



## **Monitoring International Labor Standards: Techniques and Sources of Information**

Committee on Monitoring International Labor Standards,  
National Research Council

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# MONITORING INTERNATIONAL LABOR STANDARDS

## ***TECHNIQUES AND SOURCES OF INFORMATION***

Committee on Monitoring International Labor Standards

Center for Education  
Division of Behavioral and Social Sciences and Education

and

Policy and Global Affairs Division

NATIONAL RESEARCH COUNCIL  
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## Preface

The past half century has witnessed growing attention to the treatment of workers around the world. The U.S. Department of Labor is committed to helping improve working conditions and ensuring compliance with international labor standards. The Bureau of International Labor Affairs (ILAB) of the U.S. Department of Labor has contracted with the National Academies to create a system to monitor international labor standards. The contract states:

The international labor standards that information will be collected on are those included in the 1998 ILO [International Labour Organization] Declaration of Fundamental Principles and Rights at Work, with the additional of “acceptable conditions of work.” These are: Freedom of Association and the Right to Collective Bargaining, Forced or Compulsory Labor, Child Labor, and Discrimination.

To carry out this contract, the National Research Council (NRC) of the National Academies convened the Committee on Monitoring International Labor Standards to provide expert advice on how best to assess compliance with international labor standards. The committee has prepared a report and the structure for a web-based database that identify indicators of compliance or noncompliance, providing a framework for carrying out the assessment.

To carry out its task, the committee commissioned papers, held workshops, convened domestic and international forums, and consulted with experts from international, governmental, and nongovernmental organiza-



tions. The report and the database system it proposes examine existing sources of information on country-level compliance with labor standards, discuss their strengths and weaknesses, and integrate them into a system to serve the needs of ILAB's day-to-day work. Further information about the committee's activities may be found on the committee's website at [www.nas.edu/internationallabor](http://www.nas.edu/internationallabor).

The report is the result of the committee's discussions at the public workshops and its deliberations in closed meetings. Such work is inevitably collaborative and the committee is deeply indebted to and appreciative of the participation of attendees at the workshops and forums. We would like to thank International Labour Organization (ILO) staff for sharing their knowledge and expertise on these important issues with us.

This report has been reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise, in accordance with procedures approved by the NRC's Report Review Committee. The purpose of this independent review is to provide candid and critical comments that will assist the institution in making the published report as sound as possible and to ensure that the report meets institutional standards for objectivity, evidence, and responsiveness to the study charge. The review comments and draft manuscript remain confidential to protect the integrity of the deliberative process.

We thank the following individuals for their participation in the review of this report: Jere Behrman, Population Studies Center, University of Pennsylvania; Leon Gordenker, Center of International Studies, Princeton University; Eivind Hoffmann, International Labour Organization, Geneva, Switzerland; Evance Kalula, Kramer Law School, University of Cape Town, South Africa; Phyllis Kritek, School of Nursing, Virginia Commonwealth University; Richard M. Locke, Sloan School of Management, Massachusetts Institute of Technology; Elliot J. Schrage, Columbia University School of Business and Council on Foreign Relations; Prakash Sethi, Zicklin School of Business, Baruch College; Rudra Sil, Department of Political Science, University of Pennsylvania; Robert M. Stern, Gerald Ford School of Public Policy, University of Michigan; and J. Edward Taylor, Department of Agricultural Economics, University of California at Davis.

Although the reviewers listed above have provided many constructive comments and suggestions, they were not asked to endorse the conclusions or recommendations nor did they see the final draft of the report before its release. The review of this report was overseen by Douglas S. Massey, Department of Sociology and Public Policy, Princeton University, and Samuel

H. Preston, School of Arts and Sciences, University of Pennsylvania. Appointed by the National Research Council, they were responsible for making certain that an independent examination of this report was carried out in accordance with institutional procedures and that all review comments were carefully considered. Responsibility for the final content of this report rests entirely with the authoring committee and the institution.

We also thank Anne Zollner and Robert Bednarzik of ILAB for providing us with critical information that contributed to our understanding of relevant policies. Finally, we thank the staff for their hard work, and we particularly thank Crispin Rigby, Monica Ulewicz, and Margaret Hilton for their outstanding contribution to the study.

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## Executive Summary

From the beginning of the industrial revolution, there have been concerns about conditions and standards in the workplace. The adoption of the United Nations Universal Declaration of Human Rights in 1948 and two International Labour Organization (ILO) conventions concerning freedom of association and collective bargaining in 1948 and 1949 gave recognition to the protection of basic human rights, including the rights of workers.

In the past decade, the appreciation of the importance of ensuring compliance with core labor standards around the world has risen dramatically. From the world summit for social development in Copenhagen in 1995, through the World Trade Organization's ministerial meeting in Singapore in 1996, to the ILO's Declaration on Fundamental Principles and Rights at Work in 1998, the endorsement of a need to ensure core rights for workers has gained strength.

The 1998 ILO Declaration defines four core labor standards:

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



U.S. trade law adds “acceptable conditions of work with respect to minimum wages, hours of work, occupational safety and health” to its definition of “internationally recognized” worker rights, despite the lack of an international consensus on what these are or how to define them globally.

Increased attention to the role of labor standards in a more integrated global economy has led to a growing demand for information on compliance with core labor standards. In response, traditional institutions and procedures have acquired new vigor, and innovative new processes have grown up along side the old. The ILO has shown fresh vitality in its efforts to promote observance of core labor standards. There has also been a burgeoning number of voluntary monitoring and reporting procedures in the private sector. The result has been a proliferation of sources for information and data on compliance with core labor standards.

What to make of this proliferation of sources is by no means clear. There are still large gaps in the information available, and the quality of much of the available data is unknown. Most of the data sources reflect conditions only in the formal sector and ignore what are often far worse conditions in rural areas and the informal sector of developing economies. Many sources also do not provide comparable information across time or across countries. Some of the sources—both quantitative and qualitative—are biased or not fully reliable for other reasons.

There are also problems in adapting this information to the job of assessing compliance. In some cases, precise definitions of specific elements of the core labor standards are lacking, making it difficult to create operational indicators so that an assessor can determine compliance or noncompliance. Some potential indicators require careful interpretation because they can equally well be taken to show compliance or lack of compliance. None shows a complete picture. Assessing compliance is a serious undertaking: it cannot be accomplished in a quick, easy, or haphazard way.

With this increasing attention to monitoring labor standards, there is a growing need for rigor in the assessment of compliance and whether conditions are improving or deteriorating. This assessment requires careful analysis of what the core labor standards mean and imply, how to determine when a country is or is not in compliance, what indicators of compliance and which sources of information to use, and limitations of the sources of information.

## REPORT AND DATABASE

The result of the committee's work is in two parts: this report and a database structure. Together, they offer a first step toward the goal of providing an empirical foundation to monitor compliance with core labor standards. The report provides a comprehensive review of extant data sources, with emphasis on their relevance to defined labor standards, their utility to decision makers in charge of assessing or monitoring compliance, and the cautions necessary to understand and use the quantitative information. Given the overwhelming range and quantity of data—both quantitative and qualitative—the committee was not expected to evaluate the accuracy of each data point for hundreds of countries; rather, it was expected to provide a macrolevel assessment of the overall merits—and caveats—of including diverse sources of information.

Aligned closely with the descriptions and caveats of data contained in the report, the database structure provides a tool for systematic and informed assessment of compliance. Its intent is to enable users to focus on the complexities of compliance from multiple perspectives—by country, by labor standard, and by data source. The committee intends the database methodology and contents to provide improved empirical information for assessing compliance. Users of the database are cautioned against drawing inferences that are not necessarily supported by the data, given the caveats and threats to validity described in the report.

As specified in the request from the U.S. Department of Labor, the committee focused on “acceptable conditions of work” as well as on the four internationally recognized core labor standards. Also in response to the department's request, the committee considered the relationship between compliance with labor standards and human capital formation, which is an essential element in improving workers' standard of living over time.

The report and the database structure together respond to the committee's charge to identify relevant and useful sources of country-level data, assess the quality of such data, identify innovative measures to monitor compliance, explore the relationship between labor standards and human capital, and recommend reporting procedures to monitor compliance. With respect to “quality,” we could not and did not attempt to validate the accuracy of all the data that are or might become available for all the indicators for all countries. Rather, such quality assessment must be part of the ongoing monitoring process, and this report offers guidance for that task.

The characterization of this report as providing a first step is offered deliberately. Improvements will follow—must follow—immediately, from the day this report is issued, and continuing far into the future. This report will prove successful to the extent it provokes debate; stimulates more intensive dialogue among workers, employers, governments, and civil society about workers' rights; and moves governments and international institutions to provide more resources for data collection and research to address the weaknesses identified in our report.

Indeed, much of this report is cautionary. Not only are the sources of information often problematic, but there are continuing controversies about the precise definitions of some elements of the core labor standards, and what specific obligations governmental authorities assume in trying to comply with the core labor standards as opposed to endorsing aspirations whose realization lies in the future. The disputes that surround acceptable conditions of work, for which no international consensus exists, are even more contentious.

How to operationalize compliance so that observers “know it when they see it” is certainly not straightforward. A central issue is how to separately judge a government's intention and its capability in compliance and what weight to give to resource constraints and alternative pressing needs for those resources in the evaluation of government effort and outcome. There are also many controversies associated with evaluating the somewhat idiosyncratic historical evolution of any country's experience with labor regulation, as well as with comparing that evolution with any other country's experience with labor regulation. Yet the committee believes that this report and database provide the first step toward improvement in the system of assessing and monitoring compliance with international labor standards.

### **The Database**

The database structure is, in the first instance, a way of organizing and presenting all available information that is relevant to the core labor standards. It will enable assessors—all interested parties throughout the world—to have access to what information exists and to use that information as best suits their needs. The database structure is known as WebMILS and exists as a website. At this time, the database structure is populated with data for only one country; it is the committee's intention that the U.S.

Department of Labor will continually add to and update the information in it.

The database structure reflects four sets of indicators the committee developed for the four core labor standards and acceptable conditions of work: legal framework, government performance, associated factors, and overall outcomes. The database also contains measures of human capital investment, recognizing that the linkages between human capital and labor standards compliance are critical. The committee also included associated factors that might either provide contextual information or serve as useful signals that there may be problems with compliance. For each indicator, there are from 4 to 21 items. This report presents and discusses those indicators and measures. The design of WebMILS consists of a data cell for every combination of variable and political jurisdiction.

The database structure is designed to include all relevant information, along with comments on anything that is known about the data or their source (such as frequency or range of coverage). Thus, the database will provide a way for assessors to have access to all available data and information about those data. In this way, we have tried to devise a system that encourages dialogue among all parties and that stimulates a continuous flow of ideas about how the process of promoting and ensuring compliance can be improved.

We have tried to provide a roadmap for how to use the information that is available and for how to assess compliance with appropriate care and caution. That is, we have attempted to create a useful structure within which different assessors—who will make judgments about the extent of compliance and the direction of change—can undertake “due diligence,” with transparency for others to observe their evaluations, in the midst of imprecision and contention. Those assessors will include, among others, government officials, elected representatives, international organizations, socially responsible corporations and investors, board members, stockholders, labor organizations, and a wide range of nongovernmental organizations.

It is important to note that what the committee has devised is not an ideal, but a reflection of what is known and available as the report was being written. Ideally, quantitative data for inclusion in such a database should meet a number of criteria:

- The data were collected in a reliable census or survey and are not estimates that extrapolate from data collected in earlier surveys.

- Survey recipients in the survey sample are drawn from an actual census, which permits issues of representation, selection bias, and nonresponse to be assessed and reported, which is important in judging the validity and reliability of data that emerge from the survey.
- The data are national in coverage. In some countries, labor data may be collected only for urban areas or only for limited industries. As a consequence, the data are usually biased because not all parts of the labor force are represented.
- Survey questions are consistent over time, in order to allow assessments of trends. Any necessary changes in data definitions, survey questions, or collection methods should be fully documented.

It was not possible, within the real-world constraints of time and resources, to take this ideal approach. The committee could not assess the quality of the various surveys or censuses that National Statistical Offices in different countries use to collect primary national data on wages, hours, and working conditions. Instead, the committee chose to draw on aggregate data sources to develop our set of compliance indicators. Most national-level data (including those related to acceptable conditions of work) are applicable only to a specific country, using a country-specific definition. The data may or may not be comparable within countries over time and they are often not comparable across countries. In developing the database structure, the committee envisions a strategy of including the information on the relevant variables provided by international agencies. Rather than excluding data that do not meet a strict set of quality criteria, it is important to document each indicator and record the drawbacks as fully as possible, allowing assessors to judge the quality for themselves.

To guide the performance of due diligence, and to help avert any potential rush to indefensible conclusions, the database structure provides direct links to the committee's cautions about definitions, information sources, and appropriate inferences along with access to data. These cautions also appear within the chapters of the report.

## Compliance

There are both positive and negative aspects of compliance. The negative aspect focuses on the degree to which governments permit citizens to exercise these rights without interfering. The positive aspect focuses on

whether governments provide a legal and administrative framework that ensures citizens are able to exercise these rights in practice.

The positive role of government, in turn, has reactive and proactive aspects. The reactive aspect deals with enforcement mechanisms and determining whether there are prompt and adequate penalties for violations. The proactive aspect emphasizes educating workers, employers, and government officials about the importance of labor rights and the productivity gains and human satisfaction from successful worker-management relations, and it encourages the spread of best practices through a given economy and a given country. We endorse the provision of new resources to strengthen enforcement, to educate the participants, and to reward improved performance.

We recognize, at the same time, that improvement in the lives of workers, and in the treatment of workers, relies on many economic, political, and social factors besides the enforcement of labor standards. In particular, economic growth is essential to stimulate job creation and rising wages.

Taking into consideration the more detailed treatment of the above considerations in the body of the report, the committee has recommended against precise scoring or ranking of countries against each other. Instead, the U.S. Department of Labor—or other assessors—may find it helpful to use a matrix structure to organize the information provided in the database for each country and each standard. This framework has the advantage of allowing assessors to simultaneously analyze both current levels of compliance and the direction of change. The committee believes that it is particularly important to keep the dynamic element in mind when assessing the compliance of poorer developing countries with high levels of poverty and limited resources. In addition, the matrix framework discussed in Chapter 1 is designed to make explicit how alternative assessments differ in value weighting and empirical inference and to bring greater transparency to a process that is currently opaque and arbitrary.

## RECOMMENDATIONS

Our most ardent hope is that this report and WebMILS will soon be overtaken and surpassed by yet more detailed efforts that try to achieve the common objective of advancing observance of core labor standards for workers around the world. To assist in this process, the committee offers 5 general recommendations and 11 specific recommendations:

### **General**

1-1 The committee recommends that the U.S. Department of Labor improve, maintain, and update the committee's website database.

1-2 The committee recommends that this improved website database be publicly accessible with a mechanism that allows public comment.

1-3 The committee recommends that the U.S. Department of Labor, working with other federal agencies and international institutions, support programs designed to strengthen reporting and information through capacity building in particular countries.

1-4 The committee recommends that the U.S. Department of State and the U.S. Department of Labor devote higher priority to monitoring labor standards, to developing greater expertise in this area, and to improving coordination between the two departments.

1-5 The committee recommends that the U.S. government, using agencies such as the National Science Foundation, fund research and development on methodologies for monitoring labor standards.

### **Information from Nongovernmental Labor Monitoring Systems**

3-1 The committee recommends that nongovernmental monitoring organizations—including internal corporate systems and external systems operated by NGOs or other organizations—work together to develop transparent methodologies and measures of performance that allow comparison.

3-2 The committee recommends that external monitoring organizations make their data, auditing methods, and findings public.

### **Freedom of Association and the Right to Collective Bargaining**

4-1 The committee recommends that the U.S. Department of Labor, and the ILO, support systematic data collection by providing technical assistance to developing country governments to add questions to household surveys relating to freedom of association and effective recognition of the right to bargain collectively.

4-2 The committee recommends that all the principal reporting bodies in the U.S. government, particularly the U.S. Department of Labor and the U.S. Department of State, gather data related to the full list of indicators of freedom of association and the right to collective bargaining identified in this report and database system.

### **Forced or Compulsory Labor**

5-1 The committee recommends that systematic in-depth national studies of the kind that the ILO has conducted with respect to child labor be conducted on forced labor by the ILO, with support by the U.S. government, as a priority, taking into account a variety of labor market factors that bear on the economic environment in which forced labor takes place.

### **Child Labor**

6-1 The committee recommends that national and international agencies cooperate in creating a system of data generation focused primarily on child labor, such as the ILO's Statistical Information and Monitoring Programme on Child Labour surveys.

6-2 The committee recommends that research be done on the scalability and cost-effectiveness of successful pilot programs (e.g., RUGMARK Foundation in Nepal, the Bangladesh Garment Manufacturers and Exporters Association, and PROGRESA in Mexico) that have removed children from work, rehabilitating and educating them and involving their parents.

### **Discrimination**

7-1 The committee recommends that national and international agencies cooperate in either modifying household surveys or creating a new system of data generation that better captures informal sector or household work that women do and that current methods often miss.

7-2 The committee recommends that the ILO, with support from the U.S. Department of Labor, assist national statistical agencies in gathering labor market information on ethnic, religious, migrant worker, or other groups that may be vulnerable to discrimination and post that information, along with other labor market information, on a public website.

### **Acceptable Conditions of Work**

8-1 The committee recommends, based on its development of indicators for the database, that the U.S. government develop and use a common definition of acceptable conditions of work. At a minimum, this definition should identify a nation's working conditions as fulfilling the "acceptable conditions of work" clause in U.S. trade law if that nation has:



- a mechanism to establish minimum wages;
- a regular workweek of 48 hours or less;
- a specific number of paid holidays each year for covered workers;
- provision that all workers receive a full day of rest every 7 days; and
- a mechanism for setting health and safety standards.

### **Human Capital and International Labor Standards Compliance**

9-1 The committee recommends research at the micro and macro levels to explore the mutually reinforcing links between the investments in education and training and labor standards compliance.

# 1

## Introduction and Overview

Concerns about conditions in the workplace emerged at the very beginning of the industrial revolution. With increased international economic interdependence over the past half century, these concerns became more global, and in the late 1990s a consensus developed, as reflected in declarations by the United Nations in 1995, the World Trade Organization in 1996, and the International Labour Organization (ILO) in 1998, that certain standards—freedom of association, the abolition of forced labor and child labor, and nondiscrimination—are fundamental rights to which workers everywhere are entitled. We refer to these as the core labor standards.

The treatment of workers is embedded in broad social, political, and economic circumstances. In the absence of political will and effective governance institutions that are based on the rule of law, there is little chance that the core labor rights will be respected. In the absence of strong economic growth, there is little chance of achieving broad-based improvements in workers' standards of living. Thus, the economic and political context is crucial when assessing compliance with labor standards, particularly for identifying the sources of noncompliance and, therefore, the appropriate policies, including technical and financial assistance, to address noncompliance. At the same time, monitoring compliance with labor standards poses challenges. The information required is often unavailable or of poor quality, and the interpretation of what the information means in terms of compliance is not always obvious.

## COMMITTEE CHARGE AND FOCUS

Recognizing these difficulties, the U.S. Department of Labor (DOL) requested guidance from the National Research Council (NRC) of The National Academies. The request calls on the NRC to “. . . conduct a set of connected tasks designed to provide the federal government with expert science-based information on issues pertaining to international labor standards, monitoring, and enforcement.” Specifically, DOL charged the NRC to:

1. Identify relevant, valid, reliable, and useful sources of country-level data on labor standards and incorporate them into a database tailored to the current and anticipated needs of the Department of Labor’s Bureau of International Labor Affairs (ILAB).<sup>1</sup>

2. Assess the quality of existing and potential data and indicators that can be used to systematically monitor labor practices and effectiveness of enforcement, in order to determine compliance with national labor legislation and international standards.

3. Identify innovative measures to determine compliance with international labor standards on a country-by-country basis and measure progress on improved labor legislation and enforcement.

4. Explore the relationship between labor standards compliance and national policies relating to human capital issues.

5. Recommend sustainable reporting procedures to monitor countries’ progress toward implementation of international labor standards.

The DOL specified that the committee’s work be based on the consensus core standards identified in the 1998 Declaration of Fundamental Principles and Rights at Work of the ILO:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labor;

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<sup>1</sup>The ILAB carries out the international responsibilities of the DOL under the direction of the Deputy Under Secretary for International Labor Affairs. ILAB conducts research on and formulates international economic, trade, immigration, and labor policies in collaboration with other U.S. government agencies and provides international technical assistance in support of U.S. foreign labor policy objectives.

- the effective abolition of child labor; and
- the elimination of discrimination in respect of employment and occupation.

In addition, the committee was asked to consider how to assess compliance with standards related to acceptable conditions of work, including hours of work, wages, and occupational safety and health.

The first two points of the committee's charge require comment. The report and database structure constitute the committee's response to the first point—the identification of relevant and useful data for assessing and monitoring international labor standards. However, the sheer volume of data we so identified precluded an assessment of the quality (including reliability and validity) of the hundreds of thousands of pieces of data that we recommend be included in the database. With regard to the second point, the committee interpreted its charge with regard to quality in terms of the kinds of data that would be necessary to assess and monitor compliance with labor standards. This interpretation followed tense committee deliberations and our findings from a workshop held on July 10, 2002.<sup>2</sup> The workshop enabled the committee to explore with a wide range of experts, the complexities involved in defining and measuring quality. We concluded that the only way to interpret the charge with respect to validity and reliability was to include all available and relevant data, along with appropriate caveats concerning inferences, interpretations, and uses of the information.

Furthermore, the committee did not have the resources to evaluate the huge quantity of data that now exist and might be considered relevant to the committee's task, nor to devise a system to evaluate data that will become available in the future. For example, the ILO's database of legal documents (NATLEX) alone has 55,000 pieces of information, some of which are in languages other than English. Moreover, the committee believes that assessment of the quality of any given data is an essential part of the overall process of assessing compliance.

The committee's work is only the first step in what must be an ongoing process of identifying appropriate data, assessing the quality of those data, and then analyzing their relevance within the overall task of monitor-

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<sup>2</sup>For a discussion of the quality of information in the field in international labor standards, see the summary of the committee's first workshop (National Research Council, 2003).

ing compliance with international labor standards. This report and its accompanying database are meant to provide the U.S. DOL with a structure and procedure for carrying out that task over many years. Our recommendations point to specific ways that the task can be informed with better data, more systematic analysis, and closer working relationships among the many organizations, agencies, and individuals—in both the United States and other countries—who are involved in labor standards.

### Context

In approaching its charge, the NRC Committee on Monitoring International Labor Standards understood that the underlying rationale for its work is to inform U.S. policy as it relates to improving the lives of workers and their families around the world. The committee undertook the task of providing science-based information on the monitoring and enforcement of international labor standards while recognizing that compliance with core labor standards is one prong of what must be a multifaceted strategy toward achieving the fundamental goal of raising living standards across the globe.

From a historical perspective, the committee is aware that it took many decades of economic, social, and political development—including enactment and enforcement of laws on education and workers' rights and the development of trade unions—to mostly eliminate child labor and achieve the 40-hour work week and other improvements in contemporary industrialized countries (see, e.g., Engerman, 2003). Indeed, full enjoyment of the core labor standards is an ongoing struggle everywhere in the world. This is true even though the world is far different in the twenty-first century than it was in the nineteenth. Today, democracy and free markets are far more widely spread than they were 100 years ago, and institutions such as the ILO exist to assist countries in improving labor standards if they lack the capacity themselves.

The committee is also aware that there is small likelihood of achieving broad-based, sustainable improvements in workers' standards of living without solid economic growth, expanded market access for developing country products, and reliable governing institutions backed by respect for rule of law. Yet the empirical evidence shows that the core standards can be improved even in poor countries if the political will exists to do so. For example, some poor countries have much lower rates of child labor than

other countries at roughly the same per capita income level, while some middle-income countries have far higher rates than others (Elliott, 2004).

Although cognizant of the myriad factors that affect political, economic, and social development, and the connections between those and working conditions, the committee understood its charge as more narrowly focused on the development and analysis of information to monitor and assess country-level compliance with core labor standards and acceptable conditions of work. Thus, in its work, the committee considered only a small part of the relevant academic literature. The committee also did not delve into the historical evolution of labor standards in the now developed countries, in part, because, the economic, technological, and institutional environment facing developing countries today is quite different.

The committee also does not address in detail the disparities in working conditions among sectors in the currently poor countries, though we are well aware of the fact that the available data typically reflect conditions only in parts of the formal sector. Since the majority of people in poor countries typically work in agriculture and the informal sector and since conditions in these sectors are typically worse than those in the formal sector, the available data tend to understate the gap between actual conditions and international norms. Moreover, increased efforts at compliance with labor standards will usually not reach the majority of workers because, by definition, their activities are largely unregulated. We do not analyze these issues in depth, but we do recommend that additional effort be put into data collection and research on working conditions in the informal sectors.

As policy makers and others implement the database system proposed in this report, they need to remain cognizant of the broader social, economic, and political context in which compliance with labor standards takes place. They also need to remain open to emerging research findings that could influence both the refinement of the database system and its use.

### **Report Structure**

Chapters 2 and 3 describe and evaluate the sources of information available to assess the indicators of compliance with the four core labor standards and acceptable conditions of work. Chapter 2 discusses the problems of finding qualitative and quantitative evidence about compliance that is objective, representative, and comparable over time. Chapter 3 examines

the opportunities and challenges posed by “voluntary” nongovernmental monitoring and reporting.

Chapters 4-7 address the assessment of compliance with each of the four core international labor standards. Each chapter discusses the challenges of defining, implementing, and measuring compliance with a particular standard and offers a close look at relevant sources of evidence. Chapter 8 is devoted to the assessment of acceptable conditions of work, following the pattern of Chapters 4-7 on the core labor standards.

Chapter 9 considers the connection between investment in human capital and observance of labor standards.

Appendix A describes the committee’s approach to the design of the database structure. Appendix B contains biographical sketches of committee members.

### **Database**

Part of the committee’s task was to construct a database for use in monitoring international labor standards. In response to this part of its charge, the committee has constructed a database structure, which resides on a website, WebMILS. The design of the database follows the committee’s work in this volume. There is a cell for every political jurisdiction for every indicator (see Chapters 4-8) for the four core labor standards and acceptable conditions of work, divided into three areas: legal framework, government performance, and overall outcomes. The committee also included associated factors that might either provide contextual information or serve as useful signals that there may be problems with compliance.

We stress that WebMILS is a structure: it is populated with data for only one country, to provide an example. It will be the task of the U.S. DOL to maintain, add to, and improve the database over time. The database structure is designed to include information from all possible sources on the indicators that the committee has determined are relevant to monitoring international labor standards. In addition to the data and their sources, the database is designed to include comments on anything that is known about the data or their sources (such as frequency or range of coverage). Thus, the database structure provides a way for all assessors to have access to all available data and information about those data. In this way, we have tried to devise a system that encourages dialogue among all parties and that stimulates a continuous flow of ideas about how the process of promoting and ensuring compliance can be improved.

