon the official national minimum wage annually. During the eight years of Uribe's presidency, this Commission only reached agreement on two occasions and every other year the Government set the Legal Minimum Wage unilaterally.

Recent Developments in Terms of Advocating for Union Rights in Colombia

Following the trend to advance the global integration of economies, particularly the examples set by Chile and Mexico,²⁵⁰ the Uribe first-term Government launched an agenda that included the negotiation of various Free Trade agreements (FTAs), with emphasis on the promulgation of FTAs with the world's largest and most prosperous economies, especially the USA, Europe, and Canada. The negotiations for an FTA with the USA began in May 2004 as part of a regional accord between Colombia, Ecuador, Peru, and Colombia. Nonetheless, after Rafael Correa was voted in as president in 2005, Ecuador withdrew from the process and at a later date, Colombia and Peru decided to undertake bilateral negotiations and sign separate agreements with the US Government. Despite the fact that the Colombia-US FTA negotiations ended in February 2006 and the Agreement was signed by both parties in November of that year, it took another five years before it received both US Congressional approval and US Presidential ratification.²⁵¹

The principle reason for the extremely slow passage of the FTA was the vociferous opposition to the implementation of an FTA with Colombia, considering that this country had such a deplorable history in terms of the protection of human rights and labor rights. Indeed, the vehement local and international union and social movement opposition to the ratification of this and other FTAs brought together, under a

²⁴⁷ ENS. 2012. Op cit., p. 33.

²⁴⁸ Levitsky, Steven & Scott Mainwaring (2006). "Organized Labor and Democracy in Latin America." *Comparative Politics* 39 (1), p.

²⁴⁹ In Spanish: *La Comision Permanente de Politicas Salariales y Laborales*.

²⁵⁰ Chile has signed 20 FTAs with 57 countries. See: www.direcon.gob.cl/pagina/1489 (accessed on 20 November 2012). Mexico, for its part, has signed 44 FTAs, see: WTO. 2012. *World Trade Developments in 2011: A Snapshot*, www.wto.org/statistics (accessed on 25 November 2012)

²⁵¹ For a step-by-step review of the main announcements and political events during this more than five year process, see: "Hitos del viacrucis para el TLC con Estados Unidos". *Portafolio*, 11 September 2011, www.portafolio.co

consolidated union front, a transnational advocacy network (TAN),²⁵² which simultaneously opposed the ratification of the FTA while also calling for concrete improvements to be made to both the Colombian legal framework and the state's effectiveness in enforcing its labor laws.

During Alvaro Uribe Velez's two presidential terms, there was little concrete improvement in labor rights' protection. Instead of actually strengthening state protection of unionists and the extent to which Colombian workers could enjoy their fundamental rights at work, the two Uribe governments were synonymous with heightened antiunion rhetoric, attempts at delegitimizing union activity, and a general failure to undertake labor law reform as a means of appeasing members of the US Congress (especially after the Democrats gained a majority in the Senate in 2006), the AFL-CIO, other unions, and even President Obama from 2009 onwards. One of the key antiunion policies implemented during Uribe's presidency was the newfound ability of the Ministry for Social Protection²⁵³ to negate union status. This policy, in clear violation of Article 39 of the 1991 Colombian Constitution and the ILO Convention 87, led to the Ministry rejecting the request of 253 unions (between 2002-2007) to be formally registered. Furthermore, during the Uribe years, the fundamental right of workers to strike was severely curtailed as the government made highly questionable interpretations of sections of the Colombian Labor Code (*Código Sustantivo del Trabajo*),²⁵⁴ one of which involved using extraordinary faculties (article 1, paragraph 2 of Law 1210 of 2008), allowing the President, after obtaining approval from the Labor Room of the Supreme Court, to terminate a strike that was deemed to affect the "health, security, public order, or the economy, in all or part of the population"²⁵⁵ And finally, perhaps the state-propelled development that most crippled unions and the protection of basic worker rights in the first decade of the new century in Colombia was the prolific expansion of Associated Work Cooperatives (CTAs), legal entities that made a mockery of the historical conception of the cooperative movement inspired by Robert Owen in Britain's early 19th century.

CTAs in Colombia: Mimicking Cooperatives while Crippling Worker Voice and Union Organizations

In the Colombian case, although CTAs have a long legal history, first being promulgated in 1931 (Law 134), it was not until the present millennium that they took hold, at the same time their alleged "social objectives" became tainted by opportunities to expand a

²⁵² For an overview of this concept, see: Anner, Mark. 2011. *Solidarity Transformed: Labor Responses to Globalization and Crisis in Latin America*. ILR Press: Ithaca/ London.

²⁵³ At the beginning of Uribe's first presidential term, via Law 790 of 2002, the Ministries of Health and Work were fused into one: The Ministry of Social Protection, alongside the fusion of the Ministries of Justice and Government into the Ministry of the Interior.

²⁵⁴ For example, during the Uribe years, many strikes were declared illegal on the following grounds: the strike took place outside a CBA; it was undertaken by workers who did not have a work contract; it included the participation of a union confederation or federation; it took place within a public sector service or in the telecommunications and energy sectors, or in establishments of social assistance. See: Hawkins, Dan. 2009. "100 years of Colombian trade unionism: battles and bloodshed". *Relay: A Socialist Project Review* (28), October-December, pp.55-57.

²⁵⁵ Hawkins, Dan. 2009. Op cit.,

firm's profit line. Initially, perhaps, CTAs were promoted as a means of consolidating a true cooperative experience. Some commentators have argued that the driving motivation of legislators was to enhance the potential role of CTAs in the community by "creating the material and juridical conditions so that citizens who only possessed their labor power, and perhaps some small initial capital . . . could associate with others and build a business, and from that, generate their own employment while also building upon a principle of wellbeing for themselves and their families."²⁵⁶ Nonetheless, especially during the Uribe governments, this admirable conception was set aside by a double drive to cut business' costs while simultaneously crippling union activity.

The cost cutting opportunities afforded by outsourcing to CTAs stemmed from the fact that they were not bound by the Substantive Work Code (CST) because the "associated workers" were simultaneously workers and, in theory, owners of the cooperative. As such, "workers" in a CTA were not paid a salary but rather received "compensation," which did not include any of the privileges underwritten by the CST.²⁵⁷ Furthermore, upon becoming members of the CTA, workers were often obliged to pay a non-returnable starting fee as well as a capitalization contribution and 5% of one's monthly compensatory income.²⁵⁸ Perhaps the most dangerous structural impact of the CTA model is that it rendered union activity superfluous. How can a union organize in a business where the "associated people" are workers and businessmen and women? In the words of one commentator, in many CTAs, "unionization of the cooperative workers is a legal impossibility. A list of demands would have to be handed to one another."²⁵⁹

Under Uribe, the CTA model expanded prodigiously. Prior to his election as president, there were only 710 CTAs, which grouped together just under 54,000 associates.²⁶⁰ Nine years later, just after Uribe had vacated the presidential office, there were over 4,000 CTAs and over 610,000 associates (see table 1 below).

²⁵⁶ Rios, Norberto. No date. "El trabajo asociado. Un instrumento para deslaborar la contratacion laboral". Medellin: Escuela Nacional Sindical.

²⁵⁷ See: Farne, Stefano. 2008. "Las cooperativas de Trabajo asociado en Colombia: Balance de la politica gubernamental, 20002-2007". *Revista de la Economia Institucional*, vol. 10, No.18, first semester, pp.261-285.

²⁵⁸ Farne, Stefano. 2008. Op cit., p.264.

²⁵⁹ Aricapa, Ricardo. 2006. "Las cooperativas de trabajo asociados en el sector azucarero: Flexibilizacion o salvajizacion laboral?" *Documentos de la Escuela 58*, Escuela Nacional Sindical: Medellin, p.4.

²⁶⁰ According to the Confederation of Colombian Cooperatives (Confecoop).

Table 1: Number of CTA's and members

CTA	Number of CTAs	No. of members
2001	710	53,645
2002	1,110	97,318
2003	2,039	198,477
2004	2,631	321,617
2005	2,980	378,933
2006	3,296	451,869
2007	3,602	500,450
2008	3,903	537,859
2009	4,111	559,118
2010	4,307	610,526
2011	3,462	482,168

Data taken from the Confederation of Colombian Cooperatives (Confecoop)

Taken together the number of workers grouped in CTAs across the country easily surpassed the number of people employed in two of Colombia's most significant economic sectors: mining and finance. Calculated for the period October-December 2010, the total national occupied workforce in mining came to 151,000, while financial intermediation came to 227,000, together, a collective workforce well below that of all CTA associates in the country. Beyond the supposed philanthropic reasoning for promoting the expansion of CTAs, there were a number of more sinister motives. First and foremost were the vast possibilities for political corruption and clientelism. In line with Stefano Farne,²⁶¹ we could argue that the massive process of privatizations that swept Colombia and other Latin American countries during the 1980s and 1990s and the ensuing drive to incorporate meritocratic hiring practices in public entities led to a significant reduction in the number of jobs that were available based on political patronage. The expansion of CTAs, especially the hundreds that obtained contracts with public entities,²⁶² opened up a new sphere for political influence and enrichment and a phase of legal shutdown as many Congressional proposals to reform the CTAs were unceremoniously tabled, lest the farce be terminated.²⁶³

Alongside the chance to foment old lines of patronage and corruption, the CTA model allowed businesses to save substantial money on wage costs. Relative to directly hired workers, the CTA model allowed enormous savings. There were no requirements to pay parafiscal costs, weekend pay rates, nocturnal rates and prior to the 2010 and 2011 reforms, social security contributions, offering savings of up to 50% in overall wage costs. Relative to Temp Service Agencies (EST), one calculation estimated that CTAs could save between 12 and 15% of the overall wage costs paid: 9% saved on the required transfers to Colombia's *parafiscales* and a further 4-5% saved from not having to pay the commission charged for the administration of the wage bill.²⁶⁴ However, such an

²⁶¹ Farne, Stefano. 2008. Op cit., p.267.

²⁶² Especially, in the health industry, after Decree 536 of 2004, which opened up the possibility that State-owned social enterprises could utilize third-party contracts with external operators.

²⁶³ Farne, Stefano. 2008. Op cit., p.267.

²⁶⁴ See: Farne, Stefano. 2008. Op cit, p.268.

estimation is highly conservative given the fact that the CTAs, prior to the 2008 reform, were not required to pay the fees for unjust dismissal, and they saved significantly by conveniently avoiding the appearance and costs associated with any CBAs. What's more, CTAs benefitted from numerous tax reductions, which made their administrative costs decidedly lower than conventional temp agencies.

The CTA Model and Precarious Work in Colombia's Port Sector

Along with the tremendous explosion of CTAs in the health industry, particularly in the last few years of the 2000 decade, the port sector also underwent a dramatic labor regime reconstitution due to the rise of CTAs in the post privatization period. Indeed, the 1990s privatization process and the drive for renewed competitiveness across the Colombian economy, pushed forth together with the relative deregulation of the labor market, brought about a dramatic reformulation of the labor-capital relation. In the port sector, once marked by stable, relatively well paid employment, such changes were highly noxious to port workers and especially trade union activity. It is only in very recent years that there has been a renewal in worker struggles against this oppressive system of labor squeeze. Understanding how this renewal developed requires detailing the main protagonists involved in this struggle and the actual working conditions and rates of worker organization within which it occurred. Then we can finally examine what happened to ignite a new round of worker organization and union activity to confront and overcome the perpetuation of non-standard labor hiring practices.

Actors

The firm at the top of the ladder at Buenaventura's main seaport, and the one under discussion in this report, is The Regional Port Society of Buenaventura S.A., *Sociedad Portuaria Regional de Buenaventura S.A.* (SPRBun). This firm was constituted in December 1993, after the privatization of the State-owned port firm, Colpuertos (in 1991). The SPRBun originally signed a contract for the concession of the Buenaventura Port with the General Superintendent of Ports for a 20-year period, for the sum of US\$106,693 million. On the 30 May 2008, the Ministry for Transport of Colombia emitted the resolution 246 of 2008, which extended the concession until February 2034. The SPRBun, according to its webpage, moves "67.1% of all the cargo that passes through the port".²⁶⁵ The SPRBun also has controlling shares of a number of port operating firms:

- a) TECSA (*Terminal Especializado de Contenedores de Buenaventura S.A.*). The SPRBun has a 52% share in this firm;
- b) ZELSA Ltda(*Zona de Expansion Logistica*). The SPRBun has a 99.9% share in this firm;
- c) Sociedad Portuaria de Caldera S.A. (SPRBun owns 51% of its capital);

²⁶⁵ See:

http://www.sprbun.com/documentos/INFORME_GESTION_FINANCIERO_NOTAS_2010_SPRBUN.pdf (accessed on 2 November 2012).

d) Socieda Portuaria Granela de Caldera S.A (SPRBuen owns 51% of its capital).

FIRM	Operational income* (millions of pesos)	Net profits* (millions of pesos)
TECSA	63.665.967	11.636.18
ZELSA	9.141.078	1.954.5
Sociedad Portuaria de Caldera	22.133	2.959
Sociedad Portuaria Granela	8.692	2.927

Data taken from the financial reports of SPRBuen (2011-2012)

* Combining totals for 2nd Semester 2011 and 1st semester 2012

As well as the SPR terminal, there are also three other specific port terminals with their respective Regional Port Societies.²⁶⁶ Muelle El Bosque S.A., also commonly known as Muelle 15, is the first 100% privately owned port terminal in Colombia. It has port installations in Cartagena and Buenaventura as well as possessing a Logistical Center in Cartagena.²⁶⁷ The firm in Buenaventura employs roughly 300 workers. In mid-November 2012, this firm merged with the port societies owned by Colombia's multi-Latina cement company, Grupo Argos. This newly formed firm will count on seven port terminals in Colombia (four located in the Atlantic coast, two in the Pacific coast, and one along the Magdalena River).²⁶⁸

Muelle 13, owned by the Grupo Portuario S.A., specializes in the unloading of steel and other bulk merchandise (coal, general cargo, minerals, loose cargo, and automobiles). It employs approximately 60 workers in Buenaventura. TCBuen S.A., (Terminal de Contenedores de Buenaventura) is in charge of the construction and administration of the new container terminal in Buenaventura. This new terminal will be operated by the Spanish firm, Terminal de Contenedores de Barcelona S.L. together with the Regional Autonomous Corporation of Valle (CVC), the Government of the Department of Valle del Cauca, the Municipal Mayor's Office of Buenaventura, and other private firms located in Buenaventura.²⁶⁹ This terminal began operations in 2010 and specializes in receiving (loading and unloading) containers; daily there are approximately 700 employees contracted by the firm Data Control.

Moving back to firms involved in activities at the SPRBun port terminal, alongside the principal administrative and operating firms, there are a number of other private enterprises involved in specific functions and port operations. Some of the main ones are:

- Serteport (Servicios Tecnicos Portuarios S.A.). This is a Medellin-founded Stevedore company that operates in all four principal ports of Colombia.
- Accion S.A (a Temp Service firm) in Buenaventura, this firm has been engaged in numerous activities, but recently it is in charge of cleaning.

²⁶⁶ Nonetheless, as a point of clarification, this study concentrates solely on the main port society, the SPRBun and the labor relations found there.

²⁶⁷ See: <http://portal.elbosque.com/en-us/qui%C3%A9nessomos.aspx> (accessed, 11 November 2012).

²⁶⁸ See: "Grupo Argos, fusion en los negocios de servicios portuarios". *Portafolio*, 16 November 2012, www.portafolio.com (accessed, 16 November 2012).

²⁶⁹ See: <http://www.ccc.org.co/archivo/revista-accion/090/25.html> (accessed, 11 November 2012).

- Ciamsa is a sugar-exporting firm based in Cali. This firm has a total of 130 employees (administration, logistics, and loading for export. In Buenaventura its installations allow for the storage of 16,000 tons of loose sugar and 12,500 tons in sacks.²⁷⁰ Many workers interviewed claimed that Ciamsa utilized other temp agency firms as a means of avoiding its full contractual obligations with employees. One of the firms mentioned was Ocuservi.
- Ocuservi (a Temp Service Firm) is based in Cali, which offers outsourcing services. In Buenaventura, this firm has been active since 2001.
- Nueva Calidad (CTA) focuses on cleaning activities in the port.
- Intermodal. This firm offers a variety of port-related services (storage, manipulation, inspection, maintenance, repair of containers, and tracking of containers.
- Pilotos Practicos del Pacifico S.A. Pacific Pilots Ltd. This firm offers a number of services related to the appropriate positioning of a cargo ship as it arrives at a port; ship berthing; docking; transporting ships from one wharf to another; and so forth.

Trade Unions

Presently, there are a number of unions present at the SPRBun terminal, but only three are officially registered and have some degree of union history and practice, even though their present role as trade unions is quite a distortion of what they actually represent.²⁷¹

1. Sintramaritimos (National Union for Cargo Handlers at Colombian Seaports) has roughly a 20-year history and is present at the Buenaventura port. Although this union makes a pretense of having a national reach, it only has a union office in Buenaventura and as such should not be counted as a national office. Since privatization, Sintramaritima, has confronted the massive chain of labor intermediation and as a means of “surviving,” its president, Harold Alegria, has opted to utilize the models of CTAs and, more recently, union contracts²⁷² as a means of ensuring that the union does not fade into non-existence. Sintramaritima is affiliated with the CUT, Colombia. It claims to have 1212 affiliates nationwide, although numerous Buenaventura port workers, as well as members of Union Portuaria, state that these “affiliates” are actually workers who have signed up as casual laborers as a means of getting rudimentary work through past and present Sintramaritima union leaders.²⁷³

²⁷⁰ <http://www.ciamsa.com/index.php> (accessed on 7 November 2012).

²⁷¹ Sintraalpar is a union in name only. It has no elected Directive Board and no formally affiliated members. Simbraseim is also, in reality, but a semblance of a union as its members are not formally affiliated and aren't required to pay dues.

²⁷² It is important to specify that the *contrato sindical* (union contract) in Colombia is not a collectively bargained agreement. It is a mode of labor intermediation officially backed by the leadership of a firm-level union.

²⁷³ Comment made during an interview with the President of UP-Buenaventura, Jon Jairo Castro, in Buenaventura, 3 October 2012. It was also reiterated in interviews with Fabio Arias, Fiscal of the CUT-National, Bogota, 9 October; and with Jose Luciano Sanin, General Director of the ENS, Medellin, 12 October 2012.

2. Simbrasemar (Union of Laborers, Stevedores, and Auxiliary Services of Maritime Firms), at the beginning of 2011, Simbrasemar was negotiating a union merger with Sintramaritimos. At the time of this writing, this merger had not come to fruition. Like Sintramaritimo, this union has long been associated with the model of labor intermediation, with the president and director's board having close ties with many of the firms involved in "hiring out" workers for the principal operating firms. Neither Simbrasemar nor Sintramaritimo has attempted to negotiate formal lists of demands as the first step towards signing a CBA. It appears that worker representation in the eyes of the union hierarchy in both these unions goes no further than attempting to attain work for the members; working conditions and pay come at a distant second on the list of priorities. Sintrabrasemar currently counts 510 members, although as with the Sintramaritima case, these affiliates are passive; neither of these two unions undertakes any type of union organizational activities or any form of union representation for its members and, as such, they are unions in name only.
3. Union Portuario (UP), initially consolidated in Cartagena in 2009 after a six-year process of planning, discussion, and worker consultation, had approximately 300 members at the time of its Caribbean inauguration. The elected President, Javier Marrugo, ex unionist of Sintramaritima and current pensioner, was the lynchpin in the efforts to create a new national level union from 2002 onwards. Marrugo, with the support of the Solidarity Center, began a series of nation-wide visits to the main Colombian ports in an effort to drum up port-worker backing for the formation of port-based UP sectional offices. In Buenaventura, after much on-the-ground union canvassing, port workers came together to attend numerous assemblies (in 2006, 2007 and 2008), which were organized to discuss the formal creation of a union office of the UP in Buenaventura. Roughly 300-400 people participated in these assemblies, which focused on the need to promote union unity in the port sector nationally, via the creation of a truly national port workers' union that would have union offices in the main Colombian ports. Furthermore, discussion revolved around the need to reinvent what unionism meant to port workers, after the long-winded saga in which many local union leaders had unscrupulously veered into the role of middlemen and hoodwinked affiliated workers in the complex web of labor intermediation.

As well as the many protagonists from the employer-employee spheres, state apparatuses and officials have played a key role in permitting, perhaps implicitly, the expansion of non-standard labor contracts and anti-union practices, as well as, more recently, attempting to regulate more visibly the labor relations at the port. The transition from the Uribe to the Santos' presidency in 2010 and the latter negotiation and signing of the Labor Action Plan between President Obama and President Santos impelled a major reconfiguration of the Labor Ministry in Colombia, both in terms of its institutional reach and capabilities and its institutional image and objectives. Indeed, as stated in its institutional homepage, the new Ministry, ". . . has nothing to do with the previous dispatch, which was dedicated to resolving confrontations, to authorizing mass dismissals

and to assuming passive attitudes in the face of the many gender inequities associated with the past.”²⁷⁴ The restructuring of the Ministry and its revamped role in upholding labor rights throughout the country makes it central to the case study of non-standard work contracts and worker unionization at the SPRBun port terminal in Buenaventura. Institutionally, the Ministry, after merging with the Ministry of Health to create the Ministry of Social Protection in 2002, was given back its core focus on work and the labor market, becoming once again the Ministry for Labor in 2011. The Ministry is now conformed by a Minister for Work and two Vice Ministers, one for Employment and Pensions, the other for Labor Relations, as well as having a Central Directory in Bogota, alongside Territorial Directories in each of the country’s 32 departments. The Ministry is also partially responsible for four government entities.²⁷⁵

Research Methods

Since January 2012, the SPRBun port terminal in Buenaventura has been the scenario of two energetic work stoppages and strikes, something that has not occurred since 1997. These mobilizations were aimed at pressuring for the formalization of work at the port, after years of labor intermediation and processes of inter-firm outsourcing as a means of placing downward pressure on wages and working conditions. In order to get inside the Buenaventura case study, this research combined numerous formal interviews with key actors involved either directly or indirectly in this labor dispute, as well as more informal conversations, particularly with unionists and non-unionist workers at the port including:

With Local Unionists (interviews)

- * The President of Union Portuaria-Buenaventura
- * The General Secretary of the Union Portuaria-Buenaventura
- * Six women unionists who work as "tarjadoras" (tallymen/women)
- * Five male "estibadores" (stevedores)
- * One wincher
- * One female "oficinista" (person charged with registering merchandise)
- * One male cleaner
- * The secretary of the Union Portuaria-Buenaventura

Focus Group Session

- * With 32 members of the Union Portuaria-Buenaventura

With National Union Leaders

- * Fabio Arias (Fiscal, CUT-National)

Non Unionist Workers(inside the port)

²⁷⁴ See: “Un ministerio modern y humano”, <http://www.mintrabajo.gov.co/el-ministerio/quienes-somos/presentacion-del-ministerio.html> (accessed: 7 January 2013).

²⁷⁵ Respectively, SENA, Colpensiones, the Unidad Administrativa Especial de Organizaciones Solidarias, the Superintendencia de Subsidio, and the Red de Observatorio de Mercado de Trabajo.

- * Male stevedore in the coffee section
- * Male cleaner in the grain section
- * Female cleaner in the grain section
- * Female "distributor" in the grain section
- * Male security supervisor

Colombian Government Officials

- * David Luna (Vice-Minister for Labor Relations)
- * Stella Salazar (Sub Director of Territorial Gestion of the Ministry of Labor)
- * Giovanni Saavedra (Director of the Department for Inspection, vigilance and Control, Ministry of Labor, Valle de Cauca)
- * Oscar Gutierrez Guateca (Head of Labor Issues, Vice-presidency of Colombia)

US Government Colombia

- * Andrea Aquila (US Embassy in Bogota; Economic and Social Issues)

Others

- * Luciano Sanin (General Director of the National Union School of Colombia)
- * Carlos Guarnizo (Solidarity Center of the AFL-CIO in Bogota)

In addition to the many interviews conducted during an almost three week period in Colombia, the research benefitted from the author having worked at the National Trade Union School of Colombia (Escuela Nacional Sindical: ENS), in a period during which researchers conducted a diagnostic study of decent working conditions in the port sector of Colombia. This study, financed by the AFL-CIO Solidarity Center in Bogota, formed the basis of the author's understanding of the working conditions and the prevalence of indecent work in the port sector, particularly in Buenaventura. Complementing this in-depth study, the researcher made a detailed literature review of the Colombian port sector, focusing especially on newspaper articles from the main national newspapers: El Tiempo, El Espectador, Semana, as well as the principal business magazines of the country: Portafolio and Dinero.

Union Revitalization and Worker Protest in Buenaventura, Colombia

1993 was the year in which the Colombian state formally relinquished its control of the country's ports. This process was pushed forth as part of the hegemonic regional policy discourse and the Washington Consensus as a means of lightening the state's economic load and providing much-needed resources to pay for the burgeoning foreign debt.

Colombia's ports had been under state control since 1959, run and administered by the firm *Colpuertos*. This firm was set for liquidation with the passing of Law 1 in 1991. The new Statute for Maritime Ports outlined that Regional Port Societies (RPS) (*Sociedades Portuarias Regionales*) would administer the country's ports and, initially, nine such concessions were obtained by a mixture of businesses and public entities. These partnerships were urged in order to expand the activities and efficiencies of the country's ports: introducing new technologies, protecting the environment, using beaches

efficiently, and reducing port costs.²⁷⁶ Part of the process of reducing port costs was the apparent need to downsize the workforce and flexibilize the labor regime. Indeed, the rationalization of staffing levels in previously public entities has been one of the main calling cards of multilateral entities, such as the World Bank (WB) and the Inter-American Development Bank (IDB). In the Colombian case, the quick fire dismantling of Colpuertos implied the termination of over 10,000 employee contracts.²⁷⁷

Many of these workers were rehired by the newly founded RPS or by the numerous operating firms that began to appear from 1993 onwards. However, if they were hired, the conditions were markedly different to those that the majority union, *Sintrapuertos*, had upheld during the period of Colpuerto's monopoly of the port sector. First and foremost was the new legal framework governing the period of employee hiring. With the passing of Law 50 of 1990, firms could now hire workers for set periods, rather than the "indefinite" contractual period set out in the CST. Secondly, the reconstitution of port operations and management opened the way for the expansion of outsourcing; particularly those that involved labor intermediation. CTAs became one of the most lucrative ways of fomenting such processes. The Buenaventura port, perhaps more than any other of the country's principal ports, was the most affected by the privatization of Colpuertos and the subsequent revamping of labor relations. As such, examining the Buenaventura case study is a good way of comprehending the dynamics of the workers' struggles against changed working and living conditions.

Buenaventura: The Systematic Push for Labor Degradation

Buenaventura is located on the Pacific Coast of Colombia, on the left side of the Occidental Mountain range. This city is predominantly devoted to the port industry, with few alternative economic opportunities available. The region has experienced massive population growth in the past few years. According to the National 2005 Census, there were 74,843 people residing in this municipality, and this was expected to grow to over 360,000 by 2010.²⁷⁸ Buenaventura has a homogeneous ethnic composition with almost 90% of the population identifying itself as Black, *Mulato*, Afro-Colombian, or Afro-descendent.²⁷⁹ The city is plagued by poverty and unemployment. For 2010, DANE calculated that there was a 35.9% rate of Unsatisfied Basic Needs (NBI) and a whopping unemployment level of 63%, for June 2012, according to the local Chamber of Commerce.²⁸⁰ Perhaps more than any other factor, it is the extreme level of structural labor market discordance that hinders attempts to improve the working situation of the thousands of port workers.

²⁷⁶ Conpes 2680 (1993), *Plan Nacional de Expansión Portuaria 1993-1995*, Ministerio de Transporte, Republic of Colombia.

²⁷⁷ According to Colombia's leading national newspaper, as of 1993, 7,700 port workers had been retrenched and a further 2,740 were awaiting retrenchment. See: El Tiempo (1993), "Privatización de los puertos: A toda vela", 2 March, www.eltiempo.com

²⁷⁸ DANE, Boletín Censo General 2005: Buenaventura, www.dane.gov.co.

²⁷⁹ DANE, Boletín Censo General 2005, op cit.,

²⁸⁰ See: <http://www.mintrabajo.gov.co/marzo-2012/247-mintrabajo-y-alcaldia-de-buenaventura-firmaron-acuerdo-por-el-empleo-de-la-ciudad.html> (accessed on 5 November, 2012).

The many streets surrounding the port's operations are perpetually inundated with people either biding their too plentiful "recreational" time or partaking in what is colloquially termed, *el rebusque*, what could tentatively be translated as "the daily rummage for sustenance." The expansion of labor intermediation via a host of *empresas de papel* (fictitious paper firms) was, to some extent, a natural progression, as many local wheelers and dealers took advantage of the local reserve industrial army to represent them on the informal market of worker hire (by the hour, for piecework, or for the day). This problem of informal dealings is compounded by the strategic importance the Buenaventura port plays in the illegal economy. Due to the city's geographic location and the precarious socio-economic situation of its residents, it has become a strategic corridor for the macro-economy, particularly as one of the key points from which drugs and laundered money can be exported and imported.

These multiple crossings of the illegal and informal economies further complicate the avenues of pressuring for more decent working conditions in the port, and they have allowed for the expansion of cost-cutting labor practices without adequate state regulation and monitoring. While such practices often involve small and even one-person firms, they are driven by the main firms and persons involved in the overall management and operation of the port. In the Buenaventura Port, the country's largest and busiest sea terminal, after privatization, the new RPS was made up of capital distributed in the following manner: 83% private funds (importers, exporters, port operating companies, naval line operators, export workers and other "natural" people); 15% belonging to the Mayor's Office of Buenaventura; and the remaining 2% belonging to the Ministry of Transport. Once this new company began operations in 1993, it set about restructuring the pre-existing labor regime. Following the dictates of the World Bank,²⁸¹ the SPR-Buenaventura set about trimming the core labor force so that basically the direct employees consisted of executives, administrative employees, and specialized operators. All the logistical processes involving the loading and unloading of ships and containers came under the control of primary port operating firms. These firms directly outsource labor and services from smaller firms, often using EST and CTAs.

