A Guide to Worker Rights in the Global Economy

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JUSTICE FOR ALL

A Guide to Worker Rights in the Global Economy
The Solidarity Center is a nonprofit organization established to provide assistance to workers who are struggling to build democratic and independent trade unions around the world. It was created in 1997 through the consolidation of four regional AFL-CIO institutes. Working with unions, nongovernmental organizations, and other community partners, the Solidarity Center supports programs and projects to advance worker rights and promote broad-based, sustainable economic development around the world.

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Glossary of Abbreviations and Acronyms

A

AFL-CIO ........... American Federation of Labor-Congress of Industrial Organizations
AGOA ............. African Growth and Opportunity Act
AIDS ............ Acquired Immune Deficiency Syndrome
AIP ............... Apparel Industry Partnership
ATC ............... Agreement on Textiles and Clothing
ATCA ............. Alien Torts and Claims Act
ATPA ............. Andean Trade Preference Act
ATPDEA .......... Andean Trade Promotion and Drug Eradication Act
AWA ............ Australian Workplace Agreement

B

BDC ................. beneficiary developing countries
BIAC .............. Business and Industry Advisory Committee
BWI ............... Building and Wood Workers’ International

C

CAFTA-DR ........ Central American Free Trade Agreement-Dominican Republic
CalPERS .......... California Public Employees Retirement System
CBI ................. Caribbean Basin Initiative
CCALC ............ Canada-Chile Agreement on Labor Cooperation
CCC ............... Clean Clothes Campaign
CCRALC .......... Canada-Costa Rica Agreement on Labor Cooperation
CEACR ............ Committee of Experts on the Application of Conventions and Recommendations
CEJIL ............. Center for Justice and International Law
CEO ............... chief executive officer
CERES ............ Coalition for Environmentally Responsible Economies
CFA ............... Committee on Freedom of Association
CIA ............... Central Intelligence Agency
CIME .............. Committee on International Investment and Multinational Enterprises
CIP ............... Corporate Involvement Program
CLR ............... Campaign for Labor Rights
CLS ............... core labor standards
CODEMUH ...... Honduran Women’s Collective
CPB ............... U.S. Customs and Border Protection
CSR ............... corporate social responsibility
CUO ............... comprehensive union organizing
CWC ............... Global Unions Committee on Workers’ Capital (also known as Committee for International Co-operation on Workers’ Capital)
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>EBA</td>
<td>everything but arms</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission or European Council</td>
</tr>
<tr>
<td>ECE</td>
<td>Evaluation Committee of Experts</td>
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<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>ECOSO</td>
<td>United Nations Social and Economic Council</td>
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<td>ECSR</td>
<td>European Committee on Social Rights</td>
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<tr>
<td>EPZ</td>
<td>export processing zone</td>
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<tr>
<td>ESP</td>
<td>employee savings plan</td>
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<td>ETAG</td>
<td>Ethical Trading Action Group</td>
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<tr>
<td>ETI</td>
<td>Ethical Trading Initiative</td>
</tr>
<tr>
<td>ETUC</td>
<td>European Trade Union Confederation</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EWC</td>
<td>European Works Councils</td>
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<td>FDI</td>
<td>foreign direct investment</td>
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<tr>
<td>FLA</td>
<td>Fair Labor Association</td>
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<td>FLOC</td>
<td>Farm Labor Organizing Committee</td>
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<td>FTA</td>
<td>free trade agreement</td>
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<tr>
<td>FTAA</td>
<td>Free Trade Area of the Americas</td>
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<tr>
<td>FTZ</td>
<td>free trade zone</td>
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<tr>
<td>GAP</td>
<td>Gender Action Plan</td>
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<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<tr>
<td>GCIU</td>
<td>Graphic Communications International Union</td>
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<tr>
<td>GDP</td>
<td>gross domestic product</td>
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<tr>
<td>GMAC</td>
<td>Garment Manufacturers Association of Cambodia</td>
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<tr>
<td>GNP</td>
<td>gross national product</td>
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<tr>
<td>GRI</td>
<td>Global Reporting Initiative</td>
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<td>GSP</td>
<td>Generalized System of Preferences</td>
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<tr>
<td>GTUTI</td>
<td>General Trade Union for the Textile Industry</td>
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<tr>
<td>GUF</td>
<td>global union federation</td>
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<tr>
<td>HDI</td>
<td>human development index</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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IA ..........Inter-American (e.g., IA Court)
IACHR ........Inter-American Commission on Human Rights
IAHR ........Inter-American human rights (e.g., IAHR system)
IBRD ............International Bank for Reconstruction and Development
ICCPR ..........International Covenant on Civil and Political Rights
ICFTU ..........International Confederation of Free Trade Unions
IEG ............Independent Evaluation Group
IFA ..........international framework agreement
IFC ................International Finance Corporation
IFIs ............international financial institutions
ILO ..........International Labor Organization
ILRF ..........International Labor Rights Fund
IMF ..........International Monetary Fund or International Metalworkers’ Federation
IMWU ..........Indonesian Migrant Workers’ Union
ISO ............International Organization for Standardization
ITGLWF ..........International Textile, Garment & Leather Workers’ Federation
ITUC ..........International Trade Union Confederation

Jo-In ..........Joint Initiative on Corporate Accountability and Workers Rights

LAC ..........Labor Advisory Committee for Trade Negotiations and Trade Policy
LDC ........least-developed country

MDG ..........Millennium Development Goal
MEC ..........Maria Elena Cuadra Women’s Movement for Underemployed and Unemployed
MFA ........Multifiber Arrangement
MIGA ..........Multilateral Investment Guarantee Agency
MNE Declaration ..........Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
MOU ..........Memorandum of Understanding
MTUC ..........Malaysian Trades Union Congress
<table>
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>N</td>
<td>NAALC.......North American Agreement on Labor Cooperation</td>
</tr>
<tr>
<td></td>
<td>NAFTA.......North American Free Trade Agreement</td>
</tr>
<tr>
<td></td>
<td>NAO.......National Administrative Office</td>
</tr>
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<td></td>
<td>NCP.......National Contact Point</td>
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<tr>
<td></td>
<td>NGO.......nongovernmental organization</td>
</tr>
<tr>
<td></td>
<td>NTA.......National Textile Association</td>
</tr>
<tr>
<td>O</td>
<td>OAS.......Organization of American States</td>
</tr>
<tr>
<td></td>
<td>OECD.......Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td></td>
<td>OPEC.......Organization of Petroleum Exporting Countries</td>
</tr>
<tr>
<td></td>
<td>OPIC.......Overseas Private Investment Corporation</td>
</tr>
<tr>
<td></td>
<td>ORIT.......Inter-American Regional Workers Organization</td>
</tr>
<tr>
<td>P</td>
<td>PRGF.......Poverty Relief and Growth Facility</td>
</tr>
<tr>
<td>Q</td>
<td>QIZ.......qualified industrial zone</td>
</tr>
<tr>
<td>R</td>
<td>RED.......Network of Women in Solidarity with Maquila Workers</td>
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<tr>
<td></td>
<td>RMG.......ready-made garment</td>
</tr>
<tr>
<td>S</td>
<td>SA8000.....Social Accountability 8000</td>
</tr>
<tr>
<td></td>
<td>SAAS.....Social Accountability Accreditation Services</td>
</tr>
<tr>
<td></td>
<td>SAI.....Social Accountability International</td>
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<tr>
<td></td>
<td>SAP.....structural adjustment program</td>
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<td></td>
<td>SEWA.....Self-Employed Women’s Association</td>
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<td></td>
<td>SEZ.....special export zone</td>
</tr>
<tr>
<td></td>
<td>SOE.....state-owned enterprise</td>
</tr>
<tr>
<td></td>
<td>SRI.....socially responsible investment</td>
</tr>
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<td></td>
<td>STD.....sexually transmitted disease</td>
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T

TIP ................ trafficking in persons
TPA ............... trade promotion authority
TPSC ............. Trade Policy Staff Committee
TUAC ............ Trade Union Advisory Committee

U

U.K. ............... United Kingdom
U.S. ............... United States
UAE ............... United Arab Emirates
UFW .............. United Farm Workers of America
UN ................. United Nations
UNCTAD .......... United Nations Commission on Trade and Development
UNI ............... Union Network International
UNITE ............. Union of Needletrades, Industrial and Textile Employees
USAID .......... U.S. Agency for International Development
USAS ............. United Students Against Sweatshops
USCIB .......... U.S. Council for International Business
USTR .......... U.S. Trade Representative
USW ............. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)

V

VER ............... voluntary export restraint

W

WCL ............... World Confederation of Labor
WIEGO .......... Women in Informal Employment: Globalizing and Organizing
WRA ............... Workplace Relations Act
WRAP ............ Worldwide Responsible Accredited Production
WRC .............. Worker Rights Consortium
WTO ............. World Trade Organization
Introduction
Over the past several decades, the globalization of commerce and industrial production has proceeded at a rapid pace. Most of today’s national economies are dependent to some degree upon products—from apparel to autos to medical equipment to toys—made or assembled in other parts of the world. Services such as software design, technical support, and customer service are increasingly outsourced. Customers located in one country may find their problems resolved by technicians located halfway around the world.

In an increasingly competitive global climate, companies and economic policymakers have searched for ways to remove barriers to production and business operations and to increase their flexibility. For example, corporations have been able to shed the cost of expensive medical insurance and pensions by hiring more workers on a temporary or contractual basis, and contracting with suppliers who also use contract labor. These practices, aimed at deregulating the labor market, are in line with policies pushed by international financial institutions (IFIs) on developing countries as part of market reform processes. The global chain of production that developed as a result has helped fuel the growth of an immense informal economy around the world, allowing companies to rapidly adjust supply to demand (see Chapters 2 and 3).

But workers have not fared so well. Many men and women labor permanently as “temporary” workers, with no health or pension benefits, sick or annual leave, or even the assurance that they will have a job the next morning. In this way, many workers have become trapped in the uncertainties and upheavals of their countries’ economic transition. Without good job prospects at home for the foreseeable future, they have migrated in search of a viable livelihood to other countries. This has generated a truly global wave of migration. The steady flow of migrant workers around the world has provided employers with a large, mobile labor force, but at the same time it has raised an array of complex immigration, infrastructure, and security issues for host-country governments.

These trends have intensified as donor countries and IFIs have successfully pushed for economic reform measures in developing countries. Reforms have typically attempted to open markets, generate export economies, and remove legal restraints that hamper the operations of multinational companies. As developing countries in need of investment have implemented these measures, companies have reaped huge profits. But at what cost?

In 2007 the International Monetary Fund (IMF) announced in its October report that the “world economy has entered an uncertain and potentially difficult period.” Today, in mid-2008, economists are calling it a global economic slowdown, while others are talking of a recession.

The United States is reeling from an economic shock wave, with increasing food and energy costs, a weak dollar and stock market, a near-collapse of its housing market (housing-price declines and foreclosures), tightening business credit, increasing consumer credit debt, and a simultaneous reduction of hours of work and pay for millions of American workers. If one of the wealthiest nations on earth is standing on shaky economic ground in a new recession, what of the countries that have been struggling for decades to escape poverty? What have global economic-development policies secured for them? The IMF also noted in its report that over the past two decades, income inequality has increased in most countries and regions—including developing Asia, emerging Europe, Latin America, the former Soviet Union, and the “advanced economies.” Inequality has increased mainly in middle- and high-income countries. This, the report notes, “seems to be a clear change in course from the general decline of inequality in the first half of the twentieth century. . . .”
It is indeed a clear change of course. During the latter part of the 20th century, global economic integration began to far outpace global democratic development, and this was no coincidence. The very policies most often promoted by economic reformers called for the weakening of labor protections, and policymakers and donors often pushed economic reform at the expense of democratic development. Many developing countries complied with prevailing economic development formulas by weakening their labor laws and starving their enforcement budgets. As they did so, they witnessed a commensurate backsliding in nascent democratic development, the erosion of political stability, and even the loss of initial economic gains.

One fact is undeniable: global economic growth has not created enough good jobs to reduce global poverty. The International Labor Organization (ILO) notes several disturbing trends in the world of work:

- 50 percent of the 2.6 billion workers in the world live on incomes of less than $2 per day, and 19 percent live on less than $1 per day;
- 85 percent of the 1 billion young workers in the world live in developing countries, constituting 45 percent of the unemployed;
- 80 percent of people worldwide lack sufficient social security coverage;
- workers suffer almost 2 million work-related deaths every year;
- nearly 12.4 million people are estimated to be victims of forced labor and trafficking;
- nearly 250 million of the world’s workers are children between 5 and 17 years of age; half of these work full time;
- nearly 1 billion workers are unemployed and underemployed; about 180 million are actively seeking work but not finding it; and
- nearly 40 million people live with HIV and AIDS; 9 out of 10 are adults.
Global economic development alone does not guarantee that wealth will be equitably distributed or that democracies will thrive. Democracies depend on a vibrant civil society, and at the core of a democracy’s civil society lies the trade union—the voice of the workers who produce the wealth. An attack on trade union rights is essentially an attack on democracy itself.

Attacks on trade unions are on the increase. The 2007 Annual Survey of Violations of Trade Union Rights notes that 144 trade unionists were murdered in 2006 for defending worker rights, 800 were beaten or tortured, almost 5,000 were arrested, and more than 8,000 were fired for union activity. The report highlighted these additional global trends:

- mass dismissals, beatings, detentions, and threats against workers and their families in countries in every region;

- repression of independent trade unions by dictatorships and authoritarian governments in Belarus, Burma, China, Cuba, Equatorial Guinea, Iran, North Korea, and several Gulf countries;

- increasing government hostility toward trade unions in some developed countries, such as Australia, Switzerland, and the United States;

- antiunion behavior by some multinational companies (including Coca-Cola subsidiaries and suppliers, Wal-Mart, Goodyear, and Nestlé); and

- heavy repression of trade unions by some suppliers to well-known global brand names (particularly in the apparel and agriculture sectors).

Women have proven to be the workers most adversely affected by globalization:

- women are 45 percent of the world’s workforce but are 70 percent of people living in poverty;

- women in developing countries work an average of 60 to 90 hours per week;

- 90 percent of the 27 million workers in export processing zones (EPZs, tax-free industrial zones where labor laws are often suspended and/or unenforced) are women (most of them are between the ages of 15 and 25); EPZ workers in Asia, Africa, and Latin America continue to face repression; and

- women earn an average of 75 percent of men’s pay in nonagricultural work.

The situation for women workers within individual countries presents a sobering and sometimes startling picture. Women in the Colombian labor movement have the highest rate of assassination in the world. Six million women in the Philippines (20 percent of the working age population) have moved overseas to become domestic workers; they often work a seven-day week...
for low wages and are subjected to abuse and harassment. Abuse of domestic workers is particularly prevalent in the Gulf States. Ninety percent of women workers in India are in the informal economy, with low wages and very few rights under the labor law and regulatory framework. Women textile workers in Morocco have stood trial for conducting a strike, and in Mauritius, women workers who participated in a sit-in were beaten by police. Developed nations are no more exempt from violations of women workers’ rights than developing countries; almost 50,000 women are trafficked to the United States each year to work in sweatshops or serve the sex industry. Around the world, our mothers, sisters, wives, daughters, and friends seek to eke out a living while facing inhumane treatment for meager pay—without having a voice in their pay, their working conditions, and for some, even their living conditions or personal freedom. Is this the democracy the world has championed?

As attacks on trade unions have increased, union density (the percentage of workers in a country who belong to a union) has fallen in many countries over the past decade. In response, unions have taken unprecedented steps to come together. In 2006 the establishment of the International Trade Union Confederation (ITUC) from the merger of the International Confederation of Free Trade Unions (ICFTU) and World Confederation of Labor (WCL) brought the international labor movement closer to global unity. In January 2007 the establishment of the Council of Global Unions followed suit by bringing together 10 global union federations (GUFs), the ITUC, and the Trade Union Advisory Committee (TUAC) to form the Organization for Economic Cooperation and Development (OECD).

The body of Justice for All is divided into two broad thematic sections.

Chapters 1-4 look at the history of international worker rights, the process of economic globalization, the worldwide growth of the informal economy, and the rising wave of global migration, assessing the impact of each of these current trends on respect for worker rights.

Chapters 5-7 examine the measures in unilateral laws and regional and global trade pacts designed to strengthen worker rights, and the
experimental initiatives and strategies tested in the political arena and global marketplace over the past 30 years, and they evaluate the advantages and disadvantages that have become apparent through their implementation.

Three sections of appendices provide reference tools for worker rights promotion and advocacy:

Section I is on international instruments that protect worker rights. The first appendix in this section provides a detailed breakdown of ILO core labor standards (freedom of association, the right to organize and bargain collectively, and the elimination of forced labor, child labor, and discrimination), and it outlines general guidelines for the basic ILO standards on working conditions. This set of standards brings us closer to the ILO’s goal of promoting “decent work.” The appendix covers the basic principles that apply to each standard, and it cites the specific types of laws and practices that constitute violation of the standard. In addition, it identifies situations that can serve as warning signs of possible violations or negative trends.

This section is especially useful to those who report on or monitor worker rights compliance, to teachers who want to provide students with a detailed understanding of the standards, and to unions and nongovernmental organizations (NGOs) that want to accurately track and cite worker rights violations for the preparation of ILO cases and other international or domestic processes. The rest of the section provides useful related information, such as summaries of ILO standards, the text of the ILO Declaration on Fundamental Principles and Rights at Work, and a glossary of ILO terms.

Section II provides help to those who wish to access international processes, such as an updated appendix on how to file an ILO complaint, and a standardized form for reporting on cases of worker rights violations.

Section III provides lists of information resources, including updated directories of ILO offices, ITUC offices, and GUF offices around the world.

The Solidarity Center hopes that Justice for All will be helpful to those who are developing their own worker rights strategies to gain a basic understanding of the options available, their advantages and drawbacks, the role of different international players, and the information necessary to identify potential partners. In addition, we hope that human rights and worker rights trainers, as well as union and community organizers, will find the reference useful for educating local activists about their own rights, the connection between their work and the global movement to increase respect for worker rights, and ways to access that international community for support when needed. Finally, it is our hope that Justice for All will well serve the needs of policymakers, educators, lawyers, trade union leaders, specialists, monitors, and union and NGO activists in their pursuit of global justice for workers.
Endnotes

1 The World Bank and International Monetary Fund are known as international financial institutions (IFIs). See Chapter 2 for an extended discussion of the IFIs’ far-reaching impact.

2 The Global Unions Group noted the following on this issue: “As inequality increases worldwide, it is more imperative than ever that the IFIs refocus their attempts to promote the lot of the “losers” of economic globalization. This statement calls on the World Bank and . . . IMF to make real changes in their policies to achieve these outcomes. Specifically, it insists that they cease to use dubious evidence in support of labour market deregulation to impel countries to do away with workers’ protection. . . .” Global Unions Group, “The Role of the IFIs in Supporting Decent Work and Countering the Risks of Financial Globalisation: Statement by Global Unions to the 2007 Annual Meetings of the IMF and World Bank,” October 20-22, 2007, pp. 1-2, www.ituc-csi.org/IMG/pdf/statement.imfwb.1007.pdf.


5 Chapter 4, “Globalization and Inequality,” in World Economic Surveys/World Economic Outlook October 2007: Globalization and Inequality, pp. 136, 139, 141.


9 Ibid., pp. 1-4.


12 Ibid.


Section I

Worker Rights: Where We Are and How We Got Here
Chapter 1

The Evolution of Worker Rights: Toward International Consensus
When did people first seek respect for their basic human rights in the workplace? Historic discussions about worker rights often focus on the emergence of industrial revolutions in Europe and the United States, beginning in the late 18th century in the U.K. However, workers have surely been aware of injustice in the workplace since the first day one human being began to work for another. The earliest recorded strike occurred in Egypt during the time of Ramses III (ca. 1186-1155 B.C.), when pyramid workers staged a sit-in for three days, refusing to return to work until they were paid their daily “wage” of five kinds of fish and beer.¹

Today’s policymakers often limit the concept of democracy and freedom to holding free and fair elections, but the historic human cry for freedom and justice has not only been aimed at obtaining a say in the selection of leaders. It has also been grounded in the quest for more day-to-day civil liberties, including the freedom to negotiate the conditions under which people—both of today and yesterday—spend most of their waking hours. Over thousands of years, many struggles for political participation or independence have been fueled by attempts of people—whether as individuals, feudal serfs, tribes, or nations—to break out of repression. The freedoms they sought were fundamental, such as the right to live and work where they wished, for whom they wished. They sought to escape abusive treatment and for the obvious right to receive just compensation for their work.

The modern pursuit of international legal frameworks to protect fundamental worker rights is rooted in efforts to halt the slave trade. The Peace Treaties of Paris of 1814 and 1815, the Declaration of the Congress of Vienna of 1815, and the Declaration of Verona of 1822 reflected the idea that the slave trade was abhorrent to justice and humanity, admonished nations worldwide to prohibit it, and enjoined the signatory countries to take action against it.

On March 2, 1807, the U.S. Congress passed a law prohibiting the importation of slaves, but the law was unenforceable and the practice continued. Following the Civil War, the 13th Amendment to the U.S. Constitution, which prohibited slavery or involuntary servitude, was adopted in 1865.

Other treaties—including those of 1831 and 1833 between France and Great Britain, the Treaty of London of 1841, and the Treaty of Washington in 1862—covered joint action at sea to suppress the slave trade and afforded mutual rights to visit, search, and capture ships suspected of participating in the slave trade. Finally, the General Act of the Berlin Conference of 1885 and the General Act of the Brussels Conference of 1890 attempted to suppress the institution of slavery itself as well as slave trading. These were the first attempts to regulate international trade on moral grounds.

Early legislation linking a labor issue to an unfair trade practice was passed in 1890, when the United States banned the import of all foreign goods made by convict labor. The international community demonstrated its concern for occupational safety and health in 1906 at the Berne Conference by adopting a convention requiring its signatories to prohibit the manufacture, sale, and import of white phosphorus matches, which were poisoning workers during the production process. In 1912 the United States followed suit by banning the import and export of the matches and discouraging their domestic production through a special tax.

Global Recognition of Worker Rights: The Creation of the International Labor Organization

The 1919 Treaty of Versailles, which ended World War I, also established the International Labor Organization (ILO) to promote and improve working conditions.²

The Treaty of Versailles specified that signatories would “endeavor to secure and maintain fair and humane conditions of labor for men, women and
children, both in their own countries and in all countries to which their commercial and industrial nations extend.” The establishment of the ILO reflected the international community’s new and profound understanding, born from the pain of global war and expressed very clearly in the very first line of the ILO constitution’s preamble:

[U]niversal and lasting peace can be established only if it is based upon social justice... 3

The preamble then expands on the necessity of just working conditions to peace:

[W]hereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization. 4

Since its creation, the ILO has led a worldwide effort to set and monitor international labor standards through tripartite cooperation between governments, employers, and unions. The first ILO convention, which was adopted in 1919, limited the hours of work in industry to eight per day and no more than 48 per week.

As World War II was drawing to an end, the severity of the consequences of world conflict once again fueled a quickening of international interest in cooperation on matters of mutual concern. This led to the ILO’s adoption of the Declaration of Philadelphia on May 10, 1944. The declaration cleared the way to bring the ILO into the United Nations, which rose from the ashes of the League of Nations in 1945. It reaffirmed the original founding principles of the ILO and reinforced the idea that workers had the right to pursue both material well-being and spiritual development in conditions of freedom, dignity, economic security, and equal opportunity. In particular, the declaration emphasized: 5

labour is not a commodity;

freedom of expression and of association are essential to sustained progress;

poverty anywhere constitutes a danger to prosperity everywhere; and

the war against want ... [must] be carried on with unrelenting vigor within each nation [with international tripartite discussion directed toward promoting the common welfare].

In 1946, when the ILO became a specialized agency of the UN, its activity expanded, and its membership increased. At this time, the ILO started a technical cooperation program and began to adopt many of its key labor standards.

Then, under the chairmanship of Eleanor Roosevelt, the UN Human Rights Commission drafted the Universal Declaration of Human Rights. The UN General Assembly adopted it in 1948. Unlike treaties, the declaration is not binding; rather, it
serves as a statement of principles and sets a common standard for achievement. It has now been accepted by all UN members. The United States and other nations have used it as a basis to formulate foreign policy. The declaration includes the following specific worker rights:

- Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. . . . Everyone who works has the right to just and favorable remuneration insuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection (or everyone has the right to a standard of living adequate for the health and well-being of himself and of his family). . . . Everyone has the right to freedom of association. . . . Everyone has the right to form and join trade unions for the protection of his interests. . . . Everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay.⁶

An effort to convert the declaration’s principles into a binding treaty prompted the drafting of the UN Covenant on Economic, Social and Cultural Rights. The covenant included more detail than past UN documents on principles of freedom of association and working conditions. The UN General Assembly did not adopt the covenant until 1966, and it did not enter into force until 1976, after 35 countries had ratified it.⁷ The United States signed the covenant but did not ratify it.

In 1966 the UN General Assembly also adopted the International Covenant on Civil and Political Rights (ICCPR), which covers forced labor in Article 8 and freedom of association and the right to form and join trade unions in Article 22.⁸ When the U.S. Senate ratified the ICCPR in 1992, it entered several reservations, understandings, and declarations sidestepping certain obligations in the covenant, perhaps most notably reserving the right to impose capital punishment on minors.⁹ Reservations, understandings, and declarations are accepted under international law as a means of ratifying complex international instruments while taking exception to certain details, so that wider ratification of the instruments can be achieved. The United States took no reservations, understandings, or declarations with respect to Article 22 on the right to form and join trade unions, or to Article 2 requiring an “effective remedy” for rights violations.
Acknowledging the obligation, the U.S. State Department’s first report on compliance with the ICCPR stated, “[P]rovisions of the First, Fifth and Fourteenth Amendments guarantee freedom of assembly in all contexts, including the right of workers to establish and join organizations of their own choosing. . . . The rights of association and organization are supplemented by legislation.” 10

Distressingly, however, the United States devalued the importance of protecting the right to freedom of association by claiming that the widespread exclusion of workers from coverage under U.S. labor laws—primarily agricultural workers, domestic workers, and supervisory employees—“means only that they do not have access to the specific provisions of the NLRA . . . for enforcing their rights to organize and bargain collectively.” 11 “Only” lacking access to enforcement mechanisms means these workers’ rights can be violated with impunity. There is no labor board or other authority to remedy violations.

How Does the ILO Work?

The ILO is globally representative in a unique way, as its tripartite membership consists of representatives of the three principal stakeholders in any employment relationship—governments, workers, and employers. Its International Labor Conference, which is held in Geneva, Switzerland, every June, develops conventions and recommendations. The Governing Body, with 28 members from governments, and 14 members each from trade unions and employer organizations, administers and sets strategy for the ILO. The ILO’s principal activities are setting, supervising, and promoting compliance with international labor standards, and providing technical assistance to promote full employment and decent work. 12

The ILO uses four major instruments to promote respect for worker rights:

- the ILO Constitution;
- ILO standards (conventions);
- tripartite declarations; and
- recommendations.

The ILO Constitution is binding on all members. ILO standards, called conventions, also carry legal weight. After the annual International Labor Conference has approved a convention it goes into effect after at least two countries have ratified it. Then each country is expected to ratify the convention through its legislative process, creating a legal obligation (with the force of an international treaty) to bring its laws, practices, and enforcement system into compliance.

ILO tripartite declarations are intended to encourage and promote compliance with ILO conventions. ILO recommendations are basically practical guidelines, often providing more detail on how to implement a convention. Neither declarations nor recommendations are legally binding.

The most fundamental of all worker rights, the right to freedom of association (Convention No. 87) and the right to organize and bargain collectively (Convention No. 98), were adopted in 1948 and 1949, respectively. 13 The aim of Convention No. 87 is to ensure the freely exercised right of workers and employers, without distinction, to organize for furthering and defending their interests. The purpose behind Convention No. 98 is to protect workers who are exercising their right to organize, to protect workers’ and employers’ organizations against interference by each other, and to ensure that governments promote voluntary collective bargaining.

Employers’ organizations enjoy the same right to organize as workers under ILO standards, but since employers have a greater share of economic power, which also translates into political influence, the vast majority of activity around compliance with ILO standards focuses on the rights of workers. Conventions Nos. 87 and 98 have over-
lapping principles, but in general, and for purposes of discussion, freedom of association pertains most often to the relationship between workers’ organizations (unions) and governments, while the right to organize and bargain collectively relates conceptually to the relationship between unions and employers.

Many ILO conventions focus on health and safety concerns. These have been ratified by fewer countries. In 2006 the ILO adopted Convention No. 187 as the “Promotional Framework for [an] Occupational Safety and Health Convention.” The convention outlines general principles that promote the systematic treatment of occupational safety and health, and the recognition of existing conventions that address them. It calls on governments to develop a national tripartite policy, to create an infrastructure to implement the policy, and to establish a national culture where the right to a safe and healthy working environment is respected at all levels. This convention will go into force February 20, 2009. 14

Although the ILO monitors compliance, it has little enforcement authority. Countries that ratify conventions are expected to incorporate them into their national laws and comply with them through national labor law enforcement. However, all ILO member countries are expected to comply with the principles of freedom of association, and protection of the right to organize and bargain collectively, whether or not they have ratified Conventions Nos. 87 and 98. In any case, ratification of standards does not necessarily imply compliance. Some countries do not comply with standards even though they have ratified them, while others may comply with provisions of standards they have not ratified.

Global Recognition of Fundamental Principles and Rights at Work

As international attention focused increasingly on growing worker rights abuses in the mid-1990s, support began to develop around the identification of “core” labor standards, the most fundamental worker rights, which could be considered necessary in any society. At the 1995 World Summit for Social Development, national leaders agreed that all workers were entitled to the following four basic rights: freedom of association and the right to organize and bargain collectively, the prohibition of forced labor, the prohibition of child labor, and the elimination of discrimination in employment. The ILO identified eight conventions that corresponded to those rights, noting that they were “fundamental to the rights of human beings at work.”

In its 1996 meeting in Singapore, the World Trade Organization (WTO), following intensive discussions with labor representatives, included language on worker rights for the first time in its Singapore declaration:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO secretariats will continue their existing collaboration. 15

However, despite the Singapore declaration and U.S. Government support for the creation of a working group on worker rights in the WTO, no working group has been formed.

Throughout this period, the ILO sought to build on the momentum to increase international support for a common approach to protect worker rights. In 1994, in the midst of debate to identify “core” labor conventions, the ILO Governing Body designated four conventions as priority conventions. These conventions addressed tripartite consultation
(No. 144), labor inspection (Nos. 81 and 129), and employment policy (No. 122). In 1998 the ILO’s effort to identify the most universally basic labor standards culminated in the adoption of a formal Declaration on Fundamental Principles and Rights at Work. The declaration affirms the commitment of the ILO and its member states to “respect, promote, and realize” the following principles:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labor;
- the effective abolition of child labor; and
- the elimination of discrimination with respect to employment and occupation.16

These principles have come to be known as the “core labor standards.” All member countries are bound to the Declaration and its principles as outlined in Section 2, which states:

[A]ll Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions. . . .17

### ILO Core Labor Standards

<table>
<thead>
<tr>
<th>1998 Declaration on Fundamental Principles and Rights at Work</th>
<th>Corresponding ILO Conventions</th>
<th>Number of Ratifications of Convention As of May 2008 (out of 181 ILO member states)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Freedom of association and the effective recognition of the right to collective bargaining</td>
<td>Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)</td>
<td>148</td>
</tr>
<tr>
<td></td>
<td>Right to Organize and Collective Bargaining Convention, 1949 (No. 98)</td>
<td>158</td>
</tr>
<tr>
<td>2. Elimination of all forms of forced or compulsory labor</td>
<td>Forced Labor Convention, 1930 (No. 29)</td>
<td>172</td>
</tr>
<tr>
<td></td>
<td>Abolition of Forced Labor Convention, 1957 (No. 105)</td>
<td>170</td>
</tr>
<tr>
<td>3. Effective abolition of child labor</td>
<td>Minimum Age Convention, 1973 (No. 138)</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>Worst Forms of Child Labor Convention, 1999 (No. 182)</td>
<td>165</td>
</tr>
<tr>
<td>4. Elimination of discrimination with respect of employment or occupation</td>
<td>Equal Remuneration Convention, 1951 (No. 100)</td>
<td>164</td>
</tr>
<tr>
<td></td>
<td>Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</td>
<td>166</td>
</tr>
</tbody>
</table>

References to core labor standards sometimes speak of four, six, seven, or eight such standards; the confusion arises because the ILO has more than a single relevant convention on the four core issues contained in the declaration—two on forced labor, two on child labor, two or more on freedom of association and collective bargaining (which are taken to include the right to organize), and two or more on discrimination.

The 1998 declaration created a follow-up mechanism with new measures requiring self-reporting by all members on compliance with the core labor standards. Each June, as part of the follow-up, the ILO Director-General submits a Global Report on one of the four categories of fundamental principles and rights at work to the tripartite International Labor Conference. The reports include recommendations for governments that encounter problems with compliance.

Each Global Report focuses on a different core standard. Countries considered to be the most blatant violators are identified in bold print. The ILO Global Reports on Core Labor Standards produced thus far include:

- **Freedom of Association in Practice: Lessons Learned** (2008);
- **Equality at Work: Tackling the Challenges** (2007);
- **The End of Child Labour: Within Reach** (2006);
- **The Global Alliance Against Forced Labour** (2005);
- **Organizing for Social Justice** (2004);
- **Time for Equality at Work** (2003);
- **A Future Without Child Labour** (2002);
- **Stopping Forced Labour** (2001); and
- **Your Voice at Work** (2000).

Today the ILO’s mission is the same as it has always been: to stand up for worker rights, establish and enforce international labor standards, and remain true to its founding principles. The ILO is now stepping up efforts to encourage its member countries to ratify at least the conventions that comprise the core labor standards.

The declaration has indeed facilitated progress toward global consensus of these standards as fundamental worker rights. Its principles also have provided a useful tool for engaging policy makers from international financial institutions, multinational corporations, and reluctant governments on the negative impacts of globalization. This concrete, small set of basic global standards (in contrast to the cumbersome entire body of ILO conventions) has helped focus discussion by providing an effective list of tripartite-generated, internationally accepted “minimums.” Fundamentally, the core labor standards represent global consensus about the most basic responsibility of any member of the global community of nations.

**The ILO’s Supervisory and Review Process**

**Reporting Requirements and Committee Review**

Ratifying member governments are required to submit reports on implementation of the core and priority conventions to the ILO once every other year (just as for the eight core conventions). Governments must report on the other ratified conventions every five years, and they are expected to send their reports for comment to the most representative trade union and employer organizations, which may send their comments either to the government or directly to the ILO.

The ILO Labor Office (permanent secretariat) sends the country reports to its independent Committee of Experts on the Application of Conventions and Recommendations (CEACR), which reviews them and publishes an annual report that includes “observations” on worker rights problems. A number of these observations are discussed in turn by the Conference...
Committee on the Application of Standards, which may highlight the most serious cases for the special attention of the Conference.19

Through the Committee on Freedom of Association (CFA), the ILO also reviews complaints submitted by member countries and worker and employer organizations concerning violations of the freedom of association principle. (For a more complete description of these processes, see Appendix I). The ILO asks for a response from the government. It occasionally seeks supplemental information from employers and unions. It investigates these complaints by seeking additional information from the employers, unions, and governments concerned. Occasional extreme situations result in visits by “ILO missions” to the country in question. The ILO then reports all the information that has been gathered and offers its conclusions.

The ILO has little enforcement authority, so it relies mostly on moral pressure to make headway in raising labor standards around the world. Worker rights advocates often criticize the ILO for the lack of “teeth” in its process. But despite the lack of enforcement authority, the ILO’s supervisory system has succeeded in providing a way to focus international public attention on the conditions of oppressed working people around the world. In fact, over the past decades, the ILO CEACR and CFA have carried out their responsibilities with remarkable competence and objectivity, conferring a mark of global validity on their findings that is unmatched by any other information source on worker rights. In addition, their rulings have built up volumes of international labor jurisprudence drawn from thousands of decisions. These rulings define, very specifically, which laws and practices are in compliance or noncompliance with the relevant standards. Accordingly, the ILO is often the first stop in the efforts of worker rights advocates and practitioners to assess a government’s compliance with a given standard.

**Article 33: The ILO’s Call to Action**

In addition to publicizing its report findings, the ILO can employ other tools to promote compliance with conventions. Under Article 24 of the ILO Constitution, any worker or employer organization can submit a complaint about a member government’s failure to adhere to a ratified convention. Complaints on violations of freedom of association can be filed against a government even if it has not ratified Convention No. 87 or 98.

Article 26 of the Constitution provides official ILO delegates an additional avenue for addressing extreme violations. Under an Article 26 complaint, the ILO’s Governing Body, with the government’s permission, sends a Direct Contacts Mission to the country. If the issue remains unresolved, the ILO may appoint a Commission of Inquiry to further investigate. The Commission reports its determinations and recommends remedial changes in laws and practices to bring the country into compliance. The government under investigation can appeal to the International Court of Justice.

If the government fails to make the recommended changes, the ILO Governing Body can then invoke Article 33, which states:

> In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.20

Although the Article 33 language—“such action as it may deem wise and expedient”—is broad enough to allow for sanctions, the ILO had never applied it until November 2000, when the Governing Body for the first time used the article to call its members to action against the government of Burma (also called Myanmar).
The Burma Case

Burma’s military dictatorship fell under ILO scrutiny in the early 1990s for egregious violations of freedom of association and the state’s unparalleled use of forced labor (Burma ratified Convention No. 29 on forced labor in 1955). In 1996 members of the ILO Workers Group submitted a complaint under Article 26, and in 1997 the Governing Body convened a Commission of Inquiry. The Burmese government did not cooperate, and so in 2000 the ILO adopted a special resolution under Article 33 authorizing member countries to take appropriate action. Several member nations imposed sanctions, because they felt that the Burmese regime’s intransigence left them no other option.

The majority of participating countries withdrew sanctions in 2001, when they believed the government was attempting to resolve the situation, and the Burmese government allowed the ILO to open an office in Rangoon in 2002. The ILO withdrew its call for sanctions in early 2003, when it agreed on a joint plan of action with Burma, but the plan was suspended in May of that year. The United States acted on its own accord that same year, passing the Burmese Freedom and Democracy Act, which effectively banned all imports from Burma.

Burma continued to avoid taking concrete measures to eliminate its forced labor problem. The ILO issued another warning to the military junta in March 2005, demanding that the government put a stop to the practice or risk a reimposition of sanctions from member states. An ILO resolution specifically condemned the government’s refusal to permit a high-level ILO delegation to meet with senior Burmese officials about the use of forced labor.

In February 2007 the Burmese government agreed with the ILO on a process by which forced labor victims could seek justice without fearing reprisals. The Burma Lawyers’ Council, noting the government’s failure to honor its agreement, called on the ILO to forward the issue of the government’s use of forced labor to the International Court of Justice.21

In August 2007 the Burmese government doubled the price of gasoline and diesel fuel, and quintupled the price of compressed gas (used by buses). The steep increase in costs for public transportation and food staples (which relied on transportation) created intense hardships for Burmese families. On August 19, several hundred people led by prodemocracy activists marched in protest in Rangoon. The authorities moved to stop the protests, arresting dozens of activists, but protests around the country continued and built momentum.22

In September the protests garnered world attention when large numbers of Buddhist monks began to participate in the rallies after troops used force to halt a peaceful rally in the town of Pakokku. By mid-month tens of thousands of monks were participating in daily protests. On September 21 the Alliance of All Burmese Buddhist Monks issued a statement describing the Burmese military government as “the enemy of the people.”23 On September 24 thousands of people participated in a massive protest in Rangoon. The Burmese government responded with a brutal crackdown. Thousands were reportedly arrested, and over 3,000 people are reportedly dead. China responded by asking Burmese leaders to refrain from using violence. The United States tightened sanctions on military leaders, and along with the EU, called for action to be taken about the protests. The last large protests of this nature had occurred during a popular uprising in August 1988.24

By the end of 2007, no evidence suggested that the Burmese government was willing either to tolerate peaceful dissent or to halt the use of forced labor. On the basis of an ILO Mission report, the ILO Governing Body decided in March 2008 to extend the one-year trial period for the ILO-Burma agreement, or “Supplementary Understanding,” which sought an end to the detention and harassment of those who were attempting to file forced labor complaints.25 The ILO also called once again for the release of six jailed labor activists.26
The United States promoted and/or was heavily involved in the development of UN human rights standards and ILO conventions, including the “core” labor standards, and it fought for the passage of the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Official U.S. foreign policy supports increasing respect for worker rights around the world. But of the current 188 ILO standards, the United States has ratified only 14, including 2 of the “core” labor conventions—one on Forced Labor (No. 105) and one on the Worst Forms of Child Labor (No. 182).

Why hasn’t the United States ratified more of the standards it has supported abroad?

Some countries ratify ILO conventions in order to begin bringing their own law and practice into conformity with international standards. The United States has resisted doing so, because ratification would require that domestic law conform with the ratified convention. In fact, in 1984, shortly after returning to the ILO after a three-year withdrawal, the U.S. Senate set out three conditions for ratification of ILO conventions. The first condition is that U.S. law must comply with the convention before the Senate ratifies it. Under the second condition, a government-business-labor committee called the U.S. Tripartite Advisory Panel on International Labor Standards (TAPILS) must agree by consensus that U.S. law comports with the ILO convention before submitting it for ratification. And third, ratification cannot change state labor law and practice.

These conditions have enabled the United States to ratify some additional conventions. Prior to 1988, the United States had ratified only 7 of the more than 160 ILO conventions then drafted. Since 1988 the United States has ratified 7 more ILO conventions (for a total of 14), including the 2 “core” standards mentioned above. But this list still does not include what worker rights experts regard as the most essential of core standards: the conventions corresponding to the Right to Freedom of Association (No. 87) and the Right to Organize and Bargain Collectively (No. 98).

This poor ratification record has subjected the United States to a great deal of criticism both domestically and abroad. The United States, critics say, should not try to force other countries to do what it will not do itself. That is especially true at this time, when U.S. Government officials are urging other countries to conform to ILO worker rights standards mandated by U.S. unilateral trade law or regional or global trade pacts (see Chapter 6). By pushing for ratification of standards that the United States itself has not ratified, the United States weakens its own argument for adopting higher standards abroad.

Defenders of the U.S. position claim that American legislation meets or exceeds the basic worker rights standards in any event. Critics of U.S. law and practice, including American unions, dispute that claim. In 1999, in its first annual report to the ILO in accordance with the Declaration on Fundamental Principles and Rights at Work and its follow-up procedures, the United States undertook a serious survey of the protections of freedom of association and collective bargaining embodied in domestic law and practice. Responding to a question calling for an “[a]ssessment of the factual situation,” the report conceded:

The United States has an elaborate system of substantive labor law and procedures to assure the enforcement of that law . . . and is committed to the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining. Nonetheless, the United States acknowledges that there are aspects of this system that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances. The United States is concerned about these limitations and acknowledges that to ensure respect, promotion and realization of the right to organize and bargain collectively, it is important to reexamine any system of labor laws from time to time to assure that the system continues to protect these fundamental rights [emphasis added].

Many observers assume that in our federal system of government, potential conflicts between state and federal law hamper U.S. ability to ratify conventions. But federalism is not an inherent barrier to ratification. In fact, other countries with federal systems have ratified ILO conventions, including the core conventions.
Congress, however, has chosen to use federalism as a weapon against ratification, as one of the three conditions for U.S. ratification of conventions is that it cannot change state labor law and practice.

This makes the ratification issue one of political will—in this case a reluctance to create a path of global accountability. That position reflects the influence of the U.S. business community. In 1999 Ambassador Thomas Niles, then President of the U.S. Council for International Business, testified before the Senate Foreign Relations Committee on the business community’s support for ratification of Convention No. 182 on the Worst Forms of Child Labor. Despite this endorsement of the relatively noncontroversial standard, the business community’s coolness toward the general idea of ratifying international worker rights standards was evident in Ambassador Niles’s testimony:

. . . U.S. business support to adopt an ILO treaty at an ILO conference was not a decision taken lightly and, in the historical perspective it was an exceptional event. Our decision is based on whether, at the time of the vote, the Convention is appropriate for multilateral regulation and whether the United States can ratify the Convention without changing existing federal and state law . . . [T]he precedent-setting legal review of the treaty undertaken by the United States during the second year of the negotiating process gave us, at the time of the vote, a great deal of confidence that the United States could ratify this Convention without affecting current federal and state law.

As a champion and signatory of the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, the United States has committed itself to comply with principles supporting freedom of association; the right to organize and bargain collectively; and the elimination of forced labor, child labor, and discrimination in employment. Further, as an ILO member and signatory of the ILO Constitution, the United States is already bound to the basic principles of freedom of association. While continuing to resist ratification and compliance at home, the United States weakens its credibility around the world as it urges developing countries to comply with core labor standards.


Stretching now to more than seven years of direct engagement, the ILO’s involvement in the Burma case illustrates both the possibilities and limitations of ILO mechanisms to effect change. While the ILO can capably hold the moral compass to point the way toward freedom of association and other fundamental worker rights, permanent change is unlikely through this action alone, where political will is absent.

Other Services

In addition, the ILO provides technical assistance in many labor-related areas. It continues, as it has done since its establishment, to provide legal expertise to member governments to help them assess and, if needed, to revise their labor law. The ILO provides Labour Legislation Guidelines to help those drafting labor law. Countries can also obtain direct ILO expertise related to the following matters:

- policy guidance on labor law issues;
- assessment of labor law framework in a given country or subregion;
- advice on revising labor legislation;
- drafting of laws and regulations, if requested by a member state;
The Decent Work Agenda responded to the ILO’s goal of reducing and eliminating poverty, and Somavia asserted that it should be “the centerpiece of integrated national and international efforts to reduce and eliminate poverty.” The “decent work” concept regards work as “a source of personal dignity, family stability, peace in the community, democracies that deliver for people, and economic growth that expands opportunities for productive jobs and enterprise development.” It emphasizes that people should have the opportunity to perform productive work that gives them a fair and stable income as well as job security and stability.

The Agenda highlights the need for family social protection, greater opportunities for personal development and social integration, freedom for people to express their concerns without fear of retribution, freedom to organize and take part in decisions that impact their lives, and equality of opportunity and treatment for all.

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ILO Twenty-First-Century Initiative: The Decent Work Agenda

In 1999 the ILO launched the Decent Work Agenda as a new strategy for the twenty-first century. ILO Director-General Juan Somavia noted:

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security, and human dignity.

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ILO Decent Work Agenda

| Job creation: | The economy should generate opportunities for investment, entrepreneurship, skills development, job creation, and sustainable livelihoods. |
| Guaranteeing rights at work: | The rights of workers should be protected. All workers (disadvantaged and poor workers in particular) need representation, participation, and good laws that are enforced and work for, not against, their interests. |
| Social protection: | Promote both inclusion and productivity by ensuring that men and women enjoy working conditions which are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income, and permit access to adequate healthcare. |
| Promotion of dialogue and conflict resolution: | People in poverty understand the need to negotiate and know dialogue is the way to solve problems peacefully. Social dialogue, involving strong and independent workers’ and employers’ organizations, is central to increasing productivity and avoiding disputes at work, and to building cohesive societies. |

men and women.\textsuperscript{31} It also seeks to reduce “unemployment and underemployment, poor quality and unproductive jobs, unsafe work and insecure income, rights that are denied, and gender inequality.”\textsuperscript{32}

Along with productive employment, many civil society and rights advocates consider decent work as key to poverty reduction and sustainable development throughout the world. According to the ILO, it “underpin[s] peace in communities and society” and provides a foundation for “a more just and stable framework for global development.”\textsuperscript{33} At the 2005 UN World Summit, 150 global leaders agreed to make it the principal feature in their policies. In 2006 ministers at the UN’s Economic and Social Council (ECOSOC) agreed:

Opportunities for men and women to obtain productive work in conditions of freedom, equity, security, and dignity are essential to ensuring the eradication of hunger and poverty, the improvement of the economic and social well-being for all, the achievement of sustained economic growth and sustainable development of all nations and a fully inclusive and equitable globalization.”\textsuperscript{34}

The ILO has sought to promote decent work through pilot programs in countries throughout the world, including Bahrain, Bangladesh, Denmark, Ghana, Kazakhstan, Morocco, Panama, and the Philippines. These programs set priorities and goals within countries’ development policies and focus on addressing problems that thwart decent work. Lessons garnered from the initial pilot programs were used to develop subsequent Decent Work Country Programmes in other ILO member states (see chart below).\textsuperscript{35}

### Workers Unite Globally

#### The International Trade Union Confederation

Over the past few decades, the globalizing economy has increased cooperation among national governments on economic policy, particularly trade policy (see Chapters 2, 5, and 6). As globalization has increased trade, augmented migration, and eroded worker rights across borders, unions in countries throughout the world have increasingly recognized common ground. That recogni-

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**Countries with Decent Work Country Programmes**

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tion has stemmed from a growing understanding that injustice to workers on one side of the world has an adverse impact on workers thousands of miles away. As a result, unions throughout the world have acknowledged a critical need to cooperate on a more global basis to halt the hemorrhage of fundamental worker rights and to secure them for all workers.

This recognition culminated in the formation of the ITUC in November 2006. The confederation was formed from the merger of two major international trade union confederations, the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labor (WCL), along with eight national trade union organizations. Quadrennial world congresses, a General Council, and an Executive Bureau govern the ITUC. In December 2007 the ITUC had almost 168 million members from 311 affiliated organizations in 155 countries and territories.

The confederation hopes to usher in a new era for the international labor movement. On the eve of the ITUC’s establishment, the organization’s General Secretary, Guy Ryder, noted:

The creation of ITUC will solidify the trade union movement’s capacity at the national and international levels. Stronger, we will exert more influence on companies, governments and the international financial and trade institutions. The founding of the ITUC is an integral part of the process of uniting the power of trade unionism.

The ITUC’s main goal is to promote and defend the rights and interests of workers globally. It plans to achieve this goal through international trade union collaboration and cooperation, worldwide campaigns, and advocacy within major international institutions. By highlighting trade union and human rights, the economy, society and the workplace, equality and nondiscrimination, and international solidarity, the ITUC hopes to better the lives of workers all around the globe.
The ITUC is currently sponsoring a decent work campaign entitled “Ensuring Decent Work for a Decent Life.” The campaign, which supports the ILO Decent Work Agenda, is committed to building “awareness of Decent Work amongst citizens, decision makers, and key institutions”; showing that “Decent Work is the only sustainable way out of poverty and is fundamental to build democracy and social cohesion”; and placing “Decent Work at the core of development, economic, trade, financial and social polices at the national, European, and International level.” This complements a major focus of the ITUC, which is to ensure respect for core labor standards.

The ITUC is also involved in other global campaigns, including Fair Play at the Olympics, which promotes respect for the rights of workers in the sportswear industry, and the Global Call to Action against Poverty, which supports UN Millennium Development Goals to eradicate poverty. In addition, the ITUC conducts ongoing research and advocacy work on: human and worker rights;
trade, investment, and labor standards; workplace safety and health; global governance (e.g., IFI issues); global social dialogue, and corporate social responsibility; union organizing; equality (including rights of young workers, women workers, and migrant workers); and fighting against HIV/AIDS, child labor, and forced labor.42

Global Unions

GUFs, formerly known as international trade secretariats, are federations of unions composed of national-level unions that represent members in specific industry sectors or occupational groups. National-level sector unions usually belong to at least two broader groupings: to a national union confederation uniting unions of diverse sectors (which is in turn generally affiliated with the ITUC), and to a GUF that corresponds to the sector where it has members. Unions with members in many sectors may belong to more than one GUF.43 (More information on the role of GUFs in promoting compliance with core labor standards can be found in Chapter 7.)

On January 10, 2007, in another move toward building a more global trade union movement, the ITUC, the TUAC for the OECD, and nine GUFs formed the Council of Global Unions. Fred Van Leeuwen, Education International’s General Secretary, who was elected to be the first Chair, said, “This historic step will enable us to meet the tremendous challenges facing workers more systematically and with greater impact...”44 ITUC General Secretary Guy Ryder noted that the Council “gives us a key platform for coordinated global solidarity, mobilisation, campaigning, and advocacy.”45

The Council meets annually. The general secretaries of member organizations and a Coordinating Committee oversee its work.46 The Council’s first initiatives addressed union recognition and organizing, “financialization” in the global economy, and global public policy (with a focus on public services and decreasing poverty).47

Today’s Challenge

Over the past century, the international community has increasingly declared its support for workers’ basic rights through many types of international accords. These rights appear in UN covenants and declarations, ILO conventions, regional social charts, bilateral and regional trade pacts, unilateral legislation, and even in local laws and shareholder resolutions. Worker and human rights proponents have worked tirelessly to use all the institutional and advocacy mechanisms available to improve respect for worker rights around the world. However, despite their best efforts, worker rights—and not incidentally, democratic rights—are rapidly evaporating before our eyes. Why is 100 years of progress being reversed?

A 2004 report by the ILO’s World Commission on the Social Dimension of Globalization found that globalization had not resulted in benefits to most people; rather, it had made matters worse in many cases, failing to meet workers’ “simple aspiration for decent jobs, livelihoods and a better future for their children.”48

The report placed the blame for this failure on the way globalization had been managed at both national and international levels. It noted that unfair trade and finance rules had consistently trumped rules for social justice, even international human rights law, yielding a “democratic deficit” at the core of the global economic governance system. It highlighted the need to “rethink current institutions of global economic governance, whose rules and policies... are largely shaped by powerful countries and powerful players.” It warned that the legitimacy of our current political institutions (national and international) is in crisis, with imbalances that are “ethically unacceptable and politically unsustainable.” To meet the crisis, it called for the development of a global system of governance that supports national development strategies and places the “needs and aspirations of ordinary people at the centre of rules and policies.”49
As of 2008, the global community of nations has yet to answer that call. But World Bank President Robert B. Zoellick sounded a faint note of hope when he addressed the ILO’s Governing Body on March 17, 2008. Zoellick discussed increasing ties with the ILO to seek “an inclusive and sustainable globalization.” He indicated that the World Bank, the ILO, and other international organizations should strengthen their efforts to see that globalization can “help to overcome poverty, to enhance growth with care for the environment and to create individual opportunity and hope.” He said that the World Bank’s agenda “connects quite well with the Decent Work Agenda,” and that the World Bank’s vision of an “inclusive and sustainable globalization” was about “trying to improve the lot of people across the globe. And that requires quality jobs, it requires better social conditions, and it requires opportunities for individual development in achieving aspiration. . . . We can’t leave people behind.”

These are excellent sentiments, and welcome ones, coming from one of the most powerful international financial institutions. But the proof—and the difficulty—will be in the doing. While globalization, in its current iteration, has not delivered what policymakers promised, it has had profound impacts on work, industry, prosperity, and peace throughout the world.

The next three chapters of this book look at how global financial institutions have promoted international economic integration, and the new trends that have emerged as their policies have been put into practice. These include an expanding global pattern of migration, a growing dominance of the informal economy, and the impact of these trends on democracy and prosperity. They point to the magnitude of the job at hand and to the level of success (or lack thereof) in getting it done. One thing is clear: in order to leave no one behind, global economic governance must place a new priority on democracy, human rights, and genuinely inclusive processes. And as workers are the primary fuel for the global economy, their fundamental rights cannot be ignored.

Endnotes


2 The United States did not join the League of Nations but did participate in the ILO. Woodrow Wilson appointed Samuel Gompers, president of the American Federation of Labor (AFL), as the first U.S. representative to the organization. The United States joined the ILO in 1934 and has played a leadership role throughout its existence.


4 Ibid.

5 Ibid., Annex.


11 Ibid., p. 166.


15 World Trade Organization (WTO), Singapore WTO Ministerial 1991: Ministerial Declaration WT/ MIN(96)/DEC, December 18, 1996, www.wto.org/english/theWTO_e/minist_e/min96_e/wtodec_e.htm. The WTO, successor to the General Agreement on Tariffs and Trade, was established on January 1, 1995. The final accord was signed by 111 governments. The purpose of the organization is to set global rules for trade; it is the legal and institutional foundation of the multilateral trading system. The WTO sets the principal contractual obligations determining how governments frame and implement domestic trade legislation and regulations. Its primary functions are:

1. to administer and implement the multilateral and plurilateral trade agreements which together comprise the WTO;
2. to act as a forum for multilateral trade negotiations;
3. to seek to resolve trade disputes;
4. to oversee national trade policies; and
5. to cooperate with other international institutions involved in global economic policy making.


17 Ibid.


19 In recent years concern has been expressed over an emerging trend among some government and employer groups within the Conference CEACR to apply a less objective, more political perspective to cases, causing conflict and undermining consensus. From Steyne presentation.


23 Ibid.

24 Ibid.


26 Ibid.


32 ILO, “Facts on Decent Work.”

33 ILO, “Decent Work for All.”

34 ILO, “Facts on Decent Work.”
Chapter 1 The Evolution of Worker Rights: Toward International Consensus


39 Ibid.


45 Ibid.

46 In 2007 Coordinating Committee members included: Council Chair and EI General Secretary Fred van Leeuwen, Council Secretary and ITUC General Secretary Guy Ryder, Council Vice-Chair and Building and Wood Workers’ International General Secretary Anita Normark, and UNI General Secretary Philip Jennings; www.tuc.org.uk/international/tuc-12871-f0.cfm.

47 Ibid.


49 Ibid.

Chapter 2

Worker Rights, IFI Policy, and the Global Economy
The International Monetary Fund and World Bank in International Development

The past quarter century has brought epic changes in the world of work. More than 1.4 billion low-wage workers have joined the global labor force, with India, China, and Soviet bloc countries entering the global economy in the 1990s. Women, who continue to suffer widespread discrimination at work, have entered the formal and informal labor force in unprecedented numbers, reaching some 1.2 billion in 2006. Migration for work—and the accompanying loss of social, political, and economic rights that it entails for the migrant—is increasing. Migration is a survival strategy for more than 180 million workers (an estimated 95 million of whom are women) and their families. Some national governments rely on the hundreds of billions of dollars migrants send home as remittances in order to stay afloat in the global economy.

In developing countries, workers have shifted out of traditional agricultural employment and higher paying jobs in the public sector to jobs in the private sector, assembly industries, and the informal economy—as well as into the ranks of the unemployed. In scores of countries and sectors, labor conditions and exploitation have worsened. In its most extreme form, that trend is manifested in higher levels of forced labor and human trafficking for work. Some workers, on the other hand, have experienced clear improvements in their status, income, and opportunities. Unfortunately, the spread of antilabor policies has meant that the gains of the few have done little to ameliorate or pave the way forward for the hundreds of millions more struggling to survive in the face of overwhelming pressures.

The World Bank and the International Monetary Fund (IMF), commonly known as international financial institutions (IFIs), have played central roles in this epic transformation of the world economy. Formed during the global economic, social, and political turmoil of World War II, these two public-sector institutions, originally intended to provide an international framework to support global growth and full employment, have had a direct and profound impact on the lives and rights of workers worldwide. This chapter outlines these impacts, examines their links to the economic reform role of the IFIs, and considers specific critiques—both theoretical and operational—of the IFIs. It then highlights recent changes in the IFIs (made in part to address critics) and the inherent contradictions that limit deep reform. The chapter ends with some issues that worker rights advocates need to understand and confront if global economic policy is to support the growth of democracy and harmonize with worker and human rights.

Origins of the World Bank and the IMF

Today’s World Bank and IMF are very different from the original public-sector financial institutions established in July 1944 at Bretton Woods, New Hampshire. At that time, governments of the major powers of the day (primarily the United States and Great Britain) came together to address the enormous devastation of World War II and to prevent global economic crises such as those of the late 1920s and 1930s. They created the International Bank for Reconstruction and Development (IBRD), the precursor to today’s World Bank, and the IMF. The World Bank and the IMF are sometimes called the Bretton Woods Institutions.

The IBRD and the IMF had two distinct but complementary roles. The IBRD was initially established to provide financing or loans for the rebuilding of war-torn Europe, as a means of rapidly restoring the prosperity and economic stability necessary to the political equilibrium of Europe. The IMF, the central agency for enforcing the Bretton Woods Articles of Agreement, was intended to promote the stability of the international monetary and financial system by monitoring international payments and exchange rates, key to enabling cross-border trade between and among nations. The IMF was also created to provide short-term emergency loans to countries fac-
ing short-term balance of payment crises. The overall objective of the agreement was to establish a stable postwar economic order where trade, investment, and exchange rate policies would stimulate growth while leaving individual countries free to enact full-employment policies, progressive taxation, and other aspects of a state-based social and economic security system.

The establishment of the IFIs was part of a bold agenda to stabilize a world torn by war and contribute resources and vision for a return to production and economic progress. In this era of trauma and change, political forces worldwide were converging at the United Nations General Assembly to define and adopt the Universal Declaration of Human Rights, marking the first time that the social, economic, and political rights and freedoms of individuals, as well as the duty of nations to guarantee those rights, was set forth in such detail.

It was during this time that Karl Polanyi published his classic and influential book *The Great Transformation*, in which he analyzed economic history and explained the dangers of converting markets from a means to a social end in and of themselves. Essentially, Polanyi argued that “for market economies to function with some modicum of fairness, they must be embedded in social norms and institutions that effectively promote broadly accepted notions of the common good.” Otherwise, acquisitiveness and competition—the two driving forces of market economies—achieve overwhelming dominance as cultural forces, “rendering life under capitalism a Hobbesian ‘war of all against all.’” Various social democratic movements in advanced capitalist societies adopted this perspective and argued in favor of government intervention in the economy to achieve this fairness.

John Maynard Keynes, a British economist, was a leading intellectual force contributing to the initial design of the IMF and the World Bank. Keynes knew that capitalist economies are prone to economic crisis and that unconstrained financial markets are prone to swings in currency value and speculation that distorts prices—with negative impacts on production and trade. Keynes also posited that markets could only function with regular and robust government management. He promoted the active use of a combination of government regulation and policies that would increase overall demand for goods and services, which in turn would increase private capital investment. Although a number of Keynes’s key proposals were rejected at Bretton Woods, at least initially, the IFIs did adopt his approach to macroeconomic policy and for the first two decades after World War II highlighted the role of the state in employment generation, growth, and redistribution.

Keynes’s approach represented a steep departure from that of the classical economists, whose theories were dominant in the late nineteenth and early twentieth centuries. For classical economists, falling wages were not a problem, as they assumed that low wages would eventually lead to more employment, which would lead to more output and eventually to higher wages. Keynes, on the other hand, argued that falling wages would mean reductions in consumption, which in turn would deepen deflation, the core problem of the recession—manifested as too little demand for the goods being produced. Without demand, there is no reason to invest, and lower investment in turn means fewer jobs, drops in production, lower wages, and a worsening of recession. For a system driven by profit and expansion, as is capitalism, such a deflationary spiral poses deep and destabilizing systemic threats.

The U.S. Great Depression of the 1920s and 1930s was just such a crisis of capitalism. It was born of a combination of unfettered and poorly regulated capitalism, manifested in the stock market crash of 1929 and the high levels of poverty and unemployment that followed. Between 1929 and 1933, the gross national product (GNP), the sum of all the goods and services produced in the country, fell 29 percent. Construction was down 78 percent, manufacturing 54 percent, and investment a staggering 98 percent. Such economic devastation spread poverty and insecurity far beyond the large numbers of working-class people already familiar with such deprivations. Workers across the country
protested, went on strike, and clashed with employers, police, and private antilabor forces. In 1934, in the nation’s largest single strike, 350,000 textile workers walked out in a massive uprising that shut down mills from Maine to Alabama.

Building on decades of educational and political work by prolabor party organizing, a new consciousness of social and economic rights was forged by the political and economic convergence that challenged the American faith in the notion of equality and opportunity for all. U.S. workers and their advocates became an influential, if not decisive, political force fighting for worker rights and social policies to benefit poor and working people.

Another powerful influence on U.S. Government policy at the time was the need to address the “underconsumption” side of the Depression equation. As noted by one labor historian, in this period, “the labor question” held center stage “not because the Great Depression made so many people poor and desperate, though it did, but because during the era of the New Deal an amelioration of the labor questions seemed inexorably bound up with a structural solution to the crisis of American capitalism itself.” In other words, workers were important not just because they were the basis of the productive capacity that drove the expansion of goods but also because they consumed the goods so produced. With the onset of World War II, massive labor shortages gave workers even more leverage and helped consolidate labor unions. In the decade of intense organizing and social struggle from 1933 to 1944, union membership rose to 15 million, or 35 percent of the labor force (from 15 percent in the early 1930s).

Thus, during the New Deal years and on into World War II, U.S. Government rules and regulations were deployed to “humanize” capitalism, directly address the problem of insufficient purchasing power, and link the power of labor and capital together in a way that moderated the power of both. Policies were enacted to create jobs, guarantee a worker’s right to join a union, establish a minimum wage and a 40-hour week, and introduce unemployment and retirement benefits. Unions used worker power to address concrete problems, and despite divisions among various factions of the labor movement, they established the role of labor as an institutional as well as political player in the United States. While U.S. business interests successfully fought against many of the labor and social support policies, the promise of postwar profits gave them motive to reach some accommodations with labor.

**Establishment of the IFIs**

This was the context for the founding of the World Bank and the IMF. Many of Keynes’s insights were incorporated, and the IFIs were initially considered to be quite progressive institutions. In its early years, the IMF’s primary intent was to relieve foreign exchange crises at moderate socioeconomic cost. With the help of World Bank loans, Europe began to rebuild.

From the IFIs’ founding, the economic and political interests of the United States and its corporations were an operative force in shaping the institutions’ policies and operation. Because many aspects of the initial, ambitious plans to establish two multilateral institutions (such as the establishment of a currency specific to the World Bank and the stabilization of commodity prices) were challenged and rejected by Wall Street and some political elites, the final agreement, not ratified by the U.S. Congress until 1947, included many accommodations to business interests.

Having emerged from World War II with an intact and enormous manufacturing capacity, the United States needed new markets in which to sell its goods. When it became clear that World Bank loans would not be sufficient to rebuild Europe or to help establish the kinds of economic and political (anticommunist) systems the United States sought for Europe, the Marshall Plan was developed. In addition to providing needed capital, it invested American goods, expertise, and manpower in Europe’s rebuilding. By 1953 the IBRD had lent...
$497 million for European reconstruction,\textsuperscript{14} in comparison to $13.3 billion transferred to Europe under the Marshall Plan. By the time Europe was once again a productive force, American goods already dominated the market in a whole host of industrial and other sectors.

In the 1950s and 1960s, with markets in Europe successfully expanding, the United States began looking for new ways to justify lending money to developing countries in order to enable them to purchase American goods. The World Bank provided both the rationale and the operational support for this new objective. In particular, it adopted theories of economic modernization that equated growth and investment with development. During the same period, on the basis of these theories, the World Bank turned its lending to finance infrastructure projects such as dams, roads, schools, and extractive industries. In many cases the World Bank required developing countries to purchase U.S. goods and services.\textsuperscript{15}

World Bank lending in the 1950s was also shaped by Cold War politics. Lending to Zaire (now known as the Democratic Republic of the Congo) is a case in point. In 1965 with the help of the CIA, army chief of staff Mobutu Sese Seko seized power in a military coup. A valued anti-communist ally of the United States, Mobutu maintained a ruthless and corrupt regime until his ouster in 1997. In the early years of his regime, the United States helped funnel World Bank loans and IMF credits to Mobutu’s government, even though internal documents revealed that these agencies knew in advance the money was likely to be stolen and the loans unlikely to be repaid.\textsuperscript{16} Mobutu used IMF and World Bank loans to repay Zaire’s private creditors, thereby transforming private debt into public debt that by 1997 totaled almost $14 billion.\textsuperscript{17}

Also emerging in the 1950s was a small, marginal group of economists who came to be known collectively as the “Chicago School,” after the university where they were based. At the time, their zealous support of free markets—by which they meant the unregulated exchange of goods and services—and critique of government intervention were considered reactionary and extreme.\textsuperscript{18} The trauma of war and depression may have brought the theories and analysis of Keynes and Polanyi to the forefront of public policymaking, but the free-market proponents did not go away.

In the 1970s, under Robert McNamara, the World Bank grew dramatically in size and scope. While lending for infrastructure continued, the World
Bank also paid more attention to the issue of redistribution of resources and investment in systems—health, education, small farm production—that would directly enhance the productive capacity of the poor. This increased attention to poverty concerns can be traced in part to the growing influence and unity of the newly independent Third World countries in their call for a New International Economic Order that would redistribute wealth and income more fairly to developing countries. Also playing a role were the increasing critiques by Third World scholars of Western modernization theories and the emphasis on unleashing an “entrepreneurial class,” which would supposedly launch a country on the path to development. These scholars saw prevailing development theories in a different light, underlining the economic dependency that was created in their wake, and the strengthening of the “comprador class”—a class of national elites whose interests lay not with their own people but with emerging forms of international capitalism (see the “Trade Liberalization” section of this chapter for an example of the negative consequences discerned by Third World scholars).

The Modern Era: Debt and the Rise of IFI Power

Events of the 1970s brought about dramatic shifts in the role of the IFIs, as another “crisis of capitalism” emerged. Increased global competition was squeezing profits for U.S. corporations. Overproduction was contributing to falling rates of profit, and prices spiked as a result of rapid increases in the price of oil.

The United States, which had enjoyed 25 years of growth and low inflation, became mired in “stagflation,” a phenomenon of high inflation, high unemployment, and low growth and productivity. The policy response was to hike interest rates, making it more expensive to borrow money, a monetary policy tool used to lower inflation. (One way to reduce inflation is to reduce spending—thus easing pressure on prices. High interest rates do that by reducing borrowing and increasing savings.) Rising interest rates, however, serve as a brake on borrowing for both consumption and productive purposes, which in turn lowers growth, squeezing profits even more.

For the developing world, which had been encouraged to borrow heavily from private banks in the 1960s and 1970s (to enable them, as noted above, to “modernize” their economies and “take off” into development—not to mention purchase American goods), the sudden rise in interest rates was catastrophic. Overnight the interest on poor-country debt rose dramatically, and many countries were thrown into severe economic crisis. Banks were hard hit as well, as what had been lucrative—and many would say irresponsible—loans turned to looming defaults.

The crisis caused the Chicago School of economics to gain popularity. Milton Friedman argued that too much government had caused the problem. The ascendancy of the Chicago School had major consequences. The Chicago economists had made a “moral argument” that capitalism bestowed the most benefits on those who worked the hardest and that it was inherently unjust for a coercive state to forcibly redistribute capital through taxes and government expenditures. That “moral” argument was transformed into a technical argument about inefficiencies associated with nonfree-market solutions and the perverse incentives that made any social program doomed to fail. This transformation elevated the status of economics to that of natural law, obscuring to this day the deeply political nature—and intent—of that shift.

When Chilean General Augusto Pinochet seized power in a U.S.-backed military coup in 1973, he gave the Chicago theorists an opportunity to try their ideas in a real-world environment. Acting on their advice, Pinochet abolished minimum wages, outlawed trade union bargaining rights, slashed public employment, cut all taxes on wealth and business profits, and privatized the pension system. Although this experiment eventually led to
the collapse of the Chilean economy, it was hailed as a triumph of sensible policy by the adherents of the Chicago School.

A few years later, with the election of Margaret Thatcher in 1979 and Ronald Reagan in 1980, there was a unique political convergence of conservative, free-market leaders in two of the most powerful economies in the world. It brought new vigor and political muscle to the governmental promotion of capitalism and free trade. The free marketeers argued that the root causes of financial disorder are not markets themselves but interventionist policies that allegedly distort markets. Yet it would take strong government intervention to re-regulate the global economy to favor markets over other concerns.

Chicago School theorizing rested on an assertion about the innate efficiency of markets, and though few if any data actually supported the assertion, its adherents took that orthodoxy as sufficient foundation for far-reaching changes in the power and role of both the World Bank and IMF—changes that endure to this day. The United States directed the World Bank and the IMF to step in and manage the debt crisis—which meant first and foremost bailing out U.S. banks that stood to lose enormous sums of money if developing countries defaulted on their debt. The IMF provided short-term emergency loans—but only if countries agreed to a set of economic policies that reflected the Chicago School’s priorities. The World Bank joined the IMF in its agenda, partnering in designing and conditioning loans on economic reform policies grouped together under “structural adjustment programs” (SAPs). As one noted economist states, the Keynesian consensus was routed in favor of what became known as the Washington Consensus.20

Three Decades of Economic Reform

With this shift in roles, the IFIs grew to be the most powerful public creditors in the world. In addition to imposing loan conditions on countries that could force direct change, they became gatekeepers of the flow of foreign funds into developing countries. Nations that did not toe the neoliberal line would lose the IMF “seal of approval”—meaning they would lose access to development-related aid and loans, whether public or private, bilateral or multilateral. Without such support, countries in crisis would be unable to purchase food, fuel, medicine, and machines, and they could quickly face economic devastation and political turmoil.

Throughout the 1980s and 1990s, the IFIs, newly empowered by the political consensus under which they operated and a renewed mandate to secure debt payment, acted with an abiding belief in the power of export-oriented markets to create growth, increase efficiency, and reduce poverty. Based on both belief and perceived economic imperative, the World Bank and IMF used the “power of the purse” to compel more than 90 countries to adopt SAPs. The goals were to stimulate more exports, freer trade, greater efficiency, better governance, the shift of resources to productive sectors, and the use of competition to spur productivity gains. In 1999 the World Bank and IMF essentially dropped the term SAPs, but they continued to press on with the SAP agenda under the rubric of poverty relief programs.

The main economic policies required by IFIs as conditions for loans can be grouped into the following categories:

- labor market deregulation that weakens key worker rights protections such as minimum wages, benefits, pensions, the rights to organize and bargain collectively, and many others in order to create “flexible” labor markets;
- market and trade liberalization, which eliminates or minimizes taxes, tariffs, and trade quotas to facilitate free trade between and among countries, and reduces or eliminates regulations on business and trade;
- privatization (the sale to the private sector of state-owned industries and services, including key manufacturing and extractive industries,
banks, financial services, telecommunications, electricity, and even healthcare, education, and water);}

- reductions in public expenditures, including expenditures on health, education, food subsidies, pensions, unemployment benefits, roads and infrastructure, government salaries, and regulatory bodies such as labor inspectorates;

- export promotion, which includes providing tax breaks and monetary and regulatory incentives for foreign investors; and

- monetary policy to control inflation, stem capital flight, and encourage removal of other forms of capital control.

In addition to conditioning loans on the adoption of specific policies, IFIs use a host of other mechanisms to mold the policies and actions of national governments. Both the World Bank and the IMF have large research departments, provide high-level training for officials and staff in key government bodies such as finance ministries and central banks, and publish books, reports, articles, and studies on all aspects of development. They also generate the data and analytical tools widely used in developing countries to direct development strategies and trade and investment policy reforms. Through a number of types of assessments, they judge a country’s performance vis-à-vis trade and investment liberalization criteria, and IFIs may use the information to deny—or approve—loans and other forms of assistance. Other aid agencies and private-sector interests rely on these assessments as well. Combined with the IFIs’ gatekeeping function, this control over the generation and interpretation of information greatly enhances the power stemming from their actual financial and technical contribution to a given country.

**How Has It Worked?**

IFI economic reform policies have reshaped national economies to serve a global economy dominated by market forces and driven by profit. IFI policies played a key role in prying open markets in developing countries, as well as in shifting land, labor, and capital from domestic to export production. Exports for some countries did increase, and inflation was brought under control in most countries. In some cases high interest rates, export promotion, and market deregulation did attract foreign capital. Fiscal deficits—whereby governments spend more than they earn in revenue—are dropping even in the poorest countries, and foreign exchange holdings have risen.

These changes have made conditions better for profit making in the short term. Yet IFI interventions, on the whole, have failed to deliver on other IFI stated objectives, key among them stimulating long-term, sustainable growth as a solution to uneven development, reducing poverty and inequality, and significantly increasing investment and productivity.

This is not to say that the IFIs are solely responsible for achieving these goals, nor by any means solely at fault for the failure to achieve them. But as purveyors and enforcers of a global economic development model that places the private sector and free markets at the center of policymaking, the role of the IFIs must be critically examined. IFI interventions include provisions that have aggressively undermined international accords on human and worker rights, which were decades in the making and represented binding agreements among nations. The impacts of IFI policies on workers, cumulative and interactive in nature, encompass labor conditions, gender equality, food security, rule of law, access to decent healthcare and education, and the structure of the labor market in which they may or may not find jobs. A sampling of these impacts—from the macro to the micro level—is outlined below.

**Growth**

Arguing that “a rising tide lifts all boats,” IFIs have made increasing growth rates their highest priority. Even after 25 years of IFI-enforced eco-
nomic reform, however, growth rates for the majority of countries following IFI reforms have been anemic. Between 1980 and 2005, there were markedly slower rates of economic growth and reduced progress on social indicators for the vast majority of low- and middle-income countries, compared to the 1960-1980 period. Using a measure of gross domestic product (GDP) per person, data show the following:

- In Latin America, GDP per capita during the period when SAPs reigned supreme (1980-1998) was less than one-tenth what it was from 1960-1980 (75 percent vs. 6 percent).21

- In sub-Saharan Africa, GDP per capita grew by 36 percent between 1960 and 1980, while it fell 15 percent from 1980 to 1998.22

- Even where growth rates did eventually improve, the gains were not sustained, exposing the poor to volatile shifts in their economic fortunes. A 2006 World Bank study found that per capita income rose continuously from 2000 to 2005 in only two in five countries that borrowed from the World Bank, and over a full decade (1995-2005), it increased continuously in only one in five.24

IFI market-led policies have had a direct and interactive impact on growth rates.

**Slow Growth**

IFI promotion of exports has led in some cases to overproduction, while wage caps, labor flexibilization, layoffs, and reduced subsidies have cut consumption. Faced with too few customers and too many goods, firms increase profits by holding down wages and benefits, outsourcing work, and relocating to countries with weak worker protections and low labor costs.25 These short-term, profit-maximizing tactics do little to address overproduction, and they heighten the problem of underconsumption by keeping worker buying power low and slowing job creation. This sequence reduces per capita GDP, which slows growth.

**Jobless Growth**

Despite some improvements in growth in the last five years, there has been a worldwide decline in the number of jobs and an increase in unemployment and underemployment.26 In 2005 there were 34 million more people unemployed than in the late 1990s, and unemployment among the working population worldwide in 2006 was estimated at 6.3 percent, compared to 6.1 percent in the late 1990s.27 High rates of unemployment continue to plague scores of countries, especially for women and youth. A number of SAP provisions have contributed to job losses. These include privatization, cutbacks in labor protections, resource shifts that have wiped out local industries, so-called free trade provisions that pit small farmers against subsidized agribusiness, an obsession with high interest rates (which have slowed growth), and debt collection, which has taken government money out of productive use.

**Maldistribution of Benefits of Growth**

Recently the World Bank’s evaluation body reported that its growth strategies have not done enough to help the poor, and that the World Bank had failed to assess the distributational impacts of its policy recommendations.28 Even when IFI borrowers manage to achieve growth, neither the benefits nor costs have been evenly shared. According to the New Economics Foundation, the share of economic benefits from growth that reaches the poor has fallen by nearly three quarters since the 1960s. Between 1990 and 2001, for every $100 worth of growth in the world’s per capita income, just $60 contributed to reducing poverty below the $1-a-day line. At the same time, the poor are paying a disproportionate share of the environmental costs of growth.29 It is poor people who live near polluting industries, work in hazardous jobs, crowd into slums, and lack access to clean water and air.
Poverty

Despite almost three decades of IFI technical advice and hundreds of billions of dollars in lending spent on economic reform with a goal of reducing poverty, half the world’s population—over 2.5 billion people—live on the equivalent of less than $2 a day. Of those living in the most extreme poverty (less than $1 a day), 70 percent are women.

- In 2004 nearly 300 million Africans lived on less than $1 a day—nearly twice as many as in 1981.

- The relative incidence of poverty is lower in Latin America and the Caribbean, but progress in further reducing poverty has been slow.

- In Europe and Central Asia, poverty rates rose sharply in the 1990s, and despite some improvements after 2000, in 2004 poverty rates were higher than in 1981.

- In South Korea, which the IMF touts as a “success story,” government figures show that the proportion of the population living below the “minimum livelihood income”—a measure of the poverty rate—rose from 3.1 percent in 1996 to 8.2 percent in 2000 to 11.6 percent in early 2006.

- Among the least developed countries, despite a pickup in growth since 2000, average per capita incomes rose over the 25 years between 1980 and 2004 by just $6—from $343 to $349.