Appendix A provides a guide to the database and sample views to enable readers to have a clear view of the committee's product.

## THE ILO AND CORE LABOR STANDARDS

While the broad principles behind the four core international labor standards are fairly clear, what they mean in practice is not always obvious. In order to flesh out the meaning, the committee believes that it is necessary to begin with the work of the ILO and to review how the ILO interpretation of the concept of "core labor standards" has evolved. The ILO has 175 member nations. Its unique tripartite structure also includes representatives from national organizations of workers and employers.

Traditionally, the ILO has established international labor standards by formulating conventions, which are multilateral treaties that are binding on the countries that ratify them. Once a country ratifies a convention, it has an international obligation to implement the treaty in law and practice. To hold ratifying countries accountable for meeting their international obligations, the ILO has established a sophisticated supervisory system that includes ongoing reporting, dialogues with member nations, general complaints procedures, and a special procedure specifically for complaints related to freedom of association. This system is a key source of information on compliance with international labor standards, much of it available on the Internet (see Chapter 2).

In 1995, the ILO identified four basic rights as "fundamental to the rights of human beings at work" and launched a campaign to increase the ratification of the conventions corresponding to these rights. The basic rights are freedom of association (87) and the right to organize and bargain collectively (98), freedom from forced labor (29, 105), equal remuneration (100) and nondiscrimination in employment (111), and the abolition of child labor (138). An additional child labor convention—addressing the "worst forms" (182)—was passed in 1999. As of October 2003, 75 percent of the 175 ILO member nations had ratified seven or more of these eight conventions (International Labour Organization, 2003). These eight conventions comprise the core labor standards.

In 1998 the ILO adopted a Declaration on Fundamental Principles and Rights at Work, committing ILO member nations to realize and achieve at the policy level the four basic rights as an obligation inherent in ILO membership, regardless of whether or not they have ratified conventions



corresponding to those rights. The declaration addresses the principles and rights that are the subject of the eight “fundamental” conventions, but signing the declaration does not obligate a member government to carry out the detailed legal provisions of the conventions.

The committee’s starting point for interpreting the meaning of the four core international labor standards is the jurisprudence built up over the years by ILO experts as it relates to the eight fundamental conventions. The committee recognizes that elements of this jurisprudence remain controversial and unsettled, but there is no alternative consensus definition and, in general, it was not our role to rewrite the meaning of these standards.

As requested by the DOL, the committee also analyzes how to assess compliance with “acceptable conditions of work” (Chapter 8). This set of standards is more problematic because wages, hours, and some other conditions of work necessarily vary with average per capita income levels. Currently, there is no broad international consensus on how to apply these standards globally.

### **Challenges Assessing Compliance**

The committee viewed its primary charge as organizing and structuring data from multiple sources into a useful tool for policy makers (and others) who wish to *assess* compliance. The first observation must be that problems abound. First, with ILO jurisprudence, there are difficulties with defining what the core labor standards mean in practice. Second, there are difficulties in identifying operational indicators of compliance with core labor standards so that an observer easily recognizes compliance or non-compliance. Third, there are difficulties with separating intention from capability in government performance in implementing compliance and with evaluating government effort in relation to scarce resources and competing needs for resources. Fourth, there are difficulties with finding accurate, representative, comparable sources of information about compliance or non-compliance. In particular, much of the data currently available from developing countries reflects conditions in the more modern manufacturing sector and is not representative of conditions in agriculture and the informal sector. Fifth, there are problems in drawing valid inferences from the information sources that are available. Sixth, assessments of changes in conditions over time are difficult because definitions and sampling methods

may change over time. These difficulties are detailed throughout the rest of the report.

To take one case in point, what appears to an American in 2003 as a long workweek, say, 50 hours, in large manufacturing firms in some poor countries is less than that which characterized American workers in the early twentieth century (Jones, 1963), when the United States was already much richer (in terms of per capita income) than currently poor countries. In 1890, children's maximum hours of work in Belgium were 72 and in Denmark 63 (Huberman, 2002). There is an extensive literature on the evolution of working hours, one of the "acceptable conditions of work," that shows its relatively close relation to per capita gross domestic product (GDP). In today's developing countries a typical workweek for agricultural workers or those in urban workshops may be 70 hours. Recent studies in countries such as Vietnam find that the number of hours worked on farms by children decrease systematically with improvement in parental income. A 50-hour workweek in manufacturing is thus considerably less onerous than the conditions under which a majority of the population work. In turns, these long hours are one of many unfortunate effects of living in a poor country. It is an effect, not a cause, of poverty.

As yet another example, consider average earnings, a suggested measure. Assume that the available measure is earnings per year. In the United States, this is a well-defined concept, and some confidence can be placed in the reported figure. Nevertheless, even in the United States, part of the movement in earnings per year reflects movements in the business cycle and changes in hours worked—that is, changes that reflect larger macroeconomic forces that affect the labor market. In developing countries, these effects are often much stronger. As noted above, a large part of the labor force is employed in agriculture and the informal sector; earnings in these sectors are not covered adequately by most statistical offices and are subject, if available, to huge sampling errors. Movements in earnings may reflect the effects of such events as droughts and civil wars, as well as policy-induced changes, such as the unavailability of fertilizers. Thus, an improvement in annual earnings may simply reflect the termination of a civil war or improved policies that permit the import of fertilizer rather than changes in labor market policies.

In sum, the problem faced by policy makers working in this area is similar to the problem faced in other areas: integrating raw, qualitative, and quantitative data from multiple sources of differing reliability into valid and fair judgments about performance. In this case, policy makers will have

to rely relatively heavily on qualitative sources of information, including legal documents, expert (e.g., ILO) assessments, complaints, investigations of complaints, and other kinds of qualitative reports.

The committee considered, at one extreme, the possibility—often tempting—that we simply draw up an exhaustive list of the difficulties with definition, measurement, and evaluation, compounded by the troubles with data quality and inference, and turn the results over to the DOL, and other assessors, and wish them well in their endeavors. At the other extreme, many who consulted with the committee urged us to devise a detailed scoring system to rate and rank countries in terms of their compliance with each of the core labor standards.

The committee has chosen a middle road. We see our charge as trying to provide the DOL, and other assessors, with a roadmap for assessing compliance and evaluating progress or deterioration over time. The goal is to improve on the existing process by pointing the way to better information collection and dissemination and by recommending that the decision-making process itself be made more open and transparent. The list of assessors that might find our efforts useful includes government officials, elected representatives, international organizations, socially responsible corporations and investors, board members, stockholders, labor organizations, and a wide range of nongovernmental organizations.

Overall the task of assessing compliance may resemble a judge in a courtroom forming a judgment about what exactly a given labor standard requires in particular circumstances and evaluating performance based on a preponderance of the evidence (some of which is admissible, some of which is questionable, and some of which must be rejected)—more than an econometrician running regressions or a physicist conducting an experiment under controlled conditions. While the goal of the committee is to show how assessments might be made more fair and objective and balanced, in a transparent process in which alternative assessors can challenge each other's evaluations in a clear, precise, and thorough fashion, the committee does not intend to leave the impression that there is a scientific procedure by which assessors can use science-based information to come to a scientific conclusion about compliance across all countries and all time periods.

To comply with the request from the DOL, we have developed a set of potential indicators of compliance and a detailed database structure that lists the information needed. We believe this database, when the cells are full, can provide a basis for assessing compliance. In the interim, we believe

the database structure provides information on what additional data need to be collected.

## AN APPROACH TO ASSESSING COMPLIANCE

### Three Sets of Indicators

WebMILS, the database system developed by the committee, contains key indicators we have identified to help in assessing compliance. Each of the chapters on the four core labor standards and acceptable conditions of work organizes these indicators into three aspects of compliance in a given country:

1. The first set of indicators focuses on assessment of the legal framework relating to the core labor standard (“A” indicators).
2. The second set of indicators addresses assessment of a government’s performance in implementation of the core labor standard (both effort and effectiveness of implementation) (“B” indicators).
3. The third set of indicators involves assessment of overall outcomes with regard to the core labor standard (“C” indicators).

The issues involved in identifying the indicators and in drawing inferences from them are the subject of the chapters themselves. The chapters also discuss associated factors that might either provide contextual information or serve as useful signals that there may be problems with compliance.

Both the second and third sets of indicators measure outcomes, and they are bound to overlap somewhat. The separation between the two categories is maintained, however, out of consideration that users—including the U.S. government—will sometimes want to make a judgment about a government’s performance (e.g., whether the government is “taking steps” to correct deficiencies) and will at other times want to make a judgment about overall conditions in a country.

### Making Inferences

Collecting and organizing the relevant data are only the first steps. The daunting policy challenge is to evaluate indicators of compliance and use them as a basis for policy judgments. Clearly, those judgments will always

be partly subjective—even when they are based on quantitative data—and the key question confronting policy makers who are committed to a science-based system will be how those data can best be used for fair and valid inferences. For example, in looking at freedom of association and right to bargain collectively, strike frequency and duration, union density, numbers of labor disputes, and frequency and severity of fines are important indicators (see Chapter 2). But the committee's analysis concludes that each of these indicators could be a measure of strong compliance or, conversely, of weak compliance.

Similarly, in looking at child labor, the proportion of children who are economically active might be taken as an indicator of compliance (see Chapter 6). But the data must be interpreted carefully because an economically active child is not necessarily engaged in work that is defined as impermissible child labor in ILO conventions. In looking at acceptable conditions of work, the number of occupational injuries, both in the absolute and as a fraction of the labor force, can be an indicator of compliance. Yet, again, we note that an increase in this statistic could reflect either a larger number of injuries or improved reporting.

In each case, the context in which the actions are occurring and the specific definitions determining what is included or excluded are key. It is essential that assessors understand the source of the data and how they were collected and that they consider all of the indicators suggested for each standard, as well as the associated factors and any other contextual information that is available, when interpreting the meaning of the indicators in the database. To help assessors perform this due diligence, WebMILS provides links to the committee's cautions about definitions, information sources, and appropriate inferences.

## USING THE DATABASE AND OTHER SOURCES OF INFORMATION

### Using the Data

To assess the extent of compliance with a given labor standard for an individual country, the U.S. DOL officials—or other assessors—might begin by examining relevant labor laws and evaluations of them as summarized in the database and described in more detail in the major comprehensive, systematic, and recurrent sources to which WebMILS links. As indicated in the chapters on individual standards, such sources include the

ILO supervisory mechanisms, the annual country reports, and the director-general's global report under the *Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work* and the U.S. Department of State's *Country Reports on Human Rights Practices* (see Chapter 2). These sources could be supplemented by in-depth individual studies when available. One example is the report to the Council of Ministers under the North American Agreement on Labor Cooperation on the effects of sudden plant closings on freedom of association.<sup>3</sup> An assessor would need to determine whether the legal framework of a country protects that core labor standard adequately, whether it protects the core right in general but is deficient in some important aspects, or whether there are serious deficiencies in several important aspects of the core right.

U.S. DOL officials—other assessors—would then use WebMILS and these other sources to undertake an evaluation of an individual nation's performance—efforts and effectiveness—in complying with the core standard. In this case, the reporting of advocacy groups could also be helpful in evaluating implementation. For example, the International Confederation of Federal Trade Unions (ICFTU) and national trade union centers, the London-based Amnesty International, and other international and national human rights and worker rights groups report on specific instances of failure or broader patterns of failure by national governments in enforcing labor laws key areas. Although the latter reports are complaint driven and may be biased toward the identification of violations of worker rights (discussed in Chapter 2), they can nonetheless provide important indications of failure in implementation that could be used to cross-check other sources of information.

The assessment of an individual government's performance in implementation needs to include both negative and positive aspects of ensuring compliance: the negative aspect is the extent to which governments leave workers alone so that they can exercise their rights; the positive aspect is the extent to which governments intervene to protect workers' exercise of their rights. Assessment would include both proactive enforcement (inspections, reporting requirements, appropriate interventions or mechanisms to effectuate legal rights) and widely available reactive or adjudicative mechanisms for responding to individual or group claims that their rights have been

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<sup>3</sup>Available at <http://www.naalc.org/english/publications/nalmcp.htm> [October 7, 2003].

denied. The objective would be to determine the extent to which both proactive enforcement and adjudication work well, the extent to which they are weak, or the extent to which they rarely occur.

The assessment of any country's performance is complicated because efforts and effectiveness have to be considered in the light of the resources available to the government for compliance, the poverty of the country, the number of workplaces, and the extent of other demands for government resources. In many African countries, for example, where 80 percent of the population may have no access to clean water, governments may not choose to devote scarce resources to labor standards. At the same time, it is not very costly for a government to take steps to eliminate discrimination in its own activities or to change laws that restrict the rights of workers to organize unions.

The assessment of a country's performance also needs to include an appreciation of the extent of government support for the positive agenda of educating workers and communities about rights and remedies, building capacity among labor regulators, promoting the spread of best practices associated with voluntary compliance, and encouraging the use of independent monitoring and reporting outside the government regulatory apparatus (see International Labour Organization, 2000, Parts II and III). Some of these, such as increasing labor inspection capacity, would be costly, but others, such as publicly speaking out in favor of worker rights, would not.

In many developing countries, however, local capacity is not strong enough to pursue an effective positive agenda. In these cases, as with compliance overall, assessors should analyze the institutional and policy weaknesses affecting working conditions. That analysis may, in turn, indicate where improvements need to be made and help identify needs for financial and technical assistance to strengthen local capacities to improve labor policies. Finally, an external assessor will need to evaluate indicators of overall outcomes, keeping in mind that relevant data are often lacking or of variable quality. As noted above, the context for assessing these indicators is crucial, since high or low measures on some of these indicators can indicate either increasing or decreasing rights for workers in different situations.

In addition to assessing levels of compliance, the committee's charge also includes the task of recommending methods to measure progress. This requires using WebMILS and the other sources identified here to look for evidence, for example, that laws have changed, more effort put into enforcement, or that market outcome indicators are improving. The U.S.

Foreign Service officers who prepare the U.S. Department of State's annual human rights reports are instructed to note improvements, deterioration, or other changes regarding each of the rights. ILO supervisory reports also note changes in a country's practice in comparison with earlier ILO reviews, although these are not systematically prepared for all countries. Reports from the ICFTU and other complaint-driven sources of information, such as those from nongovernmental organizations in Europe, Asia, and Latin America, may provide important insights, but they present more difficult problems in determining whether there are consistent trend lines in compliance.

In weighing the relative importance of these various indicators, context is, again, crucial. Many countries have reasonably good legal frameworks but are either unable, because of inadequate resources, or unwilling, because of political concerns, to effectively enforce labor standards. In such cases, assessors should place greater weight on the two outcomes assessments (government performance and observed outcomes) and less weight on the first assessment (legal framework). The reasoning is that the simple placement of laws on the books, without indications of effort and effectiveness in enforcement and without demonstrable results in the lives of workers, does not constitute a solid indication of compliance with the core labor standard.

Relatively greater weights for the outcome measures are not always appropriate, however. If the legal framework is clearly inconsistent with international norms, then effective government performance enforcing it should be given a negative weight, if any at all. Similarly, in judging how to evaluate trends in compliance for any given country at any time, assessors need to be alert to changes in regional or international stability—political, military, or economic—that may swamp all other determinants of working conditions from one period to the next.

The committee believes that any effort to assess the level of and direction of change in compliance should provide separate and independent treatment of each of the core labor standards and not attempt to construct a composite characterization for any given country. Favorable compliance on one standard (e.g., child labor) should not be represented as offsetting unfavorable compliance in another category (e.g., freedom of association and right to collective bargaining). Core worker rights are not substitutable: a country that eliminates forced labor but maintains discrimination in the workplace should still have the latter clearly identified.



### **A Framework for Analyzing Compliance Indicators**

Once the information is compiled, the next step is to analyze it. In using this report and web-based information collection system, U.S. policy makers and other assessors will sometimes want to make judgments about a country's performance with regard to all four of the core labor standards (perhaps as background for a proposed trade agreement). At other times, they will want to make judgments about a country's performance with regard to a single standard (perhaps for use with legislation that bans the importation of the products of forced labor). Furthermore, with regard to providing assistance to help remedy any problems identified, the U.S. Congress appropriates funds to address some issues—such as child labor—separately from others, such as worker rights. These different uses affect how the information will be used.

Some experts with whom the committee consulted recommended devising a quantitative method for ranking countries according to their level of compliance with international labor standards. Such rankings of country performance in various areas have become popular in recent years. For example, Transparency International ranks more than 100 countries according to their scores on an index of “perceptions” of the level of corruption within each country. The Center for Global Development recently created an index to measure the “commitment to development” of 21 rich donor countries. The World Economic Forum has an index ranking countries according to their performance on environmental issues. The committee quickly concluded, however, that a seemingly precise, linear ranking was neither feasible nor desirable. Moreover, it also rejected the notion of using precise numerical weights for each of the indicators in order to assign countries to categories.

By contrast, when ILO experts assess compliance, they identify particular areas of a country's law or practice that are inconsistent with international standards, they suggest ways of remedying the situation, and if appropriate, the ILO offers technical assistance. The committee believes that this disaggregated approach to assessing and promoting compliance is to be preferred and that, with the identification of indicators and creation of WebMILS, the committee has fulfilled its task.

Other members of the committee note that U.S. law requires the executive branch to assess overall compliance with these standards for a variety of purposes. In 1984, the U.S. Congress conditioned eligibility for trade preferences granted to developing countries on their performance with re-

spect to “internationally recognized worker rights.” Subsequently, these conditions were extended to a variety of preferential trade programs, as well as to eligibility for risk insurance from the Overseas Private Investment Corporation. Whatever one thinks of the desirability of these requirements, they exist and must be implemented.

Currently, however, the process for making assessments under these programs and agreements is opaque and often subject to political pressures. It is impossible to make the process purely scientific, objective, and apolitical, but some committee members believe that it could be improved by making it more open and transparent. Such openness, in turn, would make it easier for foreign governments and a variety of individuals to raise questions and contest the assessments. In addition, the DOL’s charge to the committee requires it to identify “innovative measures,” both of countries’ current compliance with international labor standards and with changes over time.

In response, the committee has developed a matrix framework as one possible way to analyze the data (see Figure 1-1). A matrix framework, with variations in levels of compliance on one axis and the direction of change on the other, might be a useful way of capturing these two dimensions simultaneously. In addition to avoiding the superficial precision implied by using specific numbers and weights to create a detailed index or ranking of countries, the matrix approach would have the advantage of giving a dynamic picture of compliance. Using this framework, assessors would carefully analyze each of the indicators in all three categories (legal framework,

	<b>Conditions</b>		
	Improving	Steady State	Worsening
Some Problems			
More Extensive Problems			
Severe Problems			

FIGURE 1-1 Matrix design for assessment of a standard in a country.

government performance, overall outcomes) for a given standard and come to a judgment about the placement of each indicator along both axes.

In general, “some problems” with compliance are those that are not so frequent, broad, or severe as to seriously undermine compliance with a given standard. “Severe problems” are such as to make compliance difficult or impossible. We expect, however, that many indicators for many countries will fall into the middle category: problems that are serious enough to raise questions about compliance in important areas or for particular groups, but not across the board. For indicators in this middle category, careful scrutiny of whether compliance is improving or deteriorating will be of particular importance.

Clearly, there are other ways to design a matrix framework, and other ways to label the cells. For example, a  $2 \times 3$  matrix that retains the three-part dynamic element but collapses the compliance decision to a binary one (in or out) is possible, but the committee believes that it would fail to reflect the complexity of the situation in most countries. As assessors work with the indicators and the matrix, they may find that four categories, such as those used by the Organisation for Economic Co-operation and Development (OECD, 2000), or perhaps subcategories, such as those used by Freedom House within the broad categories of free, partly free, or not free, are more appropriate (Freedom House, 2003). But as a starting point, the  $3 \times 3$  matrix may be a useful way of highlighting the fact that, while some countries will fairly clearly fall into either the some or severe problems categories for some standards, most countries will fall into the middle category with respect to some indicators.

We do not attempt to delineate the thresholds along either axis that would place a country above or below the line separating the categories because we do not believe that it is possible to set thresholds that are appropriate for every country and every situation. Judgments about government performance have to reflect the resources that a government has to work with: the question is not solely whether a government is spending more or less than a given percent of its gross domestic product, but whether it is doing the best it can with what it has. And, as noted above, many of the outcome indicators can mean different things under different circumstances. The burden of demonstration, argumentation, and persuasion necessarily falls on assessors—and their critics—to defend or challenge any given assessment.

Given the necessarily subjective and contingent nature of these judgments, the major value of the matrix framework is to increase the transpar-

ency surrounding U.S. government assessments of compliance with international labor standards. It also provides a structure to reveal clearly and explicitly those areas in which value weightings or empirical inferences among assessors and their critics diverge.

Under this or any other monitoring framework, it is impossible to ensure that individual assessors are not hasty, biased, or ill-informed in making judgments about compliance. Given this reality, the matrix framework may be useful in identifying weaknesses or political biases, as well as divergences, in alternative assessments. A hypothetical example of how this might work is presented in the annex to this chapter. As illustrated there, the matrix framework exposes clearly where differences in emphasis or interpretation lie and presents a structure for open contestation among assessors.

## CONCLUSIONS AND RECOMMENDATIONS

The committee concludes that the informational base for assessing compliance with international labor standards is very far from ideal. This chapter has presented examples, which can be multiplied, indicating why it is difficult for an observer to decide on the severity of a problem or its evolution.

To overcome the difficulties noted throughout the report, the committee makes the five following general recommendations:

1-1 The committee recommends that the U.S. Department of Labor improve, maintain, and update the committee's website database.

1-2 The committee recommends that this improved website database be publicly accessible with a mechanism that allows public comment.

1-3 The committee recommends that the U.S. Department of Labor, working with other federal agencies and international institutions, support programs designed to strengthen reporting and information through capacity building in particular countries.

1-4 The committee recommends that the U.S. Department of State and the U.S. Department of Labor devote higher priority to monitoring labor standards, to developing greater expertise in this area, and to improving coordination between the two departments.

1-5 The committee recommends that the U.S. government, using agencies such as the National Science Foundation, fund research and development on methodologies for monitoring labor standards.

### ANNEX: HYPOTHETICAL DEMONSTRATION OF THE MATRIX FRAMEWORK

This annex demonstrates how the matrix framework can be used to assess compliance with a single core labor standard—in this example, freedom of association and effective recognition of the right to collective bargaining—for a hypothetical country. It uses the 37 principal indicators discussed in the report: 21 “A” indicators for evaluating the extent to which a country’s system of laws and regulations are in compliance with international norms, 13 “B” indicators for evaluating the effectiveness of a government’s performance in implementing compliance, and 3 “C” indicators for overall outcomes. Figure 1-2 shows how one assessor might evaluate the legal framework in the country, government performance in implementing compliance, and overall outcomes. Figure 1-3 shows how a second assessor—or a critic of the first assessor—evaluates the same data.

	Conditions		
	Improving	Steady State	Worsening
Some Problems	<b>C-2</b>	A-1, A-2, A-3, A- 4, A-6, A-16 B-6, B-12	
More Extensive Problems		<b>A-5</b> , A-7, A-8, A-9, A-10, A-11, A-14, <b>A-15</b> , A-17, A-20 B-1, <b>B-2</b> , B-3, <b>B-4</b> , B-5, B-7, <b>B-8</b> , B-9, B-10, B-11, B-13	
Severe Problems			

FIGURE 1-2 Hypothetical assessment of country X’s compliance with freedom of association and right to collective bargaining by assessor A.

NOTE: As we discuss in subsequent chapters, all estimates of freedom of association, including those of the ILO, are subject to potentially serious measurement errors and biases; this caution has to be kept in mind throughout this report.

	Conditions		
	Improving	Steady State	Worsening
Some Problems		A-1, A-2, A-3, A-4, A-6, A-16 B-6, B-12	
More Extensive Problems		A-7, A-8, A-9, A-10, A-11, A-14, A-17, A-20 B-1, B-3, B-5, B-7, B-9, B-10, B-11, B-13	
Severe Problems		<b>A-5, A-15</b> <b>B-2, B-4, B-8</b>	<b>C-2</b>

FIGURE 1-3 Hypothetical assessment of country X’s compliance with freedom of association and right to collective bargaining by assessor B.

What has been accomplished by utilizing the matrix framework? It leads both assessors through an extensive review of what the committee considers the major indicators of compliance. Whether each assessor has undertaken with the same degree of thoughtful integrity and brought the same degree of expertise to this task, as opposed to engaging in a mere pro forma check-off of the lists of indicators, is of course unknowable. In light of this, the format for structured comparison shows both assessors—and outside observers—where the divergences lie and invites discussion of alternative judgments and inferences.

In this case, the two hypothetical assessments differ in the importance accorded to laws that make citizenship of members a precondition for establishing a trade union (**A-5**) and laws that forbid sympathy strikes (**A-15**) (see Chapter 2). They also differ in the importance accorded to delays in the prosecution of employers who retaliate against strikers (**B-2**), in the importance accorded to government interference in freedom of association by declaring martial law or “state of crisis” (**B-4**), and in the importance accorded to frequency of labor inspections (**B-8**). The two assessments further differ in the interpretation of whether an increase in the number of

strikes between two periods of comparison (C-2) represents an increase in repression of workers, a relaxation in repression of workers, or more extensive reporting.

It is not possible to provide specific guidelines on where to draw the line between characterizing a country's compliance problems as "extensive" or "severe." But the matrix framework at least makes the value judgments and data interpretations of assessors explicit and exposes them to challenge and debate.

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## 2

# Official and Nongovernmental Sources of Information

Information on compliance with international labor standards and acceptable conditions of work is available from a wide range of sources, including international organizations, national governments, nongovernmental organizations (NGOs), and academic researchers. The committee's task was to identify "relevant, valid, reliable and useful sources of country-level data on labor standards and incorporate them into a database" that could be used to assess compliance. Unfortunately, this task is not as straightforward as it appears.

Assessing compliance along the three dimensions proposed by the committee—(A) legal framework; (B) government performance; and (C) overall outcomes—requires consideration of both qualitative reports and quantitative data. But the quality of both types of information is uneven and research methods for measuring compliance with international labor standards and acceptable conditions of work are still in the developmental stages. This chapter presents an overview of major information sources identified by the committee that cover all or most of the core labor standards and conditions of work. More detailed descriptions of sources of information that are specific to each of the core labor standards and conditions of work are found in Chapters 4-8. Chapter 9 contains sources of information examining the linkages between compliance and national human capital policies. Chapter 3 describes information sources related to voluntary monitoring.



## OVERVIEW OF THE DATABASE

The committee has accomplished its goal of constructing the comprehensive structure of WebMILS, though currently the cells are not populated except for the data from one country. In an ideal world, the committee might have assessed all sources of information, both qualitative reports and quantitative data, based on a consistent set of criteria, and proposed for inclusion in the database only those sources that met these criteria. However, the reality is that both qualitative and quantitative sources of information are incomplete and suffer from a variety of quality problems. So, the database is designed to include all available information, from all possible sources.