The principal port operating firms are in charge of all the major services undertaken in the maritime terminals: pilotage, tug-boat services, berth and moor tie-up, opening and closing of storage facilities, loading and unloading of cargo, tally, fastening of boats and ships, recognition and classification of cargo, and so forth. TECSA S.A. is perhaps the most visible and important of the main operating firms. According to members of the UP, TECSA employs roughly 320 workers in the Buenaventura port, but it is also said to be linked to many of the smaller outsourcing firms in the port and, as already noted, TECSA is controlled by SPRBun. Previous to the UP-led worker struggles and mobilizations in 2012, TECSA did not directly hire any of its workers; they all worked for TECSA but were contracted by intermediary firms or CTAs, as were the roughly 4000 other workers laboring at the port. And TECSA is the most visible of the operating firms deeply involved in chains of labor intermediation. The following section will delve into the breadth of such practices and focus on the manner in which they have created a panorama of worker suffering at the principal Buenaventura seaport

²⁸¹ See: World Bank. Port Reform Tool Kit. Module 1: Framework for Port Reform.

Non-standard and Precarious Work at the Buenaventura Port

As noted by numerous labor scholars, having extensive labor laws are necessary but alone they count as mere window dressing if not supported by effective mechanisms to ensure compliance and enforcement.²⁸² This holds particularly true for Colombia. Some have argued that the overall extent of labor law deregulation was quite placid in the early 1990s, based on the fact that Law 50 of 1990 (Labor Reform), which existed to counteract the new flexibilities given to businesses to hire and fire by improving compensation for unfair dismissal and constraining the degree to which temporary employment agencies could be used,²⁸³ was laxly put into effect. Such re-regulatory mechanisms are only effective to the degree to which they can be implemented on the ground, in the concrete labor relations taking place across the country. The early and pervasive use of labor outsourcing in the newly privatized port sector exemplified the major discord between the written labor law and the labor law in practice in Colombia. Indeed, a popular Colombia saying states, “*hecha la ley, hecha la trampa*” (when the law has been made, so has the means of evading it). Analyzing the spread of non-standard labor relations in the Buenaventura port will help us to comprehend how such semi-informal (and indeed normatively illegal) processes of labor flexibilization drastically weakened worker organizations in the port sector and led to deplorable working conditions.

In Buenaventura, the privatization of the port and the subsequent flexibilization of working conditions were even more destructive than in the other principal port cities of Colombia (Cartagena, Santa Marta. and Barranquilla). Unlike the first two cities, Buenaventura does not have an established tourism sector.²⁸⁴ Nor does it benefit from a diverse industrial structure, as does Barranquilla. Thus, this mid-size city is highly dependent on the port industry. Nonetheless, the massive levels of unemployment in Buenaventura indicate the inability of the main port and the other minor ports to cater to a sufficient portion of the economically active labor force. According to the Labor Market Observatory of the local Chamber of Commerce for 2010, of the roughly 360,000 residents in the city, 284,069 are of a working age. While during the pre-privatization period there were upwards of 8000 fulltime employees at Colpuertos’ Buenaventura port, in 2012, after years of modernization and downsizing, this had fallen by nearly 60%, with

²⁸² See: Anner, Mark. 2008. “Meeting the challenges of industrial restructuring: labor reform and enforcement in Latin America”. *Latin American Politics & Society*, 50(2), pp.33-65; Burgess, Katrina. 2010. “Global Pressures, national policies, and labor rights in Latin America”. *Studies in Comparative International Development*, 45, pp.198-224; Portes, Alejandro. 1994. “When More Can Be Less: Labor Standards, Development, and the Informal Economy”. Cathy A. Rakowski (Ed.), *Contrapunto: The Informal Sector Debate in Latin America*, New York: State University of New York Press, pp.114-129.

²⁸³ Burgess, Katrina. 2010. Op cit., p. 216.

²⁸⁴ Cartagena is the country’s second most important city in terms of non-Colombian tourism, after the capital Bogota. For January 2012, 13.6% of all foreign tourists traveled to Cartagena. See: Ministerio de Comercio, Industria y Turismo, Republica de Colombia. 2012. *Informe turismo, enero 2012*. www.mincomercio.gov.co/publicaciones.php?id=16590 (accessed 3 November 2012).

roughly 4000 people working at the main port terminal. There are a significant number of workers laboring in the many export-processing zones (EPZs) located around the port installations, as well as many people employed by public entities directly responsible for overseeing and supervising the industry (especially the DIAN, and the Direction for Antinarcotics of the National Police Department). Nevertheless, the main industry and local employer is the port, both in terms of its direct and indirect demand for labor.

Subcontracting Workers at the Buenaventura Port: High Profits, Low Worker Stability

Buenaventura appears to have been the laboratory for labor intermediation in the Colombian port industry. While diverse firms began their incursion into the sector almost immediately after privatization, Buenaventura was the port of most frenetic entrepreneurial activity. The vastness and depth of “mediating” firms is lost if one only examines the main players in the port’s operations and management. SPRBun is the main controlling entity, sitting on top of the pyramid of port operations and hiding behind a veneer that formally assigns it responsibility only for the port’s administration. In the words of its CEO during a 2011 interview, in line with the stipulations of Law 1a of 1991, the SPRs are “only responsible for the administration of the ports . . . we are only administrative companies”²⁸⁵ When one considers the SPRBun’s controlling share in the terminal’s main operating firms, principally TECSA, such a claim becomes untenable. Beyond the SPRBun and the already listed primary operating firms, there are upwards of 680 other private firms whose activities are directly concentrated in the Buenaventura port.²⁸⁶ Beyond these at least semi-formal firms,²⁸⁷ any number of informal and indeed, sole-person firms advance the already spiraling chain of intermediation.

According to the results obtained from the ENS survey,²⁸⁸ which sampled 195 workers from various occupations at the SPRBun-controlled port terminal, 66% of all workers were subcontracted by either a temp employment agency (EST) or a CTA. Only 27% of the workers (or 52 workers surveyed) had a direct labor contract with either the SPRBun or one of the main port operating firms.

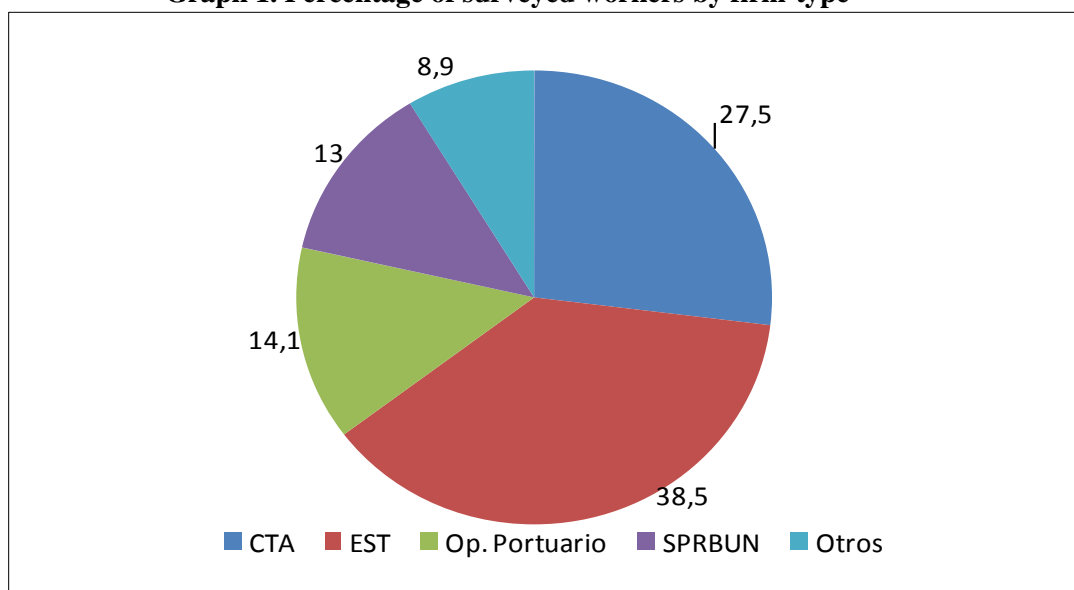
²⁸⁵ Interview conducted by the ENS’ researcher, Juan Diego Gonzalez, in July 2011 in Buenaventura.

²⁸⁶ Indeed, as of July 2011, there were 700 firms, registered with the local Chamber of Commerce, directly involved in port-related activities. See: ENS. Unpublished. *Condiciones de Trabajo Decente de los Trabajadores de los Puertos de Colombia (Santa Marta, Barranquilla, Cartagena y Buenaventura)*, research document awaiting final publication.

²⁸⁷ One of the first steps towards business formality in Colombia is the registration of a firm before the local Chamber of Commerce. After this, the firm must pay both local and national taxes before it can claim to be completely “formal.” Of course, a formally-constituted firm may undertake informal labor practices, generally by avoiding complete compliance with labor regulations, in terms of the payment of employer contributions to the social security regime, vacations, overtime, etc.,

²⁸⁸ The ENS survey and fieldwork was conducted between April and September 2011. In total, port workers from the following cities filled out 699 conditions of decent work surveys: Buenaventura (195); Barranquilla (188); Santa Marta (186); and Cartagena (130). The research document is presently being revised and should be ready for publication by early 2012.

Graph 1. Percentage of surveyed workers by firm-type



Taken from ENS. Unpublished. p.28.

The vast number of labor intermediation firms existing at the SPRBun's port terminal is not solely the result of an all-inclusive modernization and efficiency drive in which core business activities are undertaken by the main port operating firms (or by the SPRBun itself), while peripheral or complementary activities are outsourced to specialized firms. As noted by a World Bank study on port reform, the liberalization of Colombian ports did result in "large and rapid improvements in productivity, lower fees for port users, and very attractive returns for the concessionaries."²⁸⁹ However, such an affirmation completely bypasses the influence that labor intermediation contractors played in these cost-saving practices. 44.5% of the 195 workers' surveyed in the SPRBun port terminal stated that they worked for a firm different than the one that contracted them. So the question must be asked: what role are many of these contracting firms undertaking apart from simple labor intermediation?

According to Colombian legislation, the only types of firms that can legally undertake labor intermediation are EST (Temp Service Agencies).²⁹⁰ These firms can send employees to client firms where they will undertake core business activities. However, these employees can only work at the client firm for six months, which can then be extended for a further six months maximum (see article 6, Law 50). Furthermore, the EST must ensure that its employees are covered by the legal social security protections and the legal benefits associated with a labor contract. CTAs, once the prime culprits in institutionalizing labor intermediation and promoting the hegemony of non-standard

²⁸⁹ World Bank. Port Reform Tool Kit. op cit., p.2.

²⁹⁰ Law 50 of 1990 and Decree 4369 of 2006 regulate the activities of ESTs.

work at the port, once regulated by Law 1429 of 2010, could no longer undertake labor intermediation that involved sending associated members to work in core business activities.

The great majority of the surveyed port workers have spent the main part of their adult life working at the port. Only 3.9% had worked at the port less than one year, with 19.1% having worked between one and five years; 70.7% of the surveyed workers had worked longer than 11 years. However, due to the great instability and lack of employee contracts, only 20.2% of all people surveyed work at the port on a permanent basis. These results imply a number of tendencies and working realities: many port workers in Buenaventura are often contracted by a firm different from the one they actually work for; they have little workplace and occupational stability; and contracts, if and when they actually exist, are generally of a short-term nature. Finally, neither SPRBun nor the principle-operating firm, TECSA, directly contract more than the bare minimum of workers. This was confirmed by the CEO of SPRBun who stated that this firm directly hires only 300 employees as well as another 80 employees who have temporary work contracts.²⁹¹

The pervasiveness of labor intermediation, carried out in a manner outside the parameters of the legal norms, was still starkly evident more than one year after the ENS' fieldwork was carried out. In interviews (group interview 1) with five tallymen and women,²⁹² it became clear that TECSA S.A. continued to hire workers "through" outsourcing firms, even though these workers were undertaking core business activities and even though they had been working in this occupation for longer than the stipulated one-year maximum period. The means by which TECSA overcame legal impediments to such continual intermediation was by terminating the contract of one temp service firm and then hiring a new one. The tallymen and women would then be told to hand in their CVs to the new firm, and they would immediately recommence their labors. It is important to note that the actual working conditions and managerial hierarchy in the port did not change; TECSA, through its supervisory personnel, ensured that tasks were completed as required. Effectively, the outsourcing firms did nothing but permit TECSA to evade the payment of costs associated with directly hiring workers and paying their legal employee benefits. Even when an outsourcing firm's contract lasted longer than one year, the firm in question (Accion S.A.) would only hire its employees for a maximum 10-month period. After this period was reached, the workers would receive their severance pay and the other legal minimum benefits and then be told that the contract had ended. Generally, they had to wait either one or two weeks before the firm would tell them to come back to work as "new" employees. A port machine operator with 11 years' experience confirmed that this practice was quite widespread amongst the labor outsourcing firms in the port.²⁹³ Ocupar Grupo Empresarial also used the 10-month contract followed by a small non-working period as a means of evading the legal regulations inscribed in Law 50 and Decree 4369 of 2006.

One curious piece of information that illustrated the fictitious nature of such outsourcing firms was a recent TECSA S.A company brochure that used a photo of two

²⁹¹ Interview conducted by the ENS' researcher, Juan Diego Gonzalez, in July 2011 in Buenaventura.

²⁹² The researcher conducted these five interviews in Buenaventura on the 2 October 2012.

²⁹³ Interview conducted in Buenaventura, on 2 October 2012.

tallymen (one female) as the “image” of its firm. Both of these supposed TECSA employees were interviewed by the researcher and surprisingly, neither of these TECSA employees had a contract with the firm. Rather, they had been passed from one outsourcing firm to another, always undertaking the same task and always under the direct supervision of TECSA management.²⁹⁴

Such worker rotation “between” intermediary firms has been one of the persistent realities of working life at the Buenaventura SPRBun terminal ever since the liquidation of Colpuertos. These practices have significantly augmented the degree of worker instability and precarity as well as impede opportunities for worker organization. Nevertheless, blame for the initiation and expansion of labor intermediation also rests with many of the previous union leaders at the time of port privatization. Indeed, some old-time unionists were the first to create labor-intermediary CTAs in the port industry, especially in Buenaventura. These unionists, with their extensive understanding of the industry and their wide array of contacts with workers, were often very well placed to take advantage of the many business possibilities available by promoting fictitious cooperativism at the port.²⁹⁵

Certain union leaders have strongly supported the use of union-run CTAs as a better alternative to the private-firm model.²⁹⁶ However, such a position remains highly questionable when considering the systematic disenfranchisement of workers’ rights such a model has pushed forth. Furthermore, the heyday of CTAs as an ambiguously positioned legal cooperative model used to outsource labor services is over. With the expedition of Decree 2025 of 2011, which made adjustments to Law 1429 of 2010, it is illegal for CTAs to use personnel for the undertaking of permanent core business activities. With the normative and explicit prohibition of CTAs conducting labor intermediation, what type of adjustment has been made?

Unfortunately, after the expedition of new labor laws outlawing intermediation by CTAs, new business models have emerged and expanded that have, in many instances, continued labor intermediation. Particularly, two new business models—SAS (Societies for Simplified Actions) and union contracts with firms (*el contrato sindical*)—have spiraled in number in Colombia in recent years, especially as CTAs have first faced stricter regulations regarding their promotion of labor intermediation and, later on, prohibition.

New Forms of Sidestepping Government Regulations

SAS came into existence with the promulgation of Law 1258 of 2008, which defines this business as a society constituted by one or various natural or juridical persons. Under this model, the firm’s owners are only responsible for their own contributions. They are not held responsible for any labor-related obligations, thereby opening up further terrain for new practices of non-standard labor contracts. Alongside SAS, the rise of union contracts between a union and a firm is perhaps one of the unhealthiest developments in

²⁹⁴ The mentioned brochure can be seen in the appendix.

²⁹⁵ This point was made during interviews with the General Director of the ENS, Luciano Sanin, conducted in Medellin, 12 October 2012 and a separate interview with the President of Union Portuarios (UP)-Buenaventura, Jon Jairo Castro, on the 3 October in Buenaventura.

²⁹⁶ Comments made by Carlos Guarnizo, advisor to the Solidarity Center in Bogota, 28 September 2012.

terms of the timid process undertaken to decrease labor intermediation in Colombia. Although union contracts of this nature have existed in Colombian legislation since 1950 (article 482 of the CST), it was only with the outlawing of CTA labor intermediation and a subsequent amendment to the model of union contracts that this modality of outsourcing workers' labor became attractive to the business world and to certain sectors within Colombia's union movement. When a contract is signed between a union and a firm, the union is held directly responsible for all the labor obligations. Furthermore, the second Uribe Government (2006-2010) specifically stated that union contracts fell outside the labor laws on intermediation. In May 2010, the Ministry for Social Protection announced that "contracts involving labor subcontracting have already been regulated by the Government via Decree 1429 of 2010."²⁹⁷

Signing a union contract implies ambiguity in the role of the union as the representative of its members, due to the intrinsic complication that comes with a union assuming a state of bicephaly (being employer and worker representative simultaneously). The very existence of this type of union as a contracting third party leads to a reduction in union autonomy as well as affecting union freedoms vis-à-vis the employer. Any labor demands will fall against the union, rather than the actual contracting firm, which ultimately benefits from the work or service performed. The union must also assume responsibility for the workers' registration with the social security system (as stipulated in article 483 of the Decree 1429 of 2010). Finally, in a complete about-turn in terms of the spheres available for union activity within a union contract, the Labor Room of Colombia's Supreme Court affirmed (see Sentence 13/94 of December 2010) that a union contract is of a merchant nature. Consequently, it cannot involve any collective bargaining.²⁹⁸ As such the promotion of union contracts by firms can be seen as a subtle way of poisoning unions from within. A firm may only accept the existence of a union if that union agrees to sign a union contract. One of the key reforms of the original CST disposition regarding union contracts, set out in the Decree 1429, was that no longer must a union contract be approved by a union assembly. Now, the signature of the union's legal representative is sufficient for the union contract to be approved. Such a practice directly undermines the very structure of democratic unionism, opening the door to union leader corruption.

Since the reforms made to union contracts, this new mode of outsourcing has seen quite a rapid proliferation, although so far, in the port industry, this model has not been adopted. According to the ENS collective bargaining database, the number of union contracts in Colombia went from 53 in 2010 to 160 in 2011.²⁹⁹ In the port industry and especially in Buenaventura, the growth of labor intermediation has led to more than just unstable work contracts. General working conditions have suffered perhaps more than in any of the other principal Colombian ports.

²⁹⁷ Ministerio de Protección Social, Boletín de prensa Prensa 57, 1 May 2010.

²⁹⁸ The ENS' labor lawyer, Andrés Felipe Sánchez, emphasized this point in an email correspondence with the researcher on 11 November 2012.

²⁹⁹ ENS. 2012. Op cit., p.34.

Non-standard Work Contracts and Precarious Working Conditions

The ENS survey of working conditions in the Buenaventura SPRBun-run port terminal highlighted the vast degree of labor subcontracting taking place. And the widespread trend of de-laborization is most worrying. Of the 195 workers surveyed, only 57% responded that they possessed a work contract. The remaining workers labored under a different modality: 62.5% under a service contract (*orden de prestación de servicios*), which is of a commercial nature and does not include any employee benefits; 27.5% under a covenant of association with a CTA; 1.3% with a civil contract; and 8.8% under a different modality.³⁰⁰ Of the workers who possess an actual employee contract, only 46 (or 23.6% of all surveyed workers) have a fulltime permanent contract. The remaining workers laboring under an employee contract do so for fixed time periods; the majority of these contracts last for three and four months, evidencing a very high level of employee rotation.

In terms of wages or income derived from working at the port terminal, a whopping 70.9% of surveyed workers received, as of mid-2011, a sum equal to or below the legal minimum wage (COP \$535,600.000) per month.³⁰¹ The majority of surveyed workers obtained a monthly income ranging from between COP\$50.000 and \$400.000, an amount precariously low, highlighting the pervasive worker exploitation at this terminal. However, in light of the exorbitant rates of unemployment and the post-privatization downsizing and outsourcing of labor, it is not surprising that wage levels are so low. In the words of one long-term stevedore (interview two): “wages are low here because the competition for jobs is so high. Outside the port terminal, people hustle and bustle in order to get one of the few jobs going; as such, the rates either go down or stay stagnant.”³⁰²

In another interview with a 47 year-old stevedore, who had been working on-and-off at the SPRBun terminal for 17 years, hourly and piece rates were discussed. This stevedore had worked for a number of EST and CTAs in recent years, and he stated that prior to the recent prohibition of CTAs engaged in intermediation, stevedores generally worked 12 hour shifts and received only COP \$28,500, a rate of only \$2.375 per hour. With the regulatory change, in accordance with the Labor Action Plan Obama-Santos, the firms undertaking labor intermediation now had to comply with the stipulations of an eight-hour shift. Since this change, the stevedores working for Sotesport (previously called Cotesport) received COP\$19,000 for the eight-hour shift.³⁰³ This worker, after so many years of hard labor at miserable wage levels, had no more than a few months of pension contributions to his name due to a combination of employer fraud, avarice, and a lack of adequate state regulation of the sector.

Another interview (number four) conducted with a 23 year-old male who had worked for six years at the SPRBun terminal, in a variety of occupations (stevedore, technician, transport auxiliary, and archive administration), reiterated the poor working conditions encountered at the terminal. As a stevedore, this worker was hired per shift

³⁰⁰ ENS. Unpublished. Op cit.,

³⁰¹ This sum is equal to the equivalent of roughly USD\$293.50 (conversion made via XE Currency converter) www.xe.com/ucc/convert/?Amount=535.600&From=COP&TO=USD

³⁰² Interview conducted inside the Buenaventura terminal, 4 October 2012.

³⁰³ Interview conducted in the office of Union Portuario, Buenaventura, 3 October 2012.

and earnings were based not on a set hourly rate but rather on the workers' productivity. In other words, he and his co-workers were paid a piece-rate amount. As this was not conducive to hours worked, often the group charged with unloading or loading a container had to work as long as 16 hours straight, but generally the shifts lasted between 10-12 hours.³⁰⁴

In addition to long shifts for piece-meal rates, workers complained of the lack of adequate and real break time and the general lack of clear rules and regulations in terms of the supervision of work at the port. During the interviews with group one—the numerous tally women and the tallyman—these workers complained that they were obliged to work shifts of 12 and even sometimes 16 hours, even though in the port the maximum shift permitted was 10 hours. Although they were formally granted a 30-minute break time for lunch or dinner, the intensity of their jobs meant that they could not actually take a full break. Rather, they were required to eat while working, or make a choice between eating and going to the rest room; there was not sufficient time available to do both. Furthermore, during the period of heightened worker consciousness and mobilization (specifically in reference to the two strikes in January and July-August 2012), three of these women had their contracts terminated by the firm Colombiana de Servicios Portuarios Ltd., without due severance pay. According to these workers, after participating in the second port-workers' strike in July-August, TECSA S.A. terminated its service contract with Colombiana, due to the fact that too many tally women had become members of the UP. Colombiana, in turn, cited the women for not having presented themselves for work three days in a row and decided to fire them due to such incomppliance. The fact that the women were legally undertaking a work stoppage, which had been made public and registered before the Ministry for Labor, counted little.

Perhaps one of the most worrying aspects concerning the labor regimes found at the Buenaventura SPRBun terminal has to do with the complete lack of rules or agreements concerning set wage rates per occupation. The ENS survey underlined the massive heterogeneity in terms of worker income per occupation. The two most prevalent occupations--wincher and stevedore--received monthly incomes that varied between COP\$100,000 to \$1.000,000. While certain differences could be explained by the hours worked or the different rates of productivity between individual workers and working groups, the piece-rate and hourly-rate differentials offered by different intermediary firms are the root cause of such disparity. The vast pool of available but unoccupied workers outside the terminal is the fuel that lights the fire for the intensification of worker exploitation, as it pushes downward the hourly, daily, and piece-work rates. Nevertheless the long chain of labor intermediation that begins from the SPRBun and works its way down is the engine that drives wages and conditions towards the miserable sphere in which they presently rest. And the piecework system, promoted throughout the port sector, is by far the biggest culprit when it comes to worker exploitation.

Stevedores working for a piecemeal rate (often between COP\$3-4,000 per worker for each container loaded or unloaded) generally tend to exceed the stipulated working hour limits, and they receive no compensation or income that is not directly related to the actual time employed in loading/unloading containers or boats. Stated in a more precise manner, "despite taking three or four weeks to complete the loading or unloading of a

³⁰⁴ Interview conducted in the office of Union Portuario, 3 October 2012.

shipping embarkation, the stevedore will not be compensated for the time he/she has employed in this labor. Instead he/she is paid for the exact weight of the goods loaded/unloaded, without any consideration for the time expended.”³⁰⁵

Union Presence and Activity at the Buenaventura Port

In light of the widespread state of worker precarity, the question of union presence and organization at the port becomes of paramount importance. With the privatization of Colpuertos, worker organizations were decimated. Many senior workers and unionists were offered retirement packages, and Sintracolpuertos (the main port-sector union) was disbanded. Since privatization, there has not been one CBA negotiated in the port sector, and permanent and direct working contracts have become the exception when once they were the rule. As mentioned in the introductory section, of the three officially registered unions, only the Unión Portuaria (UP) was interested in ending the long-term trend of precarious working conditions at the port and organizing workers as unionists, rather than as workers on a list from which to select casual laborers, as is the case with the two other unions’ “members.”

The UP proposal was geared towards representing and organizing workers on the basis of improving their concrete working conditions, especially in terms of pressuring for the formalization of their jobs and obtaining salary increases to ensure that their wages were more in line with the actual physical and intellectual labor they performed. With the assistance of the CUT-National, numerous unionist pensioners from Cali, as well as the continual political support and technical assistance of the Solidarity Center, the UP opened a union chapter in Buenaventura in 2009. At the moment of its formal creation, the Buenaventura office counted 120 members, the majority stevedores and wincheros as well as a few tallymen/women.

Initially, the UP-Buenaventura focused on fostering grassroots port worker support for the initiative and looked to unionize workers who were motivated by the cause and energetic about beginning the long struggle to improve the miserable working conditions at the port. In the words of the elected regional President, Jon Jairo Castro, the local union strategy “concentrated not on unionizing vast numbers of port workers just for numerical importance. Rather, importance was placed on unionizing people who were committed to the cause.”³⁰⁶ Clearly, from the outset, the national port worker union proposal of the UP was centered on recapturing the seemingly lost cause of unionism in the port sector. As noted by a 54-year old stevedore and member of the UP, the difference between this national union and other unions was that “it was the only one that has looked to represent workers rather than firms.”³⁰⁷

The opening of the Buenaventura UP chapter was followed by the establishment of port-based union offices in Santa Marta and Barranquilla and then, in late 2011, a fifth office was opened in Turbo, Antioquia, one of the principal export zones for Colombian bananas. There, roughly 70 long-term port workers joined the UP in an effort to collectively contest the poor working conditions in this city, which had been ravaged by

³⁰⁵ ENS. Unpublished. Op cit.,

³⁰⁶ Interview with Jon Jairo Castro, in Buenaventura, 3 October 2012, op cit.,

³⁰⁷ Interview conducted in Buenaventura, 3 October 2012.

paramilitary and guerrilla warfare and spiteful attacks on the population for decades. Nevertheless, as has been customary for many Colombian union initiatives, such initial fervor and hope for change was quickly tempered by the realities of anti-unionist sentiment. The many fictitious contracting firms that managed the chain of labor intermediation in the city specifically targeted the Turbo-based UP members. Most of the founding UP-Turbo worker members were dismissed from their jobs soon after the union was registered.³⁰⁸ In Buenaventura, such employer and business reactions were slightly more poised but nevertheless active in constraining the space available to the union. As such, in order to survive and undertake union activities, the UP began a port-wide campaign to foment worker consciousness, concentrating on informing workers of their rights at work, and then on pressuring the SPRBun and TECSA to formalize labor relations at the port. The following section will summarize and offer commentary on this campaign, highlighting both its successes and failures.

The Campaign to Formalize Work in a Sea of Informality

Solely as a grassroots-driven process of union revitalization and reactivation, the Union Portuaria experience would have ended just as it began: with a whimper. In the context of enhanced global economic integration and the decades-long assault on unionism and job stability, any effort to organize and motivate workers collectively requires a multifaceted strategy and a combination of actors, scales, and cross-border solidarity. And for it to have any political reach and success, it must take advantage of political opportunities and conjunctures.³⁰⁹ In the Colombian case, the long-drawn out and hotly contested ratification process of the US-Colombia FTA offered a window of opportunity for a consolidated transnational action network (TAN) between Colombian unions and labor activists and their US counterparts.

As in the negotiations and disputes leading up to the signing of the FTA between the USA and Central America-Dominican Republic (CAFTA-DR),³¹⁰ widespread complaints of the systematic violation of worker rights, particularly in the export-processing zones (EPZs) of the Latin American co-signing countries, coalesced into a united transnational union campaign to pressure for major reforms of the respective labor laws and the national governments' position vis-à-vis workers' rights and unionization. In the Central American case, this resulted in the inclusion of a labor chapter to the agreement (chapter 16), which states that the signing parties will "strive to ensure" that internationally recognized labor principles, especially those focusing on five main labor

³⁰⁸ See: WOLA. 2012. "Portuarios afrocolombianos estan atacados por la policia anti-motines", 31 August, http://www.wola.org/es/comentario/portuarios_afrocolombianos_en_huelga_estan_atacados_por_la_policia_anti_motines

³⁰⁹ This point is critical and as well as being noted repeatedly during the author's fieldwork in Colombia; it was also frequently expressed by other Central and South American unionists when discussing their own country-wide campaigns to improve working conditions and enhance unionization. See: Anner, Mark. 2011. Op cit.,

³¹⁰ The CAFTA-DR FTA was passed by the US House of Representatives on 28 July 2005 and signed into law by the then US President George W. Bush on 2 August 2005. It includes El Salvador, Guatemala, Costa Rica, Honduras, the Dominican Republic, Nicaragua, and the USA.

rights, will be upheld.³¹¹ As well as these de jure-centered recognitions, the transnational labor advocacy pressure ensured that the FTA included a Labor Cooperation and Capacity Building Mechanism (Annex 16.5).³¹² Of course, it would be foolish to equate more adequate labor regulations with better on-the-ground working conditions and improved protections and guarantees of workers' rights.³¹³ Nonetheless, without first having an improved normative threshold, the possibilities for better regulation of the labor market and broader protections for workers will remain highly precarious.