- According to the 2004 Human Development Report, people in 46 countries were poorer in 2004 than in 1990. Further, between 1990 and 2002, 20 countries suffered a reversal in their human development index. (The HDI is used by the United Nations to measure well-being; it includes indicators on poverty, literacy, education, life expectancy, and other factors.) In previous decades, virtually no country experienced a decline in the HDI.
Inequality

Since 1980 inequality—the gap between the rich and the poor—has skyrocketed both within and among nations. Globally, excluding fast-growing China from the equation, the income ratio of the richest 10 percent of countries to the poorest 10 percent rose from 90:1 in 1980 to 154:1 in 1999.37 Within China, income, health, education, and other disparities have grown so much that China has the greatest gap between rural and urban areas in the world.38 According to the UN, more than 80 percent of the world’s population lives in countries where income differentials are widening.39

Trade and Inequality

Trade policies of the sort promoted by the World Bank have increased inequality in poor countries. An ex-World Bank researcher examined eight alternative measures of inequality and found that seven indicated increased disparity over the past two decades.40 In the 1990s the United Nations Commission on Trade and Development (UNCTAD) reported that in almost all developing countries that undertook rapid trade liberalization of the sort dictated by the IFIs, wage inequality increased. Most often, the increase occurred in the context of declining industrial employment of unskilled workers and large absolute falls in their real wages—on the order of 20-30 percent in some Latin American countries.41

Distributional Impact

IFI policies have systematically and deliberately skewed the rules and resource flows of the global economy to favor capital. Relative power between labor and capital, and between the rich and the poor, has shifted accordingly. In most countries, this shift in market power was not accompanied by redistributive rules and resource flows (e.g., programs to improve health and education outcomes for the majority, provide sufficient assets and income to enable workers to rise out of poverty, and safeguard worker and human rights). Recently the IFIs have acknowledged that increases in inequality dampen the poverty-reducing effects of growth, reduce the returns on social investments such as public health and education, and in general make it more difficult to reduce poverty.42

Gender Equality

Even though gender inequalities are a fundamental obstacle to human development, advancing gender equality was never an explicit goal of IFI-driven economic reform. Yet the IFIs view the nearly worldwide increase in female labor force participation, as well as the number of jobs created for women in export industries, as positive outcomes for women and for the relative position of women and men. It is true that for many women, paid employment increases their status and influence in the household and can be a source of satisfaction and pride.

Numerous studies, however, including many by the IFIs themselves, have shown that women bear a disproportionate share of the cost and negative impacts of IFI-driven economic reform.43

Indirect Costs

Increasing casualization of labor, declining wages, shifts of family labor into export crop production, and reductions in social services have forced many women to work longer hours, both paid and unpaid, in order to sustain their families. Women also tend to be concentrated in “mobile” industries, which are relatively easier to relocate to lower wage sites.

Hidden Costs

Women in insecure jobs with forced and unpaid overtime and no benefits report taking their older daughters out of school in order to care for younger children. Erratic work schedules exacerbate childcare difficulties and often force women to make emergency and expensive childcare arrangements. In some cases, as women earn income, other family members actually reduce their own contribution to the household. Young
women loosen traditional family ties when they move to the city for work, and many weaken their own chance for marriage and children by sacrificing their health and reputations in order to work and survive. In effect, many public costs have become private burdens for women, who both absorb the shock and subsidize (with their labor, time, and health) the cost of adjustment.

Discrimination

Women are also subject to simple discrimination. This global phenomenon contributes to wage inequities for women in virtually every country in the world. Discrimination also means that even when employment is growing, women are last hired and first fired.

Weakened Bargaining Power

All of these factors both reflect and constrain women’s bargaining power and their relative ability to negotiate for increased wages and better working conditions. Indeed, women’s weaker bargaining power partially stems from the very nature and structure of the economic model, which has shifted economies from wage led to profit led.44

Tallying the Cost

Gender inequality is very costly. In 2007 the UN Economic and Social Commission for Asia and the Pacific estimated that inequality and discrimination against women cost Asia-Pacific economies almost $80 billion a year due to restrictions in access to employment and education alone. These costs occur despite considerable gains in reducing discrimination and improving education in recent decades.35

Labor Market Flexibility

The IFIs have consistently pushed developing countries to deregulate labor markets in order to make it easier for employers to hire and fire workers, remove wage protections, diminish labor standards, and deny workers their rights to organize and bargain collectively. They assume that otherwise, labor costs will be artificially high, and they will retard employment creation and efficiency—not to mention profits. Yet the bulk of economic research on worker rights shows that these labor standards are associated with significant increases in economic growth in the nations that have implemented and enforced them. The effect of worker rights on income distribution is even more powerful than their effect on growth.46

Support for Core Labor Standards

In 2003 the World Bank released a report, based on a review of more than 1,000 studies on the effects of unions and collective bargaining, which found that countries with highly coordinated collective bargaining tend to be associated with lower and less persistent unemployment, lower earnings inequality, and fewer and shorter strikes than countries with unorganized workers. According to the World Bank, the research was part of its work to support the promotion of core labor standards. At the time, the World Bank noted, “While not conditional in World Bank lending, these standards are promoted by the Bank as important elements of a well-functioning labor market.”47 Since that time, support for core labor standards has been somewhat more in evidence in the rhetoric, research, and most recently operational policies, of the World Bank.48

Doing Business: A Contradictory Stance

Since 2003 the World Bank’s Private Sector Development Department has produced an annual publication called Doing Business. The stated purpose of the publication is to identify and measure impediments to private sector investment. It includes an index—“Employing Workers”—that awards the highest scores to countries that have the least amount of labor regulation, effectively contradicting the policies suggested by the World Bank research cited above.

- Doing Business 2008, for example, praises Georgia as the top reformer for its labor laws, because it did away with most of its worker protection rules in 2006.49
• Slovenia, which has the lowest unemployment, best labor conditions, and best social programs among all the former communist countries, gets the worst Doing Business ranking in the region.50

• Among “Employing Workers” best performers in Latin America and the Caribbean is Haiti51—the poorest country in the hemisphere, with the lowest wages, almost no social protection, and 80 percent of its population living below the poverty line.

• In both 2006 and 2007, Palau (formerly part of the U.S. Trust Territory of the Pacific Islands) was named by the Doing Business report as a “best performer” on the worker rights scale. Under Palauan law, workers can be required to work 24 hours per day, 7 days per week, and there is no legal requirement that they be given a single day of annual leave, regardless of seniority.52

The Cost of Doing Business

The World Bank aggressively promotes Doing Business, and it is now the World Bank’s highest-circulation publication. More importantly, it plays a vital role in the labor-related policy advice and loan conditions of both IFIs. The ITUC has documented at least 23 cases where the IFIs used Doing Business indicators and rankings to pressure countries to deregulate their labor markets.53 This practice directly violates not only the rule of law but also ILO principles on freedom of association, to which the governments are committed as ILO members.

Privatization

Since the early 1980s, privatization—the transfer or sale of state-owned assets or functions to the private sector—has been both a mechanism to bring about, and a tangible reflection of, a fundamental shift in power and roles between governments and the private sector. It has been a key component of structural adjustment as well as a major focus of IFI technical advice. In low- and middle-income countries alone, between 1985 and 1999, there were over 7,000 privatization transactions, valued at almost $330 billion.54

The IFIs’ strong support for privatization was not based on evidence of its success so much as it was on the simple assertion that governments are inherently bureaucratic and corrupt, private companies are inherently more efficient and better managed, and the market is the best regulator of goods and services. Privatization was also expected to attract foreign investment, unleash market forces that would compel efficiency and cut waste, and provide a fiscal shot in the arm for cash-strapped governments.

In some settings, privatization has delivered on its promise, bringing increased efficiency at the firm level, leading to improved services for those who can pay, and removing money-losing state enterprises from a government’s budgetary burden. Yet there is widespread and mounting evidence of its pitfalls.55 These include the lack of accountability, transparency, and sufficient regulatory frameworks to support legal and fair privatization; fire sale prices for the private-sector purchase of industries or utilities built through years of public investment; differential negative impacts on women and men; false promises of increased efficiency and investment; the narrow economic criteria by which the success or failure of privatization are determined; corruption; degradation of services; and a poor record on ensuring access to the poor for privatized goods and services. Of particular concern for many is the marketization of goods and services essential to human life (such as water) and the commodification of human care relationships in privatized health and education services. Widespread public protests against wholesale transfer to the private sector of public goods are a common manifestation of these concerns.

In addition to profoundly affecting workers as consumers and citizens, privatization has direct impacts on their jobs and worker rights.
Job Losses

Workers worldwide have experienced job losses due to privatization, whether as the private sector takes over a state-owned enterprise (SOE), or whether workers are fired prior to privatization as a way to make an SOE more attractive to investors. Large-scale retrenchments often lead, not surprisingly, to short-term increases in labor productivity as remaining workers take up new tasks, yet the social and economic cost of laying off thousands of workers is not included in the assessment of privatization’s costs and benefits. In Peru and Argentina, the industry-adjusted average of job reduction in privatized SOEs was in excess of 37 percent.\(^{56}\) A study by the ILO states, “Large scale job losses have been associated with privatization in most transition countries, and new private-sector growth has not been sufficient to absorb labour retrenched by formerly state-owned enterprises.”\(^{57}\) An IMF Selective Issues paper on Serbia noted the public’s concerns about the “job-destructive effects of privatization” but argued against making attempts to preserve jobs, stating that privatization “cannot be delayed” and that requirements for purchases of SOEs to preserve jobs “may impede efforts to sell the firms.”\(^{58}\) Concerns that such a drastic increase in unemployment could destabilize a nation just emerging from a bitter and bloody civil war took a back seat to the imperative to “sell the firms.”

Degraded Work Conditions

Labor standards have deteriorated significantly in the transition from public to private ownership. A recent Inter-American Development Bank report on Latin America noted, “In addition to labor deregulation throughout the region, there has been a clear trend toward reduction in non-wage labor costs, especially social benefits. In other words, privatized and private firms seem to be favoring temporary workers over those with permanent contracts and employing more low-skilled workers.”\(^{59}\)

Undermined Economic Democracy and Rightful Worker Participation

Workers and their unions have been conspicuously absent from consideration or decision making related to privatization, and their interests have been routinely dismissed. Yet where workers were actively engaged, as in the effort to privatize South Africa’s railways, thousands of jobs were saved, profit-making elements of the railways continue to subsidize lines that support economic development for the poor, and unions and the government found new common ground in the regulation of this strategic industry.\(^{60}\) While there are examples of the IFIs working with unions in privatization processes, the World Bank was not involved in the South Africa railways privatization.

Popular protests and strong evidence of structural problems with privatization, however, have not lessened the IFIs’ zeal for it. Research by the World
Development Movement shows that of 50 poverty reduction strategy papers, 90 percent included privatization.\(^6\) The World Bank Group’s Privatization Database shows that in 2004-2005, 62 developing countries carried out nearly 400 privatization transactions worth $90 billion.\(^6\) The World Bank has an entire strategy—called the private sector development strategy—to promote the role of the private sector in infrastructure development, especially water and energy. The role of the two arms of the World Bank Group specifically formed to support the private sector—the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA)—is growing as a proportion of World Bank activities. In 1980 IFC and MIGA accounted for only 3.3 percent of all World Bank activity; by 2000 the proportion had increased to 25 percent.

**Trade Liberalization**

An underlying tenet of IFI policy has been that “free trade” will lead to higher foreign investment, more jobs, higher incomes, greater growth, higher levels of consumption, and expanded economic opportunity for poor countries and their people. Both institutions have promoted this vision directly through trade-related policies and by using the bilateral and highly unequal relationship between a government and the IFIs to compel countries to undertake rapid one-way trade liberalization. (For a fuller discussion of trade-related labor issues, see Chapters 5 and 6.)

**Impact on Sovereignty**

This one-way trade liberalization has effectively weakened countries’ negotiating leverage in forums such as the World Trade Organization (WTO), where once a country has opened trade in a sector, the only policy direction is further opening, and the agreements are binding and permanent.\(^6\)

**Impact on the Working Poor**

A number of World Bank reports have claimed that trade has benefited workers. Outside researchers have long held that these benefits were greatly exaggerated, and now researchers from the World Bank’s own Internal Evaluation Group report that the Bank has grossly overestimated the benefits of free trade.\(^6\) A 2005 study by Christian Aid concluded that “trade liberalization has cost sub-Saharan Africa $272 billion over the past 20 years,” roughly the amount that the region received in aid over this period.\(^6\) In Haiti, Christian Aid estimated that 830,000 poor suffered decreased incomes resulting from trade liberalization on three products—rice, sugar, and semi-industrial chicken production.\(^6\) The World Bank has also documented that in Latin America, where trade and investment liberalization policies are most advanced, not a single country had a significant decline in inequality in the 1990s.\(^7\) A recent Food and Agriculture Organization report on Cameroon identified structural-adjustment-related conditionalities imposed in 1994 as having triggered a series of devastating import surges in poultry, meat, rice, and vegetable oil. For the poultry sector alone, it was estimated that 110,000 jobs a year were lost as a result of the import surges.\(^6\)

**Impact on Women**

According to the World Commission on the Social Dimensions of Globalization, established by the ILO, trade liberalization has often allowed the import of subsidized agricultural products and consumer goods, wiping out the livelihoods of women producers. The increased entry of foreign firms has often had a similar effect by, for example, displacing women farmers from their land or outcompeting them for raw materials essential to their productive activities. At the same time, women producers face formidable barriers to entry into new economic activities generated by globalization. These barriers are often due to biases, either against women directly or against the micro- and small-enterprise sector in which they are most prevalent.\(^6\)
Seeds of the Current Food Crisis?

Agriculture, the sector in which the majority of the world’s working poor makes its living, has long been a focus of IFI trade liberalization conditionality. Countries were told to cut tariffs that protected domestic food production, reduce taxes on export agricultural commodities, dismantle public marketing boards, and reduce food stocks held by the governments to even out harmful swings in production due to sudden market shifts or bad weather conditions. At the same time, the World Bank sharply decreased its investment in agriculture. This one-two punch has put large numbers of agricultural workers and small farmers out of business and sent many to the cities looking for work. The food crisis in Mexico provides a case in point. In the early 1980s Mexico was one of the largest developing-country debtors. In return for the multibillion-dollar bailout it eventually received from the IFIs, Mexico embarked on a program to eliminate high tariffs, state regulations, and government support institutions. Interest payments on the debt rose from 19 percent of total government expenditures in 1982 to 57 percent in 1988, while capital expenditures dropped from 19.3 percent to 4.4 percent. As part of the spending cuts, the government dismantled state credit agencies, government-subsidized agricultural inputs, price supports, state marketing boards, and extension services. Unilateral liberalization of agricultural trade pushed by the IMF and World Bank also contributed to the destabilization of peasant producers. With passage of the North American Free Trade Agreement in 1994, highly subsidized U.S. corn quickly flooded the market, reducing prices by half and plunging the corn sector into chronic crisis. According to a 2003 Carnegie Endowment report, imports of U.S. agricultural products threw at least 1.3 million farmers out of work. Mexico is now a net food importer. Because of monopoly control of domestic trade, higher international corn prices do not translate into significantly higher prices paid to small producers.70

Reducing Government Spending

In the first decade of IFI-driven economic reform, budget austerity—severe cuts in government spending—was a core condition for receiving World Bank and IMF loans. The goal was to control inflation (see below) and reserve a country’s scarce resources to make interest payments on debt owed to commercial banks (usually in the United States) and IFIs (a practice called debt servicing).

Weaker Public Programs

Austerity policies decimated already weak health and education systems, and they severely cut spending on infrastructure such as roads. Imposition of user fees in health and education limited access to those who could pay, and educational enrollment and health-care visits dropped precipitously as a result. Systematic underinvestment in health has crippled governments’ ability to respond to the AIDS epidemic, which killed 2.2 million sub-Saharan Africans in 2003; to fight other major killers like tuberculosis and malaria; and to provide routine preventive care. Recently, Guillermo Perry, the World Bank’s chief economist for Latin America, stated that the drive to reduce public spending harmed economic growth on that continent because it led to an underinvestment in infrastructure.71

Activists Push Back

In the 1990s, pressured by activists, practitioners, researchers, and legislators from around the world, the IFIs eased their “slash and burn” policy toward social spending and mediated their market-led approach to service provision. They no longer call for primary school fees and recommend against fees for service in basic healthcare. In Uganda, removal of school fees led to a surge in school enrollment from 50 to 90 percent.72

Lingering Effects of Austerity

The legacy of IFI austerity conditionality is extensive, however, and despite the acknowledged damage caused by user fees, they continue to be the norm around the world. More troubling in terms of
future trends, the IFIs continue to promote the
decentralization and privatization—and therefore
the commodification—of health and education
services, and the IMF continues to insist on
reduced public spending to dampen inflation (see
below). In many countries, the World Bank has
actively supported employing nonprofessional
teachers as a way to lower wage costs in the edu-
cation sector, which directly undermines the qual-
ity of education in both the short and long term.73

Inflation and Wage Caps

Several policy tools have been used extensively
to control inflation. These include austerity mea-
ures to cut consumption and lower government
deficits; high interest rates to control borrowing;
and currency devaluation, which lowers inflation
by raising the cost of imported goods. Because of
the success of earlier austerity programs in cut-
ting consumption, recent rounds of inflation con-
trol have centered on managing fiscal expansion
(i.e., capping the growth of government employ-
ees’ wages), usually at some small increase over
current spending. A recent IMF working paper
reports that between 2003 and 2005, some condi-
tionality on the wage bill was in place in half of
the 42 countries with loans from the IMF’s
Poverty Relief and Growth Facility (PRGF).
Seventeen of these faced quantitative ceilings on
the wage bill, and for eight the ceiling was a
“hard” condition, which if breached could cause
an interruption of IMF loans.74

Given the urgency for poor countries to increase
their capacity to deliver health and education to
their people, the IMF’s low-inflation obsession has
come under intense scrutiny by numerous govern-
ments and activists in the fields of healthcare, labor,
the environment, and social justice, to name a few.

Unspent Foreign Aid

In addition to the negative impacts on growth and
employment, wage caps are blocking governments
from spending even the foreign aid that is pro-
vided specifically to help them scale up to address
crises such as HIV/AIDS, the rise of bacteria-
resistant tuberculosis, and the low education levels
that hinder poor nations’ ability to emerge from
poverty. A recent report by the IMF’s Independent
Evaluation Office noted that governments in low-
income countries bound by PRGF spent, on aver-
age, only 28 percent of the development aid they
were promised by overseas sources. If their infla-
tion rates exceeded 5 percent, they spent on aver-
age only 15 percent of the aid.75

Public Health Crises

In Ghana, when the government sought to retain its
healthcare workers and civil servants by offering an
increase in allowances, the IMF and other donors
reportedly punished the country for exceeding its
agreed-upon wage bill limit by withholding loans
worth $147 million in the last quarter of 2002. In
Botswana, the Gates Foundation and other donors
agreed to provide enough resources to furnish anti-
retrovirals to anyone who needed them, but the
crippling shortage of healthcare workers at every
level, among other problems, limited rollout of anti-
retrovirals to only 21,000 of the 110,000 who
needed them.76

Education Undermined

Wage bill ceilings can prevent governments from
hiring more teachers and can lead to disastrous
effects in terms of teacher numbers, quality, and
planning processes. They limit the total number of
students who can enroll in school, as well as the
number of schools that can be built. Ceilings
directly undermine nations’ efforts to achieve their
own commitments to free primary education, as
well as the Millennium Development Goals
(MDGs) in education, which call for teacher-stu-
dent ratios of 1:40 by 2015. Under current wage
bill ceilings, for example, Action Aid reports that it
will be impossible for Malawi, Mozambique, and
Sierra Leone to hire the number of teachers
needed to achieve the MDG for education.77
Pension Reform

Pension reform reflects multiple strands of the IFIs’ overall approach to development—privatization, belief in the efficiency of the private sector, and reduced public expenditures. The World Bank has been a major player in pension reform in developing and transitioning countries for more than two decades, providing more than 200 loans in 68 countries since 1984.78 With these loans, the World Bank has pushed countries to partially or totally privatize public pension schemes following the precedent set by the Pinochet regime’s privatization of Chile’s pension system.

In 2006 the Independent Evaluation Group (IEG) of the World Bank published a largely negative assessment of the World Bank’s work on pensions that echoed many criticisms that union and worker advocates had been making for years.79 The IEG report noted:

- World Bank pension reforms are driven by ideology, analytical errors, and insufficient analysis of key issues such as the income of the aged and the impact of gender on the welfare of the elderly;

- despite its rhetoric of increasing coverage, little empirical research existed on the limits of formal pension coverage or ways to increase it, and there was little support to expand old-age benefits to workers in the informal economy;

- World Bank-supported reforms have had a more negative impact on women than on men;

- World Bank claims about pension privatizations’ positive impact on capital markets were unsubstantiated; and

- the World Bank’s technical support on pension reform has been “mixed,” “not sufficient,” “not effective,” “inadequate,” “neither effective nor timely,” and “should be stronger.”80

Capital Account Liberalization

Despite the fact that it contravened its founding charter, for over two decades the IMF made capital account liberalization—the reduction of controls on flows of foreign currency into or out of a country—a condition of IMF loans.

Capital Mobility: Serving Speculation, Not Development

Although flows of money across borders have slowed somewhat since their peak in the late 1990s, they still average $1.2 trillion per day—twice what they were in 1989.81 Only 1 to 2 percent of these transactions are related to trade or foreign direct investment. The remainder are speculative or short-term investments, which are subject to rapid flight when investors’ perceptions change. Higher volatility raises the risks of investing for the long term, while higher real interest rates, which are used to stabilize flows, increase the cost of borrowing money. Each factor deters long-term investment, which impacts employment.

The Asia Financial Crisis and Its Aftermath

Following the IMF’s strong urging, in the early 1990s East Asian economies liberalized capital controls and saw a massive increase in short-term investments in the region. In mid-1997, in response to a devaluation of the Thai currency, Western investors began pulling billions of dollars out of their speculative investments, sparking a wave of currency devaluations and stock market plunges throughout Asia. By the end of 1998, there was massive unemployment. More than 10 million workers in Thailand and Indonesia alone had lost jobs. Growth rates were down sharply, and millions of people were thrown into poverty. Ten years later, there is greater poverty, inequality, and social destabilization than before the crisis.82

The Asia crisis was a turning point in the power and prestige of the IMF, and it put a stop to the IMF’s efforts to require capital account liberalization as a condition of its loans. Middle-income
countries suffered profoundly by following the IMF’s advice, and the IMF compounded the suffering by denying its resources as a “lender of last resort” just when they needed it most. As a result, those countries have turned away from the IMF, paying off existing loans (as in the case of Thailand and Indonesia) and refusing new ones.

In low-income countries, however, the IMF continues to control financial flows, with damaging results. In April 2007 the IMF’s Independent Evaluation Office reported that since 1999, nearly three quarters of aid to the poor countries of sub-Saharan Africa remained unspent. Rather, at the IMF’s request, those countries have used the aid money to pay off debt and accumulate reserves.

**Foreign Direct Investment**

A host of policies that maximize the ability of firms to move from one country to another contributes to depressed wages and weakened worker bargaining power, which in turn can reduce pressure on firms to innovate or adopt new technologies to maximize profits. Instead, firms become “lazy” and rely on low wages to make short-term profits. This reliance can lead to a low-wage/low-productivity trap that retards growth.83

Foreign investment has increased significantly in the past 25 years, yet the bulk of it has gone to a small subset of developing countries called “emerging markets.” In the 1990s, 75 percent of foreign direct investment (FDI) inflows to developing countries went to just 12 countries or territories. China alone received 23.7 percent. The remaining 25 percent of FDI was shared among 176 developing countries.84 According to UNCTAD, the bulk of these flows are actually diversions of investment from one country to another, thereby shifting patterns within North-South trade rather than increasing its volume.85

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**What Have the People Done?**

The negative impacts noted above were not a hidden phenomenon: they were widespread and deeply felt by the poor and working people in the more than 90 countries where they were implemented. Since the early 1980s protests against the World Bank and IMF have been common occurrences. It is estimated that in 2002 alone there were more than 100 demonstrations against IFI policies involving millions of people in more than 20 countries.86 For two decades a broad array of groups has mobilized against privatization, labor exploitation, removal of subsidies, cuts in health and education, and growing food insecurity. Opponents of IFI policies include peasant farmers, teachers, healthcare workers, street vendors, labor unions, indigenous peoples, religious and social leaders, and social change advocates. A common protest theme was people’s exclusion from decision making in the policies that most affect their lives.

Having based SAPs on theory and ideology, not research and experience, the IFIs were ill prepared and, shockingly, simply unwilling to question their own orthodoxy. Faced with evidence of their failure, the IFIs simply denied the existence of any alternatives to their prescriptions. They insisted that the pain of economic reform will eventually pass and leave a more sound, productive, and sustainable economic system in its wake.

The opposition to SAPs was and is deep, however, and it fuels new debates about how work, production, consumption, growth, and distribution must be structured in a global economy to improve the lives of the world’s majority. It is an opposition grounded in the direct experience of workers and informed by emerging schools of economic, social, and political thought that challenge the dominant free-market paradigm. It is both grassroots and global, intellectual and activist, consumer based and producer based. It is also forward looking, developing a wide array of policies, theories, and practices intended to transform the current hardening of inequality and crisis into a
rights- and dignity-based global economy where production and consumption are thoughtfully managed, broadly shared, and sustainable.

Crucial insights, analysis, and energy in this transformational, extremely diverse, and to date uncoordinated movement have come from many sectors. Worker rights advocates, in addition to defending individual workers, are also urging countries and IFIs to adopt full, productive, and decent employment as a central objective of national and international macroeconomic policies. Worker rights organizations such as the ITUC, the ILO (notable in that its positions represent a tripartite consensus among labor, business, and governments), and global unions are insisting on the centrality of decent work to the human condition, to the eradication of poverty and deprivation, and as a necessary condition of broad-based prosperity.

Workers are fighting not just for bread-and-butter issues but for the full complement of their worker, economic, social, and political rights. In the Americas, for example, union organizations joined in a democratic process of reflection, debate, and consultation to develop Labour’s Platform for the Americas. Finalized in 2005, the platform proposed an alternative development path for the Americas based on “decent work for sustainable development.” Such positions stand in stark contrast—and at times in contentious opposition—to the vision of labor as a cost of production that must be controlled, which has dominated IFI policies and programs in the modern era.

The social energy focused on the question of gender equality has deepened debates and actions on key challenges to social and economic justice posed by the current structure of the global economy. Since the 1970s pioneering feminist economists and activists have highlighted the contributions of women’s unpaid labor to economic development and the differing impacts of development on women and men. Using innovative research and economic modeling, fresh insights, and the real-life experience of men, women, and children, they have tackled the key questions: Who cares for the children? What is needed to maintain and support the “caring” economy? Do IFI policies disadvantage women in the distribution of resources? What does it all mean for true economic justice? Feminist economists have mounted effective challenges to economic orthodoxy and narrow political thinking and opened the debate to billions of women previously excluded, both analytically and politically, from economic policymaking.

For decades environmental activists have led the effort to bring IFI policies and actions into line with a vision of sustainable development. They have sounded the alarm on the fatal impact of climate change; driven home the consequences of the devastation of water, forests, and other natural resources inherent in the unregulated and global race for profit and capitalist expansion; and brought to policymaking a vision of the natural world as our human home, not just a factor of production. Antidebt campaigners have turned the debate on debt from one that shamed the borrower into an acknowledgment of “odious debt” and the mutual responsibility of those who knowingly lend money for illegitimate purposes in the name of economic development. This shift has helped turn the tide on debt cancellation and has led to the “liberation” of tens of billions of dollars in debt payments in poor countries. Citizens and consumers have banded together to successfully fend off water privatization efforts and successfully replaced privatized systems with various models of public control.

A New Era?

Years of broad-based opposition, combined with the accumulated impact of extensive policy failures, has forced some long needed—if insufficient—change on the World Bank and the IMF. In the decade since the Asia crisis, the IMF lost credibility and power as a result of its abysmal mishandling of that disaster; the dramatic economic and financial collapse in 2001-2002 in Argentina, the IMF’s star “pupil” in Latin America; and its overall ineffectiveness in helping countries face financial challenges in a way
that promotes equitable and sustainable economic development. Thailand, Indonesia, Argentina, and Brazil have prioritized escape from the IMF’s influence. This has reduced the IMF’s income, generating its own funding crisis.

Currently the IMF seems unable to predict, much less address, major challenges such as the dramatic tightening of global credit markets that began in August 2007. Although the IMF is ideally positioned to analyze the consequences on capital markets and the real economy of the emerging new speculative forms of investment and to develop policy responses, its continued role as a defender of the private financial sector undermines its mandate to promote global financial and economic stability and assist countries in need of short-term financial support.89

At the World Bank, Paul Wolfowitz, President George W. Bush’s appointee who championed anticorruption during his tenure, was driven to resign his presidency because of his own ethical lapses. More serious, however, was his failure to grapple with the contradictions within the organization that are driving it to irrelevance. He seemed unable to navigate the diverse economic policies and development strategies devised by labor, women, environmentalists, and other engaged citizens to prompt governments to fund World Bank loans to poor countries.90 Wolfowitz also found it difficult to address the insufficiency of World Bank resources in comparison with the financing provided by newly powerful countries such as China and Venezuela. Robert Zoellick, the ex-U.S. Trade Representative and current president of the World Bank, is now promising to focus more attention on the “global public good” and to increase the inclusiveness of World Bank operations and policies.91 The question remains whether the World Bank or the IMF has the skills and capacity, let alone political will, to make the needed changes.
There are some signs of positive change. In the collapse of the IMF’s economic domination of middle-income countries, many see an opening for more creative, people-centered approaches to the pressing problems of the international financial system. In 2005 after years of international campaigning by debt advocates, the G-8 announced it would cancel up to $55 billion owed by some of the world’s most impoverished and indebted nations. Called the Multilateral Debt Relief Initiative, it enabled 29 beneficiary countries to save $1.25 billion in debt service payments in 2007. Governments have pledged to use the funds to support social spending and infrastructure development. The cancellation of the debt could provide significant “policy space,” or freedom for governments to allocate their resources in ways that make sense to their own citizens. Moreover, the benefits are tangible. After receiving partial debt cancellation, Malawi was able to train 4,000 new teachers per year. Tanzania built more than 2,000 schools.

One of the most promising changes is among the most recent, and as yet untested. Since May 2006 the IFC, the World Bank’s private sector lending arm, has required clients to abide by ILO core labor standards (CLS) and other basic labor requirements. In December 2006 the World Bank president followed the IFC’s lead with an announcement that it would apply CLS in infrastructure projects that it financed, notably through the inclusion of all four CLS in its Standard Bidding Documents for Works. The ITUC and GUFs, which have been instrumental in bringing about this change of policy, have offered their cooperation to the World Bank Group toward full implementation of the new measures. It is clear that the IFC will need a great deal of assistance to implement its policy, since it has very little institutional experience or even familiarity with worker rights issues. What is different—and potentially important—about this policy is that loans can actually be refused, or even cancelled, if firms violate CLS. In addition, the IFC is exerting increasing influence on the lending standards followed by private banks, so changes in its practices could prompt increased support for worker rights in private sector lending.

Yet for every step forward, there continue to be steps back. Advances on worker rights rhetoric notwithstanding, both the World Bank and the IMF continue to press for labor market reforms that strip workers of their basic rights. Both the World Bank and the IMF recently declared that conditionality needs to be used far more sparingly than has been the case historically, and it should be imposed only when two important safeguards are in place. First, economic policy conditions must be “country owned,” and second, they must be based on preapplication analysis (conducted prior to their application) of their impact on poor people. The World Bank claims that conditionality has been reduced, especially in regard to privatization and trade liberalization. Yet there is ample evidence that both institutions have failed to “kick the habit.” The World Bank’s own report reveals that one in four of its 2006 policy conditions pushes neoliberal economic reform. The IMF has substituted the term “benchmarks” for conditions, without changing their coercive nature or significantly reducing their number. A Norwegian government study of IMF conditionality revealed that 26 out of 40 poor countries still have privatization and liberalization conditions attached to IMF loans. Both institutions are systematically failing to assess the impact of economic policy reforms on the poor.

Toward the crucial goal of gender equality, the World Bank instituted a new Gender Action Plan (GAP) in 2006, called “Gender Equality Is Smart Economics.” It is the first World Bank gender plan, strategy, or policy that claims to apply to the entire World Bank Group. Yet, from the start, it seems doomed to failure, because it shares the inherent weaknesses of the “gender mainstreaming” approach in actually achieving women’s rights: it aims to increase women’s participation in land, labor, product, and financial markets while privatizing these sectors as much as possible. In
addition, the enforceable operational policy on which the GAP claims to build actually excludes program loans from the requirement to address gender disparities. Moreover, the World Bank has almost no expertise to carry out gender mainstreaming. Less than 1 percent of staff and consultants are gender experts, and the majority cover gender part-time in addition to their other significant responsibilities. 98

**Economic Justice for All**

The roiling transformation of the global economy since the founding of the Bretton Woods Institutions has created great wealth and astonishing human and technological innovation. And yet, the current rules and structures of the global economy have in fact often undermined the social and economic rights, including worker rights, enshrined in UN agreements forged in the aftermath of the twentieth century’s world wars.

The seeds of global economic crisis are sprouting once again in this age of overproduction, rapid and extreme concentration of wealth, the demise of state involvement in economic development planning, jobless growth, tiered and discriminatory labor markets characterized by declining labor standards for hundreds of millions of workers, rapidly rising food and fuel prices, and the risk-laden financialization of world markets. Many argue that the devastation caused by these economic failures constitutes its own kind of world war, fought in the trenches of poverty with the working poor as cannon fodder.

New economic challenges will also affect our rights as workers, citizens, and social actors. Intensifying demographic trends, such as too few young workers in advanced industrialized countries to support an aging population and too few jobs in developing countries to support the number of young people, could reach a crisis point even before the projected rise of the earth’s population to over 9 billion in 2050. Most of the population relies on natural resources and the environment for wages and income. 99 The speed with which climate change and depletion of natural resources such as soil, water, and oil are affecting the environment presents an as yet ill-understood threat to the number and quality of jobs and a host of other vital human security concerns. The rapid intensification of inequality, perhaps more than poverty itself, is further skewing resource flows away from the poor majority.

To make a lasting and proworker impact on policies and outcomes of the IFIs, worker rights advocates within and outside the institutions must grapple with a number of profound challenges and conundrums, including the following:

- All things being equal, dominant global institutions will use power to maintain their dominance, yet dominant power is the root of the problem of inequitable and unsustainable development. How can rights advocates bring about a true shift in power at these global institutions, so that workers can realize their rights as defined by international agreements?

- By ideology and training, the IFIs implement a model of development that favors capital over labor. In such a model, unemployment serves a useful purpose: it decreases worker power and helps prevent wage increases while maintaining productivity. The incentive for policymakers to address unemployment, therefore, is severely limited.

- Overproduction in the global economy has led to smaller profits for many companies. This trend in turn has fueled the financialization of the global economy, where rather than deriving profits from productive activities, the private sector is developing new ways of packaging and selling the financing of existing investments and production—the buying and selling of “risk.” Derivatives and hedge funds are examples of these risky new “products.” Unregulated and poorly understood even by most financial experts, these speculative mechanisms concentrate wealth when profitable, yet they can have devastating negative impacts on workers when they fail. Additionally, they skew resources away from the real economy, where worker rights are best grounded.
The very governmental functions so necessary to help navigate economic crises have been eroded by 30 years of neoliberal, shrink-the-state policies. This reality has taken on new urgency with the spiraling food crisis, exacerbated by 25 years of economic restructuring that has shifted power from farmers and governments to food corporations, leaving the former few tools with which to protect livelihoods and food security. Corporations, even those that pride themselves on being socially responsible, have proven themselves unable and unwilling to uphold worker and other social and economic rights that run counter to their interests as short-term, profit-making entities, and in too many cases, the state is now too weak to compel rights adherence by economic entities.

The depth of these challenges notwithstanding, workers and their advocates worldwide are engaged in a variety of efforts to promote worker rights for the global economy of the twenty-first century. Underlying the best of this work is an understanding of the indivisible nature of worker, women’s, human, social, economic, and political rights. Part of the task is to reconnect the humanity of individual workers to their productive—and reproductive—functions and to creatively integrate the stewardship of finite natural and human resources in a way that sustains rights and livelihoods worldwide. New theories, policies, and practices must be developed to link the rights of workers to the economic well-being of nations and the stability and health of the global economy. Workers in every country need to be in the forefront of discussions and policymaking on how to spur responsible investment and which macrolevel spending and savings policies can achieve and sustain full employment, living wages, and decent work for all.100

For this to happen, one thing is clear: workers themselves will need to develop the power and mechanisms to take their place as equals to governments and business in tripartite decision making. As long as the rich and powerful control economic policy, widespread improvements to the lives of workers, will never occur. For globalization to benefit workers, they will need to claim political space, using all the tools available to them to enforce their internationally recognized rights.

Endnotes


3 Since its inception as the IBRD, the World Bank has expanded to include a total of five specialized member institutions that now comprise the World Bank Group: the IBRD, the International Development Association (IDA), The International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID). The World Bank has 185 members and is governed by a Board of Governors. The United States is the most powerful member, holding almost 17 percent of the total votes.

4 Balance of payments problems arise when more money is flowing out of a country in payment for imports, investments, interest on debt, and other transactions than is flowing in from receipts from exports, investment, and other transactions.


6 Capitalism is an economic system based on private ownership of productive resources and allocation of goods according to the signals provided by free markets.

John Maynard Keynes (1883-1946) led the British Delegation to the Bretton Woods Conference, which established the World Bank and IMF. Keynes had a major impact on modern economic and political theory as well as on many governments' fiscal policies. He advocated interventionist government policy, by which the government would use fiscal and monetary measures to mitigate the adverse effects of economic recessions, depressions, and booms. Economists consider him one of the main founders of modern theoretical macroeconomics.

As Oxfam observes, in 500 years of economic history, “Slavery and colonialism were decisive stages in the creation of genuine global markets, all of which were operated in order to concentrate wealth and advantage. Political power, as much as economic exchange, shaped the distribution of the benefits from trade.” Oxfam, “Rigged Rules and Double Standards: Trade, Globalization and the Fight Against Poverty” (2002), p. 33.


Ibid.


John Mihevc, The Market Tells Them So: The World Bank and Economic Fundamentalism in Africa (Penang: Third World Network, 1995). The World Bank continued to tolerate, and even support, state-led integrated rural development, health and education, small-farm credit, as well as import substitution (a national strategy to build up a domestic economy by emphasizing the replacement of imported by domestic goods) and even policies to protect internal markets, such as tariffs and quotas.


Ibid. The debt owed to IFIs by the DRC is the classic example of “odious debt”—debt accumulated by corrupt rulers who stole the money or used it to oppress their people. Antidebt campaigners argue that such debt is illegitimate, and it should be wiped off the books with no conditions.

Christopher Hayes, “What We Learn When We Learn Economics,” In These Times, November 27, 2006.

Ibid.


Mark Weisbrot, Dean Baker, and David Rosnick, The Scorecard on Development: 25 Years of Diminished Progress (Washington, DC: Center for Economic and Policy Research, September 2005). Where data for 2005 were not available, the authors used the most recent available data.


Ibid.


Ibid.


48 For example, World Bank, World Development Report 2006: Equity and Development notes the risks workers face when markets determine their working conditions: “Unlike the markets for many commodities, labor markets generally are not competitive—this can lead to unfair and inefficient outcomes when the bargaining position of the workers is weak. . . . Left to themselves, private markets often result in underpaid workers, hazardous working conditions, discrimination against vulnerable groups, [and] also do a poor job of protecting workers against the risk of unemployment.”


52 ITUC/Global Unions, “The IFIs’ Use of Doing Business.”


54 Nancy Drune, Geoffrey Garrett, and Bruce Kogut, “The International Monetary Fund and the Global Spread of Privatization,” IMF Staff Papers, vol. 51, no. 2, 2004. Assets worth twice that amount were privatized in high-income countries during the same era.


ICFTU, “Fighting for Alternatives.”


Ibid.


IEG, “Pension Reform and the Development of Pensions.”


83 Seguino, “Is More Mobility Good?”


87 Labour’s Platform for the Americas: Decent Work for Sustainable Development, developed by the union movement of the region with representatives from the Inter-American Regional Workers’ Organization (ORIT), the Andean Labour Consultative Council, the Caribbean Congress of Labour, the Central America and Caribbean Union Coordination, the Southern Cone Union Coordination, and the national labor centrals of Canada, the United States, and Mexico, August 2005, www.gpn.org/research/orit2005/labour_platform_eng_web.pdf.

88 In her book, Gender, Development and Globalization: Economics As If All People Mattered (Milton Park, U.K. and New York: Routledge Press, 2003), Lourdes Beneria (Professor of City and Regional Planning and Women’s Studies at Cornell University) presents a wealth of information and analysis on the essential contributions of feminist actors and thinkers to the struggle for social and economic justice worldwide.


93 50 Years Is Enough, Grassroots Guide to the IMF and World Bank (Washington, DC, 2008).

94 The ADB, together with the ILO, developed a handbook for its staff to help ensure that their operations comply with CLS. While the handbook contains valuable information and practical suggestions, its overall impact is weakened by the fact that it is left to individual staff initiative to decide whether and where CLS should be addressed or upheld.


97 Ibid.

98 Elaine Zuckerman and Wu Qing, Reforming the World Bank: Will the Gender Strategy Make a Difference? A Study with China Case Examples (Heinrich Boll Foundation, 2005).


100 The ILO defines decent work as “work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.” ILO, “Decent Work—The Heart of Social Progress,” www.iilo.org/public/english/decent.htm.
Chapter 3

The Growth of the Informal Economy: Workers on Their Own
Increasingly, the brunt of the work that makes the global economy move has become temporary, flexible, unmeasured, and informal. Recent decades have seen the growth of entire categories of informal jobs, and much of the new job growth in the developing world is informal work.

Informal work is economically productive activity that is unregistered, unreported, and without the benefits of a secure contract, protection under labor or employment law, or the workplace benefits and social protections (pension, healthcare, training) that often accrue in formal employment. Like anyone else, informal workers desire steady work and good pay, but for various reasons they are excluded from the social benefits of the mainstream economies they support. Their exclusion, along with the rise of new “flexible” job categories, has sparked renewed debates about the nature of job growth in the age of globalization. This chapter looks at the impact of informal work on the basic rights of the people who do the work.

**What Is the Informal Economy?**

The term “informal sector” was originally used by development economists, mainly after 1950, as they began to look more deeply at the problems of developing countries. The more encompassing term “informal economy” is now used to describe economic activities that are difficult to measure and therefore are not counted in most formal labor and economic statistics.

The ILO’s original definition of the informal economy, formulated in 1993, differentiated “own-account” enterprises, where workers control the terms of their work and may employ contributing family workers or other occasional employees, from enterprises of informal employers, which employ one or more employees continuously.

Today the ILO and worker organizations use a more employment-focused classification that encompasses both informal enterprises and informal employment.

Accordingly, informal employment includes workers who are self-employed (or are themselves employers) in unregistered enterprises and workers who are employed in informal, unreported jobs. The “self-employed” category includes a further consideration of whether workers are true own-account workers or are own-account workers by law but in fact are disguised subordinate employees in insecure and unprotected jobs.

Most economists originally thought that as countries improved their governance structures and integrated themselves into the global economy, their largely unregulated, informal sectors (mainly rural and agricultural) would shrink as more formal businesses were registered and more formal jobs created. But decades later it has become clear that the informal economy has not withered or faded away. As the world economy becomes more integrated, just the opposite is occurring, and the informal economy plays a vital role today in the overall economic viability of many countries. According to the ILO, “[I]n countries with high rates of population growth or urbanization, the informal economy tends to absorb most of the expanding labour force in the urban areas.” In fact, the ILO notes that the “bulk of all new job growth in the developing world is in the informal economy.” The ILO further states that the informal economy is a necessary survival outlet for workers in countries that lack social safety nets or where wages or pension benefits are low. This is particularly true for vulnerable groups such as older workers, ethnic minorities, women, and migrants.

Surprisingly, informal employment is becoming more prevalent in developed economies as well, through new forms of flexible and temporary work arrangements. Though such seasonal, temporary, and/or subcontracted jobs may be contractually binding in some instances, they are only
semiformal, lacking the protections and benefits of full-time work. They cause more and more workers to fall outside the scope of social benefits and labor laws.\(^9\)

Current estimates show that informal work makes up 50 to 75 percent of nonagricultural employment in the developing world, while over 90 percent of all work in India and most of sub-Saharan Africa is informal.\(^9\) In developed countries, part-time or temporary employment makes up 25 percent of overall employment in the United States and 14 percent in OECD member states.\(^11\) Overall, the ILO estimates that over 70 percent of worldwide employment is informal.\(^12\)

As the informal economy grows, policymakers, think tanks, trade unions, and business groups are being forced to take a hard look at its nature and impact. The informal economy is no longer considered a distinct economic “sector” that can be viewed separately from the measured formal economy. Informal work occurs everywhere at different levels and, despite being unmeasured, exists alongside and is often integrated into the formal sector. Anyone who has hired a babysitter has a basic understanding of unmeasured “informal” work and the basic role it plays in everyday life.

But this interwoven mix of informal and formal economies is much more pronounced in the age of globalization. For example, a “self-employed” homeworker being paid piece rates sews clothing for a subcontractor who sells it to a major clothing manufacturer’s importer for eventual sale in a developed country department store. Truck drivers, street vendors, and day laborers who work day-to-day for irregular payments are not employees of the companies whose products they deliver, sell, or build, but they are an integral part of the supply chains and overall profitability. A janitor cleans an office building full of well-paid full-time employees with benefits but may be working on a temporary contract at minimum wage, with no benefits or job security.

In addition, the products of informal work are visible everywhere, from food picked or processed by migrant labor to childcare services of domestic workers to clothes sewn by subcontracted textile workers. For some, the daily mix between the two forms of employment is more tangible when workers in the formal economy take a second, informal job to supplement low earnings. In developing and transition economies, this trend is particularly true for government employees or workers in SOEs faced with wage arrears.\(^13\) In the United States, minimum wage workers are among those who must often supplement their incomes with temporary and part-time jobs that have low pay and no benefits and that increasingly resemble semiformal and informal work.

**Global Informality**

While the informal and formal economies may be intertwined, workers throughout the world are becoming more dependent on informal work for their livelihoods as formal job opportunities dwindle. This increase in the size and role of the informal economy is a symptom of broader trends in the global economy, where an increasing number of new job seekers (estimated at well over 40 million per year) are looking for work while global business models increasingly focus on flexible and temporary employment relationships.\(^14\)

Most companies emphasize a small workforce supported by outsourced and contracted labor or temporary, seasonal, and part-time workers. This practice is prevalent in the white-collar telecommunications and high-tech industry, but it is also the case in the more labor intensive manufacturing, textile, food processing, and service industries. In these sectors, supply and sourcing chains move jobs from region to region in search of quicker production and just-in-time distribution, all at lower prices that rely heavily on low-cost poor and/or migrant laborers to create overall “value” for shareholders and consumers.
In the global job market, informal workers have no fixed employer or regular contract, and they work for lower wages and fewer benefits or protections than those in stable, formal jobs. Instead of providing workers with access to the economic mainstream or a temporary point on the way to eventual formal employment, informal work is increasingly the only form of employment in many countries and has become a poverty trap for the poorest workers. At the periphery of this system in both poor and wealthy countries are the working poor, who take multiple jobs just to make ends meet; migrants, whose legal status often forces them into substandard work where they are easily exploited; and home-based women workers, working for piece rates and often juggling the needs of childcare and eldercare.

According to the Cambridge, Massachusetts-based organization Women in Informal Employment: Globalizing and Organizing (WIEGO), the most common groups in the informal workforce are garment workers, home-based workers, street vendors, domestic workers, waste pickers, small farmers, and migrant workers in various forms of work.15 Women and migrant workers are particularly vulnerable to employment in low-paid, nonstandard jobs. Women make up well over half of all informal workers in the developing world. The ILO estimates that women comprise 85 percent of nonagricultural informal employment in sub-Saharan Africa, 60 percent in Latin America, and 65 percent in Asia.16 WIEGO estimates that more than 80 percent of all subcontracted industrial homeworkers in the developing world are women, and they are a majority of part-time workers in developed countries.17

Women are often the first to lose their formal jobs under economic policies designed to promote growth. Economic reforms that cut government spending and public-sector employment hit hard in the education and healthcare sectors—where many women are employed. In addition, cuts to subsidized healthcare, education, and housing force many women into a workforce where informal employment is the only option if they are to support their families.18

Migrants are often caught in a precarious legal and financial situation and relegated to seasonal, temporary, or poorly paid work, with little access to institutions or organizations that can assist them and defend their rights. The informality of many migrants’ work options, plus their legal uncertainties due to their citizenship or work status, makes them vulnerable to a number of worker rights violations, such as dangerous work, low pay, debt bondage, forced labor, and human trafficking.

Child labor is a parallel concern. According to the ILO, “[C]hild labor is almost entirely an informal economy phenomenon.”19 While child labor has been recognized as a grievous worker rights violation for decades, it shares some causality with the larger trend of job informalization. Problems such as poor access to education or the economic mainstream force not only adult workers but also many children into often-dangerous subsistence work.

Of the 211 million children working in the world today, nearly half are thought to be performing hazardous and exploitative jobs.20 Studies show that child labor has increased as a result of economic crisis, violent conflict, and the HIV/AIDS epidemic in Africa.21 Girls in particular tend to be more vulnerable than boys to working at a younger age for longer hours, and they are at risk for some of the worst forms of child labor including child prostitution, debt bondage, trafficking, and forced labor.

**Growth of Informal Work**

The clearest reason for the growth of informal working arrangements is that formal job growth in recent decades has not accommodated the increase in job seekers—especially women.22 From the starting point of a lack of formal job growth, there are a number of different (and often competing) explanations for both the existence and the growth of the
informal economy. As mentioned earlier, many in the trade union movement and allied organizations view informality and globalization as linked aspects of a global movement toward cheaper, flexible employment relationships and a gradual hollowing out of worker rights and social protections. This trend is most prevalent in the developing world, but it is also found in developed countries as governments contract formal employment in the public sector, constrict wages and labor laws to promote trade competitiveness, and cut back on needed social services and active labor market policies.

Within this broad viewpoint, unfortunately, workers are seen only as “input costs” by businesses and governments, which put downward pressure on wages, benefits, and social safety nets around the world. A range of policies and causes can be identified as reasons why the informal economy has grown globally, even in the face of supposed gains in GDP and economic development. They include, but are not limited to:

- contracting of formalized work in industrialized countries;
- increased free flow of migrants seeking decent work, mainly from rural to urban environments;
- fiscal austerity measures that contract formal employment in SOEs and public services;
- fiscal austerity measures that cut key services such as education, health care, and other social security nets, in turn pushing workers, particularly women, into informal employment to make ends meet;
- globalized supply chains, especially in textiles, seafood, and light manufacturing, that emphasize decentralized, mobile, and low-cost production through extensive subcontracting;
- export-oriented policies that rely on low labor costs as a core pillar of economic development; and
- import policies that rely on lower-priced goods to maintain developed-country living standards.

This view of the informal economy differs somewhat from the position of most development agencies and international organizations, which tend to
focus on the role of taxes, government regulations, and labor laws as brakes on formal employment. For example, these policymakers see high business taxes and onerous registration requirements as incentives for firms to operate off the books or to underreport information. In the same vein, labor laws, particularly those that limit the ability of firms to easily hire and fire workers, are alleged to force businesses to utilize low-wage informal and temporary contracts for new work. According to one report, “[L]abor informality is a consequence of labor laws and regulations whose very aim is to provide workers with protections and benefits.”

Policy development on informal work in the 1990s was heavily influenced by Peruvian economist Hernando de Soto, who framed the informal economy as self-sufficient and entrepreneurial, while showing the government as elitist and bureaucratic. His work prompted a wave of policy prescriptions extending property titles and property rights to informal workers and businesses. That extension was based on the idea that property rights formed much of the basis for a transparent and contractual legal system, because they motivated informal workers “to add value to their resources by investing, innovating, or pooling them for the prosperity and progress of the entire community.”

In the big picture, these rights would serve not only to encourage business development but also to promote efficient governance institutions, for example, by reducing uncertainty in tax assessments or in the provision of public services such as utilities.

Today’s development experts, including many at the World Bank, have been strongly influenced by de Soto and also by economic studies that suggest that many workers make a conscious choice to work informally, as do many businesses that utilize informal labor. By the same token, they believe that individuals and businesses make the decision to exit the formal sector out of cost-benefit analysis (much as a firm may judge it easier
and more profitable not to register or a worker who prefers the flexibility and tax benefits of informal work).  

The idea of informality as a rational choice factors heavily in the World Bank’s recent study of the informal economy in Latin America, Informality: Exit and Exclusion. The study tries to take a more nuanced view of the informal economy, referring obliquely to issues such as “the introduction of temporary contracts and subsequent weakened enforcement of tax and labor regulations” and informal workers’ “lack of [political] voice.” Yet the authors consistently return to a strict view of informality as a choice or as an “implicit cost-benefit analysis about whether to cross the relevant margin into formality.”  

Power disparities go a long way to explain why informal work continues to proliferate. Researchers Marilyn Carr and Martha Chen of WIEGO sum up the issue:  

Street vendors often have to vend informally because they are not integrated into existing regulatory frameworks . . . or because [they] are too punitive or constraining. Industrial out-workers typically have no bargaining power with those who put out work to them. And self-employed garment makers often have relatively little market knowledge, market access, or bargaining power compared to large garment manufacturers.  

According to WIEGO, “[M]uch of the recent rise in informal wage employment is due to the decline in formal employment or the informalization of previously formal employment relationships.” So, not only are many workers excluded from the mainstream economy or forced to settle for substandard informal work, they are increasingly joined by workers from the contracted formal sector, particularly as economic crises and restructuring squeeze formal employment without adequate training or other labor market initiatives to help workers adjust.  

For informal workers, falling in the gray legal area between formal and informal employment means denial of social services, credit, and/or job training that would help them move closer to formal employment. The exclusion of workers from the legal and political tools they need to improve their living standards effectively traps them in informality and has, according to the ILO, become a “vicious cycle” for the poorest workers.  

While it remains possible for some self-employed workers to make decent money, pay in the informal economy is generally lower than that for for-
In the late 1960s, Ela Bhatt, a labor lawyer with the Indian Textile Labor Association, began to notice that many poor women struggled with oppressive poverty in spite of almost round-the-clock work. She noted that the poorest women workers were excluded from social services and that their informal status as “contract” or “self-employed” workers made them nonentities in the eyes of India’s labor code. Bhatt recognized that alone these workers, among the poorest of the poor, had no negotiating capacity or power in relation to middlemen, contract agents, bank officers, the police, or employers.

In cooperation with thousands of Indian women, Bhatt helped to form a powerful new organization that serves as a cooperative and even a business incubator but is at its core a trade union. The Self-Employed Women’s Association (SEWA), founded in the Indian state of Gujarat in 1972, began as a broadly based movement of unions, nongovernmental organizations, workers’ cooperatives, and other allies. It has raised awareness about the informal economy and helped informal workers defend their interests and raise their standard of living.
The SEWA Model

SEWA has changed the way many, particularly those in formal trade unions, view the informal economy and the organizing capacity of informal workers. While SEWA is a trade union first and foremost, it combines related but autonomous functions that include a banking arm, cooperative business elements, and a broadly based women’s rights movement with more than 700,000 dues-paying members.

SEWA offers its members literacy classes, a training academy, a bank, a network of social service programs, marketing support for local producers, and other services. By including advocacy and lobbying for policy change at local, national, and international levels, SEWA augments its organizing work by pushing for women workers’ legal rights. All of its programs are demand driven so that they respond to the needs of its members. By using a participatory approach, members plan, implement, and evaluate programs they develop with SEWA.

SEWA refers to its capacity to organize informal women workers and provide them with access to services as its “integral approach.” With twin goals of full employment and self-reliance, SEWA views its work as more than simply improving wages and benefits. Its agenda also includes food, social security, healthcare, childcare, shelter, and the overall empowerment of women workers.

Invisible Women

The impetus for SEWA’s formation was the concern that too many women workers fell outside the boundaries of the law. Because they had no officially sanctioned employment relationship, they were excluded from the economic and social mainstream. With no set employer to bargain with, SEWA was forced to step outside traditional trade union organizing paradigms from the very beginning. According to Bhatt, “[A] union is about coming together. Women did not need to come together against anyone, they just needed to come together for themselves.” But simply organizing does not yield tangible improvements in pay, benefits, or access to services, so SEWA had to develop a bargaining relationship with someone. Rather than allow the strict letter of the law to exclude its members, SEWA attempted to create venues for bargaining with the very sources of political and economic power that controlled the work of informal women workers. Much of this effort was tied to the legal concept of “subordination,” whereby workers attempted to prove that though they were legally self-employed, they were in an unequal authority relationship with local authorities, contracting agents, employers, and other entities upon whom they relied for work.

Using the strategy of creating legal bargaining venues where they did not exist, SEWA has pressured political leaders to implement a tripartite dialogue model, in which it negotiates with local, state, and national governments and employers at the top of the supply chain to increase wages and gain greater social protections for its members at the very bottom. It also works with the tripartite boards to reform existing labor laws to protect informal workers. Through advocacy campaigns, SEWA not only raises membership awareness but also presses community leaders, governments, and employers to sit down and make binding decisions on bargaining issues such as prevailing wages, improved access to benefits, and other social and labor policies.

Integrating Informal Workers into a Global Labor Movement

SEWA’s work has inspired similar unions, NGOs, and networks that seek to utilize the SEWA model to better support and represent informal workers. The WIEGO network is one such organization. Pulling together groups concerned with improving the status of women in the informal economy, WIEGO has worked closely with key NGOs such as HomeNet, a consortium of home-based worker
organizations, and StreetNet, an organization representing street vendors and similar occupations.

WIEGO’s extensive statistical research has been vital to the development of improved definitions of informal work and has generated policy initiatives at the international and national levels. The work of SEWA, WIEGO, and partner organizations has had an undoubted impact on the broader international debates over the informal economy and was instrumental in the development of the 1996 ILO Home Work Convention No. 177.

Many traditional trade unions and informal economy unions are developing fresh techniques and strategies to meet the challenges of informal economy organizing. In many instances unions are working more closely with NGOs and other civil society groups that are familiar with the needs of informal workers, especially at the community level. The international trade union movement has worked through a number of sector-based global union federations (GUFs) on pilot projects to help trade unions extend representation services to informal workers.

Since 2000 the ITUC has been very active in publicizing innovative informal economy initiatives in Africa. A union-run project in Benin included the creation of a mutual health insurance company run by and for union members, while in Mauritania, unions developed healthcare funds and childcare facilities for informal women workers and are training a new corps of women organizers. A 2007 ITUC report detailed the ways in which unions in Burkina Faso worked to extend social benefits and legal rights to informal workers.

In 2002 the ITUC, the International Cooperative Alliance, and the ILO established the SYNDICOOP Project to create effective organizing strategies for workers’ cooperatives and new union organizations. The program has developed extensive training guidelines and sponsored a number of pilot projects in East Africa, including:

- development of numerous savings and credit cooperatives, such as one with the Kampala (Uganda) Shoe Shiners and Repairers Association and the Association for Poverty Eradication in Dar es Salaam (Tanzania);
- assistance to large workers’ cooperatives, such as the Kagera (Tanzania) Cooperative Union, which links 90,000 coffee farmers; and
- assistance to small cooperatives, such as the 10-person Wamumo Enterprises and Commercial Services cooperative in Nairobi (Kenya).

Organizing informal workers has also become an issue for developed-country unions and informal worker organizations. For example, in the U.K., where most part-time workers are women, the trade union UNISON has developed a campaign called “positively part-time” to prevent part-time work from sliding into informality by promoting the extension of rights and benefits of full-time work (e.g., maternity coverage, pension benefits, sick pay, and employment protection) to part-time workers.

In the United States, a number of trade unions have had success in recent years organizing home-based childcare workers. In 2006 the AFL-CIO concluded a groundbreaking agreement with the National Day Laborer Organizing Network to promote cooperative initiatives on legislation, enforcement of worker rights, and immigration laws. The agreement also covers organizing assistance as well as such services as legal aid and information on social services to day laborer “workers’ centers” across the country. Thirteen domestic workers organizations in the United States came together in 2007 to form the National Domestic Workers Alliance. The group has sponsored initiatives to improve wages, extend social benefits, and include coverage of domestic workers under labor laws in California, Maryland, and New York.

**Controversies**

Although these examples are only a small sample of the union-led initiatives being implemented worldwide, the issue of how to extend worker pro-
tions to informal workers remains controversial. Despite trade unions’ global commitment to organize informal workers, the nature of informal work poses a dilemma. Unions based in industrial or formal settings, with well-established lines of communication between workers and their long-term employers, often have been reluctant to recognize both the formalization of work and the rising number of informal workers. Some unions have considered informal workers to be unfair competitors for jobs or have had a limited view of who works in the informal economy. Others have viewed the recognition of informal unions as a slippery slope leading toward a general public acceptance of informal work, flexible employment, and an overall decline of labor standards. In addition, legal wrangling continues about the definition of the employment relationship. The basic issue is whether labor laws define the self-employed as workers or employers. Depending on statutory and/or regulatory wording, the “employer” definition could exclude self-employed workers from labor law coverage (as workers) and cover them under civil or commercial codes (as employers). In many countries the “informality” of the informal economy comes from the fact that many workers have no clear boss and no contract setting the terms and conditions of employment. Within the strictly construed confines of labor law they are often considered self-employed, while in reality their work often combines elements of employment with elements of self-employment. This legal limbo is often cited as a “gray” area of employment law.

Problems in defining the employment relationship are most visible when governments and businesses use it to narrowly define employment in a way that creates broad categories of informal workers who fall outside the scope of social protections. There are many ways firms use legal definitions of employment to avoid responsibilities under labor law. In some instances, textile contractors “sell”
raw materials, such as cloth and materials, to home-based or even to factory-based workers whom they classify as self-employed. These workers must then “re-sell” the finished product to the firm at the end of the day for payment. Though they are dependent on the firm for the orders that drive their livelihood, their legal status as self-employed allows the firm to skirt much of the pay, benefits, and legal obligations it would otherwise incur for a full-time employee.

Some firms also abuse laws made to promote cooperatives and small-business growth. For example, laws that require a high threshold number of workers for unionization encourage firms to make use of temporary or subcontracted workers, or even to reincorporate their constituent parts into various “autonomous” small-business units or sham “employee-owned” cooperatives. The Solidarity Center’s recent report on worker rights in Colombia noted reports of workplaces where unionized workers leave work one day and return the next to find that they are now technically “owners,” but with no real ownership power, no change in their relationship to their bosses, and (importantly) legally barred from unionizing.

The fluidity of informal employment makes traditional organizing campaigns difficult. Informal workers are often working on temporary, seasonal, and unregistered bases. They often switch jobs or employers, requiring a union membership status based less on their relationship with a formal employer and more on their status and needs as workers, regardless of their occupations.

The legal concept of subordination has been used to show that workers with no formal employment relationship can prove that they are in an unequal authority relationship with companies, governments, and other entities with which they have a business relationship. Pioneered by SEWA and street vendors’ unions, the concept allows workers to seek out the individuals or institutions with the power to affect their terms of employment and thus create a bargaining relationship with them, often through trial and error but ultimately through collective strength. The country-by-country recognition of subordination can be very different, but some trade unions have successfully helped informal workers establish an employer-employee relationship utilizing the concept.

### Applying Worker Rights Standards in the Informal Economy

Pivotal discussions in 2002 at the ILO attempted to resolve some of the debate over the informal economy and set a baseline for actions to improve workers’ access to formal employment opportunities. The growth of the informal economy encouraged the ILO to address the “decent work deficit.” The term describes the “poor-quality, unproductive, unremunerative” nature of the informal economy, with its high concentration of women and young workers whose rights are “not recognized or protected by law” and who enjoy little access to social protection or representation.

In recognizing that “those who work have rights at work, irrespective of where they work,” the ILO sought to promote its decent work agenda for the informal economy across the continuum of employment, both formal and informal, focusing on:

- giving priority to addressing decent work deficits through extension of social protections, rights at work, and representation to informal workers;
- enabling informal workers and new job seekers to find employment in formal, protected forms of employment; and
- creating new employment opportunities that are formal and protected.

With these goals in mind, the ILO has proposed that countries implement pilot projects designed to enhance employment opportunities, worker rights, social protection, and representation.
Core Labor Standards for Informal Workers

Extending worker rights protections forms the core of any informal economy organizing campaign or pilot project. Depending on the needs of specific workers and the political environment in each community, respect for and enforcement of CLS are integral to any development program that seeks to both create new jobs in the formal economy and provide informal workers with greater opportunities to move into more formal employment arrangements.

The CLS of the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up are the beginning point for discussions of worker rights in the informal economy. Key to the CLS is their broad applicability to all workers, regardless of employment relationship or formality of status. The Freedom of association and collective bargaining (Conventions Nos. 87 and 98) are the most basic CLS but they are also the most difficult to secure for informal workers. According to the ILO, the “rights gap” between formal and informal workers often begins with either the government or business perception that informal workers do not have the right to organize or bargain collectively, or they are systematically denied those rights. The gap often eliminates entire categories of workers from coverage under these standards and stems from the debate over the employment relationship. Workers who are defined as “self-employed” or who have no contract or officially documented employer-employee relationship (such as street vendors) are excluded from labor law or explicitly forbidden from organizing and bargaining in most countries. National labor laws that are grounded in the employer-employee relationship at fixed worksites are no longer relevant to increasingly flexible, temporary, and informal employment.

In its report on the informal economy at the 2002 International Labor Conference, the ILO addressed the rights gap by making it clear that its standards are not “only for those in the formal economy where there is a clear employer-employee relationship.” The organization further noted that labor standards apply to all workers and “there cannot be a lower level of rights for workers in the informal economy.” Enforcement of these provisions is up to the member countries, and there have been instances of trade union action to either extend the employment relationship to informal workers or ensure their legal coverage through policy changes.
ILO Conventions Nos. 29, 105, 138, and 182 aim at eliminating child labor and forced labor. Throughout the world, most instances of child labor and forced labor occur in informal working environments. Forced labor and child labor often arise from the same impoverished circumstances that force workers into informal arrangements. The need for paid work to support families in times of dire need or crisis effectively puts millions of people into unregulated and substandard work settings. Migrants, because of their financial and legal status, are often vulnerable to trafficking and forced labor, while children entering the workforce are extremely vulnerable to exploitation. Work to extend economic access as well as ILO conventions on labor inspection is closely linked to the effort to ratify and implement the child labor and forced labor conventions.

Because women make up the majority of the world’s informal workers, Conventions Nos. 100 and 111, which promote the “elimination of all discrimination in employment and occupation,” are very relevant to the advocacy work of informal economy organizations. According to the ILO, these conventions “make no distinction between formal and informal status.” Convention No. 100, for example, “requires ratifying States to pursue a policy of equal remuneration for men and women for work of equal value and applies to all workers without exception, including self-employed workers.” Just as legalistic definitions of employment potentially deny informal workers their freedom of association and collective bargaining rights, the ILO notes that informal women workers have been denied access to social services (e.g., childcare and job training) because of their employment status and relative job insecurity.

Below are several examples showing how unions and workers’ organizations have helped informal workers secure their fundamental rights.

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**Defining the Employer: StreetNet and SEWU, South Africa**

In 2000, StreetNet, a South Africa-based network of street vendors, worked with the Self-Employed Women’s Union, also representing street vendors, to help pressure the Durban local government to hold a public forum where vendors put forward their views, concerns, and suggestions. As a result of advocacy by StreetNet and the actions of street vendors, the Durban municipality was officially recognized as the “employer” for city street vendors in a move that became Durban’s citywide Informal Economy Policy. The policy extends the protections and services formally employed workers receive to informal workers, particularly street vendors. The success of developing cooperative bargaining structures between street vendors and local government agencies quickly became an international best practice for organizing informal workers in urban environments.

Following this change, the Provincial Minister of Economic Affairs and Tourism of KwaZulu-Natal initiated a process to develop a policy on the informal economy for the province. Both the Durban city policy and the draft policy for KwaZulu-Natal reflect a change from the traditional outlook toward street vendors, regarding them as part of the economic life of the province and the city. Instead of being seen as a problem for the tourist industry, they are seen as a part of the economic landscape that could even attract tourists and investment, with the proper legal support and facilities.

**Reforming National Labor Laws in Ghana**

When the Ghana Trade Union Congress determined that national labor laws had not kept pace with the rise in informal employment, it engaged with the government and employers in a tripartite negotiation process. This resulted in the New Labour Act of 2003. The new law is significant for its extension of worker rights protections to the informal economy. Special provisions also apply
to temporary and casual workers, guaranteeing equal pay for work of equal value, the same level of medical benefits available to permanent workers, and full minimum wage for all days in attendance and public holidays. In addition, any temporary worker employed for a continuous period of six months or more is to be treated as a permanent worker.\textsuperscript{60}

**Protecting Domestic and Agricultural Workers in South Africa**

As a result of trade union campaigns and tripartite negotiations, vulnerable categories of mostly female workers in South Africa, such as part-time domestic or agricultural workers, now have legal worker rights protections. These include the rights to organize, bargain collectively, access to dispute resolution processes, and protection from dismissal. They also include minimum conditions of employment such as provisions for sick leave, (unpaid) maternity leave, overtime pay, prevention of discrimination, affirmative action, and skills training. A minimum wage for domestic and agricultural workers was also legislated at the sector level when collective bargaining mechanisms do not exist.\textsuperscript{61}

**Extending National Labor Laws to Informal Women Workers in India**

The Second National Labour Commission in India (1999) recommended a number of legislative initiatives to extend legal coverage and social benefits to the informal workforce, including:

- broadening the definition of workers under the Minimum Wage Act to incorporate informal workers and include piece rates along with time rates in the minimum wage calculation;

- amending the Equal Remuneration Act to apply across sectors, industries, and regions;

- providing for updated antidiscrimination guidelines and training for labor inspectors;

- providing coverage for all female workers under state medical insurance schemes and extending childcare and maternity benefits to all workers; and

- including informal workers and those who earn less than Rs 3000 (about $75) per month.\textsuperscript{62}

The commission completed its work in 2002. Many of its recommendations are included in a draft Unorganised Sector Workers’ Social Security Bill. The bill, supported by SEWA and other labor organizations, includes many of the maternity and health insurance provisions as well as pension coverage and adequate registration for informal workers. Though the latest version of the bill was tabled in Parliament in 2007, SEWA notes that the bill has been reintroduced to a standing parliamentary committee.\textsuperscript{63}

**Other International Agreements on Informal Work**

**Home Work Convention (No. 177)**

The 1996 Home Work Convention is the first ILO convention specifically designed to cover a category of informal workers. In the text of the convention, home work is defined as:

work carried out by a person . . . in his or her home or in other premises of his or her choice, other than the workplace of the employer; for remuneration; which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has a degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations, or court decisions.\textsuperscript{64}

The convention covers a particular category of informal workers—dependent home-based workers—who often work for the lowest pay and no benefits, but it potentially excludes self-employed
and own-account workers. Nonetheless, the convention is a step forward in that it defines a category of workers previously not recognized by the ILO, and it specifically extends many of the provisions of freedom of association, collective bargaining, and nondiscrimination to homeworkers.

**Domestic Workers Convention**

Although the Home Work Convention remains the only ILO standard specifically devoted to informal work, the ILO is presently considering language on a convention to standardize domestic workers’ rights. The proposed standard has been placed on the agenda at the ILO’s 2010 conference for adoption in 2011.

**Migrant Workers**

With the pace of migration increasing, migrant rights issues and informal economy organizing overlap as gaps in labor laws expose migrants to a number of potential abuses (see Chapter 4 for a more in-depth look at the issue of migrant worker rights). The two principal ILO conventions on issues of migrant workers rights are the Migration for Employment Convention (revised) (No. 97) and the Migrant Workers (Supplementary Provisions) Convention (No. 143). These and other migrant rights standards direct governments to provide certain assistance to migrants and reassert prohibitions against worker rights abuses and discrimination.

For example, The Rural Workers’ Organisations Convention (No. 141) extends basic CLS coverage to all rural workers, including the self-employed, and workers in cooperatives. The Social Policy Convention (No. 117) and the Occupational Health and Safety Convention (No. 155) also support the goals of extending social protection and decent work to all categories of workers.

**Reaching Out to Informal Workers**

The persistent growth of the informal economy in the developing world and its increasing appearance in industrialized nations presents a clear challenge to those in the trade union movement seeking to return a measure of fairness to the global economy and build respect for worker rights.

Informal workers are hard working and entrepreneurial, but they are too often working too hard for too little pay or benefit. Rarely do economists or policy makers adequately measure their work.
Though development economists expected the informal economy to disappear as development increased, its continuing growth in the age of accelerated globalization has the potential to trap millions of workers. It also threatens decades of global work promoting democracy and economic growth. At the growing periphery of informal work are the working poor, migrants, and low-wage women workers, all of whom are increasingly vulnerable to exploitation and worker rights abuses.

Those who subscribe to economic orthodoxy pay close attention to the “proper” policies or regulatory environment needed in order to allow market forces to work efficiently, but they pay too little attention to the needs of informal workers and ways in which these workers can improve their access to the social and economic mainstream and build their organizational and political power.

Yet as the informal economy continues to expand, many new union organizations, traditional unions, and NGO allies have developed new strategies to build the collective strength of informal workers and build a growing global movement. Unions worldwide have taken the initiative to reach out to informal workers—developing organizing models and utilizing cooperation with civil society groups at the community and national policy level to expand worker rights to those previously hidden.

Endnotes


7Ibid.

8See the conclusions concerning decent work and the informal economy, adopted by the 2002 International Labor Conference in ILO, Decent Work and the Informal Economy.

9Ibid.


11Ibid.

12ILO, Key Indicators of the Labour Market (Geneva: 2002).


14Ibid., pp. 13-22.


17See WIEGO Web site.


24 See WIEGO Web site.


26 See WIEGO Web site.


30 See WIEGO Web site.

31 See WIEGO Web site.

32 See WIEGO Web site.

33 See WIEGO Web site.

34 See WIEGO Web site.


46 Ibid., p. 13.
51 For a comprehensive view of the informal economy policy-making environment within the scope of these four policy directions, see: Chen, Vanek, and Carr, Mainstreaming Informal Employment and Gender.
52 ILO, Decent Work and the Informal Economy, p. 39.
53 Ibid., p. 41.
54 Ibid., pp. 44, 45.
55 Ibid.
56 Ibid., p. 43.
57 Ibid.
58 Ibid.
60 Chen, Vanek, and Carr, Mainstreaming Informal Employment, pp. 112-113.
61 Ibid., p. 110.
Chapter 4
Worker Rights and Migrant Workers
Migrant Terminology

A Migrant is a person who moves from his or her home country or community to another for political, economic, social, religious, or other reasons. There are different types of migration: documented and undocumented (sometimes referred to as legal and illegal, or regular and irregular), urban and rural, international and domestic.

An Irregular Migrant is a person who migrates outside the regularized system of migration set out by a particular country in its laws and regulations. Such a migrant may also be referred to as an Undocumented Migrant as the person migrates without the protection of government-issued documents, such as travel visas and employment permits.

A Migrant Worker, also referred to as an Immigrant Worker, is a person who travels from one area to another in search of work. A migrant worker may also be referred to as an Economic Migrant. The term Immigrant Worker often connotes some sort of long-term right to residency. A Foreign Worker is a person who works in a country other than the one of which he or she is a citizen.

A Foreign Contract Worker is a person who works in a foreign country under contract with a third-party labor broker to work at a particular workplace for a specified length of time. Contract workers are often employed in the informal economy and thus are not protected by labor laws and other legal mechanisms.

A Temporary Worker or Guestworker is a person with legal authorization to work in another country for a specified period of time. Temporary workers are not granted any rights to residency or citizenship, usually cannot migrate with their families, and their employment is tied to a particular employer. A temporary worker or guestworker may also be a foreign contract worker.

A Country of Origin, also referred to as a Source Country or Sending Country, is the Home Country for a migrant worker. It is the country the migrant worker leaves.

A Destination Country, also referred to as a Host Country or a Receiving Country, is the country to which a migrant worker travels.

Child Labor refers to work for children under age 18 that is mentally, physically, socially, and/or morally dangerous or harmful to children and interferes with their schooling. Under international standards, developing countries may allow children over 15 years of age to work under certain conditions.

Debt Bondage, also known as Bonded Labor, is demanding a person’s labor as a means of repayment for a loan or other form of debt. When debt is the root cause of the bondage, the implication is that the worker (or dependents or heirs) is tied to a particular creditor or employer for a specified or unspecified period until the loan is repaid. Bonded labor may also refer to situations where a person inherits or is born into involuntary servitude due to a family’s debt (sometimes passed on from generation to generation).

Forced Labor is work or service exacted from a person under threat or penalty, which includes penal sanctions and loss of rights and privileges, where the person has not offered him/herself voluntarily.

Involuntary Servitude is laboring against one’s will to benefit another, under some form of coercion.

Labor Exploitation is profiting from the labor of others without giving a just return or providing acceptable conditions of work (e.g. fair wages, reasonable hours, safe and healthy working environment, adherence to international and national labor standards and protections).

Remittances are the international transfer of funds sent by migrant workers from the country where they are working to people (typically family members) in the country from which they came.

Slavery is the ownership and control of one person by another.

Migration in search of employment is not a new phenomenon. In the era of globalization workers are moving in unprecedented numbers from rural to urban areas, from poorer to richer countries within a region, and from developing to developed countries around the world. The ILO estimates the population of migrant workers at more than 86 million with nearly half of migrants from developing countries residing in other developing countries. Experts agree that the growing number of migrant workers is a trend that will most likely accelerate throughout the twenty-first century.

People migrate for many reasons, but the opportunity to send home remittances—payments transmitted by migrant workers to their countries of origin—and to improve their economic situation are major incentives. According to the World Bank, “Wage levels (adjusted for purchasing power) in high-income countries are approximately five times those of low-income countries for similar occupations, generating an enormous incentive to emigrate.” Migrant workers around the world often cite the ability to pay for the education of younger siblings, to provide a home or buy land for parents, and to provide the basic necessities for their families as their reasons for migrating. Others are lured by the prospect of a higher standard of living, fueled by the images of prosperity in the Global North seen on television and movies that are now readily available around the world.

While many workers find success abroad, the decision to migrate is never an easy one. Migrant workers often pay a high price to make a living and provide for their families. Many migrant workers leave their families behind. Mothers and fathers reluctantly leave young children with spouses, grandparents or other relatives, and husbands and wives separate, often for years at a time.

This chapter explores migration from several perspectives: its role in the global economy, the forces that drive it, the strategies of governments and employers to utilize and regulate it, the experiences of migrant workers themselves, and efforts to combat the abuse and exploitation that migrants often face, including human trafficking.

Why People Migrate

Both home and destination countries derive significant benefits from migration. Migration can create nonmonetary gains for both countries through greater international understanding, cultural cross-fertilization, and stronger relations between nations. However, the economic benefits generally outweigh any others. The World Bank states, “The increased availability of labor boosts returns to capital and reduces the cost of production.” Migration provides host countries and employers with professional and skilled workers to fill shortages in key sectors such as healthcare and education. It also creates a large supply of low-wage labor and workers willing to do dangerous, dirty, and difficult jobs that host country nationals may spurn.

Countries of origin benefit greatly from labor migration. In 2007 developing countries received international remittances estimated at approximately $240 billion, more than twice the amount for 2001. When remittances made through informal, unrecorded channels are taken into account, studies suggest that the amount may be even 50 percent higher. Labor migration and remittances help reduce pressure on developing-country governments to provide employment and other economic and social services to their citizens. From 2000 to 2007, Mexico received approximately $133 billion in remittances and now receives 14 percent of the worldwide flow of remittances. The Inter-American Development Bank estimates that in 2002, 1.4 million Mexican homes received income from remittances—one of every nine homes in rural areas and one of every 10 homes in medium and large urban areas. In one of the poorest countries in the world, Bangladesh, annual remittances totaled almost $6.4 billion in 2007. Indonesia, one of the world’s leading suppliers of migrant labor, officially received $6 billion in
remittances in 2007. In reality, however, this number may be much higher since the inflow of remittances to Indonesia is not well recorded.

Many governments treat migration as a kind of de facto development policy. Mexico, Bangladesh, and Indonesia are said to have developed policies that actively promote urban and international migration as a means to relieve unemployment and generate income from remittances. The demand for unskilled, cheap labor in destination countries such as Saudi Arabia, the Gulf States, Malaysia, Singapore, and Taiwan, combined with high levels of unemployment in Indonesia, has led to an Indonesian government policy of encouraging (or pushing) Indonesian workers to migrate. The income earned by migrant workers has become a significant factor in the Indonesian economy. According to Human Rights Watch, “Indonesia sets targets on the numbers of migrant workers it hopes to send abroad in its five-year economic development plans. Its target rose from 100,000 in 1979-84 to 2.8 million in 1999-2003. Similarly, many other countries have started setting a target for the numbers of workers they hope to ‘export,’ arguably without a similar emphasis on how to create livelihoods at home.”

Such targets and development policies often focus on women’s labor, leading to a “feminization” of migration. Professor Janie Chuang, of the Washington College of Law at American University, writes:

[In an effort to ease their unemployment problems and accumulate foreign currency earnings, deeply indebted countries make use of their comparative advantage in the form of women’s surplus labor and encourage their labor force to seek employment in wealthier countries. Through their work and remittances, women enhance the government revenue of deeply indebted countries, helping to “narrow the trade gap, increase foreign currency reserves, facilitate debt servicing, reduce poverty and inequalities in wealth and support sustainable development.”