Given the emphasis on legal frameworks and government performance, qualitative sources are essential. Such sources provide on-the-ground reporting on working conditions and workers' rights. Ideally, such sources would be developed independently of the stakeholders directly involved—governments, employers, and workers—and would be prepared by experts in the field. But, as examined below, qualitative sources of information reflect the perspective of the reporters and may be biased in one direction or another. Some of these reports are complaint-driven, which can introduce selection bias, while others may be written by a committee, or skewed or muted for political reasons. They often lack consistency over time because many of these reports are ad hoc rather than regular and systematic. In developing countries with large informal sectors, both qualitative and quantitative sources are likely to be unrepresentative of conditions overall within an economy.

The order in which sources appear in the chapter is roughly the order in which assessors would retrieve evidence from WebMILS database to perform assessments and the order in which subsequent efforts to fill out the database should be conducted, based on criteria of independence and expertise and ready availability of information. Although no source is ideal, the International Labour Organization (ILO) is the obvious starting point for information on member countries' laws and practices with respect to labor standards. We begin with the regular ILO supervisory process under Article 22 because it involves a committee of independent experts that publishes observations on areas of inconsistency between a country's laws and its obligations under conventions that it has ratified. For countries that have not ratified the core conventions, the follow-up under the 1998 Declaration on Fundamental Principles and Rights at Work requires govern-

ments to report annually on what they are doing in law and practice to achieve the principles embodied in the four core standards.

These government-generated reports, because of their inherent bias, will be more helpful for the legal framework indicators than for indicators of government effectiveness. Together, these reports provide a great deal of information on the application of standards in a large number of countries. More selective but also more detailed information is available from investigations under the ILO's ad hoc supervisory procedures, including the Committee on Freedom of Association. The ILO's National Labor Codes (NATLEX) database, as well as national sources, also have texts of national constitutions, laws, and regulations, but the country coverage is limited and, since it includes texts without expert interpretation, the user may need some legal knowledge in order to discern whether particular provisions are consistent with international standards or not.

For countries or standards not covered by ILO sources, other official sources, such as the United Nations, require similar country reporting under other relevant international conventions, such as the Convention on the Elimination of Discrimination Against Women, that are also sometimes accompanied by third-party review. The World Bank is also beginning to pay attention to labor standards issues in its country reports, but not as systematically as the other international sources.

After international sources, other official sources at the national level can provide supplemental information. The U.S. Department of State report on human rights is particularly handy because of its comprehensive coverage and orientation in section 6 toward assessing the status of worker rights around the world, but it and other national sources could be viewed as biased. Similarly, NGO reports are often quite detailed and can be quite useful, particularly those that cover large numbers of countries. But they will also often be subject to selection bias and, whatever the quality of their information, will be viewed with suspicion by the parties they criticize. When attempting to assess compliance with regard to any given country, NGO and other unofficial sources are most valuable, therefore, to provide complementary or contrasting perspectives for matching against other sources.

Labor market, economic, and other quantitative data are also essential for assessing compliance, particularly for the indicators in the overall outcomes. Ideally, quantitative data should meet a number of criteria:

- The data were collected in an actual census or survey and are not estimates that extrapolate from data collected in earlier surveys.
- Survey recipients in the survey sample are drawn from an actual census, which permits issues of representation, selection bias, and nonresponse to be assessed and reported, which is important in judging the validity and reliability of data that emerge from the survey.
- The data are national in coverage. In some countries, labor data may be collected only for urban areas or only for limited industries. As a consequence, the data are inherently biased because not all parts of the labor force are represented.
- Survey questions are consistent over time, in order to allow assessments of trends. Any necessary changes in data definitions, survey questions, or collection methods should be fully documented.

But these conditions are rarely met. As discussed below the data gathered by national statistical agencies and by international agencies vary widely in terms of coverage, periodicity, and reliability. Few “hard” numbers are available.

In general, national-level data to be included in the database are applicable to a country using country-specific definitions. The data are often not comparable across countries, and database users are cautioned against using them in this manner. The data may or may not be comparable within countries over time. In addition, assessors using the database should be sensitive to issues related to questionnaire design, sample design and sampling error, data collection and nonsampling errors (e.g., nonresponse), and data preparation problems (e.g., the possibility of data entry errors). The data should be publicly available with the sources clearly identified.

The committee’s database will reflect the limits of currently available information. In populating WebMILS, the focus should be first on sources that are international, cover a majority of countries in the world, are secondary, are easily accessible electronically, and which would be relatively easy to sustain. Such sources are both quantitative and qualitative in nature. The committee’s view is that it is appropriate to include some information in the database that does not meet the ideal criteria. Also, there are other sources of information that have yet to be tapped, such as information collected by national statistical agencies that is not compiled by international agencies, such as the ILO. Additionally, local NGOs may produce information on violations of a specific labor standard within a single country that could be identified and entered into WebMILS. The database,

therefore, is a way to collect relevant, publicly available, and web-accessible information together in one place—as a starting point—and to provide comments on the reliability or limitations of that information.<sup>1</sup>

Rather than ignoring data that did not meet a strict set of quality criteria, the committee chose to document each indicator and record the drawbacks as fully as possible, allowing assessors to judge the quality for themselves. There will be a record in the database cell for every combination of variable and political jurisdiction. Currently for the committee's single-country illustration, the following information is presented, to the extent available. (See Appendix A for some sample views of the database structure.)

- definition of the indicator;
- assessment and discussion of the indicator;
- available information;
- available sources, including hyperlinks to the relevant information;
- assessment of the information source, which may include a description of information collection methodology or characteristics of collecting agency, including weaknesses and caveats; and
- further or related information.

The rest of this chapter summarizes the key sources for both qualitative and quantitative information, in four categories: international organizations; national agencies; NGOs, both international and national; and academic research.<sup>2</sup> In view of the problems inherent in existing data se-

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<sup>1</sup>The committee decided to exclude information from media sources. Every nation has numerous newspapers, magazines, radio, and television stations that provide coverage on labor issues. The committee agreed that the media should not be viewed as a primary source of information on compliance with core labor standards and conditions of work. There are clear limitations to the validity of media reports—spotty coverage, political influence, media ownership, complaint-driven coverage, uneven investigation quality, and so forth. Nevertheless, the committee recognizes that the media may be the canary in the coal mine and may serve as a barometer of labor conditions. In this sense, the media should be used as a stimulus to additional investigation in potential labor problems.

<sup>2</sup>The discussion of qualitative sources in this chapter draws on Compa (2002). The evaluation of qualitative sources has also benefited from commentary from Anthony Giles, research director, Commission on Labor Cooperation of the North American Free Trade Association (NAFTA); Ben Davis, head of the Solidarity Center for the Western Hemisphere, AFL-CIO; and Sandra Polaski, senior associate at the Carnegie Endowment.

ries, the committee recommends extensive investment in further efforts to collect and disseminate high-quality data.

## INFORMATION FROM INTERNATIONAL ORGANIZATIONS

### **The International Labour Organization**

As the multinational organization charged with establishing international labor standards and supervising their enforcement, the ILO assembles a large amount of compliance information, most of which is made public. The ILO's website contains helpful information on its supervisory systems in the "frequently asked questions" (FAQs) section of the page on international labor standards. It is also possible to access reports on a country-by-country and convention-specific basis in the ILOLEX and Application of International Labour Standards (APPLIS) databases, making it possible to systematically examine problems with compliance by a particular country or for a particular standard.<sup>3</sup>

Under ILO's "regular system of supervision," countries provide routine reports under Article 22 on how they are meeting the obligations of conventions they have ratified and periodic reports under Article 19 for those they have not ratified. The ILO also has an ad hoc mechanism for investigating allegations of noncompliance against a member state under Articles 24 and 26. In addition to these and other qualitative reports on compliance, the ILO is also the primary international institution that collects and disseminates labor market data.

### **The Regular Supervisory System**

The ILO regular system of supervision examines member country compliance with international labor standards through member country reports to the ILO that are referred to its Committee of Experts on the Application of Conventions and Recommendations (CEACR).

Under Article 22 of the ILO constitution, each member state is required to report annually "on the measures which it has taken to give effect

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<sup>3</sup>See <http://www.ilo.org/public/english/standards/norm/index.htm> for the FAQs on labor standards; for the ILOLEX database, <http://www.ilo.org/ilolex/english/>; and for APPLIS, <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> [October 14, 2003].

to the provisions of Conventions to which it is a party.” Currently, member countries are required to submit reports on the eight core conventions to the CEACR every 2 years and on other conventions every 5 years. These reports contain the substantive provisions of the convention in question and answer questions about how it is applied in that country both in law and in practice.

Article 22 reports would be a valuable source for information on national laws and policies, but they are not readily available to the public. They are on file at the ILO headquarters in Geneva and researchers can, in theory, use them, but they have not been made available on the ILO website as have so many other ILO reports. Thus, these reports have not been included in the prototype database developed in the course of this study. The ILO should consider making the Article 22 reports relating to the eight core conventions available on its website at minimum.

Under Article 19 of the ILO constitution, the governing body also requests reports periodically on selected conventions from countries that have not ratified them. Reports prepared under Article 19 are fewer in number than Article 22 reports; and those relating to the core conventions are made available on the ILO website (see below). WebMILS would certainly draw on these reports for country information.

Additional sources of information are produced when the CEACR reviews the Article 22 reports submitted to the ILO. Based on its review, CEACR prepares a summary report highlighting both cases of progress and areas of concern, which it submits each year for consideration by the International Labour Conference Committee on the Application of Standards. The conference committee then selects 20 to 30 of the cases highlighted by the CEACR for discussion during the ILO’s annual conference. In reporting on the discussion to a plenary meeting of the conference, this committee sometimes includes “special paragraphs” to highlight particularly troublesome situations or long-standing problems, identified as a “continued failure to implement . . .”.

The CEACR reports are relatively technical, usually involving detailed textual analysis of laws and how they compare with ratified conventions. WebMILS would draw on the CEACR’s “Individual Observations” regarding particular problems in particular countries; these can be accessed by country on the ILO website (through the ILOLEX or APPLIS databases). (The database does not draw on the general report of the CEACR.) WebMILS would also draw from the annually prepared General Report of the Conference on the Application of Standards, as appropriate.

### **Follow-Up Reporting Under the 1998 Declaration**

As part of the follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work, additional reports by and about country compliance with core labor standards that are of concern to this study are available. As part of the “follow-up mechanism” to the ILO’s 1998 Declaration, countries that have not ratified the core conventions are required to report annually on their efforts to meet the declaration’s goals. These reports replace the periodic Article 19 reports on these conventions. WebMILS would draw on the annual compilation of these reports.

In addition, the ILO director-general has issued the first cycle of “global reports” on the overall status in the world of freedom of association and the right to collective bargaining (International Labour Organization, 2000), forced labor (International Labour Organization, 2001), child labor (International Labour Organization, 2002), and nondiscrimination in employment and remuneration (International Labour Organization, 2003). These reports draw on the governing body’s tripartite discussion and annual reviews to provide a dynamic global picture for each set of fundamental principles and rights. While these reports do not provide much detail on any given country, they do provide a general indication of the status of a given country, particularly where concerns have been raised with regard to a core labor standard. These reports are public- and web-accessible, and WebMILS would draw on them as appropriate.

### **The Ad Hoc, Complaint-Driven Supervisory System**

Under Articles 24 and 26 of its constitution, the ILO has ad hoc mechanisms for addressing allegations of noncompliance against member states. Under Article 24, any national or international workers’ or employers’ organization may make a “representation” claiming that a given member state has failed to apply an ILO convention it has ratified. More serious Article 26 complaints regarding inadequate compliance with a ratified convention may be brought only by another ILO member government delegate that has ratified the same convention or by any worker or employer delegate to the International Labour Conference. Under both articles, allegations that a member government is not protecting freedom of association and the right to organize and bargain collectively will be considered by the governing body, regardless of whether the country in question has ratified Convention Nos. 87 or 98.

If the governing body certifies that an Article 24 representation is receivable, it then goes either to an ad hoc committee of three members set up to examine the matter, or to the governing body's Committee on Freedom of Association if the claim involves that issue. After an investigation, which may involve contacting the government concerned, that committee or the Ad Hoc Committee provides a report to the governing body, which may then decide to publish the initial representation, along with the committee's conclusions and recommendations. If the matter remains unresolved, it may become a complaint under Article 26. The governing body may try to resolve the matter by sending a "direct contacts mission" from the director-general to consult with the government in question; if that does not work, it may refer Article 26 complaints to a commission of inquiry. After investigating the matter, the commission of inquiry writes a report of its findings for consideration by the governing body.

As a source of information, the reports associated with Article 24 and 26 cases can be valuable for an assessment of compliance with core labor standards. These reports, including those by the Committee on Freedom of Association, ad hoc committees, and a commission of inquiry, are usually more pointed than the CEACR observations on country reports because they respond to complaints and address concrete assertions about workers' rights violations. Together, the documents in the ILO databases from the regular and ad hoc supervisory mechanisms reflect the careful judgments of ILO delegates or independent experts on the status of a country's compliance with international labor standards.

It is important for any assessor to be sensitive to the limitations of these reports. Most important, aside from freedom of association, the coverage of these reports is mostly limited to countries that have ratified conventions. For the core labor standards, it is typically 140 to 150 countries. In the case of Article 24 and 26 complaints and cases before the Committee on Freedom of Association, there is an additional problem in that these cases are complaint driven and not representative of the full range of problems, either across countries or within them. For example, a country with a relatively strong union movement may find itself the subject of more complaints than a country with an authoritarian government and no unions able to file complaints. This problem has resulted in significant regional disparities in the number of complaints to the ILO that almost certainly do not reflect the actual distribution of violations. Approximately half of all complaints to the Committee on Freedom of Association, for example, involve Latin American countries, in part because Latin American unions



have become accustomed to using this mechanism. The ILO's procedures are less familiar to many trade unionists and their allies in Asia and Africa, and, in some countries, unions are much weaker. Technical assistance from the ILO and from other agencies, such as the U.S. Department of Labor, in how to use the ILO complaint process could help remedy this.

It is also important for any assessor to be sensitive to the use of language in ILO reports. Most ILO reports use guarded and somewhat opaque language. However, they follow a consistent, formulaic approach with code phrases that can be systematically analyzed. For example, there is escalating censure attached to phrases like "the committee notes that," "the committee notes with concern that," "the committee regrets that," "the committee again regrets to note that," "the committee deploras that," and "the committee deeply deploras that" (as used in reports on Burma, where the military dictatorship had not provided information requested by the committee). As noted above, it also uses "special paragraphs" to identify egregious problems.

ILO language can also be used to measure progress as when "the committee notes with satisfaction that . . ." a particular failure has been rectified. ILO language can similarly be used to identify lack of progress, as in "the committee therefore once again requests the government to take the necessary measures to amend the provisions which are in violation of the Convention," or "the committee expresses the firm hope that the government will find the most appropriate formula for amending the above provision."

Article 24 and 26 representations and the reports of the Committee on Freedom of Association, ad hoc committees, and commissions of inquiry, which are available through the ILOLEX database, are important sources for WebMILS.

### **ILO Umbrella Database on Labor Statistics**

The ILO umbrella database on labor statistics (LABORSTA) is the umbrella database of labor statistics collected by the ILO. It collects data on economic activity for more than 200 countries. Data are published in a series of 30 tables that present aggregated country-level data on:

- size of the economically active population,
- employment,
- unemployment,

- hours of work,
- wages,
- labor cost,
- consumer prices, and
- occupational injuries and industrial disputes.

Each of these subjects may be classified by age, gender, industrial sector, occupation, employment status, education, and economic activity.

Data in LABORSTA are derived from national sources, including labor force surveys, household surveys, censuses, establishment surveys, and administrative records. The member state has the responsibility for submitting data to the ILO that are included in LABORSTA. Since 1984, the ILO Bureau of Statistics has produced methodological descriptions of the national statistics on all the subjects published in the ILO *Yearbook of Labour Statistics*. These appear in a series of volumes entitled *Sources and Methods: Labour Statistics*, which are available through the LABORSTA website.<sup>4</sup> It is important to note that the ILO accepts national data unconditionally, regardless of the source of the data.

There are several inherent problems of comparability of data both over time and across countries. Although international institutions, including the ILO, encourage the use of consistent global definitions, many countries continue to use their own national definitions when collecting labor market data, e.g., definition of the economically active labor force, unemployment, or the age of majority for children. For an example of these discrepancies, see Box 2-1. In addition, within a member state, definitions may change over time as data collection methods evolve or as economic conditions change. Moreover, data in LABORSTA may be based on official estimates that are based on survey data, administrative records, or a combination of sources. Finally, some countries do not report data for all categories or all years. Consequently, the database will be missing data as a consequence of the failure to report or the periodicity of reporting. The committee is fully cognizant of potential weaknesses in LABORSTA. Nevertheless, the committee considers LABORSTA as an important source of information for its database, while documenting the caveats as fully as possible.

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<sup>4</sup>The LABORSTA website is available at <http://laborsta.ilo.org> [October 8, 2003].

## **BOX 2-1 National Definitions of Unemployment**

*International Labour Organization, LABORSTA*

### **Unemployment**

“National definitions of unemployment may differ from the recommended international standard definition. The national definitions used vary from one country to another as regards, inter alia, age limits, reference periods, criteria for seeking work, treatment of persons temporarily laid off and of persons seeking work for the first time.”

### **National Definitions – ILO Sources and Methods**

#### **South Africa**

“The unemployed are persons 15 years and older who:

1. are not in paid or self-employment as defined above (working for 5 or more hours);
2. are currently available, or were available during the seven days preceding the interview to take up either paid or self-employment;
3. had taken active steps during the four weeks preceding the interview either to find paid employment or to undertake self-employment; and
4. wished to work and were prepared to enter employment or undertake self-employment.”

#### **Thailand**

Unemployed persons are “all persons aged 11 years and over who, during the survey week, did not work even for one hour, had no jobs, business enterprises or farms of their own, from which they were temporarily absent, but were available for work. Persons in this category include:

1. those who have been looking for work during the preceding 30 days;
2. those who have not been looking for work because of illness or belief that no suitable work was available, waiting to take up a new job, waiting for agricultural season or other reasons.”

Also included are:

1. full- and part-time students seeking full- or part-time work;
2. participants in employment promotion schemes; and
3. unpaid family workers who were temporarily absent from work, if available for work during the survey week.

## **ILO Key Indicators of the Labor Market**

The ILO key indicators of the labor market (KILM) is an effort to develop comprehensive and expanded information on labor market indicators. KILM covers a large number of countries and is designed to be amenable to monitor new employment trends. KILM does not collect primary data; rather, it is composed of secondary data collected from eight data sources, which include:

- the International Labour Office,
- the Organisation for Economic Co-operation and Development (OECD),
- the U.N. Industrial Development Organization (UNIDO),
- the U.N. Educational, Scientific, and Cultural Organization (UNESCO),
- the U.N. Statistics Division,
- the World Bank,
- the Statistical Office of the European Union (EUROSTAT), and
- the U.S. Bureau of Labor Statistics (BLS).

Data in KILM are generally drawn from the data archives of these organizations and are based on questionnaires completed by national statistical sources or official national publications. When data are not available from an organization's repositories, regional and national data sources are utilized. The ILO multidisciplinary teams and regional offices assist in providing access to these data sources. For data with multiple sources, the ILO reviews the data sources and selects the most appropriate.

KILM presents data for 21 labor and economic variables, including:

- labor force participation rate,
- employment,
- employment-to-population ratio,
- status in employment,
- employment by sector,
- part-time workers,
- hours of work,
- urban informal sector employment,
- unemployment,
- youth unemployment,

- long-term unemployment,
- unemployment by educational attainment,
- time-related underemployment,
- inactivity rate,
- educational attainment and illiteracy,
- manufacturing wage trends,
- occupational wage and earning indices,
- hourly compensation costs,
- labor productivity and unit labor costs,
- labor market flows, and
- poverty and income distribution.

KILM includes data for nearly 200 countries (employment by sector) or as few as 29 countries (hourly compensation costs). It has baseline data for the years 1980 and 1990 and all available subsequent years. KILM recognizes the importance of historical continuity in the presentation of time-series data and indicates when breaks in data occur as a consequence of methodology of data collection or change in data source.

### **ILO Statistical Information and Monitoring Programme on Child Labour**

The ILO Statistical Information and Monitoring Programme on Child Labour (SIMPOC) represents the efforts of the ILO's International Programme on the Elimination of Child Labour (IPEC) to generate comparable and comprehensive data on child labor in all its forms. Initiated in 1998, SIMPOC used multiple methods of primary data collection, including:

- national child labor surveys,
- rapid assessments,
- baseline surveys,
- establishment-based surveys,
- street children surveys, and
- school-based surveys.

There is no designed periodicity to SIMPOC surveys or reports. To date, there have been 57 countries engaged in SIMPOC activities that have participated through one or more of the SIMPOC data collection efforts. In addition, SIMPOC has prepared child labor reports in 20 countries.

These child labor reports present comprehensive information collected from surveys and other sources on the incidence, causes, and consequences of child labor at the national level. SIMPOC data are country-specific. While country-level surveys are similar, they are not directly comparable from one country to another.

### **ILO Database on National Labor Codes**

The ILO Database on National Labor Codes (NATLEX) is described as “an index to the labor laws found in official gazettes and other legal compilations” at the national level; it includes bibliographic information on labor law in a large number of countries, sometimes with summaries of the content and occasionally with a link to full texts. This database can be searched by issue area, including nondiscrimination, and by country, with all of the entries in at least one of the three official languages of the ILO (English, French, or Spanish). In addition, the Library and Information Services section of the website has a brief guide, “How to Find National Labour Law.”<sup>5</sup> This useful guide has a section at the end that organizes sources available in the ILO collection by constitution, official gazettes, and labor codes, by country, with links to sources that are online, at the ILO or elsewhere. For example, there are links to the full text of 61 different national labor codes on the ILO website, 27 in English, 17 in French, and 17 in Spanish, as well as links to national government sites in the original language for some countries. There are also links to other repositories of national constitutions.

However, the country coverage of the texts available in NATLEX is spotty, and it is preferable to go to original national sources when possible to ensure that the information available is up to date. A casual perusal of documents available for the United States, for example, led to a 1995 executive order by President William Clinton discouraging the awarding of federal contracts to employers that had permanently replaced lawfully striking workers. What was not indicated, however, was that the order had been withdrawn shortly thereafter when a court overturned it. Such lack of timeliness might not be a major problem for legal statutes, for which the database indicates subsequent amendments and revisions, but further research would be required to determine the reliability of the database. Executive

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<sup>5</sup>See <http://www.ilo.org/public/english/support/lib/howto/legislation.htm> [October 14, 2003].

orders or other regulatory revisions, which may be more prone to frequent change, should be treated with greater caution in using this database.

In some instances, we have drawn on NATLEX as a source of information for national labor laws. However, as indicated above, it is typically preferable to use national sources of information. Thus, WebMILS, when possible has used these sources as described in the section below on national sources of information.

### **ILO Database on Labor Administration**

The ILO database on Labor Administration (ATLAS) is a regularly updated information system on national labor administrations. It provides analytical data on different labor administration organizations and different types of functional and other characteristics of labor administrations throughout the world. Of particular interest are the ATLAS data on the number, characteristics, roles, training, and functions of labor inspectors and administrators. The depth and scope of data that are available in ATLAS varies widely from country to country.

### **Information on ILO Technical Assistance**

Detailed reports on ILO technical assistance projects do not get systematically posted on the web as self-standing documents. However, the Technical Cooperation Committee does report annually to the International Labour Conference, and its reports may be useful for identifying countries that have requested or are participating in technical cooperation projects. Additional information on technical cooperation programs may be available from the InFocus Program on Promoting the Declaration, Multidisciplinary Advisory Teams, and regional and area offices. The receipt of technical cooperation is one of the committee's indicators of potential progress.

### **The United Nations**

Like the ILO, the United Nations has a regular reporting mechanism in which countries (state parties to U.N. treaties) submit reports detailing how they are meeting the requirements of various U.N. treaties. Seven U.N. treaties contain provisions that are similar to the provisions in the core labor standards plus acceptable conditions of work:

- the Convention on the Rights of the Child,
- the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,
- the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography,
- the International Covenant on Economic, Social, and Cultural Rights,
- the International Covenant on Civil and Political Rights,
- the International Convention on the Elimination of All Forms of Racial Discrimination, and
- the Convention on the Elimination of All Forms of Discrimination Against Women.

Information on the ratification of these treaties is appropriate to include in WebMILS. Reports submitted to the United Nations by countries that have ratified these covenants and conventions often contain useful information regarding the countries' laws related to international labor standards.

The U.N. High Commissioner for Human Rights produces country reports that sometimes include workers' rights issues. For example, the high commissioner's oversight of the peace process in Guatemala (U.N. Verification Mission in Guatemala, 2002) has generated a series of detailed reports that cover abuses of labor rights, among other human rights violations. Many of the country reports submitted to the United Nations, as well as specialized U.N. committee reports with commentary, are available to the public online.<sup>6</sup> These reports are typically not focused on employment issues, but they can be useful to supplement the information available from the ILO, particularly for countries that have ratified a U.N. convention but not the related ILO convention. As appropriate, we would draw on these reports for information or links provided in WebMILS.

With the exception of these country reports, the United Nations typically defers to the ILO with regard to worker issues. The U.N. *Human Development Report* refers to core labor standards, but it provides information only on ratification of ILO conventions. The United Nations is also a

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<sup>6</sup>For example, reports to the Committee on Economic, Social, and Cultural Rights are available at <http://www.unhchr.ch/html/menu2/6/cescr.htm> [October 8, 2003].



clearinghouse for statistics on population, education and literacy, health, and economics, which are compiled by components of the United Nations. In addition, the United Nations and its components seek to develop and promote standards for these statistics, promote better reporting by countries, publish technical studies on statistics, and develop specialized reports on demography. UNESCO collects and publishes comprehensive country-level data on indicators of educational attainment and literacy. Specifically, UNESCO presents information on:

- educational assessment and participation,
- efficiency of educational systems (retention and survival),
- resource allocation,
- literacy, and
- characteristics of educational institutions.

Detailed country-level, regional, and comprehensive data on education and literacy are published through UNESCO's Institute of Statistics. The institute collects data through multiple methods, including surveys. As with other U.N. agencies, UNESCO accepts national data unconditionally.

The U.N. International Children's Emergency Fund (UNICEF) collects and publishes information on six key areas of children's status:

- child survival and health,
- child nutrition,
- maternal health,
- water and sanitation,
- education, and
- additional child rights.

Through the Multiple Indicator Cluster Surveys (MICS), nearly 100 countries have collected data on the status of children based on 75 indicators. The development of the MICS questionnaire was the result of collaboration among UNICEF and other U.N. agencies with data collection responsibilities. UNICEF provides technical training and oversight to participating countries. Each participating country is responsible for data collection. As with other U.N. agencies, UNICEF accepts national data unconditionally.