Following the Central American lessons, as well as those learnt from the various FTA negotiation and union lobbying experiences in Latin America,³¹⁴ the Colombian and US union movement vehemently opposed the FTA as it was perceived as awarding the Colombian state, and especially the two-term Alvaro Uribe Government, for its continued apathy in the face of the systematic violation of worker rights across the country. Indeed, the Uribe government's staunch anti-union sentiment and political stance effectively ensured that the Agreement would linger for five years in the US Congress, as broad sectors of the US union movement and NGOs such as WOLA, in support of their Colombian counterparts,³¹⁵ undertook major political lobbying campaigns to convince political representatives that Colombia's horrid record on human and worker rights violations meant that without change, the FTA could not be sanctioned.

More than being an economic debate, it was a moral one, rooted in what Eddie Webster terms "humanitarian solidarity," a defensive strategy in which human rights violations activate moral outrage.³¹⁶ Colombia's workers, in this specific case, were framed as victims in need of state protection and international union support. Such a stance feeds off the rights-based discourse, which has been the counter face to economic globalization and liberalization.

After many years of intense union-NGO pressure and political lobbying against the FTA during the Uribe reign, the inauguration of the Santos Government in mid-2010 brought about new opportunities for the Colombian and US labor movements and their NGO supporters to move from denouncing labor violations to a position where they

³¹¹ 1. The right to association; 2. The right to union organization and collective bargaining; 3. The prohibition of forced labor; Respect for minimum age employment policies and practices and the elimination/prohibition of the worst forms of child labor; and, 5.

³¹² For a brief overview of some of the problems and benefits of this Mechanism, see: Doumbia-Henry, Cleopatra & Eric Gravel. 2006. "Free trade agreements and labour rights: Recent developments", in: *International Labour Review*, Vol.145, No.3, pp. 195-196.

³¹³ For critiques of the vast difference between norms and practices, see: Marshall, Adriana. 2007. *Explaining non-compliance with Labor Legislation in Latin America: A Cross-Country Analysis*. Geneva: ILO; and, Piore, Michael & Andrew Schrank. 2007. *Norms, Regulations & Labor Standards in Central America*, Studies and Perspectives Series. Santiago: ECLAC.

³¹⁴ Especially, the labor clauses or side agreements that form part of the NAFTA of 1993 (Mexico, Canada and the USA), and the MERCOSUR (originally, Brazil, Argentina, Paraguay, and Uruguay) signed in 1991, as well as the Chile-US FTA (signed in 2003).

³¹⁵ The main Colombian actors involved in the opposition movement to the US-Colombia FTA were the Polo Democrático (the leftist political opposition party), the three Colombian union confederations (CUT, CGT and CTC), the ENS, as well as a number of diverse social movement groups, and NGOs such as RECALCA, CENSAT Agua Viva, among others.

³¹⁶ Comment made by Edward Webster, the WITS University Emeritus Professor of Sociology during a Tele-Conferencing lecture, transmitted to Faculty of the Department of Labor Studies and Employment Relations, Penn State University, on 18 October 2012.

could propose new ways of protecting labor rights. Santos attained the Colombian presidency in the second round of elections on 20 June 2010, and he was inaugurated on the 7 August of that same year. While the Uribe governmental platform was based on division and a concerted attack on all parties and organizations that opposed the president's ultra conservative political-economic platform, Santos looked to promote conciliation and dialogue. This was confirmed by his proposal to form a cross-party coalition as a means of overcoming a Congressional stalemate and obstructionism. His government looked to rebuild the international diplomatic relations that had been so thoroughly dismantled by Uribe's fanatical diatribe against human rights in Colombia and the foreign interventionists. Part of the Santos' strategy involved the nomination of his electoral running mate, Angelino Garzon, one of the founders of CUT Colombia and long-time unionist turned centrist-conservative politician, as Vice President. Garzon was charged with monitoring Human Rights with a particular focus on labor rights as a means of displaying the Santos' Government intention to improve union-government relations in Colombia after their historic Uribe-year lows.

Disentangling the US-Colombia FTA from its Congressional stumbling point attained preeminent importance. As such, the Colombian and US labor movements could now tap into the new spaces open for the discussion and dissemination of policy reform proposals, geared towards strengthening Colombian labor law and its enforcement. As this heterogeneous TAN continued lobbying it also brought together diverse policy proposals that focused on broadening the protections for workers and unionists in Colombia. These proposals were discussed and reworked by certain US Senators and Congressmen as well as by Colombian Congressmen and women, staff at the then Ministry for Social Protection, and staff at the Vice Presidents' dispatch. After much back and forth, the Obama and Santos governments formally agreed upon and signed the Labor Action Plan Obama-Santos in April, 2011.

This plan became a side agreement to the FTA,³¹⁷ focusing on policy mechanisms needed to improve the situation of union and worker rights in Colombia prior to the formal Obama Presidential ratification of the Agreement. Without going into too much detail in terms of the intricacies of the Plan, and thereafter, its weaknesses and failure,³¹⁸ we can note that it contained numerous legal modifications and reconfigurations as a means of addressing 10 major themes. Furthermore, the Plan focused on improving the protection of labor rights and union activity and ending "illegal" labor intermediation, especially in five key economic sectors:³¹⁹ mining, African palm, the sugar cane industry, the cut-flower industry, and the port sector.

³¹⁷ The US-Colombia FTA was formally approved by the US Congress, (both the Chamber and the Senate), on the 12 October 2011. It then received the presidential sanction on the 21 October of the same year. In May 2012, the FTA formally came into effect.

³¹⁸ For a more detailed review of the Plan, see: ENS. 2011. "El Plan de Accion sobre Derechos Laborales. Una nueva frustracion?", *Agencia de Informacion Laboral*, October 2011, www.ens.org.co. For a defense of the Plan by the Colombian Government, see: "Action Plan Santos-Obama", 6 April 2012, www.mintrabajo.gov.co/index.php/tlc-plan-de-accion-laboral/314-documentos/370-action-plan-santos-obama.html?showall=1 (sourced 25 September 2012).

³¹⁹ These sectors were selected for special attention and protection due to the multiple and continual labor rights' violations found in each of these industries. The Colombian labor movement and its US counterparts argued that unionists in these five sectors required additional protection.

Perhaps the most positive aspect of the Labor Action Plan, beyond the specific institutional and legal reconfigurations it propelled, was its focus on increasing the presence and capacity of the state to intervene in labor relations to uphold labor rights where before they had been widely ignored by firms. The creation of the Ministry of Labor was perhaps the first and most emphatic step in that direction. But in terms of harmonizing the often-ambiguous terrain between norms and implementation, it was the plan to strengthen labor inspection that was most important. Under the specifications of the Action Plan, the Ministry was to hire 480 new inspectors,³²⁰ 200 of which would be assigned to the five key sectors.

In the words of the Vice-Minister for Labor Relations of the Colombian Ministry of Labor, David Luna, the newly created Ministry “had to act quickly and strongly but its personnel was insufficient. Due to this the Ministry, with Executive approval, widened its department of inspectors and improved their salary base. As of today, we have 100 new inspectors and by the end of 2012 we will have a further 100. In total, by the end of 2013 there will be 904 labor inspectors throughout the country.”³²¹

Broadening the scope for labor inspection and decreasing the possibilities for corruption, increasing salary rates for often overworked and under-paid inspectors are two of the policy proposals most roundly supported by certain international labor studies’ experts.³²² Nonetheless, even with this institutional strengthening of the monitoring and vigilance of labor relations, Colombia still remains notably short of reaching international standards for inspection. In line with the ILO Conventions 81 and 129 on Labor Inspection in Industry, Commerce, and the Agricultural Sector, Colombia should have up to 2000 labor inspectors to adequately cover the entire country.³²³

Moving on from the creation and strengthening of the institutional mandate of the Labor Ministry and its capacity to monitor and ensure compliance of the labor law, the Action Plan targeted illegal intermediation, especially in the five key sectors. As already mentioned regarding CTAs, the Law 1450 of 2011, via article 63 directly prohibits the misuse of cooperatives or other forms of labor intermediation that negatively affect labor rights. Furthermore, Decree 1228 of 2011 authorized the transfer of 100 labor inspectors to a special branch focusing solely on cases involving cooperatives, especially in the five key sectors. And finally, Decree 2025 of 2011 set out to clarify previous laws regulating cooperatives as well as harmonizing these laws. This decree was formulated to set out a more clear distinction between what could be termed “permanent core business” and “intermediation” as a means of more coherently addressing violations and abuses of workers’ rights. Furthermore, this decree clearly sets out the instances in which a cooperative would be found in violation of laws concerning intermediation.

Together with the many other normative and institutional reforms included in the Labor Action Plan, the stage was set for a new era in workers’ protections in what for decades was considered to be the world’s worst country in which to be a unionist. However, before congratulating the Santos Government for its vision in listening to

³²⁰ This specification was implemented via Decree 1228 of April 2012.

³²¹ Interview conducted in the office of the Vice Minister David Luna, Bogota, 10 October 2012.

³²² See: Piore, Michael J. & Andrew Schrank. 2007. “Trading up: An embryonic model for easing the human costs of free markets”, in: *Boston Review*, www.bostonreview.net

³²³ See: ENS. 2011. “El Plan de Accion sobre Derechos Laborales. Una nueva frustracion?”, op cit., p.3.

domestic and international critiques in order to establish new parameters for labor relations, one must endeavor to see the ways in which the reconfigurations associated with the pressure to formulate a Labor Action Plan affected the conditions on the ground in Buenaventura. This task becomes two-fold. Firstly, we must ask the question: to what extent did the moral-based international campaign of union solidarity link to local actions of protest and workers' organization based on discourses that proclaimed and demanded respect for the rights of port workers? Secondly, we must then determine the degree to which the institutional and legal changes made as part of the Labor Action Plan were understood by workers and used as leverage in their demands. Finally, we must evaluate the extent to which these normative-institutional changes were actually enforced and upheld at the port.

Activating Worker Consciousness; Protesting Labor Precarity

It would be one-dimensional to think that the discourse of rights only affects those people who move in the formal and upper echelons of the political sphere. Indeed, while much political rhetoric is couched in abstract conceptions of citizenship and rights, many grassroots movements have appropriated the discourse of rights and used it to leverage the state and to demand concrete changes.³²⁴ In the Colombian case, grassroots worker protest has been quite prolific in recent years: for 2011 there was a total of 228 worker mobilizations of a diverse nature (including strikes, work stoppages, marches, sit-ins, and so forth); the highest number in over 20 years.³²⁵

In the ports of Buenaventura such broad national tendencies also took hold. With the consistent political and logistical support offered by the Bogota-based Solidarity Center, the newly-founded UP Buenaventura office also began to perceive major disjuncture in terms of the international importance of human rights in political discourse and government policy and the consistent violation of workers' rights at the port. Participating in a number of workshops financed by the Solidarity Center and undertaken by ENS' staff and union experts from the CUT, the port workers began to awaken to the fact that as workers they had rights and that, irrespective of the precarious socio-economic situation of the city, their rights were inalienable and should therefore be guaranteed by the Colombian state. These workshops had two broad objectives: first, the ENS labor experts explained the legal reforms associated with the prohibition of CTAs as business modes for undertaking illegal subcontracting and their ramifications for workers who had been or still were caught up in these chains of intermediation via CTAs. The ENS staff also explained and discussed with the workers present the legal norms associated with intermediation, so that workers knew of their rights and could then know when they were being contracted illegally, without the stipulated benefits. Second, both the ENS staff and the CUT delegates focused on the broader topic of labor rights (both as set out in International ILO Conventions as well as in the Colombian Constitution) and especially union rights.

³²⁴ For a more conceptual take on such scales of rights-based protest, see: Della Porta, Donatella & Sidney Tarrow (Eds.) 2005. *Transnational Protest & Global Activism*. USA: Rowman & Littlefield.

³²⁵ Data taken from the ENS' *Dinamica Sindical* database, www.ens.org.co

These workshops were structured and designed to ensure that not only would the participants learn about the legality of labor relations in Colombia, but also they would also be informed of the broader terrain of rights' discourses and especially, their inalienable quality. And, thereafter, workers would learn of the legal tools available to them to defend their rights, both through the union as well as individually, via the Tutelage Right of Action (*Acción de Tutela*). Such workshops were designed and undertaken as a means of fomenting worker consciousness, so that workers would understand both their objective and subjective roles in capitalism and more clearly delineate the ways in which they were being exploited by the businessmen who propelled the complex chains of labor intermediaries as well as the principal operating firms and the SPRBun.

Many of the UP members in Buenaventura mentioned the union workshops as being the trigger that activated their motivation to participate in the latter protests and mobilizations at the port. In the words of interviewee six, a 48 year-old woman who had worked for a total of 21 years in different capacities at the port:

Sometimes you think that it is normal that the boss and the supervisors ride roughshod over you because you're from the lower class; it's normal that they tramp down on you. But when you hear someone tell you that this is not normal, that it's not normal that you should have to ask for your rights; that you have rights and you need to make sure that these rights are respected, well, you begin to say, what? What was I thinking? Was I asleep? Well, after this, you begin to wake up and see things differently.³²⁶

Interviewee four also succinctly summarized the benefits that the workshops offered the UP unionists:

It's a big plus when you can count on an organization that can provide knowledge to workers about their labor rights. This knowledge helps us to defend our personal patrimony. Just as the boss needs to find out the things that help him to be successful, us workers also need to find out our rights at work. Before joining the UP and participating in the workshops, I didn't know that I had a right to health coverage, or that I had a right to a pension and to occupational risk insurance.³²⁷

Workshops, alone, however, will never be sufficient to foment a change in consciousness and ignite a sense of worker or class solidarity aimed at challenging the powers that be or the status quo at work. Many workers who were interviewed during the fieldwork spoke of the initial work stoppage in January 2012 as being perhaps the key instigator of a collective sense of enough is enough. The long-time and continuously intensified degree of worker exploitation at the Buenaventura port would eventually bring about a counter-reaction from within. Indeed, this is effectively the thesis at the basis of Marx's and Engel's analysis of the development of capitalism in the mid-19th century and the development of an international brotherhood/class of workers, set out in the Communist Manifesto, that would bring capital to its knees and to its end. More recent Marxist labor scholars have also argued of the cyclical nature of the capital-labor conflict

³²⁶ Interview conducted in Buenaventura, 4 October 2012.

³²⁷ Interview conducted in Buenaventura, 4 October 2012.

as it is borne out across sectors and countries over many years and decades: the spatial shift has capital moving to escape increasing worker power (through unionization and the power of association), resting in new terrains of production with lower cost and less organized workers. With time, however, this process repeats itself because essentially, try as capital (and many sympathetic neo-classical economists) may, workers' labor-power cannot be treated as a commodity.³²⁸

Workers in Buenaventura's ports, despite the multiple structural impediments to worker resistance, could not withstand the perpetual race-to-the-bottom of their working conditions without eventually fighting back. As Marx prophesized, with time and continual exploitation, workers would come to see that they had "nothing left to lose, but their chains." The mere process of observing fellow workers publically protest at the appalling working conditions and the perverse chains of worker subcontracting that took place at the port allowed many workers to comprehend that their individual struggle to "get by" was really a broad collective one shared by all the workers there who were denied decent working conditions. It is for this reason that once this small protest and work stoppage began, it quite quickly drew in many spontaneous supporters and, at a later date, helped to ensure that more workers would begin to voice their demands in a collective and even contentious manner.

Although a few of the UP members had previously been members of Sintramarítimos, they had never received union-centered training and educational processes that would help them to understand and better reclaim their rights at work. Indeed, as already noted, since the privatization of Colpuertos and the dismantling of Sintracolpuertos, unionism in Buenaventura had meant little other than a strange means of advancing or at least linking with the vast chain of labor intermediation. As such, apart from the significant on-the-ground and decades-long union training of the President of UP-National, Javier Marrugo, together with a few other mostly Cartagena-based UP members, there was a dearth of union knowledge and experience in Buenaventura. Furthermore, at the SPRBun port terminal, "real" unions were not expected or permitted to assume their roles as worker representatives.

At this terminal, the unwritten rule was that "workers must be thankful to the employers for work, irrespective of its quality. As the boss always states, 'outside the port there are thousands of people looking for work.'³²⁹ Even the CEO of the SPRBun stated that unions at the port have functioned as go-betweens: ". . . all of them can manage to get something for their efforts . . . but none of them really knows how the port operates."³³⁰ Under such pressing constraints, the elected leaders of UP's Buenaventura office faced an almost insurmountable task in pressuring for union freedom and the formalization of working conditions at the port. First and foremost, in the first two years of the UP's existence in Buenaventura, the elected leaders were not offered any spaces in which they could undertake dialogue with SPRBun and TECSA management. According

³²⁸ See: Silver, Beverly. *Forces of Labor: Workers' Movements & Globalization Since 1870*. USA: Cambridge University Press, 2003; see also: Arrighi, Giovanni. "Marxist century, American century: The making and re-making of the world labor movement." In: Samir Amin, Giovanni Arrighi, Andre Gunder Frank and Immanuel Wallerstein (Eds.), *Transforming the Revolution: Social Movements and the World System*. Monthly Review Press: New York, chapter two.

³²⁹ Interview six, op cit.,

³³⁰ Interview conducted by ENS' researchers in July 2011 in Buenaventura.

to the Labor Advisor to the Vice Presidency of Colombia, Oscar Gutierrez, whenever a member of the UP wished to organize a meeting with port management, the Vice Presidency would have to intervene and attempt to negotiate the visit. In his words, in the port sector “it has not been possible that the employers accept, in real terms, union activity. Formally, they say that the workers can unionize but if they do so, the following day they discover that they no longer have a job.”³³¹ Mr. Gutierrez also affirmed that efforts by the CUT to establish an ongoing dialogue with the SPRBun and the main operating firms had not come to fruition.

In such a climate of acrimonious and implicit anti-unionism, the UP was forced to adopt a different tactic as the only means of pressuring for change. In 2010, Javier Marrugo, on invitation from the Solidarity Center, travelled to Washington as part of an exchange program to help Colombian union leaders network and acquire new skills from US partnerships. The following year, the President of UP-Buenaventura, Jon Jairo Castro, together with a small delegation of union leaders from the sugar cane sector, education sector and private security industry, was invited by the AFL-CIO to travel to Washington, to denounce the continued violation of labor rights and the hostile and implicit anti-unionist stance undertaken by all employers in the SPRBun port terminal. Upon his return to the city, Jon Jairo was threatened and together with the UP’s General Secretary, he was assigned a bulletproof vest as a means of protection in the event of an attempt on their lives. Meanwhile, WOLA, the Washington Office on Latin America, sent staff to Buenaventura to assist the UP in publicizing the labor rights’ violations at the port.

With the promulgation of the Labor Action Plan, the speedy Congressional approval, and Presidential ratification of the new labor laws, the UP and its Colombian and US supporters began an effort aimed at pressuring the Colombian government to oblige the SPRBun and the principal operating firms to restructure their worker hiring practices in accordance with the new laws and decrees. Unfortunately, such efforts went nowhere. Although management personnel from the SPRBun did eventually meet and discuss the UP’s proposals, they clearly stated that their hands were tied, and they could not get involved in regulating the labor relations at the port. The SPRBun was, in a claim already mentioned, nothing more than an administrative firm, not a port operator. Attention then turned to TECSA, the most important primary operating firm at the terminal. Not surprisingly, TECSA’s management team did not wish to discuss the manner in which it operated its firm with either unionists or workers, so the UP members decided to adopt the only tactic that remained--worker mobilization and protest designed to both hurt the employers where they most felt it: in their profits; they rattled the local political sphere in the hope that, with international support, their plight would reach the ears and eyes of the Colombian Government and influential US members of Congress.

Alongside the quite frequent union training programs that had begun in 2009, the UP members, distinguished by their motivation to the cause, had begun canvassing for support among diverse work sections of the port terminal. Winchers and stevedores were by far the dominant numerical basis of the UP-Buenaventura at the port, alongside the *braceros* (casual laborers). But worker bitterness and dismay at the precariousness of working conditions at the port was a broadly felt sentiment, something later confirmed

³³¹ Interview with Oscar Gutierrez, Labor Advisor to the Vice President’s Office, conducted in Bogota, 28 September 2012.

during the case-study author's fieldwork at the port.³³² In order to adequately pressure the TECSA management, the UP's local leaders realized that they would have to attain support from a wider occupational base, particularly as the stevedores and winchers were the easiest workers to replace if a protest, worker slow-down, or stoppage were to be organized. A small group of machinery operators who had discreetly affiliated with the UP began the difficult task of convincing their co-workers of the need to join the UP and demand that TECSA contracted them directly.

Conjuring up worker support outside the union UP base was a highly arduous task. "Trade union" was a distasteful term for more than just the port terminal's operating and contracting firms. The perilously thin-line between unions and sham cooperative firms in Buenaventura was a daily reminder of the risks involved in trusting union leaders to have the workers' best interests at heart. Furthermore, the last terminal-wide work stoppage in 1997, which had been advanced and organized by diverse union leaders and which culminated in the presentation of a list of demands to the SPRBun and the other main firms became, after a two-month period of initial jubilation, a major failure. For some reason the SPRBun and the main operating firms wriggled their way out of negotiating and signing a CBA with the unions, leaving the small and diverse contracting firms responsible for an agreed-upon salary increase. Many workers today complain that the failure of this stoppage and negotiation process was due to union corruption; many still believe that certain union leaders of the time were paid off to ensure that no enforceable CBA came into existence.³³³ Whatever the truth may be, the UP unionists faced an uphill battle in assuring their fellow workers that without worker collectivity and a combined show of strength all the labor law changes in the world would come to nothing in the distinct everyday world of the Buenaventura port terminals.

In the case of the machine operators, although there were only a few UP members as of 2011, worker discontent was rife. These male workers were qualified machine operators with certificates from SENA,³³⁴ but they were paid less than the minimum wage, receiving, as of 2009, only COP\$2,900,000 per hour as the set rate. The principle complaint they had against TECSA, which was their boss but not formally their employer, was that their jobs were perilously underpaid and without any semblance of stability. According to a group of TECSA machine operators, they had no fixed or permanent shifts. Instead, they would all turn up for work daily and hope that the management would put them to work. If successful in their petitions, they would work 12-hour shifts without the legal stipulations in terms of health, pension, and occupational risk insurance. Prior to even hearing about the creation of UP, these workers had attempted, unsuccessfully, to discuss and improve their working conditions and pay scale

³³² During a near daylong informal tour/scout of the port terminal from the inside, the author managed to speak with and interview workers from a variety of occupations: stevedores, cleaners (both male and female), grain distributors, tallywomen, as well as management security. All of the workers with whom the author spoke complained about the pay, the forms of hiring/firing, the arbitrary disciplinary procedures, the stress and intensity of working shifts and hours, among other aspects.

³³³ Comments made during a focal group session with 32 members of the UP-Buenaventura, Buenaventura 3 October 2012.

³³⁴ SENA stands for the National Training Service. It is the state entity in charge of vocational training and educational courses; see: www.sena.edu.co

with the TECSA management.³³⁵ By the end of 2011 their patience had run out. After repeated discussions with UP members, these workers decided that to effectuate change they needed to move from debate and complaints to worker action and protest. The stage was set for the first work stoppage at the port terminal in nearly 15 years.

Work Stoppages in Buenaventura: Pressuring for the Formalization of Work

After many fruitless attempts at negotiating better working conditions for TECSA's principal and key workforce, the UP, bolstered by the new unionization of 110 TECSA machine operators, decided to undertake a work stoppage at the SPRBun terminal. On the 17 of January 2012, 160 TECSA S.A workers stopped work and began a UP organized worker meeting directly outside the entrance to the port. These workers, under precarious, paid-by-the-hour work contracts with the TECSA contracting firm, Accion S.A., demanded that TECSA directly contract them and that their salary base increase and their overall working conditions improve. The main argument used by the UP in justifying this work stoppage was that these operators undertook "permanent core business" at the port and as such, TECSA could not continue to utilize illegal labor intermediation—through Accion S.A.—as a means of avoiding the costs associated with formal and legally-compliant labor contracts.

As word travelled around the port installations, more workers joined in the work stoppage. Particularly notable was the fact that approximately 80 crane operators who had direct work contracts with the SPRBun united in the stoppage to demand that their salaries be increased to the level of their fellow colleagues in the Cartagena port. Such a decision demonstrated a sense of unity in action of both the mass workforce of casual and non-standard workers and the very small population of directly contracted workers. Indeed, in Buenaventura, even the few workers who had formal work contracts still received quite menial wages, while being forced to labor in strenuous, inhospitable conditions. The TECSA focused work stoppage took place at a key moment in the FTA-related discussions. International and particularly US union pressure was still high and as the port sector was one of the targeted focal points of the Labor Action Plan, something had to change so that the Santos Government could show that change was taking place outside the formal realms of Bogota's political sphere.

The work stoppage continued for eight days, hurting TECSA's bottom line and hurling port workers and the UP into the spotlight locally and nationally. A bilateral negotiating commission including TECSA management, a commission of port workers, UP union leaders and representatives of the CUT-National, came together on 24 January as a means of bringing the stoppage to an end. This commission finally signed an agreement that had as its basis the direct hiring under indefinite contracts of 80 of the machine operators that were previously paid by Accion S.A. The remaining operators would not be immediately hired directly by TECSA, but they would receive the same wages as their 80 counterparts, what amounted to an increase of approximately 20%.³³⁶

³³⁵ Comments taken from the group focal session with UP members, which included approximately eight newly formalized TECSA machine operators, Buenaventura, 3 October 2012.

³³⁶ Comments made by Jon Jairo Castro during the focal group session, op cit.,

The relative success of this work stoppage and the UP-led process of fomenting worker consciousness had a ripple-on effect throughout the port. Shortly after the machine operators had achieved the previously unthinkable goal of attaining direct contracts with TECSA, a group of roughly 30 maintenance workers presented a petition to TECSA demanding direct contracts and the corresponding benefits.³³⁷ And perhaps more striking than direct petitions was the fact that after the January work stoppage and the relatively successfully labor accord, workers across the terminal now understood that a new type of union was on the horizon and, even more importantly, that workers did have rights and that they could fight for them.

The situation for female port workers was without doubt even more onerous than for male port workers who were hard-worked, underpaid, and could count only potluck job stability. Many of the female workers interviewed during the author's fieldwork complained that job mobility was a fiction for women. Supervisors were almost always men and mid-level and senior managers were only men. In the words of one tallywoman (interviewee 4): "There has always been lots of discrimination in terms of ascents. Women can never be more than supervisors, and it's doubtful that you can even reach this role. Meanwhile, men scale the ladder."³³⁸ Many tallywomen had taken note of the January work stoppage even while they had not participated directly in it. Indeed, there were but a few tallywomen who were members of the UP-Buenaventura at the beginning of 2012. This was due to the quite explicit anti-unionist sentiment that prevailed throughout the port. Even to voice support for collective action or unionization was sufficient reason to lose favor with bosses and risk losing one's job. This preference to "aguantar todo lo malo calladamente"³³⁹ (silently put up with one's plight) would change as worker inconformity grew across the terminal.

The initial relief for unions and workers that TECSA had at least negotiated and accepted the necessity of directly hiring a group of workers turned into despair as the months wore on. UP members and CUT representatives realized that despite all the Ministry of Labor's high rhetoric, it did not appear to be taking real interest in the plight of port workers. On the one hand, the Ministry in accordance with the Labor Action Plan had set out to improve its system of prevention, inspection, and control. According to the Sub-Director of Territorial Management of the Ministry of Labor, Stella Salazar, the revamped ministry began a new program of inspection and control which had two phases: the first being prevention-oriented, focusing on giving administrative assistance to firms so that they could comply with labor norms, especially regarding intermediation. The second phase focused on visits to the many EST, the CTAs, and other contracting firms, as a means of regulating their activities.³⁴⁰ As part of this plan, the Ministry had undertaken 12 investigations and countless visits to the offices of port-based businesses, which culminated in the imposition of 10 sanctions as of October 2012, for a total of US\$7 million in fines.³⁴¹

³³⁷ See: ENS. 2012. "En el Puerto de Buenaventura se dan primeros pasos para la formalizacion laboral", *Agencia de Informacion Laboral*, 2 February 2012.

³³⁸ Interview 4, op cit.,

³³⁹ Interview 6, conducted 4 October in Buenaventura.

³⁴⁰ Comments taken from an interview with Stella Salazar in Bogota, 8 October 2012.