Migrating for work is often a valid and successful option for women in developing countries who are escaping poverty, lack of economic opportunities, and discrimination. Such work may also become empowering for women as they acquire more authority as remitters. Chuang also found, “While women migrate in response to economic hardship, they also migrate to flee gender-based repression. Women will accept dangerous migration arrangements in order to escape the consequences of entrenched discrimination against women, including unjust or unequal employment, gender-based violence, and the lack of access to basic recourse for women.” The American Friends Service Committee reports, however, that women migrant workers are generally “confined to occupations traditionally filled by women such as nurses, maids, caregivers, caterers, and teachers . . . [and] they may be deskilled (trapped in low-skilled occupations for which they are overqualified) by the occupations they are confined to under guest-worker programs.”

When migration is driven by choice and access to better opportunities, migrant workers are more likely to have a positive experience. When it is driven by necessity, force, or lack of other valid options, however, they are vulnerable to exploitation and abuse.

**Types of Migrant Labor**

Workers migrate abroad for all types of employment. They migrate into the formal economy as well as into the informal economy. Migrant workers are categorized as professional or highly skilled workers or as manual laborers and low-wage workers.

Professional workers, such as nurses, doctors, and teachers, are much sought after around the world to fill shortages in industrialized nations. They are often subject to less restrictive immigration laws and tend to be less vulnerable to exploitation and abuse. However, foreign professional workers may still
work under harsher conditions and receive lower wages than their national counterparts. In poor or developing countries, many professionals emigrate permanently. The result is “brain drain,” whereby a country loses the capital it has invested in training professionals. This process erodes the base of human capital and hinders economic growth.\textsuperscript{19} When the United States and the U.K. recruit teachers from abroad, developing countries lose key professionals in their own educational systems. The World Health Organization has warned, “[M]illions of people are dying of preventable causes in poor countries because of lack of health care workers, many of whom are leaving for better paid jobs in Europe and North America.”\textsuperscript{20} Swaziland, which has one of the highest rates of HIV/AIDS in the world, has a severe shortage of nurses to treat patients as large numbers of nurses migrate abroad in search of a higher standard of living. This problem is exacerbated by the fact that the government of Swaziland does not pay nurses for months at a time, leaving them little incentive to remain in the country.\textsuperscript{21}

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**The Feminization of Migration**

Gender is a key element of international migration. More and more migrant workers around the world are women. Professor Chuang found, “Compelled to leave their homes in search of viable economic options, previously invisible, low-wage earning, migrant women are now playing a critical role in the global economy. . . . Entire households, communities, and even some governments are increasingly dependent on these women for their economic survival.” Often referred to as the “feminization of migration,” the number of women migrating for work has increased dramatically over the last decade, and about 90 million now reside outside their countries of origin. Women make up 50.9 percent of migrants in the developed world and 45.7 percent in the less developed world. For example, the proportion of women among Sri Lankan migrant workers rose from 33 percent in 1986 to almost 60 percent in 2005.

Researchers have noted several factors that contribute to the rise in female migration globally:

- the economic boom in destination countries and increased demand for female migrant workers, which corresponds to the growing, globalization-driven gap between the rich and poor;
- official labor migration policies of governments that actively promote the recruitment of women in collaboration with recruitment agencies;
- gender stereotyping of women in work situations that echo their traditional roles as caregivers and entertainers;
- growing poverty in the context of structural adjustment programs that produce landlessness, rural impoverishment, and increased pressure on women to join the labor force;
- lack of opportunities for local employment that would allow women to seek better jobs, acquire greater skills, and obtain a more secure future;
- an increase in the number of female-headed households;
- growing family dependence on women for income, especially among poorer households;
- women’s growing sense of economic and personal autonomy, in both home and destination countries; and
- many women and men in destination countries relegate domestic work to hired help from abroad.

Low-wage workers, such as domestic, construction, and agriculture workers, are much sought after around the world as a source of cheap labor. Domestic workers are in high demand throughout the world to provide housekeeping, cooking, and care services. Most migrant domestic workers are women and young girls. Many travel from Asia to work in the Middle East, and large numbers of Central Americans migrate to the United States. Hundreds of thousands travel from Central and Eastern Europe to Western Europe, and from African countries such as Ethiopia and Sudan to Europe and the Middle East to work in people’s homes.

Large numbers of workers migrate abroad to work in agriculture. A 2002 U.S. Government survey found that 78 percent of farm workers in the United States were foreign born: 75 percent were born in Mexico, 2 percent were from Central American countries, and 1 percent were from other foreign countries. Of these workers, approximately 51 percent were undocumented. In the Sabah and Sarawak region of Malaysia, which has an agrarian economic structure, 77 percent of the almost 150,000 registered foreign workers are employed in the plantation sector.

Construction workers migrate in large numbers to the United Arab Emirates (UAE), where an economic boom over the last decade has resulted in the large-scale construction of skyscrapers, homes, and other big infrastructure projects. The UAE relies almost exclusively on migrant workers from countries such as India, China, and Sri Lanka to build such structures. More than 4,000 migrant workers helped to build a new Hong Kong airport in the late 1990s. Migrants also provide other types of manual labor in restaurants, cottage industries, and small businesses.

Increasingly, migrant workers are recruited to work in factories that produce goods for multinational corporations exporting to U.S. and European markets. Taiwan, South Korea, and Japan import workers for this purpose. Even in countries with high unemployment or a large pool of low-wage workers, employers bring in migrant workers to labor in factories. Asian factory owners in sub-Saharan Africa have brought in Chinese migrants to work in Namibian textile and garment factories. Thai shrimp producers use Burmese migrant workers to process shrimp for worldwide export. Thousands of migrant workers from Bangladesh and China have been recruited to work in Jordanian factories located in qualified industrial zones (QIZs), established after the ratification of a 1996 trade agreement with the United States.

Push and Pull Factors

“If you look at the global economy from the perspective of people, its biggest structural failure is the inability to create enough jobs where people live.”

Juan Somavia, Director General - ILO

Factors that push people to migrate include poverty, discrimination, conflict and war, natural disasters and environmental degradation, urbanization, overpopulation, competition for natural resources, and technological advances in transportation. The opportunity to send remittances home and the prospect of a higher standard of living are also key push factors.

Despite its general economic benefits, globalization has created an ever-widening wealth gap between countries and between rich and poor areas within countries. Indeed, it is the lack of viable economic opportunities at home that often pushes workers to migrate in search of better options. Global economic policies, initiated through market liberalization and World Bank and International Monetary Fund (IMF) structural adjustment programs (SAPs), are major causes of the gap in employment opportunities due to the displacement of workers from local employment. Trade agreements often solidify these policies. For example, the flood of cheap agricultural products from the United States following the implementation of the North American Free
Employers favor migrant domestic workers over local domestic workers because of their vulnerability and lack of choice that results from their foreign status. Employers perceive them as more “flexible” and “cooperative” with respect to longer working hours, more vulnerable to “molding” to the requirements of individual households, and less likely to leave their jobs. Moreover, their racial “otherness” makes the hierarchy between employer and employee less socially awkward—it is easier to dress up an exploitative relationship as one of paternalism/maternalism towards the impoverished “other.”

Globalization and neoliberal economic policies are demanding greater flexibility of the workforce, thus causing further degradation of work, whereby workers are increasingly moving from formal to informal sectors of the economy, downgrading from permanent to temporary and contract work, and receiving fewer benefits (such as healthcare, pensions, and unemployment compensation) from their employers and the government. Such a situation puts workers into a more vulnerable position, as the safety net on which they previously relied when they were laid off, injured, or unable to find work no longer exists. For example, the expiration of the Multifiber Arrangement (MFA), a 30-year-old system of international textile and garment trade quotas that encouraged multinational corporations to invest in developing countries, led many workers to migrate in search of jobs. After the phaseout of the MFA, a number of textile and garment factories in West Java, Indonesia, closed almost overnight without paying severance to the mostly female workers who showed up for work only to find locked factory doors. Anecdotal evidence suggests that these women were prime targets for labor recruiters, who persuaded some of them to migrate abroad to work as domestic workers. As their families relied on them for income, many of these young women felt they had no choice but to accept job offers in foreign countries.
Structural adjustment programs imposed on developing countries by the international financial institutions, according to Chuang, add to the pressure on women to migrate in search of work:

These policies, which require governments to cut programs and reduce expenditures on social services, cause women to take on additional income-earning activities in order to maintain their families’ standards of living as governments decrease benefits in housing, health care, education, food, and fuel subsidies. This often pushes women to work in the unregulated, informal sectors, thus contributing to the rise of gendered-labor networks—prostitution or sex work, domestic work, and low-wage production work. Women often migrate in search of jobs in these largely unregulated sectors, rendering them all the more vulnerable to exploitation.  

The U.S. Trade and Migration Working Group reports that trade liberalization “induces privatization of public services and state-owned industries that often leads to both rising costs and massive layoffs leading to increased migration.” Global trade liberalization agreements and policies rarely address the impact of such agreements on workers, nor do they include adequate labor standards and protections, thus contributing to the movement of people and exploitation of migrant workers. For example, the U.S. African Growth and Opportunity Act (AGOA) resulted in increased
investment in Africa, leading to the growth of textile and garment factories in export processing zones (EPZs) in countries such as Uganda. To fill the low-wage jobs in these factories, Ugandan and Kenyan agents recruited young women workers from Kenya. Once in Uganda, according to Kenyan trade unions, many of these women were exploited and even trafficked into involuntary servitude and other exploitative labor and sexual practices. Some were in a particularly vulnerable situation due to their migrant status and the lack of labor law protections in Uganda.\(^{35}\)

A similar movement of workers occurs in Jordan, where large numbers of workers migrate through recruitment agencies to work in textile and garment factories in the QIZs. More than half of all garment workers in Jordan are migrant workers from countries such as Bangladesh and Sri Lanka. The free trade agreement between Jordan and the United States, signed in 2000, includes worker rights provisions, but for several years neither partner invoked those provisions to improve working conditions.\(^{36}\) In 2006 the sweatshop conditions for these workers captured the attention of the media in the United States and Jordan. Forced overtime, often more than 100 hours per month, extremely low wages, verbal and physical abuse, confiscation of workers’ passports, and many other violations of fundamental worker rights are extremely common in these factories.\(^{37}\)

Destination countries periodically change their preference for the numbers of migrant workers from a particular country. NGOs in Asia note that employers in East Asia and the Middle East increasingly prefer to hire women migrant workers from countries such as Indonesia and Ethiopia, because they believe that these workers “tend to know less about their rights, do not speak English like their Filipina counterparts (and therefore are easier to take advantage of), report complaints and violations less often, have less support from their embassies or consulates, and can be paid less than migrant workers from other countries.”\(^{38}\) Similar anecdotal evidence has been uncovered in the United States, where global employment agencies recruit workers from Asia to work in construction and agriculture, instead of employing workers from nearby Mexico, because they believe that Mexican workers are more organized, know their rights and are more likely to assert them, and may demand higher wages than other migrant workers.\(^{39}\)

Aging populations in industrialized countries are also a pull factor for migrant labor. Over the next few decades nearly all European countries as well as the United States, Japan, and most other developed countries will see their populations age and decline in numbers. Because of a confluence of factors in these countries—aging populations, low birth rates, and longer life expectancies—the number of people reaching retirement age will outpace the rate of nationals entering the domestic workforce. The American Friends Service Committee reports, “This imbalance will stress welfare systems such as social security where worker contributions finance senior benefits. Increasing immigration to augment the workforce is frequently suggested as a way to solve this imbalance.”\(^{40}\) This process is referred to as “replacement migration.” The UN estimates that to “maintain the size of the potential working population [in the European Union], some 80 million migrants will be needed by 2050, and to ensure a balanced ratio of working to nonworking population, Europe will need to attract almost 700 million migrant workers!”\(^{41}\) Moreover, increasing numbers of migrant workers will be needed to care for the aging population.

**Immigration Policies and Migrant Workers**

Despite the fact that many destination countries rely on migrant workers to fill positions crucial to their economies, these same countries often marginalize and limit their rights. Host countries use a variety of methods to limit the residency and citizenship rights of foreign workers. Such methods include temporary migration rules, guestworker programs, sponsorship rotation systems to limit the duration of foreigners’ stays, limits on migrant
A group of Chinese construction workers huddles on the sidewalk for over a week in front of Dubai’s Ministry of Labor. The workers protest their construction company’s refusal to pay them sufficient wages to compensate for the exorbitant fees they had paid to the recruitment agency in China before making the long trip to Dubai. The Dubai-based company refuses to acknowledge any wrongdoing or responsibility for the practices of its business partner in China. The Ministry of Labor takes the company’s position that the workers are found to be “protesting with no legitimate reason” and threatens them with deportation. The workers have no choice but to accept the Dubai-based company’s insufficient compensation offer, knowing that their families will suffer the consequences. The other option is to return home and lose the money they likely borrowed to make the trip.

This situation illustrates the complexity of the recruitment and employment of migrant construction workers in the United Arab Emirates (UAE) and in many other destination countries around the world. In the UAE workers cannot simply change employers, since their presence in the country is tied to their employer under the terms of the country’s sponsorship system, which leaves workers dependent on the good will of employers in a country where the government does not have the will to enforce the law. The sponsorship system allows employers to confiscate passports, detain workers, and restrict their movements, with no accountability for violations of the law. Migrant construction workers in the UAE are vulnerable to exploitation because they have no voice and no one to advocate on their behalf in one of the richest countries in the world.

The city-state of Dubai in the United Arab Emirates, a burgeoning megacity of skyscrapers, artificial islands, and shopping malls, has become the leader in foreign direct investment in the Middle East and North Africa, with a total of $18.72 billion invested in 160 projects, just in 2006. But this city is being built on the backs of migrant construction workers. Migrant workers from South Asia, with a growing number of Chinese and Nepali laborers, constitute the backbone of the UAE’s construction workforce. The UAE’s economy is highly dependent on foreign workers.

Migrant construction workers in the UAE, who number more than 500,000, toil for extremely long hours (often in the hot sun), languish in squalid housing, and work in dangerous conditions. It is estimated that more than 880 migrant construction workers died in the workplace in 2004. By 2006 migrant construction workers had enough of late wages, dangerous working conditions, and disrespect. They decided to take matters into their own hands. Strikes spread across the city, culminating in a highly visible riot at the Burj El-Arab Tower, the symbol of Dubai’s success. Workers in transportation, services, and even in Dubai’s Media City (a government-created special zone where many news organizations have located their regional headquarters), followed their example in laying down their tools and staging a strike.

In response to growing international criticism following the Dubai protests, in November 2006 the UAE government took a series of measures to address the key problems associated with exploitation of migrant workers in the country. The UAE Ministry of Labor promptly concluded negotiations and signed memoranda of understanding (MOUs) with India, Pakistan, Bangladesh, and Sri Lanka to deal with unscrupulous recruiting agents. Other initiatives announced included the recruitment of more labor inspectors, the issuance of a new labor law, and the establishment of labor courts to effectively arbitrate disputes. Yet with all of these initiatives, the perspective of non-UAE working people residing in the country has not been taken into account. The UAE government needs to reach out to those workers and include them in the reform process.

The UAE government’s decision to negotiate MOUs with the four major sending countries is a positive step for the UAE and its workforce, both citizen and migrant workers. However, the government lacks critical human resources and the expertise to implement the key issues covered by the MOUs, and MOUs are often weak on labor standards and protections for workers. A crackdown on unscrupulous recruiters/employers in the countries of origin is very much needed, but key gaps exist both in the ability of the UAE to monitor and enforce its labor law in country, and in the absence of genuine representation of working people in UAE government reform efforts.

workers’ ability to bring their families with them, and curbs on long-term or permanent residency and naturalization rights. Migrant worker rights organizations have reported that such migration policies increase workers’ vulnerability to abuse under legal migration programs and work permit arrangements that tie migrant workers to a particular employer. According to the International Organization for Migration, these organizations report a “rise in the incidence of unpaid wages, confiscated passports, confinement, lack of job training, and even violence against migrant workers who are legally present in a number of countries under various work permit schemes.”

In the United Arab Emirates, for example, over 2.7 million migrant workers make up 95 percent of the private-sector workforce. The UAE’s economy is heavily dependent on foreign workers. Nearly all of the construction workers in the UAE are migrants. An average wage for a migrant construction worker in the UAE is $175 a month, a sharp contrast to the average per capita income of $2,106 a month. These construction workers enter the UAE under a sponsorship system that ties each migrant worker to an individual employer and allows employers to confiscate passports, detain workers, and restrict their movements. Workers are required to live in labor camps. They are not permitted to bring their families with them to the UAE, and the duration of their stay is strictly controlled.

A similar system is currently being debated in the United States as an expanded guestworker program. In the view of the AFL-CIO, such a program would allow employers and corporations to turn permanent employment into temporary jobs staffed by foreign workers who often are not able to exercise their rights: “Under any guestworker program, a corporation has the ability to import foreign workers who remain under an employer’s control, not only for their livelihoods, but also for their legal immigration status. Workers are unlikely to complain about substandard working conditions because if they do they could lose their jobs and face deportation.”

Guestworker or “temporary migration” programs are also under negotiation in international trade agreements. Members of the WTO are negotiating the expansion of the General Agreement on Trade in Services (GATS) Mode 4. According to the U.S. Trade and Migration Working Group, “GATS defines four modes of trade in service depending on the location of the provider and consumer at the time the service is provided. The fourth mode (Mode 4) covers the temporary international migration of workers for the purpose of services provision. Mode 4 is a framework for a global guestworker program because it ties workers’ visas to a specific employer or contract creating a class of temporary workers who would enjoy fewer rights than citizen workers and permanent immigrants.”

The American Friends Service Committee notes:

Since developing country governments have pushed for Mode 4 commitments covering low and medium-skilled sectors, the negotiations have stalled. Developed countries claim they are reluctant to cede control of immigration to the WTO because of security concerns. The Mode 4 issue is increasingly becoming a deal-breaker for developing country negotiators—especially the Least Developed Countries. A growing number of groups representing migrant communities, organized labor, people of faith, and people concerned with human rights and justice, even those based in developing countries, are expressing opposition to the expansion of GATS Mode 4 and question its potential as a development policy.

While WTO-level negotiations on global guestworker programs are currently stalled, individual countries continue to advocate for and expand such programs. At the same time, worker rights advocates continue to find cases of migrant guestworker exploitation.

Many countries pass legislation that restricts immigration, making it more difficult for workers to enter a country legally in search of employment, even when there is a demand for labor and jobs are available. The government of Malaysia, for example, has
periodically implemented mass deportations or expulsions of undocumented migrant workers. According to Amnesty International, in 2002 “the government ordered an estimated 600,000 undocumented migrant workers to leave Malaysia before an August deadline, after which harsher penalties were to be imposed under the newly amended Immigration Act, including sentences of up to five years imprisonment and six strokes of the cane.”

More than 300,000 migrant workers left Malaysia during the crackdown; severe overcrowding was reported in departure ports, during transportation, and in immigration detention centers. Many migrant workers were forced to leave Malaysia without their wages or back pay, often exacerbating their indebtedness. Many migrant workers were also vulnerable to abuse and exploitation by agents, employers, and traffickers who took advantage of their precarious situation. The Malaysian government implemented such policies despite its acknowledgment of the contribution made by foreign workers in developing the country’s economy and productive capacity. Amnesty International notes:

As a rapidly developing nation with a population of 25 million, Malaysian business continues to benefit from competitive labor supplies from poorer neighboring countries, including the Philippines, Indonesia, Bangladesh and India, especially to work in the low-skilled sectors of construction, agriculture and services. Following the 2002 mass deportations, serious labor shortages were experienced by the construction and plantation sectors, prompting the authorities to expedite new approvals for recruiting foreign workers for specified industries.

By imposing immigration laws that are inconsistent with economic realities, countries place migrant workers in a vulnerable situation. When there is a demand for cheap labor, there is always a supply of low-income workers willing to take the jobs. Restrictive immigration policies often force workers to migrate through irregular channels, increasing their vulnerability to exploitation and making it easier for traffickers to “fish in the stream of migration.”

Anti-Slavery International emphasizes, “Governments in developed countries are generally reluctant to publicly recognize their dependency on both skilled and unskilled migrant labor. However, the reality is that demand for migrant workers will be filled by irregular migration unless policymakers recognize that it is in their national interest to facilitate and manage this process.”

In response to increasing media reports chronicling the abuse of Indonesian migrant domestic workers in Saudi Arabia in the early 2000s, the government of Indonesia temporarily stopped all migration of Indonesian women and young girls to Saudi Arabia to work as domestics. The government, however, did not address the lack of employment opportunities for Indonesian women at home or other underlying factors that led women to migrate abroad or young girls to be sent away from their homes to work. This policy may have resulted in Indonesian women finding more dangerous and irregular channels through which to migrate.

Abuses of Migrant Worker Rights

When workers cannot migrate safely and are forced to migrate through unofficial or irregular channels, under constant threat of deportation or expulsion, they are vulnerable to exploitation by employers, agents, and traffickers. Employers often take advantage of workers’ status and violate their basic human rights. Even workers who migrate through regular and official channels are vulnerable. They are often exempt from local labor laws and afforded less protection than other workers in the destination countries, especially if they work in the informal economy.

Migrant workers are prey to abusive labor practices as a result of competitive pressures arising from accelerated global economic integration. In today’s global economy, exported products are often produced through a complex supply chain, which includes subcontracted production and the sourcing of raw materials. Unregulated or under-
bondage, dangerous working conditions, forced labor, physical violence, and sexual harassment. Importers and retailers may argue that they are not responsible for such abuse by subcontractors, but clearly their price demands have a direct impact on labor exploitation. 54

Informal economy workers often toil outside the jurisdiction of labor inspectors and in many countries are not considered “workers” under the labor law. This is particularly true of domestic workers, the majority of whom are women and young girls. Human Rights Watch reports:

- Domestic workers, often making extraordinary sacrifices to support their families, are among the most exploited and abused workers in the world. Abuses against domestic workers, typically taking place in private homes and hidden from the public eye, have garnered increased attention in recent years. The long list of abuses committed by employers and labor agents includes physical,
psychological, and sexual abuse; forced confinement in the workplace; nonpayment of wages; and excessively long working hours with no rest days. In the worst situations, women and girls are trapped in situations of forced labor or have been trafficked into forced domestic work in conditions akin to slavery.55

Around the world, domestic work is often characterized by isolation and exploitation. Workers’ freedom of movement is often restricted, and with a limited ability to communicate in the national language, their freedom of expression is circumscribed. With no legal protection from overwork, a domestic worker can find herself on call 24 hours a day, seven days a week. Total dependence on their employers also exposes domestic workers to gender-based violence, including sexual harassment, rape, and in some cases trafficking into sexually exploitative situations. Despite minimum age requirements, many domestic workers are children, some as young as 12 or 13.

Rise of Debt Bondage

“Taking advantage of migrants’ desperation to find work, agents and employers have shifted the burden of recruitment fees, including airfare, visas, and administrative fees on to the workers themselves, while employers pay only nominal fees. This has led to an unreasonable debt burden on international migrant domestic workers.”

Nisha Varia, Human Rights Watch56

The nature of labor migration in today’s global economy, in particular the shifting of costs onto workers who seek jobs abroad, increases migrant workers’ vulnerability to debt bondage. Increasingly, recruiters and employment agencies require migrant workers to pay fees that employers are legally obligated to cover, such as the cost of visas, recruitment, transportation, housing, meals, passports, and medical tests. In order to pay the fees, migrant workers often obtain loans at exorbitant interest rates, either directly from employment agencies and labor recruiters or from local loan brokers. Workers thus incur huge debts that they must pay off before they can leave their jobs.

Abuse of Migrant Domestic Workers: The Story of Mauwanatul

Mauwanatul was 17 years old when she arrived in Singapore in 2000, weighing 50 kilograms (about 110 pounds). She had been recruited as a housemaid, a job that would help support her family back home Indonesia.

In December 2001 she was found by police, weighing 36 kilograms (approximately 79 pounds) and bearing the scars of 200 separate injuries. There were burn marks, cuts, bruises, and open wounds. She had been burned with cigarettes and boiling water, bashed with fists, cane and hammer. Her employer, a 47-year old tour guide told police, “There were so many times I beat her, I lost count of them.”

Like most maids in Singapore, Mauwanatul was not guaranteed a minimum wage, could be required to work all her waking hours, and was not automatically entitled to one day off each week.

Her employer starved Mauwanatul. Often all she would eat for lunch and dinner were packets of instant noodles. It was hunger that provoked the assault that ended her life. Accused of stealing leftover porridge from the tour guide’s infant daughter, the maid was kicked so severely that her stomach ruptured. Several days later she was found lying in agony in a vomit-stained T-shirt. Police had arrived too late to save her.

Debt bondage forces a worker to stay at a particular job for a particular employer or in a job chosen by the agent or debt holder. In some cases, debts are deducted from workers’ wages, usually by employers, and paid directly to agents. In many cases records are not kept, and employees have no way of knowing the extent of their indebtedness or when the debt is paid off. Migrant workers often work months without pay to reduce their debt; some, particularly domestic and agricultural workers, may labor unpaid for years. Workers who are exploited or abused by their employer may be trapped in involuntary servitude because of the debilitating debt. Workers who are deported may be told they must work to reimburse the costs of their accommodation in the deportation centers. In extreme cases of bonded labor, debt is passed from family member to family member, sometimes through many generations, resulting in children being born into debt.

While most fees levied on migrant workers are illegal under national and international law, weak enforcement enables them to remain commonplace. ILO Convention No. 181, Section 7.1, states that private employment agencies “shall not charge directly or indirectly, in whole or in part, any fees or costs to workers” unless the government, after consulting with the social partners, grants an exception. Moreover, the ILO Multilateral Framework on Labour Migration, Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration, which was adopted in 2005, states, “Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendations (No. 188).” It specifically requires them to:

- provide that fees or other charges for recruitment and placement are not borne directly or indirectly by migrant workers; and

- consider establishing a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to compensate migrant workers for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations to them.

Employers who demand the services of migrant workers should pay the costs of workers’ migration. Shifting these costs to workers institutionalizes the concept that a worker must pay for the “privilege” of laboring on behalf of others.

Some exploited workers agree to terms that meet the definition of bonded labor, but they do so voluntarily. In the words of one ILO study on the subject:

Crudely put, an immigrant worker may prefer bonded labor conditions in a wealthier destination country to an impoverished freedom back home. This appears to be the case of clandestine Chinese workers in France, who work long hours in heavily indebted circumstances for a number of years, in order to repay the advances they have received in their places of origin. Despite the appalling conditions, the exploited Chinese workers may see the light at the end of the tunnel. They may know that this is a finite period of suffering, a sacrifice that parents are willing to make for their children.

That workers would knowingly submit themselves to bonded labor stipulations speaks volumes about the disparities in the global economy that impel them to acquiesce to such indebtedness.

## Stages of Migration

While workers use a variety of methods to migrate, a vast number use placement, employment, or labor recruiting agencies to help them. For workers who use such a system, the migration process includes several stages, each of which may leave them vulnerable to some type of exploitation. As described by the U.S. Department of State in the 2006 *Trafficking in Persons Report*:

Structuring this mass movement of labor from supply to demand countries are contracts offered by recruiters representing labor agencies and
employers; contracts between labor agencies and employers sanctioned by the state as “sponsors”; and overarching memoranda of understanding between source and demand governments. Contracts offered to workers by recruiters cover basic conditions of employment—including wages, hours and duration—and cite the location and identity of the employer. The level of regulation and oversight of these contracts varies widely. Workers are prone to abuse and the risk of involuntary servitude when contracts are not honored or are replaced with new contracts containing less favorable terms after arrival in a destination country.61

The World Bank acknowledges that migrants “incur substantial costs, including psychological costs, and immigrants (particularly irregular migrants) sometimes run high risks; many suffer from exploitation and abuse. The decision to migrate is often made with inaccurate information. Given the high costs of migration—including the risks of exploitation and the exorbitant fees paid to traffickers—the net benefit in some cases may be low or even negative.”62

**The Recruitment Process**

Recruitment of migrant workers is a multistep process involving many actors. The most prominent are the recruitment or employment agencies.61 The status of these agencies varies from country to country. Often they are under the supervision of national or local governments and must have government licenses to operate legally. Agencies sometimes pay governments large amounts of money to obtain licenses, a strong indication of how lucrative recruitment of migrant workers can be. Many agencies operate without licenses due to

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**Debt Bondage of Central American Migrant Workers**

“The exploitation of H-2A and H-2B guestworkers commences long before they arrive in the United States. It begins, in fact, with the initial recruitment in their home country—a process that often leaves them in a precarious economic state and therefore extremely vulnerable to abuse by unscrupulous employers in this country.

“U.S. employers almost universally rely on private agencies to find and recruit guestworkers in their home countries, mostly in Mexico and Central America. These labor recruiters usually charge fees to the worker—sometimes thousands of dollars—to cover travel, visas and other costs, including profit for the recruiters. The workers, most of whom live in poverty, frequently must obtain high-interest loans to come up with the money to pay the fees. In addition, recruiters sometimes require them to leave collateral, such as the deed to their house or car, to ensure that they fulfill the terms of their individual labor contract. The entirely unregulated recruiting business can be quite lucrative. With more than 121,000 such workers recruited in 2005 alone, tens of millions of dollars in recruiting fees are at stake. This financial bonanza provides a powerful incentive for recruiters and agencies to import as many workers as possible—with little or no regard for the impact on individual workers and their families.

**Workers Start Off Deeply in Debt**

“ Typically, guestworkers arriving in the United States face a fee-related debt ranging from $500 to well over $10,000. Many pay exorbitant interest rates on that debt. When that’s the case, they have virtually no possibility of repaying the debt by performing the work offered by the employer during the term of the contract. Overwhelming debt is a chronic problem for guestworkers. Although U.S. laws do provide some obligation for employers to reimburse workers for their travel and visa costs, in practice it is rare that guestworkers are fully reimbursed. Most struggle to repay their debt, while interest accrues. These obstacles are compounded when employers fail to offer as many hours of work as promised—a common occurrence.”

the difficulty and high cost of obtaining them. Simply requiring an agency to obtain a license does not guarantee that it will follow proper procedures. Even licensed agencies sometimes send workers abroad with insufficient or fraudulent documents and deceive them about the nature or conditions of work.64

Employment agencies often hire agents to recruit workers from villages and rural areas or pay freelance or independent subagents for each worker recruited. Agents sometimes have entire networks of village-level subagents who recruit for them. Workers are often required to pay a recruitment fee to the agents, even though the agency also pays a fee to the agent, and the employer in the destination country also pays a fee to the agency that is supposed to cover costs related to recruitment and transportation. Such fees, as described earlier, can place migrant workers into debt bondage. Workers have no way of distinguishing between legal and illegal agencies or agents, or of knowing whether they will be the victims of illegal practices.65 Agents often fail to inform migrant workers of their rights, such as the minimum wage, maximum work hours, and their right to freedom of movement in the destination country. Many migrant workers are not given a contract to read, sign, or review with their families at the time of their recruitment. Agents are also known to promise work that turns out to be quite different from the actual jobs that workers find themselves doing. In some countries, government officials have been accused of receiving payments from illegal and unregistered agents to ignore their activities. As attention to issues of human trafficking and labor exploitation has increased, some efforts have been made to better regulate recruiting agencies.

Before Departure

After recruitment, some migrant workers spend time in an agency holding or training center while the documentation needed to work abroad is processed. Many recruiting agencies are required by law to provide training in life skills such as using washing machines and other modern appliances, and learning basic foreign language skills. The training does not always take place, and there is little control or regulation of the quality of the training provided. It does not generally include information about problems migrant workers may encounter abroad, how to protect themselves, or where to seek assistance. Women migrant workers are seldom informed of their rights. They are often told to “behave,” “be subservient,” and “obey the boss.” Migrant workers are usually given only the telephone number of the partner agency or their embassy/consulate in the destination country. They rarely receive information about shelters, other protection services, or government and NGO resources in the destination country.

Migrant worker activists from many countries of origin in Asia report that debt bondage is common and that the longer the workers remain in the hold-
ing centers the more indebted they become for food, accommodation, and medical care. Living conditions in the holding centers are poor; women migrant workers may be vulnerable to sexual harassment and sexual assault, including rape.  

Equally egregious, some holding centers restrict freedom of movement. Migrant workers are not permitted to leave the premises unaccompanied during their stay, which may last weeks or even months. In a 2001 interview at an employment agency in Batam, Indonesia, the staff of the holding center indicated that this policy was in place so that the migrant workers did not run away, as the agency had already invested money in their recruitment and transportation. Once recruited, migrant workers are not allowed to change their minds about migrating without repaying the cost of their recruitment, transportation, lodging, and other expenses. 

<table>
<thead>
<tr>
<th>Common Abuses in the Four Stages of Migration</th>
<th>Recruitment</th>
<th>Predeparture / Transit</th>
<th>Destination</th>
<th>Return &amp; Reintegration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt bondage</td>
<td>Dangerous or overcrowded transportation</td>
<td>Confiscation of identification &amp; immigration documents</td>
<td>Abuses &amp; exploitation</td>
<td></td>
</tr>
<tr>
<td>Deceit about type or conditions of work</td>
<td>Debt bondage</td>
<td>Debt bondage</td>
<td>Denial of unpaid wages or recourse for exploitation &amp; abuse</td>
<td></td>
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<tr>
<td>Fake or falsified documents</td>
<td>Fake or falsified documents</td>
<td>Deceit about conditions or type of work</td>
<td>Discrimination, stigma, or rejection by family/community upon return</td>
<td></td>
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<tr>
<td>Illegal fees</td>
<td>Illegal confinement</td>
<td>Detention &amp; imprisonment</td>
<td>Disruption of family</td>
<td></td>
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<tr>
<td>Misleading or no work contract</td>
<td>Illegal fees</td>
<td>Illegal confinement</td>
<td>Divorce, interference with marriage</td>
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<tr>
<td>Inflated prices for services</td>
<td>Illegal fees</td>
<td></td>
<td>Emotional ill health of children left behind</td>
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<tr>
<td>Physical abuse or violence</td>
<td>Physical, psychological, &amp; sexual abuse and violence</td>
<td></td>
<td>Extortion from government &amp; private agents</td>
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<tr>
<td>Poor &amp; unhygienic living conditions</td>
<td>Poor &amp; unhygienic living conditions</td>
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<td>Forcible return</td>
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<tr>
<td>Sexual harassment or assault</td>
<td>Reduced or withheld wages</td>
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<td>Long-term or chronic health problems, including HIV/AIDS</td>
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<tr>
<td>Unsafe working conditions</td>
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<td></td>
<td>Unwanted pregnancy</td>
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<tr>
<td>Violations of worker rights</td>
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</table>
In some source countries, local government labor offices are tasked with inspecting migrant worker holding centers, registering agents, and identifying illegal agents. These offices, however, are often underfunded and understaffed and their employees are undertrained. There is anecdotal evidence that officials are sometimes complicit in exploiting migrant workers; agencies reportedly bribe some officials to ignore problems such as unsafe holding centers and unscrupulous agents.

Other government representatives such as immigration and customs officials, municipal government employees, and police and military personnel may be complicit, if not directly involved, in the trafficking and exploitation of migrant workers. Such involvement includes helping to issue false or fake documents such as passports and identity cards, working with traffickers to transport victims, accepting bribes to ignore violations, running or profiting from local brothels, or selling victims into prostitution.

**In Transit**

Migrant workers also face dangers during transit from holding centers to employment in the destination country. Trucks, boats, and other means of transportation used to move migrant workers illegally are often overcrowded and/or unsafe. At this stage, migrant workers are particularly vulnerable to exploitation or trafficking. They often change agents at the border, and the new agent may alter the worker’s destination or the type or conditions of work. For example, while the agent in the home country may recruit a woman to work as a domestic abroad, the agent in the destination country may traffic the woman into prostitution or some other form of forced labor.

**In Destination Countries**

As in all stages of migration, workers are at risk for forced labor and debt bondage in the destination country. Upon arrival, migrant workers, both documented and undocumented, have been coerced or tricked into prostitution, domestic work under slavery-like conditions, and exploitative jobs in factories or on plantations due to debt bondage.

Migrant workers have also been detained and imprisoned, often without access to legal counsel, assistance, or translation services. The detention of migrant workers in destination countries is an important issue, because many migrant workers who are charged with crimes in destination countries may be victims of trafficking or exploitation. For example, a young girl charged with working without documents as a domestic worker in a destination country may have been trafficked or forced into involuntary servitude or debt bondage. Unfortunately, officials in many destination countries often are not properly trained to deal with exploitation and trafficking victims who end up in the legal or criminal system. Additionally, many countries do not have regulations specifying which mitigating circumstances can be applied in cases of trafficking or exploitation.

In countries such as Japan, Saudi Arabia, and elsewhere in the Middle East, few resources exist to assist migrant workers who encounter problems. Neither home-country embassies nor consulates have sufficient funding or trained staff to address exploitation and trafficking of migrant workers. NGO activists in Hong Kong and Taiwan have alleged that officials from home-country consulates and embassies are sometimes complicit in the exploitation or trafficking of migrant workers and work in collusion with employment agents. Some countries, however, are more protective. Their consulates provide temporary shelter and repatriation for migrant workers who need assistance. They cooperate with destination country police in collecting evidence on traffickers and abusive employers. Country-of-origin governments often sign bilateral agreements or memoranda of understanding (MOUs) with host countries. MOUs often cover only procedural matters regarding recruitment of migrant workers, omitting worker protection.
issues. Therefore, there are few avenues, other than ad hoc negotiation, through which consulates or other government entities can seek redress for these workers. NGO activists and other civil society groups laud the Philippines and its embassies/consulates abroad for being one of the better governments in protecting and providing services to its migrant workers abroad. As noted by the U.S. Department of State:

Governments of source countries seek to prevent such exploitation by negotiating agreements with demand country governments. The Philippines Government, with its strong Overseas Employment Agency, stands out as a leader in managed labor migration by protecting its overseas workers. Other labor source governments are less vigorous in protecting their workers abroad.69

In fact, bilateral agreements or MOUs between sending and host countries are often criticized for not containing provisions to protect migrant workers. These agreements tend to deal more with migration management, not migrant rights. For example, the 2006 agreement between the governments of Malaysia and Indonesia allows employers to confiscate workers’ passports. While the Philippines is often cited as a model for other home country governments in its bilateral agreements with receiving countries, neither agreements nor MOUs provide the same protections and penalties as labor laws, yet governments often see them as a valid replacement for such laws.

Return to Home Country

Exploitation and abuse of migrant workers may continue on their return to their home countries. Governments and private agents may extort illegal fees or use intimidation to force them into using transportation at inflated prices. Workers may also be forcibly returned. As mentioned previously, the government of Malaysia has on several occasions instituted mass deportations of undocumented migrant workers. During forcible returns, workers are further subjected to illegal fees, inflated transportation costs, poor living conditions, and unsafe transportation.70 Workers are also denied the ability to recover unpaid wages or obtain recourse for exploitation or abuse.

Migrant Workers and Human Trafficking

Migration and human trafficking (also called trafficking in persons, or TIP) are often distinguished from one another by the notion that migration is characterized by choice and trafficking by coercion, deception, or force.71 However, in today’s global economy migration and trafficking exist along a continuum. Women, men, and children may start out migrating for the promise of well-paid jobs and end up being coerced to work under exploitative conditions such as those commonly found in garment industry sweatshops, agriculture, domestic work, or sex work. Given the large numbers of workers who migrate for work globally, the particular vulnerability of migrant workers to trafficking is significant.

The UN defines human trafficking as:

the recruitment, transportation, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.72

The chart below, extrapolated and simplified from the UN definition, is a useful tool for analyzing individual cases to determine whether or not they constitute trafficking. If at least one condition from each category is met, the result is trafficking. The consent of the victim to the intended exploitation is irrelevant if one of the means listed above is employed. In the case of children, the recruitment, transportation, transfer, harboring, or receipt
of a child for the purpose of exploitation is considered human trafficking even if it does not involve any of the means listed above. A “child” is any person under 18 years of age.

Human trafficking is modern-day slavery. The ILO estimates that at any given time, 12.3 million men, women, and children worldwide are deceived or coerced into forced and bonded labor, involuntary servitude, and sexual slavery; of these, 9.8 million are exploited by private agents.73

Human trafficking is often wrongly equated only with prostitution. In reality, trafficking is used in a variety of economic sectors (primarily manual or low-wage). At its core, human trafficking is often about labor exploitation in the context of labor migration. Many migrants who become victims of trafficking start out as workers who leave their homes in search of work.

It is often assumed that trafficking victims are undocumented migrants who were smuggled into a country illegally. This is only partly true. Many trafficking victims end up in situations of forced labor, involuntary servitude, or debt bondage even when they migrate through legal channels. Large numbers of migrant workers accept contracts to work in low-wage jobs or manual labor in construction, agriculture, domestic work, and manufacturing. These workers are recruited legally in their home countries, and they travel and enter their destination countries legally. Often only after arrival do unscrupulous labor agents or employers exploit workers, creating conditions that meet the definition of human trafficking. Human trafficking thrives when safe migration processes are lacking and restrictive immigration policies are inconsistent with economic realities.

Human trafficking is a labor issue for three key reasons:

• it is often linked to exploitation in labor;
• it is one of the worst forms of labor exploitation; and
• many of its root causes relate to violations of worker rights, lack of labor standards and protections for workers (especially migrant workers), and globalization forces that displace workers and encourage competition for low-wage jobs.

<table>
<thead>
<tr>
<th>Process</th>
<th>Way/Means</th>
<th>Goal</th>
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<tbody>
<tr>
<td>Recruitment</td>
<td>Threat or Coercion</td>
<td>Prostitution or Pornography</td>
</tr>
<tr>
<td>or Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>or Transferring</td>
<td>Abduction or Fraud</td>
<td>Violence/Sexual Exploitation</td>
</tr>
<tr>
<td>or Harboring</td>
<td>Deception or Abuse of Power</td>
<td>Forced Labor or Involuntary Servitude</td>
</tr>
<tr>
<td>or Receiving</td>
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</tbody>
</table>

(Chart developed by Solidarity Center and the International Catholic Migration Commission)
Human trafficking worsens many of the problems facing workers worldwide. It contributes to depressed wages for all workers, weakened workforce productivity, loss of remittances, and an under-educated and undertrained generation of workers. It also contributes to the degradation of labor standards, support, and benefits for workers. As stated by the ILO, “Where labor standards are rigorously adhered to, workers are well unionized and labor laws are monitored and enforced—for all workers, indigenous or migrant—the demand for trafficked people and services is likely to be low.”

**International Instruments**

The UN and the ILO have developed comprehensive international instruments aimed at protecting the rights of migrant workers. However, the reluctance of destination countries to broaden the rights afforded to migrant workers results in infrequent ratification and enforcement of these instruments by the states at which they are primarily aimed. Moreover, these instruments do not address many of the global trade and economic policy issues discussed above and thus leave migrant workers vulnerable to abuse.

The UN International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (commonly called the UN Convention) entered into force in July 2003, after 13 years of efforts to obtain ratification by enough countries. The UN Convention, as described in an American Friends Service Committee report, “extends basic human rights, as defined in the Universal Declaration of Human Rights, to migrant workers both documented and undocumented. It also contains the principle of equality of treatment between migrant workers and nationals regarding wages, extensive rights to transfer earnings, and access to emergency medical assistance and education for their children.”

ILO conventions, specifically Convention No. 97 on Migration for Employment and No. 143 on Migrant Workers, provide migrant workers with better-defined rights than the UN Convention in terms of freedom of association and the right to organize, social security, education, training, housing, cultural rights, and other collective freedoms.

Critics note, however, that both the UN and the ILO lack effective enforcement mechanisms. Moreover, only the sending countries have ratified these conventions. None of the major receiving countries, such as the United States, Canada, Japan, India, or any of the Gulf States, has ratified either ILO convention or fully ratified the UN Convention. The lack of ratification and enforcement mechanisms in receiving countries renders these conventions hollow.

Other core labor standards, however, may be used to protect migrant workers. For example, in 2003 the Inter-American Court of Human Rights issued an advisory opinion titled “Legal Status and Rights of Undocumented Migrants.” The court stated that employment and labor rights must be extended to all workers equally, regardless of immigration status. The court’s decision holds that undocumented workers are entitled to the same worker rights as citizens and documented workers, including back pay and wages owed, protection from discrimination, and health and safety protection on the job. The court also found that equality of treatment means that governments must take “necessary measures” to guarantee these rights. Some commentators interpret that finding to mean that countries should look seriously at their workplace monitoring priorities, given the often-heavy emphasis on immigration enforcement and relative lack of emphasis on monitoring rights and working conditions.

Clearly, migrant workers must be extended basic workplace rights. The ILO Multilateral Framework on Labour Migration, Non-binding Principles and Guidelines for a Rights-Based Approach to Labour Migration states, “[A]ll migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and its Follow-up, which are reflected in the
eight fundamental ILO Conventions.\textsuperscript{80} Other internationally accepted labor standards, such as equal remuneration, workplace safety and health, and wage and hour protections, must also be extended to all workers regardless of their nationality or their immigration status, and as noted by the ILO, should cover “sectors such as agriculture, construction and hotels and restaurants” (see “International Instruments on Migrant Worker Rights” box).\textsuperscript{81}

Domestic worker advocates from around the world, including the international trade union movement, have been advocating for an international convention designed specifically to protect domestic workers, who, as discussed earlier, are all too often excluded from national labor legislation and denied the freedom of association, the right to collective bargaining, and other basic human and worker rights. In March 2008 the Governing Body of the ILO decided to include the item “Decent Work for Domestic Workers” on the agenda of the 99th session (2010) of the International Labor Conference. Sir Leroy Trotman, spokesperson of the Workers’ Group of the ILO Governing Body, stated, “The ILO has long been arguing in favor of a specific legal instrument for this particularly vulnerable category of workers. This step towards the development of a new legal instrument should contribute to filling a huge gap in terms of promoting decent work for all.”\textsuperscript{82}

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\begin{tabular}{|l|l|}
\hline
\textbf{Migrant Worker Exploitation and HIV/AIDS} & \\
\hline
The HIV/AIDS epidemic has had a devastating impact throughout the world, and it permeates every aspect of life, including work. HIV/AIDS affects individuals’ ability to work and earn a living. It deprives families of the ability to make enough money for even basic necessities. It affects productivity, profits, and numbers of organized workers. Migrant workers, especially exploited or trafficked workers, may be vulnerable to HIV/AIDS. They are often away from their families and support networks for long periods. They may work in dirty, dangerous, and difficult jobs, often without adequate safety equipment, education, or information about health and safety. They may also have less access to healthcare and medical services away from home, particularly since migrant workers may be less likely to receive healthcare benefits from their employers or from the state. Stigma and discrimination against HIV-positive individuals may push them to migrate. \\

Often before migrant workers travel abroad, employment agencies provide them training. Rarely does training involve education about HIV/AIDS and other communicable diseases. Another frequent premigration requirement is a medical test that includes an HIV screening. Workers who test positive may not be told the result. They may be denied a work permit on the basis of their positive status, but this is not revealed to them, so even if they end up staying in their home city or village, they do not know to seek treatment or adopt behaviors to stop the spread of the disease to others. Other migrant workers are tested upon arrival in the destination country and deported if they test positive for HIV. \\

Migrant workers’ vulnerability to exploitation creates an obvious link between HIV/AIDS and human trafficking. Trafficked workers are rarely given access to medical services, let alone testing for HIV/AIDS or other sexually transmitted diseases (STDs). The type of work they engage in may make them vulnerable to the disease, with no resources or ability to seek assistance. Workers who are trafficked into sexual exploitation and forced prostitution may have high rates of HIV and other STDs as they may not have access to (or control over the use of) condoms or the ability to practice safe sex. \\

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Trade Unions’ Role in Promoting and Protecting Migrant Rights

Trade unions have an important role to play in promoting migrant rights, protecting migrant workers, and combating human trafficking for labor exploitation. As grassroots worker organizations, unions are uniquely situated to address many root causes and factors that make workers vulnerable to exploitation. Through their members, unions can reach into communities and target entire families. Moreover, trade unions’ advocacy role with governments enables them to influence migration, immigration, labor, and anti-trafficking policies. Unions also have experience in negotiating and developing relationships with employers of migrant workers.

Trade union initiatives related to migrant worker rights may take many forms. A few examples:

- **Advocacy**: Trade unions advocate nationally and internationally for the rights of migrant workers, helping to reduce their vulnerability to exploitation. Trade unions advocate to governments for fair and realistic immigration laws, regulations, and policies that protect the economic, political, and social rights of migrant workers.

- **Awareness Raising**: Using their grassroots networks and ties to workers in workplaces, unions raise awareness about safe migration and help workers, local and migrant, understand their rights.

- **Labor Inspection**: Working with law enforcement, including government labor inspectors, unions help to ensure that workplaces and employment agencies are monitored and inspected.

- **Labor Standards and Protections**: Trade unions around the world work to ensure that labor laws and regulations cover all workers, regardless of immigration status, nationality, gender, or other characteristics. Trade unions also work to ensure that all countries incorporate international labor standards into their laws and policies, and that international trade agreements and global economic policies include the core labor standards.

- **Legal Aid and Victim Protection**: Unions provide legal aid and other protection services to exploited and trafficked workers to help them get back pay, avoid deportation, and access government and nongovernmental services.

- **Organizing**: The freedom of association and the right to organize are key protections for migrant workers.

When migrant workers have the right to form or join trade unions, they are afforded better wages and protections in the workplace. Trade unions around the world in both origin and destination countries are helping migrant workers organize themselves into unions or associations. Migrant workers are much less likely to be exploited or trafficked if they are allowed the freedom of association and the right to organize.

Some unions in destination countries may be reluctant to organize migrant workers or fight to protect their rights. These unions may perceive migrant workers as a potential threat to the livelihoods of their members, or they may simply lack the resources to assist them. Source-country unions may not understand the benefit of organizing or assisting workers who are going abroad. Increasingly, however, unions around the world are an important partner in campaigning for the ratification of the UN Migrant Workers Convention. Not only because they often have easier access to government officials, but primarily because they represent a large section of the population, have a well-established network of local branch offices and are working cooperatively across sectors and across borders.”

International Instruments Affecting Migrant Workers

International Instruments on Migrant Workers and Labor Migration

- UN International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
- ILO Migration for Employment Convention (Revised), 1949 (No. 97)
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Employment Policy Convention, 1964 (No. 122)
- EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962 (No. 118)
- Maintenance of Social Security Rights Convention, 1982 (No. 157)
- Migration Statistics Recommendation, 1922 (No. 19)
- Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Migrant Workers Recommendation, 1975 (No. 151)
- Protection of Migrant Workers (Underdeveloped Countries) Recommendations, 1955 (No. 100)
- Private Employment Agencies Convention, 1997 (No. 181)
- Private Employment Agencies Recommendation, 1997 (No. 188)
- ILO Multilateral Framework on Labour Migration, Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration, 2005

ILO Conventions Applicable to All Workers (Migrant and Indigenous)

- Private Employment Agencies Convention, 1997 (No. 181)
- Private Employment Agencies Recommendation, 1997 (No. 188)
- Freedom of Association and Protection of the Right to Organize Convention, 1950 (No. 87)
- Application of the Principles of the Right to Organize and to Bargain Collectively Convention, 1951 (No. 98)
- Forced Labor Convention, 1930 (No. 29)
- Abolition of Forced Labor Convention, 1957 (No. 105)
- Equal Remuneration Convention, 1951 (No. 100)
- Nondiscrimination in Employment Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labor Convention, 1999 (No. 182), 1955 (No. 100)
- Employment Policy Convention, 1964 (No. 122)
- EQUALITY OF TREATMENT (ACCIDENT COMPENSATION) CONVENTION, 1925 (No. 19)
- Labor Clauses (Public Contracts) Convention, 1949 (No. 94)
- Labor Inspection (Agriculture) Convention, 1969 (No. 129)
- Labor Inspection Convention, 1947 (No. 81)
- Maternity Protection Convention, 2000 (No. 183)
- Minimum Wage Fixing Convention, 1970 (No. 131)
- Nursing Personnel Convention, 1977 (No. 149)
- Occupational Safety and Health Convention, 1981 (No. 155)
- Occupational Health Services Convention, 1985 (No. 161)
- Plantations Convention, 1958 (No. 110)
- Protection of Wages Convention, 1949 (No. 95)
- Safety and Health in Agriculture Convention, 2001 (No. 184)
- Safety and Health in Construction Convention, 1988 (No. 167)
- Safety and Health in Mines Convention, 1995 (No. 176)
- SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION, 1952 (No. 102)
- Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
are taking the lead in advocating for migrant worker rights. More and more destination-country unions understand that the global economy is not structured to benefit workers (see “Push and Pull Factors” section) and that without union solidarity, all workers suffer. Moreover, many unions around the world now understand that by organizing migrant workers and ensuring that they benefit from the protection of labor standards and rights, that wages and working conditions improve, benefiting all workers and enhancing the strength and membership of unions.

Trade unions have been successful in working with governments, civil society, and even employment agencies to develop laws, regulations, and policies aimed at ensuring that workers can migrate safely, thus rendering them less vulnerable to exploitation and trafficking. Unions also conduct predeparture training for migrant workers so that they know their rights before they leave home. Unions often use their unique presence in economic sectors to combat the exploitation of migrant workers. For example, transportation union members (truckers, taxi drivers, and other transport workers) serve as watchdogs along transit routes. Hotel union workers watch for exploitation in tourist areas. Teachers’ unions have developed curricula and programs to increase children’s awareness about their rights and safe migration. Garment and textile unions organize migrant workers in EPZs and QIZs to improve their working conditions.

Below are examples of best practices from around the world of the role trade unions play in promoting and protecting migrant worker rights:

- **ILO and ITUC Global Programs:** The ILO and the ITUC are addressing migrant worker rights and the problem of human trafficking for labor exploitation. The ILO has initiated a Special Action Program to Combat Forced Labor, which has a mandate that includes antitrafficking initiatives. The ILO also promotes migrant worker rights by setting standards, assisting member states in formulating their policies, and enhancing comprehension of the impact of migration policies through training and research. The ILO works for safe and constructive migration.83

- **European Trade Union Confederation (ETUC) Action Plan and Policy on Migration:** The ETUC is working with its affiliates to promote migrant worker rights throughout Europe. Its efforts include the development of the ETUC Action Plan on Migration, Integration and Combating Discrimination, Racism and Xenophobia. The ETUC is taking the initiative to monitor and further implement the action plan; intensify its call for ratification of the UN Convention and ILO and Council of Europe instruments on migrant workers and their families; promote freedom of association for migrant workers regardless of legal status; and explore ways to establish an ETUC membership card to develop mutual aid systems across borders.84

- **AFL-CIO Advocacy:** The U.S. Government continues to debate immigration law reform, and many proposed policies deny migrants their basic worker rights. The AFL-CIO is leading the U.S. labor movement’s efforts to ensure that immigration law reform makes protecting workers a priority. The AFL-CIO has partnered with the National Day Laborer Organizing Network to further protect the rights of documented and undocumented migrant workers in the United States. The AFL-CIO has also developed best practices and training programs for individual unions on immigrant worker rights; established a team of union and community-
based lawyers to develop legal strategies for raising labor standards for immigrant workers; and jointly convenes a coalition of unions, faith-based and community-based groups, and other NGOs called the Low-Wage Immigrant Worker Coalition.

- **Farm Labor Organizing Committee (FLOC) and Safe Migration:** FLOC, which organizes and supports migrant workers in the U.S. agricultural industry, advances worker rights through organizing and collective bargaining for migrant workers. In 2004 FLOC helped Mexican migrant farm workers win a union contract covering more than 1,000 farms throughout North Carolina. The groundbreaking contract between FLOC and the North Carolina Growers Association gave 8,500 seasonal workers from Mexico a voice on the job. The contract—the first ever signed by farmers in North Carolina—also allows FLOC to recruit and hire the Mexican workers, ensuring their safety and their legal ability to work in the United States. In less than four years, conditions for FLOC workers have changed dramatically. Wages are higher and housing conditions are much better. Most importantly, the migrant farm workers have a direct voice in their working conditions through a national labor union and an effective process for resolving grievances and problems.86

- **Indonesian Migrant Workers’ Union (IMWU) and the Right to Organize:** Freedom of association and the right to organize are key protections for migrant workers. When migrant workers have the right to form or join a trade union, they receive better wages and protections in the workplace. Indonesian migrant domestic workers in Hong Kong came together and formed the IMWU, now an affiliate of the Hong Kong Confederation of Trade Unions. Even though domestic workers are mostly spread out in private households in Hong Kong, the IMWU has organized more than 2,500 women members. The IMWU has also been able to influence government policy to the benefit of its members. With the right to organize, domestic workers in Hong Kong are better off than their counterparts in Singapore and Saudi Arabia, who are denied this right, and wages and working conditions for migrant domestic workers in Hong Kong are generally better than those of domestic workers in other countries.

- **Jordanian General Trade Union for Workers in Textile, Garment, and Clothing Industries (GTUTI) and Organizing Migrant Workers in the QIZs:** Being able to join and work with national unions in host countries greatly enhances the ability of migrant workers to exercise their freedom of association and right to organize. In Jordan, the legal right of migrant workers to join unions, or be represented by unions in any way, remains ambiguous. The Jordanian garment union has taken the lead in changing the perception of migrant workers among the Jordanian public and generating support for migrant rights. GTUTI has challenged the Jordanian law that prohibits migrant worker organizing. In response to international and union pressure, the Minister of Labor has made official public announcements allowing migrant workers to join unions in Jordan. The Jordanian union has established offices in each of the four QIZs, staffed by fully trained organizers who speak the native languages of the migrant workers from Bangladesh, Sri Lanka, China, and elsewhere. GTUTI has developed concise pocket-sized booklets, translated into the languages of the workers, which outline migrant rights at work and where to go for assistance. In addition, organizers have been trained at the workplaces to report on abuses and violations of core labor standards. As a result of these efforts, over 3,000 migrant workers have joined the GTUTI and are covered by a basic collective bargaining agreement.

- **Malaysian Trades Union Congress (MTUC) and Migrant Worker Support Services:** The MTUC has become a leading voice in the campaign to gain rights for migrant workers in Malaysia. Because Malaysia is among the destination countries with the highest number of migrant workers, the recent MTUC initiative to protect migrant workers is significant. In addition to signing a cooperation agreement with the Indonesian Trade Union Confederation, the MTUC is organizing migrant workers, raising awareness through the media about migrant
rights, and providing legal aid and support to migrant workers in their dealings with employers and the courts.

Safe Migration for All

Labor migration is an increasing phenomenon in the age of globalization. While migration is a valid and successful option for many workers, it is also rife with abuse. The inequitable forces of globalization (such as free trade agreements, market liberalization, and structural adjustment programs) that push and pull workers to migrate increase their vulnerability to exploitation. Restrictive immigration policies that ignore economic realities place migrant workers at risk for abuse. The lack of a rights-based approach, which includes adherence to core labor standards for all workers, only exacerbates the problem.

Whether or not to migrate should be a freely made choice, not one based on force, coercion, or repression. Migrant rights advocates around the world emphasize that restricting the movement of workers is not a solution to the problem of exploitation. The freedom of movement is a key human right. The emphasis therefore needs to be on safe migration, creating mechanisms and policies to ensure that workers can migrate safely and have access to full human and worker rights.

Endnotes


4 Ibid.


6 IBRD/The World Bank, “Global Economic Prospects.”


8 Jorge Camil, “Mexico Dangerously Dependent.”


10 Ibid.


18 Often, migrant workers are described as “skilled” or “unskilled,” with skilled workers being defined as professionals such as doctors, teachers, engineers, nurses; and unskilled workers being defined as manual laborers such as domestic workers, construction workers, and farm workers. Such terminology, however, devalues the work performed by the latter. It may in fact be one of the reasons such labor is characterized by low pay and bad working conditions. Therefore, the Solidarity Center uses the terms manual laborers and low-wage workers instead.


20 Ibid.


24 Qualified industrial zones (QIZz) are similar to export processing zones (EPZs) or special economic zones (SEZs). Terminology varies by country, but the zones are usually geographical areas governed by economic laws (including labor laws) different from those that apply elsewhere in the country. Usually the zones are established to attract multinational corporate investment. The zones are designed to house industrial factories that manufacture products for export (such as garments, textiles, and electronic goods). Governments often suspend labor laws and regulations within the zones as added incentives to corporations. In particular, the right to organize and minimum wage laws may not apply in the zones. QIZs in particular make products that are given duty-free entry to the U.S. market.


27 Bjorn Jensen, “Labor Mobility and the Global Economy,” p. 4. As Jensen notes, “SAPs generally include the raising of interest rates, cuts in public spending for health, education and subsidies to the manufacturing and agriculture industries. Additionally, countries are pushed to privatize public services (to reduce government expenditure so additional money can go to repaying international loans) and to liberalize their economy by opening it to foreign competition. Privatizing government services leads to layoffs for many public workers and lower pay and less benefits for workers who keep their jobs.”


31 Ibid., p. 146.
Neoliberalism is an economic and political philosophy that expands the concept of free trade in a globalized world. Neoliberalism is characterized by policies that reduce governments’ role in economic and market factors by cutting public expenditure for social services (such as education and healthcare), privatization of state-owned enterprises for essential services (such as electricity and water), and deregulation of industry and forces that “interfere” in the free market. Neoliberal policies aimed at structural adjustment and market liberalization focus on drastic austerity measures, cuts in social investment and farm subsidies, layoffs and salary cuts for public sector workers, loosening of capital controls, and relaxation of rules covering foreign investment.


U.S. Trade and Migration Working Group, Initial Analysis of the “International Migration and Development – Report of the Secretary General” Submitted to the General Assembly in Preparation for 14-15 September High-Level Dialogue on the Topic (July 10, 2006). The Trade and Migration Working Group was made up of several U.S.-based organizations that initially came together to look at GATS Mode 4 in preparation for the WTO meetings in Hong Kong in December 2005. After that, the Group focused on the UN meetings in September 2006. The Trade and Migration Working Group is no longer functioning as such, though many of its component groups continue to work closely on these issues.


In 2006 the AFL-CIO joined with the National Textile Association, which represents U.S. textile producers, to file the first workers’ rights case submitted under the U.S.-Jordan Free Trade Agreement (Jordan FTA) in response to the egregious abuses of workers in textile and garment factories. The complaint calls on the U.S. Government to invoke the labor provisions under the agreement to force Jordan to protect the rights of workers (nationals and migrants). The Jordan FTA was the first U.S. trade agreement to include enforceable core workers’ rights. The Jordanian government is also taking steps to respond to the worker rights abuses. For more information, see James Parks, “Textile Business Association Joins with Unions to Fight for Jordanian Workers’ Rights,” AFL-CIO Now Blog, September 21, 2006, http://blog.aflcio.org/2006/09/21/textile-business-association-joins-with-unions-to-fight-for-jordanian-workers%e2%80%99-rights/.

Interview with Heba El Shazli, Solidarity Center Regional Director for the Middle East and North Africa, 2007.

See New Orleans Workers’ Center for Racial Justice Web site, http://www.neworleansworkerjustice.org/, for information regarding a case of Indian migrant workers, who were recruited to work on post-Hurricane Katrina reconstruction on the U.S. Gulf Coast through the H-2B visa guest worker program. They were allegedly trafficked and exploited in Mississippi.


AFL-CIO, “Q&As on AFL-CIO’s Immigration Policy.”

U.S. Trade and Migration Working Group, Initial Analysis.


See New Orleans Workers’ Center for Racial Justice Web site.


ibid.


57 S. Jones, Making Money Off Migrants: The Indonesian Exodus to Malaysia (Hong Kong: Asia 2000 Ltd.).


63 Companies that recruit and assist workers to labor abroad are referred to variously as private employment agencies, overseas employment agencies, temporary work agencies, recruitment agencies, labor brokers, and placement companies.

ILO Convention No. 181, Private Employment Agencies Convention (1997), states:

Article 1

1. For the purpose of this Convention the term private employment agency means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

(b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks;

(c) other services related to job seeking, determined by the competent authority after consulting the most representative employers’ and workers’ organizations, such as the provision of information that do not set out to match specific offers of and applications for employment.

64 S. Jones, Making Money Off Migrants.

65 Ibid.

66 Coalition of Indonesian NGOs, Systematic Abuse at Home and Abroad, Indonesian Country Report to the UN Special Rapporteur on the Human Rights of Migrant Workers, presented to the Special Rapporteur at the First Consultative Meeting with Non-Government Organizations from Asia, Kuala Lumpur, Malaysia, June 2-3, 2002.

67 Interview conducted by the Solidarity Center and the International Catholic Migration Commission (ICMC) in Batam, Indonesia, 2001.

68 False documents are legal documents issued by the official issuing agency but containing falsified information. Fake documents refer to illegally manufactured documents.


70 S. Jones, Making Money Off Migrants.

71 Portions of this section are taken from Neha Misra, Trafficking in Persons from a Labor Perspective: The Kenyan Experience.


77 Ibid.

78 Ibid.


81 Ibid., p. 10.


Section II

Strategies for Strengthening Worker Rights
Chapter 5

Worker Rights and Unilateral Trade Benefits
In the 1980s the United States was the first government to include worker rights protections in unilateral trade preference programs. For the first time, in order to export certain goods duty-free to the United States, countries were required to ensure (or take steps to ensure) the protection of certain worker rights. Later the European Union (EU) would add requirements to its unilateral trade benefits, increasing the pressure on some developing countries to protect worker rights. This chapter introduces unilateral trade benefits by surveying their history, contents, and impacts.

**Caribbean Basin Initiative—1983**

The first U.S. law to condition trade benefits on worker rights was the Caribbean Basin Economic Recovery Act, or Caribbean Basin Initiative (CBI), which was passed in 1983. The legislation, which sought to promote economic revitalization and to expand private-sector opportunities in the Caribbean region, designated certain Caribbean countries eligible for duty-free benefits on their exports to the United States.

At the time, the AFL-CIO was concerned that irresponsible firms in the region might gain an unfair advantage by exploiting their workers and denying their rights. CBI proponents tried to assuage AFL-CIO concerns by directing the U.S. President, when determining a country’s eligibility, to “take into account... whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.”

However, these criteria were discretionary and for years there was little action to enforce the provision. In 1990 the CBI was renewed, and worker rights criteria became a mandatory part of the eligibility designation process. These worker rights guidelines conform to those contained in the Generalized System of Preferences (GSP) legislation, which is discussed below.

Despite its weaknesses, the CBI’s linkage of trade and worker rights made it a landmark piece of legislation. The application of this law was less controversial than that of later laws, because countries received privileges when they met qualifications that included some worker rights, as opposed to revoking existing privileges for failing to protect those rights.

**U.S. Generalized System of Preferences—1984**

The GSP program, initiated in 1974, was renewed for 10 years in 1984 with new language on the protection of worker rights. It was extended retroactively once again in 1996, expired in September 2001, and the pending cases remained on hold. GSP was renewed in August 2002, as part of a larger trade-related bill. It has been renewed a number of times since then, most recently in 2006. The law will expire again on December 31, 2009.

The GSP law authorized the President to grant duty-free treatment to eligible imports from beneficiary developing countries, making it easier for them to compete in the U.S. market. By exporting more to the United States, the developing countries could earn the foreign exchange needed to import capital goods necessary for their own industrialization and growth. Other industrialized nations did not enjoy such preferences and had to pay prevailing tariffs whenever exporting to other countries. The developing countries thus gained a competitive advantage over the industrialized nations in trade with the United States.

The renewal of GSP legislation in 1984 amended the conditions for beneficiary status and added several new requirements, including respect for worker rights:

[The President shall not designate any country as a beneficiary developing country . . . if such country has not taken, or is not taking, steps to afford internationally recognized worker rights]
to workers in the country (including any designated zone in that country).\(^3\)

The worker rights cited under the law include:

- the right of association;
- the right to organize and bargain collectively;
- a prohibition on the use of any form of forced or compulsory labor;
- a minimum age for the employment of children; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The intent behind the act was clearly stated in the U.S. House Ways and Means Committee Report by the authors of the bill:

The Committee believes that promoting respect for the internationally recognized rights of workers is an important means of ensuring that the broadest sectors of the population within BDCs (beneficiary developing countries) benefit from the GSP program.

The capacity to form unions and to bargain collectively to achieve higher wages and better working conditions is essential for workers in developing countries to attain decent living standards and to overcome hunger and poverty. The denial of internationally recognized worker rights in developing countries tends to perpetuate poverty, to limit the benefits of economic development and growth, to narrow privileged elites and to sow the seeds of social instability and political rebellion.\(^4\)

The conference report stipulated:

It is the intention of the Conferees that this definition of internationally recognized worker rights be interpreted to be commensurate with the development level of the particular country, but that each element of the definition be reviewed with respect to the determination required by section 503(c)(3) of this bill.

Any “interested party” can submit a petition to the U.S. Government calling for denial of GSP benefits to certain foreign countries on the grounds that they violate worker rights. The Office of the U.S. Trade Representative (USTR) receives such petitions on June 1 each year or at other designated intervals. Investigations concerning the worker rights laws and practices of individual countries are conducted by the interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC), which includes members from the USTR and the Departments of State, Labor, Commerce, Treasury, Agriculture, and other agencies. This subcommittee decides whether or not to accept petitions for review.

Petitions accepted for review are analyzed on the basis of data received from a number of sources. One such source is a public hearing held by the USTR, where groups can testify about the worker rights conditions in the countries under investigation. In addition, petitions are weighed against information in the U.S. State Department’s annual Country Reports on Human Rights Practices, special reports from U.S. embassies and consulates abroad, ILO findings, and other information as appropriate.

The subcommittee analyzes the information to determine whether a country is “taking steps” to strengthen respect for worker rights, and it establishes what constitutes progress in each case. It may decide to continue the investigation for another year. It then makes its recommendations to the President, who makes the final decision on whether to remove GSP status from a country. In April of
the following year, the USTR announces whether GSP benefits of the countries under review will be continued, suspended, or permanently revoked. Once a country’s GSP privileges have been suspended or revoked, it must reapply for eligibility. The process for reinstatement follows essentially the same procedures used in determining whether to remove a beneficiary country from GSP.

Since the adoption of the GSP worker rights amendment in 1984, the United States has conducted more than 100 country reviews to determine whether countries were taking steps to afford worker rights to workers in those countries. Allowing for repeat reviews of the same country, approximately 50 countries have come under worker rights scrutiny in the GSP process. As a result, the GSP beneficiary status of 15 countries has been suspended because of worker rights violations. More than a dozen other countries have been placed on a temporary extension with continuing review.

The experience with the GSP reviews has given rise to a number of criticisms of U.S. policy. One complaint raised by international law specialists is that U.S. trade statutes such as the GSP invoke “internationally recognized worker rights” without tying them to any source of international recognition, such as UN or ILO norms. Instead, Congress simply listed a set of worker rights. The list excludes nondiscrimination, which is now one of the universally recognized core labor standards. At the same time, it includes working conditions, which are outside the core group, and “cost items” such as minimum wage, hours of work, and safety and health. This discrepancy was widely regarded as the U.S. Government’s effort to avoid being bound to comply with conventions it had not yet ratified or to avoid the obligation to use the conventions in its deliberations. Accordingly, although the principles used to define worker rights were actually based on ILO standards, U.S. officials did not create a binding link.

A second criticism of the legislation is that Congress has set rules for other countries that those countries had no voice in creating. A general principle in international law is that countries are bound only by treaties that they sign and ratify, especially when they face punishment. The problem is compounded when, as with the GSP, a large and powerful country like the United States is laying down norms for economically struggling nations, threatening to deprive them of a small but important advantage in trade access to the U.S. market. Critics consider the GSP worker rights law to be another example of “aggressive unilateralism.”

A third argument from critics addresses due-process flaws in the U.S. statutory scheme. Under current law, the USTR decides whether to accept the case (a prosecutor’s role) or hear the case (a judge’s role). The USTR also decides whether or not a country is “taking steps” to comply with the statute (a jury’s role) and applies the sanction (an executioner’s role).

The implementation history of GSP, where successive U.S. administrations have made only selective use of worker rights provisions, clearly reveals the inherent flaws in this structure. In its early decisions, the USTR imposed a series of arbitrary restrictions on the process as well as an extremely legalistic interpretation of the law and regulations. This approach made it possible to exempt some countries from the embarrassment of a review and others from the application of sanctions, thus sparing the President from invoking economic considerations.

For example, international political and economic considerations prompted the United States to absolve Indonesia and Malaysia, despite blatant worker rights violations, including the killing of labor activists and suppression of independent trade unions. In addition, the USTR refused early in the process to accept petitions against El Salvador and Guatemala, where death squads kidnapped and killed trade union leaders, often after threatening them because of their union activity. The administration’s view was that although the victims’ human rights were certainly violated, it
was not clear that their worker rights had been violated, because there was no proof that they had been kidnapped or killed specifically for their trade union activity. Since it was highly unlikely that the perpetrators of these crimes would come forward to clarify precisely why they had kidnapped or killed the victims, the petitioners were faced with looking for new ways of showing a direct connection between union leaders’ labor activities and the reprisals that followed.

The history of GSP implementation has been plagued by efforts to ignore the law’s intent when politically convenient. In fact, geopolitics and foreign policy have often been the true criteria, not the merits of a country’s compliance or noncompliance with the law. The process provides a classic example of unchecked administrative authority.

The fourth problem is the lack of uniformity in U.S. law and in U.S. ratification of international law on these issues. Clear and internationally accepted worker rights can indeed be found in instruments like UN covenants and ILO conventions, which have been ratified by many countries, and in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. But the United States has not ratified the UN’s most extensive statement of worker rights, the International Covenant on Economic, Social and Cultural Rights. Of the ILO’s eight “core” worker rights conventions, the United States has ratified only one on forced labor and one on child labor. It has not ratified the conventions governing nondiscrimination in the workplace. It has not even ratified the most basic worker rights conventions covering freedom of association and the right to organize and bargain collectively (although it is bound as an ILO signatory to comply with these principles).

The traditional U.S. Government defense is that it does not have to ratify international instruments because its laws already bring it into compliance. Successive U.S. administrations have suggested that it is better to abide by the conventions without ratifying them than it is to ratify them while routinely violating them, as many countries do.

However, this position is not credible, as the United States does not live up to international standards. Hundreds of U.S. workers are fired each year for trying to form or join trade unions. Employers routinely threaten to close plants and move jobs overseas if workers unionize. Collective bargaining is outlawed in many states for public employees. In addition, thousands of U.S. workers are killed, maimed, or sickened by industrial accidents and occupational disease.

The United States also fails to meet the ILO standards on protecting the right to strike. Essentially, this right is negated by a “permanent replacement” doctrine, which allows companies to hire new workers and replace striking employees. In addition, “secondary boycott” laws outlaw U.S. workers’ exercise of freedom of association through solidarity initiatives. Such laws prohibit workers and trade unions in “secondary” companies, such as suppliers and customers of a “primary” firm in a labor dispute, from striking or picketing to support workers at the primary firm. Furthermore, a resurgence of “sweatshop” garment factories, marked by child labor and minimum wage violations, is growing in many U.S. cities with large immigrant populations. Finally, prisons are increasingly turning to commercial production to sustain their operations, a practice that often runs counter to standards on prison labor.

In effect, through its structure and application of the GSP law, the United States has failed to accept the international definition that it was instrumental in creating. And it systematically violates the standards that it has not yet ratified as well as the principles by which it is bound as an ILO signatory. Critics deplore this hypocrisy.

These are all powerful criticisms. However, if worker rights advocates had waited for a perfect process with swift, consistent enforcement, nothing would have been accomplished. The truth is that in concrete measure, and sometimes in life-or-death cases, unilateral worker rights actions by the United States have made a difference.
These criticisms are arguments for improving the GSP worker rights law and procedure. First, GSP is a preferential program created solely by U.S. law. International trade rules allow such preferential programs for developing countries, which would otherwise violate WTO equal-treatment rules. But they do not mandate such programs, and industrialized countries are free to establish them with whatever norms and procedures they choose. In this context, U.S. workers have a right to demand conditions for preferential trade programs from their government.

A U.S. law that fully complies with international norms that are ratified and applied by the United States would indeed be the optimal approach to unilateral action on worker rights in trade. For the AFL-CIO, U.S. ratification of UN covenants and ILO conventions is higher on the agenda of the U.S. labor movement than it has ever been. But given the current aversion to any restraints on free trade and a more general aversion to international treaties constraining U.S. powers, the legal situation is likely to remain unresolved for the foreseeable future.

The following reviews of cases filed between 2003 and 2007 reflect the continued importance of the GSP as a policy tool, regardless of whether or not the results are what the petitioners seek.

**Bangladesh**

Since 1990 the AFL-CIO has filed numerous petitions on violations of internationally recognized worker rights, in law and practice, in Bangladesh. An initial petition was filed in 1990 calling for the withdrawal of GSP preferential treatment because the government of Bangladesh had refused to apply its labor laws to the EPZs. A second petition was filed in 1999, as the government of Bangladesh had failed to meet established deadlines to adopt and enforce worker rights in the EPZs. In response to the second complaint, the Bangladesh government published a notice in the *Official Gazette* in January 2001 that provided, in part, that all workers in the EPZs “will have their legal rights and related rights in the Zones and that this will be effective from January 1, 2004.”

In December 2004, the AFL-CIO filed a third petition, which highlighted the Bangladesh Export Processing Zones Authority’s decision to review the performance of the Workers Rights and Welfare Committees in the EPZs prior to permitting the full exercise of free association and collective bargaining. In 2005 the AFL-CIO again filed a GSP petition as a result of ongoing violations of internationally recognized worker rights in the EPZs. The most recent petition was filed in June 2007.

These petitions were based primarily on worker rights violations in the ready-made garment (RMG) industry, on child labor, and in the EPZs. The USTR accepted these petitions for review and, in the case of the complaints on the EPZs, put pressure on the government of Bangladesh to enact change in the EPZs. Over time, these reviews have had a positive impact. In 2008 the government of Bangladesh put pressure on factory owners in the EPZs to allow workers to determine for themselves whether they wanted to join worker associations. In almost every case, and by overwhelming majorities, the workers chose to form these associations and elected their leaders. The government has also encouraged the shrimp industry to take worker rights seriously, although labor conditions have changed little in this sector. The RMG industry still fails to take up the issue of worker rights seriously, a cause of continued unrest in this sector. On June 30, 2008, the USTR decided to continue the review of Bangladesh.

**Uganda**

The AFL-CIO filed a GSP petition with the USTR in 2005, seeking the withdrawal of Uganda’s status as a beneficiary developing country. The AFL-CIO argued that the government of Uganda had not taken and was not taking steps to afford workers their internationally rec-
exploitation and violations of their internationally recognized worker rights every day. There was no right to organize and bargain collectively; workers did not have the right to freedom of association; and conditions of work in no way met the standard of acceptability as required for GSP designation.

By June 2005 Oman still had not taken steps to afford workers internationally recognized worker rights, despite commitments dating back to the mid-1990s to reform Omani labor laws to make them consistent with ILO core labor standards. The establishment of workplace committees mandated by Omani government was not a substitute for the changes required to bring Omani law into compliance with ILO standards.

Abuse of foreign workers, including forced labor, nonpayment of minimum wage, and even physical and sexual violence committed against domestic workers were known occurrences in Oman. The government of Oman had not adequately enforced its own laws forbidding such practices.

The U.S. Government did not accept the petition for review, but the Omani government has made substantial changes in its labor laws since the petition was filed. In 2006 the Omani Ministry of Manpower issued Ministerial Decrees No. 31 and No. 294, which amended the 2003 Labor Law and recognized freedom of association, collective bargaining, and the “peaceful” right to strike. The Omani government also took steps to address exploitation of migrant workers through a 2006 ban on the confiscation of passports. The reforms were initiated during the course of negotiations with the United States for a free trade agreement. The General Federation of Oman Trade Unions is due to hold its founding Congress in 2008.

El Salvador

The AFL-CIO petitioned in 2005 for the withdrawal of El Salvador’s status as a beneficiary developing country on the grounds that the government of El Salvador has not been and is not
taking steps to afford internationally recognized worker rights. Ineligibility for these GSP benefits should also disqualify El Salvador from benefits under the CBI and the Caribbean Basin Trade Partnership Act, since those laws condition benefits on the same worker rights.

The AFL-CIO argued that no significant progress had been made to address the systemic impunity of employers or the government of El Salvador itself. The petitioners incorporated by reference the documented violations of workers rights in past petitions filed in 2001, 2002, 2003, and 2004.

Over a period of years, the USTR failed to fully implement the GSP instrument in a manner consistent with its legally binding mandate conferred by the U.S. Congress. This failure has allowed the government of El Salvador to continue to refuse to amend its labor law to comply with international labor standards, to fail to apply its existing labor law with serious intent, and to allow past worker rights violations to go unremediated.