## The World Bank

### World Bank Reports

The World Bank has instructed its staff to begin to take core labor rights into account in designing strategy for Bank assistance to individual member countries. The required analysis consists of four elements: legal and institutional assessment; factual assessment; assessment of potential negative impacts on the country's development due to its treatment of core labor standards; and assessment of country actions taken to rectify abuses.<sup>7</sup> The results of this analysis are used as input for the development of World Bank country assistance strategy (CAS) reports.

The legal and institutional assessment includes a notation as to whether the country has ratified ILO core conventions, a brief examination of national laws relating to core labor standards, and an analysis of provisions and capability for enforcement. For its "factual assessment," the Bank instructs staff to "report briefly what is happening in practice regarding the core standards, despite what protections might be guaranteed in law." Under "actions taken to rectify abuses" the Bank advises that "any notable government action to address violations of labor standards should be mentioned. For example, governments will frequently have programs addressing child labor. The strength and independence of the labor inspectorate is also important." Finally, the Bank states that its response to detected violations should be consistent with broader objectives, and "to the extent feasible, be developed in collaboration with the ILO." The Bank points out, however, that "the World Bank does not intend to act as an enforcement body of the ILO." The Bank adds, nevertheless (World Bank, 2003)

... in cases where non-implementation of one or more core standards negatively impacts the country's prospects for development, Bank staff should address these issues in dialogue with that country and should collaborate with the International Labour Organization in such dialogue and on labor issues more broadly.

To take workers' rights into account in designing the country assistance strategy, the Bank instructs staff to contact ILO country offices and

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<sup>7</sup>See "Core Labor Standards Toolkit – Diagnosing Core Labor Standards in the CAS" at <http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/2d5135ecbf351de6852566a90069b8b6/98df7256b3dd946185256946006b5256?OpenDocument> [October 9, 2003].

to review information from the ILO, trade unions, employers, human rights organizations, and Section 6 of the U.S. Department of State's annual *Country Reports on Human Rights Practices*.<sup>8</sup>

In implementing this approach, the World Bank has included analysis of core labor standards in recent country assistance strategy studies involving India, Bangladesh, Cambodia, Armenia, Indonesia, and Uganda. The discussions do not contain a great deal of detail, however, and mostly address child labor issues.

### **World Bank Quantitative Data**

The World Bank publishes information related to compliance with international labor standards in its annual *World Development Indicators Report (WDI)*, which consists of hundreds of indicators for the majority of nations in the world. Of particular interest are economic and demographic data, such as measures of the size of the economy and basic population statistics, which can provide context for understanding labor market dynamics.

With the exception of macroeconomic data, much of the data in *WDI* were not originally compiled by World Bank analysts. Thus, WebMILS would use *WDI* macroeconomic data, but for other data included in *WDI* we would prefer the source from which the World Bank obtained its data. For example, we have drawn our education data from UNESCO rather than the *WDI*, which also draws on UNESCO for its education data.

## **INFORMATION FROM NATIONAL AGENCIES**

### **U.S. Department of State**

The State Department's annual *Country Reports on Human Rights Practices* provides a fundamental source of information on compliance with international labor standards. They are particularly valuable because they cover so much of the globe (196 countries in the year 2002 report), because they are updated annually, and because they provide information on all

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<sup>8</sup>See "Core Labor Standards Tool Kit—Locating Information on Core Labor Standards" at: <http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/2d5135ecbf351de6852566a90069b8b6/aa0bfaa21a4a597585256946006987cb?OpenDocument> [October 9, 2003].

core international labor standards and acceptable conditions of work. Due to the continuing discrepancy between the U.S. legal definition of internationally recognized worker rights and the ILO consensus definition, however, the labor rights section of these reports (Section 6) provides information on only three of the four core standards; the reader must turn to Section 5 for information on country compliance with the core international standard that prohibits discrimination.

While individual country reports vary, overall quality improved in the 1990s when embassy labor officers (formerly called attachés) were given more training and their work was accorded a higher priority than previously (Compa, 2002, p. 14). With an on-the-ground presence, labor officers can interview key actors directly, place events and indicators in context, and strive to translate their findings into objective evaluations.

But the reporting in the State Department's annual human rights report continues to reflect a number of weaknesses. Recently, the State Department Advisory Committee on Labor Diplomacy (2000, p. 27) stated:

Many of the 49 Labor Officers in the field engage in labor work on a part-time basis, so that the resources dedicated to labor issues actually represent the equivalent of only about 20 to 25 full-time positions. . . . A number of Labor Officers only spend a small proportion of their time on labor issues.

The advisory committee also pointed to “antiquated” Internet access, lack of funds for in-country travel to investigate labor conditions, lack of support staff for labor officers, and lack of opportunities on a “labor promotion track” within the State Department's career priorities.

Over the long term there has also been a decline in the number of labor officer positions. The advisory committee report pointed out that in 1966 there were 89 full-time labor positions, including 73 at foreign posts, but by 1997, the number of labor positions at foreign posts had declined to 33. Between 1998 and 2000, the number of overseas labor officers increased to 49, but most of these have combined “political/labor” or “economic/labor” responsibilities. The Advisory Committee on Labor Diplomacy (2000, p. 37) recommended providing more resources to the International Labor Affairs Office within the Bureau of Democracy, Human Rights, and Labor, but the trend has been in the opposite direction with staffing at the office declining since the report was released.

Moreover, labor officers in a U.S. embassy do not act with complete autonomy. Ambassadors, their deputy chiefs, and other embassy officers

review labor reporting, and sometimes edit drafts to avoid creating an incident or offending host countries. And when they receive embassy drafts, the staff of the Country Reports and Asylum Office in the State Department's Bureau of Democracy, Human Rights, and Labor reviews them and initiates a complex negotiation on the final language among themselves, the Department of Labor, the embassies, and country desk officers at State Department headquarters. This process has both the advantages and disadvantages of any reports by committee. Nonetheless, considering their scope and overall reliability, the chapters of the State Department human rights report constitute an indispensable starting point for assessing compliance with core labor standards.

### **U.S. Social Security Administration**

The U.S. Social Security Administration (SSA) publishes *Social Security Programs Throughout the World* as a cooperative product between the SSA and the International Social Security Association. The publication contains data for more than 170 countries on old-age survivors and disability, sickness and maternity, work injury, unemployment, and family allowances. A global survey was completed in 1999, and beginning in 2002, data are being published every 6 months. Each volume focuses on a specific region of the world—Europe, Asia and the Pacific, Africa, and the Americas.

### **U.S. Department of Labor, Bureau of International Labor Affairs**

The Labor Department's Bureau of International Labor Affairs (ILAB) has been the source of many detailed reports assessing countries' compliance with international labor standards. From the late 1980s until the late 1990s, ILAB's *Foreign Labor Trends* series was a major repository of country information; it was supplanted by the Department of State's annual human rights report, with its Section 6 reports on workers' rights.

Through document review, legal analysis, site visits, interviews with key public and private actors using standard questionnaires, and solicitation and review of information from U.S. embassies, ILAB studies compliance with core labor standards in individual countries or country clusters. As noted in Chapter 4, for example, ILAB's 1996 study of export processing zones (EPZs) in the Dominican Republic, El Salvador, Guatemala, Honduras, India, and the Philippines was a model of careful investigation (U.S. Department of Labor, 1996).

The Department of Labor's International Child Labor Program produces the series *By the Sweat & Toil of Children* and the annual *Findings on the Worst Forms of Child Labor*. These reports provide an overview of child labor conditions in a number of countries and sectors and describe efforts to combat child labor. More detailed information regarding data sources and methodology are provided in Chapter 6 of this report.

### **Congressional Research Service Reports**

The Congressional Research Service (CRS) of the U.S. Congress publishes occasional country reports that focus on compliance with core labor standards. These reports usually are generated by specific requests from members of Congress who are writing legislation or organizing public hearings, often in connection with trade matters. In recent years, CRS has produced lengthy investigations of labor rights in Vietnam in 2001 as part of congressional consideration of a bilateral trade agreement with that country, and of labor issues in China as background for congressional debate about that country's entrance into the World Trade Organization (WTO) (Manyin et al., 2001; Bolle, 2000).

### **U.S. Government Complaint-Based Reports**

All of the reports discussed below suffer from selection bias because they are initiated based on private sector complaints and not on systematic reviews of compliance.

### **U.S. Trade Representative and Trade Policy Staff Committee**

Chaired by the Office of the U.S. Trade Representative (USTR), the Trade Policy Staff Committee (TPSC) is the interagency group that reviews labor rights complaints as part of the determination of eligibility for Generalized System of Preferences (GSP) and other preferential trade arrangements, including the Caribbean Basin, Andean Pact, Africa Growth, and other trade statutes.

U.S. government economic and foreign policy concerns have played a large role in TPSC labor rights reviews, producing inconsistent results in terms of which petitions are accepted for review and how much attention is given to investigations of politically sensitive cases. The reports are also largely derivative, relying heavily on the Department of State reports. They

are not available on the web but are kept on file at the USTR office. These reports may be useful, however, to supplement ILO or Department of State reports for particular countries.

### **U.S. Overseas Private Investment Corporation**

In most cases, the Overseas Private Investment Corporation (OPIC) follows the decisions of the TPSC when determining country eligibility for OPIC assistance.<sup>9</sup> For countries not eligible for GSP benefits, however, OPIC is required to conduct their own evaluation of labor rights performance. This occurred in the late 1980s, for example, with China, Saudi Arabia, and Korea, which were not eligible for GSP status because China was communist, Saudi Arabia was a member of the Organization of the Petroleum Exporting Countries, and Korea's level of development had "graduated" the country from eligibility for GSP benefits (Zimmerman, 1991).

More recently, an OPIC report on labor rights in Vietnam (still not eligible for GSP treatment due to its communist government) contains detailed analysis of both law and practice. While the report did not discuss its methodology in detail, it covered laws, decrees and regulations, U.S. State Department Section 6 reports, testimony from unions, NGOs, OPIC's annual public hearings, and on-the-ground interviews with key actors (Compa, 2002). OPIC in fact sent three delegations to Vietnam to meet with government and union officials (linked to the government through the Communist Party) and with managers and workers in public and private enterprises. The outcome is a balance of objective and interpretative reporting. When they exist, these reports may provide more detailed information on particular countries than is available from other sources.

### **U.S., Canadian, and Mexican Reports Under the North American Free Trade Agreement**

Detailed information on Mexico and Canada can be found in the reports of the U.S. National Administrative Office (NAO) on complaints

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<sup>9</sup>With regard to the specific projects that the corporation insures, however, OPIC regards information on worker rights investigations, monitoring outcomes, and remediation as "business confidential" and does not report results publicly.

about observance of core labor standards in those countries. The U.S. NAO is prohibited from conducting investigations inside Mexico or Canada; instead, it holds public hearings in the United States that include witnesses from the other members of NAFTA. It has sponsored reports from consultants and independent researchers, who have produced valuable information based on in-country research and interviews. Under the North American Agreement on Labor Cooperation (NAALC), the NAO may also request relevant information from the other governments. In practice, the NAO has often experienced great difficulty in getting timely and complete responses from the Mexican government, which sometimes considers U.S. NAO reviews as infringements on Mexican sovereignty.

Canada's NAO has also conducted some detailed investigations on core labor standards complaints involving Mexico, occasionally producing more thorough reports than the U.S. NAO treatment of the same case.

Mexico's NAO has produced several very circumscribed reports on complaints involving the United States. Mexico tends to do the minimum needed to fulfill NAALC requirements, which Mexico still considers an assault on its national independence imposed as the price for approving NAFTA. Mexican NAO reports typically just restate the terms of the complaint, without providing additional investigation or analysis.

### **Quantitative Data from National Statistical Agencies**

National-level data sources include censuses, surveys, and individual reports from countries around the world. Data from these sources vary widely in terms of coverage, periodicity, and reliability. There are four kinds of the weaknesses of data obtained from national statistical agencies in developing countries. First, they may suffer from subnational coverage. In many countries, data sources are drawn from surveys conducted only in certain parts of the country or among certain groups. Some examples of the limited parameters of survey information include: "greater Santiago," "greater Buenos Aires," "Korean firms employing 50 or more workers," and "registered manufacturing firms in greater Johannesburg."

Second, the data may not be drawn from an actual census or survey. In many countries estimates have been made on the basis of informed guesses; one example is the number of child workers.

Third, the data may not be drawn from consistent questions. In many countries the questions asked have changed over time for one survey or are asked differently in different surveys. For example, countries have some



household surveys that ask “What was your income in pesos, dollars, or rupees?” and other surveys are detailed household income and expenditure surveys with careful checks and cross-checks. Finally, in many countries the data cannot be traced. Examples are such notations as: “Source: ILO” or “Source: Staff estimates.”

In spite of inherent weaknesses in data generated from national statistical agencies, they may be the only source of national-level data on labor practices and policies, especially for data on government performance in endorsing and enforcing labor legislation.

### INFORMATION FROM NONGOVERNMENTAL ORGANIZATIONS

WebMILS would make use of information from a number of NGOs on various aspects of core labor standards. NGO reports vary considerably in the validity and reliability of data reported. In addition, many NGO reports are restricted in terms of time frame, geography, and industrial focus—with some reports focusing on one manufacturing facility in one city for one time period. Many NGOs also have strong political orientations that may introduce a selection bias in the data that are published. However, NGO reports may provide early warning of an emerging compliance problem or may provide more detailed information than other sources. As a result of the potential for selection or other bias, NGO reports should be used primarily to supplement official sources and should be cross-checked with other sources.

#### NGOs with Ongoing Broad or Global Coverage

##### International Confederation of Free Trade Unions

The *Annual Survey of Violations of Trade Union Rights* of the International Confederation of Free Trade Unions (ICFTU) is useful for information on violations of freedom of association, particularly employer discrimination against and government repression of union organizers.<sup>10</sup> The report contains data for approximately 150 countries that are submitted through its *Survey of Violations*. It is both complaint driven and anecdotal and does

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<sup>10</sup>These surveys are available at: <http://www.icftu.org> [October 14, 2003].

not present information on resolutions of labor disputes. Most information included in the annual survey is drawn from national and local labor unions and thus may reflect any biases inherent in the structure of those unions. For example, an International Labour Rights fund report indicates that some union leaders in Mexico sexually harass and discriminate against women (International Labour Rights Fund, 2003).

The ICFTU also submits selected country reports to the WTO that review the status of all four core labor standards.<sup>11</sup> The countries covered are those that are being reviewed by the WTO under its Trade Policy Review Mechanism, which eventually should cover all WTO members. The ICFTU is also a source of many submissions to the ILO, including comments on the country reports submitted under the Declaration follow-up mechanism.

### **Freedom House**

Freedom House conducts an annual survey that evaluates the political rights and civil liberties in 192 nations. The survey is based on a summation of a subjective rating of a checklist of 8 political rights and 14 civil liberties. Each political right and civil liberty is rated on a scale of 0 to 4 and scores for each nation are obtained by summing the ratings. Internal consistency checks are applied to political rights and civil liberty scores. Finally, ratings scores for both political rights and civil liberties are aggregated on a scale of 1 to 7. This survey has been conducted since 1989 and is an extension of Freedom House activities that began in 1955.

A panel of experienced experts makes assessments of individual nations, although no information is provided on interrater reliability or the overall reliability of the scales. Although the Freedom House scores are not without problems, the committee considers them for inclusion in WebMILS as an associated factor because of the importance of democratic institutions in protecting the core labor standards, particularly freedom of association.

In addition, although the Freedom House reports do not treat labor rights issues systematically or in much depth, some of the individual country chapters include qualitative information on labor rights that may be useful as a supplement to other sources.

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<sup>11</sup>These reports are available at <http://www.icftu.org> [October 14, 2003].

## Human Rights Watch

Through examination of press and other documents, legal analysis, intensive in-country interviews with government officials, nongovernmental actors, and victims of human rights abuses, and a rigorous internal editing process, Human Rights Watch (HRW) produces an annual report on human rights in roughly 70 countries. The HRW's annual report devotes only infrequent attention to workers' rights, but it also occasionally conducts in-depth country reports on labor rights issues. For example, recent studies have dealt with child labor in U.S. agriculture, discrimination against women in Guatemalan *maquila* factories, and freedom of association and child labor in the banana industry in Ecuador (Human Rights Watch, 2000, 2002a, 2002b). These reports may be more valuable for thorough information and analysis than HRW's annual report.

## Lawyers Committee for Human Rights

The Lawyers Committee for Human Rights (LCHR) is a New York-based NGO that was a founding member of the Fair Labor Association (see Chapter 3). The organization is creating a Workers Rights Information Project aimed at corporate performance around the world. It explains:<sup>12</sup>

. . . the goal of this multi-year project is to create a system that will provide a variety of users with access to information that they can use to assess corporate compliance with human rights standard[s]. . . . The project will emphasize measurable criteria on the status of working conditions, so that different situations can be fairly compared and so that progress (or decline) can be meaningfully tracked over time. In addition to distributing what is already known, and consistently highlighting what is not (on a case-by-case basis), the project will include a major emphasis on creating and supporting initiatives for more extensive disclosure than exists today, both through voluntary actions and through law.

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<sup>12</sup>See the LCHR workers rights website at [http://www.humanrightsfirst.org/workers\\_rights/workers\\_rights.htm](http://www.humanrightsfirst.org/workers_rights/workers_rights.htm) [February 27, 2004].

Obviously, however, this database will not provide systematic information on conditions at the country level, and it should only be used as a supplement to other sources.

The LCHR also occasionally publishes brief reports on workers' rights in particular countries, including Cambodia, China, Guatemala, India, Indonesia, Jordan, and South Korea, which are available online.<sup>13</sup>

### **Ad Hoc NGO Reports**

Ad hoc reports from NGOs are highly variable in coverage, quality, and approach.

### **Global Alliance for Workers and Communities**

The Global Alliance for Workers and Communities is a consortium including the World Bank, St. John's and Pennsylvania State Universities, Nike, and the Gap, Inc., with associated organizations in Asia. Founded in 1999, the program is managed by the International Youth Federation (IYF), which is an NGO funded by corporations and foundations. The Global Alliance has projects to assess workers' needs and provide training for managers to meet workers' needs at Nike and Gap supplier factories in China, India, Indonesia, Thailand, and Vietnam.<sup>14</sup>

Global Alliance researchers investigate general working conditions, focusing especially on health and safety and sexual harassment. However, in the course of investigating workers' needs, the organization produces information on compliance with international labor standards. The Global Alliance uses carefully prepared scripts for interviewers to explain what they are doing and detailed questions to draw out workers' expression of their needs. The result is one of the few sources of detailed survey information produced by the NGO community, but its information comes from plants owned by multinationals or their subcontractors and thus is not representative of conditions in the country.

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<sup>13</sup>See the LCHR workers rights website at [http://www.lchr.org/workers\\_rights/workers\\_rights.htm](http://www.lchr.org/workers_rights/workers_rights.htm) [October 14, 2003].

<sup>14</sup>See the Global Alliance website at <http://www.theglobalalliance.org> [October 14, 2003].

### **International Labor Rights Fund**

The Washington, DC-based International Labor Rights Fund (ILRF) produces occasional country reports, such as studies of child labor in the Ivory Coast and discrimination against women in Kenya.<sup>15</sup> In addition, ILRF collects a great deal of specific information for GSP petitions, NAALC complaints, and civil lawsuits on behalf of workers' rights. The ILRF has been a lead petitioner in GSP cases involving Guatemala, Colombia, Chile, Malaysia, Indonesia, and Sri Lanka and it was the first NGO to use the NAALC complaint process for Mexico-based cases. The ILRF is serving as plaintiffs' counsel in civil lawsuits against companies implicated in workers' rights violations in Guatemala, Colombia, Ecuador, Indonesia, and Burma.

### **National Labor Committee**

Based in New York City, the National Labor Committee (NLC) is an advocacy group dealing with sweatshop conditions in factories exporting low-skilled labor-intensive products to the U.S. market. It organizes delegations of workers and investigators from the United States to visit foreign countries and sponsors speaking tours by foreign workers in the United States. The NLC employs what it calls a "high profile campaign style," aggressively using the media to publicize working conditions and to bring pressure on U.S. companies that subcontract with supplier firms abroad.<sup>16</sup>

The NLC has carried out extensive firm-focused reporting on Wal-Mart, Walt Disney Company, Nike, Liz Claiborne, Ralph Lauren and, in one of its best-known media campaigns, on clothes carrying the Kathie Lee Gifford label. NLC country reports have covered Bangladesh, Burma, China, Colombia, El Salvador, Haiti, Honduras, and Nicaragua. Most of the country reports have been short, punchy, popular-style calls to action by readers—with a tone of exposé rather than systematic assessment—listing factory locations by name and identifying the U.S. retailers they supply.

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<sup>15</sup>For these reports and others that follow, see the ILRF website at <http://www.laborrights.org> [October 14, 2003].

<sup>16</sup>See the NLC website at <http://www.nlcnet.org> [October 14, 2003].

### Foreign NGOs and Websites

Based in London, Amnesty International is the best known and most often cited non-U.S. NGO. The discussion of HRW above applies equally to Amnesty International's reporting on worker rights. Both groups' reports should be scrutinized for workers' rights information, with the caveat that they are haphazard in covering this field.<sup>17</sup>

Solidar is a European NGO that also deals with labor rights issues.<sup>18</sup> Formerly named International Workers Aid (renamed Solidar in 1995) this Brussels-based organization is an alliance of European NGOs and trade unions that focuses on social justice, usually devoting attention to the relationship between the European Union and developing countries. Solidar publishes regular "International Updates" that consist largely of news clips on trade and labor standards, with special attention to the role of the European Union in the WTO. The Updates provide occasional links to more substantive workers' rights reports.

Several NGOs report on worker and human rights in Asia. The China Labour Bulletin<sup>19</sup> and Human Rights in China<sup>20</sup> are just two of several NGOs that are focused on China. NGOs working on China exhibit notable factionalism, requiring expert knowledge to sort through the players and their biases. The two groups noted here produce regular, well-documented reports on labor rights in China.

A similar effort by a new NGO called Global Standards focuses on Vietnam.<sup>21</sup>

The Hong Kong-based Asia Monitor Resource Centre, reporting on worker rights in the Asia-Pacific region for more than a quarter century, produces the quarterly *Asia Labour Update*.<sup>22</sup> Recent research and reporting efforts focus on comparative labor law in Asia-Pacific countries, on layoffs in China's special economic zones, on women workers in Asian EPZs, on the effect of transnational corporations' subcontracting on workers, on transnational subcontracting and social development, on migrant workers in Southern China, and on monitoring workers' conditions and workers' rights in the sports shoe, garment, and toy industries.

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<sup>17</sup>See the Amnesty International website at <http://www.amnesty.org> [October 14, 2003].

<sup>18</sup>See the Solidar website at <http://www.solidar.org/> [October 14, 2003].

<sup>19</sup>See the website at <http://iso.china-labour.org.hk/iso/> [October 14, 2003].

<sup>20</sup>See the website at <http://iso.hrichina.org:8151/iso/> [October 14, 2003].

<sup>21</sup>See the website at <http://www.global-standards.com/> [October 14, 2003].

<sup>22</sup>See the AMRC website at <http://www.amrc.org.hk> [October 14, 2003].

Established in 1987, the London-based International Centre for Trade Union Rights (ICTUR) produces a quarterly journal called *International Union Rights* that covers labor rights issues around the world.<sup>23</sup> It is particularly good in its coverage of African countries, which otherwise generally get much less attention than other developing country regions. ICTUR recently created an International Commission for Labour Rights to undertake country-specific research and reporting projects in years ahead.<sup>24</sup>

Brazilian trade union researchers produce an independent bimonthly report called *Correio Sindical Mercosur* that monitors worker rights developments in the four Mercosur countries—Brazil, Argentina, Paraguay, and Uruguay—plus information on Chile, Peru, and other Mercosur associates. In January 2002, with support from several North American unions and trade union federations, this group added an English edition, titled *Mercosur Union Post*, available by e-mail.<sup>25</sup>

Based in Geneva, the Global Unions website is a project of global union federations (formerly called International Trade Secretariats) affiliated with the ICFTU. It provides regular, updated reports on events within sectors of industry and within specific multinational corporations.<sup>26</sup>

Based in New Delhi, the Global March Against Child Labor produces the *Status Report on the Worst Forms of Child Labor*.<sup>27</sup>

### Academic Research

Scholars who work on international labor issues are often underused as a resource for assessing countries' compliance with core labor standards. The reporting organizations discussed above, especially governmental and international institutions, look almost exclusively at formal economic sources of information. While these sources are centrally important, a narrow focus may miss rich information sources and analyses produced by scholars with deep country and regional expertise.

Two sources created by Nils Gleditsch and Kevin Bales, respectively, are proposed for inclusion in WebMILS. At the Euroconference in Uppsala,

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<sup>23</sup>See the ICTUR website at <http://www.ictur.labournet.org/> [October 14, 2003].

<sup>24</sup>See the information at <http://www.labourcommission.org/> [October 14, 2003].

<sup>25</sup>See the website at <http://www.sindicatomercosul.com.br/> [October 14, 2003].

<sup>26</sup>See the website at <http://www.global-unions.org/> [October 14, 2003].

<sup>27</sup>See the website at <http://globalmarch.org/index.php> [October 14, 2003].

Gleditsch et al. (2001) presented a paper that provides information on the level of conflict in countries, one of the associated factors identified as important by the committee. Bales has produced global estimates of the number of slaves and the scale of human trafficking (Bales, 2002).

Ad hoc but detailed research on labor standards issues can also be found from a variety of other academic sources and may be useful as supplementary information. For example, there is extensive country-specific research on labor issues in the programs of such major academic congresses as the Industrial Relations Research Association (and its international counterpart, the International Industrial Relations Association), the American Political Science Association, the Latin American Studies Association, the American Sociological Association, and the Academic Consortium on International Trade.

Many of the top universities and research institutions have diverse investigators from the fields of economics, industrial relations, political science, comparative law, planning, sociology and other fields who have extensive experience doing on-the-ground quantitative and qualitative work on labor standards in many countries and regions. Researchers across these fields, from different institutions, collaborate to produce significant contributions to labor issues. University researchers also usually have valuable networks of foreign colleagues who bring their own national expertise to joint research and writing projects.

Scholarly journals contain a growing number of articles on countries and regions that can contribute to assessing countries' compliance with international labor standards. To give just one example, Weisband and Colvin (2000) have compiled a statistical representation of labor rights violations on the basis of an analysis of ICFTU reports over a 13-year period, leading to important questions of whether workers' rights were violated more frequently in the Americas than elsewhere in the world, or whether workers' rights violations were reported more frequently in the Americas than elsewhere in the world. But the journals in which such kinds of articles are likely to appear—including *Human Rights Quarterly*, *Comparative Labor Law and Policy Journal*, *International Journal of Comparative Labour Law and Industrial Relations*, and any one of a dozen more high-quality law journals devoted to global labor issues—are rarely cited by the reporting bodies reviewed here.