³⁴¹ Comments made by Vice Minister for Labor Relations, David Luna in an interview in Bogota, 10 October, op cit.,

On the other hand, while such heavy fines had never before been heard of in the sector, there remained serious questions as to the willingness of the Ministry to pressure for concrete change on the ground in Buenaventura in terms of pushing for union freedom and firm-union dialogue at the port. Leaders of the UP stated that on no occasion had the local labor inspectors consulted the workers as to how labor relations and intermediation practices were undertaken at the terminal. Visits to firms and fines focused on establishing the degree of “financial independence” of the contracting firm in question and whether or not associates of the CTAs in existence actually had access to the economic proceeds of the cooperative and whether they really owned the capital and assets of the cooperative, in line with the stipulations of Decree 2025 of 2011. In the words of the General Director of the ENS, Luciano Sanin, the problem with the method of undertaking labor inspection in Colombia is that “the inspectors undertake visits but these are centered on the firms’ offices. In the meantime, the inspectors leave to the side what actually occurs at the port.”³⁴²

With labor inspections conjuring up not unsubstantial fines, many CTAs had begun the process of changing their juridical name and business figure (*su razón social*). But concrete labor relations had not changed for any of the port workers apart from the 110 TECSA machine operators who had received higher salaries and for most, a formal and direct work contract. The Ministry had not really established itself in its supposed role of fomenting social dialogue. The Vice Minister of Labor Relations, David Luna, stated that as part of the Ministry’s policy of promoting respect for unions and encouraging social dialogue, there had been a number of Social Dialogue meetings both in Bogota as well as in diverse departments. If a union requests the Ministry to pressure the firm in question to negotiate, the Ministry is now authorized to order firms to do so.³⁴³ Nonetheless, according to Fabio Arias of the Executive Board of the CUT-National, the tripartite meetings organized by the Ministry had been nothing but a display of “discursive commitment to social dialogueThe business sector had refused to negotiate the implementation of concrete policies aimed at formalizing working relations in the port sector and especially at Buenaventura.”³⁴⁴

The lack of commitment from the Ministry to actually examine how the fundamental labor rights of port workers were being violated day-in and day-out created renewed cynicism from UP members and leaders. It seemed that while the Labor Action Plan was being hailed as marking a new beginning in labor relations in Colombia,³⁴⁵ workers were still facing a notoriously uphill battle to organize and effectuate positive change for workers throughout the economy. For many of the tallywomen and men who were shuffled between contracting firms, according to the whims of TECSA management, their patience was fast running out.

After the January work stoppage, in which the vast majority of tallymen and women did not participate, TECSA made a bid to separate and disperse workers as a means of reducing the chances of any future collective unrest. A group of roughly 70

³⁴² Interview with Jose Luciano Sanin in Medellin, 12 October 2012.

³⁴³ Interview with David Luna, op cit.,

³⁴⁴ Interview with Fabio Arias in Bogota, 9 October 2012.

³⁴⁵ See, for example: “Punto para los trabajadores”, in: *Semana*, Economic section, 18 June 2011, www.semana.com

tallymen and women (30/40 respectively) had worked for Accion S.A., which had been awarded the tally contract by TECSA for approximately two years. When the work stoppage finished, TECSA unilaterally terminated this contract and its supervisors told half of the workers that they had to take their CVs to a different firm, Empresa Colombiana, so that they could be considered for selection. The remaining workers stayed with Accion S.A. The new tally contracting firm rehired the same workers, but they were coerced into working three days without pay (as a supposed means of evaluating performance), and they were then given a two-month trial period. After this arbitrarily decided two-month came to an end, a number of these workers were fired, saying that they had failed the trial. In response the tally workers organized, without UP assistance, a work stoppage, which lasted from 3-6 June 2012. This pressure forced the firms' hand and the fired workers were reinstated and the two-month trial period was eliminated. But once again jubilation turned to despair as the work regime became even more arduous as they were pressured into working not 10-hour shifts but 12 to 16-hour shifts.

After many informal and formal discussions and meetings with UP leaders, the 70 tallymen and women joined the UP. From here the union decided to undertake another work stoppage, this time one that would incorporate various occupational work groups. The new work stoppage and worker protest took place at the end of August, lasting a total of four days, with mass worker support and participation. However, while the first stoppage had led to a relative union victory, the second major stoppage ended in major defeat for the workers. During the work stoppage, TECSA unilaterally terminated its contract with the Empresa Colombiana due to its failure to keep the workers in line and out of protest activity.³⁴⁶ The workers who had participated in the stoppage were fired on the basis that they had not presented themselves for work during three consecutive days. During the work stoppage, despite the fact that the UP had made the petition to the Ministry of Labor that it undertakes an inspection of port-located machinery, ensuring that it was all safe and not in danger of vandalism, as a means of authorizing its registration of the labor conflict, the officials never arrived. In their place, the state sent its repressive arm, authorizing the entry of police into the terminal to assist "scab workers" to replace those workers who had joined the stoppage. Furthermore, the ESMAD, the special anti-riot police unit, arrived to break up the peaceful worker protest. In the process, numerous workers, both men and women, were injured, including a pregnant tallywomen who was beaten to the ground.

In the wake of this violently repressed work stoppage, TECSA and many of its intermediary firms began firing workers who had taken part in the protest. Indeed, according to Jhon Jairo Castro, while the January work stoppage had led to the direct hiring of 80 machine operators, the August stoppage left in its wake approximately 80 workers from diverse occupations "vetoed" from entering the port. No new contracts were negotiated and while numerically, the UP-Buenaventura remained with the same number of members, many of them now were either banned from working at the port,³⁴⁷

³⁴⁶ Comments made by the tallywomen interviewed on 3 October 2012 in Buenaventura.

³⁴⁷ Due to the prevalence of intermediation at the port and firms hiring workers on a per shift or "per ship" basis, most workers pay for an entry card that permits them to enter the terminal, after which they can

or they could formally enter the port but their association with the union generally precluded them from the firms offering of a day's work.

Concluding Remarks

Reflecting on the campaign to formalize the precarious state of workers at the Buenaventura port, we believe that a conclusive evaluation remains, as yet, elusive, as the struggle is far from over. Numerically, as already noted, there have been no positive changes in terms of the number of workers who have seen notable improvements in their working conditions. The initial success of the January work stoppage was halted by the anti-unionist stance of the employers following the August strike. However, as argued by Luciano Sanin, in situations of such categorical anti-unionist sentiment where the labor supply far outstrips demand, one cannot expect triumphant union success on a short-term basis. The success of the Buenaventura and indeed nation-wide organizing and formalizing campaign in the port sector is based on the fact that after two decades of union demise and indeed fossilization, workers have rediscovered their consciousness and unionization is now a theme that is discussed throughout the ports, both by workers and firms.³⁴⁸ According to Fabio Arias of the CUT, the success of the initiative lies in its ability to mobilize workers around the theme of worker formalization and decent work. Furthermore, the manner in which the UP and its leaders have stuck with their goals of pressuring for work formalization at the port has ensured that the union has gained notable appreciation and support from the port workers. This in itself is a marked turnaround from recent decades.³⁴⁹

According to Oscar Gutierrez from the Vice President's Office, overall change in the manner in which labor relations are managed and governed has been too slow. The Vice President's Office, understaffed and under-equipped, has assumed the complicated role of "putting out fires" in various parts of the country, rather than working on designing, effectuating, and monitoring changes in terms of how labor rights are upheld.³⁵⁰

Perhaps in the case of the UP-based campaign some degree of blame for the failure to more successfully protect members from being fired can be placed on the union's national strategy. As a means of ensuring its national reach and tapping into the temporal opportunities for unionism that appeared on the eve of the formulation of the Labor Action Plan, the UP attempted to move quickly. In a spiraled movement, its leaders looked to convoke and unionize workers, particularly in Turbo, as early as possible as a means of then handing in a list of demands to the principal operating firms and pressuring for negotiations. The power of mobilization was used as an under-hand threat, as it still remains the biggest form of union power. However, the UP failed to develop a strategic plan of action that could ensure both a strong mid- to long-term organization plan as well as protecting members from the heavy-handed reprisals of the

search for work. This system is the basis through which intermediation thrives and survives, despite the many normative changes that were pushed through as part of the Labor Action Plan.

³⁴⁸ Interview with Jose Luciano Sanin, op cit.,

³⁴⁹ Interview with Fabio Arias, op cit.,

³⁵⁰ Interview with Oscar Gutierrez, op cit.,

business sector. Before thinking about presenting lists of demands to firms, a union should have in place a definitive structure. This is built by following the steps of unionizing workers and notifying the respective authorities of their affiliation; determining the makeup of union leaders protected by union law (*el fuero sindical*); unleashing a political campaign that highlights the precarity of working conditions in the sector as well as the prevalence of anti-union practices; and finally, when enough workers are unionized and organized, one can present a list of demands. Particularly for the case in Turbo, such steps were not followed and at least 70 UP members were fired and left to “invent” some way of surviving in a town where the banana was king and work at the port was one of only two real forms of obtaining wage work. Nonetheless, this is a common problem in the Latin American region where, in many countries, unions are permitted to register with a bare minimum number of workers rather than a majority. As such, many small unions develop a leadership structure and petition for their demands before establishing a solid worker base. In this way, their power of leverage through association remains very weak and at times, stillborn.

Such a critique, however, should not be stretched too far. This case-study has clearly illustrated that despite the many positive reconfigurations set in place as part of the ratification of the long-frozen US-Colombia FTA, especially the Labor Action Plan, concrete labor-related changes on the ground have yet to be made at Buenaventura’s SPRBun-run port. Here, union freedom remains an entirely foreign concept to the business sector, and workers continue to be fired and mistreated simply because they ask for their workers’ rights to be respected. While the Ministry of Labor has begun the task of internal restructuring in line with the new normative and administrative dictates, as well as positively reactivating its department for inspection, which was for too long understaffed, under-funded, and under-trained, it has yet to adequately enforce compliance with the laws concerning the prohibition of illegal labor intermediation.

Broad Reflections on How to Improve the Enforcement of Labor Standards and Labor Law

We come then to the oft-repeated question that frustrates many labor scholars and irritates many governmental labor lawyer officials: What is the best way of harmonizing the gap between normative dictates and their enforcement in diverse sectors and diverse countries? This question, central to understanding the still significant constraints facing workers and the UP in the SPRBun port regarding their inability to uphold their legal labor rights, is also one which could be stretched to cover multiple sites of labor-capital-state conflict throughout the global economy. Is the answer simply to bolster the Ministry of Labor, providing it with more resources and more labor inspectors who are better trained and better compensated? Looking at the Chilean, Dominican Republic³⁵¹ and more recently, at the Colombian case, this has been the preferred response. Without doubt, this is an important and positive step forward. Indeed, in the opinions of Piore and Schrank, the revamped Latin American model of labor inspection, compared to the US model, is “. . . better able to reconcile the need for regulation with the exigencies of

³⁵¹ See: Schrank, Andrew. 2009. “Professionalization and probity in a Patrimonial state: Labor inspectors in the Dominican Republic”. *Latin American Politics & Society*, No.51 (2), pp.91-115.

economic efficiency.”³⁵² Notwithstanding the fact that one should be hesitant of offering evaluations so early on in the process of institutional transformation, the results of this case study do not hold favorably to such arguments. This is in no way to belittle the efforts being made by the Minister of Work, Rafael Pardo, and his nation-wide team.

Rather, the case study has shown that the problem of regulating firms in Buenaventura and Colombia in general and ensuring that they respect the labor law and guarantee the labor rights of the Colombian workforce has very structural and cultural-political roots. More and better-paid labor inspectors may mediate the problem, but such a policy shall not overcome it, especially when these labor inspectors, very knowledgeable about the specificity and breadth of labor law, remain quite removed from understanding what actually happens “within” labor relations. How do firms interpret, ignore, or comply with labor law dictates in a manner that best suits their concrete interests, rather than in a way that first prioritizes the respect for workers’ rights? An alternative approach to ensuring widespread respect for workers’ rights is one in which the onus is on state officials and is shared by recognized worker representatives to “enforce and monitor.” Such an approach would involve a vision of enforcing labor standards that is rooted in tripartism. Herein, workers’ organizations would be given “equal standing with government and employers to supplement complaint-driven and targeted inspections”³⁵³ Such a reconfiguration would not be a new form of non-state governance of the labor market, and it would best be suited to sectors or industries marked by historical anti-unionist practices, low wages, high work-place health problems, and risks of accidents. Indeed, while there is ample literature attesting to the spread of endeavors associated with Corporate Social Responsibility, such as Codes of Conduct, which are based on firms outlining standards of production and working conditions that should be upheld in outsourced supplying factories, there have been too many cases where such initiatives are found wanting in practice, especially in terms of their convenient ignorance of FoA rights, and anyway, such codes are generally associated with the apparel sectors and global brands.³⁵⁴

Neither would this tripartite proposal be directly linked to the bilateral initiative promoted by global union federations: International Framework Agreements (IFAs), which look to ensure that workers’ organizations are directly involved in the design and implementation of company codes of conduct. For while such mechanisms do bring worker unions to the negotiating table, they remain plagued by problems associated with their geographical reach.³⁵⁵ As a side point here, after studying the UP organizational and formalization campaign, it does appear that this the UP lacks international industry-based worker support. Due to unhelpful, personal disputes between union officials, the UP has yet to negotiate its affiliation to the International Transport Federation (ITF), one of the

³⁵² Piore, Michael J. & Andrew Schrank. 2007. Op cit.,

³⁵³ Fine, Jennifer Janice & Jennifer Gordon. 2012. “Unpacking the logics of labour standards enforcement: An alternative approach”. Chris Warhurst, et al., (Eds). *Are Bad Jobs Inevitable? Trends, Determinants & Responses to Job Quality in the Twenty-First Century*. New York: Palgrave Macmillan, pp. 193-207.

³⁵⁴ See, for example: Locke, Richard et al., 2007. “Beyond corporate codes of conduct: Work organization and labour standards at Nike’s suppliers”. *International Labour Review*, Vol. 146, No.1-2, pp.21-40.

³⁵⁵ See: Stevis, Dimitris. 2010. “International framework agreements and global social dialogue: Parameters and prospects”. *Employment Sector, Employment Working Paper No.47*, International Labour Office: Geneva.

strongest and most collaborative GUFs. This seems like a missed opportunity as the ITF, based on the transport industry's logistical power in an ever-more integrated global economy, has done much to improve working conditions in seaports and in sea vessels the world over. The UP could benefit from its support and experience of negotiating with and pressuring port-based firms.³⁵⁶

The trilateral proposal of renovating the practice of workplace inspection simply seeks to reaffirm the central role the state and its governmental apparatuses have in ensuring respect for labor standards and labor law. However, in certain sectors marked by flagrant and continual labor rights' violations, states must consider widening the role played by workers' organizations and union-backed worker centers, by listing violations and moving to ensure that the state can and does respond to eradicate such practices. The port sector in Colombia, like the other four sectors for special monitoring in the Labor Action Plan, is one such industry, particularly in that the SPRBun, like all but one of the country's Regional Port Societies, is a part-public-owned firm, with a percentage of ownership staying with the respective municipal mayor's office where the port is based.

This proposal would not mean transforming unionists into new inspectors per se. Rather, it would involve the Labor Ministry opening up formal avenues for union volunteers' involvement in monitoring and effectuating disciplinary action. There are some novel and interesting examples of such collaboration in the USA. As mentioned by Fine and Gordon,³⁵⁷ in Los Angeles there are two recent examples of such an initiative in the Los Angeles Unified School District (LAUSD) and the Board of Public Works (LABPW) deputization programs.³⁵⁸ Based on low-wage, high immigrant workforce industries, these programs have capacitated and empowered, in the first case, union business agents as Work Preservation Volunteers (WPVs), and in the second, a Janitorial Enforcement Team (JET). One of the central and interesting aspects of these initiatives is that they are based on business approval as they look to rid the pervasive practice of inter-firm destructive competition via the undercutting of wage costs. Furthermore, the teams of trained volunteer work monitors have a "specific knowledge of industry structures and strategies,"³⁵⁹ something that cannot be expected of labor inspectors who must cover jurisdictional territory rather than sectoral-based industries.

The five key sectors marked for special monitoring and attention by the Labor Ministry of Colombia as part of the Labor Action Plan could be used as a pilot program for the design and implementation of such a collaborative government-union partnership that would count on employer representation, at least in its initial period of design, set-up, and implementation. It would require time, additional resources, and vehement support from the Colombian Presidency and departmental-municipal governments so that its aims do not become squandered by a lack of territorial transferal. If given a political and financial mandate, it could be a novel and deep instance of true dialogue, one that helps to improve the stick of legal rules and everyday business practice. Furthermore, it could

³⁵⁶ Based on an email correspondence with the President of UP-Buenaventura, Jon Jairo Castro, on 4 January 2013, it appears that there is a new-found consensus amongst the UP to push for its affiliation with the ITF sometime this year.

³⁵⁷ Fine, Janice & Jennifer Gordon. 2012. Op cit., p.200.

³⁵⁸ Fine, Janice & Jennifer Gordon. 2012. Op cit., p.201.

³⁵⁹ Fine, Janice & Jennifer Gordon. 2012. Op cit., p.203.

help give workers and their unions the chance to actually push forth and consolidate the minute space they have been given via the Labor Action Plan.

**“A CONFUSION OF CATEGORIES!”: A CASE STUDY OF THE
ORGANIZATION OF CASUAL AND CONTRACT WORKERS BY THE SOUTH
AFRICAN COMMERCIAL, CATERING, AND ALLIED WORKERS UNION
(SACCAWU)
Sahra Ryklief**

Introduction

This case study analyses the on-going campaign of the South African Commercial, Catering and Allied Workers Union of South Africa to organize and represent casual and contract workers in the Retail and Hospitality Sectors in South Africa. The case study focuses on two national companies where SACCAWU has an overwhelming majority of membership: Pick n' Pay, a major retailing chain with holdings in several African Countries, and Sun International of South Africa, a hotel chain with a similar expansionist programme in the region.

The study points to some of the characteristics of flexibility in the South African labour market and reveals that under certain conditions permanent, or core workers, have sufficient commonalities with flexible workers to not only act together within the union but also to lead resistance to extremes of inequality on a workplace level. The study also provides indicators of the organizational characteristics which facilitate this struggle.

Research Method

A literature review was performed to review the sectors; profile the companies; the demographics of the workforce; occupational distribution; extent of formal and informal work, trends and reasons for informalization.

In addition, the research drew on preliminary findings of a survey conducted by the Labour Research Service to establish union activity at workplaces with significant numbers of informalised workers (Petersen & Elsely 2012). Twenty nine trade union representatives, 24 organisers, and 5 shop stewards from eleven unions were surveyed. There were eleven female respondents.³⁶⁰

The qualitative method was utilized through semi-structured interviews and focus group discussions. Focus group discussions (F/G1) with 46 SACCAWU members working in the hospitality sector were conducted in Durban (1 June 2012); Cape Town (16 March 2012 & 23 August 2012); and Johannesburg (5 September 2012). These focus groups reviewed the perspectives of union members of the extent of informalisation in their sector; differences in conditions of work and wages; perceived challenges and obstacles, and their views of union strategies for organizing the informalised in their workplaces.

³⁶⁰ Petersen, Patricia and Elsely, Trenton. Drivers and obstacles to organizing vulnerable workers. Labour Research Service, Cape Town, 2012.

Face to face interviews and/or written responses to questions were conducted with:

- 2 leading shop stewards of the two retail food chains, Pick ‘n; Pay;
- 1 leading shop steward from Shoprite /Checkers in the Western Cape;
- 8 shop stewards at Sun International workplaces;
- 3 union officials.

A final focus group (F/G2) to discuss the research findings and verify facts was conducted 23 November 2012 comprising of:

- 13 representatives of the Sun International Shop Steward’s co-ordinating committee, including the National Gender Co-ordinator of the Sun International Shop Steward’s co-ordinating committee;
- 1 representative from SACCAWU Collective Bargaining Unit;
- The head of SACCAWU International Desk;
- Three representatives from the IUF, the global union organizing in the hospitality sector;
- The senior specialist for Southern Africa of the American Centre for International Labour Solidarity (ACILS).

Names of interviewees are not revealed in the study; instead, interview referees are numbered according to codes defining their roles in the union. Citation codes are as follows:

- F/G: Focus Group.
- S/St.: Shop Steward.
- TU/O.: Trade Union official.
- GUF/O.: Global Union official.

Sex breakdown is as follows:

- F/G: Focus Group 1: Female 18; Male 28.
- F/G: Focus Group 2. Female 4; Male 15.
- S/St.: Shop Stewards: female 3; male 8.
- TU/O.: Trade Union officials: female 0; male 3.
- GUF/O.: Global Union officials: female 2; male 1.

Opinions from management were taken directly from company reports and of government from government statements and documents.

Extent of “Informalisation from Above” in the South African Economy

Labour flexibility has been steadily gaining ground in South Africa. As one academic authority argues, “Fifteen years after the introduction of the Employment Equity Act (EEA), the workplace in the formal economy is probably a more unequal place than when it was introduced. Certainly it is a more unequal place than in the 1980s, when trade unions were in ascendancy, and the foundations of the present labour dispensation were being laid... In legal form, it (inequality) is between different workforces engaged in the

same operation: the workforce of a core business, who is the client, on the one hand, and the workforces of the contractors or service providers the client engages, on the other.”³⁶¹

South Africa has experienced a consistent growth curve for over almost two decades. From 1993 until 2011, the average quarterly GDP Growth was 3.32 percent.³⁶² The global recession in 2008 caused growth to slow sharply during the latter part of the year, leading to a decline in 2009. The recovery in 2010-11 was less robust than the growth rates recorded in the mid-2000s.

Contrary to expectations,³⁶³ steady economic growth has not led to significant improvement in job security, working conditions or wage income.³⁶⁴ Instead, in line with global trends, it has been accompanied by the restructuring of several key industries, predominantly textile manufacturing; retail; hospitality; construction, and transport and the informalization of much of the workforce in these sectors.

In the period from 1995-2001, full-time employment according to the economically active population (EAP - meaning workforce) declined by 20% while informal occupations rose by 17 - 31% of EAP %.³⁶⁵ As a result of the restructuring, “Employment practices were highly exploitative, with most workers being employed on a casual, temporary, or ad hoc basis.”³⁶⁶ “During 2004 – 2005, of the 658,000 jobs created, 516,000 were in the informal sector.”³⁶⁷

An adaption of Von Holdt and Webster’s calculations in 2003 – 2004 puts the EAP at 20.3 million, with 8.4 million registered unemployed; 6.6 million in the formal economy with regulatory protections and secure employment; 3.1million as “semi-formal” workers in precarious forms of work, including outsourced, temporary, part-time and domestic workers; and 2.2 million in completely informal economic activities.³⁶⁸

The Labour Force Surveys for the period 2008 to 2012 show representation of the informal sector as a proportion of the total number employed in South Africa to be in the range of 15.5% in the second quarter of 2012, with the largest percentile by far in the trade sector.³⁶⁹

³⁶¹ Theron, Jan. S.A. *Labour legislation is not working*. <http://www.iol.co.za/capetimes/sa-s-labour-legislation-is-not-working-1.1361880>

³⁶² “South Africa GDP Growth Rate,” Trading Economics, <http://www.tradingeconomics.com/south-africa/gdp-growth>.

³⁶³ For a recent analysis of the relationship between the ANC government’s economic decisions and increased inequality, I recommend Professor Sampie Terblanche’s *Lost in Transformation: South Africa’s search for a new future since 1986*. (2012).

³⁶⁴ See “Jobless Growth” in *The Economist* June 3rd 2010 <http://www.economist.com/node/16248641>

³⁶⁵ Barchiesi, Franco “Informality and Casualization as Challenges to South Africa’s Industrial Unionism: Manufacturing Workers in the East Rand/Ekurhuleni Region in the 1990s,” *African Studies Quarterly* 11 (2010): 67-85.

³⁶⁶ Barrett, Jane *Organizing in the Informal Economy: A Case Study of the Minibus Taxi Industry in South Africa*, ILO, 2003, 15, http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_s_eeed/documents/publication/wcms_117698.pdf. pg15

³⁶⁷ Devan Pillay, “Globalisation and the Informalisation of Labor: The Case of South Africa,” in *Labor and Challenges of Globalisation: What Prospects for International Solidarity?*, eds. A. Bieler, I. Lindberg, and D. Pillay, (Scottsville: UKZN Press, 2008), pg49.

³⁶⁸ Pillay, 52

³⁶⁹ QLFS 2008 – 2012 <http://www.statssa.gov.za/qlfs/index.asp>. Includes retail and wholesale trade

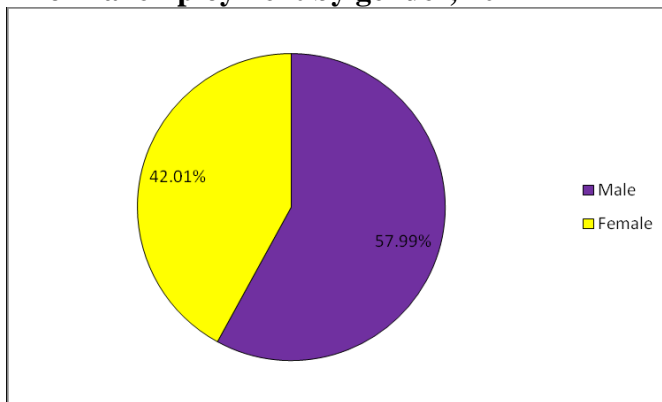
Table 1: Informal Sector Employment by Sector

INDUSTRY	2008 Q2	%	2012 Q2	%
1. Mining	2	0.1	0	0.0
2. Manufacturing	237	10.1	171	8.2
3. Utilities	1	0.0	2	0.1
4. Construction	329	14.1	292	14.0
5. Trade	1,079	46.1	1,000	48.0
6. Transport	217	9.3	187	9.0
7. Finance	165	7.1	132	6.3
8. Community and Social Service	310	13.2	300	14.4
TOTAL: INFORMALLY EMPLOYED	2,340	17	2,085	15.5
TOTAL EMPLOYED	13,729		13,447	

Source: Quarterly Labour Force Surveys 2008 - 2012

In a University of the Western Cape, Department of Economics Mini-Thesis, Petersen notes the following about gender in the informal sector:³⁷⁰

“With respect to gender status, Saunders (2005:130) showed that there is a slightly larger share of male workers (averaging more than 55%) in the informal economy compared to their female counterparts. Male informal workers also constitute a slightly higher proportion than female workers in 2011 as indicated in the figure below.”

Informal employment by gender, 2011

Source: Own calculations (Saunders 2005) using QLFS data.

³⁷⁰ Saunders, S.G. (2005). Estimates of informal economy in South Africa: some macroeconomic policy implementations. Unpublished doctoral dissertation. Johannesburg: University of Johannesburg. Cited in Petersen, Marshall Maurice. *Informal employment in South Africa: a critical assessment of its definition and measurement*. (University of Western Cape: 2868590), December 2011, pp8-9.

Industrial Regulatory Framework and the Coverage of Informalised Workers

There are currently two central pieces of labor legislation: the Basic Conditions of Employment Act (BCEA) of 1997 and the Labour Relations Act (LRA) of 1995. The BCEA sets out minimum standards for most employers, excluding minimum wage requirements. The BCEA also provides for state legislated Sectoral Determinations, which regulate wages, hours, and basic conditions for vulnerable or special sectors.³⁷¹ Under this act the ANC government, in some cases for the first time, has set minimum standards, including minimum wages and benefits for vulnerable workers. This applies to both the wholesale and retail sector (Sectoral determination 9) and the hospitality sector (Sectoral determination 14).

The LRA facilitates collective bargaining rights for wages and workplace conditions, including the right to organize. Once a Collective Bargaining Agreement (CBA) is signed at a bi-partite sectoral bargaining forum, it becomes legislated and covers all employers and employees in that particular sector. However, if workers are not in any employment contract, then they are not granted these rights. Small, medium, and micro enterprises may apply for exemption from coverage of CBA's by the department of labour. These applications are generally contested by the unions in the sector.

These two laws, revised in the mid-1990s and amended through social dialogue, have underpinned the establishment of minimum standards and wages for workers not historically protected in this way, and brought a much larger number of workers under the protection of labour regulating instruments than had been the case under apartheid. Moreover, most of these rights are also extended to vulnerable workers such as casuals and contract workers. In most cases, only workers working less than 24 hours per month are excluded from the legislation. The problem is that although these workers are now covered by legal protections, they are not effectively organized or represented and are very often either ignorant of their rights or unable to access them due to deliberate strategies by employers to deny them access. This is why sectoral determinations are legislated to set minimum wages and protections.

³⁷¹ Vulnerable includes inter alia contract cleaning workers; domestic workers; farm workers; forestry workers; workers in the hospitality sector; civil engineering and taxi drivers. eg. of special sector; child performers.

Table 2: Coverage of social protection laws for casual workers

LEGISLATION	PURPOSE	COVERAGE OF CASUAL/ INFORMAL WORKERS
Constitution of the Republic of South Africa, 1996	Provides the supreme law of the Republic	23 (1) Covers workers, as citizens and as workers of all categories
Labour Relations Act, 66 of 1995 (LRA)	To advance economic development, social justice, and labour peace.	Covers casual workers together with all other categories of workers
Compensation for Occupational Injuries and Diseases Amendment Act, No 61 of 1997	To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.	Covers casual workers but domestic workers are specifically, excluded.
Basic Conditions of Employment Act, 75 of 1997 (BCEA)	To advance economic development and social justice by giving effect to and regulating the right to fair labour practices.	Covers casual workers together with all other categories of workers, but really aimed at standard employees
Employment Equity Act, 55 of 1998 (EEA)	To protect workers and job seekers from unfair discrimination, and provide a framework for implementing affirmative action to increase the participation of previously disadvantaged groups in the workplace.	Covers casual workers, as with all other categories of workers, but really aimed at standard employees
Skills Development Act 97 of 1998, and Skills Development Levies Act 9 of 1999.	To develop workplace skills and legislates employer contributions (levies act).	Covers existing and potential workers, all categories.
Unemployment Insurance Act, 63 of 2001 (UIA)	To establish an unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment.	<i>Excludes</i> employees employed for less than 24 hours a month with a particular employer, and their employers.

Sectoral Determinations Minima, a Double Edged Sword

State legislated wage minima are generally pegged against existing poverty levels, and have as their main objective the protection of vulnerable, under-organized workers from extremes of poverty. They are set outside of the collective bargaining framework in

those sectors where unions are too weak to set up bargaining councils to protect the vulnerable and unorganized.³⁷² However, as will be demonstrated in the case studies below, if the minimum wage is legislated at a lower rate than the actual wages won through collective bargaining processes,³⁷³ it also serves to drive down wages and conditions in organized workplaces in the same sector by allowing employers to add to the ever-growing vulnerable underclass amongst the protected workers.

Creating the Informalised in South Africa

In a report for the Danish Federation of workers on the impact of non- standard and non-permanent employment relations, such as temporary work; fixed term contracts; seasonal work and outsourcing/subcontracting, Bodibe notes that services such as cleaning, catering, warehouses, transport and distribution and lastly security are heavily subcontracted.³⁷⁴

The report gives three reasons for companies to resort to casual and flexible labour, viz.:

- to reduce labour costs;
- to extend working hours;
- to achieve easy deployment of labour.