This petition demonstrated continued systematic and serious violations of fundamental worker rights in El Salvador. The government had repeatedly failed to comply with its international obligations to respect and enforce worker rights. The Salvadoran government had:

- provided no remedies for repeated acts of anti-union discrimination, retaliatory firings, and illegal lockouts of union activists in the maquilas;
- allowed public-sector agencies to undermine unions—in some cases taking advantage of public restructuring and privatization plans to do so—by refusing to recognize a legitimate union, pressuring workers to disaffiliate from their union, breaking up union meetings, targeting union activists for suspension, and illegally locking out union members by forcibly evicting them from the workplace; and
- failed to remedy and even denied serious health and safety lapses in the maquiladoras producing for export.

Through delays, refusals to provide effective remedies, and active animosity, the Salvadoran government had directly aided private exporters in denying their workers freedom of association and the right to organize and bargain collectively. The government had also directly violated the rights of public-sector workers, thus dragging down standards for all Salvadoran workers and the Salvadoran labor market as a whole.

The U.S. Government has sent a message profoundly troubling to defenders of human rights and worker rights, rewarding the government of El Salvador for its failure to adhere to international labor standards by including El Salvador in the Central American Free Trade Agreement–Dominican Republic (CAFTA-DR). By neglecting to recognize that violation of worker rights is a practice tacitly encouraged by the Salvadoran government as a development strategy, the U.S. Government has undermined its stated commitments to respect worker rights as a primary concern in CAFTA-DR.

**Impact of GSP**

Despite the availability and importance of later worker rights amendments, and notwithstanding its flaws, the original GSP formulation and petitioning process have significantly affected worker rights and trade policy. The GSP worker rights clause continues to be a key venue for worker rights advocacy in the global economy. The GSP worker rights amendment was the first substantive linkage of worker rights to trade. It provided a remedy of economic sanctions (though with excessive discretion in the hands of the U.S. presidential administration), and it had a procedure for filing complaints and putting worker rights violations to a test of allegation, defense, and judgment.

The GSP was a fairly narrow program affecting only a small portion of U.S. trade. Its economic importance diminished further as tariff levels continued dropping in the years that followed, in connection with the General Agreement on Tariffs and Trade (GATT) negotiations in the Tokyo Round.
(1973-79) and the Uruguay Round (1986-93). (GATT preceded the WTO.) But GSP eligibility is still an integral factor in a country’s image among human rights and worker rights advocates, and it remains an important issue for a country’s status in the eyes of U.S. trade negotiators and trade policymakers. Developing countries that want access to the U.S. market do not want to end up on a U.S. list of worker rights violators and potentially face more dire consequences under other trade programs with worker rights amendments.

Most important, the worker rights amendment in the GSP fixed into U.S. law and policy both the principle of a worker rights/trade linkage and the practice of applying it. The GSP law was the foundation for launching later, broader advocacy of worker rights in trade in many other forums.

The worker rights advocacy community first pressed for including worker rights provisions in other U.S. trade laws. The North American Free Trade Agreement (NAFTA) and its worker rights side agreement presented a new opportunity to include worker rights in broader trade pacts, as did the opening of talks on a hemispheric trade pact called the Free Trade Area of the Americas. Worker rights have also been included in a number of bilateral trade agreements.

Worker rights issues have now begun to penetrate governance discussions in international financial institutions like the World Bank and the International Monetary Fund. The United States and other countries also have pushed for worker rights on the agenda of the WTO. The WTO has so far resisted the move, but this resistance provided impetus for the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work. In sum, the GSP, a modest amendment in a little-known trade program, has provided workers and their allies with a usable means to pursue increased respect for worker rights in the global marketplace, and it has helped them find their voice in the clash and clamor of economic globalization.

European GSP—1995

The development of the European Common Market and the gradual integration of European economies created the need for a common trade policy. The European Generalized System of Preferences was developed by the European Economic Community in 1971 and was renewed twice without changes. A 1995 revision incorporated both worker rights provisions and sanctions. An incentive clause was added in 1998 allowing countries that respect the “substance” of ILO core conventions to access additional tariff benefits.

In December 2001 the EU renewed its GSP program to the end of 2004, including measures to expand and strengthen the link between GSP benefits and core labor standards. Member-country ministers approved a plan granting an additional 3.5 percent tariff reduction to all developing countries unless they failed to meet basic labor standards and an additional 5 percent reduction for countries that demonstrated their adherence to ILO core labor standards contained in the ILO’s 1998 Declaration.

The current EU GSP framework was adopted in 2005 for the period 2006-2015 (with a mandatory review in 2008) and came into force on January 1, 2006. Seeking to simplify the mechanism while maintaining its stated goal of promoting economic development in less-developed countries, the EU reduced the number of GSP arrangements from five to three. Special incentive arrangements to combat drug trafficking and encourage respect for worker rights and environmental protection were rolled into a single quota scheme, called “GSP Plus.” An “everything but arms” (EBA) arrangement—which ensures quota-free access for nonmilitary imports from the least developed countries—and the general GSP arrangement have remained unchanged.

Under the GSP provisions, the European Commission (EC) may suspend GSP benefits if beneficiary developing countries are found to have committed a number of trade-related offenses, including but not limited to fraud related to rules-
of-origin provisions, unfair trading practices, inadequate controls on the export or transit of illegal drugs or money laundering, and improper management of fishery resources. Under the GSP Plus preferences, developing countries are eligible for special incentives if they can show economic and trade-related statistics that demonstrate that they are “dependent and vulnerable” and have ratified and implemented 16 standards, which include eight core labor standards covered by ILO conventions:

- Minimum Age for Admission to Employment (No. 138);
- Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (No. 182);
- Abolition of Forced Labor (No. 105);
- Forced or Compulsory Labor (No. 29);
- Equal Remuneration of Men and Women Workers for Work of Equal Value (No. 100);
- Discrimination in Respect of Employment and Occupation (No. 111);
- Freedom of Association and Protection of the Right to Organize (No. 87); and
- Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98).

In addition, countries must agree to maintain ratification and implementation of these conventions and accept regular monitoring in accordance with the provisions of each convention. Deviation from these standards was accepted if countries were faced with “specific constitutional constraints” and had not ratified more than two of the 16 standards listed in the GSP Plus scheme. These countries, however, were required to make a formal commitment to ratify and implement all standards by October 1, 2006. Similar provisions existed for ratification and implementation of 10 conventions on environmental protection, corruption, and drug trafficking.

Debate between the EC and European trade unions over the continued inclusion of worker rights standards revolved around the issue of eligibility. As the EC proposed a new GSP structure, unions wanted the GSP standard to ensure that beneficiary countries had not only ratified but also implemented the conventions required for benefits. Among the problematic countries highlighted by both the European Trade Union Conference (ETUC) and the ICFTU were Colombia, where over 600 trade unionists had been killed in a five-year period, as well as Georgia, Moldova, Sri Lanka, Costa Rica, and Guatemala, where there was evidence of ongoing worker rights violations.

In addition, a key change to the new EU GSP standard included what unions called the “exemption” clause—language allowing countries not to ratify all the listed ILO conventions if they could cite a clear constitutional constraint to ratification and committed themselves to ratifying the conventions by a certain date. The change differed from the previous GSP system, which demanded ratification before any benefits could be granted. According to a joint trade union statement, “the proposed exemption would remove the prospect of using the GSP as a device to provide a serious incentive to countries to ratify the conventions, and indeed would penalize the actions of other countries that have ratified and do apply the conventions concerned.”

The EC chose not to eliminate the exemption clause but instead modified the language to tie benefits directly to a plan for actual ratification and implementation of all standards. The only country not to ratify all core labor standards and gain eligibility under the GSP Plus rules was El Salvador, which on August 29, 2006, ratified its remaining ILO conventions, including Conventions Nos. 87 and 98 on Freedom of Association and the Right to Organize and Bargain Collectively.

The rules for suspension of benefits are similar to those under the previous GSP scheme. Benefits may be suspended for “serious and systemic” violations found by relevant monitoring bodies. Compliant
countries are eligible for a gradual reduction of tariffs. Depending on the product, most goods become eligible for an initial 20 percent tariff decrease, followed by further incremental reductions.21

An individual, association, or EU member state may register GSP complaints with the EC. If the EC receives a complaint, it notifies all member states. If the EC finds sufficient evidence to warrant an investigation, it announces the opening of the investigation in the \textit{Official Journal of the European Communities}.

After seeking whatever information it deems necessary, the EC consults with the Committee for the Management of Generalized Preferences, which consists of representatives of member states and is chaired by an EC representative. After this consultation, if the EC considers it necessary, it will decide within one month whether to launch an investigation into the allegations, consulting relevant international organizations (such as the UN and ILO) or other bodies, or to call hearings. The beneficiary country may also cooperate with the investigation, which is to take no more than four months. Following the investigation, the EC reports its findings to the committee and the decision is published in the \textit{Official Journal}. The withdrawal of GSP benefits lasts for six months. The suspension of benefits will then be renewed unless the beneficiary country can show that the violation is no longer taking place.

The EU has taken worker rights action on only two GSP cases. In 2007, GSP benefits were suspended for Belarus, the first country to have GSP benefits suspended under the new system.22 Burma was stripped of beneficiary status in 1997 under the old system, due to forced labor violations. By comparison, more than a dozen countries have been struck from U.S. GSP beneficiary status and a dozen more placed on “continuing review” for worker rights violations and failure to improve laws and practices.

The EU GSP program also brought some positive results when countries faced the possibility of losing GSP Plus benefits because of worker rights violations. For example, when the EU said it might suspend benefits for Sri Lanka because of violations against hundreds of workers trying to form a union at the Polytex factory in one of the country’s three large free trade zones, management quickly agreed to a union election in which workers were free to choose representation without pressure from management. Employees voted 754-115 in favor of the union. That organizing victory was quickly followed by several others.23

Following organizing victories at Polytex and other free trade zone (FTZ) factories, the EU granted additional tariff preferences to Sri Lanka. Developments in Sri Lanka continue to highlight the importance of the EU GSP labor regime. In 2006 Sri Lanka garment manufacturers decided to make worker rights and fair labor standards a cornerstone of their international marketing efforts.

Sri Lanka’s garment industry, the island’s largest manufacturer and number one export income generator, has launched an industry-wide label and image-building campaign—“Made in Sri Lanka: Garments without Guilt”—to help it stand out in the crowded international market. The garment sector is hoping to leverage the country’s extensive welfare-oriented labor regulations and industry-wide practice of avoiding child labor in order to position itself as an ethical producer. According to industry sources, the strategy is based on growing international consumer awareness of human rights and human dignity.

Strong worker and human rights standards that qualified the country for duty cuts from the EC during its earlier GSP regime have helped Sri Lanka obtain GSP Plus status and zero tariffs on exports to the EU market. “We were audited by the EC before they gave us the GSP Plus. This is very significant because it was an independent audit,” said Kumar Mirchandani, chairman of Joint Apparel Association Forum’s Marketing and Image Building Sub-committee.24

The garment industry provides direct employment to over 300,000 people. Most of the workers—
over 80 percent—are young women, and employment opportunities in the sector, say apparel manufacturers, have contributed to lowering unemployment and increasing economic empowerment of women. The industry says it is also working to uplift the image of garment workers within Sri Lankan society.25

The image-building program was adopted after buyer research was conducted in the United States and EU. It will initially target the island’s biggest export markets in the United States, U.K., France, and Germany. The United States is Sri Lanka’s biggest customer, buying 58 percent of export production. The EU accounts for 37 percent of total Sri Lankan production.26 In the face of increasing competition, the image-building campaign is aimed at retaining and growing these markets.

The ethical branding, say manufacturers, may not lead to direct financial returns but will help meet the ethical expectations of consumers in these countries. Brands that place manufacturing orders with Sri Lankan factories are expected to benefit through their ability to meet these consumer expectations. “What we will get is an intangible premium. We can’t go to buyers and say pay more for our products because we are ethical and we don’t use children to make clothes, but we can make buyers feel more comfortable buying from us,” explains Mirchandani.27

Overseas Private Investment Corporation—1985

The Overseas Private Investment Corporation (OPIC), established by the U.S. Congress in 1969, provides political risk insurance and project financing to facilitate U.S. private investment in developing countries. OPIC’s reauthorization in 1985 added some new provisions, including a stipulation effectively prohibiting OPIC from assisting any
project in a country not determined to be “taking steps to adopt and implement laws that extend internationally recognized worker rights... to workers in that country (including any designated zone in that country).” The provision was based, in part, on similar GSP legislation. The rationale behind the law was to keep the “privilege” legislation consistent. The U.S. Congress did not want to withdraw GSP trade privileges from a country because it failed to provide basic worker rights while continuing to offer that country benefits under OPIC. The worker rights language remained unchanged through 2007.

OPIC relies on GSP findings for its determinations concerning projects in GSP countries. For non-GSP countries, OPIC makes independent worker rights determinations in consultation with executive branch agencies and interested human rights and labor organizations. Non-GSP countries in which OPIC is authorized to operate are Bahrain, Chile, French Guiana, Gabon, Germany, Greece, Korea, Nicaragua (as a result of presidential waiver), Nigeria, Northern Ireland, Qatar, Saudi Arabia, Singapore, Taiwan, and Kuwait. Those who wish to raise worker rights concerns have the opportunity to do so at an annual public hearing. Well-documented testimony prompts a review of the beneficiary country’s worker rights legislation, policy, and practice.

Countries under review may submit pertinent materials to OPIC, but at no time are they advised of what they would have to do to remain in the program. The process is essentially petition driven. OPIC’s findings and conclusions are described in an annual report to Congress for non-GSP countries whose continued eligibility for OPIC programs is challenged at OPIC’s annual public hearing. The President may waive the worker rights provisions for GSP and OPIC if he or she determines that it is in the national economic interest of the United States.

Much controversy has centered on the meaning of “taking steps” in the GSP and OPIC legislation. While neither Congress nor the interagency committees that studied and made recommendations on country petitions strictly defined what constituted “taking steps,” Congress defined this term for purposes of the OPIC legislation to mean that:

- the country is a member of the ILO;
- it is a signatory of its Constitution;
- its laws conform to one or more of the five worker rights listed in section 502(2)(4) of the Trade Act of 1974; and
- it continues to make progress to implement internationally recognized worker rights.

In addition to the protection already provided in the statute, in 1989, OPIC incorporated language in insurance contracts in Poland and Hungary intended to ensure that investors receiving OPIC political risk insurance coverage respect internationally recognized worker rights. Subsequently, the use of this clause was extended to other parts of the world and expanded to include other OPIC activities, including, for example, loan guarantees. The contract language on worker rights is as follows:

The Investor agrees not to take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The Investor further agrees to observe applicable laws relating to a minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety and not to utilize forced or compulsory labor.29

The investor is not responsible under this paragraph for the actions of a government.

Initially, OPIC was used by some U.S. firms to guarantee investments in plants abroad that denied workers their rights while producing mainly for export to the U.S. market. Not only were they unable to exercise their worker rights, but they also were not manufacturing products that were needed in their own countries. For this reason the AFL-CIO called for the abolition of OPIC at that time.
In 1985, attempting to address the concerns of the U.S. labor movement, Congress amended the OPIC law to direct the President, as in the GSP, to exclude developing nations that repressed their workers from participating in the OPIC guarantee program. Since OPIC abides by GSP determinations, most of the countries that lost OPIC eligibility did so as a result of GSP actions. However, since 1987, OPIC has also suspended eligibility for countries that were not part of the GSP program.

The President’s authority to waive worker rights provisions was first exercised on June 21, 1990, when President George H.W. Bush, in the national economic interests of the United States, exercised his right of waiver in section 231A(a)(1) of the Foreign Assistance Act of 1961, as amended. This action permitted OPIC to insure, reinsure, guarantee, and finance projects in Nicaragua, which had conducted free elections and was making a transition to democracy.

In 1995 Nigeria was removed from OPIC eligibility after the Abacha government suspended the Executive Boards of the Nigerian Labor Congress and two national unions and appointed state administrators to run the organizations. In addition, the general secretary of the Nigerian Union of Petroleum and Energy Workers had been detained along with other union leaders. Nigeria, as a member of the Organization of Petroleum Exporting Countries (OPEC), the oil producers’ cartel, was not eligible for GSP, but it was eligible for OPIC. In December 2000, OPIC coverage was resumed for investments in Nigeria after the restoration of a democratic government under newly elected President Olusegun Obasanjo. As of 2007, OPIC listed Belarus, Maldives, Qatar, Saudi Arabia, Sudan, and the UAE as “ineligible for OPIC programs on worker rights grounds.”

Omnibus Trade and Competitiveness Act—1988

The Omnibus Trade and Competitiveness Act of 1988 also tied trade to worker rights law and practice. In addition to several sections aimed at improving worker rights reporting, this bill contained two major provisions that tied worker rights to trade. The first called for the United States to negotiate a multilateral agreement to link worker rights and trade in the GATT.

The second provision, in Section 301, deemed denial of worker rights an unfair trade practice. According to this provision, the USTR, under the direction of the President, may take a broad range of retaliatory actions to enforce U.S. rights under trade agreements. Retaliation against such unfair trade practices (including suspension of most-favored-nation status) may be authorized if, after an investigation of the facts and consultations with the subject country, the situation cannot be resolved. This process is triggered by filing a case.

The 1988 law appeared to be a major step forward for worker rights in trade legislation, because it applied to all imports into the United States and authorized the use of tariffs and quotas to block unlawful imports. However, the law also offered two loopholes that could be used to thwart its intent. It permitted the USTR to refrain from taking action against the country if the USTR determined that the country was “taking actions” to improve its worker rights performance or if the actions that denied worker rights were “not inconsistent with the level of economic development of the foreign country.”

By April 2008 only three cases had been filed under the worker rights clause in Section 301. Cases are difficult and costly to investigate and prove, and the loopholes inherent in the legislation suggest to worker rights proponents that even proven cases will not result in any U.S. Government action.
In 1998 the Union of Needletrades, Industrial and Textile Employees (UNITE) and allied worker rights groups, working with the AFL-CIO, prepared the first Section 301 worker rights complaint for filing based on severe violations of workers’ organizing and bargaining rights in Honduran EPZs. However, the terrible floods of Hurricane Mitch wiped out the EPZ factories and destroyed workers’ jobs, along with thousands of lives. For humanitarian reasons, the complainants agreed not to pursue the case at that time.

The AFL-CIO has filed two Section 301 petitions. The first petition was filed in 2004, charging that the Chinese government persistently and systematically denies worker rights, hurting U.S. workers and communities, while also preventing Chinese workers from exercising their internationally recognized rights at the workplace. The USTR refused to investigate. The USTR did not dispute the evidence presented in the petition but asserted that alternative actions by the President would advance worker rights in China. In the intervening two years, the circumstances for workers in China did not change, so the AFL-CIO submitted a new petition under Section 301 worker rights in 2006. Once again, the USTR rejected the petition.

The ATPA incorporates the GSP worker rights clause into its country eligibility requirements. All four countries are also GSP beneficiaries so any complaints that might arise in an ATPA country would be subject to a GSP worker rights petition, and any outcome of a case also would affect ATPA eligibility. However, successive administrations have used national security and the war on drugs as justifications for maintaining GSP and ATPA benefits for the four Andean countries.

In 2002 the ATPA was expanded and renamed as the Andean Trade Promotion and Drug Eradication Act (ATPDEA). The existing worker rights provisions in the ATPA were renewed and the program was extended to include approximately 700 new products for a total of 6,300. Before Colombia, Ecuador, Bolivia, and Peru were eligible for expanded coverage under ATPDEA, a review of their worker rights laws and practices was conducted. The government of Ecuador had promised to take steps to address worker rights concerns but had not done so. This failure resulted in a number of petitions being filed on conditions in Ecuador. Petitions were filed by Human Rights Watch, U.S. Labor Education in the Americas Project, and the AFL-CIO, documenting violations of freedom of association and child labor in the banana industry.

**Andean Trade Preference Act—1991**

In 1991 Congress adopted the Andean Trade Preference Act (ATPA), which affected four South American countries: Bolivia, Colombia, Ecuador, and Peru. The ATPA grew out of concern over drug trafficking, especially the production and export of cocaine from these countries. In practical terms, the ATPA is an extension of GSP, providing additional duty-free treatment for certain products not covered by GSP in order to offer an advantage to Andean countries. In addition, imports from ATPA countries are not subject to GSP competitive need and country income restrictions. Cut flowers, copper cathodes, processed tuna, and jewelry are the main products that enter the United States under ATPA advantages.

**African Growth and Opportunity Act—2000**

On May 18, 2000, the African Growth and Opportunity Act (AGOA) was signed into law. The purpose of AGOA is to promote trade and commerce between the United States and the countries that comprise sub-Saharan Africa and to provide incentives for African countries to achieve political and economic reform and growth. AGOA extends GSP benefits to include all imports from beneficiary countries except products classified as “import sensitive.” The law also provides unlimited duty-free and quota-free access to U.S. markets for apparel produced in eligible AGOA countries from “wholly formed” U.S. fabric, yarn, and thread.
Amendments to AGOA (known as AGOA II) were made on August 6, 2002, as Section 3108 of the Trade Act of 2002. AGOA II expands preferential access for imports for beneficiary sub-Saharan African countries as follows:

- components made with knitted (“knit-to-shape”) fabrics, not eligible under AGOA I, now qualify;
- apparel assembled in lesser-developed countries, previously eligible regardless of the origin of the fabric, is now also eligible regardless of the origin of the yarn;
- hybrid cutting (cutting that occurs both in the United States and in AGOA countries) no longer makes fabric ineligible; and
- volume caps on duty-free treatment were doubled.

Countries must pass through two stages of qualification to receive benefits. In the first stage, countries are designated eligible by the U.S. President on the basis of existing GSP criteria, new AGOA criteria, and a new GSP criterion. GSP criteria include whether a country has established or is making continual progress toward establishing:

- a market-based economy;
- the rule of law and political pluralism;
- the elimination of barriers to U.S. trade and investment;
- economic policies aimed at reducing poverty and increasing availability of healthcare and educational opportunities;
- protection of intellectual property;
- protection of internationally recognized worker rights;
- elimination of certain child labor practices; and
- a system to combat corruption and bribery.

In addition, countries are prohibited from:

- activities that undermine U.S. national security or foreign policy interests;
- gross violations of internationally recognized human rights; and
- support for acts of international terrorism.

To be designated eligible, countries also must have implemented their commitments to eliminate the worst forms of child labor.

In the second stage, to gain duty-free and quota-free access to U.S. markets for textiles and apparel, beneficiary countries must adopt effective visa systems and other procedures designed to prevent unlawful transshipment and the use of counterfeit documents. They also must have implemented or be making substantial progress toward implementing customs procedures that help U.S. Customs and Border Protection (CBP, formerly the U.S. Customs Service) verify product origin. The purpose of all these requirements is to eliminate fraud. When a country meets these criteria, the Office of the USTR publishes a notice in the Federal Register.

The AGOA Acceleration Act of 2004 (AGOA III) extends preferential access for imports from beneficiary sub-Saharan African countries through September 30, 2015. AGOA IV extends the third-country fabric provision for five years, through September 2012; adds abundant supply provisions; designates certain denim articles as being in abundant supply; and allows lesser-developed beneficiary sub-Saharan African countries to export certain textile articles.

Countries also may be designated as “lesser-developed beneficiary” countries. A “Special Rule” provision allowed countries with a per capita GNP of less than $1,500 (in 1998) duty-free access to apparel made of fabrics from anywhere in the world until September 2004. All sub-Saharan African countries were eligible for the Special Rule except Botswana, Gabon, Mauritius, Namibia, Seychelles, and South Africa. In 2002 AGOA II added Botswana and Namibia to the list of lesser-developed beneficiary countries even
though their per capita GNP had exceeded $1,500, recognizing the distorting role of minerals and precious stones in inflating GNP and intensifying inequalities in income distribution.

All beneficiary countries must undergo an annual review process in which the U.S. President determines whether or not a country is making continual progress toward the establishment of the rule of law, free trade, economic policies that will reduce poverty, and the protection of worker rights. The results of the annual review are included in a report issued annually on May 18. If the President decides to terminate a country’s designation, benefits are suspended effective the following January 1.

The USTR conducts the review through its Trade Policy Staff Committee. The review begins with the publication of a notice in the Federal Register soliciting comments on countries’ potential eligibility. The TPSC then collects and reviews information from U.S. embassies; African governments; U.S. government agencies such as the Departments of State, Commerce, Treasury, Labor, and Agriculture and the U.S. Agency for International Development (USAID); and public information sources.

When problems related to the eligibility criteria are identified during the review process, the USTR works with individual countries to meet objectives that address those problems. The U.S. Department of Labor also has offered assistance to some countries on issues related to the protection of worker rights and the elimination of child labor.

On the basis of the beneficiary country’s efforts to address the problems identified during the review process, the USTR makes a recommendation to the President regarding the country’s status. The President then makes the final decision whether a country should be added to or withdrawn from the list.

The law also establishes a U.S.-Sub-Saharan Africa Trade and Economic Cooperation Forum to serve as a vehicle for policy discussions and technical assistance. This government-to-government forum is intended to stimulate U.S.-Africa trade and encourage the development of economic prosperity. Two parallel forums are held concurrently with the government forum: one for the business sector, and another for the NGO community.

### Tariff Act of 1930—2000 Modification

Section 307 of the Tariff Act of 1930 prohibits the importation of merchandise made in whole or in part with prison labor, forced labor, or indentured labor under penal sanction. This law applies to workers of any age. It was amended in 2000 to reinforce the fact that the provision also applies to forced labor and indentured child labor. Section 307 does not apply to child labor, however, unless it is forced or indentured labor. Being under the legal age for work or working in response to “extreme economic pressure” due to severe poverty does not automatically constitute forced labor under the legal definition.

The amendment sought to bolster efforts to address abusive child labor, which is found in many industries that produce for export. These include the production and processing of hand-knotted carpets, apparel, footwear, brassware, silk, glassware, bricks, furniture, food, gems, and leather. Some of the industries that employ children—such as fireworks, match production, glass blowing, and mining—are hazardous. Unfortunately, in some countries, government efforts to promote exports requiring low-skilled, labor-intensive production may have actually resulted in an increase in demand for the use of child labor, which may include forced or indentured labor.

Under the law, in order to be admitted into the United States, a product must be free of components produced with forced or indentured labor. This means that both manufacturers and suppliers must avoid the use of forced or indentured child labor.
The U.S. CBP is charged with enforcing Section 307 and related regulations. CBP encourages importers to avoid importing goods produced by forced labor, including child labor, but may exercise two types of enforcement options against importers who violate the law. The first is provisional detention of the merchandise—either individual shipments or the entire output of a product type from a company or facility. The second enforcement action is the issuance of a formal finding that a particular class of merchandise is the product of forced or indentured child labor. When such a finding is released, the merchandise is barred from the U.S. market as long as the finding remains in effect.

Both types of enforcement actions are product and producer specific; the law does not authorize restrictions on all imports of a particular product from a country just because some products of that type are produced with forced labor. Once CBP has determined that a product was made with forced or indentured labor, the burden of proof to change the finding lies with the importer, who must attempt to substantiate his or her claim that the particular shipment or production run in question was not produced through unauthorized means.

The U.S. Government also can levy monetary sanctions on offenders for related legal violations, including penalties for material false statements and other material false acts or omissions related to the introduction or attempt to introduce illegal merchandise into the United States. Criminal sanctions can apply under the Tariff Act, which makes it a felony for someone to knowingly or fraudulently import or bring into the United States merchandise contrary to law. Criminal penalties can also apply to a person who knows that the merchandise has been illegally imported but receives, conceals, buys, or sells it or facilitates its transportation, concealment, or sale after importation. A related law makes it a felony to introduce merchandise into U.S. commerce through false statements or to knowingly make a false statement in a declaration.

CBP also works with the U.S. Department of Labor’s Bureau of International Labor Affairs to implement Executive Order 13126, the Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The order prohibits U.S. Government organizations from purchasing items produced with forced or indentured child labor.

The U.S. Government works to promote effective enforcement of law on forced labor in several ways. In 1999 the Secretary of the Treasury established the Treasury Advisory Committee on International Child Labor Enforcement. This committee makes recommendations to the Department of the Treasury and CBP on ways to strengthen enforcement of the law through voluntary compliance and business outreach.

In addition, the Forced Child Labor Command Center is part of the U.S. Government’s enforcement system. The center serves as a liaison for CBP investigative field offices. It also provides a clearinghouse for information and investigative leads, a way to identify illegal merchandise before it arrives in the United States, and help in improving the coordination of enforcement and information.

Finally, CBP’s outreach program serves as a liaison for U.S. and foreign government agencies and NGOs; educates manufacturers, U.S. importers, and the public about forced child labor; advertises in trade publications; participates in trade fairs; and accepts information about forced child labor on its tip line (1-800-BE-ALERT).
Endnotes

1. U.S. Code 19 §2702(c)(8).
9. See “Petition to Remove El Salvador from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC 2462(D) of the Generalized System of Preferences (2006),” on file with the Office of the United States Trade Representative.
11. Ibid.
16. Ibid.
17. Ibid.
19. John Monks (General Secretary, ETUC), Guy Ryder (General Secretary, ICFTU), and Willy Thys (General Secretary, WCL) to Peter Mandelson (European Commissioner for Trade), March 21, 2005 (letter re “New GSP Regulation Special Incentive Arrangements (GSP-Plus”), www.icftu.org/www/pdf/lettermandelsonfinal.pdf.
21. Ibid.


25 Ibid.

26 Ibid.

27 Ibid.

28 U.S. Code 22 §2191a(a)(1).


32 Sub-Saharan countries eligible to participate in AGOA (as of 2007): Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.


Chapter 6
Promoting Worker Rights in Trade Agreements
Under the drive for global economic integration, regional and bilateral trade pacts have proliferated in recent years. That growth is traceable in large measure to the lack of concrete progress in reaching agreements at the multilateral level. As negotiators continue to wrestle over difficult issues, such as agricultural subsidies and nonagricultural market access in the framework of the Doha Development Round of WTO negotiations (deadlocked as of mid-2008), many developed and developing countries have instead moved forward with their own free trade agreements (FTAs).

At the same time, the international trade union movement has led the drive to ensure the protection of worker rights in trade pacts. The ITUC, the ILO, and the Trade Union Advisory Committee (TUAC) to the Organization for Economic Cooperation and Development (OECD) have long encouraged the formation of working parties on worker rights in multilateral trade groups. Further, trade unions have pursued, and in many cases eventually have obtained, the inclusion of worker rights in trade agreements by forming regional coalitions and formulating social charters that represent the trade union point of view within a given region. This chapter describes significant regional and bilateral agreements, their status, and their connection with worker rights issues.

Regional Pacts

NAFTA was negotiated in the early 1990s during the administrations of U.S. President George H.W. Bush, Mexican President Carlos Salinas, and Canadian Prime Minister Brian Mulroney. The three leaders announced an agreement on NAFTA in August 1992, just as the U.S. presidential race was heating up. Worker, environmental, and human rights organizations pressured then-candidate Bill Clinton to repudiate the agreement during his campaign for the presidency, charging that it favored multinational corporations and investors at the expense of workers and the environment. Instead, the newly elected Clinton Administration championed NAFTA over the strong objection of numerous congressmembers of his own party.

More than 15 years later, NAFTA’s impact on U.S. jobs and U.S. trade is still hotly disputed. The debate in the United States over job losses and wage reductions is a low-intensity disagreement, but it still breaks into large-scale conflict when international trade issues rise to the top of the Washington agenda. As with any heated public policy debate, perceptions and facts are at sharp odds in the NAFTA decade on jobs and wages. The Economic Policy Institute has argued that NAFTA destroyed some 1 million U.S. jobs by 2006. In contrast, the Heritage Foundation claimed in 2001 that NAFTA-related trade supported 600,000 U.S. jobs.

The controversy is exacerbated by the malleability of numbers in conflicting claims about jobs gained and lost under NAFTA. The argument is further complicated by separating the impact of NAFTA on employment and wages from the impact of Mexico’s peso devaluation at the end of 1994. NAFTA opponents can point to closed U.S. factories, many of which employed hundreds of workers whose jobs have now moved to Mexico. In contrast, jobs created in warehousing, distribution, professional services, and other fields are spread too thinly through the economy to affect the public debate. In addition, the balance of U.S. trade, which showed a slight deficit with Canada and a surplus with Mexico at the time when NAFTA was negotiated, has shifted to a large and growing deficit with both countries today.

The AFL-CIO has published figures that demonstrate an adverse impact. The AFL-CIO’s Task Force on Trade noted that in 1994, the U.S. trade surplus with Mexico was $1.7 billion. In 1995, this was transformed into a $15.4 billion deficit, and the combined merchandise trade deficit with NAFTA partners was $34 billion. In 2006, the deficit stood at $64 billion.

From NAFTA’s inception to November 4, 2002, when the U.S. Department of Labor stopped
accepting NAFTA-TAA (Trade Adjustment Assistance) petitions, the Labor Department certified 4,116 petitions covering 525,407 workers.\textsuperscript{3} This figure, however, does not accurately reflect the magnitude of workers affected, because many American workers were simply unaware of the TAA program. Moreover, service workers, such as truck drivers and railroad workers, were ineligible to apply.

\textbf{North American Agreement on Labor Cooperation}

In an effort to respond to both pro- and anti-NAFTA forces, then-President Clinton opted to support NAFTA if “side agreements” dealing with labor and the environment were added to the package sent to Congress for approval.\textsuperscript{4} After taking office in January 1993, the new Clinton administration began supplemental negotiations on these issues with Mexico and Canada. Agreements were reached in August 1993 on the North American Agreement on Labor Cooperation (NAALC) and a companion environmental accord, the North American Agreement on Environmental Cooperation (NAAEC). All three agreements took effect on January 1, 1994.

\textbf{Introducing the NAALC}

The NAALC is the first international labor agreement directly connected to a trade pact that allows for the imposition of economic sanctions to enforce worker rights. The accomplishments cited by NAALC supporters and the shortcomings noted by NAALC detractors provide important lessons for future attempts to fashion a viable worker rights/trade linkage.

One starting point for understanding the NAALC is to consider two things it does \textit{not} do:

- It does not set new common standards to which countries must adjust their laws and regulations. Instead, the NAALC stresses sovereignty in each country’s internal worker affairs, recognizing “the right of each party to establish its own domestic worker standards.”

- The NAALC does not create a supranational administrative tribunal to take evidence and decide guilt or innocence in labor disputes or to order remedies against violators. This function is left to national authorities applying national law. Nor does the NAALC create a supranational labor judicial body to take appeals on decisions of national tribunals and overrule decisions that arguably fail to “enforce” the NAALC. Decisions by the national courts are undisturbed by the NAALC.

Instead of setting up an international enforcement system, NAALC countries have created an oversight, review, and dispute resolution system designed to hold one another accountable for performance in 11 defined areas of labor law. Oversight is conducted first by a review body in another government. Then, depending on the subject area, independent nongovernmental committees or panels can conduct evaluation and arbitration.

The NAALC also includes provisions for sanctions, but no NAALC case has ever reached this stage. Practically speaking, it is unlikely that a case would result in sanctions, because the procedures include ample opportunity for finding a cooperative solution to disputes before they reach that point.

\textbf{NAALC Labor Principles and Obligations}

Part 1 of the NAALC sets out the objectives of the agreement. One objective is to promote, to the maximum extent possible, the labor principles set out in Annex 1 of the agreement:

- freedom of association and protection of the right to organize;
- the right to bargain collectively;
- the right to strike;
- prohibition of forced labor;
- labor protections for children and young persons;
- minimum employment standards;
- elimination of employment discrimination;
• equal pay for women and men;
• prevention of occupational injuries and illnesses;
• compensation in cases of occupational injuries and illnesses; and
• protection of migrant workers.

Under Part 2, Articles 2-7, the parties are required to abide by six sets of obligations. Each party to the NAALC must:

• ensure that its labor laws and regulations provide for high labor standards (Article 2);
• promote compliance with and effectively enforce its labor law through appropriate government actions;
• provide appropriate access to administrative, quasi-judicial, judicial, or labor tribunals for the enforcement of the Party’s labor law (Article 4);
• ensure that proceedings in these tribunals “are fair, equitable, and transparent” and therefore comply with due process and other procedural safeguards and provide for written decisions on the merits, the right of appeal, and adequate remedies for labor law violations (Article 5);
• make public its labor laws and regulations and provide an opportunity for “interested persons” to comment on the proposed changes (Article 6); and
• promote public information and awareness of its labor laws.5

**NAALC Commission for Labor Cooperation: Ministerial Council and Secretariat**

The NAALC created a Commission for Labor Cooperation that includes a Ministerial Council and a permanent Secretariat. The labor ministers of each country comprise the Council that governs the Commission.6

In September 1995, the Commission’s Secretariat began operations in Dallas, Texas. The Secretariat staff includes a dozen labor lawyers, economists, and other professionals (four from each country) with experience in the labor affairs of their countries. The NAALC Secretariat undertakes comparative studies, reports on labor laws and labor markets in the three countries, and serves as the general administrative arm of the Commission. The Secretariat also serves as the support staff of an Evaluation Committee of Experts (ECE) or an arbitral panel. In 2000, the Secretariat moved from Dallas to Washington, D.C.

**NAALC National Administrative Offices**

The NAALC also set up a National Administrative Office (NAO) in each country’s labor department. In the United States, as labor provisions began to be included in subsequent agreements, the U.S. Department of Labor combined all its trade-related functions, including the NAO function, into a new office called the Office of Trade and Labor Affairs (OTLA).7

The NAOs receive complaints (“public communications” or “submissions” in NAALC parlance) from the public related to any of the 11 labor principles. There is no restriction on who may file a complaint. In the interest of having the process as open and accessible as possible, the regulations of each NAO have set a fairly low threshold for acceptance for review.8

The scope of such reviews is “labor law matters arising in the territory of another party.”9 This is an unusual but critical feature of the NAALC. Employers, workers, unions, and allied NGOs must file their submissions with the NAO in another country, not the country where alleged violations occurred, to start the review process. The United States and Canada hold public hearings on complaints with transcripts and sworn testimony. The Mexican NAO holds private “informative sessions.” The NAOs issue public reports on submissions they have accepted for review. The public report contains a key make-or-break determination: whether or not the NAO recommends ministerial consultations. If not, the matter is closed. If so, the matter moves forward.
These ministerial consultations are open-ended efforts to resolve a problem before it expands. They have generally led to further hearings, special research reports, seminars and conferences, worker education programs, and the like.

**NAALC Evaluation Committees of Experts**

After ministerial consultations, the labor minister of a single country can request and obtain an evaluation from an ECE. An ECE performs an independent evaluation of the effectiveness of all three countries’ labor law enforcement in the labor issue under review. At this stage, Labor Principles 1, 2, and 3—the so-called “industrial relations principles” involving freedom of association, collective bargaining, and the right to strike—are excluded from evaluation through the ECE process. ECEs are empowered, however, to evaluate countries’ enforcement records in one or more of the remaining eight labor law matters, depending on the scope of the request:

- forced labor;
- child labor;
- minimum employment standards;
- employment discrimination;
- equal pay for women and men;
- occupational safety and health;
- workers’ compensation for occupational injuries and illnesses; and
- migrant workers’ protection.

**NAALC Arbitral Panels**

Five of the eight principles susceptible to an ECE are not permitted to move beyond the ECE process to the arbitration stage. However, following the release of an ECE report, two of the three countries’ labor ministers can demand an independent arbitral panel if they believe that the third country is still manifesting a “persistent pattern of failure” in effectively enforcing domestic labor laws in one or more of the three remaining areas:

- child labor;
- minimum wage; and
- occupational safety and health.

If the arbitral panel agrees that the country under scrutiny is failing to effectively enforce the laws in question, the panel is empowered to issue an “action plan,” which the country must implement.

If the government refuses or fails to implement the plan, the panel can fine the offending government up to 0.007 percent of the volume of trade between the countries. This fine was approximately $20 million when the NAALC took effect. With the total volume of trade at roughly $866 billion in 2006, the fine would now be just over $60 million.

The fine must be used to improve domestic labor law enforcement in the area or sector that provoked the complaint. If the fine is not paid, NAFTA tariff benefits can be suspended in the sectors or companies where the violations occurred. Since Canada guarantees payment of any fine through court enforcement, it is not subject to suspension of benefits.

**Weaknesses and Overall Impact of NAFTA and the NAALC**

Controversy has continued to boil around the impact of NAFTA and the NAALC. NAFTA proponents’ early predictions regarding the Mexican economy and wage levels have not been fulfilled. The Mexican economy shrank by 6.9 percent in 1995, the worst economic crisis in decades, and production fell in virtually all sectors. In 2006, the country registered a 4.8 percent growth rate, followed by a 3.3 growth rate in 2007. However, urban and rural poverty and inequality remain high. Moreover, many of the jobs created in the maquila sector post-NAFTA have since left for lower-wage countries such as China. The lack of adequate employment is most graphically illustrated by the continued migration of immigrants to the United States across the Mexican border.
Trade unions and allied NGOs have vociferously criticized NAFTA. The Canadian Labour Congress said that NAFTA “falls far short of the mechanisms necessary to truly remedy market failures and halt the downward pressures on wages and standards. . . . Even when the workers have proven their case satisfactorily, the remedies have been inconsequential and the abuses have continued.”\(^{14}\) Some independent Mexican union organizations have said that the NAALC “has not represented a real social counterweight to free trade” and “has shown serious limitations as an instrument” for improving worker rights.\(^{15}\)

The AFL-CIO said that NAFTA has failed to live up to its promises.\(^ {16}\) It noted that NAFTA rules allow companies to pit worker against worker and drive down wages and working conditions; in fact, NAFTA has adversely affected workers in all three countries. The AFL-CIO has also pointed to the fact that hundreds of thousands of jobs were lost as companies relocated to Mexico to take advantage of lower wages, weaker worker rights and environmental practices, and improved access to the U.S. market. Companies also have used the threat of relocation to break union organizing drives and gain concessions at the bargaining table. Moreover, the persistent regional and economic inequality has generated a migration of Mexican workers from rural areas to work in the maquiladora zones or in the United States, where their rights are not fully protected.\(^ {16}\)

Moreover, NAFTA allows companies to challenge national laws that protect the environment, public health, and consumers and to demand compensation from governments. For example, the Metalclad Corporation successfully demanded more than $16 million from the Mexican government when the government tried to prevent the company from building on an ecological preserve.\(^ {16}\)

The AFL-CIO also noted that NAFTA does not allow governments to include social, environmental, or worker rights criteria in their purchasing decisions. When former U.S. President Clinton ordered the federal government to stop using taxpayer dollars to buy goods made with the worst forms of child labor, he had to exclude Mexico
and Canada from the order, because NAFTA does not permit that type of protection. Finally, the AFL-CIO charged that the NAFTA side agreement has not protected worker rights, noting that although NAALC cases have led to a number of hearings and reports, no concrete changes have been made to improve worker rights.19

On the other side, business organizations have frowned on what they view as an NAO proclivity to devote too much attention to complaints against individual employers. The U.S. Council for International Business (USCIB) maintained that the primary intent of the NAALC is “to pursue cooperative activities on labor and employment matters” and argued, “[T]he value of these cooperative activities is undermined by the highly visible emphasis on handling complaints and individual cases.” The USCIB said that acceptance of a submission should be an “exceptional act” after all domestic legal procedures have been exhausted and that the sole results of submissions should be “joint studies and technical cooperation and assistance.” Citing the practice of the ILO and the OECD, the USCIB argued that the name of a specific company should not be part of the record in any submission and that NAOs should not hold public hearings because they are “too confrontational.”20

Mexico’s Enterprise Coordinating Council (CCE), the Coordination of Foreign Trade Enterprise Organisms (COECE), and the Confederation of Chambers of Commerce (CONCAMIN) criticized the “publicity” surrounding NAALC cases in connection with “premature” acceptance of cases. They called public hearings by the U.S. NAO “contrary to Mexican sovereignty” and argued that no submission or related report should contain the name of a specific company.21 A prominent consultant who had earlier served in the Mexican trade ministry attributed the NAALC’s activity solely to pressure from anti-NAFTA protectionist groups in the United States and characterized actions of the U.S. NAO in accepting cases and holding hearings as a “distortion” of the NAALC.

Perhaps the most important outgrowth of the NAFTA labor side accord and its compliance mechanism has been an unprecedented increase in exchange, communication, and coordination among worker rights advocates and labor researchers in all three countries. The NAALC’s submission mechanism has sparked a significant increase in cross-border labor and NGO collaboration. Since a submission about worker rights violations and the failure of government authorities to effectively enforce domestic law in one country must be submitted with the NAO of another country, those who submit cases are encouraged to seek partners in the other country to assist in pursuing the case. Nearly every submission has been signed by a coalition of organizations based in at least two countries, and sometimes in all three.

As of April 2008, 35 complaints had been filed under the NAALC. Some observers have called this number distressingly low, considering the volume of worker rights violations in North America. However, the NAALC is not intended to be a mechanism for resolving specific complaints and implementing remedies, such as: reinstating unjustly discharged workers, providing back pay to victimized workers, recognizing and bargaining with trade unions, removing children from unlawful labor, adjusting pay for women to equal that of men, installing air filters to reduce health hazards, and compensating injured workers. These matters are left to “hard law” under national legislation and national enforcement mechanisms.

In contrast, the NAALC is intended to be a review mechanism by which member countries open themselves up to investigation, reports, evaluations, recommendations, and other “soft law” measures. The idea is that over time, such enhanced oversight and scrutiny will generate more effective labor law enforcement.

The pattern of NAALC complaint targets and subjects has shifted over time. Most early cases, such as those involving General Electric, Honeywell, Sony, employees of the Mexican fisheries ministry, Maxi-Switch, Han Young, and
ITAPSA, dealt exclusively with violations of workers’ organizing and bargaining rights in Mexico. One case addressed a similar matter in the United States, where Sprint Corporation, the telecommunications giant, closed a workplace while workers were attempting to form a union.

By the end of 1997, nine of the first 10 NAALC complaints targeted Mexico for allowing worker rights violations to occur without effective labor law enforcement to remedy or deter the violations. The Mexican government suggested that the NAALC was becoming a “Mexico-bashing” tool rather than a balanced agreement meant to enhance worker rights in all three countries. Some Mexican critics charged that the NAALC had been captured by protectionist groups in the United States whose real goal was to halt foreign investment in Mexico by harassing multinational companies there and keeping jobs in the United States.

An inherent limitation afflicted the early cases. The NAALC’s “industrial relations” principles—freedom of association and protection of the right to organize, the right to bargain collectively, and the right to strike—were not subject to treatment beyond the NAO review stage. An NAO review could be followed by ministerial consultations, but there was no recourse to an Evaluation Committee of Experts or to an arbitral panel. Thus, better enforcement could not be encouraged through the imposition of economic sanctions against a government for failing to enforce labor law or against companies and sectors where violations occurred.

Moreover, the NAALC process did not yield specific remedies, such as the reinstatement of workers unjustly dismissed for union activity or orders to bargain with independent unions not affiliated with the dominant central labor body. Some worker rights advocates became discouraged and rejected the NAALC as “toothless.” However, others saw the longer-term potential for using the NAALC as a “climate-changing” mechanism, especially through the availability of public hearings and public accountability by government officials. They persevered with new complaints raising new subjects, including more cases arising in the United States and Canada. Twenty-one submissions were filed with the U.S. NAO, 19 of which involved allegations against Mexico and two against Canada. Eight were filed with the Mexican NAO and involved allegations against the United States. Five submissions were filed in Canada, three raising allegations against Mexico and two raising allegations against the United States.

Sixteen of the 21 submissions filed with the U.S. NAO involved issues of freedom of association; eight of those also involved issues of the right to bargain collectively. Two submissions concerned the use of child labor: one raised issues of pregnancy-based gender discrimination; three concerned the right to strike; five concerned minimum employment standards; and seven raised issues of occupational safety and health.

Of the submissions filed to date with the U.S. NAO, four were withdrawn by the submitters before hearings were held or the review process completed. Hearings were held on 10. Eight of the U.S. submissions have gone to ministerial-level consultations. The U.S. NAO declined to accept six submissions for review. Five Mexican NAO submissions resulted in ministerial consultations. One Canadian NAO submission resulted in ministerial consultations. Canada declined to accept three submissions for review.

The most recent NAALC complaint was filed with the Canadian government by two global union federations and over 40 Canadian, U.S., and Mexican unions and allied groups on April 23, 2008. It charged that the ban on public-employee bargaining in North Carolina and other states violated the U.S. Government’s obligation to “ensure high labor standards” and to “promote freedom of association and collective bargaining under NAALC principles 1 and 2.”
A Free Trade Zone Stretching from Tierra del Fuego to Alaska: The Free Trade Area of the Americas

NAFTA's passage gave free trade proponents additional momentum to expand its reach throughout the Americas. At the 1994 Summit of the Americas, held in December 1994 in Miami, Florida, leaders from 34 countries of the Western Hemisphere (excluding Cuba) made a commitment to conclude negotiations for a Free Trade Area of the Americas (FTAA) by January 1, 2005. The purpose of the agreement was to progressively eliminate barriers for trade and investment. Subsequent meetings of trade ministers fleshed out proposals for the FTAA, while heads of state sought to advance the FTAA agenda at summit meetings in Santiago, Chile, in 1998; Quebec City, Canada, in 2001; Monterrey, Mexico, in 2004; and Mar del Plata, Argentina, in 2005.

As negotiations for the FTAA progressed, labor unions, human rights and environmental groups, and other nongovernmental and civic organizations—all excluded from negotiations—became increasingly alarmed. Trade negotiators favored a pact that would exacerbate the flaws of the NAFTA model. They sought to extend companies’ right to sue governments and to incorporate provisions that could constrain governments’ ability to regulate public-health and environmental issues. Worse yet, the negotiators had resolutely rejected all demands to place worker and environmental rights on the agenda.

Although they welcomed closer economic ties with the rest of the hemisphere, trade unions and fair trade activists throughout the region noted that new trade and investment rules had to be based on respect for human rights and a shared plan for sustainable, democratic, and equitable development. These organizations, including the AFL-CIO, called on the FTAA negotiators to incorporate the following into any hemispheric agreement:24

- protection for the rights of migrant workers, regardless of their legal status;
- measures to ensure that countries retain the ability to regulate the flow of speculative capital in order to protect their economies from excessive volatility;
- debt relief measures to improve the ability of developing countries to fund education, healthcare, and infrastructure needs;
- compliance with the World Health Organization’s “revised drug strategy,” which provides that public health be paramount in trade disputes;
- equitable and transparent market access rules that allow for protection against import surges; and
- a transparent, inclusive, and democratic process for FTAA negotiation and eventual implementation.

The AFL-CIO also noted that any agreement covering investment, services, government procurement, and intellectual property rights should not undermine governments’ ability to enact and enforce legitimate regulations in the public interest.

In Santiago, Quebec, and Mar del Plata, parallel “People’s Summits” attracted thousands of leaders and activists from trade unions (including the AFL-CIO) and NGOs throughout the hemisphere. These summit participants launched an ambitious program of their own to force social issues such as worker, environmental, and human rights concerns onto the governments’ free trade agenda.

The Inter-American Regional Workers Organization (ORIT), the ICFTU regional grouping of trade union central bodies, played a lead role both in planning People’s Summits and in welcoming NGO participation.25 People’s Summit Organizing Committees included representatives from ORIT, the Canadian Labour Congress, the Quebec Workers’ Federation, the National Union Federation, the Brazilian and Chilean central labor federations, and NGO networks from around the hemisphere. They worked to shape proposals to
advance a social agenda in alternative trade and investment policies.

At the 1998 Summit of the Americas in Santiago, ORIT affiliates adopted three major demands: recognition of a labor counterpart to the officially sanctioned “Business Forum” that meets with FTAA government trade negotiators; the addition of the ILO core labor standards to any FTAA; and the adoption of a broader social charter in the FTAA that would address the concerns of other types of NGOs. The document was presented to Chilean President Eduardo Frei and to Canadian Prime Minister Jean Chretien.

The pressure of the People’s Summits bore at least symbolic results. A final document signed by the heads of state called for a plan of action to promote core ILO labor standards, improve education, reduce poverty and inequality, expand democracy, and guarantee human rights. The governments also agreed to create a committee on civil society to officially hear the views of labor, environmental, and other NGO groups as FTAA negotiations proceeded. 

The civil society consultation mechanism failed to achieve positive concrete results. Although government officials received written communications and held occasional briefings for civil society groups, they made no apparent attempt to sincerely engage with or respond to their concerns. The consultation process was not even close to that of the already-recognized Business Forum. The distinction was dramatically illustrated at the Quebec summit. Multinational corporations and banks bought free-wheeling access to trade and investment negotiators with contributions of at least $500,000 to sponsor parties and receptions, while a new chain link fence was erected around the entire city to prevent critics from being heard at the summit’s venue.

Although the FTAA negotiations process had been a disappointment, the heightened role of Latin American governments and trade blocs in shaping trade throughout the region also meant that Latin American unions and NGOs had the opportunity to share a lead role in defining the social dimension of trade, putting new balance into a North-South dialogue. In addition to raising Northern concerns such as runaway shops and lax environmental standards, Northern unions began to address developing-country concerns over debt relief, compensatory transfer funding from rich to poor countries, the right to development, technology transfer, and job creation. Just as it bore serious consequences for Mercosur (a regional trade agreement among Argentina, Brazil, Paraguay, and Uruguay, with several associate members), the economic collapse in Argentina in late 2001 and early 2002 called into question the viability of an FTAA along the lines proposed by the United States and other Northern governments.

By 2005 official attitudes toward the FTAA had begun to change and at the Fourth Summit of the Americas, in Mar del Plata, the proposed trade agreement was dealt a serious, if not fatal, blow. As critical issues, such as agricultural subsidies, had yet to be resolved at the multilateral level, progress on the FTAA—which did not attempt to address many of these issues—was nearly impossible. Thus, many stakeholders, especially the Mercosur nations, viewed as premature the U.S. insistence on setting a firm date to restart negotiations. Many also felt that the focus on the trade agreement was unresponsive to the issues to be addressed at the summit—namely, generating employment to combat poverty and inequality. At the inaugural ceremony, Argentina’s then-President Néstor Kirchner explained to the audience (and directed to President George W. Bush) that “[w]e will not be served by just any integration, but one that recognizes the diversities.” One diplomat attending the summit, speaking anonymously, summed up the Latin American response: “We’ve almost all of us been down that road, and it didn’t work. The U.S. continues to see things one way, but most of the rest of the hemisphere has moved on and is heading in another direction.” A Western Hemisphere summit is scheduled for April 2009, when the region’s leaders will attempt to address outstanding FTAA Issues.
U.S.-Jordan Free Trade Agreement

On October 24, 2000, a historic trade agreement was signed by Jordan’s King Abdullah and U.S. President Clinton. The U.S.-Jordan Free Trade Agreement was the first bilateral trade pact to incorporate enforceable worker rights and environmental protections into the body of the agreement.

Under Article 6 of the agreement, the parties “reaffirm their obligations as members of . . . the ILO . . . and their commitments under the ILO Declaration.” They also agree to “ensure that such labor principles and the internationally recognized labor rights set forth in [the agreement]” are recognized and protected by domestic law. These rights are:

- the right of association;
- the right to organize and bargain collectively;
- a prohibition on the use of any form of forced or compulsory labor;
- a minimum age for the employment of children; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The agreement also provides that “[a] Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties . . . .”

In contrast to other trade pacts, the U.S.-Jordan Agreement takes a step forward by subjecting labor disputes under the agreement to the same dispute resolution mechanism applicable to commercial disputes. Under Article 17, either party may request consultations to resolve a dispute, then submit the dispute to a Joint Standing Committee, and finally refer the matter to a dispute settlement panel. An annex to the agreement provides for transparency measures when a panel considers a dispute. These include soliciting and considering public views, making the submission public within 10 days, opening oral presentations to the public, accepting friend-of-the-court submissions by individuals and NGOs, and releasing reports to the public at the earliest possible time. If at the end of the process the matter is still unresolved, then “the affected Party shall be entitled to take any appropriate and commensurate measure.” An “appropriate measure” in a worker rights dispute might be an ILO delegation, a training program for workplace inspectors, a monetary fine, or the withdrawal of trade benefits under the agreement.

The agreement received overwhelming and diverse support in Jordan from both the General Federation of Jordanian Trade Unions and the Jordanian American Business Association (the American Chamber of Commerce in Jordan). However, despite the support of both governments, unions in both countries, and the Jordanian business community, some parts of the U.S. business community publicly opposed the labor and environmental provisions in the agreement.

When the agreement was signed, the U.S. Chamber of Commerce vowed to work with Congress to remove “unnecessary nontrade provisions” from the pact. Moreover, in an exchange of identical letters the Jordanian and U.S. governments expressed reluctance to see the agreement enforced according to its original design:

I wish to share my government’s views on implementation of the dispute settlement provisions included in the Agreement between the Hashemite Kingdom of Jordan and the United States of America on the Establishment of a Free Trade Area, signed on October 24, 2000.

Given the close working relationship between our two governments, the volume of trade between our two countries, and the clear rules of the agreement, I would expect few if any differences to arise between our two governments over the interpretation or application of the agreement. Should any differences arise under the agreement, my government will make every effort to resolve them without recourse to formal dispute settlement procedures.

JUSTICE FOR ALL
In particular, my government would not expect or intend to apply the agreement’s dispute settlement enforcement procedures to secure its rights under the agreement in a manner that results in blocking trade. In light of the wide range of our bilateral ties and the spirit of collaboration that characterizes our relations, my government considers that appropriate measures for resolving any differences that may arise regarding the agreement would be bilateral consultations and other procedures, particularly alternative mechanisms, that will help to secure compliance without recourse to traditional trade sanctions. 30

The U.S. Congress ratified the agreement without making substantive changes. However, no administration since 2000 has enforced the agreement through use of the dispute resolution system that would potentially allow for the use of sanctions. As suggested by the history of other agreements seen as toothless, this practice is likely to considerably weaken the effectiveness of the pact.

On September 21, 2006, the AFL-CIO and the National Textile Association (NTA) (an industry association of weavers, knitters, and fabric finishing companies in the United States and fiber, yarn, and other suppliers) filed a joint complaint under the labor chapter of the U.S.-Jordan Free Trade Agreement.31 The complaint alleged that the government of Jordan was in violation of its commitment under the agreement to “respect, promote, and realize” the core labor standards embodied in the ILO Declaration on Fundamental Principles and Rights at Work (as required in Paragraph 1 of Article 6 of the agreement), as well as its commitment to effectively enforce its own labor laws (Paragraph 4(a) of Article 6).

The complaint detailed numerous areas in which Jordan’s labor laws do not comply with ILO standards, as well as serious problems in enforcement: the labor inspection system was woefully inadequate and had been subject to corruption; employers had interfered with union organizing and engaged in discriminatory acts against workers who tried to form a union or stand up for their rights at work; and the government had failed to fine or otherwise deter this behavior, creating a huge obstacle for workers attempting to organize and bargain collectively.

Interviews conducted in Jordan’s QIZs confirmed that forced overtime occurred regularly, as did non-payment of wages, sometimes for many months at a time. Several workers reported 100-hour weeks and 24-hour shifts. Employers continued to confiscate workers’ passports against their will, contrary to the Jordanian government’s claim that employers held workers’ passports at their own request, for security reasons. Serious health and safety problems were still reported, including failure to provide protective masks for workers in dusty occupations. Living quarters in many cases were overcrowded, dirty, and without access to water. Medical care continued to be inadequate, and companies sometimes refused to cover the costs of treating work-related injuries.

Several workers reported being beaten regularly by management, and others were threatened with beatings, deportation, and jail if they complained or approached the union. The AFL-CIO and the NTA recognized and welcomed the important steps taken by the Jordanian government in response to the allegations of worker rights violations. The Jordanian government has closed at least seven factories where abuses were occurring and has taken steps to improve the labor inspection regime.

The George W. Bush Administration acknowledged receipt of the petition and took some measures to pressure the Jordanians to improve the laws and practices, especially in the QIZs. Unfortunately, Jordan has not yet passed a new draft labor law, which was prepared with the assistance of the ILO. And while conditions in the QIZs have improved in some cases, abuses continue, particularly against migrant workers. However, after the plight of Jordanian migrants received ample international publicity, the Jordanian government began to allow migrant workers to join Jordanian trade unions.
The George W. Bush Administration’s Template for Worker Rights

The George W. Bush Administration, under U.S. Trade Representatives Zoellick, Portman, and Schwab, concluded several trade agreements from 2002 to mid-2007, when fast-track negotiating authority expired.

Three trade agreements in the Middle East and North Africa region were ratified, including ones with Morocco in 2004 and Bahrain and Oman in 2006 (although the last has not yet been implemented). Efforts to negotiate a free trade agreement with the United Arab Emirates were unsuccessful, and the attempt was eventually abandoned.

In the Americas, the George W. Bush Administration negotiated its first agreement with Chile in 2002. An FTA with Central America and the Dominican Republic, ratified by the United States in 2005, was nearly defeated over various concerns including worker rights, development, and sugar imports. Costa Rica has not yet ratified the agreement, although the country’s voters narrowly approved the pact in a historic popular referendum on October 7, 2007. An agreement covering the Andean region (minus Venezuela) was launched in 2004, although serious negotiations with Bolivia never materialized, and an FTA with Ecuador was abandoned over a high-stakes dispute between Ecuador and Occidental Petroleum. Bilateral agreements with Peru and Colombia were reached but have yet to be ratified. After many years, an FTA with Panama was also reached and is pending ratification.

In Asia and the Pacific, the United States concluded an FTA with Singapore in 2002, with Australia in 2004, and with South Korea in 2007—inking the deal during the last hour of trade negotiating authority. A trade agreement with Thailand was abandoned in 2006 after a military coup supported by the palace ousted Prime Minister Thaksin.

Common to all of these agreements were their labor chapters, which were first applied in the U.S.-Chile FTA and used as a template in all successive trade agreements. In all of these FTAs, the United States and its trading partner reaffirmed their obligations as ILO members and as signatories to the 1998 ILO Declaration. While acknowledging their right to establish their own respective labor laws, they pledged to see that such laws were consistent with internationally recognized core labor standards and agreed not to encourage trade or investment by weakening relevant domestic labor laws. Both governments promised to provide access to judicial tribunals for labor law enforcement; ensure a fair, equitable, and transparent enforcement process; and promote public awareness of their labor laws.32

The only enforceable provision in the labor chapter of these agreements is each government’s primary commitment “not [to] fail to effectively enforce its labor laws . . . .” In the United States, this applies to federal laws only. If one government believes that the other has not complied with this commitment, its first step is to request cooperative consultations. After 60 days of consultations, the complainant may access the agreement’s dispute settlement provisions. A dispute settlement panel can impose monetary penalties of up to $15 million annually and suspend FTA benefits if the penalty is not paid.

The labor chapter also established a committee composed of cabinet-level or equivalent government representatives to oversee implementation of the labor provisions, consultations on labor issues, and cooperation. An annex provided for consultation to improve labor standards related to the ILO Declaration, labor relations, working conditions, issues related to small and medium enterprises, social protections, and technical issues.

The U.S. Trade Act of 2002 requires trade advisory committees to prepare reports on proposed trade agreements subject to Trade Promotion Authority (TPA) for the presidential administration and the U.S. Congress. In Section 2012(a) of the TPA, Congress directs the U.S. Trade Representative to ensure that worker rights are protected in new trade agreements. TPA Section 2102(a)(6) cites the over-
all negotiating objective as being “to promote respect for worker rights . . . consistent with core labor standards of the ILO” in new trade agreements. The TPA also has negotiating objectives on the worst forms of child labor, derogation of labor laws, and effective labor law enforcement.

The trade negotiation advisory system was established in the Trade Act of 1974 to ensure that the U.S. Government would receive advice and assistance from a range of stakeholders as it developed trade policy. The advisory program is run jointly by the U.S. Trade Representative (the lead agency), the Department of Commerce, the Department of Agriculture, the Department of Labor, and the Environmental Protection Agency. The advisory groups are composed of representatives of businesses, labor unions, environmental and consumer groups, state governments, academics, and retired U.S. Government officials.

The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), composed of labor leaders and experts from multiple sectors, has been tasked with evaluating the impact of these agreements on the U.S. economy and workers. Its reports’ highly critical views diverge widely from those of the U.S. Government. Each LAC report contends that these agreements neither fully meet TPA objectives nor promote the economic interest of the United States.

Among other flaws, the committee identified the following:

- The labor provisions do not protect core worker rights in any of the countries involved; they represent a big step backward from the U.S.-Jordan FTA and unilateral trade preference programs.
- The agreements primarily benefit the few large U.S. enterprises that ship work abroad, exploit guest workers in all three countries, and constrain governments’ ability to regulate their behavior.
- Because the dispute settlement process applies to only one worker rights obligation (enforcement of domestic labor law), violations of ILO standards and derogation of labor laws cannot be remedied. Moreover, the exclusive focus on domestic labor law actually creates an incentive for countries to weaken or eliminate labor laws in order to avoid dispute settlement procedures.
- Under the Chile FTA, workers lose the leverage they had gained under the GSP, including the voice they had through the individual petition procedure.

The LAC strongly criticized the enforcement process, which excludes governments’ obligations to meet international worker rights standards, allows countries to lengthen the consultation process, and lets them cap the maximum fines and sanctions at unacceptably low levels, without regard to the level of harm.

The LAC also denounced the fact that the process essentially allows violators to pay fines to themselves with little oversight. Fines, or “assessments,” are paid into a fund to improve labor law administration in the violating country, thereby rewarding a government for its failure to enforce its laws. The FTAs do not prohibit violators from altering their budgets, so there is no guarantee that additional money will be spent on enforcement. Moreover, the LAC noted, the FTAs do not address what constitutes acceptable use of the funds. The LAC cited conferences and seminars held under provisions in the NAFTA labor side agreements that have failed to improve respect for worker rights.

Endorsing the LAC’s findings, AFL-CIO President John Sweeney urged Congress to reject these FTAs, which had been developed under a non-transparent process. With regard to Chile and Singapore, for example, Sweeney charged that the FTAs were “a blueprint to a global economy without workers’ rights, job and wage security and balanced international trade.” He contended that both FTAs “are weaker than existing trade policies in protecting workers’ rights and contain provisions on investment, services, government procurement, intellectual property rights and immigration poli-
cies that will undermine the ability of governments to regulate public health, the environment and domestic labor markets.”

**Labor Law Shortcomings in U.S. Trade Partners**

In many places, substandard laws have not been improved, nor has the enforcement of those laws. Thus, workers are no better off than they were before an FTA was implemented, and in many cases—due to the commercial provisions of the agreement—they are worse off.

A survey of the laws in force at the time of ratification reveals major flaws in the domestic regulation of many countries. As the FTAs require only enforcement of existing laws, these countries will be able to comply with their FTA obligations, even given the following serious problems:

Australia’s Workplace Relations Act (WRA) allows “greenfields” agreements. This provision permits employers to choose a union to bargain with before it has even employed any workers. “Greenfields” agreements effectively deny workers the right to choose their own bargaining representatives, and they can remain in force for up to three years. The WRA also allows employers to conclude individual “Australian Workplace Agreements” (AWAs) with their employees, and it privileges these agreements over collective bargaining agreements. This situation creates an incentive for employers to conclude AWAs with their workers to avoid being bound by a collective agreement. In Australia, a worker can also be subject to common law court claims and personal damages for strike activities unless Australian law explicitly protects those activities. However, the WRA only protects some categories of strike activity, thus penalizing workers engaging in other industrial actions and undermining workers’ right to strike as the ILO has defined the term. The conservative Australian government that adopted the WRA was voted out of office in 2007. The new Labor government has committed to a complete overhaul of Australia’s labor law.
The labor laws of the CAFTA countries do not come close to meeting international standards, and they have been criticized repeatedly by the ILO and the U.S. State Department. Employers in Central America intimidate, fire, and blacklist workers for attempting to exercise their right to join an independent union, and they do so with impunity under Central American laws. The ILO has found time and again that these laws fail to meet international standards on the right to organize.

- In El Salvador and Nicaragua, workers fired for union organizing have no right to be reinstated, and the only remedy available is a minor fine—a small price to pay to keep factories union-free.

- In Guatemala and Honduras, the fines for antiunion discrimination are so low that they do not effectively deter the practice, and courts hardly bother to enforce the fines anyway.

- In Costa Rica, a proposal to strengthen remedies for antiunion discrimination, as recommended by the ILO, has still not become law, and the government has repeatedly backtracked on tripartite agreements for labor reforms.

The ILO and the U.S. State Department have highlighted a number of other areas in which Central American labor laws fail to meet basic international labor standards:

- Costa Rican law allows “solidarity associations” to represent workers in the place of unions. In practice, employers establish solidarity associations to avoid recognizing and bargaining with legitimate independent unions that have been organized by their workers.

- El Salvador’s officials take advantage of the law’s overly formal union registration requirements to deny legal recognition to legitimate trade unions.

- In Guatemala, the government has not established a climate where the rule of law can make freedom of association possible; since July 1, 2006, there have been at least nine murders, three attempted murders, two gang rapes, and one disappearance of union leaders, members, or their families. Guatemala also has legal barriers that hamper unionization. More than half of all workers in an entire industry must agree to form an industrial union, presenting an insurmountable barrier to the formation of industrial unions and barring union pluralism. In export processing zones, where workers routinely shift from plant to plant and thus cannot organize effective unions at the plant level, this restriction essentially denies workers the freedom to form unions.

- In Nicaragua, the large number of small unions active in the agricultural sector makes effective bargaining impossible without federation involvement. Yet Nicaraguan law bars federations and confederations of unions from playing a role in collective bargaining, denying workers in agriculture and other sectors their right to bargain collectively.

- Onerous voting requirements and procedural impediments make it nearly impossible to call a legal strike in Costa Rica, Honduras, and Nicaragua. In Guatemala, workers can be held individually liable for damages resulting from a strike and face criminal penalties for striking, while the executive has broad legal discretion to bar strikes in certain sectors.

Trade unions in Bahrain are prohibited from engaging in political activities. Only one trade union may be formed at each establishment, and it must be affiliated with the same national union confederation. Bahraini law does not specifically provide for collective bargaining and it restricts the right to strike. Further, some workers are vulnerable to forced labor through employer abuse, particularly domestic servants and migrant workers, who make up approximately two-thirds of the workforce.

**U.S. Congress Enacts New Labor Provisions in Bilateral Trade Agreements**

Following the November 2006 elections in the United States, when the Democratic Party took control of the Senate and House of Representatives, the new majority made it clear that several changes
would have to be made to the pending agreements with Peru and Panama before they would receive favorable consideration. After months of negotiation between House Democrats and the Administration, a new template was agreed upon and announced at a May 10, 2007, press conference.\textsuperscript{13}

The AFL-CIO praised the new worker rights provisions as “progress in crucial areas central to the debate over globalization and its impact on working families.” The new labor chapter has three basic provisions: a commitment to “adopt and maintain in [the Parties’] statutes and regulations the core labor rights set forth in the ILO Declaration (Article 17.2.1); a commitment not to “waive or otherwise derogate from, or offer to waive or otherwise derogate from” labor laws “in a manner affecting trade or investment . . .”; and a commitment to effectively enforce domestic laws, including those that protect core worker rights set forth in the Declaration, as well as those regarding minimum wages, health and safety, and maximum hours of work (Article 17.2.1(a)).

The parties’ clear commitment to adopt and maintain the ILO core worker rights in domestic labor law represents progress over the Jordan FTA, which reaffirmed the parties’ commitments under the ILO Declaration but required only that countries “strive to ensure” that their laws recognize and protect the core labor standards. It is an enormous improvement over all the agreements previously negotiated by the George W. Bush Administration (Chile, Singapore, Morocco, Australia, Bahrain, Oman, the Dominican Republic, and the nations of Central America), which required only that countries enforce their own domestic labor laws.

The new labor language is stronger than that of previous FTAs, because it includes a commitment to refrain from violating domestic labor law in order to gain a competitive trade advantage. For example, the Jordan FTA states that “each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.” The Peru FTA states, “Neither Party shall waive or otherwise derogate from” its labor law obligations “in a manner affecting trade or investment between the Parties.” Finally, the definition of domestic labor laws that a country must “effectively enforce” is now expanded to include discrimination, along with other core ILO standards and “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”

All the new labor provisions are subject to the same dispute settlement and enforcement mechanisms as the commercial provisions in the agreement. The new language also improves on wording in previous FTAs (included in the Jordan and George W. Bush FTAs) that allowed governments to avoid complying with their labor obligations by claiming that they were exercising prosecutorial discretion. The new text clarifies that any decisions with respect to the allocation of enforcement resources must not undermine the commitment to enforce the core labor standards: “A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter” (Article 17.3.1(b)).

The governments of Peru, Panama, Colombia, and Korea have all amended the FTAs to incorporate the new labor template.

**Canada–Chile Agreement on Labor Cooperation**

When NAFTA was approved and implemented in 1994, expectations were high that Chile would soon become a fourth party to the agreement. Negotiations toward that end were derailed, however, with the peso crash at the end of 1994 and the resulting economic crisis in Mexico. Growing anti-NAFTA sentiment in the United States led to President Clinton’s failure to obtain renewed fast-track negotiating authority from Congress after it expired in 1994. Chile did not want to have the terms of its accession to NAFTA picked apart by the U.S. Congress, so negotiations on NAFTA accession stopped.
Chile then began to pursue an alternative route, undertaking a series of bilateral trade negotiations with Canada, Mexico, and Mercosur countries. As a result, Canada and Chile signed a trade agreement in 1996 followed in early 1997 by the Canada-Chile Agreement on Labor Cooperation (CCALC). In most substantive respects, the CCALC is identical to the NAALC. It sets forth the same 11 labor principles and related obligations for effective enforcement of national law and creates a Commission for Labor Cooperation to oversee the accord.  

Like the NAALC, the CCALC emphasizes cooperative consultations and cooperative work programs. It also provides a similar mechanism for receiving complaints, including “public communications,” for independent evaluations by independent committees of experts and for dispute resolution by ad hoc arbitral panels. As with the NAALC, the 11 labor principles of the CCALC are divided into three tiers limiting dispute resolution to child labor, minimum wage, and health and safety labor law enforcement.

In a targeted but significant deviation from the NAALC, sanctions under the CCALC’s dispute resolution mechanism stop with fines against an offending government. The CCALC does not take the further step provided in the NAALC of potential trade sanctions through loss of beneficial tariff treatment against a company or industry that violates worker rights.

As a bilateral pact, several of the trinational features of the NAALC are transformed in the CCALC. Obviously, the Ministerial Council consists of two, not three, labor ministers. No permanent, binational secretariat has been created to serve the council. Instead, the functions of the NAALC Secretariat and the three NAOs are combined in a CCALC national secretariat in each country. Canada’s same National Administrative Office—now renamed the Office of Inter-American Labour Cooperation—performs this function for Ottawa. The national secretariats are responsible for developing cooperative activities, preparing reports and studies, supporting any committee or working group set up by the council, and receiving and reviewing public communications on labor law matters arising in the other country.

From the start, the Canadian and Chilean governments announced that they would not substantively deviate from the NAALC in their negotiations on a labor agreement. Since it was still hoped that Chile would eventually accede to NAFTA, the bilateral negotiators did not want changes in their agreement that might require a full-scale renegotiation on terms of accession. Canadian and Chilean trade unions and NGOs roundly criticized this stance. They argued that new labor negotiations should be seen as an opportunity to improve the “toothless” NAALC.

Worker rights advocates also protested the implication in the agreement that Chilean labor law and practice conform to the 11 labor principles. While the harshly repressive Pinochet labor code was eased by a series of reforms after Chile returned to democratic rule, several provisions that arguably violate the accord’s labor principles remain in place:

- permitting wide latitude for employers to dismiss workers, including union organizers and supporters, based on the “needs of the business” as defined by the employer;
- denying organizing and collective bargaining rights to public employees and to seasonal and temporary workers;
- obstructing collective bargaining above the level of the single workplace;
- denying union access to corporate financial information for use in collective bargaining;
- severely limiting the topics susceptible to collective bargaining; and
- limiting the right to strike and permitting permanent replacements.

Notwithstanding these problems, Canada and Chile signed their labor cooperation agreement on February 6, 1997, and the agreement went into
effect on July 9, 1997. The two national secretariats conducted workshops, seminars, and conferences similar to those sponsored under the NAALC. But contrary to the NAALC experience, no complaints have yet been filed under the CCALC. Chilean unions have also not accepted offers from their Canadian counterparts to file complaints under the CCALC in order to bring problems of Chilean labor law and practice under the international scrutiny afforded by the agreement.

Canada–Costa Rica Agreement on Labor Cooperation

In 2001, Canada and Costa Rica signed the Canada–Costa Rica Agreement on Labor Cooperation (CCRALC) as part of a free trade pact between the two countries. The CCRALC continues a process of scaling down the enforcement mechanisms found in the NAALC. The CCALC eliminated trade sanctions but kept fines as a remedy for violations of the agreement. The CCRALC eliminates fines as well. It allows only “reasonable and appropriate measures, exclusive of fines or any measure affecting trade” (Article 23, ¶5). A halt to participation in cooperative activities is contemplated as the enforcement tool under the CCRALC.

The CCRALC also eliminates the Evaluation Committee of Experts found in the NAALC and the CCALC, as well as the dispute resolution process. Instead, it establishes a “review panel” directly following ministerial consultations, with the panel empowered to make recommendations.

An innovation in the CCRALC is its direct incorporation of the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work in place of the NAALC’s labor principles. The CCRALC also added a new annex titled “additional labour principles and rights” to include items from the NAALC’s labor principles that are not part of the ILO Declaration, namely, minimum employment standards, occupational health and safety, and worker compensation. However, the CCRALC failed to include the NAALC’s Labor Principle 11 on migrant worker rights.

U.S.–Cambodia Bilateral Textile Agreement

On January 21, 1999, the U.S. and Cambodian governments entered into a three-year bilateral textile trade agreement. The agreement provided for cooperation on a quota framework covering 12 apparel product categories, for increased market access for U.S. exporters, and for the prevention of illegal transshipment. Under the market access provisions, Cambodia agreed to bind tariffs at applied rates and to reduce them over the term of the agreement.

The agreement also secured Cambodia’s commitment to improve worker rights and working conditions. It permitted an annual quota increase of 14 percent if the United States found that Cambodia was in “substantial compliance” with its own labor laws as well as internationally recognized core labor standards.

In December 1999, the U.S. Government found that Cambodia was not in substantial compliance with its labor laws and did not authorize the 14 percent increase. However, the United States acknowledged that some progress had been made in the enforcement of core labor standards by offering a 5 percent increase, to take effect as soon as an ILO independent monitoring program was established. In early May 2000, the Cambodian government, the Garment Manufacturers Association of Cambodia (GMAC), and the ILO agreed to establish a project to monitor working conditions in Cambodia’s garment industry. On May 18, 2000, the U.S. Government acknowledged this move by approving a 5 percent increase for the quota year 2000.

Under the ILO program, ILO monitors visited factories and collected information about factory compliance with core labor standards and Cambodian labor law. The U.S. Government considered the results cited in the program’s quarterly public reports when making its annual decision concerning the quota increase.

On December 31, 2001, the United States and Cambodia extended the agreement for another three years, through December 31, 2004. The quota
for most textile exports from Cambodia in 2002 would be 15 percent higher than that in 2001. This included both an unconditional yearly 6 percent increase, which did not depend on core labor standards, and a 9 percent increase awarded to recognize Cambodia’s progress in reforming labor conditions in textile factories. The 9 percent bonus reward for 2002 followed a round of U.S.-Cambodia labor consultations. The ILO conducted projects in Cambodia to assist the government with labor law implementation.

The memorandum of understanding that extended the original agreement included additional incentives for continuing improvements in labor conditions. The potential quota reward for full compliance with internationally recognized core labor standards would increase from 14 percent to 18 percent. The two governments would conduct two rounds of labor consultations in 2002 and continue to review working conditions in the garment sector. If it was determined that Cambodia had made further progress toward substantial compliance, the annual quota bonus could be increased by up to 9 percent (as long as the quota increase did not exceed the newly established maximum of 18 percent).

The agreement became obsolete with the expiration of the Multifiber Arrangement (MFA) on January 1, 2005. (See Global Pacts for a discussion of the MFA.) While the program experienced some success, it was limited by a number of shortcomings. First, the ILO monitoring program, as initially created, allowed participation by factories to be voluntary—even though the quota bonus was awarded to the country as a whole. Thus, information on working conditions was, by definition, incomplete. The Cambodian government addressed the problem by issuing a regulation that limited the availability of the export quota to companies that participated in the program.  

A second problem was that the monitoring program required reports on conditions in factories but was not clear whether the information would be provided in the aggregate or would identify individual factories by name. After discussions with all parties, the ILO decided to issue reports that aggregated results in the first instance. The “synthesis reports” would give a profile of problems in the sector without naming individual firms. However, after allowing time for remediation of any problems found, the ILO monitors would re-inspect each factory for compliance. Factories that had not remedied violations of national labor laws or international worker rights found on the first visit would be named.
In addition, at the beginning of the project, the chief technical advisor refused to share the results of the factory monitoring with workers and their representatives. This decision was controversial, drawing criticism from unions and worker rights groups. Later, the results of the reports were shared, but not in their entirety.