### Conclusions Regarding Sources of Information

The report has relied heavily on national level data compiled by international agencies. It is essential to note that the ILO and other international agencies collate data provided by national statistical offices. They do not assess the quality of these data or reconcile differences in extent of coverage, nor do they edit the data and eliminate or question often egregious inconsistencies. It is well known among researchers that in most countries the data are quite unreliable, reflecting both the weakness in the system of collection and in the lack of ability of the national statistical offices to evaluate the consistency of the information gathered and to ask for clarifications in firm, household, and labor force surveys. If the country data are of dubious value, so are the data compiled from them by the international agencies.

There is also a major issue in the relevance of the data that are presented. Almost all of the current series reflect conditions in the higher-income modern sector of developing countries, including large manufacturing firms, government agencies, and large privately owned firms in services. But these sectors typically account for much less than half of a country's employment, in some cases less than 15 percent. Thus, the sectors for which data are available are, in many cases, completely unrepresentative of the economies being considered, which are largely rural and agricultural. This problem is even worse in the case of some qualitative data that focus on the performance of multinational corporations in poor countries which, in all but a few countries, account for less than 1 percent of total employment. Thus, even if the "A," "B," and "C" indicators discussed in Chapters 4-8 were correctly measured in formal sector firms, large firms, and multinational firms, which is unlikely, they represent only a small percentage of economic activity.

The peer review process in academic publishing provides a guarantee of quality for these sources that may not be found in trade union, NGO, and government reporting. At the same time, however, the peer review process has the downside of delaying publication, so that data are often more than a year old.

It is difficult to keep complete track of all academic sources and publications touching on international labor rights. A project at the University of Michigan is undertaking such an initiative.<sup>28</sup> But it would be very worthwhile for any assessment effort to try to include input from divided disciplines across universities and research institutions.

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<sup>28</sup>See the website at <http://www.ilir.umich.edu/lagn/> [October 14, 2003].

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### 3

## Information from Nongovernmental Labor Monitoring Systems

Over the last several years, a new set of regulatory processes has emerged to respond to concerns about “sweatshop” conditions through the development and implementation of nongovernmental systems of labor monitoring and reporting. These nongovernmental monitoring systems seek to affect firms across their supply chains through “voluntary” standards (sometimes developed in cooperation with nongovernmental organizations [NGOs] and unions), internal and external monitoring systems, new sanctions and incentives, and different levels of public reporting.

In order to advance their strategies, the nongovernmental monitoring organizations are taking on activities that were previously the purview of state and international regulatory bodies. They are working to fill holes in traditional government regulation and to transform the nature of existing monitoring. These initiatives involve new forms of collaboration, new roles for NGOs, new responsibilities of firms, new responses from local and national government authorities, and most important for this study, new types of information on the compliance of firms with international labor standards.

These nongovernmental systems of labor monitoring and reporting are expanding extremely rapidly across industries and regulatory arenas—now covering garments, shoes, toys, forest products, oil and gas, mining, chemicals, coffee, electronics, and even tourism (Herrnstadt, 2001; Gereffi et al., 2001; Wick 2001; Cashore, 2002). However, to date very little rigor-

ous analysis has been conducted on the effects and implications of these potentially transformative institutions, and the analysis that has been conducted has been highly contentious, either advocating programs or dismissing them out of hand.

Advocates tout these initiatives as more flexible, efficient, democratic, and effective than traditional labor regulation (see, e.g., Bernstein, 2001), while critics conversely assert that nongovernmental monitoring is a corrupt attempt to free industry from the last vestiges of state regulation and union organizing (see, e.g., Justice, 2001). Proponents argue that these systems can supplement and even support government regulation; opponents assert that nongovernmental monitoring implicitly challenges the legitimacy and efficacy of state regulation. Some fear nongovernmental systems of monitoring will preempt or “crowd out” workers’ organizing efforts and the current role of unions; others believe these systems can support worker empowerment and participation in shop-floor negotiations. Some believe the new monitoring and certification will provide consumers with a false sense that problems have been solved and will demobilize international labor and environmental campaigns; others see the information generated by nongovernmental monitoring as key to transforming how people produce, consume, and regulate around the world.

This chapter seeks to describe and assesses the nature of these initiatives and, in particular, the information they are producing on compliance with international labor standards. Based on interviews with staff of each of the leading initiatives in the United States and Europe, interviews with multinational managers and advocacy organizations, a review of the existing literature and program documents, and direct evaluation of monitoring activities in China, Korea, Indonesia, and Mexico, the chapter details efforts at nongovernmental labor monitoring, explains how these systems function, describes the challenges they face, and evaluates their effectiveness in improving labor practices.

The chapter also discusses the information made available through voluntary codes and monitoring systems, to whom this information is made available, and for what purposes. It also briefly discusses information quality and reliability issues, and the relevance and value of this factory- and brand-level data for evaluating national compliance with international labor standards. The chapter concludes with a discussion of means to strengthen information access through nongovernmental regulatory programs and to more generally support efforts to improve conditions in the global workplace.

## NEW SYSTEMS OF LABOR MONITORING

Nongovernmental systems of labor monitoring and reporting are both more diverse and “messier” than traditional regulatory approaches, going beyond fixed rules and standards, government monitoring and enforcement, and judicial review (Arthurs, 2001; Lipschutz, 2000; Reinicke, 1998). Nongovernmental initiatives involve multiple actors in new roles and relationships, experimenting with new processes of standard setting, monitoring, benchmarking, public reporting, and enforcement. In a number of ways, these new initiatives follow the evolving global production processes. As networks of production extend out along increasingly complex supply chains, interested stakeholders are exploring systems of dispersed but interconnected monitoring. These emerging systems are almost as complex as the supply chains they seek to monitor. A critical shift in this process is the move from factory-centered, state regulation that focuses on individual sites of production to supply-chain and brand monitoring that focuses on multiple actors in a production chain. This shift involves establishing systems of accountability and management of performance across factories and nations. The new monitoring system attempts to create a network of regulators that involve multiple stakeholders along global supply chains.

While traditional regulation involves a national government establishing standards and policing performance, in contrast, outsourced monitoring involves NGOs and firms in standard setting and regulations, with the International Labour Organization (ILO) core standards and local laws as minimum standards. While traditional regulation uses state sanctions to enforce standards, outsourced monitoring relies largely on market sanctions—either through interfirm purchasing decisions or NGO consumer campaigns. While government regulation is hierarchical and arms-length, outsourced monitoring is networked at multiple levels and engaged with multiple actors in the supply chain.

Nongovernmental monitoring is actually a diverse family of regulatory strategies, many of which are currently in competition. Even the terminology used to describe these systems is contested. In this chapter we use “internal monitoring” to refer to monitoring conducted by brands and retailers, “external monitoring” to refer to monitoring conducted by third-party organizations, and “verification” to refer to independent evaluations (not paid for by those being monitored) of the results of codes and monitoring systems.

## CODES OF CONDUCT

Nongovernmental monitoring systems are based on voluntary standards, usually embodied in codes of conduct, which specify norms and rules by which to evaluate factory performance. These standards are sometimes quite specific, detailing precise rules of action; in other cases, they present only general principles of good practice (Braithwaite and Drahos, 2000). In both the United States and Europe, NGOs are now at the forefront of efforts to develop entirely new institutions (some nongovernmental, some public-private partnerships) to advance codes and to define institutional procedures to monitor compliance. Increased pressure from labor and human rights groups has motivated a growing number of multinational corporations to adopt codes of conduct and to submit to some form of external monitoring.<sup>1</sup>

Codes related to labor standards were originally quite diverse (Varley, 1998; Diller, 1999; Compa and Hinchliffe-Darricarrere, 1995) but appear to be converging now around the ILO core standards and basic principles regarding health and safety, wages and hours, and treatment of women.<sup>2</sup> While the general range of issues addressed in these systems is fairly similar (van Tulder and Kolk, 2001), the details of codes can vary considerably. Table 3-1 presents a summary of the codes of conduct advanced by the four primary U.S. monitoring systems. Key debates continue around such issues as freedom of association, wages (minimum vs. prevailing vs. “living”), and the scope of “nondiscrimination” clauses.

The multiplicity of codes of conduct, however, is a cause for concern. Multiple codes of conduct can lead to excessive and contradictory monitoring of a single factory and to managerial resistance to attempts at positive change. Also, in some countries, there may be a discrepancy between the host country’s labor laws and the terms set forth by codes of conduct. In such instances, companies may be pressured to comply with the less stringent national labor law or with the least stringent code of conduct. Systems for implementing and evaluating code compliance are obviously critical to the credibility of these codes. To these ends a number of initiatives have

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<sup>1</sup>For comparisons of company codes, see van Tulder and Kolk (2001) or company web pages, such as <http://www.nikebiz.com> [October 16, 2003] and [www.gapinc.com](http://www.gapinc.com) [October 16, 2003].

<sup>2</sup>Nadvi and Wältring (2001, p. 34) note that “despite the toothless nature of core labour standards, they have become a model for private social standards.”

emerged over the last several years to foster the implementation, monitoring, and verification of codes.

### INTERNAL FIRM COMPLIANCE MONITORING

Many large brands and retailers have developed procedures for monitoring supplier compliance with their newly created codes of conduct. The Gap, for instance, has a Vendor Compliance Department with more than 100 staff who are responsible for monitoring the implementation of the company's code of conduct throughout its global supply chain. Levi's, Disney, Wal-Mart, H&M, and other companies have established similar programs. These systems can either be extensions of existing supply-chain management programs—simply adding labor, human rights, and environmental concerns to current systems for evaluating quality, timeliness, price, etc.—or they can involve entirely new systems for internal monitoring and evaluation. Some companies are asking their quality control and purchasing staff to take on code compliance as an additional task, while others are hiring dedicated staff to conduct precertification audits of contractors and ongoing assessments of code compliance.

Nike was one of the first companies in the apparel and footwear industries to develop an internal compliance division.<sup>3</sup> In 1992, Nike established a code of conduct on labor and environmental practices for its network of suppliers which now cover more than 900 factories with more than 650,000 workers around the world. Supplier compliance with the code is monitored through a program of internal evaluation conducted first by Nike staff and then reviewed by external accounting, health and safety, and environmental consulting firms. Nike has developed internal monitoring tools, such as its SHAPE (Safety, Health, Attitude of Management, People Investment, and Environment) Audit and MESH (Management, Environment, Safety, and Health) Program that allow the company to integrate the evaluation of labor and environmental issues into broader management practices and training.<sup>4</sup> MESH resembles the 14000 Management Auditing Program of the International Organization for Standardization, though

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<sup>3</sup>Levi Strauss is reported to have developed the first code of conduct in the industry in 1991 (<http://www.levistrauss.com/responsibility/conduct>).

<sup>4</sup>See <http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=compliance&subcat=mesh> [October 16, 2003].



TABLE 3-1 Codes of Conduct

Standard	Fair Labor Association (FLA) <sup>a</sup>	SA8000 <sup>b</sup>	Worldwide Responsible Apparel Production <sup>c</sup>	Workers Rights Consortium (WRC) <sup>d</sup>
Child labor, minimum age	15 or 14 if country of manufacturer allows or age for completing compulsory education.	15 or 14 if meets developing country exemption, or local minimum age if older.	14 or age for completing schooling or minimum age established by law, whichever is older.	15 or 14 if consistent with ILO practices for developing countries.
Harassment and abuse	No employee shall be subject to any physical, sexual, psychological, or verbal harassment or abuse.	No corporal punishment, mental or physical coercion, or verbal abuse; no sexually coercive or exploitative behavior.	No harassment, abuse, or corporal punishment in any form.	No employee shall be subject to any physical, sexual, psychological, or verbal harassment or abuse; no corporal punishment.
Nondiscrimination	No discrimination in hiring, salary, benefits, advancement, discipline, termination or retirement, on basis of gender, race religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.	No discrimination in hiring, compensation, access to training, promotion, termination, or retirement based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, or political affiliation.	No discrimination on basis of personal characteristics or beliefs; question about discrimination based on seniority.	No discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination, or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, political opinion, or social or ethnic origin

Freedom of association and collective bargaining	If right restricted by law, employer shall not seek state assistance to prevent workers exercising right to freedom of association.	If right restricted by law, employer facilitates parallel means for free association and bargaining.	Lawful right of free association, including right to join or not join an association.	No employee shall be subject to harassment, intimidation, or retaliation in efforts to freely associate.
Health and safety	Safe and healthy working environment is required. Standard also applies to employer-operated facilities apart from production facilities (e.g., housing).	Safe and healthy working environment is required. If provided, housing should be clean and safe. Steps are taken to prevent accidents and injury. Regular health and safety training is required.	Safe and healthy working environment is required. If provided, housing should be safe and healthy.	Safe and healthy working environment is required.
Wages	Local minimum wage or prevailing industry wage, whichever is higher, and legally mandated benefits.	Legal or prevailing industry wage and meet basic needs and provide discretionary income.	Legal minimum wage.	Legal minimum wage and benefits. WRC code requires paying a "living wage."

TABLE 3-1 Continued

Standard	Fair Labor Association (FLA) <sup>a</sup>	SA8000 <sup>b</sup>	Worldwide Responsible Apparel Production <sup>c</sup>	Workers Rights Consortium (WRC) <sup>d</sup>
Hours of work	8 hours per week and 12 hours overtime or the limits on regular and overtime hours allowed by the law of the country; 1 day off in every 7.	48 hours per week and 12 hours overtime maximum. Personnel shall be provided with at least 1 day off in every 7-day period. All overtime work shall be reimbursed at a premium rate.	Shall not exceed the legal limitations of the countries in which apparel is produced; 1 day off in every 7-day period, except as required to meet urgent business needs.	Not be required to work more than the lesser of (a) 48 hours per week or (b) the limits on regular hours allowed by the law of the country of manufacture, and be entitled to at least 1 day off in every 7-day period, as well as holidays and vacations.

<sup>a</sup>For more information, see <http://www.fairlabor.org> [November 24, 2003].

<sup>b</sup>For more information, see <http://www.SA8000.org> [November 24, 2003].

<sup>c</sup>For more information, see <http://www.wrapapparel.org> [November 24, 2003].

<sup>d</sup>For more information, see <http://www.workersrights.org> [November 24, 2003].

SOURCES: Data from organizational websites and Maquila Solidarity Network (2001b).

it seeks to go further by evaluating actual factory performance. Nike now has more than 85 staff who monitor labor and environmental conditions in the company's contractor factories. Reebok and Adidas, Nike's main competitors, along with many other prominent footwear and apparel firms, have established similar programs that combine in-house assessment with audits by consulting firms. Reebok, for instance, has instituted a worldwide Human Rights Production Standards Factory Performance Assessment System, while Adidas has created "standards of engagement" for labor practices and health, safety, and the environment for all its subcontractors.<sup>5</sup>

Through these auditing tools, companies like Nike, Reebok, and Adidas now regularly rate their subcontractors for environmental and labor performance. In the case of Nike, points are assigned for performance in a wide range of categories, with double weight given to labor and environmental performance rankings. Subcontractors are then told how they rate against other subcontractors in the same country. High scorers often garner more lucrative orders, while low scorers risk losing contracts. Nike bases these labor and environmental programs on long-standing quality control management systems for evaluating and ranking subcontractors. Requirements to improve labor conditions simply extend the scope of commitments agreed to in the code of conduct and subcontractor memorandum of understanding. Providing some evidence that this effort is earnest, Nike, Reebok, and Adidas have cancelled a handful of contracts due to poor performance and an unwillingness of these firms to change.

It is hard to determine how much change has resulted from firm-led codes of conduct and monitoring. There is little research on the effects of codes and self-monitoring on actual workplace conditions since most of these programs remain confidential. Firms naturally assert that these systems respond effectively and sufficiently to labor concerns. Many companies continue to argue that they alone (perhaps with the assistance of a consulting firm) have the knowledge and ability to solve labor problems. However, judging by press reports, neither activists nor the general public put much credence in corporate self-evaluation and monitoring (Connor 2001a, 2001b). A number of prominent retailers and brands in the United States, such as Wal-Mart, have nonetheless continued to advance tightly controlled versions of self-monitoring that provide very little, if any, pub-

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<sup>5</sup>Information from interviews with staff of Nike, Reebok, and Adidas in 2000 and 2001.

lily verifiable information. On the basis of recent cases in which codes and monitoring have been used for public relations rather than improving labor conditions, many people criticize these voluntary codes and internal monitoring for their vulnerability to corporate manipulation (O'Rourke, 2002).

## EXTERNAL MONITORING AND CERTIFICATION

Growing public awareness and activist pressure has led to a recent proliferation of programs in the United States and Europe to establish standardized codes of conduct and systems of monitoring that are conducted by accredited third-party auditors. Three such major initiatives have emerged in the United States: the Fair Labor Association (FLA), Social Accountability International (SAI), and the Worldwide Responsible Apparel Production (WRAP) certification program. Each of these programs has a code of conduct informed largely by ILO core standards and a system for accrediting external organizations to monitor compliance with the code. A small army of monitors including accounting firms, professional service firms, and small nonprofit organizations are emerging to provide these third-party monitoring services (Bartley, 2001).<sup>6</sup> External monitoring systems differ in key procedures for auditing (who conducts the monitoring and how), certification (whether a factory or a brand is certified), and reporting (what is publicly disclosed). Table 3-2 highlights the differences in these systems.

### Fair Labor Association

The Fair Labor Association (FLA), convened originally by the Clinton administration in 1996 as the Apparel Industry Partnership (AIP), is both the oldest and most controversial of current initiatives to establish monitor-

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<sup>6</sup>Private, for-profit monitors include PricewaterhouseCoopers (recently spun off as Global Social Compliance), Cal-Safety Compliance Corporation, International Certification Services, Det Norske Veritas, Bureau Veritas Quality International, Intertek Testing Service, Merchandise Testing Labs, MFQ, Sandler & Travis, Centro per l'Innovazione e lo Sviluppo Economico, RWTUV Far East Thailand, Global Standards-Toan Tin Vietnam, and KPMG. Nonprofit groups include the U.S. NGO Verité, the Guatemalan Commission for the Monitoring of Code of Conduct, the Independent Monitoring Group of El Salvador, Phulki (a Bangladeshi NGO), and the Honduran Independent Monitoring Team.

TABLE 3-2 U.S.-Based Nongovernmental Monitoring and Certification Systems

Standard	Fair Labor Association (FLA)	SA8000	Worldwide Responsible Apparel Production (WRAP)
Scope	Apparel and footwear companies; licensees of affiliated universities.	Factories producing a wide range of products.	Apparel industry.
Governance	12-Member board with 6 industry representatives, 5 NGOs, 1 university representative.	Governing board has 5 members, composed of 1 representative from Council on Economic Priorities, 3 lawyers, and 1 business person. SAI also has an advisory board with more diverse membership.	Board of 3 officers and 8 directors form the Independent Certification Board, primarily industry representatives.
Monitoring process	Companies must conduct internal monitoring of at least one-half of their applicable facilities during the first year and all of their facilities during the second year.  Companies commit to use independent external monitors accredited and selected by the FLA to conduct periodic inspections of at least 30 percent of their facilities during their initial 3-year participation period.	Manufacturers or suppliers are granted the status of “applicants” for 1 year until they are verified by an accredited certification auditor. The SA8000 certificate must be renewed every 2 years.  Specially trained local audit teams will be briefed by local NGOs and unions, speak to managers and workers, and check the records of the factories. The SA8000 “guidance document” is the	Factories must undergo a three-step process: self-assessment, independent monitoring, and final review and follow-up.  Factories contract and schedule selected independent monitors to perform on-site evaluations. Based on this evaluation, the independent monitor will either recommend that the facility be certified

*Continued*

TABLE 3-2 Continued

Standard	Fair Labor Association (FLA)	SA8000	Worldwide Responsible Apparel Production (WRAP)
Certification	<p>Factories are selected by FLA staff, with a focus on the largest and those with greatest risk of noncompliance. All monitoring must involve local NGOs. Monitors will use a combination of announced and unannounced visits.</p> <p>FLA certifies an entire brand. A service mark will be developed so consumers know which companies are participating and which have met the standards for certification. Timely remediation, assessed by monitors and FLA staff, is required for certification.</p>	<p>SAI manual, which assists the accredited auditors in fulfilling this task. NGOs are also encouraged to undergo the process of becoming accredited SAI auditors.</p> <p>Factories self-select for certification.</p> <p>Certification means that a facility has been examined in accordance with SAI auditing procedures and found to be in conformance. Auditors look for evidence of effective management systems and performance that prove compliance. Certified facilities are subject to semiannual surveillance audits.</p>	<p>or identify areas for corrective action before such a recommendation can be made.</p> <p>Factories self-select for certification.</p> <p>The WRAP certification board will review the documentation of compliance and decide upon certification. The term of certification will be specified by the board, based on a criteria of risk factors. Over the term of the certification, the facility may or may not receive an unannounced inspection to verify continued compliance.</p>
Company requirements	<p>Companies must implement the FLA code; internally monitor every factory every year according</p>	<p>Manufacturers and suppliers adopt a program to pursue SA8000 certification. Retailers become</p>	<p>Factories must meet WRAP principles and bear all costs of certification. Factories must</p>

TABLE 3-2 Continued

Standard	Fair Labor Association (FLA)	SA8000	Worldwide Responsible Apparel Production (WRAP)
	to FLA monitoring principles; and participate in independent external monitoring every year. All internal and external monitoring must include local NGOs.	“SA8000 Members” and publicly announce their commitment to seek out socially responsible suppliers and assist suppliers in meeting the SA8000 social standards.	apply, be registered in the WRAP Certification Program, and perform self-assessment of their facility with the WRAP Handbook to determine if their facility complies with the WRAP Principles.
Reporting	All internal and external monitoring reports will be provided in full to the FLA staff. The FLA will evaluate audits, jointly develop remediation plans, and then publish summary reports of audit remediation results.	Audit reports go to the companies and to SAI. Other parties can only receive them after having signed a confidentiality agreement with the company management and the audit company.	Audit reports are provided to factories and the WRAP board.
Public disclosure	Annual reports on each company are required, based on internal and external monitoring. Participating companies are publicly listed on website FLA. No disclosure of locations of certified factories.	The public is informed only of factories granted certification.	There is no public reporting and no mention of sites that receive, fail, or lose certification.

SOURCE: Data from organizational websites.



ing and verification. The FLA originally focused only on the apparel and footwear industries but has recently expanded to cover other industries that produce university-logo goods. As of May 2002, the FLA consisted of 13 footwear and apparel firms, several NGOs, and about 170 university affiliates.<sup>7</sup> Notably, several union and NGO members of the original AIP left the organization when it evolved into the FLA in protest of what they believed were insurmountable flaws in the organization and its monitoring procedures.

The FLA has a Workplace Code of Conduct and Principles for Monitoring, accredits monitors, reviews audits, and reports on audit results. The FLA advances a monitoring system that requires companies seeking certification to first inspect (internally) at least half of their factories during the first year and all of their factories during the second year. Companies are then required to hire external monitors to evaluate at least 30 percent of their supplier factories during the first 2-3 years of the certification process.<sup>8</sup> Over 2,000 internal audits have been conducted to date.

The FLA model has come under fire from a number of unions, NGOs, and student activists for being overly controlled by industry (Benjamin, 1998; Maquila Solidarity Network, 2001a). Critics pointed out that firms could select and directly pay their own monitors, have a say in which factories are audited, and only disclose summaries of auditing results (Sethi, 2003). Student activists have also criticized the FLA for failing to advance a living wage and for not sufficiently supporting union and women's rights.

The board of the FLA responded to these criticisms by taking much more control over external monitoring. The FLA staff now selects factories for audits on the basis of information from a variety of sources, chooses the

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<sup>7</sup>FLA members include Nike, Reebok, Liz Claiborne, Patagonia, Levi's, Adidas, Eddie Bauer, Polo Ralph Lauren, L.L. Bean, Nicole Miller, Phillips Van-Heusen, the Lawyers Committee for Human Rights, the International Labor Rights Fund, the RFK Memorial Center for Human Rights, and the National Consumers League.

<sup>8</sup>The FLA has to date accredited 11 organizations to carry out this "external" monitoring. Each of these monitors is accredited to inspect factories in specific countries. These include A&L Group, Cal Safety Compliance Corporation, Cotecna Inspections, COVERCO, Global Standards/Toan Tin, Intertek Testing Services, Kenan Institute Asia, LIFT-Standards, Merchandise Testing Labs Brand Integrity, Phulki, and Verite. As of June 2002, 982 companies had applied for certification, the majority of which were small university licensees.

monitoring organization, and contracts directly with that organization.<sup>9</sup> In addition, the staff has created a channel for receiving direct and confidential complaints of labor rights violations from any interested individual or organization.

Using this new approach, the FLA engaged monitors in 2002 to audit labor conditions at the BJ&B baseball cap factory in the Dominican Republic. When selecting this factory for an audit, the FLA drew on several sources of information, including reports of anti-union discrimination from student activists (Gonzales, 2003) and a direct complaint to FLA from Nike, Reebok, and Adidas, charging their BJ&B supplier with violations of freedom of association. The FLA worked closely with the companies and with the Worker Rights Consortium to pressure factory managers to respect worker rights, and in March 2003 the union and factory management signed a collective bargaining agreement (Maquila Solidarity Network, 2003a). More recently, the FLA sent an external monitor to Primo, a U.S.-owned garment factory in El Salvador, largely on the basis of information from a labor rights group charging Primo managers with discriminating against union organizers when hiring (Maquila Solidarity Network, 2003a).

The FLA has also increased its public disclosure, publishing tracking charts that summarize audit results from 50 factories on its website in June 2003. Although the tracking charts do not reveal factory locations, they do identify the company, the country, the type of product, and number of workers employed. The charts also describe the labor rights problems identified in the audits and corrective actions (Maitland, 2003; Fair Labor Association, 2003a). Publication of this information increases the transparency of the major companies' labor practices. One labor rights group has already used the tracking charts to charge two FLA member companies with violating workers' rights to freedom of association (Maquila Solidarity Network, 2003a).

Finally, the FLA has increased its efforts to work with member companies, local factory managers, and unions to address problems identified by external audits. For example, Guatemalan workers producing apparel for

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<sup>9</sup>The staff selects a 5 percent sample of factories most at risk for labor problems from a list of factories provided by each member company. The companies pay for the external audits indirectly through a revolving loan trust established by FLA (Fair Labor Association, 2003a).

Liz Claiborne lodged a direct complaint with FLA in the summer of 2003, alleging that their right to freedom of association had been violated. Earlier audits by FLA-accredited monitors had identified these problems, and Liz Claiborne had encouraged local managers to address them, but according to the new complaint, those efforts had failed. The FLA responded to these new allegations by helping to bring unions and management to the bargaining table and by contracting with an FLA-accredited monitor to monitor the negotiations. On July 16, 2003, the local parties reached agreement on a contract—the only collective bargaining agreement to date in the Guatemalan apparel and textile industry (Maquila Solidarity Network, 2003b; Fair Labor Association, 2003b).