Bodibe's report points out that it is mostly young female workers that are engaged as casuals, especially in the retail industry and without exception in cleaning.³⁷⁵ However, empirical figures, where available for these sectors, show that the gender balance may vary, depending on workplace and sector.³⁷⁶

Bodibe cites a study by Cheadle who suggests that there are three kinds of flexibility:

- employment flexibility (the freedom to determine employment levels quickly and cheaply):
- Wage flexibility (the freedom to alter wage level without restraint);
- Functional flexibility (the freedom to alter work processes, terms, and conditions of employment, etc., cheaply).³⁷⁷

One industry characterized by an increasingly flexible labour force is the retail and hospitality industry, employing a significant number of casual, contract, and part-time workers.³⁷⁸

³⁷² Unions need to prove representation of 50% of workers in the sector to bring employer bodies to the negotiating table through the setting up of a sectoral bargaining council.

³⁷³ Labour Research Service wage data demonstrates the large differentials between sectoral minima and collective agreements on an annual basis (www.lrs.org.za).

³⁷⁴ Bodibe, O, 2006. The Extent and Effects of Casualisation in Southern Africa :: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe, Danish Federation of Workers.

³⁷⁵ Summarised from Bodibe, 2006, p.4

³⁷⁶ In both companies reviewed in this report the gender and ethnic balance for casual and permanent staff are similar. This is manifest in the different workplaces as well (S/St. 1; S/St.4; S/St.7).

³⁷⁷ Ibid.

³⁷⁸ Taal, Michelle. Hospitality Sector Report 2012. (Labour Research Service, Cape Town, 2012).

The Retail and Hospitality Industry

The retail and hospitality industry is one of the largest growing industries on the African Continent.³⁷⁹ In South Africa, employment in the wholesale & trade, and hospitality and accommodation industry has grown substantially since 2001. In fact the numbers employed double between 2007 and 2008, using the revised figures for this period from Stats SA. In 2008 the total number employed in the industry was 3,156,000 of whom two thirds were in the formal and one third categorised as in the informal economy. Overall, employment declined in 2009 due to the recession and by 2010 there were close to 300,000 fewer employed in the industry. By the first quarter of 2011, the number of people employed increased but is still almost 200,000 fewer than in the first quarter of 2008 even though the economic growth of the industry is almost at 2008 levels again.³⁸⁰

Experts in the industry predict a turnaround over the next period. However, workers in hospitality interviewed consider 2012 to be the toughest year in the industry for a long time, with both five and three star hotels competing for custom. They report on being warned of possible retrenchment and report on workers accepting short-time³⁸¹, low or no increases, and multi-tasking through fulfill several functions within the hotels for no extra wages or recognition, in order to avoid retrenchments.³⁸² Union representatives from two major retail outlets, Shoprite and Pick 'n Pay, report similar trends.³⁸³

Extent of Unionization of Informalised Workers

A COSATU 2012 Workers' Survey covering 3,030 workers in 37 urban districts across the country asserts that workers who are in temporary, casual, or seasonal positions or who work for smaller employers are less likely to be in a union, although this varied substantially between affiliates. Citing the Quarterly Labour Force Survey (QLFS) for the first quarter of 2012, 95% of union members, but only 50% of non-union members, had permanent positions.

Hospitality, wholesale and retail, transport and allied services, and the clothing industries are particularly affected. Amongst COSATU's affiliates in these sectors, SACCAWU and the South African Clothing and Textile Workers' Union (SACTWU), between 15% and 20% said they were not in permanent jobs, compared to less than 10% of all COSATU members. Only 3% of union members but 12% of non-members said they are employed through a labour broker, outsourced service agency, or subcontractor.

³⁷⁹ Article by Benjamin, Chantelle in *Mail and Guardian Business* Nov 23 – 29 2012 pg. 9.

Quoting David Fine, Co-author of *Africa at Work: job creation and inclusive growth*, a report based on interviews with 1373 African business leaders.: "the secret to job creation lies in African countries focussing on three labour intensive sectors, namely, agriculture manufacturing and retail and hospitality."

³⁸⁰ *Bargaining Monitor* Vol 25 No. 177 (Labour Research Service, (Cape Town, Oct 2011)

³⁸¹ "Short time" is used when workers agree with management to work reduced hours and concomitantly, wages, in order to save their jobs and avoid retrenchments. These agreements are negotiated with the union.

³⁸² Taal, M. (2012) pp 7-8

³⁸³ S/St .6; S/St.7; TU/O.2; TU/O. 3.

Only 7% of union members were in organisations with fewer than ten workers, compared to 35% of non-members.³⁸⁴

The Union

The South Africa Commercial, Catering and Allied Workers Union (SACCAWU) is a registered trade union with 147,000 members. SACCAWU organises in the private services sectors, which comprise of commercial (wholesale, distributive and retail), catering, tourism, hospitality and finance (banks, assurance and insurance). The majority of SACCAWU membership is in the wholesale and retail trades, and SACCAWU is the most representative trade union in the sector. (<http://www.saccawu.org.za/>) SACCAWU is also the most representative union in the hospitality sector. It has a nationwide membership in the hospitality sector of 40,000 workers, of which 20,000 are in Gauteng.³⁸⁵

Both the retail and hospitality sectors are characterised by having a few huge chains, which are well organized by SACCAWU, while the overwhelming majority of employers are small, medium, and micro enterprises (SMMEs) with small staff complements, and weakly organised. Because of the preponderance of SMME's, both the wholesale and retail sector (Sectoral Determination 9); and the hospitality sector (Sectoral Determination 14); are covered by state legislated minimum wage and workplace protections. The Basic Conditions of Employment Act provides for state legislated Sectoral Determinations, which regulate wages, hours, and basic conditions for vulnerable or special sectors.³⁸⁶

SACCAWU has determinedly organised the larger wholesale and retail chains since the rapid restructuring of the labour force in this sector, which began in the 1990's.³⁸⁷ The union has, therefore, gained some experience in fighting back corporate attempts to informalise formerly protected jobs. They have now instituted a concerted campaign to take what they have learned in wholesale and retail organizing into the catering and hospitality sector. These campaigns form part of the broader SACCAWU strategy to ban labour brokers.³⁸⁸ SACCAWU is a COSATU affiliate, and supports the COSATU campaign against labour brokers.

Labour brokers, or service contractors, or temporary employment services as they are now being called, are a particular form of outsourcing in southern Africa, providing low-skilled, casual labour to companies. Companies hire the labour broker to provide

³⁸⁴ COSATU 2012 Worker's Survey:

<http://www.cosatu.org.za/docs/reports/2012/final%20workers%20surveys%20results%20August%202012.pdf> pp 35 – 36.

³⁸⁵ Nyman, P in Webster, E. et al, 2012, "Working in the Hospitality Industry in Gauteng," Society, Work and Development (SWOP) Institute, South Africa: University of the Witwatersrand

³⁸⁶ Vulnerable includes inter alia contract cleaning and gardening workers; domestic workers; farm workers; forestry workers; construction workers; taxi drivers, etc., eg., of special sector - child performers.

³⁸⁷ Official estimates put casual and temporary labour by the late 1990s somewhere between 17 and 20 per cent of the total formal retailing workforce, up from 11 per cent in the late 1980s. (Central Statistical Services, 1998; Statistics South Africa, 2002/3). However, independent case study research has found much higher rates of casualization ranging from 45 per cent to 65 to 70 per cent at store levels in specific regions (Rees, 1997; Kenny, 2004a: 488; Clarke, 2004 cited in Kenny 2005).

³⁸⁸ See SACCAWU statement on Labour Brokers (appendix 1.)

workers rather than hire the worker themselves. Workers who sign on at labour brokers have no fixed hours or benefits and are paid much less than those directly employed by the company. They provide labour for certain jobs (like cleaning and gardening services) and for peak periods and anti-social hours. An Employment Services Bill is currently in the pipeline to provide a regulatory framework and ensure that these firms are registered with the Department of Labour. Labour brokers are still subject to the BCEA and the sectoral determinations in the industry. They often claim to represent those work seekers least connected to the labour market.³⁸⁹

The campaign to outlaw labour brokers has been pioneered by the Namibian trade union federations and their allies in the Southern African sub-region. In 2008 the Namibian Constitutional court handed down a decision to ban labour brokers, in line with subsection 128 of its Labour Relations Act prohibiting ‘third party’ labour hire, defended by the government in the constitutional court case.³⁹⁰ This decision is currently under appeal.

There is no such clause in the South African LRA. In August 2009, COSATU presented a submission on labour brokers to the parliamentary portfolio committee on labour. Encouraged by the Namibian High Court decision and the pronouncements by the then South African Minister of labour in support of the Namibian position, COSATU appealed to the South African government to do the same. The South African government responded by distributing a discussion paper through its Department of Labour (now a Bill)), which sought the middle road through stronger regulation of labour brokers.

In October 2009, social dialogue and negotiations commenced on this issue at NEDLAC,³⁹¹ but no consensus was reached on future reforms. Labour, normally united on a NEDLAC level, was split on the issue, with COSATU and the National Council of Trade Unions (NACTU) in favour of a legislative ban on labour broking,³⁹² whilst on the other hand, organised business and the Federation of Democratic Unions of South Africa (FEDUSA) argued that the contentious issues, such as duration, social security, dismissal, benefits, and freedom to organise and associate, could all be tackled through improved regulation.³⁹³

Challenges to Union Organisation in the Industry as Identified by Labour Analysts

Bridget Kenny points out in her long range study of unionisation in the retail sector that the restructuring in South Africa’s food retailing labour market has significantly

³⁸⁹ The Changing face of labour broking, pg 25 Business Report Wed 28 November 2012; Angela Dick, CEO of Transman (PTY) Ltd, as quoted in <http://dailymaverick.co.za/article/2012-06-18-the-conflict-that-may-define-sas-future-labour-brokers-side>

³⁹⁰ “No person may for reward, employ any person with a view to making that person available to a third party to perform work for the third party”..” www.optumewealth.co.za

³⁹¹ The National Economic Development and Labour Council is the statutory social dialogue structure with representatives from government, organised business, organised labour, and organised community groupings.

³⁹² BPS van Eck. 2010. *Temporary Employment Services (Labour Brokers) in South Africa and Namibia*. PER. 2010. Volume 13 No. 2 p.107.

³⁹³ FEDUSA General Secretary, Dennis George, quoted in <http://www.polity.org.za/article/livelihood-of-one-million-people-hangs-in-the-balance-2010-03-05>

contributed to the decline of union strength in the sector over the past fifteen years.³⁹⁴ Kenny outlines the transformation of retail workforce from one characterised by permanent and full-time employment in the mid-1980s, with minor use of part-time and casual employment, to an extensively restructured workforce in the 1990s. As collective bargaining secured a standard shift for permanent workers, retailers made greater use of casual labour and flexible shifts, leading to the next great challenge for union organising. Staff scheduling was introduced, which utilised permanent workers in the “valleys”, and casual labour, working flexible hours, in the “peaks”.³⁹⁵

The Sociology of Work Project identified a number of obstacles to unionization in the hospitality industry in their 2012 report:³⁹⁶

Flexibility:

The industry employs a significant number of casual workers and part-time workers, many of whom are students. The number of permanent workers has declined over the last two decades due to wide-spread restructuring and outsourcing in the hospitality industry.³⁹⁷ Increasingly workers are employed on a fixed time basis for a specific event, such as a conference or festival. These irregular forms of employment hinder union membership, which requires regular payment of union dues.

Shift work is widespread in the hospitality industry with many workers employed at night. Indeed in the casino industry workers operate on a 24 hours, seven days a week system. Sun International’s Carnival City, for example has a system of four nine hour shift: 5:00 am to 2:00 pm, 8:00 am to 5:00pm, 3:00pm to 12:00 am, and 8:00 pm to 5:00 am. Apart from the negative impact these hours have on family life, they make it difficult for the union to recruit or gather workers together at a single time.

Symbolic labour (sic):

Many workers in the hospitality industry, especially in casinos, do not see themselves as workers. Instead, in the words of a waitress in a casino, they see themselves as glamorous people because the place is seen as glamorous.³⁹⁸ This identification with a globalized consumer culture constrains workers’ capacity to see themselves as potential union members.³⁹⁹

Restricted access:

Restaurants, hotels and casinos are tightly enclosed and heavily guarded spaces designed for luxury and entertainment. Access is controlled by management who are reluctant to allow union organizers into these spaces. On the one hand, they fear a threat to security by armed robbers; on the other they are concerned with the disruptive effect of intruders on the atmosphere in a restaurant. While many unions have succeeded in meeting workers during lunch breaks or after hours, shift work makes this difficult.

³⁹⁴ Kenny, B. in TRAVAIL, capital et société 38:1&2 (2005) Militant Divisions, Collective Possibilities: Lessons for labour mobilization from South African retail sector workers.

³⁹⁵ Ibid.

³⁹⁶ Webster, E. et al(2012)

³⁹⁷ Nyman, Patricia, in Webster et al.(2012)

³⁹⁸ Mguni, Lindiwe in Webster et al.(2012)

³⁹⁹ Ibid.

Gender discrimination:

The SWOP report also points out that the hospitality industry is characterized by a large number of young female workers. Many of the issues that they are concerned about are hidden, such as sexual harassment, and are difficult to mobilize around publicly.

Challenges to Union Organisation in the Industry as Perceived by Workers

In 2012, The Labour Research Service held focus group sessions with SACCAWU hospitality and catering workers in three provinces. Two were held in Cape Town, one in Durban, and one in Johannesburg. The aim of these discussions was to understand the organising problems of informalisation as perceived by workers in the sector. These sessions endorsed some of the above obstacles, and also brought out some divisive perceptions, as outlined below.

Correlation of shift work to permanent/casual divide:

Shift work undermines unity, as there is never a time when all workers are at the workplace together. Shop stewards tend to be permanent, full-time workers at the workplace, working hours conforming to the traditional working day. Casual and contract workers work the busy periods only, and early or late shifts. Access to early and late shifts brings problems of transport to work and home for shop stewards, as public transport is not reliable outside of normal peak hours.

Union members are victimised through being given fewer shifts and flexi-time,; unorganised workers are given more shifts so as to make it appear that being a union member is harmful to one's opportunities at the company. This practice also has the effect of setting worker against worker as permanent workers feel it is unfair that flexi-time workers have the same number of shifts as them. Workers often were to hold this against each other and call those with more shifts "management's babies". In one company, management promoted a company union to rival SACCAWU, giving it more space and opportunity to organise while limiting SACCAWU until SACCAWU was no longer representative. However, the failure of this to make gains at the bargaining table resulted in an illegal strike, dismissals, and the collapse of that union.⁴⁰⁰

There were also incidences reported of management using the allocation of work to play off permanent workers against casual workers, by promising permanent status in return for working the less popular shifts.⁴⁰¹

Demographic diversification and perceived divisions amongst the labour force:

Participants identified increasing levels of immigrant workers in the workplaces. This has several implications for union organising. Participants felt that immigrant workers were an easy target for management abuse as they are either ignorant of their labour rights or are willing to give them up in order to keep their jobs. For example they do not question when they are given shifts on public holidays and are also known to not only work in the shop but also to work in a private capacity for management without further wages.

⁴⁰⁰ LRS report SACCAWU Hospitality Sector Focus Group discussion.

⁴⁰¹ Taal, M.(2012).

SACCAWU has also tried to organise undocumented foreign workers in companies. Management states that because the workers are undocumented, they cannot be recruited to a union to which SACCAWU counters that if management does not allow SACCAWU to recruit the workers; they will report them for breaking the law and hiring undocumented workers.⁴⁰²

This, however, brings its own issues between workers as some participants noted that South African workers are not always willing to join the union if they see that foreigners at the workplace have joined it. This attitude is seen as nurtured by management who are perceived to encourage South Africans to see themselves as different as or better than foreign workers. The opposite is also true. Foreign workers are encouraged to see South African workers as lazy and having too many rights and that the unions encourage this, even as they themselves are abused. While these divisions are encouraged by management, participants acknowledged that these perspectives have their origin within the labour force.

Women, even when in the majority, have specific challenges in the hospitality sector. Union members, and especially shop stewards, tend to be predominantly male, and sometimes unorganised women do not feel comfortable approaching them.⁴⁰³

Union bashing.

Except in a single case, management is seen as highly hostile towards the union, both bribing workers to stay away from the union and also being openly threatening towards union shop stewards. Contract workers employed by labour brokers are known to tell SACCAWU organisers that their boss has told them not to join the union. It is often difficult to convince them that it is safe to join the union and keep their job. Despite the illegality, management practices range from offering loans to workers to awarding better wages if they agree to leave the union. Pre-written letters of resignation from the union are also available from one manager where the member only has to sign that they want to leave the union.

Insufficient trade union visibility.

There seems to be a lack of uniformity even amongst shop stewards on the union's response to casual workers. Some focus group participants were unaware that it was policy to organise casual workers, as they are not around the workplace regularly or were not long in the company. Others articulated the SACCAWU policy of aggressively organising casual workers and other atypical workers and pointed out that workers outside the sector at the same workplace have also been organised, and gave the example of the organising of security guards, by SACCAWU. Once they were organised, SACCAWU organisers handed them over to SATAWU.⁴⁰⁴

Union members, particularly in the hospitality sector, feel that the union is not visible enough at their workplaces. While there is a general acknowledgement that the elected shop stewards are the union and, therefore, the union is visible through them,

⁴⁰² *ibid.*

⁴⁰³ SACCAWU has been active in the Gender at work project, which encourages women in the retail sector to stand as shop stewards. <http://www.genderatwork.org/saccawu>

⁴⁰⁴ Taal, M. 2012.

there is a sense that a more official visibility of SACCAWU in the form of organiser's visits and written material would assist unorganised workers in seeing the union as a stakeholder at the work place.

Overcoming the Obstacles: The Case of Pick n Pay

The Pick n Pay Group is one of Africa's largest and South Africa's second largest retailer of food, general merchandise, and clothing. According to the 2011 company report, it has a total of 869 stores, made up of Hypermarkets, Supermarkets, and Family Stores (which are franchise stores). It operates in seven African countries outside of South Africa as well as in Australia as Franklins. The Group generates an annual turnover of ZAR 52billion and employs over 49 000 people. It is estimated that in South Africa, 60% of these employees are women, and that the proportion of women to men is constant amongst formal and informalised workers in the company.⁴⁰⁵

Company documentation at the year-end (February 2011) notes 869 stores (500 corporate, 379 franchise), excluding in-store pharmacies and a 25% investment in TM in Zimbabwe (51 stores). In October 2010 the company bought 24 per cent of Zimbabwe operation TM Supermarkets, bringing its total shareholding to 49 per cent. The group currently operates four stores in Zambia, seventeen stores in Namibia, twelve in Botswana, seven in Swaziland, and one in Lesotho, two in Zambia and one in Mozambique; together with its fifty-one-store network with TM in Zimbabwe. In October 2011 it opened its first store in Mauritius. In total 104 new stores are planned for 2011/2012 including Mauritius, Malawi, and DRC. Angola is next with the West African states of Nigeria and Ghana, and Kenya, Tanzania, Uganda, Rwanda, and Burundi in East Africa, listed as "on the radar" with further plans off-shore in the Comoros Islands and the Seychelles.⁴⁰⁶

Pick n Pay ownership has a markedly liberal approach to trade unionism in comparison with other South African retail chains. The company has been unionised since 1984, and in 1997 introduced an optional employee share ownership scheme.⁴⁰⁷ Even so, the union is of the opinion that the company is drifting towards a hard-line industrial relations stance, due to stiff competition and the entry of Wal-Mart into South Africa. Another development impelling the current intransigence and unilateralism (sic) of the company is the rumoured larger share purchase by TESCO, a British retail giant.⁴⁰⁸

Pick 'n Pay has employed both permanent and casual workers for over two decades. Initially, casuals earned the same hourly rate as permanent workers, but had no access to company employment benefits, viz. medical aid, provident fund, and the supplementing of state maternity benefits. The company approach has been to gradually increase its casual workforce by appointing all new employees as casuals. Casual workers work the same jobs as the permanent workforce during peak periods of the week, month, and year. They are called in when needed by store managers, and are given the hours and days they are to work on a weekly (scheduled) basis. During these peak

⁴⁰⁵ S/St 7.

⁴⁰⁶ LRS, Bargaining Monitor. Vol. 25 No. 177, October 2011

⁴⁰⁷ (http://www.financialresults.co.za/2011/pnp_ar2011/afs_stores_note04.html)

⁴⁰⁸ TU/O.3

periods, there are often more casuals than permanent workers working in any given store.⁴⁰⁹

In 2003 the government introduced sectoral determination 9, specifying minimum wages, hours, and conditions of service for wholesale and retail service, replacing the old wage determination 478 for the Commercial Distributive Trade. The wage minimum in new sectoral determination act was lower than the existing wage rate earned by both casuals and permanent workers. In the years that followed, the company's response was to appoint all new employees at a lower rate, conforming to the sectoral determination minima, thus creating a third differentiated layer amongst the workers.⁴¹⁰

SACCAWU shop stewards on a workplace and national level recruited these workers into the union and fought against this differentiation. The matter came to a head in 2006 with a deadlock around the wage increase (an equal amount for all – referred to as an “across the board increase”), as well as permanent employment for all casual workers, with the company management offering varied hours, wages and percentage increases for new employees, casual, and permanents.

Permanent, casual, and even non-unionised workers joined the strike. They settled on a very low increase (an additional R5 per week applied to all workers),⁴¹¹ which was less than the company offered its permanent workforce if they had taken a percentage increase. The union regards its main victory as the agreement struck with the company to begin phasing in all casuals to permanent employment, with a fixed number of hours per week, including the same benefits as the permanent workers, proportional to the amount of hours worked.

After working a certain number of years at Pick ‘n Pay, casuals have now become “variable time employee,” commonly known as VTEs. They earn the same and often still work peak times according to schedules, but are guaranteed 186 fixed hours averaged out over the month (40 hours per week). Employees formerly termed permanent are now known as “Full, or Fixed-time employees” (FTEs). They work 196 hours averaged out across one month (45 hours per week).

The war of hours continues...

The guaranteeing of a minimum of fixed hours and proportional benefits was viewed as a great victory by the workers at Pick ‘n Pay. However, their respite was of short duration. The first big blow dealt to the union in 2009 was the company management's withdrawal of their joint “flexibility and mobility agreement”. This agreement facilitated joint union and management decision making in scheduling hours of work during peak and slow periods on a workplace level. Shop stewards and managers had to agree on the weekly staff time schedules for each department.

The union had negotiated this agreement to ensure fairness in hours allocated to fixed and variable staff. The company withdrew the agreement unilaterally, citing its onerous unworkability and arguing that it was an infringement on their exclusive right to make operational decisions. This withdrawal has caused much unhappiness and affects full-time and variable time staff members. SACCAWU challenged this withdrawal

⁴⁰⁹ S/St. 7; TU/O 2.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

through private arbitration and lost the case on the basis that the agreement was no longer financially viable for the company. The matter was referred to the Labour Court for review, but the union's review application was dismissed.

In 2011, Pick 'n Pay management informed the union that they planned to retrench over 3000 workers. The union entered into negotiations to prevent or alleviate the retrenchments. They were presented with an option to retain all staff if they agreed to treat Sunday as part of a normal working week. In return for halting the retrenchment of the workers, the union agreed to extend the working week from Sunday to Sunday, foregoing double pay for staff working on a Sunday. Although union members at the company agreed to this concession, it was not a popular one.

The Union at Pick n' Pay.

SACCAWU has majority representation at the company, and has an agency shop⁴¹² agreement in place for over five years. This is possible if 75% of the workforce belongs to the union. SACCAWU organises its members at Pick 'n Pay, like many of the other large retail outlets, into company councils. At every store/workplace, they elect their shop stewards. They are entitled to 1 shop steward for every 10 workers as per their collective bargaining agreement. These shop stewards form a workplace shop steward's committee, and elect their co-ordinating shop steward/s, often assigning them portfolios or titles.

Shop stewards from all stores in a given geographical area attend a weekly Tuesday meeting (local company council) during working hours at the union office. Time off for shop stewards to attend these meetings is included in the CBA. At these meetings they report on recruitment targets and on-going union campaigns and cases at the company.

They convene quadrennial regional shop stewards' councils, which precede the quadrennial national shop stewards' council. These meetings elect regional and national office bearers (i.e. chairperson, deputy chairperson; secretary; treasurer; and gender co-ordinator). In the regional shop stewards' council, they elect a regional negotiator as well, who will form part of the national negotiating team. In between the quadrennial period, they hold an annual national shop steward summit that is attended by all regional office bearers, as well as national general meetings where all SACCAWU members in the employ of Pick 'n Pay attend.⁴¹³

The costs for the regional and national meetings are covered by a discretionary fund made up by a voluntary levy on all SACCAWU members at Pick 'n Pay, in addition to their union dues. SACCAWU union dues are proportional to wage. In addition to this, each worker pays a R15 per month levy into the fund, which is managed by the office bearers on the regional and national shop steward's councils. They have their own bank accounts, separate from SACCAWU's accounts. Pick 'n Pay regional shop steward's councils get 30% of the fund and the national council 70%.⁴¹⁴ The fund pays for transport and accommodation to company shop steward regional and national meetings. The levy gets set in consultation with the Central Executive Committee of SACCAWU.

⁴¹² *Non -union members pay a similar fee as union member dues into a fund that is used to support collective bargaining activities.*

⁴¹³ TU/O.3

⁴¹⁴ S/St.7 & TU/O.2

Company council's relationship to SACCAWU union structures

All members of the shop steward's committee are entitled to attend a monthly union local meetings organised on a geographical basis. At these meetings they raise their company issues and articulate their needs to the union. The local elects office bearers (Chairperson; deputy chair; secretary; and treasurer), which runs the affairs of the local and oversees the election of delegates to the regional general council, which meets annually, and the regional congress, which meets every three years.

Aside from the intersection at a local level, the hierarchical union representative structures and company councils run parallel to one another. They are all incorporated into the SACCAWU constitution as amended at their 2008 National Congress. Company councils try to get their best people elected into the union local and regional leadership, as this is their only way of influencing overall union decision making.⁴¹⁵

The Case of Sun International of South Africa

Sun International (South Africa) Limited was formerly known as Kersaf Investments Limited. The Group generates annual revenue of over 6 billion Rand⁴¹⁶ and its principal activities are the operation of leisure resorts, hotels, and casinos. Sun International owns hotels, leisure and gaming operations in Botswana, Chile, Lesotho, Namibia, Nigeria, Swaziland, and Zambia.

In South Africa it has 14 workplaces, including the head office of the group.⁴¹⁷ It employs 12,427 workers, excluding those contracted to provide services. Of these employees, 9,053 are permanent staff, and 1,844 are casual or "scheduled" as casuals are known in the company, due to the fact that their working hours are drafted according to a work schedule. 49% of the company's workforce is female, and 51% male.⁴¹⁸

Sun International South Africa (SISA) was the first Casino group in SA. Since 1998, SISA has employed a flexible workforce.

SACCAWU began organizing union members at Sun International using the Company Council model initiated in the retail industry in the 1990s. In December 2009 SACCAWU members embarked on a seven-week strike at Sun International workplace sites nationally, involving more than 70% of its members. The demands of the union were for an across the board increment for all workers, rather than a variable percentage increase leading to differentiated amounts between employees; and the conversion of "scheduled" employees, so called due to their hours of work being formulated on an weekly basis, into "core" employees with fixed hours and benefits.

At the time of the strike, all new Sun International employees were appointed as scheduled staff. After working for the company for a number of years, they could apply to become core staff. In many instances, their application was denied. Core and

⁴¹⁵ S/St.1, S/St. 6, S/St. 7; TU/O.2

⁴¹⁶ R6, 2 billion in 2010 and R6,9 in 2011. Sun International Annual Report 2011.

http://suninternational.investoreports.com/sun_ar_2011/financials/group-statements-of-comprehensive-income/

⁴¹⁷ S/ST.1

⁴¹⁸ Sun Interntional Annual Report 2011

scheduled staff worked at the same jobs, for the same hours and wage. But only core staff were eligible for benefits, which were considerable, inclusive of provident fund; medical aid; housing subsidy; education subsidy for their children's education, and profit sharing through the Sun International Employee Share Trust (SIEST). At the time of going to strike, the majority of workers at SISA were scheduled employees.

The strike was a bitter one. The company instituted a lock-out at Grand West, Boardwalk and Fish River, Sun on 4 December 2009. Contravention of the picketing distance by striking workers at Grand West hotel and Casino in Cape Town resulted in assaults by police and arrests of workers. The picketing distance was enforced through the company obtaining an interim order at the Labour Court.

The final agreement was far-reaching. The union settled on 8% wage increase, less than its asking amount of 13%. Despite accepting a lower wage increase, union shop stewards cite their biggest victory in the company's agreement to convert 90% of its staff to core through a phased process, which is still continuing, starting with those who have been with the company the longest, making them eligible for benefits. The company now reports on the two categories of workers in this process (permanent full time and permanent scheduled) in its annual report, having increased its core employees from 5,826 to 9,053 from 2008 – 2011, and reduced its scheduled staff from 2,852 to 1,844 during the same period.⁴¹⁹

It also agreed to expand its education loan scheme to finance the primary, secondary, and tertiary education of the children of all employees with a minimum of one year service and to extend the housing subsidy to all employees with over 2 years of service from 2010 onwards, whether scheduled or not. Non-scheduled employees are also eligible for shares payout from the Sun International Employee Share Trust.

This was regarded by the Sun International SACCAWU members as a major victory. In the light of this, they deferred their other urgent demands to further negotiations with the company. These were:

- to scrap a 1998 collective agreement signed by the union at certain SISA workplaces, which has Sunday as a normal part of the working week, thus incurring time and a half pay for Sunday work; whilst at others the CBA conforms to the Basic Conditions of Employment Act with double pay on Sunday;⁴²⁰
- to do away with the procurement of casual and contract workers through labour broking and employ a permanent workforce;
- to settle a dispute on the payment of tips for gaming staff, which the company has been withholding for several years. According to gaming rules, punters are not allowed to tip gaming staff directly. Instead they have to place their tips into a box in the gaming area, which management supervises. The union claims that the company has not distributed these tips to gaming employees for several years.⁴²¹

⁴¹⁹ Sun International Company report 2011.