The increase in quotas and the decisions of buyers to source from a country with a monitoring program increased employment dramatically in Cambodia, from 80,000 in 1998 to 220,000 in 2003. The ILO’s reports on its first visit indicate that compliance was generally good with regard to forced labor, child labor, and gender discrimination. It found serious problems, however, involving under-payment of wages, excessive hours and forced overtime, violations of health and safety laws, and freedom of association, where problems were fewer but often serious when they did occur.

On reinspection, many companies had addressed problems related to payment of wages. However, only 41 percent of factories were in full compliance with legal hours of work and overtime requirements or had fully remedied problems found on the first inspection, while 33 percent of factories had not remedied any of the problems. About 76 percent of factories had remedied some or all problems with freedom of association identified by the ILO, while the other 24 percent had failed to correct any of the problems in this area.

Although the ILO program generated some positive and lasting effects, worker rights conditions in Cambodia have since deteriorated. On June 20, 2006, for example, approximately 200 riot police forcibly broke up a march involving more than 1,500 workers protesting the illegal suspension of a union leader. There were credible reports that workers were dismissed on questionable grounds after organizing or participating in strikes. In some cases strikers were pressured by employers to accept compensation and leave their employment.

In September and October, garment sector unions negotiated collectively with the GMAC, principally to raise the minimum wage. On October 19, the day before the last scheduled negotiating session, the government called a meeting of the Labor Advisory Committee (LAC), a tripartite group with probusiness and progovernment leanings. In an effort to short-circuit the negotiations, the LAC approved a government plan to increase the minimum wage by $5 per month effective January 1, 2007.

Only months later, in June 2007, the government approved plans to steeply cut wages for garment workers employed on the nightshift. The move was intended to create more jobs by encouraging companies to hire more people to work in the factories during the evening, and it was also aimed at improving Cambodia’s international competitiveness. Opponents countered that there were better ways to improve business than by cutting meager nightshift wages, roughly $50 a month, by up to 70 percent.

**European Union Bilateral Trade Issues**

The EU has grown enormously in scope and authority since it was established in 1952 as the European Coal and Steel Community, a six-nation agreement governing the production and trade of coal and steel. It transformed itself into the European Economic Community in 1957. In 2002 it created a common currency, the euro, which now competes with the U.S. dollar as the world’s benchmark currency. The EU has also created complex legal and political rules for a common market, monetary union, and, since 1971, an increasingly unified trade policy.

The EU’s executive body, the European Commission, negotiates at the WTO on behalf of all 27 EU member states. In addition to negotiations at global venues such as the WTO (and largely because of negotiation impasses at that body), the EU has also followed a global trend in negotiating bilateral trade agreements with non-EU countries or regions.
While the EU often links trade to other foreign policy objectives like international development, its bilateral trade agreements have shied away from explicit enforcement mechanisms to protect or promote worker rights. For example, the 2000 EU-South Africa bilateral agreement references ILO core conventions, but it contains no linkage between the conventions and any enforcement provisions. According to a study by the Friedrich-Ebert-Stiftung, “the focus in terms of labor standards is on information exchange and technical assistance to improve domestic legislation and enforcement.” The 2002 EU-Mexico Agreement mentions democratic principles and respect for human rights, but it makes no mention of worker rights standards or enforcement mechanisms. Similarly, the 2002 EU-Chile trade agreement also heralds democracy and human rights, and its Article 44 on “Social Cooperation” discusses the role of the ILO core conventions in social development. However, it also lacks enforcement mechanisms to ensure respect for the conventions and other worker rights standards.

As of early 2008, the EU was pursuing bilateral trade pacts with Korea, India, and Vietnam, and it was attempting to reach bilateral trade agreements with regional groups such as the Gulf Cooperation Council and Association of Southeast Asian Nations.

The European trade union movement has pressed the EC on the issue of worker rights and trade. In a 2007 joint statement, the ITUC and the ETUC issued a set of demands relating to free trade agreements. It included:

- requirements that both parties commit themselves to the effective implementation of core labor standards and other basic decent work components;
- a clear statement that parties to the agreements will ratify the ILO standards concerned;
- extending to sustainable development issues (environmental, human rights, and worker rights) the same procedural standards as those that apply to commercial issues in FTAs;
- regular reports on general progress to implement all the commitments, including the ILO Declaration on Fundamental Principles and Rights at Work;
- a commitment not to lower labor standards in order to attract foreign investment and to prevent an expansion of production in EPZs;
- sustainability impact assessments that consider all relevant aspects of the social and economic impact of the agreements, including access to quality public services and the use of different policies, including trade-related policies, to achieve industrial development;
- a binding mechanism to allow workers’ and employers’ organizations on both sides of any FTA to submit complaints;
- review of complaints about social problems by genuinely independent and well-qualified experts, as well as ongoing follow-up and review provisions, particularly in order to maintain pressure on any governments that allow worker rights violations;
- a Trade and Sustainable Development Forum for consultation with workers’ organizations, employers’ organizations, and NGOs;
- inclusion of fines linked to the general dispute settlement provisions of any agreement;
- provision of technical and development assistance;
- a set of ILO conventions to be considered in addition to the core conventions; and
- inclusion of clauses concerning respect for multilateral environmental agreements, including the Kyoto Protocol, and for human rights conventions in general, including those on civil and political rights.
Global Pacts

General Agreement on Tariffs and Trade

In 1948 the General Agreement on Tariffs and Trade was signed by 23 member trading nations. The GATT grew out of the post-World War II conviction of American and European leaders that protectionist policies had contributed to the U.S. Great Depression and the international political upheavals of the 1930s. The GATT, which eventually was signed by 135 member nations, worked gradually toward an open world trading system, governed by the rule of law.

As years passed, those in international political and academic circles increasingly believed that opening world markets would promote growth and raise living standards. They asserted that open markets would give countries a greater stake in maintaining stability and prosperity beyond their own borders, thereby strengthening a fragile peace.

As part of its effort to develop an open global trading system, the GATT included a list of “unfair trading practices,” such as dumping goods in foreign markets at prices below production costs and subsidizing exports, but the list did not include violation of basic worker rights. The AFL-CIO and others continued to call for the incorporation of a “social clause” in the GATT that would clearly define the denial of basic worker rights as the unfair trading practice that it is. This clause, however, was never adopted.

World Trade Organization

During the 1990s, the Uruguay Round of GATT negotiations laid the framework for the creation of the WTO, a trade group covering virtually the entire world. The WTO incorporated GATT agreements.

The WTO was established on January 1, 1995. The final accord was signed by 111 governments. The purpose of the organization is to set global rules for trade; it is the legal and institutional foundation of the multilateral trading system. It sets the principal contractual obligations determining how governments frame and implement domestic trade legislation and regulations. Its primary functions are the following:

- to administer and implement the multilateral and plurilateral (agreements within the WTO framework among some, but not all, WTO members) trade agreements that together comprise the WTO;
- to act as a forum for multilateral trade negotiations;
- to seek to resolve trade disputes;
- to oversee national trade policies;
- to cooperate with other international institutions involved in global economic policymaking; and
- to provide technical assistance and training for developing countries.

The WTO’s day-to-day work is conducted by a number of other bodies, mainly the General Council, which also handles dispute resolution and trade policy review. The WTO Secretariat, based in Geneva, is headed by a director-general (the post rotated to Pascal Lamy of France on September 1, 2005, for a four-year term) and four deputy directors-general. It has about 600 staff members, who provide services to WTO delegate bodies for negotiations and the implementation of agreements. The WTO also provides technical support to developing countries, particularly the least developed.

In addition, WTO economists and statisticians provide trade performance and trade policy analyses. The legal staff assists in the resolution of trade disputes involving the interpretation of WTO rules and precedents. The WTO Secretariat also assists with accession negotiations for new members and advises governments considering membership. Its budget is approximately $142 million, with individual contributions calculated on the basis of shares in total trade conducted by members.
The WTO seeks to provide predictable and increasing access to global markets. Accordingly, members are required to treat the products of other members no less favorably than the products of any other country. Moreover, once goods have entered a market, they may not be treated less favorably than their domestically produced equivalents.

Quotas are generally prohibited, but tariffs and customs duties are permissible. Nevertheless, tariff reductions made by more than 120 countries in the Uruguay Round of the GATT resulted in a 40 percent cut in industrial countries’ tariffs. Members have also made commitments regarding national regulations on services.

The WTO also seeks to promote “fair competition” by strengthening GATT rules on duties levied against dumping and subsidies. In addition, the WTO has generated agreements on farm trade, intellectual property, and trade in services. The WTO aims to encourage development and economic reform by maintaining GATT provisions that favor developing countries, giving these countries transition periods to adjust to the more difficult WTO provisions. “Least-developed” countries (LDCs) receive additional flexibility as well as accelerated market access concessions for their goods.

The WTO has the potential for tremendous impact on the daily lives of citizens of all nations. A country’s membership in the WTO can weaken its ability to safeguard its citizens with domestic policies on human and worker rights, health and environmental issues, and consumer protections. Once a country has signed the accord, the legal enforceability of such provisions is, to some extent, contingent on their compatibility with WTO mandates. The WTO may find that a country’s laws violate trade rules, and the organization may then release other countries from the non-discrimination principle. This provision authorizes those countries to levy additional tariffs on goods from the offending country (any goods, not just those from the sector that benefits from the law). Member countries expect that the economic pressure created by such WTO-authorized retaliation will bring about the desired legal change.

The WTO is governed by the ministerial conference, which meets every two years. The first ministerial meeting was held in December 1996 in Singapore. As a result of intensive discussions with labor representatives, the WTO for the first time included language on worker rights in the Singapore Declaration:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO secretariats will continue their existing collaboration. 50

However, despite the declaration’s affirmation of support for core labor standards and WTO-ILO cooperation, the WTO failed to engage in any significant follow-up with the ILO. The ITUC called upon the WTO to develop a transparent, multilateral approach to worker rights. This approach would include working closely with the ILO to consider together how to strengthen international labor standards in the global trade system, potentially through what has been called the “social clause” and is now more commonly referred to as the “worker rights clause.” The ITUC recommended focusing on eight “core standards,” which included Conventions Nos. 87 and 98 (freedom of association), 29 and 105 (prohibition of forced labor), 100 and 111 (discrimination and equal pay), 138 (minimum age for employment), and 182 (worst forms of child labor). The U.S. Government has also supported the creation of a working group on worker rights in the WTO.
Despite all the evidence that links sustainable development to basic human and worker rights, the WTO has resisted even the formation of a working group on labor standards. In December 1999, at a ministerial meeting held in Seattle, Washington, its refusal to form the group sparked protests by workers, environmentalists, and human rights and other social justice advocates. Many developing countries also objected because they believed that WTO rules were stacked in favor of rich countries. Opposition from such a broad coalition forced the collapse of the Seattle meeting. WTO negotiators subsequently met in Doha, Qatar, in 2001; in Cancun, Mexico, in 2003; in Hong Kong in 2005; in Geneva in 2006; and in Potsdam, Germany, in 2007. There has been no further progress on core worker rights in the WTO.

Organization for Economic Cooperation and Development

The OECD is an economic policy research and reporting body established in 1961 as an international organization of the industrialized, market economy countries. It was considered the “rich men’s club” of the 19 advanced industrial nations of Western Europe, North America, and the Pacific. Since then, membership has expanded to 30 nations, including Korea, Mexico, Turkey, and some East European countries.

The OECD analyzes countries’ economic performance and seeks to coordinate policies generally favorable to free trade. It has thus far avoided the fire that many trade unions and NGOs aim at the World Bank, the International Monetary Fund, and other proponents of corporate-driven globalization, even though the OECD is just as committed to promoting free trade, privatization, and collateral policies. However, the OECD structure accommodates the TUAC, which gives unions a greater voice in OECD affairs than is the case in other international economic organizations.

In December 1996 the OECD produced a benchmark report titled *Trade, Employment and Labor Standards*. The OECD identified core standards as freedom of association, the right to organize and bargain collectively, the elimination of child labor exploitation, the prohibition of forced labor and nondiscrimination in employment. These were based not only on the pertinent ILO conventions, but also on the UN Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child.

The report suggested that “proper implementation of some core labor standards can support economic development, permitting an expansion in trade.” The document noted that in some cases governments appeared to deny core standards to workers or fail to enforce them intentionally to improve their industrial competitive advantage or to attract investment. It warned that the gains earned from such a strategy were likely to be short-lived and could be counterproductive in the long term. The report also concluded that “concerns expressed by certain developing countries that core standards would negatively affect their economic performance or their international competitive position are unfounded.” In 2000, the OECD reaffirmed these findings in another report.

Also in 2000, the OECD issued new Guidelines for Multinational Enterprises (Revision 2000). These are reviewed in Chapter 7.

The OECD Guidelines on Corporate Governance of State-Owned Enterprises were adopted in April 2005. The guidelines were based on the results of a survey of practice in OECD countries. They are intended to help governments improve corporate governance, evaluation, and performance of state-owned enterprises. The OECD’s Working Group on Privatisation and Corporate Governance of State-Owned Assets has drafted a follow-up Implementation Guide for Transparency and Accountability in State Ownership, the “TrAc Guide.” The Trac Guide is intended to support the implementation of the OECD Guidelines, focusing
on transparency and accountability. It will be for use by governments, international organizations, donors, business, NGOs, and labor.\textsuperscript{55}

On March 5, 2008, the OECD launched a Global Network on Privatisation and Corporate Governance of State-Owned Enterprises. The network, which includes both OECD and non-OECD countries, hopes to provide a platform for policy dialogue and information sharing around corporate governance of SOEs and privatization.\textsuperscript{56}

**Phaseout of the Multifiber Arrangement**

The Multifiber Arrangement, which was introduced in 1974, provided a multilateral vehicle for the regulation of textile and clothing trade by setting quotas for all major exporting and importing countries. Initial negotiations over the MFA grew out of the need to bring some stability to the complex and rather unstable trading environment of the 1950s and 1960s.

In response, the U.S. Government had begun to negotiate voluntary export restraints (VERs) with its competitors. Later termed the “orderly market arrangement,” the MFA was essentially an international system for the regulation of VERs. Its purpose was to protect textile production in domestic markets if surges in imports caused or threatened to cause market disruption.

Although recognized by the GATT, the MFA was a major departure from GATT rules, particularly from its basic principles of nondiscrimination and national treatment. Accordingly, on January 1, 1995, the Agreement on Textiles and Clothing (ATC) succeeded the MFA as a transitional global instrument. The ATC grew out of the negotiations for the WTO to replace the GATT.\textsuperscript{57}

The ATC called for the progressive elimination of all quantitative restrictions in textile and clothing trade. ATC signatories were required to bring their textile trade policy into full conformity with the agreement’s terms by January 1, 2005, when the textile sector was to be fully integrated into the multilateral trading system.

The agreement addressed the following areas:

- product coverage that includes yarns, fabrics, manufactured textile products, and clothing;
- a plan for the progressive integration of these textiles and clothing products into GATT 1994 rules;
- a liberalization process to progressively enlarge existing quotas to the point of elimination by increasing annual growth rates (quotas were set to grow by 7 percent annually in 1995-1997, by 8.7 percent annually in 1998-2000, and by 11.05 percent in 2002-2005);\textsuperscript{58}
- a safeguard mechanism to deal with damage or threats to domestic producers that arise as a result of the terms of transition;
- the establishment of a Textiles Monitoring Body to monitor the application of the agreement, ensuring that all of its terms are observed; and
- other provisions, including rules on circumvention, the administration of restrictions, the treatment of non-MFA restrictions, and commitments undertaken elsewhere under the WTO’s agreements and procedures.

Most economists initially hailed the ATC as a victory for least-developed countries, noting that the removal of limitations on exports would enable LDCs to sell more goods abroad. Some observers viewed it with more caution, recognizing that developing countries that formerly benefited from preferential treatment with the EU or the United States would face stiffer competition once the MFA disappeared.

Rights advocates were concerned that countries with the lowest wage rates would have the greatest potential advantage, leading potentially to a flood of textiles onto the world market by countries with enormous labor forces (such as China). A sudden phaseout of the MFA could drive prices down and cut into the market shares of other LDCs.
Democracy advocates were concerned that human and worker rights protections would be weakened to prevent the flight of foreign investors in already fragile democracies. Workers in developing and industrialized countries alike saw themselves in jeopardy of losing their jobs as companies sought ever lower labor costs abroad. The debate over the phaseout of the MFA reflected the broader international debate over how globalization should proceed to generate prosperity and peace for all nations.

What has been the actual economic and political impact of the MFA phaseout thus far? Far from being a sudden, cataclysmic event worldwide, the phaseout of the MFA under new WTO rules, which officially occurred in January 2005, has yielded very different results in different countries. Observers predicted “winners” and “losers” but often characterized the effects on a national basis, without much thought about why capital and investment would be mobile, or what the effects on particular populations of workers would be. Clearly, changes are beginning to take shape, but even in the “winning” economies, the pressure and exploitation of workers and their organizations belies the upbeat macro picture of job creation (or preservation) and overall increases in GDP.

**AGOA Countries: Swaziland and Lesotho**

The removal of garment and textile production quotas betrayed the promise of AGOA, which had been designed to encourage investment and increase employment in Africa. Under AGOA, more than 28,000 primarily garment manufacturing jobs had been created as of 2003, according to the USTR.59 By 2006, however, 18 of 31 garment and textile companies had closed down operations in Swaziland alone.60

The phaseout was initially a disaster for Swaziland and many other countries in Africa that had just begun to enter the globalized system. Because so many materials used in garment production must be imported and because transportation and basic infrastructure are lacking, foreign investors were driven to look elsewhere. For Swaziland’s workers, the MFA phaseout was a personal tragedy that will not soon be reversed. While Swaziland welcomed the new jobs created in part by AGOA and had grown increasingly dependent on its garment sector for employment, wages remained low, unemployment was high, and now declining job opportunities will make it even harder for young people to enter the workforce.

Swaziland was among the hardest hit countries in sub-Saharan Africa:

- In 2004 the apparel sector in Swaziland boasted 30,000 jobs.
- In August 2005 there were 14,000.
- In December 2005 the number had declined to 11,000.61

After the expiration of the MFA, six factories closed in Lesotho, with an estimated loss of 10,000 jobs.62 Things are looking up in 2008:

- In three years the jobs had returned and increased by 50 percent. Lesotho employs more than 45,000 workers in approximately 40 factories today, and it is not experiencing further closures.63

- Lesotho has begun to sell itself as an “ethical” producer to draw the business of retailers that want to avoid accusations that they use sweatshops. New restrictions on Chinese imports, tax breaks from the government, and a push to attract fresh foreign investment have improved the performance of the sector.64

**Bahrain**

Bahrain’s garment industry was devastated by the phaseout of the MFA:

- Bahrain’s garment sector employed 11,000 people in 2004, but as of June 2006, only an estimated 4,000 remained.
- An additional 1,000 jobs were eliminated in 2007.65
Bahrain had 22 garment factories in 2004, but in June 2006 only six factories remained and two more factories closed in 2007, leaving four remaining today. 66

Mexico

Just as AGOA was conceived to boost investment in Africa, so the sponsors of NAFTA, the original “free trade agreement,” promised it would improve Mexico’s economy. Mexican workers, often migrating long distances to the U.S.-Mexico border area, spent a decade working in hundreds of factories, many managed by Asian entrepreneurs who only opened these plants in Mexico because of NAFTA. As in the AGOA countries, the phaseout of the MFA was damaging here too. With country-based quotas a thing of the past, there was simply less reason to manage these facilities so far away from Taiwan or Korea. Dozens of factories closed their doors and the investors left for China and other lower-wage countries. A WTO study predicted that Mexico’s share of the U.S. market for clothing in the wake of the phaseout would decline by a devastating 70 percent. 67

Workers in the maquiladoras have spent more than a decade trying to organize unions and raise wages, yet that dream has been largely elusive. Now that factories are closing and unemployment is up, downward pressure on wages and standards has begun anew.

Dominican Republic

- The Dominican Republic was among the Caribbean countries hardest hit by the elimination of the trade quotas. Job-loss statistics tell the story:
  - During 2006 and the first half of 2007, an estimated 50,000 jobs were lost in the apparel sector. 68
  - In 1997 there were 132,000 workers in the sector; in 2006 there were 91,500, but by 2007 only about 50,000 remained. 69
  - In 1997 the country boasted 272 plants, but in 2006 there were 226. 70
  - In the spring 2007 closure of Interamericana, the country’s second largest company, 11,000 workers lost their jobs. 71

Guatemala

Guatemala was among several Central American countries that suffered after the MFA phaseout. However, recently Guatemala has seen slightly more positive trends:

- In 2005, Guatemala lost 38,000 jobs in the apparel and textile sectors when 51 factories closed, and in 2006 an additional 3,000 jobs were lost. 72
- Guatemala’s apparel and textile setors had an estimated 100,000 workers in 2008, down nearly 40 percent from 2005. 73
- In 2007 large manufacturing companies committed tens of millions of dollars to build new plants, and some estimates have predicted the sector will add 600,000 jobs in the future—these positive trends are partially attributed to the implementation of DR-CAFTA. 74

Saipan

Saipan—the principal island of the U.S. Commonwealth of the Northern Mariana Islands—had an apparel sector that was badly hit by the quota expirations. Saipan’s situation continues to worsen:

- At least 15 garment factories have closed in Saipan since January 2005. 75
- From about $38.4 million in April 2006, garment sales fell to $21.7 million in April 2007. 76
- In June 2007 the government imposed a temporary ban on hiring nonresident workers from off-island for the garment industry. 77
India

The picture is quite different in India. Instead of relying on outside investment and cloth woven and brought in from another country, India’s chain of production makes it a winner in the post-MFA era. India was poised to make the most of the new situation due to a confluence of factors: it grows its own cotton, it produces its own textiles, it provides its garment factories with a variety of domestically made fabrics, it has a gradually improving transportation and power infrastructure, and it has access to investment funds from inside the country. New economic policies and the emergence of as many as 180 new “special export zones” (SEZs) will accelerate India’s integration into the global economy and provide more jobs in the industry.

However, Indian workers are not necessarily “winners.” In fact, they face many of the same problems as African workers, receiving incredibly low wages even by Asian standards, and working under very bad conditions in small sweatshops spread by the hundreds across the arid landscape of Karnataka, Tamil Nadu, and Uttar Pradesh. As with garment workers the world over, workers in these small units are putting in overtime, often unpaid, far beyond the legal limit. Unions in the region have yet to devise strategies for organizing these workers in a radically changing economy. Many workers are unaware that unions even exist. The SEZs may not bring better labor standards. They may even further institutionalize low standards. But there is one bright spot: Because SEZs will be spread throughout the country, the trend toward huge populations of migrating workers may slow as factory jobs become available near the rural villages from which migrants come.
Nepal

The quota system under the MFA was the key factor that allowed Nepal to establish and expand its apparel sector. Consequently, Nepal has suffered immensely since the MFA’s expiration. The country lost 41 percent of its apparel exports in 2005 and an additional 6 percent in 2006. In 2007 the trend was even worse: drastic falls in exports began in January, which witnessed a jarring decline of 54 percent, followed by 64 percent in February, 47 percent in March, 3 percent in April, and 60 percent in May.\textsuperscript{78}

Sri Lanka

Sri Lanka suffered great losses in 2005 from factory closures. However, recently the downward trend has moderated somewhat:

- Sri Lanka had 830 factories in 2003, which fell to 733 in 2005, and the number of directly employed workers fell from 340,000 in 2003 to 273,000 in 2005.
- Fifteen Sri Lankan factories employing more than 3,000 workers closed between January and October 2005.\textsuperscript{79}
- Sri Lanka’s performance in the apparel sector improved as it began to diversify its market and develop a program to market itself as an ethical producer.\textsuperscript{80}

Thailand

In 2007 factory closures left several thousand workers jobless.\textsuperscript{41}

- Union Footwear Pic, which had 4,700 workers, closed its factories in 2007.
- Thai Silp South East Asia Import Export announced the closing of production in 2007, involving the loss of about 5,000 jobs.

Bangladesh

What about a country such as Bangladesh, which has no trade agreement with the United States? Bangladesh manufacturers and the government have been concerned for years that the MFA phase-out would hit them particularly hard, since 85 percent of their foreign exchange comes from the garment industry and at least 1.5 million workers depend on the industry. The Bangladesh government is also aware that the country has extensive infrastructure and corruption problems that deter foreign investors.

But as of early 2008, the feared exodus of jobs had not yet occurred. There are several reasons for this. One is that Bangladesh continues to have some of the lowest wages in the region, indicating that some companies are still addicted to poverty-level pay and sweatshop working standards. Many companies have also been unwilling to put all their eggs in one basket and continue to outsource work to countries in which they have long relationships—the Bangladesh garment industry goes back more than 20 years.

In 2004 the United States, Bangladesh’s largest buyer, imposed tariffs on Chinese goods. At least in the near term, this measure has forestalled a precipitous decline in the industry in Bangladesh and other poor countries. Security-conscious Bangladesh watchers are concerned that a dramatic decline in the garment industry could also have serious destabilizing effects on society, and they worry about the rise and appeal of religious extremists whose voice is growing in this country of 160 million Muslims. Despite the apparent current stability of employment, workers in Bangladesh remain some of the most exploited in the world, facing endemic violence, horrible workplace accidents (including frequent fires), and labor laws violated with impunity by employers.

Shuttered Factories and Abandoned Workers: Union Factory Closures

The union contract is another casualty of the phase-out of the quota system under the MFA. Union factories have often been selected for closure. For example, in Thailand, between 2005 and 2007 four union factories were closed or relocated.
Approximately 2,000 workers lost their jobs at the Thai Filament Textile Co, the Lien Thai Apparel Co, two Century Textiles factories, and the Gina Form Bra Co. In Central America and the Dominican Republic, several union factories closed or suspended operations in 2007: NB (Nobland International) and Cimatexil in Guatemala; KB and Fortex in Nicaragua; Just Garments in El Salvador; and BJ&B in the Dominican Republic. And in Kenya, the Rising Sun and MRC factories closed. Corporate executives might deny that unionization was a factor in the closure decisions. However, cost-cutting considerations led them to open plants in low-wage countries initially, and the same criterion may well have influenced their decisions to select unionized factories for closure, because those plants no longer offered the cost advantage that comes with rock-bottom wages and exploitive working conditions.

**China—The Biggest Winner**

China is widely considered the big winner in the MFA’s demise. Between January 2004 and January 2005, following the phaseout, U.S. imports of certain Chinese garment and textile products skyrocketed by 1,836 percent. The effect of the phaseout also ballooned the U.S.-China trade deficit to record levels. According to the U.S. Bureau of Labor Statistics, the United States lost 12,200 textile and apparel jobs in the first month after the phaseout of all quotas and another 5,000 in the next two months. Cass Johnson, president of America’s National Council of Textile Organizations, warned in March 2005 that 30 million jobs could be lost worldwide to other developing countries. In response, the United States imposed some short-term restrictions on Chinese imports. This measure delayed—but did not significantly mitigate—the significant impacts of the MFA.

Meanwhile, U.S. consumers are losers. Brands and American businesses claim that low wages in developing countries keep costs down for the U.S. market. However, the New York Times reported in April 2005 that since January of that year, wholesale prices for tops and pants had fallen 20 to 40 percent—but “American retailers and producers have gained . . . and managed to keep prices to the consumer fairly constant.”

**Overall Trends**

Overall, the general trends that are emerging are structural, economic, and to some extent social, all of which impact the economic picture.

- Countries with better infrastructure (China, India, Pakistan) are able to keep and even add employment because of the structure of their garment industries.
- Countries with low-wage regimes and huge labor surpluses (Bangladesh, Mexico, Swaziland, Indonesia) that have no backward linkages are forced to increase their reliance on low wages and standards as a major factor in competing in the market.
- Brands want to consolidate the number of contractors they deal with to streamline operations, work with fewer companies, and expand economies of scale.
- Raising serious worker rights violations addressed by brands and companies under the broad heading of Corporate Social Responsibility (CSR) or Accountability (see Chapter 7) means that a variety of labor standards are now important considerations in sourcing decisions, especially by the more dominant and recognized name brands, such as Nike, Adidas, Reebok, Gap Inc., and Levis Strauss.
- The rise of CSR as a result of pressure by unions, NGOs, consumers, and even some governments has enabled some countries to try to position themselves as “high road” or “niche” producers focused on high quality and higher labor standards than their competitors.

These developments point to a shakeout in the global garment industry, with smaller, less efficient, more problematic producers being cut out of production and going out of business, resulting in the emergence of much larger national and multinational producers. This changing landscape can provide more economic
power to producers, allowing them to deal with the brands on more equal terms. Brands have historically played hundreds of small companies and dozens of countries against one another, but now the move to fewer, larger companies in fewer countries may actually diminish the brands’ power and tilt the balance toward the companies in the producing countries.

Implications for Workers

What does this mean for workers who seek enforcement of existing labor law, redress of grievances, improvements in their wages, and protection of their rights? Unfortunately, competition will become keener to keep jobs, since capital mobility is less restricted than it was under the quota system and countries face new incentives to put downward pressure on all these factors.

In regard to the relationship between labor conditions and economic performance, economists Joseph Stiglitz and Thomas Palley have contended that improved labor conditions lead to improved economic performance and productivity. If they are correct, workers will need channels and opportunities to demonstrate that better and more sophisticated industrial relations require countries not only to abide by their own laws but also to improve both the enforcement and standards of those laws. The alternative risks creating greater industrial conflict, a destabilized investment climate, and declines in both worker rights and economic productivity. This is especially true in places like China and Vietnam, countries where observance of fundamental ILO standards, such as freedom of association and the right to bargain collectively, is restricted or nonexistent.

What can unions do to assist their members in this situation? The changes in production outlined above represent a double-edged sword. On the one hand, unions will have to deal with fewer contractors. The contractors will be more vulnerable to transnational solidarity actions, and if they are working with large brands, they may be more susceptible to brand pressure to improve labor standards. Conversely, the power of the contractors against the brands increases, and the brands’ ability to unilaterally impose their CSR vision may be weakened by the empowerment of the fewer, larger companies that they source from. It is also clear that, historically, contractors in producing countries have never led the fight for CSR; rather, the brands have reacted to advocacy efforts by unions, NGOs, labor activists, and consumer groups in countries around the world.

Although the pressures come from the global economy, they are keenly felt in the workplace. Many young women working in the sprawling export-processing city of Shenzhen (it has far outgrown its original “zone” designation) in southern China are locked up in dormitories every night after their 12-to 14-hour days manufacturing for Western brands. They have no opportunity to secure real representation of their interests, because the Chinese government refuses to allow real freedom of association or independent unions. Their plight strongly resembles that of their brothers and sisters in other countries. The difference is that they have more opportunities to work in some of the worst factory conditions in the world.

Despite the race to maximize profits and satisfy shareholders in an ever more cutthroat investment environment, costs to Western consumers are not falling but are in fact holding steady. This trend has particular importance to workers in Europe and North America, as their wages are not increasing and they are gradually losing ground.

The bottom line of the MFA phaseout for workers is the same. Whether they are in China, Swaziland, Bangladesh, India, Mexico, or any other developing country, their wages are stagnant. In countries with labor surpluses and rising unemployment, real wages are actually going down. Workers in such countries are putting in far more overtime hours than the laws of their countries allow. They are not being adequately paid for their extra work and are often cheated out of overtime pay altogether. Their low wages contribute practically nothing to building a consumer society in their own countries, which is the ultimate route to developing a middle class and overall economic health and stability.
Endnotes

1 In November 2001, the WTO held its Fourth Ministerial Conference in Doha, Qatar. The member states there agreed to a new ministerial declaration, the Doha Declaration, which provided the mandate for negotiations on a range of topics of particular importance to developing and least-developed countries—particularly agriculture. The hope was that the Doha Round would address some of the inequities that resulted from the agreements entered into under the Uruguay Round.


4 Clinton’s position was spelled out in a major campaign speech advertised as his definitive campaign statement on trade policy. See Governor Bill Clinton, “Expanding Trade and Creating American Jobs,” address at North Carolina State University, Raleigh, N.C., October 4, 1992.


7 The acronym “NAO” will continue to be used when it refers to all three countries’ offices.


9 Ibid., Article 16(3).


11 Ibid., Article 41; Annex 41B.


17 On September 6, 2007, the U.S. Government approved a program to allow up to 100 Mexican trucking carriers to make international deliveries throughout the United States. However, on September 11, the Senate approved an amendment to block funding for the trucking project from the time the appropriations bill enters into force to September 30, 2008.

18 AFL-CIO, “The Free Trade Area of the Americas.”

19 Ibid.


25 ORIT (the former ICTFU regional affiliate) and CLAT (the former WLC regional affiliate) merged on March 29, 2008, to form CSA, the regional affiliate of the ITUC.


32 See U.S. Chile Free Trade Agreement, www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Final_Texts/Section_Index.html.

33 John Sweeney, “Statement by AFL-CIO President John J. Sweeney on Report Finding Chile and Singapore ‘Free’ Trade Agreements Hurting American Economic Interests and Workers’ Rights in U.S., Chile and Singapore, February 28, 2003” (AFL-CIO, 2003), www.aflcio.org/mediacenter/prsptm/pr2003022803.cfm. LAC reports are attached to individual FTAs; see Bilateral Trade Agreements at www.ustr.gov/Trade_Agreements/Section_Index.html.


35 United States-Peru Trade Promotion Agreement, www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Section_Index.html.


40 Ibid.

41 Ibid., p. 11.

42 Ibid., pp. 11-13.


47 Ibid.


52 Ibid., p. 11.


58 For a table showing the percentage of product integration at each stage, the expansion of the growth rates of remaining quotas, and the annual quota growth, see World Trade Organization, “Textiles” (press brief), www.wto.org/english/thewto_e/minist_e/min96_e/textiles.htm.


64 Ibid.


68 Doreen Hemlock, “Apparel Importers See Drop in Products from Latin America,” South Florida Sun-Sentinel (Fort Lauderdale), May 8, 2007.


70 Ibid.

71 Ibid.


74 Ibid.


80 Ibid.


82 Interview with Rudy Porter, Country Program Director for the Solidarity Center’s Mainland Southeast Asia Program, Bangkok, Thailand, June 2007.


Chapter 7

Strategies for Promoting Corporate Accountability
he growing pressure on global corporations to respect worker rights throughout the world has led to the development and testing of many new strategies that promote accountability. These include international human rights law, multilateral government instruments for companies, multistakeholder cooperation, and global trade union (GUF) initiatives.

These strategies are commonly referred to as “soft law” approaches. While soft law initially referred only to international treaties that were nonbinding or had weak enforcement provisions, more recently, the term has evolved to include domestic as well as international documents. Agreements such as declarations of principles, codes of conduct, and even mission statements can be referred to as soft law. Hard law, on the other hand, encompasses traditional, directly enforceable domestic laws.

Among the most popular soft-law mechanisms has been the use of voluntary guidelines for corporate conduct. These guidelines emerged in the 1970s from early multilateral government efforts and the concerns of international trade unions over the behavior of multinational companies toward workers in the developing world. Corporate codes of conduct were subsequently developed by individuals or groups outside corporations, by companies themselves, and as part of multistakeholder initiatives. As their use spread, more multinational companies, governments, and NGOs (including “social auditors” charged with verifying compliance with the codes) gravitated toward what has become known as corporate social responsibility (CSR). The voluntary nature of CSR has made it popular with corporations, but at the same time, it has serious shortcomings as a tool to improve the conditions of workers worldwide.

Trade unions have traditionally been the first line of defense against violations of worker rights and the primary advocates for freedom of association for workers throughout the world. As other civil society groups, along with social auditors, governments, and even corporations, have become involved more directly in these issues, unions have developed and tested their own innovative uses for such mechanisms. In so doing, they have attempted to strengthen worker rights.

Other strategies used to promote fair treatment and respect for workers have included social labeling, local-government sanctions, multpartner coalitions, shareholder initiatives, and emerging-market investment guidelines. The global labor movement has responded to the increasing erosion of workers’ fundamental rights worldwide by developing global strategies, including the ITUC/GUF code of conduct, comprehensive union organizing, and GUF initiatives such as international framework agreements (IFAs).

Today, new generations of codes called “multistakeholder” initiatives (MSIs) are taking shape. In these initiatives, companies, unions, human rights groups and other NGOs, community and development organizations, and sometimes governments participate in formulating a code of conduct. The strategies discussed in this chapter are intended to serve as a starting point for worker rights advocates who wish to consider different paths of advocacy. Yet, new approaches are sure to emerge as effective processes are strengthened and ineffective strategies are pruned. The standard for assessing each tool is the degree to which it strengthens or expands freedom of association and the capacity to hold corporations directly accountable and responsible through collective bargaining protected and enforced under binding law.

International Law and Worker Rights Advocacy

Corporate social responsibility can complement binding law and regulations, but it can never be a substitute. Ultimately, corporations may choose to be responsible, but voluntary mechanisms do not provide accountability. The European Commission (EC) clearly states the need for appropriate laws and regulations as the foundation and framework for voluntary reforms:
Corporate social responsibility should... not be seen as a substitute to regulation or legislation concerning social rights or environmental standards, including the development of new appropriate legislation. In countries where such regulations do not exist, efforts should focus on putting the proper regulatory or legislative framework in place in order to define a level playing field on the basis of which socially responsible practices can be developed.¹

Without a legal framework that protects core labor standards and an enforcement system that ensures their application, CSR can easily become a public relations-based distraction from the need for more substantive change. However, despite the inherent weakness of voluntary and unilateral corporate reform, some CSR strategies, especially in cases where a corporation is vulnerable to public pressure, have had a positive effect (see “Guidelines, Principles, and Codes of Conduct for Multinational Corporations” section).

In addition to soft-law and CSR approaches, legally binding, or hard-law, approaches to genuine corporate accountability have gained traction in recent years. For example, trade treaties and international human rights treaties increasingly contain binding, if difficult-to-enforce, legal standards for economic rights. Regional human rights treaties and international human rights law offer additional options for worker rights advocacy in many countries and on many economic rights issues.

During the past several decades various international legal mechanisms have emerged as viable tools for worker rights advocacy. International human rights law has become increasingly robust; while not always directly enforceable, the rulings of international judicial bodies are gaining acceptance and persuasive power. This is especially true for regional treaty-based systems that hear human rights cases.

Today, three regional treaty-based human rights systems—European, Inter-American, and African—have judicial bodies in which many of their regional member nations participate. The Inter-American and the European systems are relatively well established, while the African system has begun to hear cases only within the past several years. Each of these regional systems varies widely in process, effectiveness, and the manner in which cases are adjudicated.

**Inter-American Human Rights System**

The Inter-American human rights (IAHR) system emerged as a treaty-based effort to further human rights protections among Organization of American States (OAS) members, which includes all nations of North and South America. The system has two main bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACourt).¹ The IACHR and the IA Court have been operating for more than 40 years. The two treaty bodies are charged with enforcing the Charter of the OAS (1948), the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1978), and other treaties and international law in the hemisphere. The OAS Charter and the two other primary treaties contain broad, aspirational guarantees of personal liberty and social justice. These rights are guaranteed by the government, not by an individual or a private group. When victims pursue a treaty-based judicial remedy, they are claiming that the government has failed to enforce their rights. The IA Court and the IACHR have clarified over time the following as foundational rights:

- the right to humane treatment;
- the right to personal liberty;
- the right to a fair trial;
- the right to privacy;
- the right to property;
- the freedom of conscience and religion;
- the freedom of thought and expression;
- the right of assembly;
the freedom of association; and

the right to equal protection.

The commissioners and court members of the Inter-American system are elected by the member states of the OAS. Because of its dependence on the consent and vote of governments, the body is not wholly independent or neutral with respect to the interests of those governments. In some cases governments feel compelled to honor the system’s judicial holdings; in others they may resist. In especially controversial situations, or where member states have strong disagreements, the process can be affected.

The IACHR has broad powers to hear cases and make binding judgments on matters of human rights as well as to hold informational hearings, issue country reports, and conduct country visits.5 It can launch inquiries independently of any case brought before it. Any person or group of persons, including nongovernmental entities, can submit a complaint to the IACHR system.6 A victim, his or her family, or an NGO with an interest in the rights at issue can submit a petition to the IACHR. This approach allows much broader access than would normally be the case in domestic courts. The IACHR may consider cases even if they are also under consideration or have already been heard by the ILO or other bodies, providing that the IACHR concludes there was no effective remedy reached.7

Once a petition is submitted, it goes to the IACHR for review. If the petition meets the requirements, and alleges a violation covered by the IAHRC’s mandate, the case may be deemed admissible. If a petition is found to be inadmissible, the IACHR is obligated to issue a decision (which may or may not be published) of the finding of inadmissibility. When the IACHR opens a case, it may hold a preliminary hearing or request additional information from the parties in the form of legal briefs. The IACHR can also issue “precautionary measures” (equivalent to an injunction), which a state must implement. Precautionary measures are designed to prevent further rights violations while the case is in process, and they may include provisions for state protection of victims whose lives are at risk.

The IA Court acts as an appellate body for decisions of the IACHR and is the final legal arbiter for the Inter-American system. The IA Court is a relatively small institution within the OAS, and a significant caseload slows its process. In 2006, for example, the IACHR reached decisions on the merits of eight petitions, listed 100 petitions as friendly settlements, and referred 14 cases to the IA Court. Cases that are controversial, or that a state actively contests, can take more than a decade to move through the system. In other cases, hearings can be held quickly, or precautionary measures can be issued in a matter of days.

Labor issues, specifically worker rights, have become more of a focus for the IACHR and the IA Court over the past few years. In 2006 the IACHR held general hearings on child labor in Latin America and on slave labor in Brazil. In 2001 the case of Ricardo Baena et al. v. Panama dealt with freedom of association violations. The IA Court held that 270 workers were wrongfully dismissed for participating in demonstrations aimed at obtaining national labor legislation reform. The IA Court ordered the government of Panama to pay back wages and the government complied.8

However, the strength of the IACHR and the IA Court should not be overestimated. Beyond exerting public pressure there is little that either body can do to directly force compliance with its rulings. Increasingly, though, governments are following IACHR and IA Court decisions. The two bodies can also recommend fairly comprehensive remedies.

The IACHR also has created a Special Rapporteurship for Migrant Workers and their Families.9 The rapporteur is charged with preparing an annual report on the issue, as well as working with the IACHR on cases that involve migrant workers.
The Center for Justice and International Law (CEJIL) maintains a list of pro bono attorneys and NGOs that help victims with their petitions to the IACHR. The CEJIL list includes organizations in more than a dozen countries. This resource is available on its Web site at: www.cejil.org. A number of human rights clinics, especially at some law schools, also provide pro bono legal representation in cases before the IACHR and the IA Court.

**European Human Rights System**

The European human rights system consists of two bodies, the European Court of Human Rights (ECHR) and the European Committee on Social Rights (ECSR). The ECHR is an international court established by the Council of Europe in 1959 to enforce the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention). The ECHR provides a legal forum for adjudicating alleged human rights violations, as guaranteed by the European Convention and its protocols.

Any individual, NGO, or group claiming to be a victim of a violation of the European Convention by an ECHR signatory nation has the right to lodge a complaint against that country to the ECHR. An individual need not necessarily be a national of the signatory country; the eligibility requirement is satisfied as long as the violation was committed by the signatory country within its jurisdiction. A complaint may be submitted only by a party that has directly been the victim of a violation of the rights guaranteed in the European Convention or its protocols. NGO participation is mostly limited to the submission of amicus briefs.

Any complaint about worker rights violations must demonstrate that a public authority failed to carry out its responsibilities through acts or omissions. The ECHR cannot enforce complaints against private individuals or organizations. Therefore, the purported violation must be linked to the failure of the state in question, often a difficult task for an individual worker.

Furthermore, the complaint must satisfy the admissibility criteria set forth in Article 35 of the European Convention: the ECHR may deal with the matter only after all domestic remedies have been exhausted; the complaint must be submitted within six months of the final national decision; and an individual cannot submit a matter that is substantially similar to one that has already been examined by the ECHR. Finally, a complaint cannot be filed anonymously.

If a complaint is declared admissible and no friendly settlement is possible, the ECHR will consider the application on the merits. If the ECHR finds that there has been a violation, it may award “just satisfaction,” a sum of money in compensation for certain forms of damage. ECHR judgments are binding on the state in question and enforced by the Committee of Ministers of the Council of Europe. It is important to note that the ECHR does not have the right to overrule or revise national decisions, nor can it annul national laws. However, in many instances ECHR decisions have led to changes in national laws or administrative procedures and prevented similar violations from recurring. The flow chart on the next page illustrates how the ECHR processes cases.

In *Wilson & National Union of Journalists v. United Kingdom*, for example, the ECHR ruled on a Thatcher-era U.K. law allowing employers to withdraw recognition from a union and give salary increases only to employees who renounced the collective bargaining agreement and took individual contracts of employment in its place. This law was an insidious attack on freedom of association. The ECHR said the law violated fundamental rights of association:

> [I]t is of the essence of the right to join a trade union that employees should be free to permit their union to [bargain] on their behalf. If workers are prevented from so doing, their freedom to belong to a trade union becomes illusory. . . .

> [B]y permitting employers to use financial incentives to induce employees to surrender important union rights, the respondent State...
European Court of Human Rights • Case Process

Standing: Who has the right to file a complaint under the European Court of Human Rights?

The European system allows individuals to present complaints to the court. Any person who alleges his or her rights have been violated may submit a complaint to the court.

Application filed

Assigned to one of the court sections. The court assigns the case to a rapporteur. The rapporteur makes a preliminary examination of the case and decides whether it will be referred to a three-judge committee or a full seven-judge chamber. If the three-judge committee is unanimous in rejecting the case, it is not accepted. If the committee is split, the case goes to a seven-judge chamber.

Administratively disposed

the end

Referred to seven-judge chamber

Admissibility and merits considered at the same time

Admissibility and merits considered separately

Application rejected

the end

Judgment rendered

The ECHR process rarely involves hearings. Most of the process is carried out in an exchange of written briefs.

Merits decision finds violation

Merits decision finds no violation

the end

Court publishes judgment and makes a determination of any "just satisfaction" (damages) to be rewarded.

Judgments of the ECHR

The ECHR has a Grand Chamber of 17 judges, which may either take cases directly or from one of the seven judge chambers. Generally a case will reach the Grand Chamber only if the case raises a serious question of interpreting the European Convention. The Grand Chamber also may act as a rehearing (appeals) body. Either party may request a re-hearing, and it is discretionary for the Grand Chamber to accept a request. Enforcement is left to the Committee of Ministers of the Council of Europe.

The African human rights system is represented by two key bodies: the African Commission on Human and Peoples’ Rights (African Commission), established by the African Charter on Human and Peoples’ Rights (African Charter), and the African Court on Human and Peoples’ Rights, established by the 1998 Protocol to the African Charter. The African Court on Human and Peoples’ Rights came into existence on January 25, 2004. The first judges were sworn in on July 17, 2006. As of mid-2008, the court was not yet operational, and no cases had been heard.

The African Commission’s mandate is to consider individual communications or complaints and to make recommendations to the Assembly of Heads of State and Government and to the state party in question. As of March 2008, all but one of the 54 African nations (Morocco is the exception) had become parties to the African Charter.

The African Commission will only consider complaints lodged against a state party to the charter. Communications may be submitted by the victim of a violation, his or her family, or NGOs and others acting on their behalf.

To be admissible, a communication must meet the following criteria: it cannot be anonymous; it should be compatible with both the African Charter and the Charter of the Organization of African Unity; it must not contain disparaging or insulting language; it must be submitted after all existing local remedies are exhausted; it must be submitted within a reasonable period of time; and it must not relate to previously decided cases.

Once a communication is declared admissible, the African Commission considers it on its merits. Then the commission forwards a nonbinding recommendation to be considered by the Assembly of Heads of State and Government. The African communication mechanism does not contain follow-up or supervisory procedures to address the African Commission’s recommendations. Pursuant to the African Charter, communications are made public—arguably the only real sanction against human rights violations.

Although the African Commission does not have a clear mandate to order remedies for human rights violations, it has adopted a wide interpretation of its mandate to “ensure the protection” of the rights contained in the African Charter. In the past, the commission has recommended nullifying a national court decree and has suggested compensation for an individual. However, records on the implementation of the commission’s recommendations are scarce. The African Commission has also established a Working Group on Economic, Social and Cultural Rights to investigate issues pertinent to the protection of those rights.
Multilateral and Government-Initiated Instruments for Companies

While regional human rights systems continue to progress, labor-related codes of conduct have evolved from ethical guidelines for multinational companies in the 1970s, such as the draft UN Code of Conduct on Transnational Corporations, the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. These early efforts might be called “first generation” codes of conduct, inspired by multilateral government action and international trade unions’ call to address abuses of worker rights.

UN Norms

The UN formulated, but never formally adopted, a Code of Conduct on Transnational Corporations (referred to here as the UN Code). It was promoted in the early and mid-1970s, when developing countries were aggressively confronting unresolved problems of globalization. The “Group of 77” (G-77) countries, a coalition of UN-member nations, was established to be a neutral advocate for the developing world during the polarization of the Cold War. Evidence of abuses by multinational corporations (such as their involvement in the 1973 overthrow of Chilean President Salvador Allende) also spurred consideration of the development of more broad-based corporate codes of conduct.

The UN Code spoke generally of human rights and fair treatment of workers, requiring that transnational companies respect human rights and fundamental freedoms and refrain from discrimination. Developing countries wanted a binding code to be applied to transnational corporations, while wealthy countries did not want a code at all. But if there was to be a code, the corporations lobbied for one that would apply to all companies and would deal with issues such as compensation in the case of nationalization. In 1992, however, after 20 years in development, the project was abandoned. The UN Code stands as a worthy statement of principle, but it failed to gain acceptance as an enforceable instrument for worker rights.

Despite the failure of the UN Code, the UN continued to work on the issue of corporate conduct. On August 13, 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights (UN Norms). A group of NGOs issued a joint statement in support of these norms, which formed the first set of comprehensive international human rights norms applicable specifically to transnational companies and other businesses. The norms complement the UN Global Compact by “pulling together in one document the key human rights laws, standards, and best practices applying to all businesses,” said the NGOs in their joint statement. Since they apply to all businesses, they also help “close a loophole.” Previously many voluntary standards applied only to multinational businesses, leading many of those firms to complain that the limitation put them at a competitive disadvantage when their competitors did not adopt the codes. Human Rights Watch noted that the norms and their interpretive commentary constituted “an authoritative interpretation” of the 1948 Universal Declaration of Human Rights, bringing businesses into the arena of states and individuals as “organs of society.”

The UN Norms draw from human rights, worker rights, environmental rights, consumer protection, humanitarian principles, anticorruption treaties, and other international instruments. The commentary also builds on past UN work by providing more detailed guidance on proper conduct, endorsing “methods of independent monitoring and other implementation mechanisms to hold businesses accountable for violations of human rights, humanitarian, labor, environmental, and other international principles...”
The UN Norms include specific obligations on worker rights:

- ensuring the right to equal opportunity and nondiscriminatory treatment (eliminating discrimination based on race, color, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age, or other factors unrelated to job requirements);
- refraining from using forced or compulsory labor;
- respecting the rights of children to be protected from economic exploitation;
- providing a safe and healthy working environment;
- providing sufficient remuneration to ensure an adequate standard of living for workers and their families; and
- ensuring freedom of association and effective recognition of the right to bargain collectively.\(^4^4\)

Human rights advocates hope that these norms will contribute to the further development of international law, long-term development, and poverty reduction.\(^4^5\)

**OECD Guidelines for Multinational Enterprises**

In 1976, also in response to concerns about corporate interference in national political affairs, the OECD established Guidelines for Multinational Enterprises (OECD Guidelines).\(^4^6\) Updated in 2000, the OECD Guidelines recognize the right to organize and bargain collectively, requiring employers to provide facilities and information to union representatives so that they may engage in meaningful bargaining.

The OECD Guidelines also require companies to furnish financial and strategic information to unions in order to “obtain a true and fair view” of operations. They ban discrimination in employment, require advance notice of layoffs, and call for cooperation with unions to mitigate the effects of layoffs. They also call on management not to threaten workers with plant closures or layoffs to influence contract negotiations and not to interfere with the right to organize.\(^4^7\)

The OECD provides a complaint procedure that can result in “clarifications” of the guidelines as they apply to particular labor-management disputes. A complicated system uses national contact points (NCPs) in government agencies that “identify and clarify issues that may arise in the guidelines’ application.” The adhering countries comprise all 30 OECD member countries and 10 nonmember countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania, and Slovenia).\(^4^8\) Within these countries, government offices are charged with promoting the OECD Guidelines and handling national-level inquiries.

Under the OECD Guidelines, trade unions must lodge complaints about a corporation’s alleged violations of the guidelines with the NCP of their own government, normally a low-ranking individual in an executive agency.\(^4^9\) The NCP communicates the concern to a counterpart in the country where the alleged violation took place. The latter NCP may then discuss the issue with officials from the offending company to urge corrective action, but there are no means of compelling any correction under OECD procedures. In the United States, the NCP is located in the Office of Investment Affairs of the Bureau of Economic, Energy, and Business Affairs in the State Department.

Complaints that identify a multinational enterprise as an alleged violator of the OECD Guidelines are not permitted. Only “matters for consideration” may be raised, and the resulting clarification “is not a judgment on the behaviour of an individual enterprise, and thus does not refer to it by name.”\(^5^0\)

NCPs meet every year to share their experiences and to report to the Committee on International Investment and Multinational Enterprises (CIME). Periodically, or at the request of a member country, the CIME may hold an “exchange of views” to
clarify how the OECD Guidelines would be applied to a particular issue or situation. The CIME may consult with the OECD’s advisory committees, including the Trade Union Advisory Committee (TUAC) and the Business and Industrial Advisory Committee. The CIME also allows individual businesses to state their views orally or in writing. The CIME does not reach conclusions on the conduct of individual companies.51

Although the OECD Guidelines have no coercive enforcement mechanism to ensure compliance, workers and trade unions have occasionally achieved successful resolution of disputes through recourse to the OECD.52 The TUAC’s internal analysis of cases using the OECD Guidelines raised with NCPs states: “Several of the cases demonstrate that it is easier to find a solution to a problem when trade unions are dealing with companies that are seen as responsible, e.g., those with extensive CSR policies, or when trade unions have access to company headquarters. Subsidiaries and local managements are less vulnerable and less inclined to attend to violations of the Guidelines.”53

Success in advancing worker rights through the OECD Guidelines also depends heavily on idiosyncratic relationships in the context of each country. Unions, for example, represent more than 70 percent of the labor force in Sweden, giving them weight in dealings with Swedish-based multinational firms.54 The OECD system could hardly be transposed to countries where workers who seek to form unions are murdered.

Unions may use OECD complaints to show that multinationals may respect the laws of their countries where their headquarters are located but behave poorly in other countries.55 GUFs and other unions that attempt to use the OECD Guidelines to advance their agenda do so more through public relations or interunion solidarity measures than through pressures brought to bear by the OECD. The OECD Web site maintains an archive of “Specific Instances Considered by National Contact Points.”

A recent OECD case demonstrates both the difficulty of obtaining results strictly by using voluntary mechanisms such as the OECD Guidelines and the usefulness of pursuing concurrent multiple strategies. In December 2004 Continental Tire North America, the U.S. subsidiary of the Germany-based multinational Continental Tire AG, announced an indefinite suspension of tire production at a unionized plant in Mayfield, Kentucky. Continental Tire had demanded $35 million in wage and benefit concessions from plant workers (amounting to about $35,000 per worker per year), who were members of the United Steelworkers (USW). The company subsequently implemented a four-phase shutdown, laying off nearly 1,200 workers (about 80 percent of the plant’s workforce), then sent production to lower-wage countries such as Brazil, Malaysia, and the Czech Republic.56

The company also terminated health benefits for 225 of the laid-off workers, in violation of their collective bargaining agreement. The union believed that the company was acting to avoid paying plant-closure benefits to the senior members of its workforce, most of whom had more than 20 years of service. In August 2006 the company announced more layoffs for October, as well as the layoff of the last 107 workers when operations ceased in February 2007.57 On August 7, 2006, the USW filed a complaint with the U.S. Department of State, the U.S. national contact point to the OECD.58

The case also exposed serious breaches at a Continental Tire plant in Charlotte, North Carolina, where in January 2006 the company had initially announced the layoff of 435 workers. The company had also demanded $32 million in concessions and had threatened cuts in production without demonstrating the need for the savings. (Continental Tire had won concessions from workers at its Mount Vernon, Illinois, plant and sought to sell another plant in Bryan, Ohio.) The union submitted cost-cutting proposals and recommendations for improving productivity, but the company refused to consider them. In May 2006, after the
contract expired in the Charlotte plant, Continental Tire claimed that bargaining had reached an impasse. It reduced the wages of workers at the plant by 15 percent, slashed their health benefits, and eliminated their pensions. 59

The announced healthcare cuts forced hundreds of retirees who were not yet eligible for Medicare (the U.S. public system for senior healthcare) to make a difficult choice: pay 75 percent of their pension incomes for health insurance or drop coverage and become dependent on taxpayer-funded healthcare. The union indicated that supplemental health insurance for retirees already on Medicare would be unaffordable for most of its members. Health benefits were particularly critical for these workers, since workers in the rubber industry tend to suffer excess mortality rates from cancer (leukemia, lung cancer, bladder cancer, and cancer of the larynx) and heart disease. 60

About a week later, the company claimed that high costs would force it to suspend production indefinitely on July 7, 2006. It also announced plans to reduce the hourly workforce from nearly 1,100 in July 2005 to fewer than 100 by July 2006. The company continued to claim that it would not close the plant, but the union believed that the firm planned to leave only a skeleton crew (just enough workers to mix rubber) to avoid having to close it officially. That stratagem would enable it to justify the denial of plant-shutdown benefits to the majority of workers. In September 2006 the Mecklenburg Board of County Commissioners passed a resolution asserting that Continental Tire’s abandonment of most of its North Carolina operations had devastated thousands of workers, families, and their communities. 61

In July 2006 the U.S. National Labor Relations Board charged the company with refusing to provide information requested by the union during negotiations and found that it had failed to examine all the possibilities for reaching a settlement before implementing its last offer.

In December 2006 the USW and retirees filed a class action lawsuit against Continental Tire, calling on the company to honor its obligations to provide retiree medical benefits. On August 1, 2007, a federal judge issued a ruling ordering Continental Tire to pay medical premiums for 2,300 retired workers and 100 active employees from plants in Charlotte, Mayfield, and Bryan. On April 15, 2008, Continental Tire agreed to pay $158 million to a retiree health insurance fund. As of May 2008 the agreement was awaiting approval by the court. 62
**ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**

In 1977 the ILO issued a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Principally, the MNE Declaration guarantees the right to union activity and collective bargaining. It was originally intended to become part of a broader UN code, covering such issues as job creation, investment in the local economy, and subcontracting. It also provides a more detailed complaint procedure. A Standing Committee on Multinational Enterprises is empowered to investigate and make specific findings of code violations by individual companies. Like the OECD Guidelines, the MNE Declaration has no sanctions to back up its rules; enforcement is more a matter of private consultation or public embarrassment.63

In September 2006, Harvard University’s John F. Kennedy School of Government published a survey of the human rights practices of the Fortune Global 500 companies. Author John Ruggie, Harvard professor and the UN Secretary General’s Special Representative on Business and Human Rights, found that of the 102 companies that completed the questionnaire, 71 percent indicated that they refer to the ILO declarations or conventions; 61.8 percent used the Universal Declaration of Human Rights; 56.6 percent referenced the UN Global Compact; and 40.8 percent indicated that their companies use the OECD Guidelines as a reference for responsible business practices.64

**U.S. Government Model Business Principles**

A review of U.S. Government initiatives illustrates the interplay of private and public code-of-conduct initiatives. During President Bill Clinton’s first term, he announced a commitment to work with the business community to develop a voluntary code of business principles on corporate conduct abroad. The purpose of the code was to encourage U.S. businesses to advance the openness of societies and respect for individual rights, the promotion of free markets and prosperity, environmental protection, and the setting of high standards for business practices generally. In consultation with business representatives, labor leaders, and NGOs, the following model principles were developed in 1994:

Recognizing the positive role of U.S. business in upholding and promoting adherence to universal standards of human rights, the Administration encourages all businesses to adopt and implement voluntary codes of conduct for doing business around the world that cover at least the following areas:

1. Provision of a safe and healthy workplace;
2. Fair employment practices, including avoidance of child and forced labor and avoidance of discrimination based on race, gender, national origin, or religious beliefs; and respect for the right of association and the right to organize and bargain collectively;
3. Responsible environmental protection and environmental practices;
4. Compliance with U.S. and local laws promoting good business practices, including laws prohibiting illicit payments and ensuring fair competition;
5. Maintenance, through leadership of all levels, of a corporate culture that respects free expression consistent with legitimate business concerns, and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued, and exemplified by all employees.

In adopting voluntary codes of conduct that reflect these principles, U.S. companies should serve as models and encourage similar behavior by their partners, suppliers, and subcontractors.

Adoption of codes of conduct reflecting these principles is voluntary. Companies are encouraged to develop their own codes of conduct appropriate to their particular circumstances.
Many companies already apply statements or codes that incorporate these principles. Companies should find appropriate means to inform their shareholders and the public of actions undertaken in connection with these principles. Nothing in the principles is intended to require a company to act in violation of host country or U.S. law. This statement of principles is not intended for legislation.65

While it attracted media attention at the time, nothing substantive came of the Clinton administration’s statement of principles. The George W. Bush administration did not generate any new initiatives in this area.

European Sustainability and CSR Programs

In 2001 the European Commission’s Directorate-General for Employment issued a Green Paper titled “Promoting a European Framework for Corporate Social Responsibility.” The paper launched a discussion by social partners on how to promote CSR at both the European and international levels.66

The EC sees CSR as a contributing tool to the EU’s strategic goal of becoming “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion” (emphasis added). The path toward achieving this goal includes the EU’s commitment to the OECD Guidelines and compliance with ILO core labor standards, seen as “central to corporate social responsibility.” In fact, the EC noted that monitoring and compliance of ILO standards should be strengthened.67

The EC supports CSR development only within the context of laws and regulatory systems that are in harmony with ILO core labor standards.68 It believes that CSR should apply not only to large or multinational companies (its current primary purveyors) but to “all types of companies and in all sectors of activity,” including small and medium enterprises. The EC regards CSR’s application in microbusinesses as especially important, “given that they are the greatest contributors to the economy and employment.” On the other hand, larger companies also have a special responsibility because the economic welfare of their suppliers and their workers might depend “primarily or entirely” on one large enterprise. Basically, the EC asserts that CSR should be applied in companies “at every level of the organization and production line.”69

The principle that economic growth should deliver “access to affordable prices for everyone to services of general economic interest” is at the heart of the European model for society. This places a particular importance on public well-being, especially for workers—who are major company stakeholders—and their rights. In fact, the EC sees higher labor and social standards as essential to meeting the EU’s business and social agenda. This requires attracting and retaining skilled workers, reducing unemployment and raising the employment rate, and diminishing social exclusion through various practices, including:

- lifelong learning;
- empowerment of workers;
- better internal information flow;
- better balance between work, family, and leisure;
- greater workforce diversity (recruitment from ethnic minorities, older workers, women, long-term unemployed, and disadvantaged people);
- equal pay and career prospects for women;
- profit-sharing and stock-ownership schemes; and
- concern for employability and job security.70

Respect for human and worker rights affects the bottom line over time.71 A 2001 study showed that about “half of the above-average performance of socially responsible companies can be attributed to their socially responsible environment.”72 Moreover, such companies can “expect to deliver above-average financial returns, as a company’s ability to deal successfully with environmental and social issues can be a credible measure of management quality.”73
A number of EU countries have taken actions that support these goals. In 2001 the French Parliament passed a law updating its legal framework for companies. The law includes an amendment requiring large French corporations to report on the social and environmental impact of their activities. The reports on social impact cover human resources, community and civil society standards, and labor standards. Reports on labor standards must show how French companies’ international subsidiaries respect ILO core labor standards and how the companies are promoting these standards with their international subcontractors. Unfortunately, the law does not provide for any sanctions or penalties for noncompliance.

Several other EU nations have adopted policies on CSR and other aspects of corporate sustainability. The approaches most commonly adopted tend to be informational, multistakeholder, and voluntary. Germany and the Netherlands have CSR policies focusing on information sharing and coordination between stakeholders. Finland, the U.K., and Hungary framed their policy goals in terms of sustainable consumption. The EC has “outlined a comprehensive strategy for the promotion of core labour standards and improving social governance in the context of globalisation,” but it offers no new enforcement mechanisms. So far, these efforts have not made the transition from environmental education to significant worker rights issues, nor have they acquired any real teeth as enforceable standards. However, the EU has contributed to the international debate by clarifying in principle the necessity of binding law and regulation as a foundation for successful CSR initiatives.

Privately Sponsored Guidelines, Principles, and Codes of Conduct for Multinational Corporations

The generation and adoption of guidelines, principles, and codes of conduct for multinational companies is one of the principal experiments undertaken during the past several decades to encourage multinational companies’ voluntary compliance with a variety of social standards. Initially the effort was more focused on consumer-oriented environmental standards, but worker rights standards also emerged as a goal. Those early efforts might be called “first generation” codes of conduct, inspired by multilateral government action and international trade union calls for a response to worker rights abuses. The effort to develop codes of conduct for multinational corporations involved the participation of governments; intergovernmental organizations; trade union organizations; employers’ organizations; and environmental, consumer, investor, ethical, religious, and protest groups. Some codes were internally generated by companies as policy statements of corporate ethical standards. Externally generated codes either invited companies to adopt a particular set of standards or provided a mechanism for judging a company’s performance against those standards.

The credibility of these first-generation codes depended on factors such as their degree of adoption by governments or companies and what, if any, monitoring mechanisms were included. Some codes involved little or no external monitoring, offering scarcely more than a public relations response to social criticism. These types of codes were simply part of a corporation’s brand identity or marketing strategy and might represent a disingenuous distraction from authentic accountability. Other codes were more comprehensive and transparent, with mechanisms for external verification and reporting.

A “second generation” of voluntary codes of conduct took shape in the 1980s, developed by prominent individuals and other forces outside the corporation itself. Backers of these external codes asked companies to sign on, or “take the pledge,” to abide by them. The Global Sullivan Principles of Corporate Responsibility, aimed at ending apartheid in South Africa, were among the most prominent of these. NGOs such as the International Labor Rights Fund, a nonprofit advocacy organization, began to use litigation to hold multinationals accountable for worker rights abuses.
By the early 1990s, the globalization of commerce had eroded national borders—in terms of both business boundaries and the sovereignty of governments. It had also begun to peel away labor protections as developing-country governments weakened labor standards and enforcement to compete for foreign direct investment. Public outcry over reports of inhumane treatment of workers, violence, and the widespread use of child labor in the production of clothing, footwear, toys, and agricultural products motivated multinational companies that marketed these products under brand names to respond to negative publicity, giving rise to a “third generation” of codes of conduct. These internal codes, or “corporate codes of conduct,” were formulated by the companies themselves.

The first apparel code of conduct was adopted in 1991; hundreds of apparel companies and firms in other sectors now have their own codes. Industry groups and corporate trade associations have also formulated multienterprise codes for their members in many countries.

A “fourth generation” of guidelines for corporate behavior has emerged in the form of socially responsible investment (SRI) screens. An SRI screen is not a code of conduct, but rather an external filter of minimum standards applied by an investment fund to individual corporations. This new movement is gaining widespread acceptance as a niche market within the community of investment management firms. Capital fund managers screen corporations in an attempt to create ethical investment portfolios. These efforts, while involving large amounts of money, still constitute only a small percentage of the funds invested overall in capital markets. It is unclear, and a current subject of controversy, whether they represent a viable effort at reform or merely a targeted financial product for consumers of capital investment services.

Corporations initially adopted codes of conduct for a number of reasons, including pressure from competitors, labor unions, the media, consumer groups, individual and institutional shareholders, and other worker rights advocates, or in some cases, their executives’ sense of social responsibility. Corporate social responsibility and corporate codes of conduct illustrate the challenges of the soft law approach. Because they are often key to voluntary compliance with standards that are already legally required, they have the potential to distract from solid, legally enforceable approaches.

Global Sullivan Principles of Social Responsibility

The Reverend Leon Sullivan was a prominent Philadelphia clergyman and a member of the board of directors of General Motors Corporation. He devised and promoted a set of social “principles” in connection with the antiapartheid movement of the 1970s and 1980s. It was a period when broad public pressure was brought to bear on U.S. multinational corporations operating in South Africa, whose economic and social systems before the advent of majority rule were based on race discrimination.

Established in 1977, the Sullivan Principles called upon U.S. companies to pledge an end to discriminatory practices against “black and colored South Africans” in the workplace, providing equal opportunity for advancement within the firm and equality in eating and housing facilities provided by the employer. The Sullivan Principles attracted support from U.S. companies, including such giants as the Coca-Cola Company and Proctor & Gamble. The principles came under fire from critics who contended that signatories were using them “as camouflage— as a justification for operation in (and profiting from) a fundamentally corrupt and odious system.” Sullivan himself later declared the principles to be ineffective in overcoming apartheid and joined calls for tough economic sanctions against the racist regime in South Africa. Congressional passage of the Comprehensive Anti-Apartheid Act of 1986 effectively superseded the Sullivan Principles.
The Sullivan Principles remain the most prominent example of a corporate code of conduct drawn up by an outside private party and designed for companies to pledge to compliance with its terms. This approach was replicated in the MacBride Principles, issued in 1984 by the Irish statesman Sean MacBride to influence the activities of U.S. companies doing business in Northern Ireland. This code focused on nondiscrimination and affirmative action programs aimed at overcoming the deep antipathy between the Protestant majority and the Roman Catholic minority in that British-rulled territory.81

In a move to extend the Sullivan Principles worldwide, on November 2, 1999, the Reverend Sullivan, together with then UN Secretary-General Kofi Annan, launched the Global Sullivan Principles of Social Responsibility.82 The global principles emphasize the social responsibilities of corporations worldwide. Secretary-General Annan noted that the principles could help the UN and the international business community to implement the Global Compact, give global markets more of a human face, and bring to life the values of the UN Charter.

A small number of U.S. and European companies have endorsed the principles. Each endorsing company commits to the implementation of policies, procedures, training, and reporting activities that lead toward the principles’ realization. Endorsing companies are also asked to participate in an annual reporting process so as to document their experiences in enhancing social responsibility.

GUFs have been critical of the principles because they have no effective enforcement system, a flaw shared by most other codes. The principles are also flawed in their failure to fully incorporate ILO core labor standards. For example, while freedom of association is included, the right to organize and bargain collectively, another core labor standard, is omitted.

**Company-Initiated Codes of Conduct**

Broad codes of conduct sponsored by groups that sought declarations of acceptance and compliance by multinational corporations have not fared well. Many codes either failed to gain acceptance or did not provide enforcement mechanisms. One ongoing challenge for codes of conduct is that much of the benefit for corporations is at the front end—the public relations value in simply signing on—while the benefit for workers is in the details of implementation, which may or may not occur and may or may not gain as much publicity as the introduction of the code itself.

Many companies attempted a proactive route to outpace the curve of human rights criticism. They began to issue their own self-initiated codes of conduct for human and worker rights to their international subsidiaries and suppliers. The Asia Monitor Resource Center names three general types of corporate codes: “compliance codes” (statements that guide and prohibit certain activities), “corporate credos” (general statements of a corporation’s values and ethics), and “management philosophy statements.” The last term is the one most often used by U.S. corporations.83

One of the most prominent U.S.-based firms at the forefront of this movement for internal, corporate-sponsored codes of conduct was Levi Strauss & Company. In March 1992, following an embarrassing media exposé of abusive labor conditions in factories on the U.S. island territory of Saipan that supplied Levi Strauss, Sears, and other U.S. retailers, Levi Strauss made “a commitment to responsible business practices,” embodied in new Global Operating and Sourcing Guidelines. The guidelines are a two-part instrument, consisting of Country Assessment Guidelines and Business Partner Terms of Engagement.84

The Country Assessment Guidelines are intended to assist Levi Strauss in “making practical and principled business decisions as we balance the potential risks and opportunities associated with conducting business in specific countries.” These guidelines
address health and safety conditions, the human rights environment, the legal system, and the political, economic, and social conditions in countries where the company operates through the lens of protecting corporate interests and brand image.

The Business Partner Terms of Engagement constitute a supplier code of conduct. They cover “issues that are substantially controllable by individual business partners”: ethical and employment standards, legal and environmental requirements, and community involvement. The Employment Standards section is broken down into guidelines on child labor, forced/prison labor, disciplinary practices (the company will not source from partners that use “corporal punishment or other forms of mental or physical coercion”), working hours, wages and benefits, freedom of association, discrimination, and health and safety. 85

Levi Strauss created an elaborate monitoring and enforcement system that began with a detailed questionnaire on practices in foreign supplier plants. It also provided for surprise visits by auditors, intense review by company officials charged with enforcing the code, and the termination of violators’ contracts. Levi Strauss reportedly canceled supplier contracts in the Philippines, Honduras, and other countries—more than 30 suppliers worldwide—for violating the code and forced reform in employment practices in more than 100 others. 86

In 1993 the company pulled out of China, citing alarming human rights violations, but it returned in 1998. 87 This reversal illustrates the pressure of the bottom line on strictly voluntary corporate attempts to be socially responsible. Since Chinese law does not allow workers to freely form their own unions, which is a violation of ILO principles of freedom of association, it would be essentially impossible for companies to operate there while claiming to respect that right. However, given the size of the low-wage workforce in China, companies may believe that they cannot compete without operating there.

Multistakeholder Initiatives

As corporate codes began to proliferate, human and worker rights groups increasingly challenged companies that tested them to take into account the concerns of company stakeholders, including employees, customers, and the communities in which the companies operated. As a result, the internally generated codes of conduct of Levi Strauss and others were superseded by “multistakeholder” codes that arose in the late 1990s, when the internal contradictions of company-sponsored codes began to make them untenable. As the credibility of corporations’ efforts to police themselves was increasingly called into question, workers, unions, human rights groups, consumer organizations, and other civil society actors began to demand codes with monitoring and enforcement systems independent of corporate control. Multistakeholder codes of conduct on worker rights filled the void with various models. Different ways of assessing compliance emerged in the form of monitoring, verification, and certification systems.

The lack of universal standards, terms, and agreements on how compliance was to be achieved complicated the task and multiplied the variety of terms and systems. Practitioners discussed first-, second-, and third-party monitoring, as well as internal and external monitoring (monitoring generally refers to an ongoing practice of assessing compliance). A debate ensued within the CSR and union communities about what the unions’ role should be in monitoring company compliance and whether unions had the capacity to do the job. Some unions believed that their role was to help set the rules for a social auditing system and to provide checks on its implementation. 88

As codes of conduct were increasingly adopted and implemented, labor, NGO, student, and religious organizations in both the Global North and South demanded greater roles in monitoring, increased corporate disclosure of information, and more transparent mechanisms for workers and worker rights advocates to use in lodging com-
plaints and challenging auditors’ reports. Some companies moved toward “verification,” which required systems with credible rules to govern the selection and training of auditors, inspection techniques, and the application of sanctions—all conducted in the public eye. The intent was to hold companies responsible for their claims. Certification was an alternate effort by some social auditing organizations to provide factory-by-factory clearance on worker rights.

As of early 2008, most stakeholder code initiatives had been launched in the United States and Europe, using “social auditing” firms. NGOs in the Global South have also been involved in code compliance verification. However, only a relatively small number of brands and companies are actively engaged in multistakeholder partnerships.

The apparel industry is one of the sectors most profoundly and continually affected by globalization, but the combined total revenue of brands participating in multistakeholder initiatives makes up only about 10 percent of the total for the apparel and footwear industries. The first wave of change moved production from developed nations to developing nations. The second wave generated a constant movement of production from country to country, from city to city or tax-free zone, from worksite to worksite within a city, and from worksite to home work, creating the oft-cited “race to the bottom,” which has been highly visible in this industry.

Because the industry is so labor intensive and easy to move, abuses of worker rights have been extreme, as employers easily fire and hire from day to day. Employers can close a production center one day and have another set up elsewhere within a week, making it very difficult to organize or sustain a union and very easy to break one.

Apparel workers, the vast majority of whom are women, toil in unsafe and unhealthy conditions all over the world. They are subjected to long hours (including forced overtime), low pay, and all kinds of abuse, including physical abuse and sexual harassment. Apparel unions around the world have banded together to fight this global-scale abuse of workers. Many civil society, human rights, and student groups have joined them in their effort to win respect for the people whose work is clothing the world.

**Apparel Industry Partnership/Fair Labor Association**

In 1996 the Clinton administration, with Labor Secretary Robert Reich in a prominent lead role, called together apparel firms, unions, and human rights, religious, and consumer groups to form the Apparel Industry Partnership (AIP) with the goal of creating a viable code of conduct for the industry. The Fair Labor Association (FLA) emerged in November 1998 as the AIP announced an agreement on a multicompany code of conduct, monitoring, and certification system.

The FLA represents a multistakeholder coalition of NGOs, companies, and universities. It has a board with six seats held by corporations, six by NGOs, and three by university members. In 2008 the FLA listed 29 participating companies and suppliers. More than two dozen of these have committed to uphold FLA standards for factories producing goods for university members of the FLA. The FLA accredits external monitors to certify member companies that meet its standards.

In 1998 labor and religious organizations began to withdraw from the FLA, charging that the standards were too low and the monitoring process was not sufficiently transparent. Many universities also withdrew from the FLA when it became clear that member corporations were not willing to take a stand on wage levels or a “living wage.” Some human rights organizations have remained involved in the FLA, hoping to advance a worker rights agenda.

One recent FLA activity is the Soccer Project, a series of seminars on the “balanced scorecard” in soccer factories in China and Thailand. The association’s approach is to increase the ability of suppliers in these countries to “tackle root causes of noncompliance in a more proactive and sustain-
able way.” In October 2006 the FLA’s board of directors voted to accredit the labor compliance program of Nordstrom and reaccredit the Reebok Footwear program.

**Campaign for Labor Rights and SweatFree Communities**

The Campaign for Labor Rights (CLR) is a small, membership-based NGO that works to mobilize grassroots support for antisweatshop campaigns. The CLR says it “promotes a broad, contextual understanding of sweatshops by locating them within the current structure of economic globalization, and it promotes resistance to this structure in local communities.” The CLR has worked to promote local purchasing campaigns in the United States, called SweatFree Communities. This campaign has successfully worked with a number of municipalities to pass local purchasing ordinances. Los Angeles, San Francisco and other cities, school districts, and other local bodies have passed such “No-Sweat” ordinances.

**Central American Network of Women in Solidarity with Maquila Workers**

One example of codes initiated in the Global South is the Code of Ethics developed by the Central American Network of Women in Solidarity with Maquila Workers (RED), established in 1996. RED member organizations include the Honduran Women’s Collective and the Maria Elena Cuadra Women’s Movement for Unemployed and Underemployed Women (MEC) in Nicaragua. The RED code emphasizes issues specific to women maquila workers, including discrimination; social security benefits; physical, psychological, and sexual abuses; excessive overtime; and the rights of pregnant workers. In February 1998 the Minister of Labor of Nicaragua signed the RED code into law, providing workers the right to organize and engage in collective bargaining.

RED has cooperated with North American and European NGOs such as the Maquila Solidarity Network (Canada), Clean Clothes Campaign (EU), and Women Working Worldwide (U.K.) to conduct education programs for women workers in export processing zones and to initiate the work of independent monitoring groups. RED has also reached out to women workers in Nicaragua, seeing “male-dominated trade unions” in Nicaragua as corrupt. A 2001 dialogue between women workers in Asia and Central America noted:

In response to women’s demands for greater representation in the leadership of the Sandinista unions, and a stronger focus on organizing in the maquila, the male-dominated leadership of the CST union expelled the feminist leadership of the women’s secretariat. Those women then formed the MEC movement, carried out a programme of gender and labour rights training with women maquila workers, and mobilised them in campaigns to reform the labour code.

MEC and RED now organize women in Nicaraguan EPZs as parallel but separate bodies from the unions.

**Clean Clothes Campaign**

The Clean Clothes Campaign (CCC) grew out of a 1989 demonstration in front of a Dutch clothing store. Individuals were protesting working conditions in the Philippines, where the clothes were produced. As of 2008, the CCC has campaigns in 11 European countries. It is a coalition of NGOs and trade unions that work autonomously at the national level in each member country and come together to work jointly at the European level with additional international support.

The CCC strives to improve working conditions worldwide in the apparel industry in four broad categories: raising awareness and mobilizing consumers, pressuring companies to take responsibility and live up to their corporate codes of conduct, solidarity actions, and lobbying and legal action.