### **Social Accountability International and SA8000**

SA8000, a voluntary workplace standard patterned on those of the International Organization of Standardization, was created in 1997 by the Council on Economic Priorities (a U.S. NGO) and is administered by another NGO, Social Accountability International (SAI). SAI has an advisory board made up of representatives from multinational firms, international unions, and NGOs. SAI seeks to motivate factories as well as member brands in a wide range of industries to implement the SA8000 code of conduct and to be audited by accredited auditors. SAI is responsible for accrediting the auditing firms, conducting trainings for auditors, factory managers, and workers on the standards, and for publishing a list of factories meeting the SA8000 standard.

The SA8000 system differs from the FLA in a number of regards, most notably on the issues of wages, worker representation, and certification. SA8000 may be interpreted to include the requirement that factories pay workers a “living wage,” or what SAI refers to as a “basic needs” wage, as opposed to the FLA’s weaker requirements to pay the prevailing wage (see Table 3-1). SA8000 also requires firms to “facilitate parallel means of independent and free association and bargaining” in countries where it is not possible to form free trade unions (such as China). Both of these provisions remain highly controversial, as it is not clear, for instance, exactly what will qualify as effective parallel means of representation in countries such as China. SA8000 also includes a section on management systems, which “requires policies and procedures and documentation systems that demonstrate ongoing compliance with the standard.”

SA8000 also differs in that it certifies manufacturing facilities, not

brands or retailers. The idea behind this system is that brands and merchandisers will seek out factories that have received SA8000 certification (as they look to ISO 9000 certification to verify quality standards). SAI is also developing a signatory member program,<sup>10</sup> which requires members to move their supplier factories toward SA8000 compliance and to periodically report progress in meeting these goals.

SAI discloses lists of certified facilities and their locations but does not publicly disclose which facilities have lost their certification or had their applications rejected. As of May 2003, 236 factories in 36 countries had been certified under SA8000; 50 of them are apparel and textile firms. It is not clear whether any of the signatory members' affiliated facilities have received SA8000 certification.

A number of concerns have been raised about the SAI strategy. One is the limitations of a voluntary, factory-centered initiative that has to date certified only 200 factories of at least 100,000 factories producing for the U.S. market. The SA8000 auditing procedures have also been criticized by NGOs for a perceived corporate bias and weak controls on the quality of monitors (Labour Rights in China, 1999). No NGOs have been accredited within the SAI system. Professional service firms and quality testing firms conduct the auditing.

### **Worldwide Responsible Apparel Production**

The Worldwide Responsible Apparel Production (WRAP) Program might be viewed as industry's version of external monitoring and certification. WRAP was developed in 1998 by the American Apparel Manufacturers Association (which recently became the American Apparel and Footwear Association [AAFA]) and began certifying factories in June 2000. WRAP's board members include major apparel brands, such as Vanity Fair Corporation, Sara Lee, Kellwood, and Gerber Children wear. The WRAP certification board consists of individuals primarily from the private sector, with a nominal claim that the majority of its members are not directly affiliated with the apparel industry (Maquila Solidarity Network, 2001a).

Like the FLA and SA8000, WRAP has created its own code of con-

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<sup>10</sup>Member organizations include Amana, Avon Products, Cutter and Buck, Dole Food, Eileen Fisher, Otto Versand, Toys R Us, and the U.N. Office of Project Services.

duct, which it calls the WRAP Principles. The 12 WRAP principles include common standards for child and forced labor and workplace and environmental protections. However, WRAP also contains unique requirements for customs compliance and drug interdiction efforts, which support tighter security controls over suppliers and shipments. However, the WRAP Principles are widely viewed as the weakest standards of any of the systems, with the least transparent monitoring and certification program (Maquila Solidarity Network, 2001b).

WRAP certifies factories not brands, which is similar in approach to SA8000. The WRAP certification board accredits firms to be external monitors of manufacturing facilities. WRAP has accredited six firms as monitors to date (Maquila Solidarity Network, 2001a), again primarily professional service firms such as ITS, Global Social Compliance (formerly PwC), BVQI, and Cal-Safety. Certification of facilities is valid for 1 year, and factories are required to undergo self-assessment and submit to external monitoring. External monitors submit facility monitoring reports to the WRAP certification board, which then reviews each report and decides for or against certification. On certification, facilities may or may not be subject to unannounced inspections. As of April 2002, approximately 200 factories had been certified by WRAP.

WRAP has been criticized by a range of stakeholders for its perceived industry bias and low level of public transparency. WRAP does not disclose the names or locations of certified or audited factories and has not disclosed any audits to date. WRAP also lacks any NGO or civil society participation in monitoring or verification. All audits are announced in advance and conducted by firms paid directly by the factories being audited.

### **European Monitoring Initiatives**

A number of monitoring initiatives are also emerging across Europe, for instance, the government-created Ethical Trading Initiative (ETI) was initiated in England in 1998. ETI is an alliance of companies, NGOs, and trade unions working to “identify and promote good practice in the implementation of codes of conduct of labour practice, including the monitoring and independent verification of the observance of code provisions.” ETI was established explicitly as an experimental, learning initiative, designed to help identify and disseminate information on how best to implement labor codes that benefit workers in global supply chains. ETI has conducted pilot projects in a number of countries, including apparel facto-

ries in Sri Lanka. These projects are key to the ETI strategy as they generate information on issues such as how to monitor for child labor, how to evaluate the quality of 1-day audits, how different actors can contribute to auditing, how best to establish worker complaint systems, etc. ETI reports the findings of its pilot projects and company internal auditing to member organizations only, not to the general public.

The Dutch established the Fair Wear Foundation (FWF) in 1999 (after 5 years of discussions and negotiations on code issues) to work with associations of small- and medium-sized enterprises to oversee the implementation of a standard code of conduct. The FWF requires companies to monitor their supply chains, with independent verification and effective worker complaint procedures. The foundation plans to certify companies that have a system in place to gather evidence on factory conditions in their supply chains. FWF is responsible for verifying that the code is being implemented in a percentage of each firm's factories. The FWF has conducted pilot studies in India, Poland, Romania, and Indonesia to test its monitoring and verification procedures.

## INDEPENDENT INVESTIGATIONS AND VERIFICATION

A major critique of many of these external monitoring systems has been that auditors in these programs are paid directly by the brands or factories being monitored. This potential conflict of interest raises concerns that monitoring is not truly independent and thus may miss or cover up problems in factories. As mentioned, the FLA board has responded to these critiques by approving a change in the process for hiring monitors so that firms will not be allowed to directly pay monitors. Nonetheless, an additional layer of nongovernmental monitoring has emerged to respond to this credibility concern. This independent monitoring and verification involves NGOs, unions, and private individuals who monitor firm performance without direct payment from those with a stake in auditing results. There are several institutionalized versions of independent monitoring in the United States and Europe.

### **Workers Rights Consortium**

The Worker Rights Consortium (WRC) was developed by the United Students Against Sweatshops (USAS) in cooperation with the Union of Needletrades, Industrial and Textile Employees (UNITE), the American

Federation of Labor-Congress of Industrial Organizations (AFL-CIO), and a number of human rights, labor, and religious NGOs in 1999. The WRC, with 82 college and university members as of June 2002, focuses primarily on factories that produce apparel with university logos.

The WRC uses three broad strategies: (1) inspecting factories from which the WRC has received worker complaints; (2) proactive inspections in countries with patterns of poor practice and worker organizing efforts; and (3) information disclosure requirements. The WRC does not certify company compliance with a code of conduct, conduct systematic monitoring, or accredit monitors. Instead, the WRC encourages (but does not require) participating universities to adopt codes of conduct that closely resemble the WRC's model code, which includes strong provisions for a living wage, women's rights, and recognition of workers' rights to freedom of association. The WRC requires member universities to commit to broad public disclosure and to develop mechanisms to verify information reported by companies and their suppliers.

The WRC's goal is to ensure that factories that produce university-branded apparel comply with a base code of conduct and, in particular, with rights to freedom of association and collective bargaining. The WRC also seeks to educate workers themselves about university codes so that workers can report code violations to local NGOs or the WRC. The WRC aims to work collectively with its university affiliates, the licensee corporations (the manufacturers), and local NGOs to correct problems that have been identified. The WRC's investigative efforts rely on collaboration with local NGOs and activists, personnel from either the WRC, its board, or affiliated university members, and labor and human rights experts.

To date, the WRC has investigated conditions at four factories.<sup>11</sup> The WRC makes all of its factory investigation reports public. The WRC is also developing a database of manufacturing facilities, which allows anyone with Internet access to search by factory name, location, or university affiliate.<sup>12</sup> The WRC is increasingly focusing on remediation processes, working with universities and buyers (usually the brands) and workers' organizations to

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<sup>11</sup>They are the Kukdong garment factory in Puebla, Mexico; the New Era baseball cap factory in Buffalo, New York; the BJ&B cap factory in the Dominican Republic; and the PT Dada apparel and stuffed toy factory in Indonesia. These investigations have involved six to eight people for 5-6 days each.

<sup>12</sup>See <http://www.workersrights.org/fdd.asp> [October 16, 2003].

negotiate solutions to problems raised by workers, with the hope that there will be some “ripple effect” to other factories in those regions.

The WRC has also been criticized (and publicly opposed) for its model of monitoring and reporting. Opponents have accused the WRC of representing a “gotcha” model of monitoring, more focused on pointing at problems and embarrassing firms than on resolving problems (*Brown Daily Herald*, 2000). And the WRC’s in-depth inspection system has been criticized for having a limited scope and coverage.

### Related Initiatives

There are several other initiatives that, while not explicitly focused on labor codes and monitoring, are potentially supportive or complementary to nongovernmental monitoring. The Global Reporting Initiative (GRI), for instance, is a project to advance globally applicable guidelines for voluntary self-reporting of economic, environmental, and social performance of firms. The GRI is working to set a global standard for corporate reporting, creating a system analogous to financial reporting procedures for environmental and social issues. This standard, and broader efforts for corporate disclosure, could strengthen and help to standardize existing codes and monitoring systems.

The United Nations is also advancing voluntary codes and reporting systems through the Global Compact initiative, created by the U.N. Secretary General in 2000. The Global Compact is, in the words of the United Nations, “not a regulatory instrument or code of conduct, but a value-based platform designed to promote institutional learning. It utilizes the power of transparency and dialogue to identify and disseminate good practices based on universal principles.”<sup>13</sup> To this end, the Global Compact asks companies to commit to respecting nine principles, including respect for human rights, labor rights (basically the ILO core standards), and the environment and to report annually on their progress on advancing these principles. The global compact and GRI now work together, and GRI reports qualify for global compact annual reporting. It should be noted however, that neither initiative requires external or independent monitoring or verification of any kind. These initiatives remain essentially self-reporting and disclosure systems.

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<sup>13</sup>See <http://www.unglobalcompact.org> [October 16, 2003].



Other codes and monitoring systems have also emerged in industrial sectors and issue areas outside the spotlight of the anti-sweatshop movement. As just one example, the Global Sullivan Principles, an initiative rooted in the anti-apartheid movement in South Africa, advances a broad corporate code of social responsibility that has been adopted by a range of firms around the world.

## INFORMATION DISCLOSURE

The nongovernmental monitoring systems collect, analyze, and make public different types and levels of information. Some are completely confidential, providing information only to corporate managers. Others are fully transparent, with full investigation reports made public.

In general, most of the initiatives have now converged on codes of conduct that center around the ILO core labor standards, plus a number of other key issues: health and safety, wages and hours, and the treatment of women. Information is thus being collected on individual factory compliance with these standards. In countries where there is little state monitoring, that information may be the only information gathered on standards compliance.

The first critical piece of information made public by several of these initiatives is the names and locations of factories that provide products for U.S. brands and retailers. The student movement in the United States has made this a central demand of their campaigns and has been successful in winning fuller disclosure of factory locations from university licensees. It is now possible to identify factories that produce for leading colleges.<sup>14</sup> Several brands have also voluntarily disclosed this information, although the vast majority do not.

A small number of firms are beginning to make public summaries of their external audit reports. Nike has published summaries of PricewaterhouseCoopers audits (under a program dubbed Transparency 101), aggregate data on factories that produce university-logo goods, and factory locations.<sup>15</sup> Nike also recently published a corporate responsibility report in line with GRI reporting guidelines. Adidas recently published a

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<sup>14</sup>See <http://www.workersrights.org/fdd.asp> [October 16, 2003].

<sup>15</sup>See <http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=collegiate> [October 16, 2003].

report disclosing the country locations of supplier factories, the number that have been audited, and the number of contracts terminated due to failures to comply with the company's code.<sup>16</sup> Adidas has also developed a supplier scoring system, and it releases aggregate data on scores for factories in Asia, the Americas, and Europe. Otto Versand similarly collects audit results (based on the SA8000 system) of its suppliers and analyzes compliance patterns across countries. These firms and others are gathering very rich data on factory practices and core standards compliance around the world. However, to date, very little of this information has been made public. And as mentioned, the majority of brands and retailers, and the largest firms in the world such as Wal-Mart, refuse to make public any information on the performance of the factories in their supply chain.

The multistakeholder initiatives also vary in their content and levels of public disclosure. The WRAP certification program currently provides virtually no information to the public, even on factories audited or certified. Presumably, the program will publish lists of certified factories in the future. SAI currently lists certified factories on its website and is in discussions about making public information on the resolution of complaints at SA8000-certified factories. SAI may in the future also make information available to researchers on corrective actions and patterns of compliance in certified factories. As mentioned, the FLA has recently agreed to make much more information public from its audit program. The FLA board has approved plans to publish summaries of audit reports and the first public report is available through the FLA website. The ETI employs a kind of "club transparency" for its audits: members of the ETI—including NGOs and union representatives—can review audit reports and aggregate data. However, this information is not available to the general public.

The WRC has committed to full public disclosure of monitoring results. Currently, all inspection reports are made public through its website and media releases. The reports provide detailed analyses of individual factories and insights into problems common in garment suppliers. The first WRC report—of the Kukdong garment factory (now known as Mexmode) in Puebla, Mexico—is touted as a major success, as the process has supported improvements in factory conditions and pay (workers have won a series of pay raises since the WRC investigation), the formation of an inde-

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<sup>16</sup>See "clear" at <http://www.adidas-salomon.com/> [October 16, 2003].

pendent union, and the signing of a collective bargaining agreement (one of the first in a Mexican *maquiladora* factory). The WRC has also recently completed an investigation in Indonesia that has led to the remediation of existing problems and agreement to recognize multiple unions in the factory. The WRC has also developed a database of factory locations for member universities.<sup>17</sup> Individual NGO exposés are also designed to be made public. A range of NGOs continue to conduct independent research and report on problems in factories around the world.

The information from these nongovernmental monitoring systems is currently being used by a range of actors. Brands and retailers are using factory monitoring information to evaluate, rank, and sometimes provide incentives (or sanctions) to suppliers. The media have used these reports to analyze current in the apparel industry around the world. And investors are increasingly looking to this information to evaluate specific companies.

Clearly, nongovernmental monitoring initiatives are at the very early stages of development, are trying to recruit new participants, and are thus often reluctant to be fully transparent about their processes and audit results. Companies remain concerned about disclosing information on factory locations (that might be used by their competitors or unions) and factory conditions (that might be used by their critics). Disclosure is thus still quite limited in these programs.

There are also questions about the quality of the information that is made public through these systems. Different actors have different interests in the outcomes of audits and reports. Both firms and activists may have biases in their reporting. (Government regulators, of course, are not free from bias themselves.) Perhaps more problematic is the currently unsystematic nature of data that are available. Reports come from individual exposés and partial samples of supply chains, so it is difficult to reach general conclusions even from detailed reports that are available. Without greater transparency on the processes for conducting audits, the public cannot evaluate the quality of the data generated by these initiatives.

## EVALUATION

There are virtually no data available to analyze how effectively these systems of monitoring are currently performing. Developing measures to

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<sup>17</sup>See <http://www.workersrights.org/fdd.asp> [October 16, 2003].

evaluate nongovernmental monitoring remains a critical area for future research. However, there is some evidence from programs in the United States, and from sporadic reports from monitoring initiatives around the world, that can provide a beginning for evaluating nongovernmental monitoring.

For instance, more than 60 companies have signed agreements with the U.S. Department of Labor to conduct factory monitoring, and hundreds of other companies are conducting monitoring on their own. Private monitoring firms conducted more than 10,000 audits of garment shops in Los Angeles alone in 1998, which is about 10 times the number carried out by state and federal authorities (Esbenshade, 2000). Although this monitoring is generally unsystematic, with little oversight, no transparency, no sanctions for poor monitoring, and potential conflicts of interest of monitors, somewhat surprisingly, it has actually led to increased levels of compliance. As Esbenshade (2000, p. 5) reports:

Monitoring has significantly raised the rate of compliance in the industry. The rate of compliance rose 20 percent between 1994 and 1996, in part due to the proliferation of monitoring. In 1998, DOL statistics indicate that the rate of violations in non-monitored shops is twice as high as in monitored ones. However, the data also demonstrate that while monitoring helps, it has far from solved industry's problems. Fifty-six percent of monitored shops are still violating labor laws.

Many of the initiatives described above are still too new to evaluate fully. The FLA has only recently begun its external monitoring program. The FLA has, however, established a complaint response system and is developing remediation strategies when problems are identified. For instance, in response to a third-party complaint submitted by Nike, the FLA sent a team to the Dominican Republic to assess a labor dispute at the BJ&B cap factory in January 2002. Workers alleged freedom of association violations when 20 workers were fired from the facility after having signed a petition to form a union. Within 24 hours of receiving the complaint, FLA compliance staff were on location and conducted unannounced factory visits, off-site interviews with workers, and a review of facility payroll, personnel, and timecard records. WRC staff also participated in this inspection. The dispute was resolved within several weeks.

As noted above, SAI has certified 236 factories to meet the SA8000 standard. SAI staff assert that member companies have conducted more than 2,000 audits of supplier factories in preparation for these certifica-

tions. SAI has also conducted a number of auditor, supplier, and worker trainings around the world. To date, more than 1,100 people in 19 countries have taken SAI's supplier training course. SAI is also working with the International Textile, Garment, and Leather Workers Federation to support workers in 12 countries across Latin America, Africa, and Asia on increasing worker involvement in workplace standards and monitoring systems. Transparency remains, however, a major issue in the evaluation of such systems.

There are obviously a number of weaknesses and challenges to making these different monitoring and reporting systems effective. Nongovernmental monitoring faces many of the same mundane challenges as traditional government monitoring and enforcement, including coverage, training and capacity of inspectors, incentives of monitors, corruption, etc. The long and mobile nature of apparel supply chains, which has strained traditional monitoring, also makes nongovernmental monitoring extremely challenging. The Gap alone receives goods from 4,000 factories in 55 countries, the number for Disney is estimated at more than 30,000 factories, and Wal-Mart from even more (Wach and Nadvi, 2000).

The ability of firms to move production quickly among factories and to hide behind multiple layers of ownership make systematic inspections extremely difficult.<sup>18</sup> A number of critics have raised concerns that nongovernmental factory visits are too infrequent to evaluate normal day-to-day operations. "Parachuting" monitors are able to identify the most obvious problems but may miss many of the largest issues and are not around long enough to actually solve problems (O'Rourke, 2002). Critics surmise, quite reasonably, that NGOs will not be able to duplicate national labor inspectorates as they cannot provide full coverage for all factories (Justice, 2001).

There are also concerns about how many workers these systems can actually reach. Many markets—such as informal-sector production, business-to-business commodities, and production for domestic consumption in developing countries—lack consumers who focus on social responsibility issues. As Pearson and Seyfang (2002) have argued, voluntary codes and monitoring primarily influence "enclaves" in the global economy rather than applying universally. Nongovernmental systems focus on workers in

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<sup>18</sup>One ETI firm commented, "I can know my supply chain at 9 a.m., then by 10 a.m. it's all different" (Ethical Trading Initiative, 2001, p. 7).

first-tier suppliers and often at large-scale factories. They rarely reach down to informal-sector or home-based workers (Lee, 1997; Brill and Tate, 2002). Nonetheless, these systems do appear to reach workers that are currently not being served by traditional labor regulation.

Codes and monitoring also entail fairly complex technical and social issues. Consulting and accounting firms and NGOs need extensive training to adequately play the role of industrial hygienists or experts on wages and hours. Counting on private actors or NGOs to provide these skills assumes that they, or the firms being monitored, will assume the cost of training and conducting rigorous inspections.

Even if nongovernmental monitoring can overcome these critical implementation challenges, a number of deeper concerns remain. Critics fear that nongovernmental monitoring will provide public relations cover to brands, may confuse consumers with a proliferation of labels and claims, and may have unintended negative effects on workers in developing countries (Liubicic, 1998). Another critical concern is that nongovernmental monitoring may be helping to privatize governmental monitoring. Some critics warn that companies are controlling these processes, coopting NGOs by changing them from watchdogs to “partners,” and undermining strong local laws and unions (Justice, 2001, p. 6). Having NGOs play the role of regulators may also ultimately undermine traditional regulatory processes (Nadvi and Wältring, 2001; International Labour Organization, 1998). Others fear that elected governments are actually ceding some of their sovereignty to consumers through these systems. Clearly the shift to nongovernmental monitoring focuses more attention on consumers (rather than the state or unions) as the key constituent of monitoring and enforcement.

Some critics also argue that monitoring, when it is conducted by local NGOs, can impede unionization or otherwise crowd out the efforts of local workers’ organizations. Compa (2001, p. 30) discusses several cases in Central America where NGOs appear to be “supplanting the unions’ role as worker representatives by discussing wages and working conditions with factory managers,” a process that will actually help “powerful companies to avoid union organizing, enforceable collective agreements, and government monitoring.” Others in Central America disagree with this assessment, arguing that NGO monitoring has supported union campaigns in El Salvador and Guatemala (Quinteros, 2001). The Kukdong case in Mexico highlights the potential of a coordinated union-NGO, north-south strategy. Cooperation between local workers, the AFL-CIO, NGOs, student activists, the FLA, and the WRC supported the formation of an independent

union, the signing of a new contract with Korean management, and important gains in pay and health and safety conditions (Brown, 2001). The spotlight of monitoring was useful in this case to protect fledgling union organizing. Nonetheless, the debate in Central America underscores the reality that NGOs and unions continue to be wary allies and need to develop (Compa, 2001).

A number of critics have also noted that codes and monitoring can hurt workers (Esbenshade, 2001; Liubicic, 1998). Monitoring reports can lead firms to cut contracts with poorly performing factories, leading to job losses. Firms may reduce overtime at a factory to comply with a code of conduct, despite workers' needing these wages to survive. Workers may also be punished after complaining to auditors, as these systems often have limited protections for workers who complain. Even when monitoring is effective, some of the most hazardous jobs may be shifted further down the supply chain or into the informal sector to avoid the selective gaze of nongovernmental monitoring.

There are also many problematic versions of nongovernmental monitoring. For example, in one recent evaluation, Global Social Compliance (formerly PricewaterhouseCoopers), a monitor for many large multinational corporations, was shown to depend largely on data provided by management and to conduct very cursory inspections of factories (O'Rourke, 2002). Worker interviews were conducted inside factories, so factory managers knew who was being interviewed, for how long, and on what issues. This kind of monitoring can miss major issues in a factory, provide a false impression of performance, certify that a company is "sweat-free" on the basis of very limited evidence, and actually disempower the workers it is meant to help. While there is no single perfect way to monitor a factory, there are clearly better and worse monitoring practices.

## CONCLUSIONS

Despite a number of problems and challenges, new nongovernmental monitoring systems have the potential to generate valuable information for the evaluation of compliance with international labor standards. As these systems are focused primarily on factory- and brand-level evaluations, they offer potentially very detailed information on the context of manufacturing practices in a particular country, providing ground-level information to complement national-level data on labor standards performance. Since these systems now generally only analyze the suppliers of western brands

and retailers, they generate information that might be considered “best practices” in developing countries. All of these types of information can be useful and complementary for broader national assessments of compliance with labor standards.

Questions remain, however, on how to move these systems towards more credible and complete global coverage. Can these systems be implemented beyond the first tier of suppliers? Can improved practices “spill over” into firms not directly tied to high-end global supply chains? Can southern stakeholders be brought into discussions and have a real say in the structure and implementation of these programs? Can mechanisms of representation and democracy be formalized in these nongovernmental systems? Can these systems provide workers and their advocates real tools that will increase their ability to organize? Is it possible to move toward interoperable systems of standards and monitoring? Can the ILO be brought more fully into nongovernmental monitoring? And ultimately, can these new forms of monitoring be designed to complement and support existing regulatory processes?

In some regards, past distinctions between official and unofficial systems are beginning to break down. There is some convergence under way in codes and monitoring regimens that is blurring the boxes presented in this chapter. Factory monitoring sometimes includes union officials. Supply-chain monitoring is using NGOs to monitor factories. And NGO investigations are sometimes coordinated with powerful brands. Nonetheless, there are still critical distinctions among these systems on such issues as the roles of workers and advocacy organizations, transparency of results, and strategies for remediation of problems.

And there is certainly no guarantee that voluntary codes of conduct and monitoring schemes will naturally converge on more complete or democratic systems of monitoring and reporting. They are just as likely to diverge into a plethora of competing initiatives, serving to only confuse the public and undermine the credibility of nongovernmental initiatives. However, with strategic policies and coordinated efforts, nongovernmental monitoring could instead move toward more credible, transparent, and accountable systems. And this monitoring and reporting could be designed to complement existing government data.

One promising avenue would involve efforts to increase transparency among these systems, in order to learn more about conditions in factories around the world and more about monitoring methods and certification processes. This approach would also facilitate better comparison across pro-



grams. The different models of nongovernmental monitoring are effective at different processes. Factory monitoring identifies willing factories and gives managers information to support change. Supply-chain monitoring helps move standards to outsourced chains of production and provides brands with information to better manage their suppliers. Independent investigations help to expose the worst actors, provide information to workers, and create incentives for brands to prevent problems in their contractors. Connecting these different types of information in some comparable way might help to overcome the challenges of access, scope, and credibility of nongovernmental monitoring.

Several new initiatives are currently being developed that might respond to this challenge. A coalition of NGOs in Europe and Australia (led by the Clean Clothes Campaign and Oxfam-Aid Abroad) are developing a comparison and rating system (which they call the “Human Rights Marathon”) that would evaluate and compare firm performance and monitoring systems. Monitoring systems that are more transparent would receive higher ratings. In the United States, the Lawyers Committee for Human Rights is working to develop a public comparison system for labor performance, modeled at least in part on the environmental comparison website.<sup>19</sup> Both of these initiatives would advance transparency and comparability of codes and monitoring programs.