⁴²⁰ FG2

⁴²¹ FG2

Sun International employs cleaners, gardeners, waitrons, and kitchen staff through labour brokers. These workers earn much lower wages than those employed directly by Sun International, work the anti-social hours or peak periods, and have no access to provident fund, medical aid, the SIEST profit sharing scheme; housing subsidy and education loan scheme. In 2011, the Sun International Shop Steward's Co-ordinating Committee decided to step up the campaign to bring all workers employed by contract service providers into Sun International's staff, in line with the SACAWU and COSATU campaign to do away with labour brokers.

Having had sufficient warning for several years with this item being on the negotiating table, Sun International management have put forward a proposal to the union to incorporate some of these workers as staff members, but once again, into a different category with varied hours and wages. The Human Resource department and Sun International Shop Stewards Co-ordinating Council met 12 – 16 November 2012, in a workshop facilitated by the statutory Centre for Conciliation, Mediation, and Arbitration (CCMA), to discuss the chain's proposal to phase out the utilization of contract service providers. Until these negotiations are completed, details remain confidential.

The union remains in dispute with the company over the differentiation at certain workplaces over Sunday as a working day, and over the tips for gaming staff.

The Union at Sun International

SACCAWU has majority representation at the company, and has an agency shop⁴²² agreement in place since 2010. Sun International is a successful example of the SACCAWU organising strategy of the retail sector being taken up in a hospitality chain.

The company council at Sun international operates slightly differently from the Pick 'n Pay one. The CBA allows for 1 shop steward for every 60 members (not 10 members as with Pick 'n Play). The union is entitled to one full-time shop steward for every 300 members at the workplace.⁴²³

The levy is also much less than at Pick 'n Pay. Each Sun International union member pays a R50 per year once-off levy into a fund, to facilitate two national meetings of the national Sun International company Council a year. The fund, as with Pick 'n Pay, is managed by the independently elected office bearers of the national company council. The fund pays for transport to the national meetings. Sun International provides accommodation for these meetings.

The SISA S/St council has 16 members. It elects a National Chairperson; Vice Chairperson; Treasurer; and Gender Co-ordinator. The Shop Steward's council has quarterly meetings with the SISA CEO and Human Resource Director. Sometimes the Financial Director also attends these meetings. A National Shop Steward's council is also convened consisting of 70 -80 people from all SISA workplaces to set the bargaining agenda. The union is preparing to form a regional company council structure, like the Pick 'n Pay one.⁴²⁴

⁴²² Non -union members pay a similar fee as union member dues into a fund that is used to support collective bargaining activities as agreed by both union and company management.

⁴²³ S/St.1

⁴²⁴ TU/O. 2

As with the Pick 'n Pay company council, only the intersection of the union hierarchical structures is at a local level.

Characteristics of Flexibility

Labour flexibility is good for employers. Flexible trading hours bring increased profits, if prohibitive legal protections intended to protect workers family and social time are circumvented and labour costs are contained. Employment flexibility brings freedom to pay low wages, change the number of workers during operational peaks and troughs, and decide unilaterally how and when work is conducted. Legal protections are supposed to provide a counter balance to this, specifically for vulnerable workers, but the Labour Relations Act of 1995, a product of social dialogue and compromise, opens the door to flexibility by allowing unions to opt out of the most crucial protections against flexibility.

The reduction of labour costs through the downward variation of hours, wages, and benefits amongst employees undermines those protections and frees up financial restrictions to trading hours in the wholesale, retail, and hospitality sectors. This trend is at the core of a protracted engagement between South African unions and employers in these sectors. The case study of SACCAWU at these two national companies is a tale of a valiant battle on the part of the union to resist this trend for employment inequality in the workplace.

The war over hours

South African labour legislation is highly protective of working hours through the Basic Conditions of Employment Act. Professionals are excluded from these protections through an exemption of anyone above a ceiling of annual earnings, but are also subject to regulation.⁴²⁵

In the Basic Conditions of Employment Act, the maximum hours in a working week are 45. Employees work a 9 hour day if the average working week in the sector/company or workplace is taken as a five day week, or 8 hours if the average is a six day week. A compulsory (lunch-hour) rest period of one hour every 5 hours must be taken. A working day (inclusive of overtime) cannot extend beyond 12 hours; and a rest period (weekend) of 36 consecutive hours, which must include Sunday, is stipulated in the Act.

All work on Sundays and public holidays is voluntary. Employees can volunteer to do overtime work on Sundays and public holidays if they are requested to do so by the employer. An employee who does ad hoc overtime work on a Sunday must be remunerated at a rate of double the usual wage or hourly fee. Even if an employee normally works on a Sunday (i.e. it is taken as part of the normal working week in the sector), she/he must still be paid one and a half times the normal daily rate.

⁴²⁵ With higher earners such as office, management staff, and professionals, the number of hours per week is specified in the employment contract and any time that is worked over this limit classifies as overtime. This overtime does not distinguish between after-hours Sundays, or public holiday work and the employment contract could specify whether the employee agrees upfront to do some overtime work when required. No compensation is required from the employer, but unless urgent and due to unforeseen circumstances, the employee is entitled to refuse to work overtime.

Employees can never be required to work on a public holiday at the usual daily fee. Work on a public holiday can only be undertaken according to a special agreement between the employer and employee, and the fee must be at least double the normal rate. If the employer and employee agree, the remuneration can also be in the form of paid time off.

Overtime cannot be more than ten hours in any given week and has to average out to 4 hours per week over a period of four months. Employees can also agree, through a collective agreement, to “average out” their working hours over a period of up to 4 months. This means that as long as the average hours per week remain 45 over the 4 month period, they can vary the number of hours on a weekly basis.

The conditions and compensation for overtime work must be negotiated between the employer and employee. The employer is not obliged to pay for overtime work in any way, and an employee is not obliged to work overtime if he does not want to.

Paradoxically, despite these explicit regulations, the legislation allows for employees to sign away these protective rights. In general, the law states that you cannot through collective bargaining agree to worse conditions than in the BCEA. However, through collective bargaining agreements, employees may agree to work a “compressed working week”. If this agreement applies, employees can work up to 12 hours a day without getting overtime pay, although they may not work more than 10 hours overtime, nor more than 5 days in any given week. Employees can also agree to Sunday work in the employment contract as a matter of course, as long as the week consists of 45 hours and contains a 36 hour rest period. If this applies, an employee no longer has the option of refusing to work on a Sunday (voluntary agreement is no longer necessary) and is remunerated at one and a half times the normal wage rate for each hour worked, not at the double rate of the act.

As the case studies of Pick ‘n Pay and Sun International bear out, this facility to opt out of the protection of weekends in the Basic Conditions of Employment Act, and the legislation of sectoral wage minima in the wholesale, retail, and hospitality industry, has set the scene for a long range process of driving down the overall cost of wages whilst increasing trading hours in the industry.

Downward variation of wages

The case studies also demonstrate how state legislated minima, being an agreed amount set by technical experts and adopted through a tri-partite structure,⁴²⁶ can weaken actual earnings, negotiated through collective bargaining. This is corroborated by the LRS survey of informal work, in which organisers identified sectoral determinations as an obstacle to organizing, limiting unions in negotiating better increases. Employers use it as a weapon against the unions saying, “this is the wage instituted by your government” and are not prepared to negotiate more.⁴²⁷

⁴²⁶ The Employment Conditions Commission was established in terms of section 59 (1) of the Basic Conditions of Employment Act, 1997 (BCEA). It advises the Minister of Labour on the making of sectoral determinations and any matter concerning basic conditions of employment including the effect of government policies on employment.

⁴²⁷ Petersen & Elsely (2012)

Without due cognizance being given to the actual earnings in the sector, the state legislated minima aids those employers seeking to undercut actual earnings.

Opting out of employee social benefits

Employer contributions to statutory benefits, such as those prescribed by the Skills Development Act and Unemployment Insurance Act, are compulsory. However, employer contributions to employee pensions and provident funds,⁴²⁸ medical aid schemes, annual thirteenth cheques, and other social benefits, such as employer “top-up” to the state provisions for maternity benefits, housing and education loans or subsidies have been negotiated and won by trade unions since the days of privileged white labour and a tiered labour force during the apartheid era. These benefits were extended to black workers in the formative years of the democratic trade union movement in the 1980s and early 1990s.

The rolling back of these benefit provisions has been one of the main challenges to trade unions over the past two decades. As the case study demonstrates, employers have by and large succeeded in reducing the number of permanent or core employees through the introduction of shift work and the appointing all new employees on a “scheduled hours” or “varied hours” or “part-time” basis.

Concluding Remarks

“A Confusion of Categories”⁴²⁹, but Clarity of Vision: Analysis of the Union’s Strategy

“Although atypical employment has become the natural order of employment throughout the world, we find in South Africa resistance to this arrangement.”⁴³⁰

Resistance to informalisation

At Pick ‘n Pay the union succeeded in improving the hours, wages, and benefit provision of informalised/flexible workers. A similar victory was won by SACCAWU at another huge retail chain, Shoprite/Checkers. Here too, the union also engaged in a protracted battle and a bitter strike to increase the hours of casual workers, and is still locked in a battle to improve the ratio of permanent to casual.

In both cases, the union did not succeed in winning absolute equality. At Pick ‘n Pay, there are three categories, permanent full/fixed-time employees, permanent variable time employees, and casual employees. Under their current agreement,

⁴²⁸ A Provident fund is a retirement scheme, which varies slightly from a pension in that employees are paid a portion as a lump sum immediately on retirement and the balance as a monthly allowance. It is preferred by low paid workers who often have in general, a limited life expectancy rate.

⁴²⁹ A term coined by TU/O.3 to describe the multiple employee categories in various collective bargaining agreements signed by the union (FG2).

⁴³⁰ Bagraims attorneys, a labour law consultancy with an aggressive and vocal advocacy project for legal protections to be minimised to facilitate market restructuring.

<http://www.bagraimsattorneys.co.za/welcome-back-to-the-world-of-work/>

Shoprite/Checkers now employs permanent full/fixed-time employees (working 45 hours per week); permanent part-time employees (working 40 hours per week) and part-timers working less than 40 hours per week.

The union has recently set its sights on improving their level of representation and organisation of informalised workers in the hospitality and catering sectors. This has been pioneered in the progress made by the Sun International Company council, which has succeeded in increasing permanent positions and improving hours, benefits, and wages for scheduled workers.

Re-regulation is neither easy nor neat. In all three workplaces, contract workers still earn much less than permanent workers. Often, these variable time or contract workers cannot exercise their rights to the proportional benefits won through collective bargaining, as they cannot afford the employee portion of the costs.⁴³¹ Neither can they exercise their rights as members of the union, as employers refuse to grant them rights negotiated by the union for shop stewards who previously were all full-time, specifically time off arrangements to do union business.⁴³²

All the workplaces mentioned above are still locked in negotiations or disputes around averaging of hours and compressed working weeks. Another retail chain, Woolworths, has recently issued new contracts to all their staff in which Sunday is treated as a normal trading day. Even if the Sun International company council succeeds in their negotiations for incorporating contract staff into the company, it seems likely that a third category of worker will be created at the company.

Yet it is undeniable that SACCAWU has provided an alternate scenario to the indiscriminate and unchallenged informalisation so prevalent in the retail and hospitality industry in other countries. In the companies reviewed, permanent workers were prepared to make personal sacrifices in the interest of workplace equality for all. In both Pick n Pay and Sun International, shop stewards who are permanent workers are doing all the negotiations for casual and contract workers, and even entering into mediated discussions on their behalf.⁴³³ They take their mandate from these workers through the union.

Even when union membership is merely aspirational, due to contract workers not being allowed to join the union openly, or having their attempts for membership thwarted, as in the case of Sun International, shop stewards are negotiating on their behalf and in their interest. When asked whether they are sure that these workers will accept what they negotiate for them, they responded by saying they are sure, implying some consultation, albeit clandestine or informal.⁴³⁴

Equally remarkable, flexi-time workers are prepared to accept variable conditions in one workplace, as long as they are given job security/ permanency. When interrogating what this permanency/job security entails, the most common and important elements are a fixed number of hours per week (as close to a 45 hour week as is possible); provident fund and medical aid coverage. They are also prepared to accept, and elect, full-timers to represent their interests.

⁴³¹ FG2.

⁴³² TU/O.2

⁴³³ As in the SISA discussions for incorporation of contract workers.

⁴³⁴ FG2.

Utilisation of service advantage

Retail and hospitality workers in large chains like Pick 'n Pay and Sun International have considerable leverage. Both sectors thrive on customer service, on creating an ambience that builds a loyal customer base and attracts them back again. Thus, although employers are determined to reduce the costs of their labour force, they cannot go too far, as unhappy or highly dissatisfied workers do not provide a desirable service atmosphere. The union at Pick 'n Pay and at Sun International have used their company's images very astutely to their advantage through collective bargaining.

Utilisation of locational advantage

In the large retail chains characterised by peaks and troughs in trading days and hours, workers with varied hours, wages and benefits share the same workplace, and often do the same work. This leads to a strong impetus to recognise the commonality between them. It is in the interest of the permanent worker to reduce the number of casuals and contract workers, or risk losing their increasingly precarious permanent status altogether. It is also in the interest of the organised workers earning actual wages and benefits much higher than the sectoral minima to bring other workers up to their levels of wages, or their income, and jobs become unsustainable.

It is always more difficult to accept hardship when others in close range are faring better. Unorganised workers, employed at lower rates and anti-social shifts, are witness to the superior conditions of the permanent, unionised staff at the same workplace, and thus eager to join the union.⁴³⁵ Once the members of the union overcome viewing these workers as "other" the task of recruitment is easy.

Centralised gender programme

SACCAWU has been at the forefront of South African unions pioneering parental rights, HIV/AIDs rights and sexual harassment protections for its members. In 1988 the union signed an unprecedented parental rights agreement at Pick n Pay for 9 months paid maternity leave⁴³⁶ and 2 months unpaid. As part of this agreement, males were also granted 8 days fully paid parental leave.⁴³⁷ The union signed similar agreements with other large retail outfits in the 1980s and 1990s⁴³⁸, although most of these have now been undermined by new conditions being introduced through mergers or the appointment of large numbers of casual staff who no longer qualify for these benefits.

SACCAWU has also been at the forefront of developing a full gender department in the union, convening gender councils and conferences and electing gender co-ordinators on multiple levels. The union has a national gender co-ordinator and eight regional gender co-ordinators, who are all administrators in their respective regions. The

⁴³⁵ All Shop stewards interviewed; TU/O. 2

⁴³⁶ Statutory requirement is 3 months unpaid leave, with a percentage of your salary redeemable through the statutory unemployed insurance benefits.

⁴³⁷ TU/O. 2

⁴³⁸ National Gender Co-ordinator's report to the SACCAWU inaugural national gender conference 28 – 30 July 2006, Agreements data pgs. 1 – 7.

national gender chairperson sits on the national executive structures of the union⁴³⁹. In 2002, at its 7th general congress, it decided to elect gender co-ordinators at a company level. In 2005, at its 8th general congress, it decided that gender co-ordinators should form part of the national negotiating teams of the companies, and should sit on the local and national executive structures of the company councils. These gender co-ordinators meet in regional and national gender structures.⁴⁴⁰

Company gender co-ordinators are expected to place “gender issues like childcare and sexual harassment (and parental rights) on the collective bargaining agenda.”⁴⁴¹ The union has also developed guiding workplace policies on these issues. There is still some unevenness on a company level though. One gender co-ordinator mentioned that when the company has these policies in place, gender co-ordinators need more structured resource provision and forums to raise concerns and issues concerning lower paid women workers, as well as guidance on what to actually do in the national council and national negotiating committee.⁴⁴²

SACCAWU has kept track of women in leadership positions in the union since 1998.⁴⁴³ The union’s most recent campaign endeavour is to focus on building women leaders from the shop floor, through increasing the number of female shop stewards. The campaign is aimed at retail shopping malls.⁴⁴⁴

The Role of Global Unions

In collaboration with the Global Union UNI, SACCAWU and Shoprite/Checkers have signed a Global Framework Agreement in 2010. The agreement is minimal, in that it merely stipulates that Shoprite/Checkers will comply with the legal minimum standards, terms, and conditions of employment for working hours, pay, health & safety, training, and holidays in each country in which it operates; and that UNI will influence any of its members that participate in unprotected or illegal strikes and industrial activities. The union is also convening African regional shop steward’s meetings towards a framework agreement for Pick ‘n Pay.

Following discussions in 2012, SACCAWU, the Sun International Shop Steward’s Council, and the IUF Africa have entered into an informal agreement to begin discussions towards assisting the organizing of unions in other African countries.

Platforms of self-organisation

Unique among trade unions in South Africa, the SACCAWU company councils are semi-autonomous, expediting decision making and reporting directly to the members at the workplace. They set the agenda for collective bargaining demands in consultation with the members, and make all decisions related to the collective bargaining process amongst them. They raise and control their own funds to facilitate this. They decide on what they need from the union, and relay this through the local structures.

⁴³⁹ SACCAWU General Secretary email, 20 February 2013.

⁴⁴⁰ Ibid. pg 12.

⁴⁴¹ Ibid. pg 13.

⁴⁴² FG2.

⁴⁴³ See National gender co-ordinator/s report pg 15.

⁴⁴⁴ <http://www.genderatwork.org/saccawu>

Most of this they do without requiring much intervention from union staff. The union has staff members who co-ordinate sectoral, national, regional, and local activities. This ranges inter-alia, from overseeing shop steward elections to convening and servicing the collective bargaining process, to representing individual workers cases at the CCMA. The union has a national and regional Organising, Campaigning and Collective Bargaining Unit (OCCBU), with national and regional sectoral co-ordinators to provide this support.

Company councils may also be the reason perceived “otherness”, due to casual and contract workers belonging to other ethnic groups, nationalities, or regions, are able to be overcome. All workers have, or seek, a common company identity *through* the union. Hence the structural barrier of contract workers being employed by another company/labour broker provides the greatest obstacle, not only to representing,⁴⁴⁵ but even to recruitment, with several workers in the focus groups expressing ignorance of the union policy to organise these workers.⁴⁴⁶

Despite the weight given to them in the review of workers’ perceptions,⁴⁴⁷ identity issues do not come into play in these case studies either. Shop stewards at both companies affirmed that there little to no demographic or gender differentiation between permanent, casual, and contract workers at their different workplaces.⁴⁴⁸ They also assert that these workers are eager to join the union, and, therefore, easy to recruit. They say that these workers recognise the power of the union in the workplace and want that power to be exercised on their behalf. They often approach union shop stewards to act on their behalf and articulate their needs, even as non-members.⁴⁴⁹

However, things are not always rosy between the company councils and the union structures. Shop stewards feel they receive insufficient support or delayed responses from their local union offices.⁴⁵⁰

The problems arise once the new members have been recruited. Especially with contract workers who report to employers off-site and, therefore, require union intervention for elections and negotiations for recognition agreements. Shop stewards accuse the local union offices of being slow to respond to new recruits, of not keeping pace with their requirements, of not creating sufficient visibility of the union at the workplaces.⁴⁵¹

When interrogated, it also became clear that hospitality sector shop stewards felt that the retail sector dominance in the union has led to difficulties in getting the interest and responses to the considerable organising problems of their sector from union leadership.⁴⁵² The response of the Global Union officials to this was a suggestion that

⁴⁴⁵ As in the case of Sun International Grand West. A majority of cleaners at the Grand hotel employed by a contract cleaning company were recruited to the union, but management halted shop steward elections through refusing to allow another company’s workers to meet on their premises (S/St. 1 & S/St.2; TU/O 1).

⁴⁴⁶ FG1.

⁴⁴⁷ FG1; Petersen & Elsely 2012.

⁴⁴⁸ All Shop stewards interviewed; FG2.

⁴⁴⁹ All Shop stewards interviewed; FG2.

⁴⁵⁰ All shop stewards interviewed; FG2.

⁴⁵¹ FG2.

⁴⁵² Ibid.

SACCAWU consider structuring national planning and reporting along sectoral lines, to give equal consideration to all the sectors, as the IUF has done.⁴⁵³

The role of shop stewards, especially full-time shop stewards, in driving the company councils also bears some scrutiny. Much mention has been made in recent months, since the massacre of mineworkers at Marikina, of the higher education and resource levels of shop stewards, especially full-time shop stewards, in relation to their peers, as inevitably leading to estrangement between union leaders and rank and file at the workplace.⁴⁵⁴

These case studies contradict this easy conclusion. The shop stewards at Pick ‘n Pay and Sun International not only have better resources than their peers, but are often better resourced than local union officials. They have individual access to email, ability to travel using their independent company council funds, financial and company literacy through years of company negotiations and joint operational decision making. Yet far from this alienating them from rank and file members, the relentless struggle against flexibility has made them more attuned to worker needs.

Shop steward’s described the pressure of constantly being under scrutiny by their fellow workers, of having to measure up to the pressures of being put on the union to restructure by management. Such scrutiny not only increases the competitive nature of workplace elections, but also their frustration at slow union responses and weak workplace visibility. At the cutting edge of daily conflict, they take issue instead with union staff, and describe the union responses as lacking energy and urgency.⁴⁵⁵

Building solidarity between permanent and contract/casual/variable time workers

“The influx of casual workers into the ranks of the Union has meant that the Union has to address new challenges arising from such an influx.”⁴⁵⁶

SACCAWU has only begun organising casual and contract workers during the current decade and has yet to institute the accompanying organizational changes. The need to give equal organisational weight and resources to all its sectors is top of the list. So too is addressing the union response rate to shop floor interventions and general visibility. All shop stewards and union officials agree that the ratio of union organisers to members (one organiser for every 1,000 members) is unrealistic for a sector dominated by small employers and a geographically scattered workforce such as the hospitality sector. More importantly, given the crucial role strikes have played in the shifting of management approaches to grant permanent status to casual and contract workers in the companies reviewed in this report, the union has to see concrete results (in the form of strike pay-outs) from its resolution to create a strike fund, taken at the 2008 national congress. These structural and resource weaknesses bear addressing in the short to medium term.

⁴⁵³ GUF 2; GUF 3.

⁴⁵⁴ See Momomiat, Y “A labouring Behemoth finally reaches the crossroads” in *Mail & Guardian*, Dec 21 2012 – Jan 3 2013, pp 34 – 35;

⁴⁵⁵ All shop stewards interviewed; FG2.

⁴⁵⁶ Deputy General Secretary of SACCAWU, Mdu Mbongwe (2010)

<http://www.saccawu.org.za/discussion-documents/challenges-of-globalisation-extended-working-hours>

When asked what the union does actively to build solidarity between these workers, the response of a union official was that joint plant, regional and national general meetings develops these tactics on a case by case basis.⁴⁵⁷ Negotiating on their behalf and fighting to increase their permanency, wages and benefits was the response of others.⁴⁵⁸ The role of the union in highlighting the lack of fairness in a striated labour force cannot be underestimated in the on-going resistance to informalisation and the struggle for greater equality at these companies. The union slogan of Unity, Democracy and Socialism; a clear, national policy position of the union on equal working conditions and wages; the union and federation (COSATU's) refusal to accept labour brokers and abuse of the category of casual employment have set the value base which inspire shop stewards and workplace struggles, thereby succeeded in preventing docile acceptance of this concerted global trend.

APPENDIX 1.

SACCAWU Statement on Labour Brokers (<http://www.saccawu.org.za/campaigns/57-anti-walmart-coalition-campaign/111-saccawu-supports-strike-against-labour-brokers>)

TOTAL BANNING OF LABOUR BROKERS

For years now the wholesale, retail and hospitality sectors, the sectors in which SACCAWU organises, have been faced with growing casualization of employment with increasing worsening of employment contracts, wages, and benefits. This situation has become substantially worse since the mushrooming of labour broking companies, where more and more workers are less likely to get full time and secure employment.

Labour Brokers Do Not Create Jobs!

We have pointed out many times that labour brokers are not employers. They do not create jobs but make huge profits by creating a pool of job seekers and then secure a deal to provide their services companies seeking workers but unwilling to take responsibilities that come with employment. It is through this arrangement, which does not include workers, except when they are delivered to companies to work; the Labour Broking Companies are then paid an amount out of which they then pay workers. This obviously results in conditions that are worse than what workers would have secured if they were directly employed by companies where vacancies exist. We must demand the banning of labour brokers because it represents nothing more than modern day slavery under the so-called guise of creating jobs.

If we allow labour brokering to continue, then it will result in secure, full-time, permanent employment being eroded until it becomes part of the past. Labour broking is the most severe onslaught on workers' rights, hard fought for over decades and if it is not banned, much of what the workers have won, through bitter trade unions struggles, will disappear. This is not in the interest of workers, not in the interest of the unemployed, not in the interest of decent work, and not in the interest of the country at large.

⁴⁵⁷ TU/O. 2.

⁴⁵⁸ FG2.

With labor broking there is no opportunity that we will be able to meaningfully bring new job seekers into the job market, and this will not only result in problems with secure employment but also will also have untold social problems flowing from it.

A RETURN TO STANDARD EMPLOYMENT IN TUNISIA'S PUBLIC SECTOR

Stephen Juan King⁴⁵⁹

Introduction

Subcontracting labor to avoid unionization and to deny workers their basic rights pertaining to social protections, job security, adherence to minimum wage laws, and respect for deadlines for the payment of wages has been a part of the Tunisian private sector landscape since movements toward economic liberalization began in the 1970s. In some industries such as textiles, construction, and the hotel trade a large majority of the workforce is temporary and recruited by subcontracting agencies.⁴⁶⁰ During the process of economic reforms in Tunisia in the 1990s, especially after IMF and World Bank sponsored reforms and the Free Trade Agreement Tunisia struck with the European Union in 1994, the practice became widespread in the public sector.⁴⁶¹ This paper analyzes the successful campaign waged by Tunisia's National Labor Federation, the UGTT, and its affiliates to transform subcontracted labor (back) into standard employment in the public sector, and the UGTT's relative lack of success, so far, in accomplishing the same goal in the private sector.

Subcontracting labor in the public sector pushed public sector workers, mainly security guards and those employed in cleaning services, into the informal sector. The UGTT's successful campaign has returned these workers to standard employment; subcontracting has been banned in the public sector. This research is based on the secondary literature and documents from the International Labor Organization (ILO) and the Tunisian Bureau of National Statistics. In addition, the paper is based on three focus group interviews: one with 5 leaders of the UGTT, including the current General Secretary, a second with 6 male subcontract workers, and a third with 6 female subcontract workers.

The paper concludes that the Tunisian government capitulated to the UGTT's demand to end subcontracting in the public sector for several reasons: because of continuous pressure from the UGTT, which began before the fall of Ben Ali's regime; mounting public pressure from strikes and sit-ins that were publicized by a press freed from authoritarian strictures, the extraordinary opportunity presented by the regime breakdown which made transitional governments in Tunisia desperate to lessen volatile social conflicts by demonstrating that they were bringing justice to workers and ending exploitation. Finally, some members of Tunisia's transitional governments favored standard employment over subcontract labor and would have sought to end it without external pressure.⁴⁶²

⁴⁵⁹ The author would like to acknowledge the research assistance of Wafa Ben Slimane.

⁴⁶⁰ ILO, Accessed 11-18-2012, <http://survey09.ituc-csi.org/survey.php?IDContinent=1&IDCountry=TUN&Lang=EN>

⁴⁶¹ Interview with UGTT activists.

⁴⁶² The head of the UGTT spoke of allies within the transitional government.

The UGTT has also made some, though less, progress in eliminating the negative aspects of subcontracting labor in the private sector. The negotiations that led to a law ended subcontracting in the public sector failed to achieve the same aim in the private sector. Third party subcontracting agencies can still operate in the private sector, though many went out of business as a result of the loss of public sector contracts. In addition, private sector workers, witnessing the end of subcontracting in the public sector, have increasingly rejected subcontract employment on principle and have actively fought to end it.

The public pressure has led private sector employers to increasingly utilize direct short-term contracts between employers and workers in the place of subcontracting agencies. These contracts are often renewed for years at a time and, because they are short-term, the wages and benefits are lower than those for standard employment in the formal sector. For the private sector, in a sense, subcontracting has mutated into short-term contracts yielding the same material conditions and lack of labor rights. The UGTT is currently attempting, with limited success, to eliminate both serially renewed short-term contracts and subcontracting practices in the private sector. The challenges are greater in the private sector because the UGTT or workers on their own because they have less leverage with employers and the national employers association, UTICA, than they have with the government.

In the public sector in Tunisia, subcontracting labor meant ending standard employment for approximately 60,000 workers and thrusting them into the informal economy. The UGTT campaign has returned most of these workers to standard employment. Hundreds of thousands of additional workers would benefit from ending the short-term contracts and subcontracting with the third parties in the private sector. Those workers seek standard employment as well. As a whole, the informal sector in Tunisia is a huge part of the economy. In a country of approximately 10.5 million people, it involves 35-42% of the labor force, around 50% of 800,000 unemployed individuals, and represents 50% of the Tunisian GDP.⁴⁶³ There are eight main types of informal work in the country: 1) Micro-enterprises-- that set up shop on streets,-- which can be fined by the authorities.; 2) Domestic service employment--those who do housework and clean offices; 3) Economic activities such as embroidery and baking that take place in homes; 4) Security guards working at apartment buildings, in hotels, and in offices 5) Agricultural activities undertaken by seasonal or temporary workers 6) Smuggling goods across borders.; 7) Towing or repair services of any kind wherein the relationship with customers is through telecommunication. Often the worker starts by opening up a micro-enterprise to create a steady client-base, then closes down the physical shop and continues to provide services via word of mouth.; 8) Activities related to the weekly flea markets held throughout the country.⁴⁶⁴

In a country so dependent on the informal economy, successful efforts to formalize this part of the economy by subjecting its activities to state control and

⁴⁶³ Sana Sboui, "Informal Work, or Evidence of the State's Incompetence," May 9, 2012. <http://nawaat.org/portail/2012/05/09/informal-work-or-evidence-of-the-states-incompetence/>.