The CCC uses its “Model Code” as a guideline and has been involved in-depth in projects to the components of an effective monitoring and veri-
fications system. The CCC urges companies to develop codes that are based on ILO standards, thereby using language that has been adopted internationally. A priority of the CCC is to push for worker involvement in code development and company compliance. Though codes are voluntary, the CCC believes in raising the standard to include provisions for systems that enable workers to file complaints and get training.98

**Ethical Trading Action Group**

The Ethical Trading Action Group (ETAG) is a network of Canadian unions, faith-based groups, and NGOs advocating for government policies, voluntary codes of conduct, and purchasing policies that promote humane labor practices based on international labor standards. ETAG promotes more transparency in monitoring factory conditions and greater public access to information about the conditions in which apparel is made. The secretariat of ETAG is the *Maquila Solidarity Network*, a worker and women’s rights organization that advocates for and works with grassroots organizations in EPZs in Mexico, Central America, and Asia.99

In 2002 ETAG and UNITE successfully coordinated a “No Sweat” campaign in Toronto. The campaign led to the unanimous passage of a city council resolution that requires all uniforms, garments, and apparel items worn by city workers be manufactured in sweat-free conditions.100

In September 2006 the Canadian government held a series of discussions on corporate social responsibility in the extractive industries, including official policy regarding core worker rights. ETAG contributed a report outlining the failure of purely voluntary CSR in the apparel industry, making suggestions about holding industries accountable for labor and human rights standards.101 Also in 2006, ETAG developed a Transparency Report Card, the first attempt at an annual assessment of labor standards reporting by apparel brands and retailers in Canada.102

**Joint Initiative on Corporate Accountability and Workers Rights**

In 2003 six organizations—the Ethical Trading Initiative, the CCC, the FairWear Foundation, the FLA, Social Accountability International, and the Worker Rights Consortium—came together in a collaborative effort to improve workplace conditions in the garment industry. This project is called the Joint Initiative on Corporate Accountability and Workers Rights (Jo-In). It was established to lessen the confusion created by the multiplicity of codes and related initiatives while facilitating coordination among the groups to work efficiently on policies aimed at improving the lives of workers worldwide. Its specific aims are:

- to maximize the effectiveness and impact of multistakeholder approaches to implementing and enforcing codes of conduct by ensuring that resources are directed as efficiently as possible to improving the lives of workers and their families;

- to explore possibilities for close cooperation between the organizations; and

- to share practices on the manner in which voluntary codes of conduct contribute to better workplace conditions in global supply chains.103

In 2005 all six parties drafted a Jo-In Code of Labor Practice. (Although producing yet another code was not the project’s ultimate goal, it served as a focus for Jo-In’s work.) Jo-In then focused on identifying the best methods of verifying, enforcing, and evaluating the code as it applied to a pilot project in Turkey. Seven multinational companies joined the the Turkey project: Adidas, Gap, Hess Natur, Marks and Spencer, Nike, Patagonia, and Puma. They were joined by a limited number of suppliers in Turkey, trade unions, NGOs, and industry and employer associations. At the international level, the International Textile, Garment and Leather Workers Federation (ITGLWF) and the Textiles, Clothing and Leather section of the European Trade Union Federation participated in the project along with the ICFTU and the World...
Confederation of Labor. The objectives of the pilot project were to improve conditions and observance of labor rights for garment workers and their families in participating garment factories in Turkey; to develop a shared understanding of the ways in which codes of labor practice contribute to this end; and to generate viable models for ongoing cooperation between the organizations.  

Turkey was selected for a variety of reasons. It is a large exporter of textiles and garments, particularly to Europe. In addition, trade union and civil society partners in Turkey were interested in and able to support the work, and Turkey had not yet been the focus of many worker rights initiatives. Finally, the Turkish government had an incentive to cooperate, since improving respect for worker rights would help facilitate the country’s admittance to the European Union. While the purpose of the trial project was to develop and inform a global effort for improved working conditions, project participants also sought to produce tangible, positive outcomes locally in Turkey.  

United Students Against Sweatshops  

United Students Against Sweatshops (USAS), an international grassroots, student-run movement, seeks to eliminate sweatshop conditions and secure rights for workers who produce goods purchased by universities—notably clothing bearing their names and logos. The movement began in 1997, when interns at UNITE designed the first organizing manual for the campaign and spread the idea to campus labor activists around the United States. In July 1998 student activists from more than 30 schools met in New York for an anti-sweatshop conference, where they formed USAS. 

In 1999 the Collegiate Licensing Company, an intermediary between universities and manufacturers, responded to student pressure by proposing a code of conduct for the 150 colleges and universities it represented. However, the code lacked provisions for full public disclosure, a living wage, and women’s rights, so student activists rejected it. Students at Duke, Georgetown, and the University of Wisconsin staged sit-ins and won commitments from university administrators to require full public disclosure of their licensees, conduct a study on a living wage, and incorporate a clause on women’s rights. USAS activists won similar commitments from other universities.  

USAS members at more than 200 campuses demanded that:  

- the clothing bearing their schools’ logos be made under decent working conditions;  
- universities adopt codes of conduct that protect worker rights;  
- universities provide full public disclosure of company information; and  
- universities utilize independent verification systems to ensure that their apparel is not made under sweatshop conditions.  

USAS has expanded beyond collegiate apparel to target the labor practices of two employers that do a large volume of business with educational institutions: the Coca-Cola Company and the global education service provider Kaplan, Inc. The organization also has established committees tasked with building long-term relationships with workers attempting to organize and conducting an internship program that places students with worker support organizations in less-developed areas of the world.  

Worker Rights Consortium  

Frustrated with the Fair Labor Association because of its failure to establish an independent monitoring system, USAS activists played a key role in establishing the Worker Rights Consortium (WRC). The WRC helps enforce the codes of conduct adopted by colleges and universities to ensure that goods bearing their names are made in factories where worker rights are respected.  

The WRC works with worker rights experts in the United States and around the world to investigate factory conditions, reporting its findings to mem-
Member organizations and the general public. When violations are discovered, the WRC works with colleges and universities, U.S.-based retail companies, and affected local workers and organizations to correct problems and improve working conditions. The WRC also works with local NGOs to educate workers in collegiate apparel factories about their rights.

More than 180 colleges and universities and nearly a half-dozen high schools are affiliated with the WRC. Each affiliate must adopt a manufacturing code of conduct and work toward incorporating the code into its contracts with licensees. Affiliated universities must also provide the WRC with the names and locations of all factories involved in the production of goods that bear their logos. To qualify for WRC affiliation, company codes of conduct must provide basic protection for workers on freedom of association, workplace safety and health, women’s rights, child labor, forced labor, hours of work and overtime compensation, wages, harassment and abuse in the workplace, nondiscrimination, and compliance with local law.

The WRC does not certify “good” companies, nor does it mandate specific penalties for licensees that violate the code of conduct. Instead, it allows individual colleges, universities, and high schools to determine appropriate recourse.

The WRC initiates unannounced spot investigations of factories in response to worker complaints or on the basis of reliable local NGO reports. The WRC may also initiate an investigation when it needs more information on a plant that is a significant source of apparel production. WRC reports of factory investigations are made public. The WRC pressures licensees to improve conditions rather than shut down factories with violations. The WRC consistently partners with local worker-allied groups on investigations with the goal of building capacity and creating space for workers and their allies to advocate on their own behalf.

Since 2000 the WRC has issued factory reports for facilities in more than a dozen countries. WRC investigations and reporting on worker rights violations at the Kukdong (subsequently Mexmode) apparel factory in Atlixco, Mexico, pushed management to make major improvements in worker rights. Kukdong workers became the first to successfully form an independent trade union in Mexico’s apparel maquila sector. In the Dominican Republic, a WRC report on the BJ&B apparel factory was important in pushing the company to offer severance pay in the wake of a factory closing.

At Sinolink Garment Manufacturing in Kenya, the WRC documented worker rights abuses, including the company’s failure, illegal in Kenya, to recognize the workers’ elected union. The WRC characterized the Sinolink response as “a dramatic, positive transformation.” In 2005 Sinolink became the first apparel factory in the Mombasa EPZ to formally recognize the workers’ democratically chosen union.

Worldwide Responsible Accredited Production

Worldwide Responsible Accredited Production (WRAP) is a factory certification program launched in January 2000 by the American Apparel & Footwear Association. WRAP is a voluntary certification program. Its appeal for U.S. apparel manufacturers is its lower standards (in relation to those of other initiatives discussed here) and the fact that responsibility for seeking and paying for certification and achieving compliance lies entirely with local factory owners, operating anywhere from Afghanistan to Zimbabwe, rather than with North American companies that contract out the manufacture of their products. For many reasons, worker rights advocates do not see this program as a serious effort. The primary source or proof of working conditions is a self-assessment form and factory records, and private-sector auditing firms employed as monitors are financed by the factory being monitored. In addition, WRAP has made little effort to disclose this industry information to the public so that independent consumers can evaluate the program’s effectiveness.
While many multistakeholder initiatives have focused on improving the plight of workers in the apparel industry, others have targeted multiple sectors for advocacy.

**Ethical Trading Initiative**

The U.K.-based Ethical Trading Initiative (ETI) brings together companies, unions, and NGOs in a campaign to identify and promote good practices in codes of conduct, including monitoring and independent verification as well as basic human rights for workers. The ETI developed a multisectoral Base Code to provide a generic standard for company performance. It was formulated from ILO standards and includes provisions for a living wage, freedom of association, and security of employment. In 2006 ETI members were engaged in creating more commercial leverage for the implementation of the Base Code, raising the standards for ethical trade, and strengthening corporate membership. In 2008 ETI member companies reported more than 50,000 separate improvements to workers’ conditions, collectively touching the lives of more than 6 million workers.

**Global Reporting Initiative**

In 1989 the Coalition for Environmentally Responsible Economies (Ceres) was established to promote transparency in corporate social behavior. The coalition united 15 U.S. environmental groups with socially responsible investors and public pension funds. This voluntary partnership subscribed to a code of conduct known as the Ceres Principles, pledging support for environmental sustainability.

In 1997, in partnership with the UN Environment Programme, Ceres convened the Global Reporting Initiative (GRI). The GRI was established to promote global adherence to the Ceres Principles and similar declarations through the creation of global guidelines for reporting on the economic, environmental, and social performance of corporations, and eventually for any business, governmental organization, or NGO.

The GRI is committed to strengthening corporate accountability in the twenty-first century. Its aim is to develop an internationally accepted framework for sustainability reporting for businesses and other organizations. GRI incorporated input from business, accountancy, investment, environmental, human rights, and labor organizations from around the world in designing its “Sustainability Reporting Guidelines.” These guidelines, released in March 1999 and updated in September 2002, cover three major areas: (1) economic (wages and benefits, job creation, labor productivity, research, development and training); (2) environmental (impacts of processes, products, and services on human health, air, water, land, and biodiversity); and (3) social (workplace health and safety, employee retention, worker rights, wages, and working conditions).

While the guidelines promote a common reporting language, they are far from a universal standard for monitoring performance. They emphasize a voluntary corporate approach to social responsibility. The board of directors is drawn from a diverse, international group of stakeholders.

**The International Labor Rights Forum/International Rights Advocates**

Founded in 1986, the International Labor Rights Forum (ILRF) is a nonprofit advocacy organization “dedicated to achieving just and humane treatment for workers worldwide.” Its principal stated objectives include public campaigning and media outreach, promoting new ILO conventions and their ratification, promoting reform of U.S. legislation, and advising multinational corporations on issues of corporate social responsibility. In the last decade the ILRF has filed class action suits against a number of multinational corporations on behalf of plaintiffs who are workers in developing countries. It has pioneered lawsuits under the Alien Torts and Claims Act (ATCA), a 1789 law that allows noncitizens to seek legal recourse in U.S. courts for violations of international law such as slavery and forced labor.
The ILRF served as lead counsel in a 1996 federal lawsuit charging Unocal (a California-based multinational oil company) with knowingly using forced labor to construct a pipeline across Burma. The plaintiffs included the Federation of Trade Unions of Burma as well as 15 Burmese workers who were forced to work on the pipeline. Facing trial, Unocal entered into a confidential “settlement in principle” in 2004. Although the terms of the settlement were not released, they included compensation to the plaintiffs and improvements to living conditions, healthcare, and education along the pipeline.119

In November 2005 the ILRF filed a similar class action lawsuit against Bridgestone/Firestone along with plaintiffs who are past and current child laborers on the Bridgestone/Firestone rubber plantation in Liberia.120 In April 2006 the trial was moved at the defendants’ request from California to Indiana, the home of the two corporate defendants. In June 2007 the court rejected Bridgestone/Firestone’s motion to dismiss the child labor allegations in the case, and the case is still pending.121

Other current campaigns of the ILRF include publicizing abuses in flower production on behalf of workers in Ecuador and Colombia and a lawsuit against Nestlé on behalf of a slain Colombian worker.122 In 2007 ILRF moved its litigation efforts to a new organization called International Rights Advocates, which is continuing legal advocacy for workers, especially through the use of the ATCA.

International Organization for Standardization

In 2004 the International Organization for Standardization (ISO) launched an effort to develop quantifiable international standards for social responsibility. The effort seeks to develop a “guidance standard [that] will be published in 2010 as ISO 26000 and be voluntary to use. It will not include requirements and will thus not be a certification standard.”123 The ISO is a Geneva-based NGO whose member organizations are national standards institutes, usually governmental bodies that set industrial standards. Much prior ISO work dealt with industrial standards and the technical aspects of manufacturing processes, often for less controversial matters such as weights, measurements, and standardizing the sizes used in industrial production. In the past it has developed a wide variety of standards for business, production, quality control, and environmental management. This new effort is a departure from ISO’s technical focus, as it now delves into the complex world of social responsibility. The ISO’s challenge is to determine how to apply its traditional quality control approach to the development of a coherent set of benchmarks for social responsibility.

The standards are supposed to be developed in consultation with industry, labor, and other stakeholders. To date, however, participation in the process has been unbalanced in favor of industry and government, with NGOs and labor underrepresented.124

Some human rights observers have questioned whether the ISO has the ability to apply its techniques to social values. The controversy has been exacerbated by the imbalance in NGO/labor participation. Since the standards are not intended to be mandatory, worker rights advocates tend to view this effort as an extension of the many voluntary codes of corporate social responsibility, lacking any mechanism for accountability.

Social Accountability 8000

Social Accountability 8000 (SA8000) is an initiative of the U.S.-based Social Accountability International (SAI, formerly the Council on Economic Priorities Accreditation Agency), which calls SA8000 “a comprehensive and flexible system for managing ethical workplace conditions throughout global supply chains.”125 SAI works with companies, consumer groups, NGOs, workers, trade unions, local governments, and a network of groups that have been accredited for SA8000 auditing to “help ensure that workers of the world are treated according to basic human rights principles.”126
The SA8000 system includes:

- stakeholder participation;
- independent verification of compliance by certification bodies accredited by the Social Accountability Accreditation Services;
- factory-level management system requirements;
- SA8000 certification and Corporate Investment Plan reports, which aim at generating consumer confidence and investor buy-in by identifying and supporting companies that are committed to worker rights;
- website postings of annual SA8000 certified facilities and CIP progress reports;
- training partnerships for workers, managers, auditors, and others in effective use of SA8000;
- research and publications on the effective use of SA8000; and
- complaints, appeals, and surveillance processes to support the system’s quality.

SA8000’s objective is to bring consistency to worker rights standards in various codes and in procedures for “social auditing.” The SA8000 standard is an “auditable certification standard based on international workplace norms of the International Labor Organization, ILO conventions, the Universal Declaration of Human Rights and the UN Convention on the Rights of the Child.” The standard has provisions on child labor, forced labor, health and safety, freedom of association and the right to bargain collectively, discrimination, discipline (no corporal punishment or mental or physical coercion), working hours, compensation, and management systems.

SAI trains and accredits social auditing firms and individual auditors, who are then hired by companies to certify their and/or their suppliers’ compliance with SA8000 standards. SAI-trained social auditors certify supplier factories in China and other countries where worker rights abuses are common.

**Socially Responsible Investment**

In the 1990s internal codes evolved into the more general (and marketable) concept of CSR. It focuses on voluntary responsibility rather than mandatory regulation. CSR has become so widespread that both the FTSE and the Dow Jones stock indexes have launched indices of socially responsible companies.

EU countries have established Social Investment Forums to provide information on CSR and encourage the development of socially responsible investment. The U.K. 2000 Trustee Act requires all pension fund trustees to disclose their policies on SRI. A French law on employee savings plans (ESPs) requires mutual funds that collect funds from ESPs, intercompany savings plans, and voluntary partnership ESPs to report on SRI policies.

Socially responsible investing is increasingly driven by large institutional stockholders, such as pension funds, leading to a merger of socially responsible investing with corporate social responsibility. Some very prominent investor groups, such as the California Public Employees Retirement System (CalPERS), have attempted to develop SRI screens to filter the many billions of dollars they invest in corporate stocks. Shareholder—especially institutional—activism may have more influence on corporate behavior than codes that are developed entirely within a company.

CalPERS in particular took the lead in developing investment screens around labor issues, working with the nonprofit research group Verité to develop a worker rights ranking for emerging market countries. With hundreds of billions of dollars involved, the evaluation has the potential to become a powerful tool for pressuring many countries to improve worker rights enforcement.

However, because of the practical pressure to maximize returns for investors, there are constraints on the system. In fact, using SRI screens may raise legal questions of fiduciary duty if financial managers do not sufficiently focus on the
return of investment. SRI may confront a practical limit in its ability to support worker rights. Past that limit, diminishing returns would so undercut the funds’ market competitiveness that SRI would be unjustifiable to investors. The question remains whether enough room exists on the proactive side of this line to influence corporate behavior more than cosmetically. Absent the level playing field created by external governmental regulation or union collective bargaining, SRI influence on worker rights may well be insufficient to effect long-term structural change.

Nevertheless, innovative work is being done in the field of SRI and worker rights. The Verité study is one of the few efforts to rank and comparatively evaluate the level of union freedoms and freedom of association in multiple countries. Verité looked at 27 emerging market countries and ranked them according to worker rights freedoms. CalPERS used the study as part of its screening process to target investments toward regions that had better worker rights protections.

Global Trade Union Strategies

As the growth of the global economy has presented similar challenges to workers around the world, the components of the international trade union movement have responded by increasingly cooperating with each other in order to address common issues. Challenged by the implementation of international financial institution policies, an increasingly mobile and informal workforce, and a global depression of wages, the labor movement worldwide has developed creative approaches to building a global response to policies and practices that lead to worker rights violations on an international scale. This section explores key strategies that unions have used to increase worker power, looking at the International Trade Union Confederation’s Basic Code of Conduct Covering Labor Practices, the nature of comprehensive union organizing campaigns, and the work of global union federations.

ITUC/GUF Basic Code of Conduct Covering Labor Practices

The ITUC and GUFs work together to limit the worst forms of worker rights abuse and exploitation generated by growing global competition. After consulting extensively with trade unions and other interested parties, the ICFTU/ITS Working Party on Multinational Companies developed a code of conduct adopted in December 1997 by the ICFTU Executive Board as the Basic Code of Labor Practice.

The code asserts companies’ responsibility for the labor practices of their contractors, subcontractors, principal suppliers, and licensees or franchise holders. It applies to both product manufacturers and service providers. It is aimed at helping unions in their negotiations with companies and also in their work with NGOs on campaigns involving codes of conduct. In addition, it is intended to serve as a benchmark for the evaluation of any unilateral codes of labor practice.

The code’s basic purpose is to promote the preeminence of international labor standards and the inclusion of worker rights in codes of conduct that address labor practices. The code encourages the use of consistent language in order to promote the development of an international framework for worker rights. It cites a minimum list of standards but stresses that the list is not intended to limit provisions that unions can negotiate through collective bargaining agreements.

The code states that workers must be provided with living wages and decent working conditions and that companies must observe the international labor standards established by ILO Conventions Nos. 29, 87, 98, 100, 105, 111, 135, and 138. Specifically, the code obliges a company and its contractors, subcontractors, principal suppliers, and licensees (or franchise holders) who are involved in the production and/or distribution of products or services for that company to ensure the following conditions:
• employment is freely chosen (no forced, bonded, or involuntary prison labor);
• there is no discrimination in employment;
• child labor is not used;
• freedom of association and the right to collective bargaining are respected;
• living wages are paid;
• hours of work are not excessive;
• working conditions are decent; and
• the employment relationship is established (employers will not use contractual or apprenticeship arrangements to avoid the provision of legal benefits, social security, and other social insurance).

Further, the code requires contractors, subcontractors, principal suppliers, and licensees to assist in implementing and monitoring the code by providing the company at the top of the supply chain with relevant information on their operations; maintaining employee records; permitting inspections of operations and employee records; informing workers both orally and in writing about code provisions; and refraining from disciplinary action, dismissal, or discrimination against any worker for providing information related to the observance of the code. If contractors, subcontractors, principal suppliers, or licensees violate one or more terms, the code removes their right to produce goods, organize production, or provide services for the company.

This code was the first to require adherence to ILO standards all along the supply chain. As such, it became the foundation for the design of many other codes developed by the Ethnical Trading Initiative, the Clean Clothes Campaign, the Fair Wear Foundation, the Sydney Olympics, and other groups.138

Comprehensive Union Organizing

Comprehensive union organizing (CUO) is another effective strategy trade unions use to defend against worker rights violations by employers during union organizing drives. Although a CUO campaign can take many forms, the scope of the campaign usually expands beyond traditional organizing and engages many of the company’s stakeholders. Sometimes referred to as a “strategic campaign,” CUO rejects the notion of looking at a firm in isolation from the forces that influence its behavior. CUO adopts a holistic approach to organizing that seeks to leverage the firm’s key relationships in order to influence its behavior and dealings with workers seeking to unionize.

The CUO campaign expands beyond the traditional labor-management relations model to one involving many corporate stakeholders, whether or not they are directly involved in labor relations. A corporate stakeholder is any person, group, or company that has an investment, share, or interest in the company. Through its demand for workplace justice, the union may expose the anti-worker/antiunion conduct to the company’s stakeholders in order to change its behavior. However, the CUO campaign is not restricted to exposing just labor-related violations. The union may determine that engaging with the employers’ relationships in other areas will also compel it to change its antiworker behavior.

Origins of CUO

According to AFL-CIO studies, one worker is fired every 17 minutes for organizing activities in the United States.139 Ninety-two percent of employers require employees to attend mandatory, closed-door meetings that stress a strong antiunion message during union organizing campaigns.140 Fifty percent of all U.S. employers threaten to shut down partially or totally if employees join together in a union.
In the United States alone, the business of advising corporations on union-busting tactics is now a $4 billion dollar industry. According to an AFL-CIO calculation, 60 million more U.S. workers would join a union if employers allowed a fair process in making that decision.\(^{141}\)

**CUO Strategy**

The objective of CUO campaigns is to persuade employers to remain neutral and let workers decide, free from harassment, intimidation, and firings, whether or not to join a union. A common model for the campaign is for unions to request that employers avoid confrontation and agree to a fair process with mutually agreed-upon ground rules early on. However, employers often dismiss this request, forcing unions to develop other strategies.

In a CUO campaign, all stakeholders are identified. Stakeholders include the communities in which an employer operates, government entities that regulate its activities, and the customers who buy its products. Each of these stakeholders has a unique relationship with the company. The CUO campaign strategically determines which stakeholders to engage, for how long, and at what level.

Publicizing an employer’s antiworker/antiunion actions to its stakeholders exerts pressure on the employer to alter its behavior. However, stakeholder disapproval by itself seldom will alter an employer’s actions regarding unionization. Therefore, the CUO campaign must expand beyond simply exposing the company’s labor-related violations.

One common employer tactic is to isolate unions from other stakeholders. By expanding beyond the traditional labor-management dynamic, the union prevents its isolation while holding the company accountable to its stakeholders. Unions must create alliances with other members of civil society to broadcast the message and increase pressure on the offending employer. Campaign partners may include union members, the media, social action groups, religious organizations, other unions, politicians, environmental organizations, and even sympathetic members of the business community.

**Elements of a CUO Campaign**

Successful campaigns usually have four interwoven, interdependent components. Each has its own objective, but it is also linked with and supported by the others. These components are: (1) active participation of nonunion workers in the facilities attempting to organize; (2) mobilization of union members; (3) community education and involvement; and (4) corporate leverage.

Involving the communities where the workers live exposes this important audience to messages on worker rights violations. It can also help minimize employer hostility, or at least help generate negative publicity about an offending employer. A community strategy often builds momentum and reduces the stigma of fighting against a company that has spent millions, if not billions, of dollars on its image. Institutional advertising goes beyond traditional advertising on television or billboards—it can take many community-focused forms, including sponsorship of local sports teams, children’s events, and other charitable efforts. This type of advertising builds an important bond between a company and its employees. The bond can be seriously jeopardized when its employees’ rights are violated and the rest of the community learns about the violations.

By harnessing and coordinating the energy generated by worker organizing, member mobilization, community involvement, and corporate leverage, pressure can spiral down on the company, with each component energizing the next. Because antiunion consultants are fairly predictable, albeit very effective, anticipating the employer’s response to its workers attempting to exercise their right to form a union can help intensify the pressure.

Effective strategies commonly begin with low-risk, low-intensity activities, such as letter writing campaigns, and escalate and expand geographically as the campaign proceeds. International
cooperation can pose additional challenges to coordinating as well as opportunities to broaden the scale of the campaign. The choice of tactics flows directly from campaign research, strategic planning, and effective coalition building.

**Cases**

**Grape Boycott**

Perhaps the most memorable campaign was conducted before the term “comprehensive union organizing” was even coined. Cesar Chavez, leading the United Farm Workers grape boycott of the 1960s, took up “La Causa” to defend California farm workers against the injustices and abuses that pervaded the agricultural industry. The campaign trained thousands of organizers, pulled leaders out of the fields, targeted particular vineyards, built coalitions with religious and academic communities, made allies of supermarket shoppers across the United States, and challenged the country’s morality. Today’s strategic campaigns have their roots in that historic effort.

**Justice@Quebecor**

The Justice@Quebecor campaign, undertaken by the Graphic Communications International Union (GCIU), adapted many of the lessons learned from Cesar Chavez’s grape boycott to its fight for worker rights in the printing industry. After extensive research, the GCIU successfully coordinated and implemented all the components of a CUO campaign in a struggle that began in 2002.

The union had experienced devastating membership loss of 50 percent from 1980 to 2000. In an attempt to reverse this free fall, the union trained hundreds of member-organizers to increase its organizing activity and rebuild its membership. However, it focused on the employer and employees as the only determinants of the power relationship. Although the GCIU was armed with motivated and talented organizers, its attempts to regain membership failed when employing the traditional approach.

One particularly disappointing loss occurred in 2001 at a 650-worker Quebecor World plant in Corinth, Mississippi. In a three-week span the member-organizers persuaded 60 percent of the workers to sign union authorization cards. But the union lost the election by a two-to-one margin following a potent antiunion campaign by the company.

Stung by the Corinth loss, GCIU leaders resolved to explore alternative organizing strategies. The GCIU, in coordination with the AFL-CIO, conducted extensive research and developed a CUO plan. The research revealed that Canada-based Quebecor World was the industry’s largest employer, which gave it the most power to influence the terms and conditions of employment within the industry.

The GCIU based its comprehensive union organizing plan on persuading the company to remain neutral and allow workers to choose or reject a union, free from the antiunion campaign they had seen in Corinth. On the basis of its experience with Quebecor World management, the union believed that the company would not agree to such an arrangement without substantial and sustained pressure.

The strategy called for a major mobilization effort among the union’s 8,000 members who worked for Quebecor World in the United States and Canada. However, the union first had to educate local union leaders on the direct relationship between its bargaining power and organizing new workers. As GCIU membership had declined over the past two decades, so had local unions’ ability to deliver good contracts to their members. By tying organizing to local union self-interest, the GCIU not only gained support for the campaign but also reignited an activist culture within the union.

The CUO plan also required strong worker committees in each targeted plant to sustain a protracted campaign. The GCIU targeted 10 plants that, if successfully organized, would give the union 80 percent density in the company’s two
most profitable and important divisions. Several plants were in close geographic proximity to union-represented plants, which helped foster effective mobilization.

The GCIU plan relied on a multipronged leverage strategy engaging stakeholders such as customers, community and religious leaders, unions, and politicians. The union took the campaign global by engaging unions that represented workers at Quebecor World plants in Europe and Latin America. In coordination with the global union federation Union Network International (UNI), the organizing campaign was officially launched in December 2003. More than 120 delegates attended the launch conference from 14 countries, including Belgium, France, Spain, the U.K., Argentina, Brazil, Chile, Peru, Canada, Mexico, and the United States.

The conference was followed by a series of “global solidarity days” where workers from Quebecor World plants all over the world wore “Justice @ Quebecor” stickers, signed petitions supporting global labor rights, and staged rallies at their own plants. Global unions successfully pressured IKEA, a Quebecor World customer, to insist that the company respect workers’ right to organize.

After almost two years the company agreed in May 2005 to remain neutral and not interfere or oppose its employees’ efforts to unionize in the United States. Within a few months workers at Quebecor World plants in Nevada and Kentucky had formed unions.

In subsequent years, unions in Chile, Peru, and Brazil successfully used international coordination as an important component in their struggle to organize new workers. In Santiago, Chile, Quebecor World had contracted out a large section of its plant to a nonunion company. The union representing the remaining workers not only organized the contractor but picked up an additional unit of guards and maintenance workers. Workers in Recife, Brazil, coordinated an international coalition to pressure the company into rehiring fired union supporters and eventually organized the plant. Workers in Peru also coordinated with their brothers and sisters to organize a 350-person plant. In 2007 Quebecor World signed a global framework agreement with UNI.

**Impact of Comprehensive Organizing Campaigns**

By expanding beyond the traditional employer-employee power relationship unions can organize and address abuses by employers. The UFW, the GCIU, and many others have demonstrated that by using research and strategic planning to exploit a union’s strengths and an employer’s vulnerabilities, the CUO can even the playing field for workers seeking to organize a union. Global unions are increasingly using the CUO model in their efforts to ensure that all workers within an industry can secure their fundamental rights.

**Role of Global Union Federations**

Global union federations are international federations of unions organized by sector or occupation (see Chapter 1). Since they are direct representatives of national trade unions, and since employers are also organized by sector, GUFs provide the most direct input into the international decision-making that affects trade union members. Each GUF is governed by its own democratic structure and ultimately by its own affiliates. Every sector’s individual characteristics affect the policies and methods employed by its corresponding GUF. This section provides a glimpse of the significance of the GUFs’ role in the struggle to achieve global respect for worker rights. Especially noteworthy is the GUFs’ use of international mechanisms to increase respect for worker rights.

**International Campaigns**

All of the global union federations engage in international campaigns. Some GUFs are primarily involved with affiliate-driven industrial relations disputes and organizing-related campaigns.
designed to exert leverage or to change the position of an employer. Others execute more thematic campaigns based on political or industrial issues of concern to member unions. A few GUFs participate in both kinds of campaigns.

Dispute-related campaigns are at times complicated by national affiliates’ differing views on what can and cannot be achieved through international action. GUFs note that other difficulties may include inflated data, insufficient attempts at negotiations and dialogue prior to mobilization, premature efforts to exert maximum pressure on the employer, lack of sensitivity to other cultures, and the abandonment of other issues and alliances once the primary issue is resolved. Despite these problems, however, GUF corporate campaigns have achieved a very high success rate.

Building solidarity in a world of multiple independent unions is no small task. GUFs continue to promote candid discussions on ways to achieve solidarity and more balance among the different approaches taken by labor movements in different regions. They must continually take into account the underlying factors that shape what is appropriate in a given country (i.e., historical, cultural, and legal differences), because these affect what does and does not influence employers.

**Company Councils**

In sectors where major multinational companies play a significant role, most GUFs have either established or are planning to establish global company councils or similar bodies. Prior to setting up formal councils, some GUFs establish networks of union representatives within specific companies. GUFs view these councils as an effective way for worksite representatives to share information and discuss problems with other workers around the world. The councils can also provide a strong incentive for organizing workers in locations where unions are weak. Further, the linking of councils in related companies can be useful for coordinating industrywide campaigns.

The primary obstacle to the establishment of company councils has been the lack of sufficient resources. Many GUFs cannot meet the costs of professional interpretation, travel for delegates from poorer countries, staffing needs, and other administrative expenses. To be effective, councils often need full-time servicing.

GUFs may look to one or two major affiliates—usually those in the country where the company is headquartered—to play a key role in the administration of the councils. Staffing shortages are easier to handle in countries where companies traditionally release employees for trade union work.

**International Framework Agreements**

Another innovative mechanism used by GUFs is the international framework agreement (IFA), an agreement negotiated between a global union federation and a multinational employer. IFAs are not a substitute for traditional collective bargaining agreements; rather, they represent a global commitment by the employer to respect specific standards of behavior for all company employees, no matter where in the world they are working. Some IFAs include clauses that extend those standards to the company’s suppliers. The companies involved in such agreements tend to have a reasonably good relationship with unions in their home countries. To date, 54 IFAs have been negotiated (see Appendix F).

IFAs provide GUFs with the following advantages:

- GUFs and their affiliates influence the way such agreements are enforced;
- IFAs allow affiliates to integrate international work into everyday union activities, often as a practical recruitment tool;
- IFAs can change the climate of company and union relations at the national level;
- IFAs can help promote internationalism and solidarity among workers in a given sector;
• IFAs allow GUFs to be more directly involved in active negotiations with corporate management; and

• GUF relationships with top management of a global company can be of direct practical assistance to affiliates for resolving national and local disputes.

Despite this potential, however, GUFs and home-country unions must take care not to undercut union efforts in other countries where the multinational company is operating. For example, it is important for a GUF to consult and involve unions in other countries when collaborating with a home-country union in order to be sure the negotiated agreement addresses the needs of the unions and workers it is actually supposed to help.

In any case, in order for IFAs to be successful, care must be taken to ensure that they do not restrict the ability of GUFs or their affiliates to publicly and aggressively challenge company practices. In addition, national unions must be fully informed, particularly on monitoring and follow-up.

Several IFAs also hold company suppliers to ILO standards. Union solidarity in this environment is extremely important, as the relationship of retailers, suppliers of raw materials, and transport raise numerous organizing possibilities. The ITUC and GUFs have conducted joint campaigns protesting the use of child labor in the sporting goods industry, the production of surgical instruments, cut flowers, and other sectors.

To improve the effectiveness of this approach, GUFs have recommended that the ITUC, national trade unions, the GUFs, and their affiliates establish general standards. GUFs note the need for a strategy to find links in the chain where leverage can be built—an approach that would require greater practical cooperation between all GUFs and the other links in the production/distribution chain within their sectors.

Global union federations also recommend that framework agreements include language dealing with suppliers. An International Metalworkers’ Federation (IMF) special progress report prepared for its World Congress in September 2006 reinforced the need to address the supply chain, laying out the difficulties encountered in efforts to implement IFAs. It noted that the worst worker rights violations were often committed not by the company that signs the IFA but by its suppliers.143 A 2003 survey of Volkswagen managers and worker representatives revealed that neither group had informed suppliers about the IFA and its requirements.144 In fact, the IMF report described widely varying levels of IFA implementation, from no action at all to the establishment of union networks and initiatives that extended to suppliers and monitored enforcement, to the successful organization of new unions in nonunion plants.145

At the November 2007 World Board and Council Meeting of the Building and Wood Workers’ International (BWI), panelists noted the importance of IFAs in organizing new unions. BWI adopted a new model IFA that focuses on implementation and increases affiliates’ role in initiating, negotiating, and implementing the agreements.146 Perhaps this is where the primary strength of the IFA—its fundamental relationship with unions—is also revealed to be its potential weakness. The 2006 IMF report pointed out that because of the lack of legal enforcement mechanisms at the global level, IFA enforcement “relies almost exclusively on the capacity and strength of unions to compel companies to resolve complaints.”147

European and Global Works Councils

In some sectors, the global (or world) company council has been structured to be the principal mechanism for union coordination within a company. This process has become more complex with the development of large numbers of European Works Councils (EWCs) under the terms of EU Council Directive 94/45/BC, but global company councils have benefited in several ways. EWCs can be used effectively as a core for the establishment of global networks, and preparatory meetings with worker representatives are helpful for
exchanging information. The inclusion of non-EU representatives in EWC structures can also provide an easy and cost-effective way of bringing unions in a company together.

However, while EWCs were strongly supported by the European Trade Union Confederation and its industry structures (some but not all of which are integrated into the relevant GUFs), most global union federations see a need for caution in this area. First, EWCs can be used to foster a Eurocentric approach, which does not build global solidarity. Also, EWCs are legally created bodies that are not necessarily union based. Some companies have reacted to the EWC system not by opposing their creation but by ensuring that they are dominated by members sympathetic to the employer. In these situations EWCs can be used to bypass or weaken trade unions. In addition, a number of European trade union groups worry that EWCs could be used as an alternative to trade unions, rather than as a support mechanism.

**Global Unions Committee on Workers’ Capital**

The Global Unions Committee on Workers’ Capital (CWC, or as it is more commonly called, the Committee for International Cooperation on Workers’ Capital) was established in November 1999 by the ICFTU Executive Board. Today it is a joint ITUC-TUAC-GUF committee.

The CWC was organized to help trade unions better understand how to use investment (particularly retirement and pension) funds to protect workers’ interests and to hold companies accountable for their behavior. The CWC helped create and facilitate a network of trade unionists that tracks investment issues, and it develops strategies for joint action. Its secretariat is located at the Shareholder Association for Research and Education, a nonprofit organization in Vancouver, Canada. The CWC meets annually, and expert working groups carry out its mandates between meetings. In 2008 the CWC had four working groups focused on trustee education, corporate governance and financial market regulation, shareholder activism, and economically targeted investment. The CWC hopes to leverage the estimated $11 trillion in workers’ global retirement funds, which indirectly belongs to workers, in order to promote better long-term investment strategies and corporate governance.

**Impact of Efforts to Promote Compliance**

The emergence of international laws, principles, guidelines, and corporate codes of conduct provide worker rights advocates with additional tools for improving worker rights. Some of these tools, such as international human rights systems like the IAHRC, have been partially successful in obtaining remediation for victims of violations. Trade union initiatives, such as IFAs, have been successful in setting minimum standards of behavior for corporations, no matter where in the world they operate. CUO campaigns have succeeded in leveraging the strength of a union in one part of the world to build union strength in another.

In recent decades, perhaps the most controversial tool has been the corporate code of conduct. In some situations its use, particularly in combination with other compliance mechanisms, has secured more rights for workers or successfully defended their existing rights. However, corporate codes have also generated confusion. They have allowed governments to ignore their obligations to their peoples’ human rights, and they have permitted corporations to avoid their responsibility to deal directly with those who are most affected by worker rights abuses—their workers. In far too many cases, two of the three tripartite partners involved in the world of commerce—governments and corporations—have avoided the path to accountability. With the energy and resources of so many powerful players involved, why have the results been so meager?
Inconsistencies among the codes have led to uneven results. Most corporate codes have standards on health and safety, child labor, and broad contractual provisions. But their labor principles are not standardized. Some companies set their own standards, some may refer to national laws of the host country, others may refer to international standards (ILO conventions), and still others may use a combination of all of these measures. Some codes fail to include even the core labor standards set by the ILO.

Enforcement has been one of the most problematic areas with codes of conduct. It has been undermined by limited resources, weak auditing systems, limited transparency, and insufficient participation by workers or their elected representatives. Most codes do not include detailed provisions for monitoring, and most have not established reliable and independent monitoring systems. Companies may elect not to apply them. The degree of transparency and the extent to which suppliers and workers are even made aware of the existence of the codes also vary widely. Other inconsistencies may make it difficult to evaluate a company’s track record.

As these problems have become more apparent, civil society groups are increasingly critical of CSR. For example, U.K.-based Christian Aid regards CSR as:

an entirely voluntary, corporate-led initiative to promote self-regulation as a substitute for regulation at either national or international level . . . . CSR is not driven primarily by a desire to improve the lot of the communities in which companies work. Rather, companies are concerned with their own reputations, with the potential damage of public campaigns directed against them, and overwhelmingly, with the desire—and the imperative—to secure ever-greater profits. 152

In recent years trade unions, NGOs, and employers have also debated the legitimacy of codes that claim to promote worker rights in countries such as China, where freedom of association principles are not followed. 153 Laws that prohibit the formation of independent unions place a country in automatic violation of ILO core principles on freedom of association, so attempts to find factories “in compliance” in these situations are futile from the outset.

Trade unions and NGOs have engaged in a war of words for more than a decade (both with one another and within their own ranks) over the value of codes of conduct, what constitutes effective enforcement mechanisms, and who should be involved in the process. Advocates for corporate codes of conduct on worker rights and labor standards believe that codes can harness the power of informed consumers to halt worker rights abuses in the marketplace. Many supporters see codes as a civil society alternative for halting worker rights violations, in contrast to government regulation or trade union organizing and collective bargaining. Code advocates also argue that governments cannot possibly inspect every workplace and catch every lawbreaker. In addition, trade unions face a worldwide crisis in organizing and bargaining. Code advocates therefore believe that codes of conduct offer an alternative through private-sector self-regulation using civil society vigilance.

But self-regulation by multinational companies or private policing, even by the best-intentioned NGOs, has not been sufficient to fully protect worker rights or raise labor standards in the long term. This failure is due in part to governments’ use of the “corporate social responsibility” movement to avoid their responsibility for legal regulation and enforcement of worker rights. Companies, too, have used CSR to avoid direct interaction with and accountability to their own workers.

Neil Kearney, General Secretary of the ITGLWF, the global union federation for unions in the beleaguered apparel industry, affirms that NGOs play a hugely important role in exposing worker rights abuse, linking it to specific corporations and brands and demanding its elimination through action by the companies concerned and by trade unions. 154 However, he warns, “NGOs have made an amazing contribution to creating a climate for
change, but some are now overstepping the mark, entering workplaces and donning a representative role without any mandate from workers. This is disempowering these workers and hindering rather than hastening the elimination of exploitation.155 Kearney also slams social auditing: “Audits themselves do not fix the problems. Nor is this a role for NGOs or code management bodies. Indeed, interference by these players in industrial relations could hinder workplace improvement in the long term. Only pressure from workers through their trade unions can effectively ensure that problems are uncovered and remedied.”156

The truth is that despite the best efforts of advocates, freedom of association remains compromised in most countries where multinational corporations operate. Little evidence suggests that the use of any corporate code of conduct alone—without the involvement of a strong union—has had a lasting impact on strengthening that most fundamental of worker rights. Instead, during the past decade, millions of workers around the world have suffered from increased abuses of their fundamental rights and a decreasing standard of living, with no bottom in sight.

But trade unions and NGOs share a desire to halt multinational companies’ abusive behavior toward workers, along with the broader goal of checking corporate power in the global economy. Their alliance is strongest when they target the most virulent forms of exploitation, such as child labor, gender discrimination, unsafe conditions, and the firing, jailing, and killing of union organizers in developing countries.

The global supply chain of subsidiaries, contractors, and subcontractors has complicated efforts to protect worker rights, especially in export processing zones. Employers in these enclaves exploit cheap, abundant, usually female labor in what has become a global assembly line. Many EPZ factories produce goods for household-name companies whose image, often conveyed by a logo, a slogan, or a famous spokesperson, is the company’s strongest marketing tool. But the image has also at times become an Achilles’ heel when consumers are made aware of abusive practices in factories that produce the goods they purchase, and that awareness provides worker rights advocates with a powerful tool.

Trade unions and NGOs have collaborated in consumer awareness campaigns targeting Nike, Gap, Wal-Mart, Disney, Liz Claiborne, and other well-known firms. At their best, such campaigns have forged six-sided alliances that include the sharing of strategies and tasks by unions, NGOs, and the governments of newly industrialized countries in both the Northern and Southern Hemispheres. Focusing on the production site, retail market, and corporate manufacturing bases is increasingly recognized as an important comprehensive approach.

In recent years, unions and many NGOs have become more cautious about publicly criticizing most code regimes, except the most obviously illegitimate, and have become more selective about endorsing particular schemes. Partnerships that have included UNITE or AFL-CIO involvement have tended to be conservative in either scope or objective, increasing the chances for both successful collaboration and meaningful results. For example, WRC limits the scope of monitoring by focusing on collegiate apparel only. The GRI limits its objectives to standardized reporting and does not offer certification or monitoring.

After years of experimentation by many organizations with different types of partnerships, the impact of several variables has become apparent. Any monitoring system’s long-term success in securing worker rights depends on a direct correspondence between its standards and ILO core labor standards, the degree of the system’s interdependence, the strength of its enforcement mechanisms, and most important, the extent of the involvement of workers and their representatives.

Compromises are legitimate if they are negotiated with workers and legally binding on employers, as they are in IFAs. As unions and NGOs search for more effective ways to work together, a common
recognition of the indispensable nature of collective bargaining and enforcement mechanisms, long the cornerstone of ILO standards, will help them devise more successful systems of advocacy. That approach will generate benefits that reach workers and empower them to secure their rights. Most unions still see strong, effectively enforced laws, along with self-organization and collective bargaining, as the best ways to advance workers’ interests. For them, corporate codes of conduct should be seen not as an alternative but as a supplement to labor law enforcement and collective bargaining.

ITGLWF’s Neal Kearney has summarized the view of many unions today by noting that “the first step towards ‘life beyond codes of conduct’ was recognising that code implementation through social auditing is not sustainable in the long term.” He added, “Now, the time has come to be . . . looking at how to build mature systems of industrial relations where managers and workers become the monitors, the verifiers and the remediation agents . . . . The objectives of the trade union movement should be to make codes and social auditing redundant. This means working to reduce the 10,000 codes that exist today to a single code which encompasses the key conventions of the ILO, including freedom of association, the right to collective bargaining, as well as the payment of a living wage and reasonable working hours.”

As the European Commission states, “Codes of conduct should . . . be based on the ILO Fundamental Conventions, as identified in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises, involving the social partners and those in developing countries covered by them.” These codes must be subject to national and international law and binding rules, because “binding rules ensure minimum standards available to all, while codes of conduct and other voluntary initiatives can only complement these and promote higher standards for those who subscribe to them.” Labor standards cannot be left to a passing fancy or depend on charitable impulses of corporations. Like other public standards that ensure human and political rights, they must be protected by law and effectively enforced for justice to reign in the workplace.

Endnotes

1 In international law, soft-law agreements may become the source of new customary international law. For additional discussion of soft law as a legal concept, see Dinah A. Shelton, “Soft Law,” in Handbook of International Law (New York and Milton Park, UK: Routledge Press, 2008).

2 Originally developed as the ICFTU/ITS Code of Conduct. ICFTU (International Confederation of Free Trade Unions) is the predecessor organization to the ITUC, while the global unions now called global union federations (GUFs) were previously called international trade secretariats (ITS).


4 For more information, see the IA Court’s Web site, www.corteidh.or.cr/index.cfm?CFID=225591&CFTOKEN=48737671 (English) or www.corteidh.or.cr/index.cfm?CFID=386171&CFTOKEN=91168288 (Spanish).


6 Article 44 of the American Convention on Human Rights.

7 For more information on admissibility of the complaint, see Article 46 of the American Convention on Human Rights.

For more information, see Web site of the Special Rapporteurship on Migrant Workers and their Families, http://iachr.org/Migrants/defaultmigrants.htm.


See Explanatory Note for Persons Completing the Application Form under Article 34 of the Convention, www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Explanatory+note+for+persons+completing+the+application+form/.

Ibid.

Article 36(2) of Protocol 11 to the European Convention states that the President of the Court may “in the interest of the proper administration of justice” accept “written comments” from any person concerned.

European Convention, “Explanatory Note for Persons Completing the Application Form under Article 34 of the Convention.”

European Convention, Article 35.

Ibid., Article 38.

Ibid., Article 41.

To find more information on how to submit a complaint to ECHR (content, language, form, etc.), see ECHR’s Web site, www.echr.coe.int.

Wilson & the National Union of Journalists and Others v. the United Kingdom, European Court of Human Rights, Applications nos. 30668/96, 30671/96 and 30678/96 (July 2, 2002).


African Charter, Article 56.

Ibid., Article 59. See also “African Human Rights System.”

Ibid.

Ibid.

Ibid.


See Senate Committee on Foreign Relations, Subcommittee on Multinational Corporations, Multinational Corporations and United States Foreign Policy, 94th Cong., 1st sess., 1975, pp. 381-86.


39 Ibid.


41 Ibid.


43 Ibid. p. 2.


46 The Guidelines for Multinational Enterprises were developed as one element of the 1976 Declaration on International Investment and Multinational Enterprises. The Declaration was a commitment by OECD member countries “to improve the investment climate, encourage the positive contribution multinational enterprises can make to economic and social progress and minimize and resolve difficulties which may arise from their operations.” The most recent review of the Guidelines for Multinational Enterprises was completed in June 2000. See OECD, OECD Declaration and Decisions on International Investment and Multinational Enterprises, p. 1, www.oecd.org/documents/24/0.3343.en_2649_34889_1875736_1_1_1_1.00.html; OECD, Directorate for Financial and Enterprise Affairs, Guidelines for Multinational Enterprises (2007 Edition), www.oecd.org/daf/investment/guidelines.


55 For more information, see the Web site of the Trade Union Advisory Committee to the OECD, www.tuac.org.


The union noted that the same week Continental Tire asked for concessions, Goodyear had announced its highest net profit in seven years and said that Bridgestone had recently announced a 58 percent rise in net earnings. USW, “Steelworkers not Surprised by Continental’s Threat to Cease Tire Production at Charlotte Plant,” March 10, 2006, p. 1, www.usw.org/usw/program/content/2806.php?lan=en; “Continental’s Announced Layoffs in Charlotte Reflect Company’s Inability to Adapt to the U.S. Market, Says USW,” January 20, 2006, p. 1, www.usw.org/usw/program/content/2665.php?lan=en.


EC Green Paper, p. 4.

Ibid., p. 7.

Ibid., pp. 7, 8, 14, 15, 19.

Ibid.

Ibid., pp. 9, 13, 19.

Ibid., pp. 8-9.


EC Green Paper, p. 9.


77 For a list of companies and corporations endorsing the Global Sullivan Principles as of October 9, 2002, see www.globalsullivanprinciples.org/Endorser_list_Oct9.PDF.


85 Levi Strauss & Co., “Global Sourcing and Operating Guidelines.”


89 Ibid.


91 For a list of FLA members and categories of membership, see the FLA Web site, www.fairlabor.org/participants/.

92 For more information see the FLA Web site, www.fairlabor.org.


94 For more information on the Campaign for Labor Rights, see the organization’s Web site, www.crlabor.org/.

95 For a list of some of the municipalities and local government authorities to pass “No-Sweat” ordinances, see Campaign for Labor Rights, www.crlabor.org/campaigns/SweatFree/sweatfree.htm.


98 For more information on the Clean Clothes Campaign, see http://www.cleanclothes.org and http://www.somo.nl.

99 For more information on ETAG, see www.maquilasolidarity.org.


106 For more information on USAS, see the organization’s Web site, www.usasnet.org.

107 The WRC Board is composed of five representatives from WRC member-university administrations, five from United Students Against Sweatshops, and five independent worker rights experts representing the WRC Advisory Council.

108 For more information on WRC, see the organization’s Web site, www.workersrights.org.


111 Ibid.


113 For more information on ETI, see the organization’s Web site, www.ethicaltrade.org.


120 Ibid.


126 Ibid.


128 Ibid.

129 Ibid., pp. 1-2.

130 For more information on SA8000, see SAI’s Web site, www.sa-intl.org.


134 Ibid.
135 Ibid.
137 Ibid.
138 Email from Dwight Justice (ITUC) to Molly McCoy (ITUC), Wednesday, March 26, 2008.
139 AFL-CIO, “Employer Interference By the Numbers,” www.aflcio.org/joinaunion/how/employerinterference.cfm; Kate Bronfenbrenner, “Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing,” September 6, 2000; Chirag Mehta and Nik Theodore, “Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns,” report for American Rights at Work, December 2005. Mehta and Theodore’s study of Chicago area NLRB representation elections found that workers were fired illegally during 30 percent of organizing campaigns; employers force workers to attend one-on-one antiunion meetings with supervisors during 91 percent of NLRB representation election campaigns; and employers hire consultants or union-busters to help them fight 82 percent of union organizing drives.
140 Mehta and Theodore, “Undermining the Right to Organize.”
142 Alan Tate, “The Justice @ Quebecor Campaign: Lessons for Canadian Unions,” JUST LABOUR 8 (Spring 2006). Information for this section was also provided by Tom Egan, Solidarity Center Program Officer, based on his personal experience with the Quebecor campaign, August 15, 2007.
144 Ibid.
145 Ibid.
149 See Ibid.
151 See Ibid., pp. 1-3.
152 Christian Aid, Behind the Mask.
155 Ibid.
157 Ibid.
158 EC Green Paper, p. 15.
159 Ibid.
Chapter 8
Resolving the Global Crisis: The Uncomfortable Truth
Almost 90 years ago, the crisis of World War I prompted the international community to adopt a set of fundamental moral principles to govern the behavior of human institutions throughout the world. Worker rights were primary among them, and the ILO was formed to ensure their promotion. A generation later, the ravages of a second world war inspired a renewed recognition of the centrality of human rights to global peace and prosperity—rights each of us has simply because we are human. Again, worker rights, reflected in economic and social rights, were at the forefront. During the years that followed, through the UN and the ILO (which was incorporated into the UN as a specialized agency), the world continued to adopt numerous instruments intended to promote democracy, economic growth, and respect for human and worker rights. They translated these principles into clear descriptions of the policies and practices that countries would have to adopt in order to actually protect those rights.

However, as the discussions throughout this book have shown, enduring global success in ensuring respect for human and worker rights remains an elusive goal. Today a new global convergence threatens our collective economic and political stability, as well as the hope for global prosperity and equality. In order to halt the global race to the bottom, and the chaos it generates, we must identify and change the elements of public policy that have contributed to global impoverishment.

At a Crossroads

Policymakers must address the central conflict between the simultaneous promotion of “democratic governance” and economic policies that disenfranchise—socially, politically, and economically—hundreds of millions of working poor. As Chapter 2 shows, IFIs and certain industrialized countries have pushed these policies for decades. This over-reliance on the free market has shifted resources from developing and strengthening democratic institutions that protect human and worker rights to disproportionately protecting the market.

Democracy diffuses power, allowing individual men and women to make decisions on issues that directly affect their lives, and economic institutions cannot be exempt from its rule. As noted by Nobel Laureate Amartya Sen, and echoed by the U.S. Advisory Committee on Labor Diplomacy:

“Many economic technocrats recommend the use of economic incentives (which the market system provides) while ignoring political incentives (which democratic systems guarantee). This is to opt for a deeply imbalanced set of governing rules. The protective power of democracy may not be missed much when a country is lucky enough to be facing no serious calamity yet the danger of insecurity, arising from changed economic or other circumstances, or from uncorrected mistakes of policy, can lurk behind what looks like a healthy state.”

The OECD cautions all countries about the danger of relying solely on economic policy to yield greater prosperity and jobs:

More open markets, global trade and investment don’t inevitably lead to greater prosperity and more jobs. . . . New empirical evidence . . . has revealed that fears about how globalisation is affecting OECD labour markets are not exaggerated. . . . [G]lobalisation, in particular the rapid increase of imports from non-OECD countries and the expansion of international production networks, has become a “potentially important source of vulnerability for workers.” The data analysed suggest that the intensification of foreign competition has made jobs less stable by increasing the probability of job separations.

It is time to jettison the fiction that the “invisible hand of the market” is as immutable as a law of nature and accept it as a human construct. By adopting it as the foundation of economic policy we make a human choice. That choice privileges the bottom line and enriches the few at the expense of the many. Limiting the debate to technical constructs of GDP, market shares, management sys-
tems, and structural reform has blinded the most powerful players from realizing that this crisis is fundamentally about us as human beings and about our collective behavior. Building a humane world where democracy and rule of law flourish demands less worship of the invisible hand and more concern for the billions of people whom it marginalizes and impoverishes.

Ironically, this flawed market ideology has not only jeopardized democratic development, but also put its primary purpose at risk. Policies that serve unrestricted profit making do not work. Feminist economists and other gender equality advocates suggest an alternative direction. Their economic vision would promote gender equality, support women and men in their essential and loving work as family and community caregivers, and open economic policy to new ways of promoting growth and equality—all without sacrificing sound economic principles.¹

**Employers’ Quest for the Lowest Bidder**

Flawed economic policy has not been the only obstacle to global prosperity and peace. The readiness of some employers to thwart or eliminate workers’ human rights and their institutional defender—the trade union—has also contributed to global impoverishment and inequality. Employers’ efforts to minimize operational costs at the expense of a living wage for workers, and their decisions to offload employment costs by skirting legal protections for workers through the informalization of work and use of cheap migrant labor, have left workers with fewer rights and little recourse to combat employer abuse.

The global effort to escape from paying a living wage and to avoid respecting the fundamental human rights of workers is at the heart of the globalization of poverty and the global resurgence of discrimination and slavery. It is the road map for the race to the bottom.

When rights are restrained, unemployment and low wages are not the only adverse impacts on workers. Globalization has linked diseases, injuries, and deaths between manufacturing countries and consuming countries. Consumers from developed countries are purchasing products made by workers in countries where safety standards are weak or unenforced. This reality came into sharp focus in 2007, when shock waves over the widespread distribution of toys tainted with lead paint resounded among consumers throughout the world, highlighting the problems of maintaining quality control over a global supply chain without enforceable standards. The risk is equal or greater for the workers who make the products, because the toxins that poison consumers poison workers, too.² These are the hidden costs of a social policy that restricts worker rights, costs that everyone pays and risks that everyone takes.

The law would be the normal path to setting just limits on society’s institutions, but globalization has left corporations without adequate boundaries. An individual who pursues “a narrow private interest without regard to broader social and environmental consequences . . . would fit the clinical profile of a sociopath,” but most governments have given multinational businesses the legal right (and in some cases the obligation) to operate under this fundamental principle, or have given them de facto permission through neglectful enforcement.³ As ITUC President Sharan Burrow noted in a speech before Education International’s 2007 Congress, “Capital has a global reach but without global rules.”⁴

Voluntary mechanisms have proven grossly insufficient. Many businesses accepted corporate codes of conduct during the globalization process in hopes that the codes would become substitutes for regulation and a way to avoid engaging with trade unions.⁵ Today, unions’ primary concern with the CSR system is that companies use it to redefine “the expectations of society instead of responding to them.”⁶
National governments and employers remain in denial over the scope of the problem. Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers’ Federation, commented on the impact of corporate behavior at the 2007 ILO Conference:

Were poverty wages, long hours and appalling working conditions the passport to rapid development and wealth, then the key textile, clothing and shoe producing countries would be topping the charts in terms of economic and social well-being instead of wallowing in poverty. Such industries and their record over the past two decades are living examples of how exploitive working conditions dehumanize and impoverish workers, their families and communities.9

Although workers in any society suffer most directly from corporate misbehavior, the entire society suffers alongside them:

- shareholders, from the diversion of investment to enrich corporate insiders;
- consumers, from unsafe and poor-quality goods and services;
- citizens, from a poisoned environment caused by corporate overuse of scarce natural resources and pollution of air and water;
- taxpayers, who pay more than their fair share when corporations avoid paying their fair share;
- communities, when they are forced to provide unjustified subsidies to influence the location decisions of corporations;
- corporate managers, who cannot choose the most ethical and responsible path because of competitive pressures of product markets, financial pressure from capital markets, and the conflicted mechanisms of corporate governance; and
- retirees, who spend and save on the basis of corporate promises of pensions that can evaporate overnight and without recourse.10

Corporations, like all human institutions, need good governance, and as we learned in Chapter 7, protecting workers’ human rights cannot be left to charitable impulse. Companies must be subjected to the rule of law.

**Governments: Neglecting the Public Good**

Rapid globalization—without just and equal rules for all—has left global society and its institutions, including governments, floundering in its wake. Whether through intent or neglect, globalization has promoted widespread poverty, worker exploitation, and working environments where traditional social contracts such as healthcare and pensions have been peremptorily removed (by either employers or government) when workers are too old, sick, or poor to make other plans.

Governments’ neglect of their fundamental responsibility for justice has fostered work cultures of exclusion, exploitation, and overwork, where employers with few limits may demand more and more from workers without being required to deliver a commensurate living wage, time off, healthcare, or old age security in return. Governments’ duty to promote the public good has also been compromised by trade pacts and IFI contracts that have frozen human rights laws and prohibited some countries from changing labor, environmental, and other laws.11 Some governments have unapologetically aligned their power with employers rather than hold them accountable, leaving individual workers to shoulder the entire burden of securing economic justice.

Market ideologues decry what they see as “entitlements.” But worker rights are not capricious entitlements; they are written into the global framework for human rights. Why would we intentionally build civilizations where workers and their families are not entitled to excellent healthcare, good education for their children, time to rest and recuperate from their labor so they may continue to be productive, time to raise their children and participate in the governance of their lands as good citizens, and
a harvest to sustain them when they have made their life’s contribution to the rest of us? The framers of today’s globalized order, in a most peculiar way, have identified the actual generators of global economic growth—the workers—as the enemy, with their governments either missing in action or acting in clear opposition to their rights.

The human and worker rights expressed in UN and ILO declarations, resolutions, and conventions are at the heart of the way forward. The ILO’s Decent Work Agenda provides a new policy framework that can marshal the talents of business, labor, and governments and put them in the service of equality, rights, and human security. Trade unions must help empower workers to create a democratic balance against the raw power of capital, as corporations must promote the efficiency, quality, and equity of work.

A Collective Shift to Rights for All

Fortunately, it is not necessary to continue the short-term thinking that has undermined global civilization; human choices can be changed. Societies can be organized in ways that allow the positive impacts of markets, private ownership, and business to flourish without leaving people behind. To do so, national and international economic policymakers will have to move beyond words and shift policy frameworks to center around decent work.

Worker rights are critical to both political and economic development because they represent the functional combination of a host of social, political, and economic rights as expressed through the daily tasks of individuals. They are the central hub connecting all other human rights; they form the core of economic life.

Democratic trade unions represent an unmatched broad-based constituency group that brings problems and proposed solutions to the attention of their employers, their members, the public, and the government. Unions continually analyze corporate and government behavior and seek to change the status quo. They naturally elicit discomfort among employers, governments, and other power brokers, but they are also highly necessary, not only for short-term democratic reform, but also for ongoing, long-term democracy, peace, prosperity, and equality. The world cannot set itself on a permanent path of growth and peace without them.

Globally, we already have the knowledge and experience we need. As we have attempted to achieve democratic and economic growth, we have tested many mechanisms, learned what works, and proved the importance of accountability, inclusion, and transparency as effective tools for protecting rights.

What lies ahead is the hard work of justice. The U.S. Advisory Committee on Labor Diplomacy admonished the policy community to bring justice into the industrial relations arena in order to dissolve the imbalances of globalization:

Competitive markets are concerned with efficiency, but care nothing about fairness. It can be demonstrated, however, that in the long run a just system can be very efficient and an unjust system can be very inefficient. . . In that light, rather than being viewed as impediments to progress, workers and trade union concerns about globalization should be regarded as a warning sign of deeper social unrest and economic dislocations that must be addressed through safety net programs, targeted resources, or policy modifications. Union/worker discontent can also be a tool for generating reform or transparency within a corrupt government environment.12

Corporations should serve society as a whole—they are intended to serve as long-term creators of wealth.13 As the AFL-CIO reminds us:

Properly regulated and governed, the corporation is an extraordinarily powerful institution for the creation of wealth. Indeed history has
seen no more effective and efficient means for creating the wealth on which society depends. However, improperly regulated or weakly governed, the corporation . . . is transformed into an engine for the redistribution of income instead of the creation of wealth.

The private interests of corporate constituents, including shareholders, may be to make money, but the corporation remains accountable to society for the creation of wealth . . . 14

This perspective on the links among workers, employers, and governments—as they are and as they can be— informs the following recommendations. They are based in the insightful, even visionary, work of rights advocates worldwide. They reflect the findings in the preceding chapters and point the way forward to the pursuit of justice—for all.

Role of Governments: Justice First

Governments can no longer conduct business as usual, “segregating,” as ITUC President Sharan Burrow says, “their global expectations into silos of trade, aid, rights, and the environment.”15 Many governments have already agreed upon rules aimed at protecting human rights through their adherence to UN human rights instruments, the ILO core labor standards, and the 1998 Declaration on Principles and Rights at Work. Now they need to codify these instruments into law and put them into practice. The ILO’s Decent Work Agenda gives governments an opportunity to scrutinize and reform their laws and practices, increase and strengthen their democratic structures, and move to eliminate poverty through the enforcement of laws that lay the foundation for decent work.

Governments must take especially seriously the two ILO core labor standards that are most critical to the success of all others—the right to freedom of association and the right to organize and bargain collectively—and advance steadily and decisively toward fulfillment of the ILO’s Decent Work Agenda. In general, governments must:

- make every effort to bring their laws into compliance with core ILO standards on freedom of association and collective bargaining;
- eliminate discrimination, child labor, and forced labor;
- provide and enforce legal protection for all workers on hours of work, a living wage, and safe and healthy working conditions; and
- establish or strengthen effective enforcement systems with penalties that serve as deterrents for offenders.

Governments should also adopt policies that promote full employment and reject structural adjustment policies that impoverish their people and deny them good healthcare, pensions, and benefits. Governments should promote corporate accountability and better governance, recognizing that ethical business culture and corporate social responsibility can contribute to accountability, but they cannot substitute for effective regulation and governance.16

Governments should view unions as social partners in holding corporations accountable so that business builds real wealth that helps the whole nation prosper. Strict enforcement of worker rights will help curb corruption, whether it is entrenched within the government, the employer community, or both. In order to counter the negative impacts of globalization, improve corporate governance, and build a climate of justice for workers, governments should:

- strengthen laws and enforcement systems that mandate respect for workers’ right to form and join a union;
- enact and strictly enforce laws that prevent employers from firing workers and their leaders for union activity;
- reform judicial systems that are corrupt, inept, and too lengthy or costly to assure timely remediation of worker rights violations;
- strengthen and enforce laws on safety and health;
Governments need to do much more to protect the rights of informal workers, migrant workers, and women workers, who are among the biggest casualties of globalization. Governments should officially recognize their existence and include these categories of workers in statistical analyses used for social and economic policy development.

It is critical for governments to bring informal and migrant workers fully into the labor law framework, affording them core worker rights and enforcing those rights. As few countries have fully contemplated the presence of informal and migrant workers within their legal system, specific recommendations in Appendix O outline steps governments can take to attain compliance with ILO core standards for these workers.

ILO members should support the ratification of ILO Convention No. 177 on Home Work (1996), which for the first time sets international worker rights standards for homeworkers and recognizes their rights as being on a par with those of other workers. They should also support the adoption
and ratification of the proposed Domestic Workers Convention, which is slated for consideration at the 2010 International Labor Conference.

To better protect migrant worker rights, governments of both sending and receiving countries should ratify and enforce the UN International Convention on the Protection of the Rights of Migrant Workers and Members of their Families; all core ILO labor standards; ILO Conventions No. 97 on Migration for Employment and No. 143 on Migrant Workers; the ILO Multilateral Framework on Labor Migration; and the ILO’s Non-Binding Principles and Guidelines for a Rights-Based Approach to Labor Migration.

Migrant workers should be able to join existing national unions or form unions or associations of their own in any country. Immigration laws should be based on social and economic realities, but labor laws should recognize that undocumented workers are entitled to the same worker rights as citizens and documented workers, including, but not limited to, back pay and wages owed, protection from discrimination, and health and safety protection on the job. Existing immigration laws should be reviewed to determine their effect on migration, and specifically on migrant workers. Guestworker, sponsorship, rotational, and other immigration programs that limit worker rights or increase workers’ susceptibility to abuse should be assessed; migration management should not entail the denial of workers’ fundamental human rights. Further, debt bondage, the bane of migrant workers around the world, must be ended, in keeping with ILO Convention No. 181 on private employment agencies, through strong legislation and stronger enforcement.

Governments can improve migrant worker rights by promoting cooperation between states, including multilateral and regional agreements to protect migrant workers and to develop standards for labor migration, based firmly on the core ILO standards. They should consider the forces of globalization, including the global impact of trade agreements and structural adjustment programs, that inherently create more insecurity for workers, pushing them to migrate in search of work.

The particularly devastating impact of globalization on women workers has been discussed in Chapters 2, 3, and 4. Since the majorities of both migrant and informal workers are women, these recommendations should also be implemented with the aim of closing the gender gap and improving equality for women workers. Special efforts should be made to eliminate discriminatory laws, enforce antidiscrimination laws, and open more political space for women workers’ advocacy.

Governments must eliminate laws and practices that support the race to the bottom, a race that ensures only poverty, disease, displacement, and instability for all. By working in a positive way with employers and unions to protect and enforce worker rights, governments will be taking a large step toward securing global equality, peace, and prosperity.

**Role of Corporations in Cultivating Worker Rights**

Domestic and international employers can greatly improve the global market environment by choosing to respect core labor standards on freedom of association; the right to organize and bargain collectively; and the elimination of discrimination, child labor, and forced labor. Just as important, they can work with the ILO and governments to promote decent work. Once corporations demonstrate their commitment, their suppliers will be motivated to follow suit. Recognizing workers as partners in building wealth, respecting their rights, and changing company hiring and operating policies to reflect that respect will make a significant contribution not only to companies’ productivity, but also to prosperity and peace in the communities where they operate.18

The best use of a corporate code of conduct is as a tool for promoting the enforcement of laws that comply with core labor standards.19 Multinational employers can provide global leadership for business and make codes of con-
duct useful by linking them directly to ILO core labor standards and increasing the transparency around their implementation.

Instead of diverting huge resources to union-busting, companies can choose to respect the laws of the land and the international principles to which their home governments and host countries are committed. Studies show that businesses would benefit more by respecting their workers; unionized companies can show as much as a 22 percent increase in productivity over a nonunionized enterprise. By aligning policies and practices with global principles, corporations can redirect the impact of valuable resources—human, capital, and environmental—toward goals that build prosperity for all.

**Role of IFIs and Multilateral Organizations**

Speaking before the ILO Governing Body in March 2008, World Bank President Robert B. Zoellick moved beyond decades of World Bank policy, making conciliatory remarks that suggested a realization of the need for closer policy ties with the ILO and its Decent Work Agenda:

We have a vision of an inclusive and sustainable globalization. What this comes down to, at the end of the day, is people. It’s trying to improve the lot of people across the globe. And that requires quality jobs, it requires better social conditions, and it requires individual opportunities for individual development in achieving aspirations . . . We can’t leave people behind.

In April 2008, ITUC General Secretary Guy Ryder stated the urgency of the need for IFIs to take quick action to support decent work:

If there is not firm and coordinated policy response, the dramatic rise in financial and economic uncertainty since mid-2007 will lead to increased unemployment, declining living standards and higher poverty, particularly affecting women, in many countries. . . . The IMF and the World Bank must support measures that increase the buying power of low-income workers.

The ITUC has been a leader in efforts to transform the World Bank and IMF, and it has laid out a series of recommendations the World Bank and IMF must take to assume the potentially positive role they can play:

- The World Bank should shift focus from promoting deregulation (including labor market deregulation derived from the World Bank’s *Doing Business* report) to policies promoting the creation of decent work.
- The IMF should adopt measures that help soften the blow of the global slowdown and help prevent new crises through leadership in developing international regulatory frameworks to govern the largely unregulated activities and new financial systems that were instrumental in precipitating the crisis.
- IFIs must reprioritize their measures of success from the current fixation on maximizing short-term growth rates to focus instead on gauging how the benefits of growth are shared and used.
- IFIs must address their inconsistencies on labor issues, revealed in *Doing Business*, whose ranking system, used by both the World Bank and the IMF, “promotes the view that labour standards have no beneficial impact but should only be seen as possible impediments to investment because they may increase the cost of doing business.”
- IFIs must stop using economic policy conditionality to demand harmful “reforms” from developing countries.
- IFIs should establish criteria to provide positive incentives to countries for implementing decent work.

Many worker rights advocates have made these additional recommendations:

- IFIs must close the gap between their statements, their assessment tools, their country-specific recommendations, and their actions. An effort to move core labor standards from an aspiration to a standard practice would go a long way toward alleviating many problems caused by three decades of failed policy.
• IFIs must proactively address the gap in gender equality, ensuring at the very least that their policies and prescriptions do not widen the gender gap or impoverish women, and ideally that their policies help countries close the gender gap and promote a living wage and decent work for women.

• IFIs must move away from pro forma consultations with workers and unions, instead building these into their development frameworks. They must accept the value and necessity of the nitty-gritty work for negotiation and thorough discussions and engage in good-faith consultations with workers and unions.

• Toward that end, the IFIs must go far beyond public statements at the headquarters level that display a concern for poverty and the marginalization of workers, and they must ensure that every country team is thoroughly educated on ILO core labor standards and the principles of decent work and that these are central to every agreement.

To effectively implement these recommendations, the IFIs will need to strive for consistent application of policy and build their capacity to enforce policy, with a special focus on core labor standards. Such capacity will require ongoing and meaningful dialogue with the ILO, the ITUC, in-country trade unions, and workers.

Role of Unions and Civil Society

Unions have long played a key role in promoting democracy and making the voice of workers heard, from the individual worksite to the international workplace and marketplace. While governments have the primary responsibility for ensuring corporate accountability, the democratic union is the most effective corporate-accountability mechanism yet to appear.

While remaining responsive to individual members’ needs, unions must also look toward the good of society as a whole and their place in the global justice arena. Consequently, unions today can run into trouble if they keep their gaze focused in only one direction—whether local, national, or international—or if they exclude large categories of workers from their outreach (such as migrant and informal workers). As the employer community has crossed borders, become truly multinational, and sought to relieve itself of rules and accountability, unions must be prepared to answer violations of worker rights not only at home but also at the multinational level.

Unions must deal with extraordinary pressures, ranging from government repression to the ideological assault on trade unionism by the employer community. In addition to these traditional challenges, they now confront a new work environment generated by globalization and the informalization and flexibilization of work. These trends have seen work cross borders and have greatly increased the number of people and types of occupations whose worker rights are not protected. Unions must now protect and defend an almost invisible workforce that is no longer automatically concentrated in large places of work. More and more workers, both formal and informal, do not fit the traditional image of a “worker.” They may not even be aware that worker rights apply to them. And unions in many countries still face a battle for the “hearts and minds” of the electorate.

In the face of global turmoil, unions must be pragmatic visionaries; they must struggle to survive in order to represent their own members, while connecting to national and international unions in order to develop global solidarity. They must fulfill these goals without the billions of dollars that the international community has used to finance the global marketplace. In the process they cannot neglect their traditional duties of legal advocacy, bargaining, and contract enforcement. They must continue to call on their governments to bring law and practice into conformity with core labor standards.

Unions must remain sensitive to their members’ needs as they evolve—including the needs of women, minorities, informal workers, migrant workers, parents, and youth. They must make sufficient political space for members to have the
voice their numbers warrant, committing to an internal democracy that seeks not only to mobilize members but also to liberate and activate them.25

Membership engagement is essential for achieving the global solidarity unions seek. Unions must engage vigorously in membership education and outreach, teaching workers about their rights under the law and the ILO and building workers’ knowledge of their place in the global economy as well as how they can pursue decent work within it. Unions must inform and mobilize members on the key issues of needed reform, provide leadership in developing an understanding of global solidarity, and build organizations that are active at all levels and connected by a profound understanding of their common needs.

The global labor movement has made great strides in developing an audible voice in the global marketplace. Its voice can be amplified further by continuing to build global solidarity, and by joining other like-minded organizations in supporting workers’ human rights.

Securing rights for informal and migrant workers, while building the strength of women workers everywhere, may be among the greatest challenges for trade unions. As Chapter 3 shows, it is one of the most necessary tasks, as the number of workers engaged in informal work or migrating to find work is growing at a staggering rate. Unions can strengthen themselves by helping these workers obtain their basic rights, either through union membership or by directly assisting and promoting the grassroots development of new informal worker unions and/or cooperatives. Unions can also cooperate with other rights advocates, including informal and migrant workers’ organizations, in the area of policy advocacy to extend worker rights coverage, social protection, and educational opportunities to these workers.

Union outreach to informal workers can include training on occupational safety and health, union management, and vocational skills. It can also encompass efforts to open collective bargaining avenues between self-employed workers and government entities and/or companies that rely on their work.

The international labor movement can play a critical role in securing rights for informal workers. The ITUC and the GUFs can help strengthen the global labor movement by coordinating their policy actions in opposition to the rapid global rise of subcontracting, casualization, and other business models based on pushing workers into forms of employment that are increasingly underpaid, unprotected, unsafe, uncertain, and unsustainable.

Unions also have a critical role to play in helping migrant workers obtain their rights. As Chapter 4 explains, migration is a global phenomenon. Employers everywhere are using migrant workers as a means to evade their responsibility to provide benefits and rights to their workforce. To improve respect for worker rights, unions must extend outreach to migrant workers, recognizing them not as threats but as one of the most exploited worker groups. Trade unions and worker organizations should continue to organize migrant workers and make it a priority to advocate for the inclusion of all workers under labor laws and within trade unions.

Workers who are members of less privileged or minority ethnic groups, whether they are migrants or members of local communities, need the kinds of advocacy and support services that unions can provide. Employers too often subject them to discrimination in the form of lower wages, worse working conditions, more limited opportunities for advancement, and less secure job tenure. Unions, guided by the fundamental principle of equality, are well positioned to play a leading role in abolishing racial and ethnic discrimination in the workplace and in society at large.

Finally, unions must make a greater effort to organize and represent women workers, both among their existing members and among workers they hope to recruit. Unions also need to support women members’ growth as union leaders and advocate along-
side them to end workplace discrimination. Just as governments can no longer point to signed declarations as sufficient evidence of compliance with workers’ human rights, unions must back up statements of principle with active efforts to meet the needs of women workers, empower them to lead, and integrate their voice into union life.

Civil society organizations, including human rights, child labor, labor support, research, academic, women’s rights, informal worker and migrant worker rights groups, have a powerful role to play by incorporating worker rights and coalition building with trade unions into their advocacy efforts. Most of the multistakeholder efforts examined in Chapter 7 had the greatest impact when coalitions of unions and civil society groups, domestic and international, had together exerted pressure for democratic reform.

**Working Together Toward Global Peace and Prosperity**

The cycles of poverty, violence, war, famine, and environmental damage will be resolved only when the global community of nations is prepared to apply and enforce just rules for all. In order to truly take advantage of the creation of wealth generated by billions of workers’ hands, governments must cease pouring billions of dollars into war and redirect their activities to promote the type of growth that provides opportunity, prosperity, and peace for all. It is within our collective power to build “strong, active, democratically accountable governments that set and enforce rules to ensure costs are internalized, equity is maintained, and market forces are channeled to the service of democracy, justice, life, and spirit,” based on “principles of responsible citizenship, community, and equity.”

26"
On December 5, 2005, a group of 11 Nobel Peace Laureates (including Archbishop Desmond Tutu, former Polish President and Solidarnosc leader Lech Walesa, former U.S. President Jimmy Carter, and the Dalai Lama) issued a joint statement in conjunction with the AFL-CIO that echoed this sentiment. The statement called upon every nation, including the United States, to “truly protect and defend workers’ rights, including the right to form unions and bargain collectively,” and said, “[P]rotecting the right to form unions . . . is vital to promoting broadly shared prosperity, social justice and strong democracies.”

The IMF recently called on national governments to acknowledge the significance and legitimacy of decent work:

[T]he policy objective should be to provide the education and other social services (such as affordable health care, a reasonable-cost pension system, and so on) to ensure that as many people as possible can find and keep high-productivity jobs. It would be unwise to ignore the issue of growing inequality; globalization is a key source of rising world prosperity, but more effective policy actions are needed to make sure that these benefits are well shared.

We must have the courage to look at the impediments to real democracy and sustainable economic growth. Prodemocracy advocates must examine—even at the cost of some discomfort—the imbalances in power they have fostered, accepted, or even embraced, and they must implement the systems of checks and balances they claim to support.

To be effective, any effort for democratic change must acknowledge and empower the largest single constituency of any society, which is—whether probusiness democracy advocates like it or not—the workers. Workers’ experience shows that ultimately they are protected only by the enforcement of good labor laws, through their formation of unions, and through collective bargaining. Sharan Burrow notes the capacity and readiness of the trade union movement to participate in building a world marked by justice:

Our house, the union house, has a commitment to a shared humanity that demands peace, justice, equality and self-determination for all. It has withstood atrocities of all forms which have been visited on the lives and the livelihoods of its occupants—workers and their families. Equally it has seen the celebrations of great victories; liberation, emancipation, democracy, human and trade union rights, development and decent work; victories too numerous to detail but victories of or with organized labor that have shaped a better world.

Today, the world is more divided than ever. Many divisions are essentially about discrimination, the misapplication of our instinct to discern who is “one of us.” No matter how many global mechanisms are introduced and tested, global peace will not be achieved if people do not proactively seek to practice, at all levels, the principle that we are all “us.”

Unions have played and can continue to play a unique role in fostering that understanding. All over the world, people who have been divided along national, ethnic, religious, racial, or gender lines have been able to recognize what they have in common through their workplace interests. By working together on solving practical problems, hazards, and abuses that occur at work, they have begun to realize that these commonalities are far greater than their differences. And if people respect one another’s rights at work, they can more easily begin to respect them outside as well. Many institutions can nurture this understanding, from schools to religious organizations to civil society organizations to media.