## RECOMMENDATIONS

Each of the existing nongovernmental regulatory monitoring systems has weaknesses and challenges. Nonetheless, under certain conditions, nongovernmental monitoring can influence factory labor practices. With increased transparency, improved technical capacities, and new mechanisms of accountability to workers and consumers, nongovernmental monitoring could complement existing state regulatory systems. As they develop, nongovernmental regulatory systems should be evaluated along a number of criteria:

- legitimacy—Are key stakeholders involved in all stages of standard setting, monitoring, and enforcement?

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<sup>19</sup>See <http://www.scorecard.org> [October 16, 2003].

- rigor—Do codes of conduct meet or exceed ILO conventions and local laws? Are standards measurable? Is monitoring technically competent?
- accountability—Is monitoring independent and transparent?
- complementarity—Do nongovernmental regulatory systems support state monitoring and processes to learn and improve standards and monitoring methods?

Regulation in the global economy remains a daunting challenge. If these experiments in nongovernmental monitoring can be made more transparent, accountable, and democratic, it may be possible to build them into an important complement to existing labor regulation. At a minimum, nongovernmental monitoring and reporting offers a glimpse of emerging strategies to monitor global supply chains and to begin the process of building new systems for a fast-changing world.

**3-1 The committee recommends that nongovernmental monitoring organizations—including internal corporate systems and external systems operated by NGOs or other organizations—work together to develop transparent methodologies and measures of performance that allow comparison.**

**3-2 The committee recommends that external monitoring organizations make their data, auditing methods, and findings public.**

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## 4

# Freedom of Association and the Right to Collective Bargaining

**T**his chapter considers the first of the four core labor standards, freedom of association and effective recognition of the right to collective bargaining. The committee focuses on issues that have emerged in ILO treatment of Conventions No. 87 and No. 98, and in the 1998 Declaration on Fundamental Principles and Rights at Work, amplifying particularly difficult, controversial, or novel questions based on its definitions. The chapter begins with a discussion of the complexities and challenges of defining freedom of association and effective recognition of the right to collective bargaining. It then turns to assessing a country's compliance using the three sets of indicators in the committee's template: legal framework, government performance, and overall outcomes. The chapter then looks at the principal sources of information for monitoring compliance with this standard. The last section presents the committee's conclusions and recommendations on assessing compliance and sources of information.

As discussed in Chapter 1, a setting in which there is democracy, freedom of opinion and expression, and respect for civil liberties—including the right of assembly—is crucial for the exercise of freedom of association and effective recognition of the right to collective bargaining.

### DEFINITIONS

A system for assessing compliance with freedom of association must examine several components. The three most central are freedom of asso-

ciation, the right to organize, and the effective recognition of the right to bargain collectively (hereafter “right to collective bargaining”).<sup>1</sup> As discussed below, they may also include the right to strike (Swepston, 1998). In the human rights tradition of analysis, these are considered “negative rights” in that, for the rights to be respected, the state initially need not do anything except allow workers to exercise them, without harassment or arrest (or worse). Here the issue for assessing compliance is to evaluate whether the state is permitting workers to execute these rights.

At the same time, however, *protection* of each of these components is also important. Thus, they have a positive dimension, requiring governments to take affirmative action to ensure that the right can be exercised.<sup>2</sup> A government that affords negative rights to workers cannot be considered in compliance if private actors are allowed to violate workers’ rights with impunity. The state must protect the rights by creating a system for complaints about violations, adjudication, remedies, and punishment. For example, a government must not only refrain from punishing workers for trying to organize unions but also effectively protect and enforce mechanisms that deter employers from acting against workers who try to organize unions.

An assessment structure must begin by examining the content of laws and the associated legal structure to protect freedom of association, move to the government’s effort and effectiveness in implementing the laws, and then finish with the overall outcomes in permitting freedom of association. Finally, there is the broader question of whether the government takes positive steps to educate workers as to what their rights are and what remedies are available, permits others to do the same, and more generally encourages the spread of best practices.

Like freedom of association, collective bargaining can first be viewed as a negative right that workers can exercise on their own as long as the government does not interfere. But workers may have to take political action to achieve a legal framework that allows them to bargain collectively without excessive exceptions and restrictions and that punishes employers

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<sup>1</sup>This chapter draws heavily from Compa (2002) and also draws on Polaski (2002a, 2002b). The committee has also benefited from comments by Anthony Giles, research director, Commission for Labor Cooperation, North American Agreement on Labor Cooperation, and Ben Davis, American Center for International Labor Solidarity.

<sup>2</sup>The distinction between “positive” and “negative” rights is standard in human rights discourse (see, e.g., Steiner and Alston, 1996; Donnelly, 1995).



who do not obey the laws. In addition, bargaining takes two parties: employers cannot be allowed to refuse to bargain. In this way collective bargaining is a positive right that needs to be backed by government enforcement procedures.

The ILO Convention No. 98 (C. 98) calls for governments to “promote . . . machinery for voluntary negotiation . . .”. The assessment of compliance must include whether a government permits collective bargaining in general and also whether a government channels collective bargaining into narrowly defined arenas. The assessment thus moves from an area in which there is widespread agreement into an area that is much more problematic. Relatively few countries prohibit collective bargaining altogether, but the degree to which there are restrictions on exercise of the right varies greatly. For example, Compa notes (2002, p. 5):

U.S. law is even stronger than the ILO norm, because its “machinery,” the National Labor Relations Act (NLRA), mandates *involuntary* bargaining by an unwilling employer when a majority of the workers vote for union representation. At the same time, U.S. law is weaker than the ILO standard in that it fails to promote bargaining for workers who desire it, but who are not a majority in their workplace.

With regard to right to strike, neither ILO Convention No. 87 nor No. 98 mentions the right to strike, but a long tradition of ILO jurisprudence has established the right to strike as an essential component of collective bargaining (Swepston, 1998). As with collective bargaining, however, governments everywhere establish conditions that limit or constrain the right to strike. In concept, it is a negative right—workers can freely exercise the right to strike if the state did not restrict their behavior. So an assessment of compliance must begin by examining whether a government bans strikes outright or uses military or police force to break strikes. The assessment of compliance must then move into consideration of how the state conditions the exercise of the right and deal with less settled questions about whether the treatment of actions such as “protest strikes,” “sympathy strikes,” or “go slow” strikes are consistent with compliance.

There are other complexities in defining what constitutes freedom of association and right of collective bargaining. One such complexity is how to handle a “closed shop”—laws that allow collective agreements that make it compulsory for employers to recruit only workers who are members of trade unions and who must remain union members and pay union dues in

order to keep their job (International Labour Organization, 1994). In conventional economic analysis of labor markets, the closed shop is considered an infringement of the freedom of workers who are not union members to be employed wherever they choose. Another difficult issue is how to deal with “right-to-work” laws, in which the state guarantees the right of workers who do not pay union dues to obtain jobs receiving the benefits of the union’s collective bargaining. Such laws that support “free riding” arguably constitute a powerful indirect constraint on the ability of trade unions to organize workers effectively.

The ILO interpretation of Convention No. 87 does not foreclose either state right-to-work laws or closed shop agreements reached between employers and unions. In ILO jurisprudence, right-to-work laws are considered legal; so, too, are union security clauses that make union membership, payment of union dues, or recruitment of workers through trade union organizations compulsory. The Committee of Experts (International Labour Organization) has stated that the convention:

. . . leaves it to the practice and regulations of each state to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate use of union security clauses in practice.

What is prohibited within ILO interpretations is the imposition by statute of a system of trade union monopoly at the company level or by occupation—for example, legislation making it compulsory to join a particular union or designating a specific trade union as the recipient of union dues (Tajgman and Curtis, 2000).

Similarly, there are challenges in reconciling the ability of firms to hire permanent replacement workers for strikers with the right to engage in collective bargaining backed by the threat of striking. The ILO Committee on Freedom of Association and the ILO Committee of Experts have concluded that the possibility of hiring permanent strike replacements poses a risk to freedom of association but is not necessarily a violation of Convention No. 87 and No. 98 unless it occurs on an “extensive” basis.<sup>3</sup>

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<sup>3</sup>The International Confederation of Free Trade Unions has observed (International Labour Organization, 1991) that in the United States, workers hired by employers as permanent replacements for strikers can vote in a decertification election to eliminate union recog-

There is a question of what organizations can authentically represent workers. Some countries laws provide for elected “workers’ councils” or labor-management councils, distinct from unions. The German system of workers’ councils puts worker representatives on company boards of directors in the largest firms and on the day-to-day management board of the coal, iron, and steel industries. While these workers’ councils exchange information and hold consultations, they do not engage in collective bargaining. In the Philippines, the government has since 1994 promoted the spread of labor-management councils to overcome the severe conflict that had come to characterize labor-management relations over the previous decade (International Labour Organization, 1998). In Central America and some other regions, many factories have “solidarity” associations of workers and managers that are set up as “mutual benefit societies” with a financial contribution from the employer to make loans for housing, education, and other purposes, and to promote “unity and cooperation” between workers and employers (International Labour Organization, 1994).

Workers’ councils and labor-management councils can be consistent with freedom of association if workers are also free to join trade unions and to engage in collective bargaining. In some countries, they do provide an effective voice for workers, either through trade union representation elected to workers’ council positions, or through workers acting on their own. Labor-management councils can be a potent tool—as the ILO has found in the Philippines—in improving worker treatment and promoting the spread of best practices in labor-management relations (International Labour Organization, 1998). There is then a question about how to evaluate the situation when workers choose to participate in worker-management arrangements other than trade unions. In the judgment of the ILO, employers often encourage—and provide funding to—these worker-management organizations to promote “harmonious relations and obviate the need for workers to form trade unions” (International Labour Organization, 1998). In order to attenuate the anti-union aspect of the solidarity associations, Costa Rica, with ILO assistance, passed laws prohibiting them from exercising the functions of a trade union, such as collective bargaining

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tion. In its global report on freedom of association, the ILO (2000a) draws attention to laws allowing employers to hire striker replacements in Burkina Faso, Cape Verde, Central African Republic, Djibouti, Madagascar, Niger, and the United States.

(International Confederation of Free Trade Unions, 2002; International Labour Organization, 2001).

Finally, there is the issue of the capture of unions by criminal elements. In some countries government officials or gangsters may organize unions as a protection racket, with employers recognizing the unions so that their store windows will not be smashed or other damage done to their businesses (Compa, 2002). In ILO jurisprudence interpreting Convention No. 87 and No. 98, there is no anticorruption standard of conduct for union leadership.

### **ASSESSING COMPLIANCE**

The committee's template to evaluating a state's compliance with freedom of association and effective recognition of the right to collective bargaining requires examination of three categories of indicators:

1. the legal framework (at all levels of government),
2. the government's performance (at all levels of government) in implementation, and
3. the overall outcomes.

#### **Legal Framework**

An assessment must begin with an examination of the content of labor laws on organizing, bargaining, and engaging in strikes. Some analysts first determine whether a given country has ratified Conventions No. 87 and No. 98. But the use of ILO ratifications as an indicator of respect for workers' freedom of association is fraught with problems. Many countries widely considered to violate labor rights in serious ways have duly ratified the two conventions, while other countries widely considered as having better records have not.

Turning to national laws, it may be possible to determine with relative ease whether the legal system affords freedom of association to workers. Laws that require workers to become members of government-run federations, that place extensive prohibitions on bargaining, or that ban strikes altogether or in "essential" industries so as to support a particular national economic policy are markers of a lack of commitment to freedom of association and the right to collective bargaining.

For many countries, the inspection of its laws and regulations would

immediately reveal that the legal framework does not meet the principle embodied in Convention No. 87, that:

. . . all workers and employers, without any distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing.

Many laws exclude agricultural workers, for example, from freedom of association and collective bargaining rights, and some countries restrict or prohibit public sector workers from organizing or collective bargaining. Some countries exclude domestic workers or other workers who do not work under contracts of employment.<sup>4</sup>

Most countries' laws are a mix; some features comply with freedom of association standards and some do not. For example, Compa (2002, p. 12) notes:

U.S. law forbids discrimination against workers because of union activity, a *sine qua non* for protection of the right to organize. However, U.S. law also excludes from coverage large segments of the labor force—agricultural workers, domestic workers, low-level supervisors, and “independent contractors” who are really dependent on one employer for their livelihoods. The National Labor Relations Act excludes about twenty million private sector workers. These workers can be fired for union activity with impunity. In twenty-seven U.S. states, collective bargaining by public employees is prohibited. On its face, this is a clear violation of the right to bargain collectively. But the situation is multifaceted. The First Amendment protects public employees' rights of association, prohibiting their discharge for union activity. It also guarantees their right “to petition the government for a redress of grievances.” In many states that prohibit collective bargaining, public employees form unions and “bargain” their terms and conditions of employment with the legislature through the political process.

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<sup>4</sup>In ILO jurisprudence, the only exceptions to the guarantees of right to organize under Convention No. 87 are the armed services and the police. Provisions prohibiting the right to organize for public servants, domestic workers, or agricultural workers, for example, have been held to be incompatible with Convention No. 87 (Tajman and Curtis, 2000).

Spain's constitution and labor laws permit the right to organize and to strike, but the country's immigration law takes away these rights for undocumented workers. South Korea's labor regulations include many restrictions on the ability to organize and the ability to strike.

Once the assessment of compliance moves beyond a threshold of "easy" analysis of labor law texts for obvious conflicts with guarantees of freedom of association and right to collective bargaining, increasingly complicated issues arise. These issues include possible legal restrictions on the ability of workers to organize (by category of workers, such as civil servants or workers without contracts of employment, or by sector such as in agriculture). Some countries' laws may make distinctions or discriminate in the right to organize (excluding, for example, legal migrant workers). National laws may also restrict the right to collective bargaining—by category of worker, by sector, or by the subject of bargaining (such as exclusion of some issues). Laws may permit government interference, for example, by allowing the government to dissolve unions without legal recourse, to impose burdensome union registration procedures, limit the formation of national unions, prohibit or limit multiple unions within a single plant (including minority unions),<sup>5</sup> or restrict who may serve as a union member, official, or adviser.<sup>6</sup>

National laws and constitutions may restrict unions' political activities, either by establishing close relationships between unions and political parties (at one extreme) or by prohibiting union contributions to parties and candidates (at the other).<sup>7</sup>

Other legal provisions might forbid certain kinds of strikes (such as

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<sup>5</sup>In ILO jurisprudence, under Convention No. 87, workers in a given occupation or workplace must be allowed to form more than one trade union (Tajgman and Curtis, 2000). However, in many nations, laws require a minimum number or proportion of workers in the same occupation or enterprise to establish or register a union. Difficulties arise in establishing what constitutes "too high" a number or proportion of workers: a minimum requirement of 50 percent of the workers, in practice, precludes establishing more than one trade union in the relevant occupation or enterprise.

<sup>6</sup>The ILO has consistently asked states to change their law and practice with regard to making citizenship a condition for membership of a trade union or making citizenship of members a condition for establishing a trade union (Tajgman and Curtis, 2000).

<sup>7</sup>The ILO is of the view that both extremes "give risk to serious difficulties" with regard to Convention No. 87 (International Labour Organization, 1994, 1996).

“sympathy strikes” or “protest strikes”) or strikes under certain conditions (such as during an “economic crisis”).<sup>8</sup> Some laws limit actions associated with strikes (such as picketing or occupation of the workplace),<sup>9</sup> while other laws may allow employers to fire striking workers and to hire permanent replacements.<sup>10</sup> Yet other laws may restrict union members’ rights to ratify or reject agreements negotiated by their leaders.<sup>11</sup> Finally, legal provisions may limit the formation of worker-advocate NGOs, or the participation of external union representatives, worker-oriented NGOs, or compliance monitors in investigating and reporting on labor practices. In assessing these complex aspects of a nation’s legal framework, an assessor must decide whether simply to follow ILO jurisprudence as far as it goes or to move beyond ILO jurisprudence on issues that are more contentious and less settled.

The committee generally followed ILO interpretations in developing its indicators for assessing compliance (International Labour Organization,

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<sup>8</sup>ILO jurisprudence generally considers that the prohibition of the right to strike in the public sector should be limited to public servants exercising authority in the name of the state, but definitions of exactly which workers this definition covers vary. Similarly, what constitutes “essential services” in which strikes are prohibited may range from a relatively short list to long schedules covering those activities where the government deems a strike would be detrimental to public order, the general interest, or economic development, with a mere statement to the effect by the authorities sufficing to justify the essential nature of the service.

In ILO jurisprudence, trade unions should have recourse to protest strikes that are aimed at criticizing a government’s economic and social policies. Sympathy strikes should be lawful when the initial strike is lawful (International Labour Organization, 1996; Tajgman and Curtis, 2000). “Acute national crisis” can justify the prohibition of strikes only in “situations such as those arising as a result of serious conflict insurrection or national disaster in which the normal conditions for the functioning of society are absent” (Tajgman and Curtis, 2000). The requirement that over half of all the workers involved must make the decision to have a strike has been found to be “excessive (International Labour Organization, 1996; Tajgman and Curtis, 2000).

<sup>9</sup>In ILO jurisprudence, prohibition of picketing is justified only if the action ceases to be peaceful (International Labour Organization, 1996; Tajgman and Curtis, 2000).

<sup>10</sup>The ILO has concluded that laws permitting the hiring of permanent strike replacements subjects strike action to “extreme cost” but does not necessarily constitute a violation of Conventions No. 87 and No. 98 unless it occurs on an “extensive” basis (International Labour Organization, 2000b).

<sup>11</sup>In ILO jurisprudence, unions are free to set up any rules they want; there is no requirement that union members get to vote.

1994, 1996; Tajman and Curtis, 2000). These 21 indicators are a partial—but by no means exhaustive—checklist for evaluating a country's legal framework relating to freedom of association and effective recognition of the right to collective bargaining, including the related issue of right to strike:

A-1. whether the country has ratified ILO Convention No. 87;

A-2. whether there are legal provisions that entitle workers or employers to establish and join organizations of their own choosing without previous authorization;

A-3. the extent to which there are legal restrictions on the ability of certain categories of workers to organize (such as civil servants, teachers, or workers without contracts of employment), and numbers of workers in each such category;

A-4. whether there are certain sectors where there is no right to organize (such as in export processing zones or in other tradable sectors or in agricultural and informal sectors);

A-5. whether there are other forms of distinction or discrimination in right to organize, such as race, nationality, sex, opinion, political affiliation, or citizenship (for example, excluding legal immigrants);

A-6. whether there are legal provisions that permit the government to interfere in freedom of association by workers or employers;

A-7. whether there are legal restrictions on political activities of unions or employers' organizations, either by establishing a close relationship between trade union organizations and political parties, or by prohibiting all political activities for trade unions (including making financial contributions to a political party or candidate);

A-8. whether national laws protect workers from discrimination if they join a union or participate in union activities;

A-9. whether the country has ratified Convention No. 98;

A-10. whether collective bargaining is protected in law;

A-11. whether there are legal restrictions on the mechanism of collective bargaining (such as the mandatory exclusion of some issues or the ability of employers to refuse to bargain with a recognized union);

A-12. the extent to which there are categories of workers not permitted to negotiate a collective bargaining agreement (such as civil servants, teachers, or workers in special activities), and numbers of workers in each such category;

A-13. whether there are certain sectors where there is no right to nego-



tiate a collective bargaining agreement (such as in export processing zones or in other tradable sectors, or in agricultural and informal sectors);

A-14. whether the principle of a strike as a means of action of organizations is generally recognized;

A-15. the extent to which the government can forbid certain kinds of strikes (such as “protest strikes,” “sympathy strikes,” “go slow” strikes, or “work-to-rule” slowdowns), or strikes under certain conditions (such as economic or political “crisis”), or strikes requiring a majority of workers involved to authorize a strike;

A-16. the extent to which the government can limit picketing or occupation of the workplace;

A-17. whether legal regulations ban employer lockouts;

A-18. whether workers are legally able to ratify or reject agreements reached by union leaders;

A-19. whether legal regulations permit employers to dismiss striking workers, or permit hiring of permanent strike replacement workers;

A-20. assessment of extent to which “right to work” laws or other “free rider” provisions undermine the ability of workers to organize and the extent to which laws require workers to join a given trade union as a condition of employment or that new workers be hired through a given trade union; and

A-21. whether workers’ and employers’ organizations may legally affiliate with international bodies.

### **Government Performance**

The task of assessing a government’s performance in implementation of freedom of association and effective recognition of the right to collective bargaining requires investigation of both the level of effort a government devotes to this objective and the effectiveness of the process. Effort and effectiveness depend on the magnitude of resources available to the government and the urgency of competing claims on those resources. The assessment involves an appraisal both of inputs and of outcomes.

Assessing compliance begins with investigating a government’s performance in enforcement. This assessment involves whether, and how often, union organizers are jailed, exiled, fired, or murdered without prompt and effective prosecution. It also considers whether and how often there is retaliation against strikers, and, if so, whether the government promptly and effectively prosecutes such retaliation. Other issues to consider are possible

defects in the complaint process (such as excessive delays or expenses or light punishments) and whether the government enforces freedom of association and collective bargaining laws uniformly across all sectors and areas (including the farm sector and informal employment and export processing zones). Assessing government performance also requires scrutiny of the extent of labor-related corruption (such as control of unions by criminal figures) and the likelihood of prosecution. The assessment also involves examination of the independence of the judiciary in handling labor cases. Finally, it is necessary to examine whether trade unions are independent of control by the government or political parties and the ability of trade unions to influence public policy, such as through contributions to parties or candidates.

Assessing a government's performance cannot be limited to enforcement but should also include the positive agenda. As the ILO and other organizations frequently point out, ensuring observance of core labor standards has a proactive, educational, and facilitative dimension (International Labour Organization, 2000a, 2000b). Many workers do not know what their rights are or how they might pursue them. They may not even understand the concepts of freedom of association and collective bargaining. They might not know where to seek assistance.

The positive agenda of promoting compliance includes governmental efforts and effectiveness in educating workers about their rights and remedies, in building capacity for government officials with responsibility for labor matters at the federal, state or provincial, and municipal levels, and in facilitating dissemination of best practices in workplace cooperation, through unions, employer groups, labor-management organizations, labor-oriented NGOs, and what the ILO calls tripartite social dialogue (International Labour Organization, 2002). Such dissemination includes encouraging the use of domestic and international channels about problems, difficulties, or violations of freedom of association and right to collective bargaining (such as submission of "Observations" by workers' and employers' groups to the Review of Annual Reports under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work).

Finally, the assessment of government performance must consider the sheer magnitude of resources devoted to compliance with freedom of association and effective recognition of the right to collective bargaining. This assessment involves the adequacy of budgets and personnel assigned to departments with responsibility for labor regulation in comparison with the number of workplaces, adjusted for per capita gross domestic product

(GDP), the caseloads of labor administrative bodies and labor courts, and the frequency of labor inspections of workplaces. As indicated above, the level of development and the competing needs faced by a government will limit the amount of resources that might be able to be devoted to enforcing compliance with core labor standards.

The committee proposes 13 indicators—an extensive but, again, by no means exhaustive list—for assessing a country’s performance in implementing freedom of association and effective recognition of the right to collective bargaining, including the related issue of right to strike:

B-1. the extent to which union organizers are jailed or exiled by the government, or fired, injured, or murdered without prompt and effective prosecution on the part of the government;

B-2. the extent to which strikers suffer retaliation without prompt and effective prosecution on the part of the government;

B-3. whether there are defects in the government’s complaint process, such as excessive delays or expenses, light penalties, or nonpunishment of offenders;

B-4. the extent to which the government interferes in freedom of association (e.g., by declaration of martial law, “state of crisis,” or by suspension or dissolution of associations by administrative authority);

B-5. the independence of trade unions from political control;

B-6. the ability of trade unions to provide support for political parties and candidates;

B-7. government actions to combat labor-related corruption (such as control of unions by criminal figures for use as a protection racket or for financial skimming) without prompt and effective prosecution;

B-8. the adequacy of personnel and budgets of labor regulation departments compared to number of workplaces, the frequency and adequacy of labor inspections, the caseloads of labor administrative bodies and labor court, and whether bribes are paid to labor inspectors by employers without effective prosecution;

B-9. the efforts on by national, state or provincial, and municipal authorities to educate workers about their rights and remedies and of the effectiveness of those efforts;

B-10. the efforts on the part of national, state or provincial, and municipal authorities to engage in capacity-building for government officials with responsibility for labor matters and of the effectiveness of those efforts;

B-11. government actions in encouraging consultation and in facilitating dissemination of best practices in labor-management cooperation, through unions, employer groups, labor-management organizations, labor-oriented NGOs, and tripartite social dialogue;

B-12. government actions in hindering or facilitating the formation and functioning of labor-advocate NGOs and of independent labor inspection, monitoring, and certification organizations; and

B-13. government actions in encouraging and enabling utilization of domestic and international channels about problems, difficulties, or violations of freedom of association and effective recognition of the right to collective bargaining.

### **Overall Outcomes**

General indicators that are not necessarily under the control of a government may show compliance with freedom of association and effective recognition of the right to collective bargaining. These indicators include union density, frequency and length of strikes, and the percentage of workers covered by collective bargaining agreements. Each of these indicators presents special difficulties in assessing compliance.

Union density might be considered a good objective indicator of compliance with freedom of association, but the information must be considered in context and cannot simply be used alone. First, union density numbers are often not reliable.<sup>12</sup> Trade unions often try to create an impression of strength by inflating their membership numbers, and governments also manipulate trade union membership data. Second, high union density numbers may not be indicative of genuine freedom of association because national governments or political parties may exercise control over membership. China and Egypt, for example, impose explicit governmental control over unions. In India, each major political party has its own union. The presence of “yellow” unionism—unions controlled by employers—can also

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<sup>12</sup>The ILO’s description of its methodology for calculating union membership attests to the problems associated with this measurement. See ILO, Task Force on Industrial Relations (GT/RP), World Labour Report 1997-1998 (International Labour Organization Governing Body, 1998), “Industrial relations, democracy and social stability, technical notes, industrial relations indicators.” Available at <http://www.ilo.org/public/english/dialogue/govlab/publ/wlr/97/annex/notes.htm>.

affect union density figures, as can control of unions by government officials or criminal elements.

Even where numbers are accurate, one still finds a lot of room for interpretation. Both France and Spain exhibit low union density when measured in terms of dues-paying membership, on the order of 8-10 percent. But they both have relatively high density when measured in terms of the percentage of workers covered by collective agreements, estimated at more than 70 percent. Countries with a large informal sector can have low union density relative to the entire labor force, but it may be high in the formal sector.

Low union density in countries where freedom of association is respected could occur if workers have simply not opted for union representation or where other forms of worker-management interaction are prevalent. The use of union density as a proxy for compliance with freedom of association is built on the implicit assumption that, in the presence of genuine freedom of association, all workers would join a trade union, but this assumption might be at variance with reality (Freeman and Rogers, 1999).

Finally, while several organizations (such as the ILO and U.S. Department of State) may provide estimates for union density (and for other general indicators discussed below), the numbers may all derive from a single origin, such as official government reporting. Alternatively, the numbers may come from distinct sources using diverse methodologies (such as those from studies by the North American Free Trade Agreement [NAFTA] secretariat).