⁴⁶⁴ Ibid.

regulation would offer enormous benefits to the population.⁴⁶⁵ It would improve labor market security (adequate employment opportunities through high levels of employment ensured by macroeconomic policies); employment security (protection against arbitrary dismissal, regulation on hiring and firing, employment stability compatible with economic dynamism); job security (the opportunity to develop a sense of occupation through enhancing competencies); work security (protection against accidents and illness at work, through safety and health regulations, and limits on working time); skill production security (widespread opportunities to gain and retain skills, through innovative means as well as apprenticeships and employment training); income security (provision of adequate incomes); and representation security (protection of collective voice in the labor market through independent trade unions and, employers' organizations, and social dialogue institutions).

The story of the success of trade union efforts to return public sector workers to standard employment in Tunisia begins within the context of the breakdown of an authoritarian regime, which opened up opportunities for collective action waged by Tunisia's national trade union federation. The next section discusses the history of the UGTT prior to the recent political opening, which has increased its power and autonomy. This will be followed by a description of subcontracting practices, then an analysis of the UGTT's successful campaign to end subcontracting in the public sector, and an evaluation of the progress made in the private sector to date.

The UGTT: Autonomy and Dependence

Prior to the intensive civil resistance in Tunisia that led to the swift, dramatic, and unexpected collapse of Ben Ali's authoritarian regime and launched the Arab Spring (December 18, 2010-January 14, 2011 when Ben Ali fled the country for Saudi Arabia), Tunisia could be described as a single party authoritarian regime that had been transformed from a populist, Arab socialist orientation to a crony capitalist form of authoritarian rule in the decades that followed independence in 1956.⁴⁶⁶ In Tunisian history, from the struggle for independence from French colonialism to the present day, Tunisia's national or general labor federation, the UGTT, has had a varied relationship with the Tunisian government with some periods of independence and other times of state control.

Breaking from the French trade union organizations in the colonial era (1881-1956), the UGTT was the first independent trade union federation in Africa. The UGTT organized and sustained long waves of militancy through strikes and demonstrations in support of the nationalist struggle led by the Neo-Destour political party that was destined to become Tunisia's post-independence state party (changing its name to the Socialist Destour then the Constitutional Rally Party, RCD, over-time). Due to its militancy and strength as a social force, the UGTT was in a strong position when the time came for negotiations with Neo-Destour party leaders upon independence. This role gave

⁴⁶⁵ On the seven securities of standard employment see most recently, Susan J. Schurman and Adrienne E. Eaton, "Organizing Workers in the Informal Economy," Solidarity Center, January 2012.

⁴⁶⁶ I make this argument in *The New Authoritarianism in the Middle East and North Africa* (Bloomington: Indiana University Press, 2009).

the Tunisian labor movement a degree of systematic access to policymaking. The secretary-general of the UGTT sat on the political bureau of the ruling party, and the UGTT automatically had a bloc of deputies in the National Assembly. Neo-Destour party leader and first President, Habib Bourguiba, named the head of the UGTT, Ahmed Ben Salah, economic czar in 1961. During his decade in power, Ben Salah was the architect of Tunisian Arab socialism.

Despite its influential role in the early post-independence years, the UGTT also became a part of a corporatist regime of national unity, that sought to organize and mobilize sectors or corporatist arms of the economy—labor, agriculture, business, students, professionals, etcetera—under the ultimate control of the party-state. The UGTT's power was put to the test in the 1970s when the government made a shift in policies from Arab socialism to gradual economic liberalization. Neo-liberal economic policies led to painful material losses for Tunisian workers and peasants, especially in the late 1970s. To stifle dissent the regime co-opted the UGTT leadership and prevented dissenting members from establishing a labor-based opposition political party.⁴⁶⁷ However, despite bureaucratic ties to the state apparatus and state co-optation efforts, in the 1970s and early 1980s the UGTT maintained an independent streak and often fought to defend the important gains made by workers and peasants during Tunisia's Arab Socialist phase. In 1978, the UGTT led a destabilizing national strike that threatened the regime at its core and prompted the announcement of multiparty elections. However, by the time the elections were scheduled in 1981, the UGTT had again formed an alliance with the ruling party. Those elections were aborted at the last minute.

Moving back towards independence from government control in the early 1980s, the UGTT claimed that workers' standard of living fell 20 percent between 1983-1985.⁴⁶⁸ Bread riots supported by the UGTT, over the rising cost of the country's main staple, shook Tunisia in 1984-1985. Fearing the growing strength of the UGTT and increasing public dissatisfaction with its policies, during this period, the regime took steps to neutralize the UGTT. The head of the UGTT, Habib Achouar, and more than one hundred UGTT unionists were arrested, accused of mishandling union funds and lack of patriotism and jailed.⁴⁶⁹ Security forces and state party members took control over provincial offices of the UGTT and its headquarters in Tunis. The control of the UGTT was handed over to state party loyalists.⁴⁷⁰

By 1987, an Islamist movement, later to become al-Nahda, the current dominant party in power in Tunisia, had replaced the UGTT as Tunisia's primary opposition social force. President Bourguiba's effort to decapitate the Islamists and the threat of civil war in retaliation led to the bloodless coup of Ben Ali in 1987. Once in power, Ben Ali sought to rehabilitate the UGTT but at a high cost to its independence.⁴⁷¹ UGTT members were freed from prison and free to rejoin a much more tightly controlled organization. Any strikes at any level had to be approved by the general secretary of the UGTT. No strikes

⁴⁶⁷ Mediouni Lassad, "Government-Labor Power Struggle Set to Continue," IPS-Inter Press Service, December 23, 1985.

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

⁴⁷¹ Sadri Khiari et Olfa Lamoulou, "Tunisie des elections en trompe-l'oeil," *Politique Africaine* 76 (December 1999): 112.

were allowed at places of work. The regime had to be notified ten days in advance of the intention to strike. A closer collaboration between state authorities and the UGTT was instituted. The UGTT leadership for all intents and purposes had to be chosen by the regime. Dissident unionists were harassed by the security police.⁴⁷²

The co-opted leadership of the UGTT signed on to Ben Ali's economic policies, which were oriented toward the acceleration of economic liberalization including the full privatization of the economy. By 1992, the UGTT General Secretary offered full support for the regime's structural adjustment policies that at least in the short term entailed severe pain for workers and peasants:

"Our union...has chosen in principle to adapt to international transformations by adopting new methods of work and intervention... in order to expand social justice and prosperity. Today, the union is trying to adapt to changes in the international economic system, the structural adjustment program, the new world order and the market economy. The task of meeting these challenges is the union's preoccupation."⁴⁷³

The Emergence of Subcontracting in the Public Sector

Subcontracting labor became a prevalent practice in the private sector in Tunisia in the early 1970s as the country launched an economic liberalization program and took steps to expand foreign investment. Economic liberalization policies were expanded in Tunisia in the late 1980s. As noted at the end of the last section, the Secretary General of the UGTT declared in the early 1990s that the UGTT intended to adapt to international transformations in order to 'expand social justice and prosperity' in Tunisia. This meant that the UGTT formally accepted the Tunisian government's economic reform program designed to fully adapt to a new world order and the market economy. Within the context of a structural adjustment program supported by the World Bank, the International Monetary Fund, and the European Union President, Ben Ali's government decided to rid the public sector of activities such as cleaning services and security guards. These activities were subcontracted out to third parties, who would hire the workers providing cleaning and security services to the public sector—the same agencies supplied workers for private sector enterprises.

The Tunisian government nominally selected subcontracting agencies because they had an existing process for ensuring that subcontracted workers were paying the correct social taxes from their wages and the companies operated according to the Tunisian labor code.⁴⁷⁴ However, according to both leaders of the UGTT and the laborers themselves, proper procedures were seldom applied. In practice, the switch to subcontracting meant that the Tunisian government would pay the subcontracting companies the same amount that the government had previously paid the workers

⁴⁷² Ibid.

⁴⁷³ Secretary General of the UGTT Ismail Sahbani speaking to the UGTT national assembly of 1992. Quoted in Christopher Alexander, "State Labor and the New Global Economy in Tunisia," in *North Africa: Development and Reform in a Changing Global Economy*, Dirk Vandewalle editor (New York: St. Martin's Press, 1996), 177.

⁴⁷⁴ Focus group interviews with UGTT leaders and public sector workers.

directly. The third party subcontractors would pocket part of this payment for themselves and pay the workers the remaining portion, which obviously reduced their salaries.⁴⁷⁵ Subcontractors also often failed to provide the social protections legally required in Tunisia for both standard employment and subcontract labor and kept the length of contracts short to further immiserate and render vulnerable this population.⁴⁷⁶ Some elderly workers found out only at the moment of retirement that they in fact did not have any social security income at all.⁴⁷⁷ In addition, often these cleaning services' workers in the public sector and security guards were asked to sign a contract to work and a letter of resignation at the same time. If the workers asked for benefits required by Tunisian labor laws, the subcontractor would add the date the worker demanded their rights to the letter of resignation and fire the worker.⁴⁷⁸

In many cases, there were no contracts at all in order for the subcontractors to avoid paying taxes and providing benefits. Workers in the public sector complained about losing health insurance and retirement benefits when they became employees of subcontractors.⁴⁷⁹ They felt humiliated by becoming undocumented workers, new parts of the informal sector. When asked about signing a contract a worker replied:

"No. He gave us money in the street. Someone would come to us carrying a folder. He would gather women together and ask us if we knew others that would like to have a job. When we met him in the street again he would take us to the places to clean. At the end of the month, we would meet the same way and he would pay us in the street. The amount of money was very little, 40 to 60 Tunisian Dinars (One Tunisian Dinar equals approximately 60 cents). This was in 1998.

The informalization of labor in Tunisia's public sector worsened the lives of workers in myriad ways. Workers often lost health insurance and retirement benefits. Their pay was sharply cut. Some claimed that subcontractors kept two-thirds of their former pay and paid them one third:⁴⁸⁰

"Life was much cheaper [in 1998] but that [40-60 dinars a month] wasn't enough at all. You can't do anything with so little money, but I had to do it. Women that are working in cleaning are usually forced to do it. We have children. We are widows. Some can't read. We have to pay rent. You have to have any job to survive with your kids."⁴⁸¹

"Working for the subcontractors my family could not afford to eat meat for two years. We ate bread and harissa (Tunisian spicy paste)."⁴⁸²

⁴⁷⁵ Ibid

⁴⁷⁶ Ibid.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.

⁴⁷⁹ Focus group interview with public sector workers.

⁴⁸⁰ Ibid.

⁴⁸¹ Ibid.

⁴⁸² Ibid

Public sector security guard salaries at the end of the 1990s ranged from 45 TD to 170 TD a month. By then, for the most part, they had become undocumented workers paid in cash and without benefits. The guard receiving the highest pay claimed that after paying his bills each month he would arrive home with 10 TD for expenses for the rest of the month.⁴⁸³ The typical pay for security guards and cleaning services' workers in the public sector since the successful campaign to end subcontracting has increased to around 400 TD per month. Their contracts also include accessible health care and retirement benefits. Unfortunately, for older workers, the return to standard employment has come too late because they are too close to retirement to accumulate much in their social security accounts.⁴⁸⁴

In addition to sharp pay cuts and the frequent loss of health care insurance and retirement benefits, informalization in the public sector through subcontracting labor produced work schedules that strained family life. The women who worked for the cleaning services subcontractors (The jobs are fully segregated by gender. Women work for the cleaning services and men work as security guards) usually had split shifts. They worked for a few hours in the mornings and then returned at night. Due to the distance from their homes most spent the time in between daily shifts loitering in public areas, usually public parks. Security guards worked 12-hour shifts five days a week. Due to the low pay many had to work all seven days for 12 hours each day in order to earn a livable wage through over-time pay.⁴⁸⁵ They complained of working out in the cold, standing always, cheap uniforms that made them sick, and a general unhealthy lifestyle.⁴⁸⁶

For women the move from standard employment to subcontracting dramatically increased sexual harassment. Their split schedules forced them to walk home, most several miles away, at night when they confronted aggressive harassment in the streets. The people working in the public offices lost respect for them and some sexually harassed them with impunity:

“ To this day [her job has been returned to standard employment] I remember the suffering from working for subcontractors. I used to be miserable and hungry. We got back home late. We faced sexual harassment in the office and in the street. In the office they touch you and if you don't let them do that they will get you in trouble and create a problem for you. Added to that when you go out at night at 8 and you live far from work like me, 13 kilometers away, you are walking in the streets at 11 pm at night when you finish work. Men harassing you everywhere.”⁴⁸⁷

Both the women working for the cleaning services and the men working as security guards in the public sector claimed that moving from standard employment to subcontracting engendered humiliating treatment:

“ They treated the women who are cleaning very badly. They treated us much worse than they treated slaves. They had no respect for us. They didn't care about

⁴⁸³ Ibid.

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

our dignity. They didn't even consider us as human beings. They shouted at us all the time. If you made any mistake or forgot to do anything even if it was not important you were treated worse. If the boss told the subcontractor about poor performance, you would have to work two or three days without pay. People were fired for no reason, beating, bitten, hit, slammed around. Workers in the offices sometimes took things from each other, but the women cleaning and the people guarding the buildings were always the ones accused of stealing.”⁴⁸⁸

A security guard complained that a colleague was fired and put in jail for eight months after being accused of stealing a box of chocolates:

“What was the value of that box of chocolate? He has a family to take care of. They saw him on camera getting on the floor. It was part of his job to check everywhere in the building. I have cleaning women working with me and I saw how bad they got treated. They look at them and us in the same way, with no respect. I said hello to someone in the office once and she answered, ‘is that the door talking to me?’ I said, ‘no the person watching the door is talking to you.’ They considered us as nothing, like we didn't exist. They didn't consider us as human beings doing this work.”

Even the co-opted UGTT of the 1990s could not ignore the pain to workers caused by the spreading practice of subcontracting labor in both the public and private sector. The UGTT fought the change in the public sector from its inception.⁴⁸⁹ There were also spontaneous protests from the workers themselves when the phenomenon appeared in the public sector.⁴⁹⁰ However, the pressure generated by the UGTT and public sector workers was not enough to end the practice. The practice remained in force from the 1990s until the recent breakdown of Ben Ali's authoritarian regime. Regime breakdown provided the opening, which facilitated successful collective action by the UGTT to end subcontracting in the public sector.

The UGTT Campaign to End Subcontracting

During the Ben Ali era, there was a concerted attempt by the UGTT to organize and bring standard employment to government workers in Tunisia. In 1999, eliminating the practice of subcontracting labor in the private sector became a formal part of the agendas of the National Congress of the UGTT and of regional unions in Tunisia. There were heated debates about the issue at all levels of the UGTT—economic commissions, national congresses, regional and sectoral unions-- running into the 2000s. The overall message from the UGTT was that subcontracting labor amounted to the exploitation of man by man.⁴⁹¹

⁴⁸⁸ Ibid

⁴⁸⁹ Focus group interview with UGTT leaders.

⁴⁹⁰ Focus group interviews with public sector workers.

⁴⁹¹ Interview with UGTT leader.

The UGTT deployed a number of tactics during the Ben Ali regime to end labor subcontracting in the public sector. At one point, the head of the UGTT's Federation of Trades, Monji Abderrahim conducted a hunger strike in support of these exploited workers. The AFL-CIO and other international unions signaled their support for Abderrahim.⁴⁹² British Parliament voiced their solidarity with the UGTT leader.⁴⁹³ In response to the hunger strike, UGTT pressure, and the internationalization of the issue, the head of the Ministry of Social Affairs in Tunisia negotiated an end to Abderrahim's hunger strike. The negotiations included a promise by the government in 2002 that it would open a dialogue with the UGTT to eradicate labor subcontracting.⁴⁹⁴

In addition to Monji Abderrahim's hunger strike, the UGTT organized sit-ins at the working places of these laborers. Sectoral heads of the various federations of trade also took a leadership role to end labor subcontracting. This occurred throughout the country in Tunis, Sfax, Ben Arous, Manouba, Ariana, Sousse, and elsewhere. It was a long struggle that was prominent for the UGTT from 2002-2011.⁴⁹⁵ The sectoral leaders of the UGTT organized strikes, and awareness seminars for the workers they organized. They waged a perpetual media campaign during these years to highlight the everyday exploitation of subcontracted labor in the public sector. However, despite these various efforts, the practice remained throughout Ben Ali's time in power.

Contempt for state corruption involving close members of the President's family, high unemployment, regional disparities, fatigue from an oppressive security apparatus, and the lack of political freedom fueled the popular uprising that brought down Ben Ali on January 14, 2011. The spontaneous popular uprising began in the poorer interior part of the country. The UGTT, sensing the end of the regime and government control, helped to maintain its momentum and to spread it to the country's urban centers and wealthier coastal regions. Pressure from its base and the spontaneous protests, strikes, and demonstrations ignited in Tunisia's poorer interior regions in December of 2010, and fueled the UGTT's leadership new confrontational stance toward Ben Ali's regime.

Successive interim governments were formed after the regime's collapse. These interim governments faced enormous challenges as they tried to steady the country until the election in October 2011 of the Constituent Assembly charged with writing Tunisia's new constitution and making a formal transition to democracy. The interim governments of the transition faced extremely volatile social conflicts. The economic problems that fueled the uprising were exacerbated by regime's breakdown. Strikes and demonstrations, spontaneous and organized, paralyzed economic productivity. Instability cut deeply into tourism revenue. New political freedoms of voice and association made it impossible for transition leaders to ignore rising expectations for economic improvements from various groups in society. A free press publicized the charged social conflicts.

Immediately after the fall of the Ben Ali regime, the UGTT trade union federations capitalized on the weakness of central government power and the spontaneous mobilization of subcontracted laborers—street protests, strikes, sit-ins—to put great public pressure on the transition government to abolish all precarious work in

⁴⁹² Ibid.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

Tunisia, especially subcontracting in the public sector.⁴⁹⁶ Monji Abderrahim once again played a pivotal role in organizing UGTT efforts in this domain, and for his efforts he was honored with an award from UNI Global Union.⁴⁹⁷

It should also be noted that the National Women's Committee of the UGTT was particularly active in the post-Ben Ali attempts to end subcontracting.⁴⁹⁸ They supported the claims of the women in the cleaning industry, framing their concerns in a politically viable way, by organizing and mobilizing workers who had not participated in the protests, and by staging events to encourage these workers to defend their rights and reasonable demands for equal pay.⁴⁹⁹

Seeking stability and social control, interim president, Foued Mebazaa, promised national level negotiations to arrive at a new social bargain that would mollify the various social groups in Tunisian society.⁵⁰⁰ The transitional government of Mohamed Ghannouchi warned that the country could "collapse" if the mass walkouts and protests sometimes interspersed with violence continued.⁵⁰¹ Sensing an opening, UGTT leaders, made the case for a rapid increase in stability by transforming deeply unpopular subcontract work into standard employment:

. "There is an immediate response that the government can provide, namely tenure for hundreds of thousands of [Tunisians working for subcontractors] in order for them to be integrated into [standard employment] said [UGTT leader] Mr. Briki?"⁵⁰²

Ultimately, the UGTT campaign against subcontracting in the public sector was a complete success. The return to standard employment has doubled or nearly tripled the salaries of the affected workers.. They have secure health insurance and retirement benefits again. Their work lives are being regulated according to the Tunisian labor code. They are paid in offices not in the streets. They can go to an office and discuss small and large issues concerning their jobs. The UGTT's successful campaign in the negotiations concerning the public sector—on April 22, 2011 an agreement was signed outlawing subcontracting—was aided by Global Union, UNI, which provided training, workshops, meeting, and exchanges.⁵⁰³ The training included leaders of UGTT branches, such as the General Federation of Professions and Services (FGPS). The leader of the FGPS received a prize for Decent Work for his role in the successful campaign.⁵⁰⁴

While leading the way in organizing protests against subcontracting, the UGTT and the FGPS were aided by some spontaneous protests and efforts at self-organization. Sometimes organizational forces from above and below met in the middle. After the revolution, strikes and protests became very common. People working for subcontractors began to talk among themselves about how to improve their deplorable working

⁴⁹⁶ Ibid.

⁴⁹⁷ Ibid.

⁴⁹⁸ Ibid

⁴⁹⁹ Ibid.

⁵⁰⁰ Tunisie: Le principal syndicat veut des negociations sociales "rapides."

[http://www.aufaitmaroc.com/monde/maghreb/2011/2/10/tunisie-le-principal-syndicat-veut-des-negociations-sociales-rapides.](http://www.aufaitmaroc.com/monde/maghreb/2011/2/10/tunisie-le-principal-syndicat-veut-des-negociations-sociales-rapides)

⁵⁰¹ Ibid.

⁵⁰² Ibid

⁵⁰³ Ibid.

⁵⁰⁴ Ibid.

conditions. A small group of cleaning services workers at the Tunisian National Social Insurance Office, SNSS, decided to go to the UGTT for help. The UGTT sent them to the office of the FGPS. At that point, the FGPS coordinated their efforts to protest subcontracting. Under FGPS tutelage (providing guidance such as telling them to come to work but to not do any work, instead of staying at home during the strikes) they formed the first union organized to protest subcontracting in Tunisia.⁵⁰⁵

Once workers in the public sector began organizing and advocating for their rights, their bosses, before the practice was outlawed, tried firing ‘trouble-makers.’ Colleagues hesitated to join strike leaders initially, but after a time they protested the firing of labor activists in a unified manner. That show of collective power convinced the subcontractors to rehire the leaders.⁵⁰⁶

Both the UGTT organized and the workers’ spontaneous strikes against subcontracting spread to many public sector jobs. In one example of self-organization, public sector workers brought in journalists to film their strikes and sit-ins. They made a documentary film of their protests called, “The Whistle.”

In sum, subcontracting in the public sector was ended for a number of reasons. Tunisia’s interim governments had some sympathizers to the cause of ending subcontracted labor. The general director of the public sector seemed sympathetic at the start of negotiations with the UGTT, even though some ministers fought against, claiming that the change would put more pressure on their budgets.⁵⁰⁷ It should be noted that this is a dubious claim since under the policy subcontracting operators were supposedly paid the same amount that would ordinarily have been paid directly to the workers.

In addition, the interim Prime Ministers and Presidents (interim governments were formed and disbanded rapidly shortly after the revolution due to public pressure to eliminate sympathizers to the prior regime) needed to demonstrate that the revolution could produce social justice and end exploitation.⁵⁰⁸ The strikes and protests organized from above and below were so widespread after the regime breakdown that government leaders were anxious to take steps to gain social control and stability. The press and media kept labor conflicts in the public eye during the sensitive regime transition phase. Finally, ending subcontracting labor was a long-standing UGTT goal, which began early in the Ben Ali era, so; success was partly due to continuous pressure.⁵⁰⁹

There were some negatives in the successful campaign to end subcontracting in the public sector. For example, women working in the cleaning services complained that some men in the UGTT (workers at the airport were named) did not like the idea of women working in cleaning services joining their organization.⁵¹⁰ The reason seemed to be linked to both gender and the status of jobs in the cleaning industry. UGTT leaders, however, doubt that the sentiment is widespread and one of the most effective UGTT/FGPS leaders of the campaign to end subcontracting is female.

⁵⁰⁵ Focus group interviews with UGTT leaders and laborers working under the subcontract system.

⁵⁰⁶ Ibid.

⁵⁰⁷ Focus group interview with UGTT leaders.

⁵⁰⁸ Ibid.

⁵⁰⁹ Ibid.

⁵¹⁰ Focus group interview with female workers.

After the revolution, when the UGTT revitalized its campaign to end subcontracted labor in the public sector, it sought to do the same in the private sector. Its efforts led to a law on April 22, 2011, that banned subcontracting agencies in the public sector but did not do the same for the private sector, although the UGTT media campaign and organized pressure, along with a fresh rejection of subcontracting by workers in both sectors contributed to a sharp decline in the use of subcontracting agencies throughout Tunisia. Some of these agencies folded because they lost contracts with the government. The success at ending subcontracting in the public sector made the practice deeply unpopular. Many employers chose to initiate direct short-term contracts to replace subcontracting agencies. Basically this led to a mutation of subcontracting in the private sector into direct short-term contracts between employers and employees. This mutation has improved the ability of private sector workers on short term contracts to unionize more easily and has also improved their negotiating position vis-à-vis their employers somewhat. However, most private sector employers have attempted to renew short-term contracts with lower pay and fewer benefits for years at a time rather than increase standard employment in their enterprises.

The UGTT is currently very actively seeking to increase the use of standard employment in the private sector. They are protesting the mutation from subcontracting to short-term contracts in the private sector. They are also negotiating with the national business association, UTICA, and individual business owners to improve the working conditions of hundreds of thousands of Tunisian workers in the private sector still seeking standard employment. In this regard, UGTT leaders lament that their leverage against private sector employers and UTICA is weaker than their leverage against the Tunisian government.

From the point of view of private sector workers affected by these issues, the difference between working for a subcontracting agency and working directly for an employer under a short-term contract is often indistinguishable. They see the UGTT's success in the public sector and understandably seek the same for themselves:

“I want to understand, since we are all living in Tunisia why was subcontracting eliminated for the public sector but not for the private sector [The legal end of subcontracting agencies obviously did not improve her working conditions as this discussion occurred after the implementation of the law]. We are all cleaning why are we treated differently? Are they better than us? The others are getting paid 400TD and they get loans to take care of their kids and to improve the conditions of their houses. My daughter was crying today because I told her that we are not buying a sheep for *El Aid* (holiday). I make 140TD a month and I can't pay the rent with that, food, and everything else.”

Subcontracting Labor and the Tunisian Labor Code

Subcontracting labor and its mutation to a series of short-term contracts in the private sector without full benefits and labor rights should be governed by the country's labor code. Nominally, it is but in terms of these practices the labor code needs better law and better enforcement. During the campaign to end subcontracting it became clear to the UGTT that part of the problem was that subcontract work fell into somewhat of a grey zone in the Tunisian labor code.

The Tunisian labor code does not make enough specific references to sub-contracting. Sub-contracting in the Code de Travail (the primary legislation regulating labor in Tunisia) falls under the general provisions for the formation of contracts between employer and employee and very few specific provisions for sub-contracting are found in the Tunisian law code as a whole. In fact, this lack of specific law governing sub-contracting was the subject of a 2012 round-table conference held by the Centre Tunisien des études économiques (CTEE) and the Institut Arabe des Chefs D'entreprises (IACE).

At the conference, some attendees mentioned that under current application of Tunisian law, the legal tribunals tasked with hearing appeals of disputes relating to subcontracting issued widely divergent decisions, and appealed in an oblique manner to the Code du Travail and the law of contracts and obligations.

However, the Code de Travail at the time of the UGTT campaign against subcontracting did provide the following guarantees to workers employed by businesses that subcontract labor:

Article 28 stipulated that any business that subcontracts labor through a third party has the responsibility to pay for all salary, vacation, reparation for job-related accidents, and charges related to the national social security system due to workers in the case of insolvency of the third party.

Article 29 stated that the business engaging in subcontracting is responsible, with the third party, to observe all the legally prescribed standards relating to work conditions, hygiene, safety, child labor, weekend, working at night, etc.

Article 30 stated that the subcontracting business must, in the case that the employees under subcontract are working at a location other than its own offices, stores or factories, clearly post a sign indicating its full contact information.

Based on the focus group interviews in this study, clearly these articles of the Tunisian labor code were widely ignored without consequences for employers. The UGTT is currently seeking to eliminate all third party subcontracting agencies (including those in the private sector)), which they see as more exploitative than subcontracting directly with the employer. They are also addressing the use of indefinite short-term contracts, lasting years, which are also a method used by employers to avoid paying decent wages and providing benefits and labor rights. Currently according to Tunisian law any employee who is employed continuously for three years has the right to a standard full-time contract, since the establishment clearly needs the worker. However, it has proven difficult to demonstrate 3-years of consecutive employment, so the UGTT is currently in negotiations with the government and the employers' associations, UTICA, to find a solution to the problem of indefinite short-term contracts, they are currently in agreement with the government (but not yet with UTICA), on the form that a subcontract employment contract should take. The UGTT is also working to update the Tunisian Labor Code to bring it in line with international ILO Convention norms, with the aim of addressing problems with subcontracting, short-term contracts, and seasonal work.⁵¹¹

⁵¹¹ Focus group with UGTT officials.

Concluding Remarks

Subcontracting labor, which underpaid workers and deprived them of benefits and labor rights, was a festering wound in the fabric of Tunisian society before the January 14, 2011 revolution. The UGTT had spent years prior to the revolution unsuccessfully trying to end the practice. Sustained efforts led by the UGTT's Federation of Trades, Monji Abderrahim, including his hunger strike, opened up a dialogue in 2002 between the central government and the UGTT to negotiate an end to labor subcontracting in the public sphere. The strikes, protests, organizing of workers, awareness campaigns, and media engagement by the UGTT from 2002-2011 put the end of labor subcontracting on the Tunisian government's agenda, but these activities did not end the practice.

Regime breakdown made transitional governments in Tunisia desperate to lessen volatile social conflicts by demonstrating that they were bringing justice to workers and ending exploitation. This provided an extraordinary opportunity for the UGTT to press their long-standing demands to end subcontracting and transform hundreds of thousands of Tunisian jobs into standard employment with higher pay, more job security, and fuller benefits. In addition to UGTT organized pressure, the workers themselves sometimes undertook strikes and demonstrations and publicized their plight in the newly free Tunisian media.

Many of the subcontracted workers are female and the UGTT's National Women's Committee played an important role in the organization of their attempts to defend their rights and make strides to equalize pay. In addition to collective action led by the UGTT, female workers in the public sector mobilized spontaneously on occasion and were creative in their efforts, including the production of a film documenting their plight.

The efforts to end subcontracting during the delicate time or regime transition in Tunisia ended with complete success on one front: subcontracting agencies were banned and subcontracted workers in the public sector, roughly 60 thousand of them, were able to move (back) into standard employment.