In June 2008, the ILO adopted a landmark Declaration on Social Justice for a Fair Globalization (see Appendix D). The Declaration aims at strengthening the ILO’s capacity to promote the Decent Work Agenda. It calls for “a new strategy to sustain open economies and open societies based on social justice, full and productive employment, sustainable enterprises, and social cohesion.” It also calls for “renewed efforts to implement decent work policies as the means to achieve improved and fair outcomes for all.”
De centWork Agenda rests on four strategic objectives (see Chapter 1): employment, social protection, social dialogue and tripartism, and the fundamental principles and rights at work (the core labor standards, which are the enabling conditions for the other three pillars).30

As Jean-Jacques Elmiger, Chair of the ILO’s Committee on Strengthening the ILO’s Capacity, noted, “What we now have is a compass.”31 That compass presupposes that workers, as those who generate the world’s wealth, merit respect and a voice in the conditions under which that wealth is produced and distributed.

As workers’ representatives, democratic unions advocate for all of these rights and pay the price of being on the front lines of defending workers’ interests. Ultimately it is in everyone’s interest to promote and strengthen this democratic institution. A rejection of trade unionism is the removal of the strongest potential advocate for all of these rights. It is a vote that grants rights only to those who already have most of them. It is a vote of no confidence for the right of all human beings to share in the bounty of the civilization they have built together. It is a vote that says workers have no right to heal from disease, to be good parents, to be responsible citizens; but only the right to work . . . more. This vote condemns the world to continue the war against all.

To free ourselves from this self-destructive dynamic, the old rights need to be used in new ways. The ILO’s Decent Work Agenda has breathed new life into the guideposts established after the last global crisis. Governments, employers, unions, and other institutions need to be led by that framework. IFIs must shift from an ideal that glorifies markets to one that supports individuals as well as the need to produce. This shift will require a tremendous undertaking, driven by billions of people.

It is time to choose. Never has it been more critical to “choose between what is right and what is easy.”32 We can no longer pretend not to notice the damage that antirights decisions are inflicting on the world. Making and enforcing policy that protects workers’ human rights and promotes interaction, inclusion, safety, security, and equality is a choice for the life we all hope to live, a life we can pass on to our children. Failing to act is also a choice.

What makes our collective decision so significant at this moment in time is that making the wrong choice today can ultimately affect the survival of our global civilization. Our success in creating a global economic system, the capacity for an instantaneous global transmission of information, the capacity to feed the world, the capacity to impact the environment, and our success in creating weapons capable of extinguishing all life have created limitless possibilities—for good or ill. The race to the bottom is on, and it is gaining momentum. Recent history has proved that political and social justice cannot be secured if economic justice is ignored. They are inseparable.

Commitment to human rights and democracy—for workers—is the practical expression of our faith in one another, as humans, to live on the higher side of our nature. It is within our grasp to do, as it has always been. So we can choose to live by greed, or under the rule of law. We can choose to continue to discriminate against one another, or to respect one another as members of the same tribe, the human family. We can continue to be apathetic about our neighbors’ plight, or we can engage with them before their plight becomes ours. Wealth can continue to be built—at least in the short term—by breaking the health, wealth, and future of others, or we can choose to build wealth in a way that supports and promotes workers’ health, wealth, and future. We can continue to live solely to serve our economies, or we can decide that they should serve us.33 In 2007 the world watched in amazement as thousands of Buddhist monks courageously walked alongside the people of Burma to call for an end to the government’s repression of the voice of its people. They carried a large banner that read “Love and kindness must win over everything.”34
A good start would be respecting one another as workers, acknowledging the contribution each one of us makes to our broader society. Workers are the people who build our roads, heal our wounds, build our homes, teach our children, grow and harvest our food, protect our communities, and clean our buildings. They are the people who make our toys, our clothes, our surgical instruments, and virtually everything we use in our daily lives. Even the most important task of all—raising our families—frequently requires the help of unpaid volunteers, who make social, political, environmental, and humanitarian contributions that also merit our respect and honor.

We are almost all workers, whether in overalls, uniforms, robes, or business suits. We are worthy of respect—especially when we speak with a unified voice on one another’s behalf. Respect for our voice is the first step on a rational global path to a future of peace, prosperity, and justice for all. Let us hope that we have the wisdom and courage to take it.

Endnotes


4 Pulitzer Prize-winning journalist Loretta Tofani tells of the fate of Chinese workers who use toxic chemicals to make products for export: “The patients arrive every day in Chinese hospitals with disabling and fatal diseases acquired while making products for America.” Tofani reports that toxins and hazards are found in almost every industry, including furniture, shoes, car parts, electronic items, jewelry, clothes, toys, and batteries, according to worker reports. Every day, Chinese workers making toys and other products touch and/or inhale carcinogenic materials, including benzene, lead, cadmium, toluene, nickel, and mercury. Many are dying slow, difficult deaths. Tofani captures the bewilderment of workers over this grim reality in the words of Xiang Zhiqing, a 39-year-old woman worker whose hair was falling out and whose kidneys were beginning to fail from prolonged exposure to cadmium, which she placed in batteries sent to the United States: “Do people in your country handle cadmium while they make batteries?” she asked. “Do they also die from this?”


Ibid.


11 For example, investment contracts can put a corporation’s rights to water use above those of the people who live in the area where a major development project is underway. If a contract guarantees a specific water supply for an industrial project, governments may not be allowed to divert that supply for humanitarian purposes in a drought; the company could claim that it could not operate profitably without such a guarantee, effectively limiting the government’s ability to protect its citizens. See Bart Mongoven, “A Potential Tool for Protecting Human Rights in the Third World,” Stratfor—Public Policy Intelligence Report, August 16, 2007, pp. 1-3, www.stratfor.com/memberships/72275/potential_tool_protecting_human_rights_third_world.


15 Burrow, Speech before the Fifth World Congress of Education International, p. 4.


17 Trumka, “The European Social Model,” p. 5.

18 In order to establish sounder mechanisms for corporate governance, the AFL-CIO has recommended the following for corporate consideration:
- alignment of interests between managers, company, and constituents;
- provision of guidance for the strategic allocation of productive assets;
- formation and execution of effective business and competitive strategies;
- compensation of CEO that is fair and related to company performance;
- establishment of diverse board of directors independent from management and loyal to the company; and
- the right of workers who participate only as shareholders to elect independent directors and to have voting power on important governance issues.


24 The statement includes a broad discussion of the impact of Doing Business on the protection of fundamental rights. For example, Doing Business gave “best performer” status for labor regulations in 2006 and 2007 to Palau and the Marshall Islands, which are not ILO members and have almost no labor regulation. Doing Business encourages countries to eliminate laws and regulations on hours of work, minimum wages, and requirements for advance notice of dismissal, so the only way for a country to improve its ranking is to eliminate worker protections. A country cannot improve its ranking by abiding by core labor standards. For this reason, repeated and serious violators of human and worker rights like the governments of Bangladesh, Belarus, China, Colombia, and Saudi Arabia receive better rankings on the “employing workers” category than most Western European countries. The IMF uses the Doing Business scores for recommending “labor market deregulation,” which calls on countries to weaken labor laws and makes it easier for employers to hire and fire. The use of these scores in two categories—“Business Regulatory Environment” and “Social Protection and Labor”—actually rewards countries that violate labor standards. For more information, see ITUC, “The Role of the IFIs in Supporting Decent Work,” pp. 6-17. Also see Chapter 2 in this book for a broader discussion of IFIs and labor.
The Self-Employed Women's Association (SEWA) in India (see discussion in Chapter 3) has had tremendous success in recruiting and representing informal workers by employing principles that have direct bearing on their members’ interests: “In a membership-based organisation, it is the member’s priorities and needs which necessarily shapes [sic] the priorities and direction of the organisation. Hence, it is appropriate that members themselves develop their own yardstick for evaluation.” SEWA, “About Us,” p. 1, www.sewa.org/aboutus/goals.asp.


Burrow, Speech before the Fifth World Congress of Education International, p. 3.


Appendices

Reference Tools for Worker Rights Promotion and Advocacy
Appendix Section I

International Instruments That Protect Worker Rights
<table>
<thead>
<tr>
<th>Instrument and Related Conventions</th>
<th>Date</th>
<th>Monitoring Body*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universal Declaration of Human Rights (UDHR)</td>
<td>1948</td>
<td></td>
</tr>
<tr>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or CERD)</td>
<td>1965</td>
<td>CERD</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights (ICCPR or CCPR)</td>
<td>1966</td>
<td>HRC</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights (ICESCR)</td>
<td>1966</td>
<td>ESC</td>
</tr>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</td>
<td>1979</td>
<td>CEDAW</td>
</tr>
<tr>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>1984</td>
<td>CAT</td>
</tr>
<tr>
<td>Convention on the Rights of the Child (CRC)</td>
<td>1989</td>
<td>CRC</td>
</tr>
<tr>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW or CMW)</td>
<td>1990</td>
<td>CMW</td>
</tr>
<tr>
<td>International Convention for the Protection of All Persons from Enforced Disappearance</td>
<td>2006</td>
<td>CED</td>
</tr>
<tr>
<td>Convention on the Rights of Persons with Disabilities</td>
<td>2006</td>
<td>CRPD</td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1)</td>
<td>1966</td>
<td>HRC</td>
</tr>
<tr>
<td>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2)</td>
<td>1989</td>
<td>HRC</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC)</td>
<td>2000</td>
<td>CRC</td>
</tr>
<tr>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)</td>
<td>2002</td>
<td>CAT</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Rights of Persons with Disabilities</td>
<td>2006</td>
<td>CRPD</td>
</tr>
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</table>

* Abbreviations for Monitoring Bodies for Core International Human Rights Instruments:
  - CAT: Committee Against Torture
  - CED: Committee on Enforced Disappearance
  - CEDAW: Committee on the Elimination of Discrimination Against Women
  - CERD: Committee on the Elimination of Racial Discrimination
  - CMW: Committee on the Protection of the Rights of Migrant Workers and Members of their Families
  - CRC: Committee on the Rights of the Child
  - CRPD: Committee on the Rights of Persons with Disabilities
  - ESC: Economic and Social Council
  - HRC: Human Rights Committee
APPENDIX B

ILO CORE Convention Summaries*

Convention No. 29
Forced Labor, 1930

Aim of the standard

Suppression of forced labor.

The fundamental commitment made by States ratifying the Convention is to suppress the use of forced or compulsory labor in all its forms in the shortest possible time.

Summary of the provisions

A general definition of forced or compulsory labor is given, but the Convention does not apply to five categories of work or compulsory service, subject to certain conditions and guarantees. The five categories are: compulsory military service, certain civic obligations, prison labor, work exacted in cases of emergency, and minor communal services.

The illegal exaction of forced or compulsory labor shall be punishable as a penal offence.

Convention No. 87
Freedom of Association and Protection of the Right to Organize, 1948

Aim of the standard

The right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests.

Summary of the provisions

Workers and employers, without distinction whatever,¹ have the right to establish and to join organizations of their own choosing with a view to furthering and defending their respective interests.

Such organizations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programs. Public authorities shall refrain from any interference that would restrict this right or impede the lawful exercise of this right. The organizations shall not be subject to dissolution or suspension by administrative authority.

Organizations have the right to establish and join federations and confederations, which shall enjoy the same rights and guarantees. The Convention also provides for the right to affiliate with international organizations.

The acquisition of legal personality by all these organizations shall not be subject to restrictive conditions.

In exercising the rights provided for in the Convention, employers and workers and their respective organizations shall respect the law of the land. The law of the land and the way in which it is applied, however, shall not impair the guarantees provided for in the Convention.

1 Regarding the armed forces and the police, however, national legislation shall determine the extent to which the guarantees provided for in the Convention shall apply.

**Convention No. 98**  
**Right to Organize and Collective Bargaining, 1949**

**Aim of the standard**

Protection of workers who are exercising the right to organize; noninterference between workers’ and employers’ organizations; promotion of voluntary collective bargaining.

**Summary of the provisions**

Workers shall enjoy adequate protection against acts of antiunion discrimination.

They shall be protected more particularly against refusal to employ them by reason of their trade union membership and against dismissal or any other prejudice by reason of union membership or participation in trade union activities.

Workers’ and employers’ organizations shall enjoy protection against acts of interference by each other. This protection is extended in particular against acts designed to promote the domination, the financing or the control of workers’ organizations by employers or employers’ organizations.

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined by the Convention.

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the development and utilization of voluntary collective bargaining to regulate terms and conditions of employment.  

1 Concerning union security clauses, which have the effect of rendering obligatory trade union membership or the payment of union contribution, the Committee on Industrial Relations, appointed by the International Labor Conference at its 32nd Session to draft this convention, stated in its report that Convention No. 98 could in no way be interpreted as authorizing or prohibiting union security arrangements, such questions being matters for regulating in accordance with national practice.

2 The extent to which guarantees provided for in the convention apply to the armed forces and the police is determined by national laws or regulations. The Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.
Convention No. 100  
Equal Remuneration, 1951

Aim of the standard

Equal remuneration for men and women for work of equal value.

Summary of the provisions

States having ratified the Convention shall promote and, insofar as is consistent with the methods in operation for determining rates of remuneration, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

The Convention shall apply to basic wages or salaries and to any additional emoluments whatever, payable directly or indirectly, in cash or in kind, by the employer to the worker and arising out of his or her employment. The Convention defines equal remuneration for work of equal value as remuneration established without discrimination based on sex.

This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. One of the means specified for helping to implement the Convention is the objective appraisal of jobs on the basis of the work to be performed.

The Convention provides that governments shall cooperate with employers’ and workers’ organizations for the purpose of giving effect to its provisions.

Convention No. 105  
Abolition of Forced Labor, 1957

Aim of the standard

Prohibition of the recourse to forced or compulsory labor in any form for certain purposes.

Summary of the provisions

Under the Convention, States undertake to suppress any form of forced or compulsory labor in five defined cases, namely:

(a) “as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system”;

(b) “as a method of mobilizing and using labor for purposes of economic development”;

(c) “as a means of labor discipline”;

(d) “as a punishment for having participated in strikes”; and

(e) “as a means of racial, social, national or religious discrimination.”
Convention No. 111
Discrimination (Employment and Occupation), 1958

Aim of the standard
To promote equality of opportunity and treatment in respect of employment and occupation.

Summary of the provisions
The Convention assigns to each ratifying State the fundamental aim of promoting equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination in respect of employment and occupation.

Discrimination is defined as any distinction, exclusion, or preference based on race, color, sex, religion, political opinion, national extraction, or social origin (or any other motive determined by the State concerned) that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Member States having ratified this Convention undertake to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with this policy, and to enact legislation and promote educational programs which favor its acceptance and implementation in cooperation with employers’ and workers’ organizations. This policy shall be pursued and observed in respect of employment under the direct control of a national authority; of vocational guidance and training; and of placement services under the direction of such an authority.

Convention No. 138
Minimum Age, 1973

Aim of the standard
The abolition of child labor. The minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling (normally not less than 15 years).

Summary of the provisions
The ratifying State undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

The minimum age to be specified in conformity with the Convention shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Developing countries may initially specify a minimum age of 14 years.

The minimum age shall not be less than 18 years—or 16 years under certain conditions—for any type of employment or work that is likely to jeopardize the health, safety, or morals of young persons.
The Convention provides that limited categories of employment or work may be excluded from its application where special and substantial problems of application arise.  

The Convention does not apply to work done in schools for general, vocational, or technical education or in other training institutions.

1 Consultation with the organization of employees and workers concerned, full protection of health, safety and morals, adequate specific instruction or vocational training.

2 A member whose economy and administrative facilities are insufficiently developed may initially limit the scope of application of this Convention, which shall, however, be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; plantations and other agricultural undertakings mainly producing for commercial purposes (but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers).

**Convention No. 182**

**Worst Forms of Child Labor, 1999**

**Aim of the standard**

The prohibition and elimination of the worst forms of child labor, taking into account the importance of free basic education and the need to remove children from all such work and to provide for their rehabilitation and social integration.

**Summary of the provisions**

Under the Convention, states undertake to prohibit and eliminate any of the following forms of labor for all persons under the age of 18:

(a) “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict”;

(b) “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes”;

(c) “the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties”; and

(d) “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

An accompanying recommendation defines “hazardous work” as “work which exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery or tools, or which include heavy loads; work in unhealthy environments which may expose children to hazardous substances, temperatures, noise or vibrations; and work under particularly difficult conditions such as long hours, during the night or where a child is confined to the premises of the employers.”
APPENDIX C

ILO Declaration on Fundamental Principles and Rights at Work and Promotional Follow-up

86th Session, Geneva, June 1998

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of Fundamental Principles and Rights at Work is of particular significance in that it enables the persons concerned, to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting Fundamental Rights at Work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the Fundamental Principles and Rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference

1. Recalls:

(a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.
2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;
(b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour; and
(d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including, by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

(a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
(b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions; and
(c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

ILO - Declaration on Fundamental Principles and Rights at Work

Promotional Follow-up

The Declaration’s Follow-up contains two promotional reporting tools: the Annual Review and the Global Report.

The Annual Review is composed of reports from governments describing the efforts made to respect the principles and rights relating to all unratified fundamental ILO Conventions, and comments from worker and employer organizations. These reports provide a baseline against which countries can measure their own progress. The Annual Review is introduced by a group of independent Expert-Advisers whose task is to draw attention to aspects for further discussion by the ILO Governing Body.
The Global Report, submitted by the ILO Director-General to the International Labour Conference, paints a dynamic global picture of the situation with regard to one of the categories of principles and rights each year. In a four-year period, all four principles and rights will have been reviewed. It serves as a basis for determining future priorities so that the Organization through its technical cooperation activities can assist its members in implementing the Fundamental Principles and Rights at Work.
ILO Declaration on Social Justice for a Fair Globalization and Follow-up to the Declaration and Resolution on Strengthening the ILO’s Capacity to Assist Its Members’ Efforts to Reach Its Objectives in the Context of Globalization

A. ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION*

B. RESOLUTION ON STRENGTHENING THE ILO’S CAPACITY TO ASSIST ITS MEMBERS’ EFFORTS TO REACH ITS OBJECTIVES IN THE CONTEXT OF GLOBALIZATION


ILO Declaration on Social Justice for a Fair Globalization

The International Labour Conference, meeting in Geneva on the occasion of its 97th Session,

Considering that the present context of globalization, characterized by the diffusion of new technologies, the flow of ideas, the exchange of goods and services, the increase in capital and financial flows, the internationalization of business and business processes and dialogue as well as the movement of persons, especially working women and men, is reshaping the world of work in profound ways:
on the one hand, the process of economic cooperation and integration has helped a number of countries to benefit from high rates of economic growth and employment creation, to absorb many of the rural poor into the modern urban economy, to advance their developmental goals, and to foster innovation in product development and the circulation of ideas;

on the other hand, global economic integration has caused many countries and sectors to face major challenges of income inequality, continuing high levels of unemployment and poverty, vulnerability of economies to external shocks, and the growth of both unprotected work and the informal economy, which impact on the employment relationship and the protections it can offer;

Recognizing that achieving an improved and fair outcome for all has become even more necessary in these circumstances to meet the universal aspiration for social justice, to reach full employment, to ensure the sustainability of open societies and the global economy, to achieve social cohesion and to combat poverty and rising inequalities;

Convinced that the International Labour Organization has a key role to play in helping to promote and achieve progress and social justice in a constantly changing environment:

- based on the mandate contained in the ILO Constitution, including the Declaration of Philadelphia (1944), which continues to be fully relevant in the twenty-first century and should inspire the policy of its Members and which, among other aims, purposes and principles:

  - affirms that labour is not a commodity and that poverty anywhere constitutes a danger to prosperity everywhere;

  - recognizes that the ILO has the solemn obligation to further among the nations of the world programmes which will achieve the objectives of full employment and the raising of standards of living, a minimum living wage and the extension of social security measures to provide a basic income to all in need, along with all the other objectives set out in the Declaration of Philadelphia;

  - provides the ILO with the responsibility to examine and consider all international economic and financial policies in the light of the fundamental objective of social justice; and

  - drawing on and reaffirming the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) in which Members recognized, in the discharge of the Organization's mandate, the particular significance of the fundamental rights, namely: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation;

Encouraged by the international community's recognition of Decent Work as an effective response to the challenges of globalization, having regard to:

- the outcomes of the 1995 World Summit for Social Development in Copenhagen;

- the wide support, repeatedly expressed at global and regional levels, for the decent work concept developed by the ILO; and

- the endorsement by Heads of State and Government at the 2005 World Summit of the United Nations of fair globalization and the goals of full and productive employment and decent work for all, as central objectives of their relevant national and international policies;
Convinced that in a world of growing interdependence and complexity and the internationalization of production:

- the fundamental values of freedom, human dignity, social justice, security and non-discrimination are essential for sustainable economic and social development and efficiency;
- social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards;
- the importance of the employment relationship should be recognized as a means of providing legal protection to workers;
- productive, profitable and sustainable enterprises, together with a strong social economy and a viable public sector, are critical to sustainable economic development and employment opportunities; and
- the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), as revised, which addresses the growing role of such actors in the realization of the Organization’s objectives, has particular relevance; and

Recognizing that the present challenges call for the Organization to intensify its efforts and to mobilize all its means of action to promote its constitutional objectives, and that, to make these efforts effective and strengthen the ILO’s capacity to assist its Members’ efforts to reach the ILO’s objectives in the context of globalization, the Organization must:

- ensure coherence and collaboration in its approach to advancing its development of a global and integrated approach, in line with the Decent Work Agenda and the four strategic objectives of the ILO, drawing upon the synergies among them;
- adapt its institutional practices and governance to improve effectiveness and efficiency while fully respecting the existing constitutional framework and procedures;
- assist constituents to meet the needs they have expressed at country level based on full tripartite discussion, through the provision of high-quality information, advice and technical programmes that help them meet those needs in the context of the ILO’s constitutional objectives; and
- promote the ILO’s standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work, and ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization;

Therefore adopts this tenth day of June of the year two thousand and eight the present Declaration.

I. Scope And Principles

The Conference recognizes and declares that:

A. In the context of accelerating change, the commitments and efforts of Members and the Organization to implement the ILO’s constitutional mandate, including through international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on the four equally important strategic objectives of the ILO, through which the Decent Work Agenda is expressed and which can be summarized as follows:
(i) promoting employment by creating a sustainable institutional and economic environment in which:

- individuals can develop and update the necessary capacities and skills they need to enable them to be productively occupied for their personal fulfillment and the common well-being;

- all enterprises, public or private, are sustainable to enable growth and the generation of greater employment and income opportunities and prospects for all; and

- societies can achieve their goals of economic development, good living standards and social progress;

(ii) developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances, including:

- the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes;

- healthy and safe working conditions; and

- policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection;

(iii) promoting social dialogue and tripartism as the most appropriate methods for:

- adapting the implementation of the strategic objectives to the needs and circumstances of each country;

- translating economic development into social progress, and social progress into economic development;

- facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and

- making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems; and

(iv) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives, noting:

- that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives; and

- that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.
B. The four strategic objectives are inseparable, interrelated and mutually supportive. The failure to promote any one of them would harm progress towards the others. To optimize their impact, efforts to promote them should be part of an ILO global and integrated strategy for decent work. Gender equality and non-discrimination must be considered to be cross-cutting issues in the abovementioned strategic objectives.

C. How Members achieve the strategic objectives is a question that must be determined by each Member subject to its existing international obligations and the fundamental principles and rights at work with due regard, among others, to:

(i) the national conditions and circumstances, and needs as well as priorities expressed by representative organizations of employers and workers;

(ii) the interdependence, solidarity and cooperation among all Members of the ILO that are more pertinent than ever in the context of a global economy; and

(iii) the principles and provisions of international labour standards.

II. Method of Implementation

The Conference further recognizes that, in a globalized economy:

A. The implementation of Section I of this Declaration requires that the ILO effectively assist its Members in their efforts. To that end, the Organization should review and adapt its institutional practices to enhance governance and capacity building in order to make the best use of its human and financial resources and of the unique advantage of its tripartite structure and standards system, with a view to:

(i) better understanding its Members’ needs, with respect to each of the strategic objectives, as well as past ILO action to meet them in the framework of a recurring item on the agenda of the Conference, so as to:

– determine how the ILO can more efficiently address these needs through coordinated use of all its means of action;

– determine the necessary resources to address these needs and, if appropriate, to attract additional resources; and

– guide the Governing Body and the Office in their responsibilities;

(ii) strengthening and streamlining its technical cooperation and expert advice in order to:

– support and assist efforts by individual Members to make progress on a tripartite basis towards all the strategic objectives, through country programmes for decent work, where appropriate, and within the framework of the United Nations system; and

– help, wherever necessary, the institutional capacity of member States, as well as representative organizations of employers and workers, to facilitate meaningful and coherent social policy and sustainable development;
(iii) promoting shared knowledge and understanding of the synergies between the strategic objectives through empirical analysis and tripartite discussion of concrete experiences, with the voluntary cooperation of countries concerned, and with a view to informing Members’ decision-making in relation to the opportunities and challenges of globalization;

(iv) upon request, providing assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations; and

(v) developing new partnerships with non-state entities and economic actors, such as multinational enterprises and trade unions operating at the global sectoral level in order to enhance the effectiveness of ILO operational programmes and activities, enlist their support in any appropriate way, and otherwise promote the ILO strategic objectives. This will be done in consultation with representative national and international organizations of workers and employers.

B. At the same time, Members have a key responsibility to contribute, through their social and economic policy, to the realization of a global and integrated strategy for the implementation of the strategic objectives, which encompass the Decent Work Agenda outlined in Section I of this Declaration. Implementation of the Decent Work Agenda at national level will depend on national needs and priorities and it will be for member States, in consultation with the representative organizations of workers and employers, to determine how to discharge that responsibility. To that end, they may consider, among other steps:

(i) the adoption of a national or regional strategy for decent work, or both, targeting a set of priorities for the integrated pursuit of the strategic objectives;

(ii) the establishment of appropriate indicators or statistics, if necessary with the assistance of the ILO, to monitor and evaluate the progress made;

(iii) the review of their situation as regards the ratification or implementation of ILO instruments with a view to achieving a progressively increasing coverage of each of the strategic objectives, with special emphasis on the instruments classified as core labour standards as well as those regarded as most significant from the viewpoint of governance covering tripartism, employment policy and labour inspection;

(iv) the taking of appropriate steps for an adequate coordination between positions taken on behalf of the member State concerned in relevant international forums and any steps they may take under the present Declaration;

(v) the promotion of sustainable enterprises;

(vi) where appropriate, sharing national and regional good practice gained from the successful implementation of national or regional initiatives with a decent work element; and

(vii) the provision on a bilateral, regional or multilateral basis, in so far as their resources permit, of appropriate support to other Members’ efforts to give effect to the principles and objectives referred to in this Declaration.

C. Other international and regional organizations with mandates in closely related fields can have an important contribution to make to the implementation of the integrated approach. The ILO should invite them to promote decent work, bearing in mind that each agency will have full control of its
mandate. As trade and financial market policy both affect employment, it is the ILO’s role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies.

III. Final Provisions

A. The Director-General of the International Labour Office will ensure that the present Declaration is communicated to all Members and, through them, to representative organizations of employers and workers, to international organizations with competence in related fields at the international and regional levels, and to such other entities as the Governing Body may identify. Governments, as well as employers’ and workers’ organizations at the national level, shall make the Declaration known in all relevant forums where they may participate or be represented, or otherwise disseminate it to any other entities that may be concerned.

B. The Governing Body and the Director-General of the International Labour Office will have the responsibility for establishing appropriate modalities for the expeditious implementation of Section II of this Declaration.

C. At such time(s) as the Governing Body may find appropriate, and in accordance with modalities to be established, the impact of the present Declaration, and in particular the steps taken to promote its implementation, will be the object of a review by the International Labour Conference with a view to assessing what action might be appropriate.

ANNEX

FOLLOW-UP TO THE DECLARATION

I. Overall purpose and scope

1 The aim of this follow-up is to address the means by which the Organization will assist the efforts of its Members to give effect to their commitment to pursue the four strategic objectives important for implementing the constitutional mandate of the Organization.

2 This follow-up seeks to make the fullest possible use of all the means of action provided under the Constitution of the ILO to fulfil its mandate. Some of the measures to assist the Members may entail some adaptation of existing modalities of application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States.

II. Action by the Organization to assist its Members

Administration, resources and external relations

A. The Director-General will take all necessary steps, including making proposals to the Governing Body as appropriate, to ensure the means by which the Organization will assist the Members in their efforts under this Declaration. Such steps will include reviewing and adapting the ILO’s institutional practices and governance as set out in the Declaration and should take into account the need to ensure:

(i) coherence, coordination and collaboration within the International Labour Office for its efficient conduct;

(ii) building and maintaining policy and operational capacity;

(iii) efficient and effective resource use, management processes and institutional structures;
(iv) adequate competencies and knowledge base, and effective governance structures;

(v) the promotion of effective partnerships within the United Nations and the multilateral system to strengthen ILO operational programmes and activities or otherwise promote ILO objectives; and

(vi) the identification, updating and promotion of the list of standards that are the most significant from the viewpoint of governance.

The Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and those standards identified on subsequently updated lists.

Understanding and responding to Members’ realities and needs

B. The Organization will introduce a scheme of recurrent discussions by the International Labour Conference based on modalities agreed by the Governing Body, without duplicating the ILO’s supervisory mechanisms, so as to:

(i) understand better the diverse realities and needs of its Members with respect to each of the strategic objectives, respond more effectively to them, using all the means of action at its disposal, including standards-related action, technical cooperation, and the technical and research capacity of the Office, and adjust its priorities and programmes of action accordingly; and

(ii) assess the results of the ILO’s activities with a view to informing programme, budget and other governance decisions.

Technical assistance and advisory services

C. The Organization will provide, upon request of governments and representative organizations of workers and employers, all appropriate assistance within its mandate to support Members’ efforts to make progress towards the strategic objectives through an integrated and coherent national or regional strategy, including by:

(i) strengthening and streamlining its technical cooperation activities within the framework of country programmes for decent work and that of the United Nations system;

(ii) providing general expertise and assistance which each Member may request for the purpose of adopting a national strategy and exploring innovative partnerships for implementation;

(iii) developing appropriate tools for effectively evaluating the progress made and assessing the impact that other factors and policies may have on the Members’ efforts; and

(iv) addressing the special needs and capacities of developing countries and of the representative organizations of workers and employers, including by seeking resource mobilization.

Research, information collection and sharing

D. The Organization will take appropriate steps to strengthen its research capacity, empirical knowledge and understanding of how the strategic objectives interact with each other and contribute to social progress, sustainable enterprises, sustainable development and the eradication of poverty in the global
economy. These steps may include the tripartite sharing of experiences and good practices at the international, regional and national levels in the framework of:

(i) studies conducted on an ad hoc basis with the voluntary cooperation of the governments and representative organizations of employers and workers in the countries concerned; or

(ii) any common schemes such as peer reviews which interested Members may wish to establish or join on a voluntary basis.

III. Evaluation by the Conference

A. The impact of the Declaration, in particular the extent to which it has contributed to promoting, among Members, the aims and purposes of the Organization through the integrated pursuit of the strategic objectives, will be the subject of evaluation by the Conference, which may be repeated from time to time, within the framework of an item placed on its agenda.

B. The Office will prepare a report to the Conference for evaluation of the impact of the Declaration, which will contain information on:

(i) actions or steps taken as a result of the present Declaration, which may be provided by tripartite constituents through the services of the ILO, notably in the regions, and by any other reliable source;

(ii) steps taken by the Governing Body and the Office to follow up on relevant governance, capacity and knowledge-base issues relating to the pursuit of the strategic objectives, including programmes and activities of the ILO and their impact; and

(iii) the possible impact of the Declaration in relation to other interested international organizations.

C. Interested multilateral organizations will be given the opportunity to participate in the evaluation of the impact and in the discussion. Other interested entities may attend and participate in the discussion at the invitation of the Governing Body.

D. In the light of its evaluation, the Conference will draw conclusions regarding the desirability of further evaluations or the opportunity of engaging in any appropriate course of action.
Resolution on strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization

The General Conference of the International Labour Organization, meeting in its 97th Session, 2008,

Having adopted, within the framework of the sixth item on the agenda, entitled “Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization”, a Declaration which may be referred to as the ILO Declaration on Social Justice for a Fair Globalization,

Recalling that the Declaration has a number of measures of a strongly promotional nature involving Decent Work and should bring benefits to ILO constituents as quickly as possible, and

Noting that it is important that work to enhance the capacity of the ILO proceed as soon as possible;

1 Notes that the provisions of the Declaration and its implementation should not duplicate the ILO’s existing supervisory mechanisms, and that its implementation should not increase the reporting obligations of member States.

2 Calls upon the Director-General to submit, as a matter of priority, an implementation plan to the Governing Body in November 2008 and, if the Governing Body deems necessary, a set of final proposals for its consideration at its next session thereafter, covering all the elements of implementation in the Declaration, including:

(a) the provisions of paragraphs A and C of Part II of the Declaration as well as the provisions of the Annex to the Declaration;

(b) without limiting the foregoing, the following elements:

   I. Capacity and governance issues – concrete proposals on ways to:

      (a) strengthen the research capacity, knowledge base, and production of evidence-based analysis, including ways to cooperate with other research institutions and external experts;

      (b) ensure that the field structure review leads to a field presence configuration best able to respond effectively and efficiently to constituents’ needs;

      (c) strengthen the coherence and cooperation within the Office and between headquarters and the field;

      (d) strengthen human resources development and adapt it to the knowledge needs of constituents;
(e) adequately monitor and evaluate programmes and ensure the feedback of lessons learned to the Governing Body, including independent assessment;

(f) improve the working methods of the Governing Body and the functioning of the annual International Labour Conference;

(g) adapt and review institutional practices, management and governance;

(h) monitor and evaluate the implementation of Decent Work Country Programmes (DWCPs);

(i) fully implement results-based management, including the full use of the IT systems; and

II. Recurring items on the agenda of the International Labour Conference – proposals on:

(a) the sequence and frequency of items recurring on the agenda of the International Labour Conference;

(b) relation of discussions of such items at the International Labour Conference to the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work;

(c) relation to the Strategic Policy Framework;

(d) the role of the field structure;

(e) consolidation and streamlining of reporting by Members and the Office; and

III. Partnerships – proposals on cooperation with other international and regional organizations and with relevant non-state actors;

(c) in addition, due regard to the concerns of constituents, as expressed in the report of the Committee on Strengthening the ILO’s Capacity at this session of the Conference.

1 Considers that the Governing Body may wish to establish an appropriate and credible mechanism to implement such a programme in the light of the experience and lessons drawn from the positive experience gained in the discussion of this item at this session of the Conference, possibly by establishing a steering committee.

2 Notes its expectation that the outcome of this work will involve the most effective, efficient and economical use of resources possible, including identifying possible cost savings.

3 Decides that the steps taken pursuant to the present resolution will form an integral part of any evaluation by the Conference of the impact of the Declaration under Part III of the follow-up to the Declaration.
APPENDIX E

ILO Convention No. 187: Promotional Framework for Occupational Safety and Health Convention, 2006*

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Ninety-fifth Session on 31 May 2006,

Recognizing the global magnitude of occupational injuries, diseases and deaths, and the need for further action to reduce them, and

Recalling that the protection of workers against sickness, disease and injury arising out of employment is among the objectives of the International Labour Organization as set out in its Constitution, and

Recognizing that occupational injuries, diseases and deaths have a negative effect on productivity and on economic and social development, and

Noting paragraph III(g) of the Declaration of Philadelphia, which provides that the International Labour Organization has the solemn obligation to further among the nations of the world programmes which will achieve adequate protection for the life and health of workers in all occupations, and

Mindful of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, 1998, and

Noting the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and other instruments of the International Labour Organization relevant to the promotional framework for occupational safety and health, and

Recalling that the promotion of occupational safety and health is part of the International Labour Organization’s agenda of decent work for all, and

Recalling the Conclusions concerning ILO standards-related activities in the area of occupational safety and health - a global strategy, adopted by the International Labour Conference at its 91st Session (2003), in particular relating to ensuring that priority be given to occupational safety and health in national agendas, and

Stressing the importance of the continuous promotion of a national preventative safety and health culture, and

Having decided upon the adoption of certain proposals with regard to occupational safety and health, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fifteenth day of June of the year two thousand and six the following Convention, which may be cited as the Promotional Framework for Occupational Safety and Health Convention, 2006.

I. Definitions

Article 1

For the purpose of this Convention:

(a) the term national policy refers to the national policy on occupational safety and health and the working environment developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155);

(b) the term national system for occupational safety and health or national system refers to the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health;

(c) the term national programme on occupational safety and health or national programme refers to any national programme that includes objectives to be achieved in a predetermined timeframe, priorities and means of action formulated to improve occupational safety and health, and means to assess progress;

(d) the term a national preventative safety and health culture refers to a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority.

II. Objective

Article 2

1. Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

2. Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health.

3. Each Member, in consultation with the most representative organizations of employers and workers, shall periodically consider what measures could be taken to ratify relevant occupational safety and health Conventions of the ILO.
III. National Policy

Article 3

1. Each Member shall promote a safe and healthy working environment by formulating a national policy.

2. Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.

3. In formulating its national policy, each Member, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, shall promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.

IV. National System

Article 4

1. Each Member shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers.

2. The national system for occupational safety and health shall include among others:

   (a) laws and regulations, collective agreements where appropriate, and any other relevant instruments on occupational safety and health;

   (b) an authority or body, or authorities or bodies, responsible for occupational safety and health, designated in accordance with national law and practice;

   (c) mechanisms for ensuring compliance with national laws and regulations, including systems of inspection; and

   (d) arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures.

3. The national system for occupational safety and health shall include, where appropriate:

   (a) a national tripartite advisory body, or bodies, addressing occupational safety and health issues;

   (b) information and advisory services on occupational safety and health;

   (c) the provision of occupational safety and health training;

   (d) occupational health services in accordance with national law and practice;

   (e) research on occupational safety and health;

   (f) a mechanism for the collection and analysis of data on occupational injuries and diseases, taking into account relevant ILO instruments;
(g) provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases; and

(h) support mechanisms for a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy.

V. National Programme

Article 5

1. Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.

2. The national programme shall:

(a) promote the development of a national preventative safety and health culture;

(b) contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;

(c) be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;

(d) include objectives, targets and indicators of progress; and

(e) be supported, where possible, by other complementary national programmes and plans which will assist in achieving progressively a safe and healthy working environment.

3. The national programme shall be widely publicized and, to the extent possible, endorsed and launched by the highest national authorities.

VI. Final Provisions

Article 6

This Convention does not revise any international labour Conventions or Recommendations.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

Article 12

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision.

Article 13

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Cross-Reference
Conventions: C155 Occupational Safety and Health Convention, 1981
Recommendations: R164 Occupational Safety and Health Recommendation, 1981

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## APPENDIX F

### Codes of Conduct and Framework Agreements Concluded Between Transnational Companies and Global Union Federations

<table>
<thead>
<tr>
<th>Company</th>
<th>Employees</th>
<th>Country</th>
<th>Branch</th>
<th>Global Union Federation</th>
<th>Year</th>
</tr>
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<td>Country</td>
<td>Branch</td>
<td>Global Union Federation</td>
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<td>2007</td>
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<td><strong>Total employees covered:</strong></td>
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</table>

Sorted by year of concluding/signing the agreement

Adapted from table © Robert Steiert (IMF)/Marion Hellmann (BWI), 2007.

1 Some GUF's call the agreements “Framework Agreements,” not Codes of Conduct, because there were only a few principles fixed in the first agreements, which often have been extended by additional agreements. For instance, in the case of Danone, the first agreement of 1988 has been extended by six other agreements.

2 The employee figures are taken mainly from the official company Web sites. The overview shows the number of employees who are directly employed by the company. Some agreements also have effects on franchising, subcontracting companies, and suppliers in the supply chain. In these cases the number of people affected by the agreement is of course higher.

3 The IKEA agreement also covers the suppliers to IKEA and its entire supply chain, as well as the IKEA-owned Swedwood Group. Altogether about one million employees might be covered.

4 Inditex is a wholesale dealer with a very small number of its own employees. The IFA is valid for the companies in the supply chain providing Inditex with products. ITGLWF can not estimate how many employees are covered.

In addition to the IFAs listed above, there are agreements between the European Metalworkers’ Federation (EMF) and General Motors Europe as well as Ford of Europe. These agreements also contain the core labor standards but are only valid for the European plants of General Motors (Opel) and Ford of Europe.

**Explanation**

BWI: Building and Wood Workers’ International (formerly IFBWW)
ICEM: International Federation of Chemical, Energy, Mine and General Workers Unions
IFBWW: International Federation of Building and Woodworkers (now: BWI)
IUUF: International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations
IMF: International Metalworkers’ Federation
ITGLWF: International Textile, Garment & Leather Workers’ Federation
PSI: Public Services International
UNI: Union Network International
WFBW: World Federation of Building & Wood Workers
Appendix Section II

Using International Instruments
APPENDIX G

Application of Worker Rights Standards

This Appendix highlights the ILO principles of the most basic internationally recognized worker rights. It includes the core labor standards identified in the ILO Declaration on Fundamental Principles and Rights at Work, along with the basic ILO standards on working conditions. It explains the basic principles behind each standard, including the acceptable conditions, laws, and practices under each principle. It also cites the laws, policies, and practices that constitute violations of the standards according to precedents set by ILO case decisions. Finally, it describes warning signs that may indicate worker rights violations warranting further investigation. Violations, warning signs, and exceptions to certain principles are clearly indicated, but the list does not encompass the entire spectrum of internationally recognized worker rights.*

Freedom of Association (ILO Convention No. 87)

**Definition:** The right of association is the right of workers and employers:

- To establish and join organizations of their own choosing without previous authorization (Convention No. 87, Article 2).
- To draw up their own constitutions and rules, elect their representatives, and formulate their programs (Convention No. 87, Article 3, ¶1).
- To join in confederations and affiliate with international organizations (Convention No. 87, Article 5).
- To be protected against dissolution or suspension by administrative authority (Convention No. 87, Article 4).

In general, the difference between freedom of association and the right to organize and bargain collectively is that freedom of association concerns relations between unions and **governments**, while the right to organize and bargain collectively concerns relations between unions and **employers**.

General Principles and Common Violations


*Key to Symbols*

- Violation of internationally recognized worker rights standards
- Warning sign of possible violation of internationally recognized worker rights standards
- Exception to general principles of internationally recognized worker rights standards
Worker Rights Violations:

Prohibiting government workers (civil servants engaged in the administration of the state), workers in special economic zones or industries (agricultural, domestic, or migrant workers), or workers in state-owned enterprises from joining a union. (Note: prison guards are not considered to be “police” under international standards.) (ILC, General Survey on Freedom, 1983, ¶87-88; Review of Annual Reports under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2000 (hereafter Follow-Up, 2000), ¶84; ILC, General Survey on Migrant Workers of the Committee of Experts on the Application of Conventions and Recommendations, 1999, Report III (Part 1B), ¶439-440).


Warning Signs:

⚠️ No unions are being formed.

⚠️ Extremely low percentage of workforce is organized.

⚠️ Widespread use of “parallel means.”

“Parallel means” generally refers to alternative ways of promoting workers’ right to freedom of association in countries that prohibit the existence of trade unions or independent trade unions in law or practice. For example, some employers with codes of conduct that call for respect for freedom of association may attempt to sponsor representative workers’ committees in order to provide a parallel means of representation and bargaining. “Parallel means” may also refer to governments’ reliance on alternate forms of governance—such as codes of conduct—to enhance respect for basic worker rights in countries where those rights are not respected.

Theoretically, parallel means offer companies the opportunity to practice high ethical standards in their dealings with workers and to open space where workers can develop representative organizations without fear of repercussions. However, they are included here as a warning sign for the following reasons:

- Employer-sponsored organizations run the risk of being dominated by employers, much like the “Solidarista” organizations in Costa Rica. The danger is high that these may simply be or could easily become “yellow” (employer-controlled) unions, or that these organizations could thwart other genuine efforts by workers to form their own organizations.

- Standards set forth in codes that are not tied directly to ILO core labor standards may veer away from strict ILO guidelines, heightening confusion over what constitutes respect for core labor standards and thereby weakening them in the process.

- Governments may be tempted to rely on the public-relations benefits of parallel means to avoid complete compliance with ILO core labor standards. They may also use parallel means as an excuse for their lack of compliance with ILO standards when confronted by other governments upon which they rely economically.
Parallel means may be at times the only practical option in a country that represses rights, but it should never be regarded as a substitute for genuine freedom of association, with laws that provide strong protections and effective enforcement systems. Ultimately, a country’s government is responsible for guaranteeing and enforcing these rights, and nothing less is acceptable as a permanent option.

2. Unions should be independent of the government or ruling party.

Worker Rights Violations:


- Inappropriate restrictions on who may be a trade union official (ILC, *General Survey on Freedom, 1983*, ¶155):
  

  - Provisions of this type may prevent qualified people from carrying out their duties and limit the abilities of unions, particularly small unions, to seek some of their leaders from outside their ranks (e.g., pension specialists, lawyers).

  If, however, restrictive legislation exists, international standards prefer that governments extend eligibility to those who were previously employed in the occupation they are now representing and allow a reasonable proportion of union officers to come from outside that occupation.

  - Requirement that trade union leaders be employed in the plants they represent (*Digest, 2006*, 5th rev. ed., ¶407).


- Government restrictions on union electoral procedures:

  - The regulation of procedures and methods for the election of trade union officials is primarily to be governed by the trade unions’ own rules (*Digest, 2006*, ¶392). Unions themselves should decide, in their constitutions or rules, on the majority of votes required to elect union leaders (*Digest, 2006*, ¶401) and the number of leaders to be elected (*Digest, 2006*, ¶402).

  According to international standards, an excessively meticulous and detailed regulation of the trade union electoral process is an infringement of the right of worker organizations to elect their representatives in full freedom (*Digest, 2006*, ¶393). For example, violations would include:

  - Legislation which minutely regulates the internal election procedures of a trade union and the composition of its executive committees, such as fixing days when meetings will take place, the precise date for the annual general assembly, and the date on which the mandates of trade union officers will expire (*Digest, 2006*, ¶394).
- Provisions giving broad discretionary power to the government to regulate minutely the internal election procedures of trade unions, their composition, the election dates for their committees, or the way they operate (Digest, 2006, ¶395).

**Exceptions:**

- Generally, very close governmental regulation of trade union elections limits the right of trade unions to elect their own representatives freely. However, in general, laws that govern the frequency of elections and set a maximum period for the terms of office of executive bodies do not violate principles of freedom of association (Digest, 2006, ¶396). The government should allow unions to set the specific terms of office (Digest, 2006, ¶397).

- Governments are permitted to enact laws and rules aimed at promoting democratic principles within unions or at ensuring that election procedures are conducted normally and with due respect for the rights of members (in order to avoid any dispute over election results) (Digest, 2006, ¶399).

**Worker Rights Violations:**

- Excessive control by public authorities over trade union finances and assets:
  
  - Government audits of trade union funds:
    
    If laws require that trade union accounts be audited, either by an auditor appointed by the trade union or, less frequently, one appointed by the registrar of trade unions, the auditor should be qualified and independent (Digest, 2006, ¶487).
    
    A provision reserving to the government the direct authority to audit trade union funds is not consistent with the generally accepted principle that trade unions should have the right to organize their administration and that public authorities should refrain from any interference that would restrict this right or impede its lawful exercise (Digest, 2006, ¶487).
  
  - Unlimited authority for inspections and information requests:
    
    Control exercised by public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. However, the discretionary right of authorities to carry out inspections and request information at any time risks the danger of interference in the internal administration of trade unions (Digest, 2006, ¶490).

  **Exception:**

  - Administrative control over trade union assets, such as financial audits and investigations, should only be applied in exceptional cases, when justified by grave circumstances (for example, when presumed irregularities are found in the annual statement or are reported by union members).
    
    This restriction is intended to avoid discrimination between one trade union and another; to preclude the danger of excessive intervention by the authorities, which might hamper a union’s exercise of the right to organize its administration freely; and to avoid harmful and perhaps unjustified publicity or the disclosure of information which might be confidential (Digest, 2007, ¶491).
Worker Rights Violations:

- Using the registration process to act as a barrier to establishing unions or to impede their function (ILC, General Survey on Freedom, 1983, ¶116):
  - Failure to register a union within a reasonable time period (Digest, 2006, 5th rev. ed., ¶296).
  - Establishment of excessive “qualifications” for union recognition or “representativeness,” which may prohibit independent unions from forming or functioning, (e.g., participating in the collective bargaining process) (ILC, General Survey on Freedom, 1983, ¶124).

The ILO has not established a specific minimum number of members that a government may require in order for a union to be legally registered or to be considered legitimate. However, case decisions over the years show a consistent pattern of ILO thinking. For example, governments that have tried to set minimum membership requirements of 1,000, 50, or even 30 workers have been told that these requirements should be reduced. The ILO has also frowned on a minimum requirement of 30 percent of the total number of workers employed in an establishment or group of establishments, or a minimum requirement of 20 percent of workers in a bargaining unit. However, the ILO considered it acceptable to require a minimum of 20 members to register a trade union.

Minimum requirements of 100 workers to establish branch unions were considered excessive, while a minimum requirement of 30 for sectoral trade unions was considered acceptable.

Requiring a minimum of 30 workers, which was considered acceptable for a sectoral trade union, was too high for works councils. This was particularly true for a country that had a large proportion of small enterprises with a trade union structure based on enterprise unions.

Any government that sets a minimum requirement is expected to do so in consultation with worker and employer organizations.

- Unions being permitted to file cases only in courts that are not independent of the government (e.g., the Labor Ministry). For example, a country may have a system of labor courts whose members are appointed by the Labor Minister. While this would be an acceptable first or intermediate step, the unions should have recourse to appeal to an independent court (ILC, General Survey on Freedom, 1994, ¶77).

- Dissolution of unions by administrative or legislative action instead of through a judicial system that allows for due process (ILC, General Survey on Freedom, 1983, ¶227 & 234).

- Broad restrictions on union political activities (this is a gray area; in general, unions should be able to engage in political activities relating to legitimate union—i.e., worker—interests) (ILC, General Survey on Freedom, 1983, ¶192-198; Digest, 2006, 5th rev. ed., ¶500 & 503).

- Interference in union functions (e.g., elections, financial affairs, or dues collection); imposition of regulations or statutes that limit union function. (ILC, General Survey on Freedom, 1983, ¶187-188; Digest, 2006, 5th rev. ed., ¶496).
3. Restrictions on the right to strike are legitimate only for government service (civil servants engaged in the administration of the state) and “essential services” (only those services whose interruption would endanger worker or public safety and health). When the right to strike is denied, there should be effective alternate procedures for mediation, arbitration, and settlement of grievances. “Essential services” are generally considered to include water, electrical, telephone, air traffic control, and health services (ILC, General Survey on Freedom, 1983, ¶214; Digest, 2006, 5th rev. ed., ¶576 & 585).

The issue of strikes in essential services can be a confusing one. The ILO permits governments to prohibit strikes in these services. However, unions in some countries have managed to organize their strikes in such a way that public safety and health are not endangered, often by maintaining minimum services during the strike. They assert that since they have protected public safety and health, they should automatically have the right to strike.

The ILO does not require that a government prohibit strikes in essential services, so unions may indeed use these creative means of protecting public safety and health while striking if their law so permits.

However, the ILO does permit a government to restrict the right to strike, even if the unions take these precautions. If it chooses, the government can simply require that minimum services be maintained, but the ILO does not believe that governments can be required to make that choice.

Worker Rights Violations:

- Replacing the right to strike with mandatory arbitration in such a way as to negate the right to strike and deny workers a choice in determining procedures and arbiters (Digest, 2006, 5th rev. ed., ¶549).
- Imposing prestrike requirements for negotiation, conciliation, and arbitration that are so lengthy and cumbersome that it would be extremely difficult to call a legal strike (ILC, General Survey on Freedom, 1983, ¶219; Digest, 2006, 5th rev. ed., ¶548).
- Prohibiting strikes in export processing zones (EPZs), fledgling industries, or state-owned enterprises (ILC, General Survey on Freedom, 1994, ¶169).
- Excessively broad definition of “essential services” (e.g., prohibitions for dock workers, transport services, petroleum industry, teachers, postal workers, bankers, etc.) (Digest, 2006, 5th rev. ed., ¶587).

Using strikebreaking tactics:

- Excessive length of compulsory mediation or arbitration procedures (ILC, General Survey on Freedom, 1994, ¶171).
- Administrative interference (e.g., by a government official or ministry) (Report of the Governing Body Committee of the ILO on Freedom of Association (hereafter Report), No. 262, Case No. 1444).
- Physical intervention or worker intimidation (Digest, 2006, 5th rev. ed., ¶645 & 647).

• Imposition of sanctions on strikers disproportionate to the offense committed (e.g., prison or forced labor) (ILC, General Survey on Freedom, 1983, ¶223; Digest, 2006, 5th rev. ed., ¶668).

• Use of police or military to break up a strike, with the exceptions noted below (Digest 2006, 5th rev. ed., ¶635 & 642).

Conditions on Restricting the Right to Strike:

• “Emergencies” must be true national emergencies, such as war, and restrictions should be imposed only for a limited period (Digest, 2006, 5th ed., ¶570-571).

• Occupational organizations in all branches of activity are obliged to ensure that the staff who are necessary for the safety of machinery and equipment, prevention of accidents, and deterrence of destruction continue to work.

• The government can assume responsibility for the function of essential services in the interest of the community. The use of police or army to maintain order or guarantee the continuation of essential services can be justified, but only in the cases where the suspension of such services would produce an acute crisis (Digest, 2006, 5th rev. ed., ¶636 & 639).

• Prestrike notification and conciliation procedures may be required, but only if they are reasonable and timely (Digest, 2006, 5th rev. ed., ¶551-552).

• Requirements for membership strike votes by secret ballot or reasonable quorum are permissible, but an absolute majority may not be required (Digest, 2006, 5th rev. ed., ¶552 & 555-559).

Exceptions:

- Strikes of a strictly political nature and strikes decided systematically long before negotiations take place are not protected by the ILO Principle on Freedom of Association (ILC, General Survey on Freedom, 1983, ¶216; Digest, 2006, 5th rev. ed., ¶528).

- Violent or illegal strikes are not protected. The ILO considers the use of police to break up strikes as a violation of trade union rights. However, police intervention is acceptable when it is limited to the maintenance of public order and does not restrict workers’ legitimate right to strike (Digest, 2006, 5th rev. ed., ¶642 & 651).

- Authorities should resort to force only in grave circumstances when public order is seriously threatened. These restrictions are justified under international standards only if the strike has ceased to be peaceful.

Warning sign:

- Little or no occurrence of strikes.
4. Unions’ civil liberties must be respected.

Worker Rights Violations:

- Restrictions on freedom of assembly:
  - Imposing excessive rules on unions applying for permission to hold a protest rally or march (ILC, *General Survey on Freedom, 1983*, ¶66).

  - Denying unions the right to political action and participation in electoral campaigns.

  - Restrictions on freedom of movement of trade unionists, such as travel restrictions (ILC, *General Survey on Freedom, 1983*, ¶63; *Digest, 2006*, 5th rev. ed., ¶129).

- Discrimination or harassment based on race, sex, ethnicity, nationality, social or economic class, religion, political activity or beliefs (*Digest, 2006*, 5th rev. ed., ¶208-210).

5. Unions may form and/or join federations, confederations, and international confederations (ILC, *General Survey on Freedom, 1994*, ¶189).

Worker Rights Violations:

- Government-imposed restrictions on regional and national unions:
  - Restricting unions to the “plant level.”
  - Prohibition of the establishment of federations or confederations that group unions from different occupations, industries or provinces (ILC, *General Survey on Freedom, 1983*, ¶245; *Digest, 2006*, 5th rev. ed., ¶715).

**The Right to Organize and Bargain Collectively (ILO Convention No. 98)**

**Definition:** The right to organize and bargain collectively is the right of workers:

- To be represented in negotiating the prevention and settlement of disputes with employers (*Digest, 2006, 5th rev. ed., ¶945*).
- To be protected against interference with union activities (Convention No. 98, Article 2).
- To be protected against acts of antiunion discrimination (Convention No. 98, Article 1, ¶1; Convention No. 151, Article 4, ¶1).
- To be protected against refusal of employment, dismissal, or prejudice due to union membership or participation (Convention No. 98, Article 1, ¶2(b); Convention No. 151, Article 4, ¶2(b)).
- To have governments promote mechanisms for voluntary negotiations between employers and workers and their organizations (Convention No. 98, Article 4; Convention No. 151, Article 7).
- To have employers negotiate in good faith (*Digest, 2006, 5th rev. ed., ¶934-938*).

**General Principles and Common Violations**

1. **Voluntary collective bargaining should be protected by law and should be practiced** *(Follow-Up, 2000, ¶83).*

   **Worker Rights Violation:**

   ![Inappropriate restrictions on collective bargaining:](image)

   - Exclusion of subjects from the bargaining process that relate to conditions of employment (Convention No. 154, Article 2; ILC, *General Survey on Freedom, 1983, ¶311; Digest, 2006, 5th rev. ed., ¶919c*).

   **Exception:**

   ![Government policies that restrict wage rates in the private sector, such as wage control measures, should be exceptional measures of limited duration accompanied by protections for maintaining worker living standards (ILC, *General Survey on Freedom, 1983, ¶315; Digest, 2006, 5th rev. ed., ¶1024).*]
• In the public sector, in cases where wages are set by legislative action, it is permissible to restrict bargaining over wages (Digest, 2006, 5th rev. ed., ¶1038).

• It is also permissible to restrict bargaining by public servants engaged in the direct administration of the state (ILC, General Survey on Freedom, 1983, ¶255; Digest, 2006, 5th rev. ed., ¶886-887).

• It is also permissible to accord exclusive bargaining rights to a particular public sector union, as long as procedures are available that allow workers some say in determining the “most representative” union to represent them (ILO, Recommendation No. 159, ¶1(1); Digest, 2006, 5th rev. ed., ¶969).

• Employers may also bargain with multiple public sector unions.

Warning Signs:

⚠ Few or no contracts signed.

⚠ Low percentage of enterprises covered by contracts.

2. Antiunion discrimination by employers should be illegal (Convention No. 98, Article 1, ¶1; Convention No. 151, Article 4; Digest, 2006, 5th rev. ed., ¶776).

Worker Rights Violations:

⚠ Dismissal of workers for having established a trade union (Report No. 300, Case No. 1780, ¶130-143).

⚠ Dismissal, demotion, or punitive transfer of workers who participate in negotiations, legal (according to country law) strikes, or other legitimate union activity (Convention No. 158, Article 5(a)).

⚠ Discrimination against prounion employees in terms of pay, hours, assignments, promotions, etc. (Report No. 305, Case No. 1874, ¶254-272; Report No. 310, Case No. 1867, ¶71-89).

⚠ Employer’s refusal to negotiate with the union chosen by the workers (e.g., choosing to bargain with another, “friendlier” union (ILC, General Survey on Freedom, 1983, ¶296).

⚠ Employer’s refusal to negotiate a first contract within a reasonable period of time (Report No. 309, Case No. 1852, ¶308-402; Report No. 313, Case No. 1880, ¶151-168; Report No. 318, Case No. 2012, ¶405-430).

⚠ Employer blacklisting of trade union leaders or members (Digest, 2006, 5th rev. ed., ¶803).

⚠ Prohibition of the right to attend union meetings (Report No. 248, Case No. 1130, ¶280 & 298).

⚠ Forcing employees to attend antiunion meetings against their will; denying prounion workers the right to attend and/or speak up at such meetings; having supervisors pressure workers in one-on-one meetings not to support a union (Report No. 302, Case No. 1826, ¶386-414).

⚠ Threatening workers with adverse consequences if they choose to unionize (Report No. 307, Case No. 1855, ¶434-445).
Making employment conditional upon the workers’ rejection of trade union membership or activity (Report No. 313, Case No. 1880, ¶151-168).

Denying union access to employees on company property in nonwork areas on nonwork time (Report No. 308, Case No. 1897, ¶451-480).

Forcing workers to sign letters of resignation as a condition of being employed, in order to use such letters subsequently to dismiss workers if they join a union (Report No. 320, Case No. 2013, ¶723-734).

Prohibition of union literature, insignia, and other promotional material in the workplace (Report No. 309, Case No. 1897, ¶451-480).

Surveillance of trade union leaders or members (Report No. 270, Case No. 1508, ¶411).

“In-house” organizations controlled by employers (e.g., employer-organized and -financed organizations in lieu of worker-organized and -supported enterprises) (ILC, General Survey on Freedom, 1994, ¶231 & 233; Report No. 311, Case No. 1966, ¶342-365).

Exceptions:

Some laws that name strikes “illegal” in certain sectors may not conform to internationally recognized worker rights standards. In these cases, strikes may be acceptable.

In most cases, illegal activities such as the destruction of property or building takeovers are not considered “legitimate” union activity.

Worker protections do not necessarily apply in cases of “absence from work without the employer’s permission” (Digest, 2006, 5th rev. ed., ¶805).

Worker protections do not necessarily apply in cases where union representatives fail to “act in conformity with existing laws or collective agreements” (ILO, Recommendation No. 143, III, ¶5).

Warning Signs:

Security rules in EPZs that deny a union access to workers.

Employers’ use of “temporary” workers who are given consecutive contracts in order to avoid the formation of unions and to avoid the cost of benefits (Report No. 259, Case No. 1403, ¶75).

Employers’ use of “individual work contracts” that preclude union participation in order to avoid or undermine union activity (Report No. 48, Case No. 1309).

3. Speedy and effective mechanisms should exist to review union or worker complaints of antiunion discrimination; mechanisms that workers do not perceive as “fair” should not be considered effective. Moreover, when complaints such as a dismissal go through a judicial process, the burden of proof should rest on the employer, who must prove that the dismissal had no connection with the worker’s union activities (Convention No. 98, Article 3; ILC, General Survey on Freedom, 1983, ¶264, 269 & 271; Digest, 2006, 5th rev. ed., ¶831).
Worker Rights Violation:

- Limited access to judicial system—e.g., linking the final resolution of a case exclusively to a labor court where justices are appointed by the labor ministry. Such a labor court could operate as an initial step in a judicial process, but parties should be able to appeal to an independent court system as well.

Warning Signs:

- Defective mechanisms, such as long delay or excessive expense in court cases (ILC, General Survey on Freedom, 1983, ¶268; Digest, 2006, 5th rev. ed., ¶820).
- Failure to punish offenders (ILC, General Survey on Freedom, 1983, ¶278).
- Over-reliance on awarding severance pay to fired workers in lieu of ordering reinstatement or imposing other penalties that would act as a deterrent (ILC, General Survey on Freedom, 1983, ¶277).

Forced Labor (ILO Conventions No. 29 and No. 105)

**Definition:** Although there are certain exceptions, forced labor is defined as work or service exacted from any person under the menace of penalty and for which the person has not volunteered. “Menace of penalty” includes loss of rights or privileges as well as penal sanctions. Forced labor should be prohibited and suppressed in all its forms (Convention No. 29, Article 1, ¶1, and Article 2, ¶1; ILC, General Survey on Forced Labour of the Committee of Experts on the Application of Conventions and Recommendations, 1979, Report III (Part 4B) (hereafter General Survey on Forced Labour), ¶21).

General Principles and Common Violations

1. Forced labor should NEVER be used for the following purposes:
   - For economic development.
   - To enforce racial, social, national, or religious discrimination.
   - As political coercion or education or as punishment for holding or expressing political views opposed to the established political, social, or economic system.
   - For labor discipline.
   - As a punishment for having participated in legal strikes (Convention No. 105, Article 1).

2. Certain forms of prison labor are acceptable ONLY when imposed following conviction for a crime in a court of law. Any prison labor must be carried out under the supervision and control of a public authority. A prisoner may not be compulsorily “hired to” or “placed at the disposal of” a private contractor (even if that contractor does not profit from such service) (Convention No. 29, Article 2, ¶2(c); General Survey on Forced Labour, ¶89; General Report of the Committee of Experts on the Application of Conventions and Recommendations (hereafter RCE), 2001, ¶123-125).
Exceptions:

- Limited obligations aimed at cleanliness, such as cleaning one’s cell, are not a violation of the standard (ILC, *General Survey on Forced Labour*, ¶90).

- Voluntary work made available to prisoners at their own request is acceptable (ILC, *General Survey on Forced Labour*, ¶90).

- Sanctions (including forced labor) can be imposed for participation in strikes in the civil service or essential services, where unions are provided adequate procedures for conciliation and arbitration as alternatives to strikes (ILC, *General Survey on Forced Labour*, ¶120 & 123).

Worker Rights Violations:


- Forcing people to work who are in detention but have not been convicted (e.g., those awaiting trial or those detained without trial) (ILC, *General Survey on Forced Labour*, ¶90; RCE, 1980, ¶61 & 68).

- Work imposed in a manner that places the prisoner at the disposal of private individuals, companies, or associations. If prisoners accept employment with particular employers, it must be voluntary. Conditions approximating a free labor relationship—e.g., payment of normal wages, social security, safety and health inspections, consent of unions, no menace of penalty—are the most reliable indicator of voluntary employment. (Convention No. 29, Article 4, ¶1, Article 5 ¶1, and Article 6; ILC, *General Survey on Forced Labour*, ¶97; RCE, 1993, ¶97, RCE, 1983, ¶79-80; RCE, 1982, ¶68-69; RCE, 2001, ¶143).

- Prison labor imposed for any of the reasons cited in Principle 1 (above), even if the person was “convicted” for those reasons (RCE, 1981, ¶159; RCE, 1980, ¶149-150).

3. National service obligations, such as compulsory military service and normal civic obligations are acceptable, except as noted below (Convention No. 29, Article 2, ¶2(a) & (b)):

Worker Rights Violations:

- Use of draftees for nonmilitary purposes (e.g., economic or social development) (*General Survey on Forced Labour*, ¶24; RCE, 1990, ¶94; RCE, 1984, ¶78; RCE, 1983, ¶77).

- Compulsory enrollment of unemployed young people in civic service where service is not restricted to education and training (*General Survey on Forced Labour*, ¶54; RCE, 1984, ¶71-72; RCE, 1982, ¶64; RCE, 1980, ¶73-74).

- Obligation to serve the state in return for training where failure to comply carries penal sanctions (ILC, *General Survey on Forced Labour*, ¶55; RCE, 1985, ¶81).

- Obligation to work in EPZs.

4. Forced labor is acceptable in a genuine emergency, limited to a “sudden, unforeseen happening, calling for instant counter measures, such as war, calamity or threatened calamity such as earthquakes, floods, pestilence, etc.” The duration and extent of work should be confined to what is absolutely required by the circumstances (Convention No. 29, Article 2, ¶2(d); ILC, *General Survey on Forced Labour*, ¶36).
5. Minor communal services, defined as services performed by community members in the direct interest of the community, are acceptable, provided that community members or their direct representatives are consulted concerning the need for the service (Convention No. 29, Article 2, ¶2(e); ILC, General Survey on Forced Labour, ¶¶37; RCE, 1995, ¶109; RCE, 1992, ¶101; RCE, 1981, ¶¶65-66).

Worker Rights Violations:

- Required communal service exacted without consent from community representatives (RCE, 1988, ¶95).
- Cultivation where no food deficiency exists and where the produce does not remain the property of the group producing it (Convention No. 29, Article 19, ¶1; ILC, General Survey on Forced Labour, ¶81; RCE, 1988, ¶77; RCE, 1987, ¶102-103).

6. Constitutional provisions that require citizens to work are acceptable unless they take the form of a legal obligation enforced by sanctions, or unless they are inconsistent with the principle of “freely chosen employment” (ILC, General Survey on Forced Labour, ¶45).

Worker Rights Violations:

- Imposing penalties on those whose only offense is refusing employment. Such penalties should be imposed only where the refusal to work occurs in conjunction with unlawful activities, such as the disturbance of public order (ILC, General Survey on Forced Labour, ¶46; RCE, 1984, ¶82; RCE, 1982, ¶66; RCE, 1980, ¶61 & 74).
- Restrictions on the freedom of workers to terminate employment. Workers should be able to terminate employment after giving reasonable notice. They should not be legally required to obtain consent or permission of the administration or other authorities before leaving their jobs (ILC, General Survey on Forced Labour, ¶¶67 & 68; RCE, 1986, ¶¶94-95; RCE, 1982, ¶¶76-77; RCE, 1980, ¶¶70 & 76).

7. Trafficking in persons—i.e., the transfer, harboring, or receipt of persons by coercion or fraud for the purpose of exploitation—should be prohibited. “Exploitation” includes prostitution or other sexual exploitation, forced labor, slavery, or the removal of organs. The transfer, harboring, or receipt of children (under the age of 18) for the purposes of exploitation should be prohibited regardless of the means used (RCE, 2001, ¶73).

Warning Signs:

- Deliberate nonpayment of wages or wage arrears.
- Forced overtime.

Both of these practices fall into a “gray zone,” where the line between forced labor and poor working conditions is difficult to define. Generally the ILO applies forced labor language to situations where the employer’s intent to restrict the workers’ rights is clear. Because intent in cases of unpaid wages or wage arrears is difficult to discern, these types of cases are usually filed under Convention 95, the Protection of Wages Convention.

To determine if these conditions represent forced labor under the standards, the ILO would consider whether coercion has been used to enforce arduous or abusive working conditions. For example, nonpayment of wages or wage arrears might be considered forced labor if the unpaid workers remain at their jobs out of fear of severe penalties, including physical harm, or if the abused workers cannot seek other employment or move about without the consent of the employer.
The same criteria would be used to consider forced overtime, which is a growing practice in the global economy, although it is not automatically considered forced labor. Other forms of coercion include excessive working hours, with no additional pay for overtime, employer-assigned tasks that entail providing free services outside the scope of the job, or employer requirements to work overtime without advance notice, well beyond legal limits. When forced overtime is pervasive, continual, or routine—and the employer applies or threatens sanctions against workers who refuse—it may become forced labor. The ILO would consider multiple factors on a case-by-case basis to decide whether they constitute forced labor, looking for the connection between poor working conditions and evidence of coercion or “menace of penalty.”

8. **Prohibitions against forced labor should be effectively enforced with adequate labor inspection and penal sanctions for offenders** (Convention No. 29, Article 25; ILC, *General Survey on Forced Labour*, ¶84).

**Child Labor (ILO Conventions No. 182 and No. 138)**

**Definition:** The “Worst Forms of Child Labor Standard” aims at the prohibition and elimination of the worst forms of child labor, taking into account the importance of free basic education and the need to remove children from all such labor and to provide for their rehabilitation and social integration (Convention No. 182).²

Under Convention No. 182, governments must work to prohibit and eliminate:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

- The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic purposes.

- The use of a child in the production and trafficking of drugs.

- Work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The minimum age standard aims at the effective abolition of child labor by raising the minimum age for employment to a level consistent with the fullest physical and mental development of young people (Convention No. 138, Article 1). Child labor is defined as any work or employment situation where children are engaged on a more or less regular basis to earn a livelihood for themselves or their families (Convention No. 138). Hazardous work is defined as work that exposes children to physical, psychological, or sexual abuse; work underground, under water, at dangerous heights, or in confined spaces; work with dangerous machinery or tools or that includes heavy loads; work in unhealthy environments that may expose children to hazardous substances, temperatures, noise, or vibrations; and work under particularly difficult conditions such as long hours, during the night, or confinement to the employers’ premises (Convention No. 182).
General Principles and Common Violations

1. **The minimum age for employment should be set no lower than 15, with an option for developing countries to set a lower minimum age of 14 where the level of economic development makes the realization of the higher standard impossible.** Countries that set the minimum age at the lower level, however, should be trying to progressively change conditions so that they can meet the higher standard (Convention No. 138, Article 2, ¶3-4; ILO, Recommendation No. 146, II, ¶7; ILC, General Survey on Minimum Age of the Committee Experts on the Application of Conventions and Recommendations, 1981, Report III (Part 4B) (hereafter General Survey on Minimum Age), ¶23 & 117).

Worker Rights Violation:

- Children under minimum age standards working to feed and clothe themselves or their families, thus diverting time from schooling.

Exceptions:

- Light work is permissible for 13- to 15-year-olds, as long as it will not harm their health or development and will not prejudice their school attendance. A minimum age of 12 for light work is acceptable where the minimum age for employment is 14. “Light work” is not a major element of the family’s work; it covers the idea of working for pocket money or helping the family, such as helping at harvest time or with the family business (Convention No. 138, Article 7, ¶1 & 4; ILC, General Survey on Minimum Age, ¶25 & 159).

- The minimum age of 18 for dangerous work (work likely to jeopardize the health, safety, or morals of young people). It can be as low as 16 where the minimum age for employment is 14 (Convention No. 138, Article 3, ¶1 & 3; ILC, General Survey on Minimum Age, ¶28, 215 & 219).

- Work for children under the minimum age is acceptable in connection with education or training (children enrolled in apprenticeship programs should be at least 14 years old) (Convention No. 138, Article 6; ILC, General Survey on Minimum Age, ¶18, 253 & 269).

- Individual permits for participation of children below the minimum age in artistic performances are acceptable but should be issued on the basis of merit. Hours and working conditions should be regulated and closely supervised (Convention No. 138, Article 8, ¶1 & 2; ILC, General Survey on Minimum Age, ¶20, 193, 195 & 205).

2. **Minimum age legislation should cover all economic activity, not just employment under contract** (ILC, General Survey on Minimum Age, ¶35 & 61).

Worker Rights Violations:

- Children engaged in street trading, maritime, self-employed, commissioned, piece, or domestic work (Convention No. 58, Article 1; ILC, General Survey on Minimum Age, ¶61 & 68).

- Children working in rural areas outside of family farms for local consumption (e.g., plantation work) (Convention No. 138, Article 5, ¶3; ILC, General Survey on Minimum Age, ¶19).

- Children doing dangerous work—e.g., mining, construction or manufacturing (Convention No. 138, Article 5, ¶3).
Children paid lower wages than adults for identical work (ILC, *General Survey on Minimum Age*, ¶279).

Child labor in EPZs.

**Exceptions:**

The scope of application and the categories of employment may be somewhat limited:

- Where there are special and substantial problems with applying a minimum age law (Convention No. 138, Article 4, ¶1; ILC, *General Survey on Minimum Age*, ¶31, 37 & 75-76).

- Where there are branches of economic activity or undertakings in countries with insufficiently developed economies and administrative facilities (Convention No. 138, Article 5, ¶1; ILC, *General Survey on Minimum Age*, ¶38 & 94).

- These exceptions may NOT include work dangerous to health, safety, or morals. Protective legislation must minimally exclude from child employment: mining and quarrying; manufacturing; construction; electricity, water, and sanitary services; transport, storage, and communication; and plantations and other agricultural undertakings producing mainly for commercial purposes (Convention No. 138, Article 4, ¶3 & Article 5, ¶3; ILC, *General Survey on Minimum Age*, ¶37).

3. **Education should be provided for all children and should be compulsory. The minimum age for employment shall not be less than the age for completion of compulsory schooling** (Convention No. 138, Article 2, ¶3; ILO, *Recommendation No. 146*, I, ¶4; ILC, *General Survey on Minimum Age*, ¶21, 117 & 124; *Follow-Up, 2000*, ¶105).

**Exceptions:**

- Work is permissible for 15-year-olds who have not completed compulsory schooling as long as the work is not likely to harm their health or development and will not prejudice their school attendance (Convention No. 138, Article 7, ¶2).

- In order to fully benefit from schooling and to allow for limited strength, young people should not work for the same duration as adults.

  - Limitations should be set on hours and overtime (ILO, *Recommendation No. 146*, IV, ¶13).

  - Night work should be prohibited (ILO, *Recommendation No. 146*, IV, ¶13).

  - Daily and weekly rest periods should be set (ILO, *Recommendation No. 146*, IV, ¶13).

**Warning Signs:**

- Failure to provide education for all children.

- Low levels of spending on education; low quality education.

- Gap between the end of compulsory education and the minimum age for employment (e.g., if education is compulsory until a child is 15 years old, but the minimum age for employment is 14, it is highly likely that in some situations children will work instead of go to school).
Low rate of school attendance (generally, where the rate of school attendance is low, the rate of child employment is high).

Prohibitions of work for children only during school hours. (If no limits are set for work after school hours as well, children’s time and energy can be drained and prejudice their education.)

No enforcement system for school attendance.

High illiteracy rates.

No access to schools (locations too distant to make attendance possible).

4. **Minimum-age legislation should have an effective enforcement system that includes an adequate number of inspectors and penalties that serve as effective deterrents.** Penalties should include fines and/or imprisonment. Employers should be required to keep registers of children under 18 years of age, and labor inspectors should have access to these records (Convention No. 138, Article 9, ¶3; ILO, Recommendation No. 146, V, ¶16(b); ILC, General Survey on Minimum Age, ¶32-33 & 39).

**Warning Signs:**

- Too few inspectors vis-à-vis the total number of enterprises.
- Low number of child labor inspections.
- Low number of citations issued by inspectors and few convictions in court.
- Little or no penalty levied upon offenders.

**Warning Signs of forced or indentured child labor:**

**Red Flags (strong indications of forced or indentured child labor):**

- **Slave labor conditions,** under which a child is not free to choose to leave the work site or the employment, including:
  - Use of chains or other physical restraints.
  - Physical confinement or restricted exit from a facility—e.g., locked gates or doors and/or the presence of police or guards exceeding reasonable security needs.
  - Use of physical force or abuse to keep children at the workplace.
  - Use of private or public police or security guards to return runaway workers to the job site and to enforce work obligations by violence or imprisonment.
  - Isolated work sites, such as jungle camps or platforms at sea, where children are not permitted to leave, even when their term of service is completed, because of the inaccessibility of transportation not controlled by the employer.

- **Employment to liquidate a debt or debt bond.**
Payments made to a party other than the worker. This condition may point to indentured employment to pay off the debt of another person, such as a parent or relative. Payment to a parent may simply reflect the child’s status as a minor, but the circumstances around this payment should be investigated to be sure that the parent is not being paid for the child’s indentured labor.

Financial penalties for absenteeism, production errors, or refusal to work overtime when these penalties eliminate wages or credits already earned or create indebtedness that must be liquidated. These may be used as an employer tactic to create indefinite bondage through continually increasing debt.

Evidence of physical or sexual abuse of child workers at the workplace. This includes physical intimidation of workers to keep them on the job, to prevent their complaints to authorities, or to punish mistakes. Children with damaged or cut feet may reflect efforts to prevent them from escaping.

Employment of very young children, particularly in significant numbers.

The presence of child workers who appear to require immediate medical or psychological care as a result of an apparent physical or mental illness.

Employment of children not working as part of a family unit or without the presence of a parent or other adult family member. The absence of a family member who can protect the child’s interests is a sign of forced or indentured child labor. However, the presence of a family member alone is not sufficient to eliminate the possibility that a child’s labor may be forced or indentured.

Girls working without adult female presence or supervision where such a practice runs counter to local custom. In many developing countries, work away from the family, including forced or indentured labor, is often a prelude to forced prostitution. In cultures where young girls are not expected to work outside the family or without an adult female presence, this condition is a warning sign of forced or indentured labor.

Employment of children at a work site far from their home town or village. Child workers are often transported from their homes by middlemen to distant work sites, where they are effectively removed from parental oversight and protection and subjected to the employer’s control.

Yellow Flags (suspicious conditions that point to possible unfair or illegal labor practices and warrant further inquiry and investigation):

Work being performed during unusual hours, such as early morning, late at night, or during school hours. This may indicate that excessively long hours are being worked, prejudicing the health of child workers. It also suggests that children are being forced to work.

Poor and unhealthy working environments, including, but not limited to, poor lighting and ventilation and/or lack of access to food, water, and sanitary facilities.

Employment that violates local laws and regulations.

Child employment in hazardous industries or under extreme conditions.

Missing or altered employment records. These may be concealing illegal business practices, including the use of forced or indentured child labor.
Workers missing from looms or other workstations that are actively operating during on-site visits. Some workplace operations require a team. For example, the operation of a carpet loom may require four workers seated side by side. If the loom is operating during a plant inspection but a couple of workers are missing, the monitor should consider the possibility that the missing workers are underage, forced, or indentured child workers.

Denial of generally available educational opportunities. Educational opportunities may be limited in certain developing countries or regions within those countries. However, if the child worker is denied the type of education that is normally available to other children of his or her age, the situation may involve forced or indentured child labor.

Factories that have been redesigned and retooled for children.

High incidence of children with parasitic infections, brain tumors, or leukemia (evidence of high pesticide exposure in agricultural areas).

Presence of small buildings or shelters locked from the outside with small holes for ventilation.

High number of children with muscular or skeletal disorders (may be an indication of underground mining).

**Discrimination (Equality in Employment and Occupation) (ILO Conventions No. 100 and No. 111)**

**Definition:** The right to equality in employment and occupation—the terms “employment” and “occupation” include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment—is the right of workers to have:

- Freedom from discrimination on the basis of race, color, sex, religion, political opinion, national extraction, and social origin. Discrimination is defined as any distinction, exclusion, or preference that impairs equality of opportunity or treatment in employment and occupation (Convention No. 111, Article 1).