However, on another front, hundreds of thousands of subcontracted workers in the private sector did not fully benefit from the campaign to end subcontracting. The campaign against subcontracting in the public sector led to a drop in subcontracting in the private sector. In the private sector the practice mutated from subcontracting to a series of short-term contracts with the same low pay and lack of full benefits. The Tunisian national business association, UTICA, and individual employers have proven to be much more intransigent than the Tunisian government when pressured to utilize standard employment contracts. The UGTT simply has weaker leverage in negotiations with these actors. The UGTT is seeking to end employer abuse of subcontracting and temporary short-term employment by seeking better labor laws and better enforcement of these laws. The elimination of subcontracting in the public sector has increased the leverage of the UGTT as they try to eliminate the practice and its mutation in the private sector. The successful campaign in the public sector and the way it has inspired similar workers in the private sector has increased the number of union members who are now using their union membership to negotiate for better protection. It also has pushed forward the negotiations on improving the labor code. The UGTT hopes that the agreement to end labor subcontracting in the public sector will act as a lever to better defend unionized workers in the private sector seeking permanent employment. The negotiations on this

front between Tunisia's primary employer association, UTICA, and the UGTT have already begun.

CONCLUSIONS AND RECOMMENDATIONS

Our findings add to the growing literature on how formal employment is transformed into informal employment through the implementation of new forms of work organization characterized by various types of “flexible” arrangements. These new arrangements result in a loss of members to trade unions which are almost exclusively rooted in the formal sector. The cases included in this study also suggest why economic growth does not necessarily correlate with reductions in income inequality.⁵¹² Instead, consistent with both short and long term global trends, all of our case studies show how employers, facilitated by the state (where these are different), have successfully externalized work from the formal into the informal economy even in countries with strong labor codes. Therefore, while economic recovery may well show numeric job growth, the nature of these jobs is dramatically different. Perhaps most stunning in this regard is the situation in South Africa, a nation with one of the strongest labor codes in the world. Theron’s assertion (cited in Ryklief’s paper) that the workplace in South Africa’s formal economy is now more unequal than when the Employment Equity Act was introduced in 1998 demonstrates the weakness of legislative protections in the absence of adequate enforcement mechanisms and the presence of various loopholes.

On a more hopeful note however, our case study findings also show that informalized workers can be organized and regain at least some aspects of formal employment. Two of our cases, Columbian port workers and Cambodian beer promoters, also add to the literature showing that if the existing trade unions fail to take up the plight of the informalized workers, these workers may well organize themselves and create new labor organizations.⁵¹³ The other two cases, Tunisian government workers and South African hospitality workers, show how trade unions can develop new strategies to use their leverage on behalf of informalized workers. A careful analysis of these cases reveals the elements of a strategy and process that other unions may be able to adapt to their own circumstances. Here we describe what emerged from our data as the key elements of this strategy and process. Not every case includes each of these elements; rather, we extrapolate from comparing the set of cases (and, to some degree, our case reviews).

Opportunities Embedded in the New Labor Process

Our cases clearly illustrate several different aspects of the ILO’s definition of informal employment and the tactics through which employers in the formal sector create and maintain informal employment inside the formal sector: subcontracting and/or privatizing standard jobs to an intermediary employer; creating a parallel workforce whose jobs are

⁵¹² See “Jobless Growth” in *The Economist* June 3rd 2010 <http://www.economist.com/node/16248641>

⁵¹³ See for example Eileen Boris and Premilla Nadasen, “Domestic Workers Organize!”, *Working USA* 11 (2008): 413-437; Fine, Janice, “Worker Centers and Immigrant Women”, in *The Sex of Class: Women Transforming American Labor*, ed. Dorothy Sue Cobble (Ithaca and London: Cornell University Press, 2007), 211-230; JanTheron, “Informalization from above, informalization from below: the options for organization”, *Africa Studies Quarterly* V. II, No. 2-3 (2010): 87.105.

carefully designed to avoid requirements in the labor code; creating informal jobs in contexts where the labor code is simply non-existent or not enforced.

The starkest examples of privatization and subcontracting are Colombia and Tunisia where, as part of neoliberal restructuring, governments, encouraged by global financial institutions, made conscious decisions to convert stable, union-represented jobs with a primary employer to unstable, poorly paying jobs with a wide array of subcontractors. In the case of Tunisia, workers ended up with short term or no contracts and lost retirement benefits, health insurance and other social protections, largely in violation of the Tunisian labor code. Workers were often paid in cash and describe sharp cuts in pay, sometimes below subsistence levels. Workers in the Colombian port in Buenaventura similarly reported short term contracts, long hours and low pay with the vast majority of workers earning the minimum wage or less and laboring in situations in which there was a complete lack of rules as to their rate of pay. In both Colombia and Tunisia female workers reported pervasive discrimination and/or harassment.

The South African cases demonstrate that even in the context of a labor-led government, a strong labor code and a strong, progressive, organized labor movement, the process of flexibilization can be successfully implemented. These examples describe the establishment of unstable and unequal non-standard forms of work that exist parallel – at least for now – with better-paying and more stable jobs at the same workplaces. Casual employees in both the store and hotel cases struggled with unpredictable and often inadequate work hours, family-unfriendly scheduling, lower pay rates and less access to various benefits including participation in retirement funds, medical aid, housing and education subsidies, profit sharing and supplemental maternity benefits.

Finally, the Cambodian beer promoters' jobs were informalized from inception. Although this is not unusual in the Cambodian context it is hardly necessary given the profitability and growth in the beer industry. While the Cambodian Labor Code provides for fixed or indefinite employment contracts, unionization rights, paid annual leave, paid holidays, overtime, maternity and sick leave and other protections, informal workers like the beer promoters have no access to any of these rights. Informal beer promoters work on a commission basis and most earn less than a subsistence wage. The nature of the work subjects them to high levels of sexual harassment and makes them vulnerable to alcoholism.

It is important to state that there is nothing inherently wrong with flexible work arrangements such as reduced hours and other modifications to the often rigid work rules in the formal sector. Many workers, especially women, need access to part-time employment and many workers want and benefit from additional skill acquisition provided by job rotation and cross training. There is a large literature on how these changes can improve organizational efficiency and quality thereby contributing to firm competitiveness as well as to improved job satisfaction. The European Union has addressed this issue by advocating “flexicurity” by which they mean finding forms of flexibility that meet both employers’ and employees’ needs and provide the types of security outlined in our literature review. Many trade unions have been skeptical of this term, arguing that employers want the “flex” part but don’t want to provide the “curity.” However, the European Trade Union Confederation has recently embraced the idea of

flexicurity while also emphasizing greater internal flexibility rather than relying on external flexibility.⁵¹⁴ The problem arises when these changes are accompanied by unequal terms and conditions of employment and/or achieved by creating jobs outside the formal sector with no access to the protections offered by the labor code.

Our findings replicate most of the challenges and barriers identified in earlier research. High rates of unemployment and/or labor codes that are weak or unenforced create a context in which workers in both formal and informal employment are afraid to question the terms and conditions of their jobs and to engage in organizing activities. Yet in all of our cases, workers and unions were able to organize and achieve some measure of success even if this success was limited to small groups of workers. In almost every case that achieved some measure of success, the organizing campaign either explicitly or implicitly exploited both the injustices as well as certain opportunities inherent in the new employment arrangements created by flexibilization. In some cases formal and informalized workers were co-located in the same worksite performing the same tasks which served to highlight the inequality between the two forms of employment. These arrangements sometimes result in core (formal) employees and even union representatives, aligning their interests with the employer since they may view the non-core workforce, with its generally lower terms and conditions, as protecting the job security and working conditions of the core workforce. But, they can also facilitate awareness of the need for joint action as happened in the Argentine food workers and South Korea autoworkers cases. In other cases, such as the Colombian port workers, the new work arrangements presented opportunities for work stoppages that disrupted production and brought unwanted media attention.

A Long-term Strategy Based on Raising the “Normative Threshold.”

In his analysis of the Union Portuaria’s campaign, Hawkins argues for the importance of creating an “improved normative threshold”, by which he means a campaign to raise the consciousness, not only of workers themselves - both union members and non-members - but also of the broader society, that degraded working conditions do not have to be simply accepted. Similarly, Ryklief describes a “value- based” campaign. In Cambodia the CFSWF was able to reach the conscience of the Danish and international communities by highlighting the disparity between their values regarding decent working conditions and the degraded nature of the beer promoters’ jobs. In Tunisia, the revolution itself helped to create raised expectations in the form of increased political and economic justice. All of these campaigns demonstrate the necessity of a long-term strategy; none achieved any measure of progress quickly and all are still fragile and could easily find their progress stalled or reversed. However, having rooted their cause on widespread international norms of justice and fairness, each has managed to challenge the idea that forcing workers to provide their labor outside the reach of the law must be tolerated. Starting with few resources other than this moral claim, the unions in each of our cases have laid a foundation for long-term change.

The unions in our cases used education programs to help lift worker expectations of their treatment. The importance of raised expectations (and educational programming with that goal) is most thoroughly described in the Colombian case but exists in the

⁵¹⁴ See e.g. <http://www.etuc.org/r/1118> accessed Jan 31, 2013.

others as well. This form of worker education along with broader public relations work is critical to creating the normative, values foundation discussed above.

Overcoming Member Resistance to Organizing Informalized Workers

Previous research on unions' efforts to organize informalized workers has identified resistance from existing members as a significant barrier.⁵¹⁵ Member resistance played a role in a number of the cases reviewed in this study as well as some of our new cases. In the Colombian case, for example, the established unions not only ignored the informalized workers; they actively abetted the government and employers' flexibilization goals by transforming themselves into labor intermediaries thereby becoming labor contractors rather than representing workers' interests. In other cases the union's past failures to protect jobs and prevent informalization created impediments to organizing workers who were in fact members before their jobs were subcontracted. It is important to understand the complex dynamics that unions must manage in order to convince their members with standard jobs of the necessity to organize those workers who are doing the same or similar work or who are otherwise performing tasks that are vital to the overall enterprise performance but who are not covered by the law or collective bargaining.

On the one hand, it may be easier for unions to see workers informalized from above as an important constituency: depending on the exact structure of their employment and the legal regime in any given country, these workers may actually be members of the union and/or may come under existing collective bargaining agreements (as did some of the workers in the Argentina case, for instance), although their needs may not necessarily be attended to. In many cases they were union members prior to becoming subcontracted workers; they may also work side by side with regular employees who are union members. Fundamentally, there is often no reason they could not be engaged in a traditional employment relationship, so organizing, representing and advocating for them may not require fundamental leaps of imagination or major changes in unions' organizational structures. In this way, they appear to be the "low-hanging fruit" of the informal workforce from a union perspective.

On the other hand, some of these very same characteristics may lead to problems for traditional unions. In several cases discussed in the secondary literature review, workers doubted the efficacy of joining or working with a union, which had been unable to prevent them from becoming subcontracted and/or nonstandard workers in the first place. Workers are also frequently concerned about union corruption having either experienced it directly or heard about it from coworkers who are former members. In our new case studies, this problem has been further exacerbated by other union behaviors. Colombia may be the most extreme example. There, traditional unions accommodated themselves to the new employment regime and re-formed as faux cooperatives, which

⁵¹⁵ See our first year report for a broad overview. For an example of a case discussing member resistance to organizing informal groups see the Canadian Rural Mail Carriers case in Cranford et al., *Self Employed Workers Organize: Law, Policy, and Unions*, (Quebec: McGill-Queen's University Press, 2005). From our case review above, see in particular Goldman, "Organizing in the Informal Economy" and Yun, "Building Collective Identity."

actually undermine rather than advance worker interests. The Colombian case details the creation of a new union, which worked hard to separate itself from the unions that had reconstituted themselves as exploitative labor intermediaries (Associated Work Cooperatives, CTAs). In Cambodia, the labor movement has a history of non-independence from the government and party in power and remains split today between independent and non-independent unions. Consequently the CFSWF has concentrated on face to face organizing to build trust in its integrity. It appears that in the S. African case, the political and financial independence of workplace representatives within SACCAWU has helped to create a degree of trust among workers as has the elevation – both practically and morally - of the campaign against the inequalities created by the establishment and proliferation of temporary and part-time positions.

Solidarity Activities with Informalized Workers

In all of the cases discussed in this report – both in the literature review and in the original studies – the union’s ability to create a sense of shared interests and solidarity between its members and prospective members in the informalized work force played a significant role in achieving a successful outcome. To some extent this solidarity may develop naturally as result of workers working side by side (as in South Africa) or in the same worksite (Colombia) or at least in the same building (Tunisia). As Ryklief points out: “It is always more difficult to accept hardship when others in close range are faring better. Unorganised workers, employed at lower rates and anti-social shifts, are witness to the superior conditions of the permanent, unionised staff at the same workplace, and thus eager to join the union.” And regular or standard workers may see, particularly with the encouragement of the union, that the growth of contingent works in their midst is likely to threaten their status. The Tunisian example however suggests that close proximity can also sometimes have the opposite effect; here, it sometimes generated class-based divisions between traditional union members who were formal workers with more education and white collars and looked down on informal workers with less education and blue collars.

At the same time, unions can consciously help bring these groups together. One interesting example of this comes from the Argentinian food factory case described in our case review where union activists worked to build cross-status solidarity through social events. In the Colombian case, the initiative of creating a new national level port industry union was promoted by a group of long-term port workers in Cartagena, many of whom were pensioners. Due to the prevalence of informal, non-standard work contracts across this sector, these older workers/unionists focused on bringing the new union directly to the mass of informal workers.

Developing a Repertoire of Tactics

One of our central questions in this study was whether there are common strategies or tactics that are associated with success in organizing informal workers. This of course raises the question of how success is defined. “Success” for a campaign may well vary from one context to another and the question of establishing specific goals that will be considered successful is an important strategic factor that is within the union’s control.

Define Success in Realistic Terms. For example, while the Union Portuaria has not yet achieved formalization for large numbers of workers, the union has an impressive record of consciousness-raising among port workers, the established labor movement and the international community about the conditions at the Colombian ports. This is an important milestone toward its ultimate goal. In a different example, Ryklief tells us that the flex-time workers at one workplace are prepared to accept variable conditions, as long as they are given job security/ permanency in the form of a fixed number of hours per week; provident (retirement) fund and medical aid coverage. Perhaps this represents the appropriate base-line target for the union's campaign.

Carefully Targeted Direct Action: Combining Morality and Leverage. In all four of our new case examples and many of those included in our literature review, direct action, including strikes, played an important role. Earlier research has shown that these workers often feel vulnerable to employer reprisal and often for good reason. In fact, all of our cases also involved intimidation of workers and reprisals. In the Colombian case, as in some of the other cases reviewed, primary employers terminated whole sub-contracts or sub-contractors fired workers to punish them for striking. Workers were also fired in Tunisia but it appears this had the effect of bringing other workers into the struggle on behalf of those fired. Cambodian beer promoters were threatened with firings and, post-strike, some were transferred to locations where they earned less. Importantly, despite these acts of reprisal, these campaigns persisted.

It is often difficult to figure out why some strikes are successful and others are not. In these cases, the strikes took place as part of a broader public campaign, as described above, to elevate the issues raised by the status of these workers and their conditions of work both within their local, national and even international context, making it harder for the employer to crack down more broadly or deeply on the strikers. In Tunisia, the public aspect of the campaign included workers inviting film-makers to make a documentary about their strike. Broader support from other workers, particularly "permanent" or "regular" workers at the same work site was also an important factor in the South African, Colombian and Tunisian cases.

Another point emerges from the observation about the importance of strikes in our cases. Industrial relations scholars and practitioners long ago observed that labor struggles are often won due to the strategic importance (leverage) of particular sub-groups of workers.⁵¹⁶ The historical example from the U.S. context that comes to mind most quickly is the importance of skilled trades' workers in auto and other metal working industries; industrial unionism places these workers in the same organizations as assembly line and other less-skilled workers and while, historically, there are many tensions between the interests of these groups, skilled workers brought greater leverage in the case of a work stoppage given their ability to shut down production through non-maintenance of equipment and the difficulty in replacing their skills. We see this

⁵¹⁶ See for example John Dunlop, "The Development of Labor Organization: A Theoretical Framework," in *Insights Into Labor Issues*, ed. R.A. Lester and J. Shister, (Macmillan, 1948), 163-93. See also Beverly Silver, *Forces of Labor: Workers' Movements & Globalization since 1870*, (Cambridge: Cambridge University Press, 2003); Edward Webster, Robert Lambert & Andreis Bezuidenhout, *Grounding Globalization: Labour in the Age of Insecurity*, (Oxford: Blackwell Publishing, 2008).

phenomenon in its updated, lean production context in the South Korean auto case where leverage came from the ability of particular workers placed where they could stop the assembly line. The Colombian port case speaks to the process whereby the UP identified machine operators as strategically placed workers and recruited them to the cause. At the same time, the result of the strike undertaken by a wide variety of occupational groups was the regularization of the employment status only of the machine operators. Ryklief argues that, in the service sector, the worker relationship (and often this is a recurring, long term one) with customers brings leverage, especially for companies relying on their service reputation. Though she does not differentiate among workers, this leverage is no doubt strongest for workers directly interacting with customers. Presumably, the beer promoters have similar leverage

The Importance of Small, Early Gains. The organizational change literature speaks to the importance of small, early gains in any overall process of major internal organizational transformation.⁵¹⁷ It may also be the case in the social change/social movements context, that small scale wins create a sense of confidence in collective power which then serves as a stepping stone to bigger wins. Clearly, SACCWU in South Africa has tried to leverage its gains in the grocery store context into similar success in the hospitality industry, even while struggling to maintain those gains. Arguably, the gains for beer promoters in Cambodia and the organizational relationships built in the struggles in that industry and others have helped, even in a small way, the campaign for the new trade union law that would cover all informal workers in Cambodia for the first time. In Tunisia, the gains for a not insignificant portion of the workforce (in the public sector) have not yet been translated into similar gains in the private sector yet they provide a clear victory that may play a role in a private sector campaign. And, while the gains for the small group of machine operators did embolden UP and port workers to push aggressively for wider change, that push has thus far been met with steadfast resistance by the employers. (Indeed, since the time of writing the case study (November 2012), port firms have fired a further 25 UP members) In short, the jury is still out on the sustainability and diffusion of these limited successes. Clearly, without support from national and international trade union organizations these important examples may be snuffed out by employer and/or state opposition.

The Role of the Global Labor Movement

In the context of a global economy, the strategically placed workers referred to above may also reside and work in another country. Each of our cases, to a greater or lesser degree, speaks to this point. Evans makes clear that the unions representing home-country employees of Carlsberg and other international beer brands along with the Global Union Federation (GUF), the International Union of Foodworkers (IUF), played an important role in the establishment of voluntary industry standards that led to the formalization of many beer promoters' employment status and continues to play a role in the struggle of the Cambodian food service workers to organize and bargain for these

⁵¹⁷ See e.g. John P. Kotter, "Leading Change: Why Transformation Efforts Fail," *Harvard Business Review*, March-April (1995): 59-67.

workers. Hawkins similarly points to the importance of a “transnational advocacy network” (TAN) in changing the context in which unions in Colombia in general are operating. In this case, transnational union solidarity has been important in keeping up pressure on political representatives in the U.S. around the trade agreement, who, in turn, put pressure on the Colombian government. Hawkins also reports that, for various reasons, the GUF in the transportation industry, the International Transport Workers Federation (ITF), has not been involved in this struggle but probably should be. Two GUFs have worked with SACCAWU around cross-national issues in the both retail and hotel sectors and the IUF and SACCAWU are working together to extend organizing at Sun International into other countries in Africa, however it does not appear global labor solidarity has played a substantial role in the specific cases. In Tunisia the GUF, Union Network International (UNI), played an important role supporting UGTT over many years.

Preparing for and Seizing Political Opportunities

In addition to the issues of worker consciousness and union organizational strategy and leverage, these cases also involve exploitation of what many social movement scholars call “political opportunity structures”.⁵¹⁸ The most obvious are the opportunities opened up by regime change in both Tunisia and Colombia. In both cases, pressures from the international community have helped pry open those structures further. Similarly, as discussed above, the work done by international labor organizations and NGOs in Cambodia to create basic standards for the beer industry created openings for unions based in Cambodia to push for collective bargaining and the attendant rights a collective agreement would bring. It is less clear if there has been a particular political opportunity opened in the S. African case. To the extent that the labor movement participates in broader, often society-wide, context-changing mobilizations (as it clearly did and continues to do in Tunisia and Colombia), it helps to create the opportunities. But it is also worth noting that continued, sometimes low level agitation around the issue of informalization, can position unions and workers for breakthroughs when the openings do come. This seems to be one of the lessons of the Tunisia case in particular, where the UGTT had maintained a focus on the issue of informalized work in the public sector and were therefore prepared to take advantage of the opportunity presented when the new regime was looking for a way to deliver on the promise of social change engendered by the revolution.

The Bigger Picture

Unions and Flexibility

. Our final conclusions focus on several “big picture” items. First is the question of how to think about flexible work arrangements. Ryklief raises the dilemma that most unions attempting to organize workers informalized from above face, although perhaps it may be

⁵¹⁸ Kriesi, Hanspeter. "The political opportunity structure of new social movements: Its impact on their mobilization," in, *The politics of social protest: Comparative perspectives on states and social movements*, ed. J. Craig Jenkins and Bert Klandermans, (Minneapolis : University of Minnesota Press, 1995): 167-198.

a dilemma born of a relatively advanced system of labor market regulation: to what degree should flexible employment practices themselves be tolerated but the pay, benefits and conditions of work made as equal as possible to those formal or permanent or stable workers experience. It is clearly the case that in many enterprises and for many workers, flexibility can be a positive feature provided it is structured to provide decent pay and benefits. As argued above, flexible work schedules do not have to be based on degraded, informalized conditions. Many women, and an increasing number of men, seek flexible schedules in order to balance work and family. It is useful to consider again Yun's typology of union responses⁵¹⁹ to subcontracted workers here:

	Non-organizing	Organizing
Non-representation	Exclusion	Inclusion
Representation	Proxy	Integration

In all of our cases, unions are moving from the top left cell of non-organizing and non-representation to the right column. There remain substantial barriers in all of our cases in moving from Inclusion to Integration (that is, full representation and equal conditions) for a broad swathe of workers. Unions must consider carefully what compromises they are willing to make in tolerating less than ideal working conditions. The dangers of compromise are clear in the Colombian case where older port unions, perhaps genuinely believing they were doing the right thing for workers, transformed themselves into labor intermediaries, contributing to rather than ameliorating, the exploitation of workers. However, as the South African case shows, in some circumstances it may be necessary to extend full membership to workers with substandard contracts in exchange for organizing them and using the collective bargaining or political process to help them obtain decent working conditions. Unions must balance pragmatism and idealism in figuring out how much flexibility is tolerable.

“Hecha la ley, Hecha la Trampa”

Hawkins introduces this Spanish expression translated as “when the law has been made, so has the means of evading it,” which brings us to our second “big picture” point: models for global labor market regulation (or labor market regulation in a global political economy). This discussion can further be broken into two elements: the role of national Labor Codes and the role of cross-national regulatory institutions. It is clear that throughout the world, strong labor and employment laws at the national level create incentives for employers to seek forms of employment that enable escape from those laws; that is a key part of the story of informalization from above. As Fichter points out, trade unions, which are local or nationally organized entities, have to develop a strategy that enables them to use their leverage to bear on the “transnational regulation gap” in labor relations.⁵²⁰ One school of thought, typically associated with pro-business, conservative political parties, is that the best response is to deregulate labor markets in

⁵¹⁹ Yun, “Building Collective Identity”, 171.

⁵²⁰ <http://column.global-labour-university.org/2013/02/modeling-global-union-strategy-arena-of.html#more>

order to make a country more competitive. The central problem with that strategy is that enables a global race to bottom, as demonstrated in particular by the Colombia and Tunisia cases. Hawkins argues that strong Labor Codes at the national level help, even when not enforced, to maintain or raise the “normative threshold” for labor standards. Even more important is careful thought about how to improve Labor Code enforcement. Drawing from Fine and Gordon,⁵²¹ Hawkins argues for improvements in national law and enforcement schemes that combine the power of government inspectors with grass roots support and assistance from unions or labor NGOs. Though the other cases don’t speak to this directly, they would seem to support this notion. There is an empirical literature on the role of unions in the U.S. in improving enforcement and compliance with employment laws that protect individual workers that seems applicable to the developing world.⁵²²

David Weil notes that the ILO issued recommendations for improving national labor inspectorates in 2006 as part of its Decent Work campaign.⁵²³ These included increasing resources, professionalizing inspectors, centralizing supervision and control, and increasing collaboration between inspectorates and other governmental authorities and NGOs. Weil argues, however, that while these measures are necessary they are not sufficient to deal with the problems raised by structural changes in labor markets including what he calls the “fissuring of the basic employment relationship” through subcontracting and independent contracting. To deal with this and other structural change in employment, he advocates four principals for “strategic” labor code enforcement: prioritization, deterrence, sustainability and systemic effects. Unions, particularly at the national and international levels, need to familiarize themselves with debates over improved enforcement and figure out their optimal role. At the same time, further research on the relationship among unions, labor NGOs, labor code enforcement and informality can help develop better enforcement schemes.

It is also worth asking what role cross-national forms of labor market regulation might play. At the end of the Colombian case, Hawkins discusses the various “experiments” taking place in developing institutions that can regulate labor markets: Codes of Conduct (arising typically from pressures from NGOs and/or international labor organizations), Global (or International) Framework Agreements (GFAs), labor provisions in international trade agreements, NGOs, unions or some combination of above. It is useful to consider the Fine and Gordon formulation – enforcement works best when government resources are combined with those of unions and NGOs - in this context. In fact, as has been argued by other scholars it appears that Codes of Conduct (a

⁵²¹ Fine, Janice & Jennifer Gordon. 2012. “Unpacking the logics of labour standards enforcement: An alternative approach”. Chris Warhurst, et al., (Eds). *Are Bad Jobs Inevitable? Trends, Determinants & Responses to Job Quality in the Twenty-First Century*. New York: Palgrave Macmillan, pp. 193-207.

⁵²² See for example, David Weil, “Enforcing OSHA: The role of labor unions”, in *Industrial Relations*, Vol. 30, No. 1, (1991): 20–36, “Employee Rights, Unions, and the Implementation of Labor Policies, in *The Proceedings of the Forty-Fifth Annual Meeting*, Industrial Relations Research Association (1993): 474-481, and “Individual Rights and Collective Agents: The Role of New Workplace Institutions in the Regulation of Labor Markets.” In *Emerging Labor Market Institutions for the 21st Century*, (Eds.) Richard Freeman, Larry Mishel, and Joni Hersch, University of Chicago Press, 2005.

⁵²³ David Weil, “A Strategic Approach to Labour Inspection”, *International Labour Review*, 147(4), (2008): 359-375.

key factor in the Cambodia case), GFAs, and possibly labor provisions in international trade agreements all require enforcement “on the ground” in the form of real, independent unions. Fichter’s recent study reinforces this idea.⁵²⁴ Based on a recent three-year study of GFAs he argues that while they are devised for exercising union leverage across national boundaries, the global trade union movement has yet to develop a strategy for taking advantage of the GFA. In successful cases, GUFs and their national and local affiliates worked together to use the GFA strategically, influence its policy content, prioritize its implementation and mobilize the resources necessary to achieve effectiveness.⁵²⁵

The Gender Issue

Finally we address the issue of gender. Although it is often observed that women are disproportionately represented in the informal economy as a whole, the picture is less clear for those who are informalized from above. While occupational segregation clearly persists, our cases show that male and female occupations alike have been informalized and degraded. At the same time, our cases describe some aspects of that degradation that presents particular problems for women. For instance, in the Tunisian case (and probably in the South African one too though it isn’t mentioned), split and long shifts put women workers on the streets going back and forth to work at unsafe times. Long, unpredictable shifts in all of our cases create a special burden for women (or men) with family responsibilities. Women workers in the Colombian port case complained of a complete lack of upward mobility for women. King reports in the Tunisia case that subcontracting had brought an increase in sexual harassment both at work and on the street and, of course, sexual harassment and even prostitution was a commonplace for the Cambodian beer promoters. Sexual harassment is also an issue in the hospitality industry in South Africa.

It is less clear if gender has played a major role in the union’s willingness to invest resources in these campaigns or in the development of leadership within the workforce. Women cleaners in the Tunisia case complained of resistance by some male members of the UGTT to their inclusion in the organization. On the other hand, Ryklief reports that SACCAWU is a leader within the South African labor movement on gender; the union shop-floor leadership includes the elected position of “gender coordinator”. Our cases do not address the persistent problem of lack of women’s leadership in unions. It is not clear if leadership pathways yet exist for organized informal workers, male or female.

It seems likely that the pattern of gender relations in the process of flexibilization varies from sector to sector, occupation to occupation. In traditional male dominated industries, like port workers, there may have been few women in the formal workforce to start with. In the case of hospitality however, women are present in large numbers and in

⁵²⁴ <http://column.global-labour-university.org/2013/02/modeling-global-union-strategy-arena-of.html#more>

⁵²⁵ For a discussion of the complex relationship between GFAs and national and local unions see Christina Niforou, “International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities”, *British Journal of Industrial Relations* 50(2012): 352-373. See also Michelle Taal, *Global Framework Agreements for Africa: Using the Space Created*, Labour Research Service (South Africa), December 2010. http://www.global-labour-university.org/fileadmin/GLU_conference_2011/papers/Michelle_Taal.pdf.

the case of the beer promoters, women are hired exclusively in order to exploit their sexuality as both marketing device as well as a wage-cutting tactic.

Trade Unions Will Have to Change

Our findings suggest that trade unions can play a vital role in bringing decent working conditions to informal economy workers whose jobs are in fact dependent on an employer in the formal sector – “the informalized from above.” However, they cannot do so without significant change in their local and national strategies and structures. Specifically moving from a policy of exclusion and non-representation to inclusion and integration will require a major educational campaign starting with their existing members on the long-term consequences of failing to organizing informalized workers in their labor markets. National unions will find it nearly impossible to succeed without the assistance of the global trade union network and the international labor and human rights NGOs. Bridging the “transnational regulation gap” in labor relations requires a transnational campaign. We hope the findings presented in this research will encourage more unions to undertake the challenge.



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