- Freedom from any other type of discrimination (defined on the basis of each nation’s particular antidiscrimination policy) that impairs equality of opportunity or treatment in employment or occupation (Convention No. 111, Article 1, as cited in ILO, *General Survey on Equality in Employment and Occupation of the Committee of Experts in the Application of Conventions and Recommendations* (hereafter *General Survey on Discrimination*), 1996, ¶27, 48).

- Equal pay for men and women workers for work of equal value (Convention No. 100, Article 2). “Pay” includes any kind of compensation by the employer to the employee for work performed for employment (Convention No. 100, Article 1).


- Freedom from discrimination on the basis of a disability. The ILO defines a “disabled person” as an individual whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment (Convention No. 159, as cited in ILO, *General Survey on Discrimination, 1988*, ¶69).
• Freedom from discrimination on the basis of migrant worker status. The ILO defines “migrant for employment” as “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment” (Convention No. 97, as cited in ILO, General Survey on Discrimination, 1996, ¶20; Recommendation 111, ¶II.8).

• Governments declare and pursue national policies that promote equality of opportunity and treatment in employment and occupation, and aim to eliminate any and all discrimination in these areas. Convention No. 111 allows for flexibility when applying antidiscrimination standards to national contexts. The manner in which these standards are applied is still important, but the primary goal of the Convention is to achieve equality of opportunity and treatment in employment without unlawful discrimination (ILO, General Survey on Discrimination, 1988, ¶157).

General Principles and Common Violations

1. As a means to this end, governments should:

   • Enact appropriate legislation (Convention No. 111, Article 3).

   • Repeal any statutory provisions, administrative instructions or practices that are inconsistent with these policies (Convention No. 111, Article 3).

   • Ensure that nondiscrimination employment policies are applied in all of its activities, including publicly provided vocational training and placement services (Convention No. 111, Article 3; ILO, General Survey on Discrimination, 1988, ¶158).

   • Seek the cooperation of employer and worker organizations (Convention No. 100, Article 4).

   • Promote the objective appraisal of jobs on the basis of the work to be performed (Convention No. 100, Article 3).

Exceptions:

慎重 Different pay rates between workers that correspond to the type of work to be performed are not considered discriminatory (Convention No. 100, Article 3).

慎重 Any distinction, exclusion, or preference based on the inherent requirements of a job is not considered discrimination (Convention No. 111, Article 1. For more detail, see ILO, General Survey on Discrimination, 1988, ¶125-156; ILO, General Survey on Discrimination, 1996, ¶117-141). In general, access to training, employment, and occupation should be based on objective criteria defined in the light of academic and occupational qualifications required for the employment. Some special jobs may require otherwise disfavored qualifications (for example, a high government post may require a particular political persuasion), but requirements that do not correspond to the person’s aptitude for the position violate Convention No. 111 (ILO, General Survey on Discrimination, 1988, ¶125-127).

慎重 Measures that affect persons whose activities endanger state security are not considered discrimination, as long as those persons have the right to appeal to an independent judiciary (Convention No. 111, Article 4). This exception does not include discriminatory measures taken because of a person’s membership in a particular religious or political group. A distinction should be drawn between a person’s beliefs or opinions and activities that directly threaten state security or affect

- Special measures of protection or assistance provided for other ILO conventions or recommendations are not considered discrimination (Convention No. 111, Article 5).⁴

- Special measures designed to assist persons who are considered in need of special protection or assistance (because of sex, age, disability, family responsibilities, or social or cultural status) are not considered discrimination (Convention No. 111, Article 5).⁵

2. **Freedom from discrimination applies to everyone, including both nationals and non-nationals; it applies equally to migrant workers and to indigenous and tribal peoples** (ILO, *General Survey on Discrimination, 1988*, ¶17, 212).

Migrant workers are covered by special provisions in the Migration for Employment Convention (No. 97), the Migrant Workers Convention (No. 143), and Recommendation No. 151. The provisions of these conventions dealing with equality of opportunity and treatment in employment (Part II of Convention No. 143 and Article 6 of Convention No. 97) apply only to immigrants who are legally present in a country (ILO, *General Survey on Discrimination, 1988*, ¶21). Indigenous and tribal peoples are covered by special provisions in the Indigenous and Tribal Populations Convention (No. 107) and the Indigenous and Tribal Peoples Convention (No. 169).

**Worker Rights Violation:**

- Racial discrimination on ships, justified by the fact that a nation’s legislation on employment protection does not cover seafarers of foreign nationality on board vessels of that nation (ILO, *General Survey on Discrimination, 1988*, ¶18).

**Warning Sign:**

- Laws protecting employees from discrimination apply only to citizens, even though the country’s labor legislation applies to both nationals and foreigners (ILO, *General Survey on Discrimination, 1988*, ¶19).

3. **Workers are entitled to freedom from discrimination in all situations that may affect equality of opportunity and treatment.** This requirement covers both law and practice, and both direct and indirect discrimination (see definition of indirect discrimination below) (ILO, *General Survey on Discrimination, 1988*, ¶22, 28-29).

**Worker Rights Violations:**

- Legislation stipulating that discrimination is considered illegal only if it can be shown that the perpetrator intended to practice discrimination (ILO, *General Survey on Discrimination, 1988*, ¶26).

- Indirect discrimination, such labor regulations and practices that, when applied uniformly, prevent certain classes from having opportunities equal to those enjoyed by others. This would include differences in treatment on the grounds of civil, marital or family status, or establishing a minimum height or weight for certain categories of employees that would lead to the exclusion of a significant percentage of the female population, provided that the requirements were not related to work performance (ILO, *General Survey on Discrimination, 1988*, ¶28).
4. **Workers shall not be discriminated against on the basis of race or color** (ILO, *General Survey on Discrimination, 1988*, ¶31).

Race is “the ethnic group to which an individual belongs by reason of heredity” (ILO, *General Survey on Discrimination, 1996*, ¶30). The ILO notes that “difference of color is only one of the ethnic characteristics, but it is the most apparent and is therefore often linked to the ground of race in constitutional or legislative provisions adopted by certain countries to prohibit discrimination” (ILO, *General Survey on Discrimination, 1996*, ¶30).

5. **Workers shall not be discriminated against on the basis of sex** (ILO, *General Survey on Discrimination, 1988*, ¶31).

Distinctions based on sex are those that use the biological characteristics and functions that differentiate men from women. Such distinctions include those established, explicitly or implicitly, to the disadvantage of one sex or the other (ILO, *General Survey on Discrimination, 1996*, ¶35).

**Worker Rights Violations:**

- Occupational segregation according to gender—e.g., rejection of a man’s application to work as a flight attendant or a woman’s application to work as an electrician because a company is seeking to fill these positions exclusively with members of one sex (ILO, *General Survey on Discrimination, 1988*, ¶38).

- Sexual harassment. The ILO definition of sexual harassment includes insults, remarks, jokes, insinuations, and inappropriate comments on a person’s dress, physique, age, family situation, etc.; a condescending or paternalistic attitude undermining dignity; unwelcome invitations or requests that are implicit or explicit, whether or not accompanied by threats; lascivious looks or other gestures associated with sexuality; and unnecessary physical contact, such as touching, caresses, pinching, or assault. To be considered sexual harassment, an act must have one or more of the following characteristics: be justly perceived as a condition for employment; influence decisions made with respect to employment; prejudice occupational performance; or humiliate, insult, or intimidate the person suffering from such acts (ILO, *General Survey on Discrimination, 1996*, ¶179).

- Discrimination on the basis of civil or marital status, a family situation, pregnancy, or confinement (ILO, *General Survey on Discrimination, 1988*, ¶41-44):
  - Prohibiting women of a certain occupation from marrying, and/or terminating their employment in the event that they do marry.
  - Making pregnancy grounds for termination of employment.
  - Making an offer of employment to a woman dependent on her husband’s permission.

- The prohibition of commingling at work or the limited training of women that results in occupational segregation according to sex (ILO, *General Survey on Discrimination, 1996*, ¶175).

- Paying women at a lower rate than men for either the same work or work of equal value (ILO, *General Survey on Discrimination, 1988*, ¶111).

**Worker Rights Violations:**

- Terminating employment because of religious affiliation; prohibiting registration in schools, higher education institutes, and universities; withdrawal of pensions; or denial of work or promotion (ILO, *General Survey on Discrimination, 1988*, ¶50).

- Imprisonment of members of specific religious groups on the grounds of the peaceful propagation of their faith (ILO, *General Survey on Discrimination, 1996*, ¶188).

- Conditioning access to employment on a statement or oath that refers to a particular religion or whose content is contrary to the religious beliefs of the applicants (ILO, *General Survey on Discrimination, 1988*, ¶53).

**Warning Signs:**

- Existence of a state religion. In this situation, the ILO recommends that special care be taken by the government to prevent religious discrimination (ILO, *General Survey on Discrimination, 1988*, ¶47).

- The proportion of persons of minority religions occupying managerial posts and positions of trust (e.g., state sector or judicial jobs) is considerably lower than their proportion in the general population (ILO, *General Survey on Discrimination, 1996*, ¶190).

- Legislation that requires the media to respect the public’s religious sensitivities (ILO, *General Survey on Discrimination, 1996*, ¶191).


7. Workers shall not be discriminated against based on political opinion, national extraction, or social origin (ILO, *General Survey on Discrimination, 1988*, ¶31).

National extraction refers to distinctions between the citizens of the same country on the basis of a person’s place of birth, ancestry, or foreign origin. This protection includes persons who have acquired their citizenship by naturalization or who are descendants of foreign immigrants (ILO, *General Survey on Discrimination, 1996*, ¶33-34).

**Worker Rights Violations:**


- Denial of or assignment to certain jobs, activities, or training based on membership in a particular class, socio-occupational category or caste, or preferences in employment or job training granted to individuals on the basis of their social origin or the status of their parents (ILO, *General Survey on Discrimination, 1988*, ¶54, 56).

- Prohibition of employment or training on the basis of political activity, opinions, beliefs, or affiliation with a political organization or party (ILO, *General Survey on Discrimination, 1988*, ¶58). Examples include:
• Dismissal of public service education workers based on their former membership or position in certain political parties or organizations (ILO, *General Survey on Discrimination, 1996, ¶196*).

• The requirement that a worker submit forms containing information on his/her moral attitude and social conduct at the time of recruitment (ILO, *General Survey on Discrimination, 1996, ¶196*).

• For persons holding principles that conflict with the “divine laws” or principles of the state, prohibition from holding posts in the public administration or public sector, from working in the media, from working in the field of education, or from working in any other post that might influence public opinion (ILO, *General Survey on Discrimination, 1996, ¶194, 199-200*).

Making access to employment contingent on specific political beliefs and the fulfillment of certain political requirements (ILO, *General Survey on Discrimination, 1988, ¶60*).

**Warning Signs:**

⚠️ Discrimination on the basis of political opinion, which often occurs following the declaration of a state of emergency (ILO, *General Survey on Discrimination 1996, ¶195*).

⚠️ Absence of nondiscrimination legislation regarding certain categories (e.g., political opinion, social origin) on the grounds that these types of discrimination are not encountered in practice (ILO, *General Survey on Discrimination, 1988, ¶32, 58*).

**8. Workers shall receive equal opportunity and treatment with respect to access to vocational guidance, placement services, and training, including the elimination of illiteracy* (ILO, *General Survey on Discrimination, 1988, ¶76; ILO, *General Survey on Discrimination, 1996, ¶71*).**

As the ILO observed, “Discriminatory practices in the matter of access to training are subsequently perpetuated and aggravated in employment and in occupations. In so far as training is a kind of economic investment with a view to future productivity, the fact that certain persons are debarred from training on discriminatory grounds means that society as a whole is denied an important growth potential” (ILO, *General Survey on Discrimination, 1988, ¶77*).

**Worker Rights Violations:**

⚠️ The use of standards of general education that differentiate between men and women (ILO, *General Survey on Discrimination, 1988, ¶78*).

⚠️ Deliberate rejection of a candidate’s application to be admitted as a pupil, student, or trainee, or otherwise neutral admission requirements that lead to the exclusion of candidates on grounds of race, color, sex, religion, political opinion, national extraction, or social origin (ILO, *General Survey on Discrimination, 1988, ¶81, 83*). Examples include:

• Prohibiting registration in educational institutions for persons of certain religious faiths or political opinions.

• Forbidding students to be members of or to join associations, political parties, or trade unions.

• Imposing political or ideological conditions as qualifying conditions for the receipt of an educational degree.

• Providing access to apprenticeships to only one sex.
A guidance test that emphasizes social, cultural, or linguistic characteristics that are not related to job qualifications (ILO, *General Survey on Discrimination*, 1996, ¶77).

**Exception:**

Vocational guidance and training may be provided to particular ethnic groups or minorities in accordance with other ILO Conventions or recommendations, e.g., targeted vocational training to indigenous and tribal peoples in accordance with the Indigenous and Tribal Peoples Convention, 1989 (No. 169). However, the ILO stresses that such guidance and training should not be confined to traditional activities of these groups, thereby perpetuating occupational segregation (ILO, *General Survey on Discrimination*, 1996, ¶76).

9. **Workers shall have equal opportunity and treatment with respect to access to all occupations and employment.** The ILO defines “occupation” as the trade, profession, or type of work performed by the individual, irrespective of the branch of economic activity to which he/she is attached or of his/her industrial status. “Persons in employment” includes all persons above a specified age who are “at work.” The phrase “at work” includes not only persons whose status is that of employee but also those whose status is “worker on own account,” “employer,” or “unpaid family worker.” All employment and occupation—public, private, or otherwise—is included in the convention’s scope. This covers all workers, including independent, nonwage, and public service work, as well as work for employer and worker organizations. Collective agreements should be free of discriminatory provisions (ILO, *General Survey on Discrimination*, 1988, ¶76, 88, 158; ILO, *General Survey on Discrimination*, 1996, ¶78, 81).

**Worker Rights Violations:**

- Restrictions on access to certain state posts applying to persons of a particular race, color, sex, religion, political opinion, national extraction or social origin (ILO, *General Survey on Discrimination*, 1988, ¶96).

- The use of subjective recruitment criteria in the choice of a candidate for a job (ILO, *General Survey on Discrimination*, 1988, ¶83). Examples include:
  - Using weight, height, or physical strength as a criterion for a job if it is not necessary to perform that job.
  - Making inquiries into a worker’s political, religious, or trade union opinions in reference to a job application.
  - Giving priority to men in recruitment and hiring.

- Excluding workers in certain sectors from nondiscrimination legislation (ILO, *General Survey on Discrimination*, 1988, ¶87). Examples include:
  - Excluding workers in the public sector from nondiscrimination legislation.
  - Excluding workers in enterprises that employ less than a specified number of wage earners from nondiscrimination legislation.

- Discrimination in access to land, credit, and/or goods and services that are necessary for conducting a certain occupation (ILO, *General Survey on Discrimination*, 1988, ¶90). Examples include:
• An inheritance system that excludes unmarried women without dependents.

• Restricting a woman’s right to enter into contracts by requiring the permission of her husband or father.

Educational or other conditions required for a certain occupation (e.g., hairdresser, lawyer, midwife) that, while applied uniformly, nevertheless result in a discriminatory effect toward persons of a different race, color, sex, religion, political opinion, national extraction, or social origin. This violation, which is a case of indirect discrimination, applies especially to the recognition of professional qualifications acquired in foreign countries (ILO, General Survey on Discrimination, 1988, ¶92).

Discrimination in the provision of public- or private-sector placement services (ILO, General Survey on Discrimination, 1988, ¶93).

Discrimination in admission, retention of membership, or participation in the affairs of employer and worker organizations (ILO, General Survey on Discrimination, 1988, ¶106).

Denying unsuccessful candidates access to written information about the qualifications of the person who received the position, such as training or experience (ILO, General Survey on Discrimination, 1996, ¶82).

Denying the right to appeal a decision refusing or rejecting a candidate for public employment. Typically, areas of abuse include national extraction, social origin, religion, or political opinion (ILO, General Survey on Discrimination, 1996, ¶98).

10. Workers shall have equal opportunity and treatment with respect to terms and conditions of employment. This principle includes advancement relating to individual character, experience, ability, and diligence; security of tenure, primarily including protection against unlawful dismissal; remuneration for work of equal value; and conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and health measures, social security measures, and welfare facilities and benefits. The principles of equality of opportunity and treatment should be respected in collective negotiations and industrial relations (ILO, General Survey on Discrimination, 1988, ¶76, 107, 158).

Worker Rights Violations:

Termination of a worker on the basis of race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin, or any other grounds that are not connected with the capacity or conduct of the worker or based on the operational requirements of the work (ILO, General Survey on Discrimination, 1996, ¶107).

Dismissal of a person because that person has lodged a complaint with an appropriate body to enforce her/his rights in the matter of equality of treatment and opportunity or who is a party to such proceedings—e.g., a witness (ILO, General Survey on Discrimination, 1988, ¶115).

Indirect discrimination in layoffs. This violation applies when apparently neutral terms and conditions of layoff/dismissal lead to disproportionate layoffs/dismissals among a particular category of persons—e.g., laying off women workers first (ILO, General Survey on Discrimination, 1988, ¶113).

The use of forced labor as a means of political coercion, as a punishment for holding or expressing certain political views, or as a means of racial, social, national, or religious discrimination (ILO, General Survey on Discrimination, 1996, ¶87).
The practice of serfdom, debt bondage, or other types of compulsory service with respect to indigenous and tribal peoples (even if these practices are formally abolished by law) (ILO, *General Survey on Discrimination, 1996, ¶88*).

Unequal remuneration for either the same work or work of equal value on the basis of race, color, sex, religion, political opinion, national extraction, or social origin (ILO, *General Survey on Discrimination, 1996, ¶111*).

Discriminatory treatment regarding benefits or conditions of entitlement to social security, the application of compulsory or voluntary statutory or occupational schemes, contributions, or the calculation of benefits (ILO, *General Survey on Discrimination, 1996, ¶112*). Examples include (ILO, *General Survey on Discrimination, 1996, ¶178, 181*):

- Restricting the right to take parental leave to women only.
- Exclusion of female public officers from public officer insurance benefits.

A system of advancement that perpetuates discrimination in promotions (ILO, *General Survey on Discrimination, 1996, ¶105*). Examples include:

- An emphasis on unbroken service in selection for advancement or promotion (this would favor men over women, since women often take maternity leave).
- A method of calculating length of service that does not take into account interruptions of working life in connection with pregnancy or motherhood.

These indirect forms of discrimination can be remedied by stating, for example, that absences from work due to pregnancy or confinement or related illnesses shall be treated as periods of employment for advancement purposes (ILO, *General Survey on Discrimination, 1988, ¶105*).

**Warning Sign:**

A significantly lower percentage of persons of a particular race, color, sex, religion, political opinion, national extraction, or social origin in supervisory positions in a certain sector than the percentage of that group in the sector as a whole (ILO, *General Survey on Discrimination, 1996, ¶110*).

**11. Employers shall take measures to protect workers’ privacy.** Personal details should not be used to establish distinctions, exclusions or preferences based on race, color, sex, religion, political opinion, national extraction, or social origin (ILO, *General Survey on Discrimination, 1996, ¶114*).

**Worker Rights Violations:**

- Collection of details concerning the sex life; the trade union membership or activities; or the political, religious, or other opinions of workers (ILO, *General Survey on Discrimination, 1996, ¶114*).
- Failure to keep medical details confidential (ILO, *General Survey on Discrimination, 1996, ¶114*).
- Requiring that employees or job applicants submit to medical tests unrelated to job requirements (ILO, *General Survey on Discrimination, 1996, ¶114*).

**12 Part-time workers shall be guaranteed the same protection from discrimination that is accorded to comparable full-time workers** (ILO, *General Survey on Discrimination, 1996, ¶115*).
13. Women and men should be equally protected from risks inherent in their employment and occupation, particularly in light of advances in scientific and technological knowledge. It is the duty of the enterprise to make every reasonable effort to create a safe working environment and safe working conditions for both men and women workers (ILO, *General Survey on Discrimination, 1996*, ¶116).

14. Governments should include in their national legislation specific provisions guaranteeing equality without discrimination in the workplace. These provisions should include all occupations and vocations. Measures to promote the participation of certain groups or of women are not sufficient; nondiscrimination legislation should be all-inclusive (ILO, *General Survey on Discrimination, 1988*, ¶165; ILO, *General Survey on Discrimination, 1996*, ¶203, 204).

Legislative provisions are only one aspect of the implementation of Convention No. 111. The Convention also implies that affirmative action measures should be adopted to correct de facto inequalities (ILO, *General Survey on Discrimination, 1988*, ¶161).

**Worker Rights Violations:**

- The exclusion of certain occupations—e.g., domestic workers—from antidiscrimination legislation (ILO, *General Survey on Discrimination, 1996*, ¶211, 212).

- The absence of national antidiscrimination legislation—e.g., a national constitution that provides that international agreements and treaties (such as ILO Conventions) prevail over national law but does not include its own antidiscrimination legislation (ILO, *General Survey on Discrimination, 1996*, ¶211, 212).

**Other Grounds for Discrimination**

In addition to the seven grounds for discrimination explicitly listed in Convention No. 111 (race, color, sex, religion, political opinion, national extraction, and social origin), discrimination on grounds such as age, migration status, nationality, trade union membership, disability, and family responsibilities are prohibited by other ILO instruments. The relevant standards are:

**Age**

- Maternity Protection Convention, 1919 (No. 3), Article 2
- Night Work (Women) Convention, 1919 (No. 4), Article 3
- Night Work (Women) Convention (Revised), 1934 (No. 41), Article 3
- Night Work (Women) Convention (Revised), 1948 (No. 89) (and Protocol, 1990), Article 3
- Migration for Employment Convention (Revised), 1949 (No. 97), Article 6, ¶1(a)(i)
- Plantations Convention, 1958 (No. 110) (and Protocol, 1982), Article 46
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Article 6
- Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123), ¶9(2)
- Human Resources Development Recommendation, 1975 (No. 150), ¶ 50(b)(v)
• Older Workers Recommendation, 1980 (No. 162), ¶3

• Termination of Employment Recommendation, 1982 (No. 166), ¶5(a)

**Nationality**

• Maternity Protection Convention, 1919 (No. 3), Article 2

• Maternity Protection Convention (Revised), 1952 (No. 103), Article 2

• Plantations Convention, 1958 (No. 110) (and Protocol, 1982), Articles 2 and 46

• Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Article 6

• Seamen’s Welfare in Ports Recommendation, 1936 (No. 48), ¶3

• Vocational Training (Agriculture) Recommendation, 1956 (No. 101), ¶3(1)

• Indigenous and Tribal Populations Recommendation, 1957 (No. 104), ¶35(b)

• Plantations Recommendation, 1958 (No. 110), ¶2

**Migration Status**

**Current instruments:**

• Migration for Employment Convention (Revised), 1949 (No. 97)

• Migration for Employment Recommendation (Revised), 1949 (No. 86)

• Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

• Migrant Workers Recommendation, 1975 (No. 151)

**Instrument with interim status:**

• Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100)

**Request for information:**

• Migration Statistics Recommendation, 1922 (No. 19)

**Shelved convention:**

• Inspection of Emigrants Convention, 1926 (No. 21)

**Withdrawn instruments:**

• Migration for Employment Convention, 1939 (No. 66)

• Reciprocity of Treatment Recommendation, 1919 (No. 2)

• Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26)
Replaced Recommendations:

- Migration for Employment Recommendation, 1939 (No. 61)
- Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62)

Trade Union Membership

- Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), Article 18(1) and (2)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Article 2
- Plantations Convention, 1958 (No. 110) (and Protocol, 1982), Article 2
- Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Article 14(1) and (2)
- Social Policy in Dependent Territories Recommendation, 1944 (No. 70), Article 41(3)
- Plantations Recommendation, 1958 (No. 110), ¶2
- Workers’ Housing Recommendation, 1961 (No. 115), ¶25
- Trade union membership of migrant workers is referred to in Recommendation (No. 100), ¶38, and in the Migrant Workers Recommendation, 1975 (No. 151), ¶8(3)

Disability

- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Article 6
- Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), Paragraph 43(3)
- Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), ¶25 and 41

Family Responsibilities

- Workers with Family Responsibilities Convention, 1981 (No. 156)
- Workers with Family Responsibilities Recommendation, 1981 (No. 165)

Other International Instruments

In addition to instruments adopted by the ILO, other international human rights conventions adopted since Convention No. 111 have further expanded the protection offered in international law against discrimination. In particular, both the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights contain the following passage:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
On the regional level, the European Convention on Human Rights prohibits discrimination on the basis of “sex, race, colour language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Additional information on these and other ILO conventions is available on the ILO’s Web site, www.ilo.org. Once at the ILO’s homepage, go to the database of information on conventions and recommendations, which is called ILOLEX.

**Flexibility in Applying the Standards**

The ILO allows for some flexibility in the scope and coverage in standards on working conditions, taking into account differences in countries’ levels of economic development. Standards on working conditions also may permit countries to implement the standards progressively by allowing countries to accept part of a standard or to apply specified exceptions. Countries are expected to take steps over time to achieve the higher levels of each standard.

However, the ILO permits no flexibility in acceptance of the basic human rights principles in the core labor standards on freedom of association, the right to organize and bargain collectively, the prohibition of forced labor and child labor, and the absence of discrimination in employment.

**Acceptable Conditions of Work**  
**ILO Conventions No. 131, No. 1, No. 95, No. 14, No. 106, No. 132, and No. 155**

**Definition:** The standards for acceptable working conditions provide for the establishment and maintenance of mechanisms, adapted to national conditions, that provide for minimum working standards (e.g., wages that provide a decent living for workers and their families and working hours that do not exceed 48 hours per week with a full 24-hour rest day, a specified annual paid holiday, and minimum conditions for the protection of the safety and health of workers) (Convention No. 1, Article 2; Convention No. 14, Article 2, ¶1; Convention No. 106, Article 6, ¶1; Convention No. 132, Article 3, ¶1; Convention No. 155, Article 16, ¶1-2; ILC, *General Survey on Minimum Wage Fixing of the Committee of Experts on the Application of Conventions and Recommendations*, 1992, Report III (Part 4B) (hereafter *General Survey on Minimum Wage*), ¶33 & 42). Working conditions are not part of the “core labor standards” included in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. However, standards on basic working conditions are included here because they are among the worker rights cited in some trade-related legislation such as Generalized System of Preferences. In addition, many of the more egregious violations in transitional countries, such as wage arrears, fall under standards on working conditions.

**General Principles and Common Violations**

1. **There should be a national statutory minimum wage. It should be set realistically, preferably as a result of an open, public or tripartite process.** (Convention No. 131, Article 4, ¶2-3; ILC, *General Survey on Minimum Wage*, ¶186-187 & 195-198). Criteria for determining the minimum wage should be as follows:
• Needs of workers and their families.
• General wage levels in the country.
• Cost of living.
• Social security benefits.
• Relative living standards of other social groups.

• Economic factors (e.g., requirements of economic development, productivity levels) (Convention No. 131, Article 3; ILO Recommendation No. 135, II, ¶3; ILC, General Survey on Minimum Wage, ¶274-281).

2. **Wages should be protected.** Wages should be paid in money (some nonmonetary or in-kind payment may be acceptable). Workers should be able to choose where and how they spend their wages (Convention No. 95, Article 3, ¶1, Article 4, ¶1, Article 6 and Article 7, ¶1; Convention No. 117, Article 11, ¶2).

**Worker Rights Violations:**

- Salary paid in company scrip instead of cash or check (*RCE, 1984*, p. 171).
- Payment in bars, retail shops or places of amusement (Employers have been known to operate such establishments, where workers may be tempted to spend most of their wages before they leave. International standards also protect workers from themselves) (Convention No. 95, Article 13, ¶2).
- Extralegal deductions of employers (for other than taxes, social security, etc.) (Convention No. 95, Article 8, ¶1).
- Nonpayment or late payment of wages:
  - No payment or partial payment (*RCE, 1993*, ¶248; *RCE, 1989*, ¶253).
  - Payment of less than minimum wage (*RCE, 1991*, ¶238-240).

3. **Workers are entitled to reasonable rest periods.** Working hours should not exceed 48 hours per week, with daily (or nightly) rest time, time to eat, and a weekly rest that includes a full 24-hour rest day. Workers also should have a specified annual paid holiday (Convention No. 1, Article 2; Convention No. 14, Article 2, ¶1; Convention No. 106, Article 6, ¶1; Convention No. 132, Article 3, ¶1).


Overtime should be remunerated at a higher rate than the rate for “normal” working hours (Convention No. 1, Article 6, ¶2; ILO, *Recommendation No. 116*, II, D, ¶19(1)).

Regulations should prohibit overtime from exceeding a certain number of hours in a given period (*RCE, 1990*, ¶50; *RCE, 1981*, ¶37).
Worker Rights Violation:


5. **Workers should have health and safety rights in the workplace.**

- Workers should have a complaint process for calling attention to hazardous conditions.
- Workers should have the right to remove themselves from situations that they believe to be hazardous (Convention No. 155, Article 13 and Article 19(f)).
- Working conditions should not be worse in EPZs than they are in the rest of the country (*RCE, 1993*, ¶58-61).
- All types of risk should be reduced to a minimum (Convention No. 155, Article 16, ¶1-2; ILO, *Recommendation No. 164*, IV, ¶10(a)).
- Regulations on work conditions designed as special protective measures for women (pregnancy and maternity) should be balanced with the principle of equal treatment (Protocol of 1990 to Convention No. 89; Convention No. 171; ILC, *General Survey on Night Work of Women in Industry of the Committee of Experts on the Application of Conventions and Recommendations, 2001*, Report III (Part 1B), ¶200-201).

6. **The government should set health and safety standards as part of an open, public, or tripartite process** (Convention No. 155, Article 4).

7. **There should be a legislatively mandated enforcement system for minimum wage, hours of work, and safety and health.** This includes hiring and training sufficient inspectors (Convention No. 81, Article 3, ¶1(a) & Article 10; Convention No. 131, Article 5; ILO, *Recommendation No. 135*, VI, ¶14(b); ILC, *General Survey on Minimum Wage*, ¶363).

Worker Rights Violations:

- Too few labor inspectors vis-à-vis the total number of enterprises.
- Untrained inspectors.
- A low number of penalties.
- A low number of reported violations.

8. **Inspectors should have the right to enter the workplace during working hours without advance notice** (Convention No. 81, Article 12, ¶1(a)).

9. **Inspectors should have access to workers and their representatives** (ILO, *Recommendation No. 81*, II, ¶5).
10. **Workers and unions should be protected against adverse action should they file a complaint about working conditions** (Convention No. 81, Article 15(c); Convention No. 158 Article 5(c); ILO, *Recommendation No. 164, IV, ¶12(2)(d) & 17; ILO, General Survey on Labour Inspection of the Committee of Experts on the Application of Conventions and Recommendations, 1985, Report III (Part 4B), ¶201-203).

11. **Inspectors should have the right to issue citations for violations** (Convention No. 81, Article 13).

12. **Penalties for violations should not be limited to warnings but should include fines and prison sentences.** The penalty’s objective is to act as a deterrent (Convention No. 18, Articles 17 & 18; Convention No. 131, Article 2, ¶1).

**Endnotes**


2. Convention No. 182 does not have “case history” as such, but the ILO has produced a series of what it calls “Rapid Assessments” on the worst forms of child labor in several countries. These examine such issues as children in bondage, child domestic workers, child soldiers, child trafficking, drug trafficking, hazardous work in commercial agriculture, fishing, garbage dumps, mining and the urban environment, sexual exploitation, and working street children. The countries included in the rapid assessment reports are Brazil, Jamaica, Nepal, Sri Lanka, Tanzania, Thailand, Laos, Burma, and Turkey. The reports are available at the ILO Web site—www.ilo.org—at the “Child Labor IPEC” heading, http://www.ilo.org/ipec/Informationresources/lang--en/index.htm.

3. The “red flag” and “yellow flag” designations were originally created by the U.S. Customs Service and published in December 2000 in the Customs Service’s *Forced Child Labor Advisory Manual* (no longer available online). The situations indicated by the flags were noted in the *Manual*, but they also reflect the observations of many worker rights activists.

These warning signs are not distilled directly from ILO case history, but they are included here because they constitute good indicators of situations that may violate worker rights, particularly rights relating to child labor. Direct documentary evidence of forced child labor is rarely available. Children may be forced to serve as indentured workers for long periods of time following no more than a cash payment from an employer to a relative of the child or a middleman. Accordingly, monitors must look for warning signs to ascertain whether forced child labor may be occurring at a worksite.

4. For example, the Maternity Protection Convention, 1919 (No. 3). For more detail and examples, see ILO, *General Survey on Discrimination, 1988*, ¶140-5.

5. For more detail and examples, see ILO, *General Survey on Discrimination, 1988*, ¶146-56.


Worker Rights Violation Report Form

Date (today’s date): ________________ Country (where violation took place): ________________

Name and title of information:________________________________________________________

Source of information (personal interview, newspaper or television report, information rights organization, union bulletin, etc.): __________________________________________

**TYPE OF VIOLATION**

☐ Freedom of Association

☐ Right to Organize and Bargain Collectively

☐ Prohibition of Forced Labor

☐ Minimum Age/Employment (Child Labor)

☐ Acceptable Conditions of Work (Minimum Wage, Occupational Safety & Health)

☐ Prohibition of Discrimination

This is a violation of: ☐ law ☐ practice

Location of violation (must include name of city, department, cooperative, etc.):

__________________________________________________________________________

__________________________________________________________________________

Date of violation: ________________

Victim’s name (s) (individuals, male or female, unions): ______________________________

Union representing or advocating for victim: ______________________________________

__________________________________________________________________________

Is the victim a member of the union? ☐ yes ☐ no

Perpetrators of the violation:

☐ Individual ☐ Government ☐ Company ☐ Police/Army

☐ Other
# COMPANY PROFILE

Company name: 

Address: 

Country: 

Located in a free trade zone?  □ yes  □ no

Phone/Fax: 

Products manufactured 

Brands or product labels (if applicable) 

Service provided 

Total number of workers at facility/location where violation took place: 

Company ownership:  □ Domestic

□ Foreign  Nationality  

□ Joint  Nationality  

<table>
<thead>
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<th>Name</th>
<th>Location</th>
<th>Country</th>
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<td>Subsidiary companies:</td>
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<td>Contractor companies:</td>
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<tr>
<td>Other related companies:</td>
<td></td>
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</tbody>
</table>

The Facts (Give a detailed description of the incident. Include names, dates, locations.)

Describe what action has already been taken by the union: 

Corroboration (alternative sources of information): 

Corroboration: 

Appendix H
Are there other substandard conditions or violations of national labor law and international labor standards?

Please indicate where the complaint has already been lodged:

- Labor ministry
- Buyers
- Embassies
- International organizations

Which representatives of international organizations have already been contacted?

Update/Progress:

Additional documentation?
APPENDIX I

How to Use ILO Complaint Procedures

ILO complaints and decisions, as well as the recommendations derived from them, establish indisputable evidence within the international community that worker rights violations exist. They create a strong base for further pressure within international and domestic channels for promotion of worker rights.

Complaints have been used to:

- protect workers and their unions from discrimination, harassment, intimidation, violence, and other repression based on their exercise of freedom of association rights;
- offer support and guidance to countries undergoing democratic transitions;
- secure the release of trade unionists and, at times, employers or employers’ representatives, from detention or imprisonment; and
- promote and maintain the right of both employer and worker organizations to a fair and legal system of collective negotiations on terms and conditions of employment and other occupational issues.

Freedom of Association is generally understood in terms of the compliance of a country’s laws and practice with ILO core labor standards. Other areas for consideration include: conducting peaceful demonstrations; the right to strike; collection of membership dues; drafting of an organizational constitution and electing leadership; registration and deregistration of trade unions; and prevention of government and employer interference in the internal workings of trade unions.

More generally, the principles of freedom of association include civil liberties such as protection from arbitrary arrest for trade union activities and forcible confiscation of property or finances without impartial and open judicial orders, or otherwise without due process. Trade union leaders and members (or those meeting to form a trade union) are also protected from arrest and detention for their union activities, whether through unlawful means or through use of criminal or other legal codes enacted to disguise suppression of workers or a trade union.

Freedom of Association also involves the freedom to hold opinions without interference and to receive and impart information and ideas through any media across borders. Overly restrictive government licensing requirements or controls are in violation of Freedom of Association provisions. Trade unions should also be free to join national trade union centers, have international affiliations, and receive international solidarity assistance.

ILO Complaint Procedure

The most common complaints concern ILO Conventions No. 87 and No. 98 on Freedom of Association and the Right to Bargain Collectively. Within the ILO, the Director-General receives complaints and forwards them to the tripartite Committee on Freedom of Association (CFA), which meets three times a year: in the first quarter, during the June ILO conference, and in the final quarter. The committee is made
up of members representing government, employer organizations, and trade unions. It makes decisions on the basis of consensus.

The CFA’s mandate is to examine complaints alleging violations of Freedom of Association and collective bargaining, whether or not the country concerned has ratified Conventions No. 87, No. 98, or both. This jurisdiction stems from the fact that when a country becomes a member of the ILO, it accepts the fundamental principles embodied in the ILO Constitution and the Declaration of Philadelphia, including the principle of Freedom of Association. Once the committee receives the complaint, it forwards the complaint to the national government in question. The national government is expected to respond to the CFA within a reasonable period of time (approximately one year). If the national government does not respond, the CFA will issue an urgent appeal, but it will open debate and pass down conclusions and recommendations regardless of whether the government in question has responded or not. If specific companies are named in the complaint, they are also informed and they are given the opportunity to respond through their representatives (national-level employers’ association).

To come to a decision, the CFA evaluates the complaint and can rely on a body of casework contained in the CFA Digest. The combined digests cover the interpretation of Conventions No. 87 and No. 98 in various circumstances. In certain cases the CFA may refer a case to the ILO Committee of Experts (COE), a body of recognized labor law experts that conducts an annual review of labor law, including Freedom of Association. The procedure can take time. The heavy workload of the CFA, plus failure of national governments to adequately respond to complaints, can involve a process of many years. There is no direct enforcement mechanism for nonresponsiveness or nonimplementation of CFA recommendations; however, these findings carry the weight of international validation and moral authority.

Who Can File?

Complaints must come from organizations of employers, workers, or national governments. For a union to file a complaint, an organization must have “standing,” which at the ILO means that it must be a national-level trade union—either a trade union confederation or a sector-level union. Local and company-level unions must file through their national affiliates, a sector-level GUF, or an international labor confederation such as the ITUC. If a local union has no upward affiliations, it may file directly. NGOs may not file Freedom of Association complaints.

How to File an ILO Complaint

Complaints must be addressed directly to the Director-General of the ILO and must be filed by the president or general secretary of the filing union.

The complaint must be filed against an ILO member government for failing to respect the right of Freedom of Association, collective bargaining, or both. Relevant government ministries or executive bodies and/or companies should be named as well.

There is no filing deadline, though complaints should be timely, and there is no specific format for a complaint. Complaints must address current violations (within the last two years), state the issue in clear, direct language, and detail the specifics of the case, beginning with relevant background information or a
chronology leading up to the point of the issue at hand. An ILO complaint may be filed whether or not legal or court proceedings have been initiated or completed, but any judicial action concerning the case that has taken place should be recorded and summarized chronologically.

If the ILO and/or the CFA receive complaints that are vaguely worded or otherwise unclear, they will request more information from the filing union. To avoid delays, filing unions should consult with their national center, their national sector union, or their GUF affiliate for advice and suggestions. National-level unions may also forward a draft to the ITUC for editing suggestions.

When the CFA makes a decision, it will pass its conclusions and recommendations to the Governing Body of the ILO, which will adopt and forward a set of recommendations to the national government in question. The recommendations will directly address the administrative, legislative, or judicial remedies to be applied. Recommendations often request that countries change or adopt their domestic legislation to bring laws into conformity with ILO standards. Recommendations have also included more detailed requests, such as dropping charges against a trade unionist, release of workers from jail, reinstatement of workers, restoration of trade union property, and restoration of dues payments or other finances taken from a trade union.

**ILO Complaint Procedures for Non-Freedom of Association-Related Conventions**

Trade unions, employer groups, and ILO member state governments with standing may also submit complaints concerning the effective observance and enforcement of any convention that a member state has ratified.

The procedure for review of these complaints is somewhat similar to those related to Freedom of Association. The Governing Body of the ILO may decide to refer the complaint to the government in question and await a response. If an inadequate response or no response is returned to the ILO, or if the seriousness of the complaint warrants deeper inquiry, the Governing Body may appoint a Commission of Inquiry to consider and report on the complaint.

The Commission of Inquiry will engage in a transparent fact-finding process and keep interested parties informed of its activities. When its work is completed, the Commission will prepare a report that it will send to the government(s) in question and the ILO Governing Body. The government then has three months to accept the recommendations of the report and set out a plan for implementation. If it does not accept the report’s recommendations, it may refer the complaint to the International Court of Justice for a decision affirming, rejecting, or revising the findings and recommendations of the Commission of Inquiry.

**Other Procedures**

The ILO Committee of Experts conducts a yearly review of ILO conventions on different themes. Every other year, it reviews Freedom of Association. Unions may send informational letters to the COE through their government or directly to the ILO.
The ILO also conducts an annual review of countries that have not ratified some of the core labor standards. The procedure is part of the 1998 Declaration on Fundamental Principles and Rights at Work, and interested parties may submit useful information to the ILO. Every year the ILO prepares a Global Report on one of the four groups of core conventions.

**Writing a Complaint**

Complaints must be addressed to the Director-General of the ILO:

Mr. Juan Somavia  
Director-General  
International Labour Office  
4 Route des Morillons  
CH – 1211 Geneva  
Switzerland

The ILO has received and reviewed thousands of complaints. For examples of complaints and follow-up information sent to the Director-General and forwarded to the CFA, please see:


**For More Information**

(Geneva: ILO, 2000),  
Appendix Section III

Information Resources
Structure and Decision Making at the IFIs*

World Bank

The World Bank is divided into five institutions, which together comprise “The World Bank Group”:

- the International Bank for Reconstruction and Development (IBRD), which provides loans on a commercial basis (with interest) to countries;
- the International Development Association (IDA), which provides grants and interest-free loans to the world’s poorest countries (currently 81 countries);
- the International Finance Corporation (IFC), which provides loans to private-sector corporations;
- the Multilateral Investment Guarantee Agency (MIGA), which insures private companies’ investments in developing countries; and
- the International Centre for Settlement of Investment Disputes (ICSID), which mediates disputes between private investors and governments.

Board of Governors

The World Bank has a president, traditionally appointed by the United States. It is officially run by a board of governors, usually ministers of finance or economy from member countries. To understand how the Bank intervenes in domestic policy debates, it is important to understand the link between countries’ finance or economic ministries and the Bank. These ministries generally ally with the Bank to push specific, unpopular policy measures, so it’s often difficult to determine whether a finance minister is merely acting as a proponent of a Bank-supported policy, or whether the ministry is using the Bank to give credibility to its own unpopular policy. For example, finance ministers in several countries have pushed for labor market deregulation, arguing that “The World Bank requires us to do this,” even when labor market deregulation is not actually a loan condition. The finance minister’s mere suggestion that future World Bank aid to the country may depend on labor market deregulation is often sufficient to convince recalcitrant cabinet members to adopt the reforms, even if the public is strongly opposed.

Board of Directors

Because the Bank’s board of governors only meets once a year, a separate executive board of executive directors in Washington is responsible for the Bank’s regular operations. There are 24 executive directors (EDs) on the board. France, Germany, Japan, the United States, and the United Kingdom—the largest shareholders in the Bank—each appoint one ED. Russia, China, and Saudi Arabia also have their own EDs, while the remaining 179 member countries elect and share 16 directors. The EDs are responsible for shaping and endorsing the Bank’s policies. They are also charged with approving country-level programs and lending operations. Because the EDs are essentially the representatives of member countries, their positions on country-level policies or programs usually echo those of their country’s government.

As the ultimate decision makers on World Bank policy and loan agreements, the EDs can be strategic contacts for trade unions. Many unions have expressed concerns about World Bank policy to their respective EDs. The Global Unions Washington Office has also developed a practice of informing EDs of specific trade union concerns, sometimes with positive results. For example, when trade unions were excluded from consultation on some national PRSPs in the early years of the PRSP process (2000-2002), the ICFTU notified the EDs of this when the PRSPs were sent to the Bank’s board for endorsement. As a result, the unions were invited to subsequent consultations. In 2004-2005, trade union lobbying of the EDs contributed to the adoption of core labor standards requirements at the IFC in 2006.

Staff

The World Bank employs 10,000 people. About 70 percent of its staff works on project and policy development, research, and analysis at the Bank’s Washington headquarters, although the World Bank announced in 2008 that it would be decentralizing some of its work to field offices, particularly in Africa.

Outside of Washington, the Bank operates regional and country-level offices in more than 100 countries. Each country office is run by a country director, who makes decisions about Bank activities in the country with a relatively high degree of autonomy. World Bank country teams, made up of staff from both the Washington headquarters and the country office, develop and implement the programs and policies of the Country Assistance or Partnership Strategy.

In several countries, national trade union centres have found it useful to develop contacts with World Bank country offices. This can help trade unions obtain useful information about the Bank’s plans and future government policies beyond what is published in Bank documents, and gives unions a way to inform Bank staff of their concerns. Unions should insist, however, that their meetings with the Bank country offices include the country director, who is the main decision maker, and not just the designated “civil society specialist,” who may be very receptive but ultimately has little influence on country-level policies. World Bank country offices generally respond positively to requests to engage regularly with unions—but local attitudes can vary from an enthusiastic desire to cooperate to indifference.

International Monetary Fund

Leadership

The IMF has a board of governors and board of directors identical in structure and function to those of the World Bank, although they are comprised mostly of different representatives. Like the World Bank, the IMF has an appointed head, the managing director, who is traditionally appointed by European countries.

The link between finance and economic ministers and the World Bank described above applies just as equally, if not more, to the IMF. An important caveat to add is that the IMF provides policy recommendations to all member countries, industrialized and developing, whereas the Bank’s jurisdiction is limited to developing and transition countries. In some industrialized countries, finance ministers have used IMF policy recommendations to help push through changes to labor or social policy that other government ministers have resisted.

As with the World Bank, unions have lobbied the IMF EDs on labor issues, sometimes with successful results.
Staff

At the country level, the IMF has resident representatives working in most of its member countries. These representatives are less independent than the Bank’s country directors and are generally more responsible for overseeing and reporting on activities in a given country than for actually making decisions about the Fund’s policies there. The IMF country teams responsible for developing Article IV surveillance and specific lending agreements are based at the Fund’s Washington headquarters. At the time of this writing, the IMF staff comprised approximately 2,600 people; however the Fund announced plans in 2008 to reduce its staff by about 15 percent.
## APPENDIX K

### Directory of ILO Offices

#### Africa

**Algeria**
International Labor Organization  
Bureau de l’OIT à Alger pour les pays du Maghreb  
Maison des Nations Unies,  
Bureau de l’OIT à Alger  
9 A, rue Emile Payen  
Hydra, Alger, Algérie  
Tel: (319 21) 69 13 24 / 69 43 64  
Fax: (319 21) 48 25 85/ 48 25/86

**Cameroon**
International Labor Organization  
Bureau de l’OIT à Yaoundé  
Boîte postale No. 13  
Yaoundé  
Tel: (237) 20 50 44  
Fax: (237) 20 29 06  
E-mail: iloyao@camnet.cm

**Congo, Democratic Republic of the**
International Labor Organization  
Bureau de l’OIT à Kinshasa  
Building LOSONIA, Boulevard du 30 juin, en face de la Regideso  
B.P. 7248 Kinshasa - RDC  
Tel: (243) 817 006 113 / (243) 817 006 189  
Fax: (243) 999 957 875  
E-mail Web Master: kama@ilo.org

**Cote d’Ivoire**
International Labor Organization  
Bureau régional de l’OIT pour l’Afrique  
01 B.P. 3960  
Abidjan 01  
Tel: (225 20) 31 89 00  
Fax: (225 20) 21 28 80  
E-mail: abidjan@ilo.org

**Egypt**
International Labor Organization  
ILO Office in Cairo  
9 Dr. Taha Hussein Street  
Cairo Zamalek 11561  
Tel: (20 2) 341 01 23  
Fax: (20 2) 736 08 89

**Ethiopia**
International Labor Organization  
ILO Regional Office for Africa, Addis Ababa  
Africa Hall, 6th Floor,  
Menelik II Avenue  
Addis Ababa  
Ethiopia  
P.O.Box 2788, 2532  
Tel: (251 11) 544 4480, (251 11) 544 4481  
Fax: (251 11) 544-5573, (251 11) 551 3633  
Email: addisababa@ilo.org

**Kenya**
International Labor Organization  
Advisory Support, Information Services and Training  
UNOPS Building  
UN Lane Off UN Avenue  
PO Box 783  
Village Market 0062  
Nairobi  
Tel: (254 20) 762 1135  
Fax: (254 20) 762 3540  
E-mail: angelak@unops.org; kabiru@ilo.org

**Kuwait**
International Labor Organization  
ILO Country Representative Office in Kuwait  
Ibn Mesbath Street, P.O. Box 27966 Safat  
Kuwait 13140  
Tel: (965) 243 87 67  
Fax: (965) 240 09 31
Lebanon
International Labor Organization
ILO Regional Office for Arab States
Justinian Str., Aresco Center, 12th Floor
Beirut Kahtari
Tel: (961 1) 75 24 00
Fa: (961 1) 75 24 05
E-mail: beirut@ilo.org

Madagascar
International Labor Organization
Bureau de l’OIT à Antananarivo
Boîte postale 683
Antananarivo 101
Tel: (261 20) 222.66.15
Fax: (261 20) 258 94
E-mail: antananarivo@ilo.org

Nigeria
International Labor Organization
ILO Office in Lagos
P.O. Box 2331
Lagos
Tel: (234 1) 269 39 16
Fax: (234 1) 269 07 17

Senegal
International Labor Organization
Bureau de l’OIT à Dakar
22, rue El Amadou Assane N’doye, B.P. 414
Dakar
Tel: (221) 889 29 89
Fax: (221) 823 68 67/ 821 09 56
E-mail: dakar@ilo.org

South Africa
International Labor Organization
ILO Office in Pretoria
PO Box 40254
Pretoria 0007
Tel: (27 12) 341 2170
Fax: (27 12) 341 2159
E-mail: dak_admin@ilo.org

Tanzania
International Labor Organization
ILO Dar es Salaam Office for Tanzania, Uganda, Kenya and Somalia
40 Ali Hassan Mwinyi Rd., P.O. Box 9212
Dar es Salaam
Tel: (255 22) 266 60 24
Fax: (255 22) 266 60 25
E-mail: daressalaam@ilo.org

Zambia
International Labor Organization
ILO Office in Lusaka
Superannuation House, Ben Bella Road
P.O. Box 32181
Lusaka 10101
Tel: (260 1) 22 32 84
Fax: (260 1) 22 32 71
E-mail: lusaka@ilo.org

Zimbabwe
International Labor Organization
ILO/SRO-Harare
8 Arundel Office Park, Norfolk Road, Mt Pleasant
P.O. Box 210, Harare, Zimbabwe
Tel: (263 4) 369805 12 and 369822 3
Fax: (263 4) 369813 4 and 369999
Email: harare@ilo.org OR
registry@ilosroharare.org.zw

Americas

Argentina
International Labor Organization
Oficina de la OIT en Buenos Aires
Avenida Córdoba 950 Piso 13 y 14
Buenos Aires 1054
Tel: (54 11) 43 93 70 76
(54 11) 43 93 70 68
(54 11) 43 93 71 30
(54 11) 43 93 71 68
Fax: (54 11) 43 93 70 62
E-mail: buenosaires@ilo.org
Brazil
International Labor Organization
Escritorio da OIT no Brasil
SEN Lote 35
Brasília DF 70800-400
Tel: (55 61) 426 01 00
Fax: (55 61) 322 43 52
E-mail: brasilia@ilo.org

ILO Caribbean Office in Port-of-Spain
Tel: (1 868) 628 14 53/54/55/56
(1 868) 622 02 92
(1 868) 628 73 04
(1 868) 622 43 12
Fax: (1 868) 628 24 33
E-mail: portofspain@ilo.org

Chile
International Labor Organization
Equipo Técnico Multidisciplinario, OIT
Luis Carrera 1131, Vitacura
Santiago
Tel: (56 2) 756 53 00
Fax: (56 2) 756 53 53
E-mail: etm@oitchile.cl

Dominican Republic
Oficina de la OIT para América Central, Panamá y República Dominicana
Ofiplaza del este, Edificio B-3o piso,Apartado Postal 1070
San Jose Sabanilla
Tel: (506) 253 7667
Fax: (506) 224 2678
E-mail: sanjose@ilo.org

Mexico
International Labor Organization
Oficina de la OIT en la Ciudad de Mexico
Darwin No .31, Colonia Anzures
Mexico 11590
Tel: (52 5) 50 32 24
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E-mail: mexico@ilo.org

Peru
International Labor Organization
Oficina regional de la OIT para America Latina y el Caribe
Las Flores 275 San Isidro
Apartado Postal 14-124
Lima
Peru
Tel: (511) 6150300
Fax: (511) 421 5292: Registry
(511) 421 5286: MDT
E-mail: lima@ilo.org

Trinidad & Tobago
International Labor Organization
11, St Clair Avenue, P.O. Box 1201
Port-of-Spain
Tel: (1 868) 628 14 53
Fax: (1 868) 628 24 33
E-mail: ilocarib@ilocarib.org.tt

United States
International Labor Organization
ILO Branch Office in Washington, DC
1828 L Street N.W. Suite 600
Washington DC 20036
Tel: (1 202) 653 76 52
Fax: (1 202) 653 76 87
E-mail: washington@ilo.org

Uruguay
International Labor Organization
CINTERFOR
Av. Uruguay 1238, Casilla de Correo
1761 Montevideo
Tel: (598 2) 902 05 57
Fax: (598 2) 902 13 05
E-mail: montevideo@ilo.org
Asia

China
International Labor Organization
ILO Office in Beijing
1-11-2 Tayuan Diplomatic Office Building, 14 Liang Ma He
Nan Lu, Chaoyang District
Beijing 100600
Tel: (86 10) 6532 50 91
Fax: (86 10) 6532 14 20
E-mail: beijing@ilobj.org.cn

Fiji
International Labor Organization
ILO Office in Suva
FNPF Place, 8th Floor, P.O. Box 14500
Suva
Tel: (679) 31 38 66
Fax: (679) 30 02 48
E-mail: suva@ilo.org

India
International Labor Organization
ILO Area Office in New Delhi
Theatre Court (3rd fl), India Habitat Centre, Lodi Road
New Delhi 110 003
Tel: (91 11) 460 21 01
Fax: (91 11) 460 21 11
E-mail: delhi@ilodel.org.in

Indonesia
International Labor Organization
ILO Office in Jakarta
UN Building, 5th Floor, 14, Jl. M.H. Thamrin, P.O.
Box 1075
Jakarta 10010
Tel: (62 21) 314 13 08
Fax: (62 21) 310 07 66
E-mail: bodi@ilojkt.or.id

Japan
International Labor Organization
ILO Branch Office in Tokyo
The United Nations Building, 8th floor,
Headquarters Building 53-70
Jingumae 5-chome, Shibuya-ku
Tokyo 150-0001
Tel: (81 3) 54 67 27 02
Fax: (81 3) 54 67 27 00

Nepal
International Labor Organization
ILO Activities Office in Kathmandu
Sanepa, Ring Road, P.O.Box 8971
Kathmandu
Tel: (977 1) 52 85 14
Fax: (977 1) 53 13 32
E-mail: kathmandu@ilo.org

Pakistan
International Labor Organization
ILO Office in Islamabad
ILO Building, G 5/2 (Near State Bank of Pakistan)
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Islamabad
Tel: (92 51) 27 64 568
Fax: (92 51) 227 91 812
E-mail: islamabad@ilo.org

Philippines
International Labor Organization
ILO Office in Manila
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Metro Manila
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Fax: (63 2) 812 61 43
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International Labor Organization
ILO Office in Colombo
202-204, Bouddhalka Mawatha, P.O. Box 1505
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Fax: (94 1) 50 08 65
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Thailand
International Labor Organization
ILO Regional Office for Asia and the Pacific
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Tel: (66 2) 288 12 34
Fax: (66 2) 280 17 35
E-mail: chanitda@ilo.org

Europe

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International Labor Organization
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40 Rue Aimé Smekens
Brussels 1030
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Fax: (32 2) 735 48 25
E-mail: brussels@ilo-brussels.eunet.be

France
International Labor Organization
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Paris Cedex 15 75732
Tel: (33 1) 45 68 32 50
Fax: (33 1) 45 67 20 04
E-mail: paris@ilo.org

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International Labor Organization
ILO Branch Office in Bonn
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Bonn 53173
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Fax: (49 228) 35 21 86
E-mail: bonn@ilo.org

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ILO Branch Office in London
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E-mail: ipu@ilo-london.org.uk

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International Labor Organization
ILO Office in Budapest
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International Labor Organization
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Fax: (39 06) 67 92 197, 62 93 069
E-mail: rome@ilo.org

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International Labor Organization
ILO Regional Adviser
United Nations Office, c/o KIMEP
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Almaty 480100
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Fax: (254 2) 56 62 34

Poland
International Labor Organization
ILO National Correspondent in Warsaw
1/3 Nowogrodzka Str., Room 616
Warsaw 00-513
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Fax: (48 22) 661 06 50
E-mail: ilowarsaw@mpips.gov.pl
Romania
International Labor Organization
Office in Romania
Str. Ministerului nr. 1-3, scara D, etaj 5, camera 574, sector 1
Bucharest
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Fax: (40 1) 312 52 72

Russia
International Labor Organization
ILO Branch Office in Moscow
Petrovka 15, Apt. 23
Moscow 107 031
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International Labor Organization
ILO Headquarters
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Geneva 22 CH-1211
Tel: (41 22) 799 6111
Fax: (41 22) 798 8685
E-mail: ilo@ilo.org

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International Labor Organization
ILO Office in Ankara
P.K. 407, 06043 Ulus
Ankara
Tel: (90 312) 468 79 22
Fax: (90 312) 427 38 16
E-mail: ilo-o@servis2.net.tr
APPENDIX L

Directory of ITUC Offices

Africa

Nairobi
The African Regional Organisation of the International Trade Union Confederation (ITUC-AFRICA)
Kenya Re Towers – 4th Floor
Upper Hill
Off Ragati Road
P.O.B. 67273
Nairobi
Kenya
Tel: (254 20) 244336
Fax: (254 20) 215072
E-mail: info@ituc-africa.org
www.ituc-africa.org

São Paulo
Organización Regional Interamericana de Trabajadores
Secretario General
Rua Formosa, 367 4º andar - Centro
CEP 01049-000
São Paulo
Brazil
Tel: (55 11) 210 40750
Fax: (55 11) 210 40751
www.cioslorit.org

Americas

New York
ITUC United Nations Office (ITUC-UN)
211 East 43rd street, Suite 710
New York, NY 10017
United States
Tel: (1 212) 370 0180
Fax: (1 212) 370 0188
E-mail: unoffice@ituc-csi.org

Washington
ITUC/Global Unions - Washington Office (ITUC/GU WO)
888 16th St. NW
Washington, DC 20006
United States
Tel: (1 202) 974 8120
Fax: (1 202) 974 8122
E-mail: washingtonoffice@ituc-csi.org

Middle East

Amman
ITUC Amman Office (ITUC-JOR)
P.O.B. 925 875
Amman 11190
Jordan
Tel: (962 6) 560 31 81
Fax: (962 6) 560 31 85
E-mail: ammanoffice@ituc-csi.org

Asia and the Pacific

Singapore
ITUC Regional Organisation for Asia-Pacific (ITUC-AP)
9th Floor, NTUC Centre
One Marina Boulevard
Singapore 018989
Singapore
Tel: (65) 63273590
Fax: (65) 63273576
E-mail: gs@ituc-ap.org
www.ituc-ap.org
Hong Kong
ITUC/GUF/HKCTU/HKTUC Hong Kong Liaison Office (IHLO) (IHLO)
12A, Lai Kee Mansions
523 Nathan Road
Kowloon
Hong Kong
People’s Republic of China
Tel: (852) 35422614
Fax: (852) 35421144
E-mail: ihlo@hkctu.org.hk
www.ihlo.org

Europe

Brussels
International Trade Union Confederation (ITUC)
Boulevard du Roi Albert II, 5 B 1
B - 1210 Brussels
Belgium
Tel: (32 2) 2240211
Fax: (32 2) 2015815
www.ituc-csi.org

Geneva
ITUC Geneva Office (ITUC-GO)
Avenue Blanc 46
CH - 1202 Geneva
Switzerland
Tel: (41 22) 7384202
Fax: (41 22) 7381082
E-mail: genevaoffice@ituc-csi.org
www.ituc-csi.org

London
ITUC Permanent Representative to the International Maritime Organization c/o ITF
49-60 Borough Road
London SE1 1DR
Great Britain
Tel: (44 20) 74 03 27 33
Fax: (44 20) 73 57 78 71
www.ituc-csi.org

Moscow
ITUC Office for the N.I.S. (ITUC-MOS)
Leninsky Prospect 42, Office 2139
RUS -117119 Moscow
Russia
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Fax: (7 495) 9387304
E-mail: ituc.mos@gmail.com
moscowoffice@ituc-csi.org

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ITUC Permanent Representative to the FAO c/o UIL
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Italy
Tel: (39 06) 47531

Sarajevo
ITUC South-East European Office (ITUC-SEEEO)
Topal Osman paše 26/IV
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Bosnia and Herzegovina
Tel: (387) 33715305
Fax: (387) 33664676
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www.ituc-csi.org

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ITUC CEE & NIS Women’s network Regional c/o UATUC
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10.000 Zagreb, Croatia
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Fax: (385) 1 46 55 021
www.ituc-csi.org
Vilnius
ITUC-PERC Regional Office (ITUC-CEE)
Jasinskio 9
LT - 01111 Vilnius
Republic of Lithuania
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Fax: (370) 2 22478
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APPENDIX M

Directory of Global Union Federation Offices

Building and Wood Workers' International (BWI)
www.bwint.org

Africa and the Middle East

South Africa Regional Office
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2nd Floor Braamfontein Centre
P.O. Box 30772
Braamfontein 2017
South Africa
Tel: (27 11) 339 4417 9
Fax: (27 11) 339 3910

West Africa Education Office
Bureau d’éducation ouvrière de la FITBB
600, Avenue Kwame Nkrumah
2ème étage, Immeuble CNTB
01 Boîte Postale 1519
Ouagadougou 01 Burkina Faso
Tel: (226) 50 30 3253
Fax: (226) 70 25 3016

Project Office, Kenya
c/o Elangata Wus Ecosystem Management Programme
Herbarium Building, National Museums of Kenya
P.O. Box 40658
Nairobi, Kenya
Tel: (254) 722 72 66 90, (254) 20 375 13 19
Fax: (254) 20 375 13 19

Project Office
Colombia Center, Bloc B, 4th Floor
Ahmed Takieddine Street
Mazraa, Beirut Lebanon 2048-1305
Tel: (961) 1 70 07 57
Fax: (961) 1 70 07 57

Zimbabwe Regional Office
15 Mold Crescent, Avondale, P.O. Box A1300
Harare, Zimbabwe
Tel: (263) 479 6400
Fax: (263) 473 5146

Americas

Latin America Regional Office
Edificio Century Tower,
1º piso, oficina D-18
partado postal 0816-00769
Panamá, Republica de Panamá
Panama 5 Panama
Tel: (507) 260 23 92/36 81
Fax: (507) 260 63 54

Asia

Pacific Sub-Regional Office
148-152 Miller Street,
West Melbourne,
Victoria, 3053, Australia
Tel: (61) 3 9247 9200
Fax: (61) 3 9274 9284

South Asia Sub-Regional & Projects Office
A-364, 1st Floor, Defence Colony
New Delhi 110 024 India
Tel: (91 11) 24 332295
Fax: (91 11) 24 331811

East Asia Sub-Regional Office
c/o KENSETSU-RENGO Yuai-Kaikan 20-12, 2-chome Shib Minato-ku
Tokyo 105-0614, Japan
Tel: (81 3) 34 55 46 19
Fax: (81 3) 34 53 05 82
Asia and Pacific Regional Office
N 7, 1st Fl, USJ 10/1G
Selangor Daral Ehsan
4762 Subang Jaya, Malaysia
Tel: (603) 5638 33 67
Fax: (603) 5638 77 21

Philippine Affiliated Program Office
6A-Fil Garcia Tower, 140 Kalayaan Avenue
Quezon City, Philippines
Tel: (632) 924 24 64
Fax: (632) 924 23 98

Project Office, South Korea
c/o KFCITU
A-soo Bld, 2nd Floor
700-4 Daerim 1-dong
Youngdeungpo-gu-Seoul, South Korea
Tel: (82) 2 843 14 32
Fax: (82) 2 843 14 36

Europe

BWI Balkans Project Office
Uzundjovska str. no. 12
Sofia 1000 Bulgaria
Tel: (359 2) 986 32 56
Fax: (359 2) 986 32 56

BWI Headquarters
54, route des Acacias, P.O.Box 1412
Carouge GE CH-1227 Switzerland
Tel: (41 22) 827 37 77
Fax: (41 22) 827 37 70

Education International (EI)
www.ei-ie.org

Africa

Education International
B.P. 14058
36 Boulevard du RPT
Lome Togo
Tel: (228) 223 1270
Fax: (228) 221 2848
E-mail: eirafoffice@ei-ie.org

Americas

Internacional de la Educación
Oficina Regional para América Latina
De Casa Matute Gómez
Edificio Tenerife
Oficina No. 2
San Jose Costa Rica
Tel: (506) 223 77 97
Fax: (506) 222 08 18
E-mail: america.latina@ei-ie-al.org

North America - Caribbean
PO Box BB16
Babonneau St. Lucia
Tel: (1 758) 450 5247
Fax: (1 758) 450 6748

Asia

Asia-Pacific Regional Office
EI-Malaysia
53-B Jalan Telawi Tiga Dua Bangsar Baru
Kuala Lumpur 59100 Malaysia
Tel: (603) 284 2140
Fax: (603) 284 7395

Europe—Headquarters

Education International Headquarters
5, bd du Roi Albert II (8th fl)
Brussels 1210 Belgium
Tel: (32 2) 224 06 11
Fax: (32 2) 224 06 06
E-mail: headoffice@ei-ie.org
International Federation of Chemical Energy, Mine & General Workers’ Unions (ICEM)
www.icem.org

Americas
ICEM Regional Office for
Latin America and the Caribbean
Rua Visconde de Inhauma 134, 7-andar, sala 715
Centro Rio de Janeiro CP 20094-900 Brazil
Tel: (55 21) 518 5059
Fax: (55 21) 218 5059
E-mail: icembr@uol.com.br

Asia
ICEM Regional Office for Asia/Pacific
5th fl Baek Suk Bldg. 432-3 Shindang-2 Dong
Seoul Joong-ku Korea
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Fax: (82) 22 234 1886
E-mail: icem@chollian.net

Europe
ICEM Headquarters
54 bis route des Acacias
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Fax: (41 22) 304 1841
E-mail: info@icem.org

ICEM Regional Office for Eastern Europe, Central Asia, and Trans-Caucasus
Avtozavodskaya 6-9a
Moscow 109280 Russia
Tel: (7 095) 290 4517
Fax: (7 095) 290 4517

International Federation of Journalists (IFJ)
www.ifj.org

Africa
IFJ Africa Regional Office
3rd Floor, VDN lot N° 4 & 6
Sicap Sacré Cour III
BP 21722 Dakar, Senegal
Tel: (221 33) 867 95 86/87
Fax: (221 33) 84 202 69
E-mail: ifjafrique@ifjafrique.org
www.ifjafrique.org

Americas
The Latin America Regional Office
Casa Nacional de Periodistas Oficina 3,
Piso 2, Ala “B” Avenida Andres Bello,
entre Las Palmas y La Salle
Caracas, Venezuela
Tel: (58 212) 793 19 96
Fax: (58 212) 793 28 83
E-mail: sntp@reacciun.ve

Asia
The Asia-Pacific Regional Office
c/o Media, Entertainment and Arts Alliance
245 Chalmers St.
Redfern Sydney NSW 2016
Tel: (61 29) 333 0999
Fax: (61 29) 333 0933

The Tokyo Office
Itoh Building 203
Kudan Minami 4-2-12
Chiyoda-Ku, Tokyo, Japan
Tel: (81 3) 3239 4055
Fax: (813) 3239 4055
E-mail: ifj-tokyo@triton.ocn.ne.jp
Europe
European Regional Office
Rue de la Loi 155
B-1040 Brussels Belgium
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Fax: (32 2) 235 33 19
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IFJ Headquarters
IPC-Residence Palace, Bloc C
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International Metalworkers’ Federation (IMF)
www.imfmetal.org

Asia
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Yusuf Sarai Commercial Complex
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No. 10-3, Jalan PJS 8/4
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46150 Petaling Jaya
Selangor Darul Ehsan
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Africa Regional Office
156 Gerard Seketo
(corner Gwigwi Mrwebi)
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Johannesburg 2001 South Africa
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Braamfontein 2017 South Africa

Americas
Oficina de la FITIM para América Latina y el Caribe
Av. 18 de Julio N°1528
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Tel: (59 82) 408 0813
Fax: (59 82) 408 0813
E-mail: fifimalc@imfmetal.org
International Textile, Garment & Leather Workers’ Federation (ITGLWF)
www.itglwf.org

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Africa Regional Office
40 Commercial Road
Commercial City Building, 10th Floor
Durban Central 4001 South Africa
Tel: (27) 83 6789 540
Fax: (27) 31 201 03 23
E-mail: admin@itglwf-africa.co.za

Americas

ITGLWF Policy
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Fax: (1 250) 354 20 16

ITGLWF Maquila Organising Project
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300 metros Este
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Fax: (506) 224 74 42

FITTVCC/ORI
Av. Bolivar, Centro Comercial “Amelia”
2do. Piso, Oficina 201
Cagua, Estado Aragua, Venezuela
Tel: (58) 244 395 8813
Fax: (58) 244 395 8813

Asia

TWARO
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8-16, Kudan Minami 4-chome Chiyoda-ku
Tokyo 102 Japan
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Fax: (81 3) 32 88 37 28
E-mail: twaro@st.rim.or.jp

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47400 Petaling Jaya – Selangor DE
Malaysia
Tel: (60 3) 711 31 57
Fax: (60 3) 911 13 26

ITGLWF Project Management Committee
Suite 509 Medalla Bldg
Gen. McArthur Street cnr. EDSA
Cubao, Quezon City, Philippines
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Fax: (63 2) 911 13 26
E-mail: itgphil@info.com.ph

ER O
Rue J. Stevens 8
Brussels 1000 Belgium
Tel: (32 2) 511 54 77
Fax: (32 2) 511 81 54
E-mail: fse.thc@skynet.be

ITGLWF Education
45 - 51 George Street
Newcastle-upon-Tyne NE4 7JN
United Kingdom
Tel: (44 191) 273 2244
Fax: (44 191) 273 2255
International Transport Workers’ Federation (ITF)  
www.itfglobal.org

Africa and the Middle East

ITF African Francophone Office  
1036 Avenue Dimbdolobsom,  
3rd Floor ex immeuble CEAO,  
11 BP 832,  
Ougadougou, Burkina Faso  
Tel: (226) 50 301 979  
Fax: (226) 50 333 101  
E-mail: itfwak@fasonet.bf

ITF African Regional Office  
PO Box 66540  
00800, Westlands, Nairobi, Kenya  
Tel: (254) 20 444 8018  
Fax: (254) 20 444 8020

ITF Arab World Offices  
PO Box 925875  
Amman 11190 Jordan  
Tel: (962) 6 56 99 448  
Fax: (962) 6 56 99 448  
E-mail: arab-world@itf.org.uk  
www.itfglobal.org/itf-arab-world

Americas

ITF Inter-American Office  
Av. Rio Branco, 26-11 Andar  
CEP 200090-001 Centro  
Rio de Janeiro, Brazil  
Tel: (55 21) 2223 0410  
Fax: (55 21) 21 2283 0314  
E-mail: rio@itf.org.uk  
www.itf-americas.org

ITF Caribbean Sub-Regional Office  
198 Camp Street, South Cummingsburg  
Georgetown, Guyana  
Tel: (592 0) 227 5907  
Fax: (592 0) 225 0820

Asia

ITF Asia Sub-Regional Office  
12D College Lane  
New Delhi 110001 India  
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ITF Asia/Pacific Regional Office  
ITF Asia/Pacific Regional Secretary  
Tamachi Kotsu Bldg, 3-2-22 Shibaura, Minato-ku  
Tokyo 108-0023 Japan  
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E-mail: mail@itf.org.uk  
www.itf.org.uk

European Transport Workers’ Federation (ETF)  
Rue du Midi 165  
B-1000 Brussels, Belgium  
Tel: (33 2) 285 4660  
Fax: (32 2) 280 0017  
E-mail: etf@etf-europe.org  
www.etf-europe.org

ITF Moscow Office  
21 Sadovaya Spasskaya  
Office 729, 107217  
Moscow 107217 Russia  
Tel: (7 495) 782 0468  
Fax: (7 095) 782 0573  
E-mail: iturr@orc.ru  
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International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers’ Associations (IUF)
www.iuf.org

Africa

IUF Regional Secretariat for Africa
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Corner Jorrisen, 28 Melle Street
Johannesburg, South Africa
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Fax: (27 11) 3394 395
E-mail: info@iufafrica.org
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Braamfontein 2017
Johannesburg, South Africa

Americas

IUF Regional Secretariat for Caribbean
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Tel: (1 246) 426 3492/5
Fax: (1 246) 436 6496

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c/o Wilson Ferreira Aldunate 1229
Oficina 201
CP 11100
Montevideo, Uruguay
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Fax: (59) 82 903 09 05

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APPENDIX N

Recommendations for Improving Respect for Informal and Migrant Worker Rights

Most countries’ legal frameworks were not designed to address the rights of informal and migrant workers. Governments may need to reform many aspects of their laws and regulatory systems to afford core worker rights to these workers. This appendix, based on experiences of global unions and human and worker rights activists, highlights some concrete recommendations for governments to consider.

For Informal Workers

- Governments can examine laws that frame legal coverage in terms of “workers” rather than “employees” and take effective steps to ensure that labor laws apply to all workers regardless of formal employment relationships.

- National and local governments can take effective steps to create or strengthen social security protections for informal workers so that they can improve their standard of living and better balance the demands of work and family. These protections include childcare services, maternity benefits, healthcare coverage, access to affordable insurance and financial services, pension benefits, and access to education and vocational training.

- At the local government level, officials and city planners can recognize the existence and economic contributions of informal workers. Leaders can actively work to open avenues for participatory dialogue and collective bargaining around access to infrastructure, permits and fees, and eliminating harassment of informal workers by local authorities or employers.

For Migrant Workers

- Governments of sending and receiving countries should ratify and enforce the United Nations International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, all core ILO labor standards, and ILO Conventions No. 97 on Migration for Employment and No. 143 on Migrant Workers.¹

- All governments should recognize in policy and law that employment and worker rights should be extended to all workers equally, regardless of immigration status. They should also recognize that undocumented workers are entitled to the same worker rights as citizens and documented workers, including but not limited to back pay and wages owed, protection from discrimination, and health and safety protection on the job. Migrant workers should be extended basic workplace rights, as described in the ILO Multilateral Framework on Labor Migration, Non-binding Principles and Guidelines for a Rights-Based Approach to Labor Migration.²
• All workers, regardless of whether they are nationals or migrants, documented or undocumented, temporary or permanent, should be afforded freedom of association and the right to organize. Migrant workers should be able to join already-formed national unions or to form unions or associations of their own. Migrant workers’ right to collective bargaining should be implemented and enforced.

• All governments should work with the ILO at the tripartite level on the development of a new international convention to protect the rights of domestic workers. In March 2008 the ILO Governing Body voted to include “Decent Work for Domestic Workers” on the agenda of the 99th session (2010) of the International Labor Conference as a first step toward developing such a convention.

• Strategies to protect migrant worker rights should include organized labor. Trade unions and worker organizations should continue to organize migrant workers and make it a priority to advocate for the inclusion of all workers under labor laws and within trade unions.

• Debt bondage should be ended. In keeping with ILO Convention No. 181, all governments (countries of origin and countries of destination) should pass, implement, and enforce laws forbidding labor recruiters, employment agencies, employers, companies, and others from charging migrant workers fees intended to cover the costs of transportation, visas, medical care, housing, and food. All costs associated with labor recruitment should be borne by the employer. Strict penalties should be imposed on employers and labor recruiters who violate these laws.

• Migrant workers should be entitled to the same monetary remedies, including payment of withheld or back wages, for any labor law violations or other violations of law. Denying migrant workers a monetary remedy allows employers to exploit migrant workers without paying a penalty for that unlawful behavior.

• Governments from countries of origin should ensure safe migration for workers by requiring predeparture rights training for all workers traveling abroad. Governments of destination countries should provide such training for workers upon arrival.

• At the time workers apply or are interviewed for a visa, consulates of destination-country governments should provide information about the illegality of slavery and other forms of worker exploitation, the laws and regulations related to labor recruiters and employment agencies, labor laws and regulations, and the availability of services to assist them in case of problems.

• Governments should include labor inspectors in law enforcement initiatives to combat human trafficking of migrant workers. In particular, labor inspectors may be trained and tasked to monitor workplaces (including homes that employ domestic workers) and search for trafficked workers.

• Governments should provide increased regulation and monitoring of production supply chains. Exports and imports should be scrutinized closely to ensure that goods made by sweatshop, slave, or exploited labor are not bought or sold globally. Such scrutiny should include “indirectly” tainted products. For example, garments made with cotton that was picked by workers in forced labor should not be allowed to be exported or imported. Companies at all points along the supply chain should be held accountable for such exploitation.

• Governments should strengthen enforcement of migrant labor protections and increase penalties against employers who violate migrant worker rights or traffic in workers. Stronger penalties should apply equally to companies that buy products made by sweatshop or slave labor.
• The U.S. Government should monitor states more closely and increase pressure on them to broaden their focus beyond the sex industry and develop initiatives to respond more effectively to trafficking for labor exploitation in sectors such as agriculture, construction, and domestic work.

• The U.S. Government, the United Nations, and the ILO should promote cooperation between and among countries through multilateral and regional agreements to protect migrant workers and develop standards for labor migration. These agreements should include the core ILO standards.

• All parties should consider the forces of globalization that inherently create more insecurity for workers, increase their vulnerability to exploitation, and push or force them to migrate in search of work. These considerations should include the global impact of trade agreements and structural adjustment programs.

For Countries with Temporary or Guestworker Programs

• Protections against worker abuse should be built into program infrastructure.

• Only end-use employers should be allowed to petition for workers. Abuses in current guestworker programs start in the home countries with labor recruiters who charge exorbitant fees to migrant workers.

• There should be an effective mechanism for testing the domestic labor market of a country before employers are allowed to bring in foreign workers. This mechanism should accurately determine labor shortages, include adequate wage protections, guard against the displacement of workers who are nationals of the country, and provide an adequate system for advertising jobs beyond the local labor market. Employer certifications do not adequately test the labor market.

• Workers should be able to change jobs in a way that preserves labor standards. Worker visas should be portable, enabling workers to walk away from abusive employers.

• Employers should not be able to use temporary worker programs to evade national civil rights, employment, and labor laws. Governments should specify that all national employment and labor laws govern the conduct of all employers (or labor recruiters, if they are allowed to continue to participate in the program) who participate in any temporary worker program, even if the conduct occurs outside the destination country.

• Governments should specify that workers who labor in temporary worker programs are entitled to worker compensation coverage and full remedies, even if they leave the destination country after they are injured on the job.

• All protections included in any statute should be enforceable. At a minimum, enforcement mechanisms should be improved by: (1) requiring employers to post a bond that is at least sufficient in value to cover the temporary workers’ legal wages and crafting a system to allow workers to make claims against the bonds; (2) adding meaningful whistleblower protections, which allow workers and their representatives to sue in order to enforce all local and national labor and employment laws as well as the conditions in temporary workers’ contracts, without workers’ having to face deportation or removal when they file a claim with any local or national government entity or court alleging a violation of any labor or employment law; and (3) strengthening penalties against employers who fail to comply with the worker protections. Penalties should include remedies that are real deterrents, including debarment and enhanced monetary penalties, such as punitive damages, treble damages, and compensatory damages. All of these remedies should be available to workers and their representatives as a private right of action.
Governments should ensure that workers who labor in the temporary worker programs have a path to permanent residency in the destination country and an opportunity to bring their families with them. Immigration laws should be reviewed to determine their effect on migration, and specifically on migrant workers. Immigration laws should be based on social and economic realities. Guestworker, sponsorship, rotational, and other immigration programs that limit worker rights or increase workers’ susceptibility to abuse should be reviewed.


3 These recommendations were adapted from Leadership Conference on Civil Rights (LCCR), “Fundamental Worker Protections in Foreign Temporary Worker Programs,” LCCR, May 2007, www.civilrights.org/assets/pdfs/LCCR-Fundamental-Temp-Worker-Labor-Protections.pdf.
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