Similar critiques apply to other overall measures. For example, the extent of coverage of collective agreements may, or may not, be an accurate measure of the right to bargain collectively. Many countries have a master collective agreement bargained between union and employer federations. The terms of these agreements are extended to all firms in a sector, even though workers and employers in the sector were not directly involved in the bargaining process. Such master agreements can result in wage levels that workers' productivity (or market clout) would afford them with free bargaining, but governments and government-run unions can also impose master agreements that hold wages below (or boost wages artificially above) the outcome that would result from free bargaining.<sup>13</sup> The assessment of

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<sup>13</sup>There is no analytical reason why free bargaining should lead to the competitive market outcome of wages that equal marginal productivity; "free bargaining" might take place between a monopsonistic employer and a monopolistic union.

master agreements requires investigating the extent to which members of the unions in the federation delegate their bargaining rights to the federation and are able to approve or disapprove of the bargains struck.

There are other difficulties with using the sheer numbers of workplace unions and collective agreements to measure respect for workers' freedom of association and bargaining rights. One difficulty springs from whether a country permits minority unionism and multiple unionism and multiple agreements in the same workplace. In France, for example, Confederation generale du travail (CGT), Confederation Francaise Democratique du Travail (CFDT), and *Force Ouvrière* bargaining groups represent workers in the same plant. In Spain, the Union General de Trabajadores (UGT) federation and the *Comisiones Obreras* bargain on behalf of employees in the same plant. Each of these multiple unions negotiates a separate contract. These two countries might be compared with other countries where labor regulations stipulate exclusive representation by a single union required to be supported by a majority of workers to obtain one contract. For two countries that would appear similar in terms of size of the labor force, firm size, and other characteristics, indicators for the country that allows multiple unionism in a single workplace might display three or four times as many unions and collective agreements as indicators for the country with exclusive representation.

A large volume of strikes—measured in terms of frequency, length, or person-days—can be taken to indicate respect for the right to strike with a healthy collective bargaining system, or it can indicate the reverse. A small number of strikes might mean that labor and management bargain freely and readily compromise to reach agreements. But a small number of strikes can also be symptomatic of a repressive system in which workers are afraid to strike for fear that they will suffer reprisals or be replaced.

Thus, each of the committee's four indicators for assessing overall outcomes needs interpretation to be used to measure compliance with freedom of association and effective recognition of the right to collective bargaining:

- C-1. union density;
- C-2. frequency, length, and person-days of legal strikes;
- C-3. percentage of workers covered by collective bargaining agreements; and
- C-4. incidents of discrimination against union organizers, unions, or employer associations.

## SOURCES OF INFORMATION

The evaluation of sources of information on compliance with freedom of association and effective recognition of the right to collective bargaining requires some introductory cautions and caveats. Most information that might be used to investigate compliance is likely to come from relatively large firms within the formal sector. In developing nations, such firms usually comprise a tiny proportion of all firms. As a result, for developing nations, information on freedom of association and collective bargaining is generally not based on a representative sample and cannot be used to draw inferences about the ways workers may be treated in the overall economy.

Information about governmental efforts and effectiveness in enforcing freedom of association and collective bargaining may likewise be nonrepresentative. Although evidence about enforcement might be presented as national in coverage, enforcement efforts may be limited to certain regions, economic sectors, or occupations.

This section discusses three information sources on various nations' compliance with freedom of association and right to collective bargaining.<sup>14</sup> Chapter 2 covers these information sources more generally and provides more detailed comments on the reporting efforts.

### Comprehensive Descriptive Labor Rights Reports

The reports in this category cover large numbers of countries and examine all the components of freedom of association, including organizing, bargaining, and the right to strike. They examine both whether governments are actively interfering with these rights, on the one hand, and whether governments are providing effective protection of the rights. Some provide a perspective on whether states are taking a proactive approach to informing workers about their rights and remedies, to improving the performance of labor regulatory institutions, to encouraging the adoption of best practices in labor-management relations, and to encouraging the spread of independent monitoring and public reporting.

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<sup>14</sup>These evaluations of information sources rely heavily on Compa (2002) and Polaski (2002a, 2002b). This section of the chapter has also benefited from commentary from Anthony Giles, research director, Commission on Labor Cooperation, North American Agreement on Labor Cooperation, and from Ben Davis, American Center for International Labor Solidarity.

Three sets of comprehensive reports are particularly important for assessing compliance with freedom of association and right to collective bargaining: the U.S. Department of State's annual Section 6 reports on workers' rights, the International Confederation of Free Trade Unions (ICFTU) and its annual survey of violations of trade union rights, and annual reports by the ILO's Committee of Experts and Committee on Freedom of Association and "Follow-Up" reporting.

#### *U.S. Department of State's Annual Section 6 Reports*

The Department of State's annual *Country Reports on Human Rights Practices* address workers' rights in Section 6, providing a valuable source of information for indicators A-1 through A-21, B-1 through B-13, and C-1 through C-4.

In a memorandum to embassies about the reports, the Department of State instructs those preparing the report to first note any ILO, GSP, and OPIC cases that may pertain to freedom of association in the country, as well as information in ICFTU and other NGO reports (U.S. Department of State, 2001). It then presents 15 general questions (with subquestions) on rights of association, organizing, and bargaining that must be answered, with explanatory amplification.

Some of the questions require reporting of facts: "Note the percentage of the total work force that is organized." "Were there legal or illegal strikes during the year? If so, how many?" "Has the government lost GSP or OPIC benefits on worker rights grounds?" Some require an assessment of laws and regulations: "Cite any categories of workers that are not permitted to join a union." "Does the law protect workers from employer interference in their right to organize and administer their unions" "Are there significant restrictions in EPZs [export processing zones]?"

Still others require Department of State personnel to form a judgment, "Are unions subordinate to the government, political parties, or any other political forces in law or in practice?" "Do labor administrative and judicial bodies function independently?" "Is collective bargaining freely practiced?" "Is the law effectively enforced?" It is clear that how such judgments are made is crucial to interpreting a country's compliance, making strict comparison among countries difficult.

Although these Section 6 reports constitute an important resource for assessing freedom of association and right to collective bargaining, they



may exhibit weaknesses relating to the inherently politically charged nature of the editing process, as described in Chapter 5.

### *ICFTU*

The ICFTU's *Annual Survey of Violations of Trade Union Rights* has become a standard reference on workers' freedom of association (International Confederation of Free Trade Unions, 2003a). The ICFTU is the largest international union confederation, made up of 231 affiliated national union organizations in 150 countries and territories located on all five continents. With total membership among its affiliates estimated at about 158 million, the ICFTU provides a unique channel for workers' concerns about freedom of association (International Confederation of Free Trade Unions, 2003b). To produce the survey, the ICFTU collects reports from its affiliated unions around the world, supplemented with country visits to interview key actors for some countries. The survey provides an overview of labor law and practice and describes specific cases of labor rights violations. Drawing on this effort, the ICFTU has also produced 63 country reports to the World Trade Organization in recent years.<sup>15</sup>

Earlier, ICFTU reports were spotty and differed widely in quality of reporting (Compa, 2002). Sometimes they were more argumentative than informative. More recently, the reports have become more consistent, more thorough, and more dispassionate, allowing readers to draw their own conclusions from the facts. The reports still present trade unionists' accounts of what they consider to be assaults on their rights during a given year in a given country, and in this sense they are inherently one-sided.

Sometimes the reports are carefully documented; other times there is inaccurate or outdated information. The more reliable reports reflect careful review and editing on the part of ICFTU affiliates and headquarters, as well as input from the offices around the world of the American Center for International Labor Solidarity (which is affiliated with the AFL-CIO). ICFTU reporting about any given country derives almost exclusively from the ICFTU affiliates in that country and may overlook important inputs from non-ICFTU sources.

ICFTU affiliates around the world feed accounts of the worst violations of workers' rights to headquarters staff in Belgium, driving the pro-

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<sup>15</sup>See <http://www.icftu.org/list.asp?Type=WTOReports&Order=Date&Language=EN&STEXT=WTO> [October 16, 2003].

duction of the final product. As a consequence, the ICFTU report cannot be considered a fully rounded study of workers' rights in every country, nor can the workers and countries covered be considered a representative sample of all workers in the world. Nonetheless, the ICFTU reports constitute a possible source of information for indicators A-1 through A-8, A-12 through A-21, and B-1 through B-6.

### *ILO Reports*

As part of the ILO supervisory system—but given special prominence because of its importance—the Committee on Freedom of Association (CFA) is empowered to investigate alleged violations in this area, even by countries that have not ratified Conventions No. 87 and No. 98. CFA reports are a possible source of information for indicators A-1 through A-21, B-1 through B-13, and C-1 through C-4.

ILO reporting uses very guarded diplomatic language that requires an acquired expertise to decipher (see Chapter 8). CFA reports are usually more pointed because they respond to complaints and address concrete problems of workers' rights violations. Inadequate enforcement can be identified, or progress measured, as when “the committee notes with satisfaction that” as it did, for example, recognizing Sri Lanka's passage of a new law prohibiting acts of anti-union discrimination.

One important caution in using the CFA reports is that they are complaint driven. This skews the distribution of reports toward those whose trade unions avail themselves of the CFA complaint procedure or toward countries targeted by external trade unionists if in-country trade unions are not in a position to avail themselves of this mechanism. The CFA does not purport to conduct a general survey. One country with serious freedom of association violations might not be the subject of many CFA complaints because the unions lack the resources to file complaints, because labor movements have different priorities for the complaints they do file, or because governments suppress the complaint procedure. Another country with fewer violations could be the subject of numerous complaints because the labor movement there actively utilized the CFA system.

This characteristic of the process has led to significant regional disparities in the number of CFA complaints to the ILO that almost certainly do not reflect the actual distribution of violations. Approximately half of all CFA complaints come from Latin American countries, in part reflecting the fact that Latin American unions have grown accustomed to using this

mechanism. In Asia and Africa, the ILO CFA procedures appear to be less familiar to many trade unionists and their allies, and unions are often less strong. Technical assistance from the ILO and from other agencies, such as the U.S. Department of Labor, in how to use the ILO complaint process could help remedy this disparity.

The follow-up mechanism to the ILO 1998 Declaration requires countries by virtue of their membership in the ILO to report on their efforts to meet the Declaration's goals (including freedom of association and right to collective bargaining) even if they have not ratified the core conventions. These reports are assembled and published with an introduction by experts in this field. These experts have urged workers' organizations and employers' groups to use these follow-up collections of reports to stimulate dialogue among themselves and with their respective governments about ensuring compliance with freedom of association and right to collective bargaining.

As part of the follow-up process, the director-general of the ILO composes a "global report" whose contents rotate among the four core labor standards. The 2000 global report was devoted to freedom of association and right to collective bargaining. *Your Voice at Work* listed countries that failed to comply with important elements of Conventions No. 87 and No. 98 (International Labour Organization, 2000b). It identified 15 countries, for example, that fail to protect agricultural workers' right to organize (including Afghanistan, Canada, the United Arab Emirates, and the United States). It highlighted countries where there were arrests and detentions of union representatives (Cape Verde, Central African Republic, China, Comoros, Democratic Republic of the Congo, Djibouti, El Salvador, Ethiopia, Gabon, Guinea, Guinea-Bissau, Indonesia, Ivory Coast, Lebanon, Morocco, Niger, Nigeria, Pakistan, Panama, Paraguay, Republic of Korea, Senegal, Sudan, Swaziland). And it listed countries that prohibited any type of labor organization (Oman, Saudi Arabia, the United Arab Emirates).

### **Selected Country and Complaint-Based Descriptive Reports**

Selected country and complaint-based descriptive reports often include useful information on freedom of association and right to collective bargaining. As discussed in Chapter 2, these sources of information may not be comparable across countries and may reflect the biases of the reporting organization. They may not be representative of conditions throughout the labor force. However, they may nonetheless provide detailed insights into specific conditions in specific countries.

### *Government Agency Reports*

***U.S. Trade Representative Trade Policy Staff Committee*** The reports of the Trade Policy Staff Committee (TPSC)—and interagency group chaired by the U.S. Trade Representative (USTR)—review complaints about countries that are parties to preferential trade arrangements with the United States, including Generalized System of Preferences (GSP), Caribbean Basin, Andean Pact, and African Growth and Opportunity Act. They frequently address issues of compliance with freedom of association and right to collective bargaining and can be an important source of information for indicators A-1 through A-21, B-1 through B-13, and C-1 through C-4. These reports may reflect the biases of the interested parties requesting review, as well as the political interests of the participating U.S. government agencies (see Chapter 8).

***Overseas Private Investment Corporation*** OPIC undertakes country studies about labor conditions in countries that are not eligible for GSP benefits because, for example, their level of development is too high or they have communist governments. As reflected in a careful and detailed study of Vietnam, such a study can be a useful source of information on prospects for freedom of association and right to collective bargaining, providing information for indicators A-1 through A-21 and B-1 through B-5.

***U.S. Department of Labor Bureau of International Labor Affairs*** Over the years, the U.S. Department of Labor's Bureau of International Labor Affairs (ILAB) has produced a variety of reports assessing countries' compliance with international standards on workers' freedom of association. ILAB country studies can be an important source of information for indicators A-1 through A-21, B-1 through B-13, and C-1 through C-4.

A 1996 ILAB study of export processing zones in the Dominican Republic, El Salvador, Guatemala, Honduras, India, and the Philippines, for example, followed a carefully prepared and thorough work plan that combined document review, legal analysis, field visits, and interviews (U.S. Department of Labor, 1996). The ILAB field methodology was exemplary, marked by previsit planning meetings with U.S. garment importers and trade unions and with embassy officials from the countries to be visited. It relied on intensive interviews with government officials, employers, unions, workers, and NGOs and included plant visits to more than 70 factories in 20 EPZs in the six countries. While the sample studied could not be comprehensive—there were several thousand factories in the EPZs under con-

sideration—the report extracted valuable information on workers' rights in these zones, which (except for India) have been the countries' main conduit into the global economy.

To be sure, there are limitations with this kind of reporting: it represented a one-time project rather than an ongoing ILAB undertaking. It did not examine workers' rights in general in each country; instead, it limited its coverage to the EPZs and used a sampling method. Within this framework, however, it proved to be an effective use of in-country site visits and systematic interviews.

*Reports under the North American Commission for Labor Cooperation*

Operating under the North American Commission for Labor Cooperation established with NAFTA, the U.S. National Administrative Office (NAO) has undertaken careful investigations of freedom of association complaints in Mexico and Canada. Canada's NAO has likewise conducted some quite thorough investigations of freedom of association complaints involving Mexico. In much more limited fashion, Mexico's NAO has reported on several complaints involving freedom of association cases in the United States. These NAO reports may be a valuable source of information for indicators A-1 through A-21, B-1 through B-3, and C-1 through C-4. The results do reflect consultation and negotiation among the three member governments.

*U.S. Congressional Research Service Reports* Prepared as background documents for congressional hearings, Congressional Research Service country reports often look in detail at freedom of association and collective bargaining issues. Studies of Vietnam and China show that these can shed useful light on indicators A-1 through A-21, B-1 through B-13, and C-1 through C-4.

*International Agency Reports*

*United Nations* While U.N. agencies consign responsibility for freedom of association issues to the ILO, occasional reports by the U.N. High Commissioner for Human Rights include labor rights violations, along with investigation of other human rights abuses.

*World Bank* The World Bank has started to incorporate analysis of core labor standards into the preparation of its "Country Assistance Strategy"

reports (World Bank, 2003). In preparing these reports, World Bank employees may address several questions, including, "Are workers prevented from organizing?"

Recent studies have not in fact given prominence to freedom of association and collective bargaining issues (to the same degree as child labor). The World Bank reports have pointed out that trade unions in developing countries can sometimes be characterized as rent-seeking organizations that provide privileges to their members at the expense of workers more generally (World Bank, 1995). A recent research review, commissioned by the World Bank, noted that trade unions sometimes speed acceptance of new practices and reforms, while at other times trade unions can detract from economic growth and efficiency and generate political opposition to reform. (Aidt and Tzannatos, 2002). The World Bank acknowledges that its approach to freedom of association, union organizing, and collective bargaining, as distinct from child labor, forced labor, and discrimination, "is complicated by (a) the potential political nature of the standards and (b) research showing ambiguous economic outcomes." (World Bank, 2000).

*NAFTA Labor Secretariat* In addition to studies on labor market issues, the secretariat of the North American Commission for Labor Cooperation under NAFTA has produced substantive analyses of workers' freedom of association in the three member countries (Commission for Labor Cooperation, 2000). These analyses are books of some 200 pages that provide a model of completeness in covering vital aspects of association, organizing, and bargaining rights. The compilation of these studies is exemplary, with commissioned background papers and internal and external referees to ensure accuracy and quality of analysis. While limited to the three NAFTA states, they provide a fundamental source of information for indicators A-1 through A-21, B-1 through B-3, and C-1 through C-4.

### **Private Actors' Reports**

#### *Reports from U.S. Nongovernmental Organizations*

Two U.S. NGOs that regularly report information pertaining to freedom of association are Freedom House and Human Rights Watch. Other U.S. NGOs engaged in labor rights reporting occasionally provide useful information as well.

*Freedom House* Freedom House reports (see Freedom House, 2003) are not designed to provide detailed information on freedom of association and collective bargaining. They pose only two fundamental questions: “Are there free trade unions and peasant organizations or equivalents?” “Is there effective collective bargaining?” These reports perform reduce highly complex assessments into simple summary answers. For the United States, for example—rated “free” by Freedom House—the complete report of workers’ organizing and bargaining rights consists of two sentences: “The U.S. has freedom of association. Trade unions are free, but have been in decline for some years and today represent the lowest percentage of American workers in the postwar period.”

On Chile (also rated “free”), the summary analysis says that: “Chile has a strong trade union movement.” However, experts familiar with Chilean labor consider that the labor movement—which certainly was very strong before the 1973 military coup—was virtually destroyed by the Pinochet dictatorship and is today weak and divided, with workers still facing severe restrictions on organizing and bargaining (Frank, 2002). On Sri Lanka, Freedom House says, “Trade unions are independent and collective bargaining is practiced,” but unions have complained that employer-created “workers’ councils” have supplanted trade unions.

Nonetheless, Freedom House reports might be useful for indicators A-1, A-5 through A-14, B-1, B-2, B-4, and B-5.

*Human Rights Watch* The Human Rights Watch annual report (see Human Rights Watch, 2003) suffers from some of the same drawbacks as Freedom House. The coverage of freedom of association issues is not always consistent and depends upon the priorities of the reporters.

Workers’ rights are not addressed in the Chile report, for example, because Pinochet-related prosecutions and treatment of journalists received higher attention. Similarly, civil strife between the central government and the Tamil separatists was highlighted in the Sri Lanka report, and workers’ rights are not mentioned. The report on Mexico, in contrast, contained two revelatory paragraphs about significant violations of workers’ freedom of association. Reliance on the Human Rights Watch annual report might therefore lead an outside observer to conclude correctly that serious problems are present in Mexico, but incorrectly that serious problems are absent in Chile and Sri Lanka.

From time to time, Human Rights Watch publishes a major country report devoted to workers' rights, such a recent one on freedom of association in the United States (Compa, 2000). In addition, the organization's Corporations and Human Rights program issues occasional studies of corporations, including their treatment of workers (Human Rights Watch, 1999a, 1999b).

Despite the drawbacks cited above, Human Rights Watch reports might be scrutinized for information on indicators A-1, A-5 through A-14, B-1, B-2, B-4, and B-5.

*Global Alliance for Workers and Communities* As part of its assessment of workers' needs, the Global Alliance for Workers and Communities has provided careful and well-organized survey information that includes some attention to freedom of association. Global Alliance reports can provide in-depth insights about worker treatment and worker preferences at plants in China, Vietnam, Indonesia, and Thailand and can provide information for indicators A-1 through A-21, B-1 through B-13, and C-1 through C-4.<sup>16</sup>

*Lawyers Committee for Human Rights* The Lawyers Committee for Human Rights has issued reports that touch on freedom of association issues in Cambodia, China, Guatemala, India, Indonesia, Jordan, and South Korea. It has also launched a Workers Rights Information Project to collect information on corporate practices, including treatment of workers.<sup>17</sup>

*International Labor Rights Fund* Information collected by the International Labor Rights Fund in connection with GSP petitions, complaints under NAFTA, and civil lawsuits on behalf of workers' rights sometimes address freedom of association and collective bargaining issues.<sup>18</sup>

*U.S. Labor Education in the Americas Project* Petitions by the U.S. Labor Education in the Americas Project on GSP and Caribbean Basin Initiative eligibility may be a source of useful information on freedom of association and collective bargaining in Central and South American countries.<sup>19</sup>

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<sup>16</sup>See <http://www.theglobalalliance.org/section.cfm/6> [October 16, 2003].

<sup>17</sup>See [http://www.lchr.org/workers\\_rights/workers\\_rights.htm](http://www.lchr.org/workers_rights/workers_rights.htm) [June 23, 2003].

<sup>18</sup>See <http://www.laborrights.org> [June 23, 2003].

<sup>19</sup>See <http://www.usleap.org> [June 23, 2003].



*Campaign for Labor Rights* The rapid action network campaigns of the Campaign for Labor Rights often point the finger at freedom of association violations that could be followed up with more in-depth investigation.<sup>20</sup>

*National Labor Committee* The National Labor Committee campaigns and high-profile firm-focused exposes—as well as the reports on worker treatment at plants in particular countries—can be examined for information on violations of freedom of association and right to collective bargaining.<sup>21</sup>

#### *Foreign NGOs and Websites*

The **World Confederation of Labour (WCL)** is a smaller international trade union confederation than the ICFTU, with 144 national affiliates located in 116 countries. Many of its estimated 26 million members are located in developing nations (World Confederation of Labour, 2003a). Although the WCL does not report routinely on freedom of association around the world, it does publish occasional short reports on problems in particular countries. For example, a July 2003 “Teleflash” provides brief descriptions of freedom of association problems in Guatemala, Paraguay, and the Republic of Guinea (World Confederation of Labour, 2003b).

Amnesty International may be a source on worker treatment but—like Human Rights Watch—is not consistent in this type of coverage.

Asia Monitor Resource Centre<sup>22</sup> might be consulted for information on Asian EPZs, including China; International Centre for Trade Union Rights<sup>23</sup> for coverage of African countries; China Labour Bulletin<sup>24</sup> and Human Rights in China<sup>25</sup> for coverage of China; Global Standards for coverage of Vietnam;<sup>26</sup> and *Correio Sindical Mercosur* for coverage of the southern cone of South America.

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<sup>20</sup>See <http://www.clrlabor.org> [June 23, 2003].

<sup>21</sup>See <http://www.nlcnet.org> [June 23, 2003].

<sup>22</sup>See <http://www.amrc.org.hk> [October 14, 2003].

<sup>23</sup>See <http://www.ictur.labournet.org/> and <http://www.labourcommission.org> [October 14, 2003].

<sup>24</sup>See <http://iso.china-labour.org.hk/iso/> [October 14, 2003].

<sup>25</sup>See <http://iso.hrichina.org:815/iso/> [October 14, 2003].

<sup>26</sup>See <http://www.global-standards.com/> [October 14, 2003].

### *Voluntary Reporting*

Information gleaned from voluntary reporting can be used—with careful attention to objectivity, bias, and representativeness—as an important check on other sources of information about compliance with freedom of association and right to bargain collectively. The growing array of voluntary reporting sources are reviewed in Chapter 3.

### **Academic Research**

There is a growing volume of academic research devoted to freedom of association issues. Much of this work is not cited or used by the reporting agencies and institutions reviewed above. Some of the more important journals that report this work include *Comparative Labor Law and Policy Journal* and the *International Journal of Comparative Labour Law and Industrial Relations*.

## **CONCLUSIONS AND RECOMMENDATIONS**

Many governments do not collect basic data on union density, number of collective bargaining agreements, number of workers covered by agreements, or frequency and duration of strikes. Much of this information could be collected simply and cheaply by adding questions to household surveys. This is one area where technical assistance from the U.S. Department of Labor, or the ILO, to national labor ministries could yield critical information about trade union representation and the reach of collective bargaining.

But as stressed throughout this chapter, quantitative data on freedom of association and collective bargaining strongly need to be interpreted and placed in context, subject to the caveats and subtleties discussed earlier, since the raw data could point in diametrically opposite directions about compliance.

**4-1 The U.S. Department of Labor, and the International Labour Organization, support systematic data collection by providing technical assistance to developing country governments to add questions to household surveys relating to freedom of association and effective recognition of the right to bargain collectively.**

**4-2 The committee recommends that all the principal reporting bodies in the U.S. government, particularly the U.S. Department of Labor and the U.S. Department of State, gather data related to the full list of indicators of freedom of association and the right to collective bargaining identified in this report and database system.**

Reporting bodies need to provide the contextual information so that they—or other assessors—can interpret the raw data about union formation, bargaining, strikes, and improvement or deterioration in the treatment of workers. As discussed throughout this report, this contextual information should include the promotion of compliance through positive inducements as well as improvement in enforcement.

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## 5

# Forced or Compulsory Labor

The elimination of one form of forced labor, slavery, was “the first human rights issue to arouse wide international concern” (U.N. Office of the High Commissioner for Human Rights, 1991). Despite universal condemnation, however, eradicating forced labor’s “numerous forms—old and new, ranging from slavery and debt bondage to trafficking in human beings—remains one of the most complex challenges facing local communities, national governments, employers’ and workers’ organizations and the international community” (International Labour Organization, 2001b, p. vii).

For much of the history of mankind, forced labor has been easier to monitor and measure than it is today. Before the twentieth century, forced labor was accepted in many countries as the natural order of economic and social relationships, and governments kept detailed records of slaves and their treatment (Bales, 2002). In the 1900s, forced labor was generally criminalized and, as a result, it went underground (Bales, 2002).

Today, its hidden nature makes it difficult to identify and quantify, making monitoring of forced labor with any degree of precision difficult. Furthermore, in some places where forced labor occurs, it is not thought of as a crime. In India, for example, bonded workers who have no freedom to walk away and are not paid for their work are often referred to as “attached workers,” thereby concealing their forced labor status (Bales, 2002).

Although this chapter relies on the International Labour Organization (ILO) definition of forced labor, there are numerous multilateral defini-

tions of forced labor and slavery with slightly different degrees of emphasis, which compound monitoring issues. Consequently, apart from the limited circumstances where forced labor is overt, identification of economic and social indicators that point to a greater or lesser likelihood of forced labor is important.

The first section of this chapter describes the history of the ILO standards on forced labor over the past 70 years and notes some of the complexities in defining forced and compulsory labor. The next section then explores in more detail the definitional problems that surround this topic. The remaining three sections follow the pattern of the previous and subsequent two chapters: assessing compliance, sources of information, and conclusions and recommendations.

## ILO CONVENTIONS AND DECLARATION

The development of international labor standards on forced labor in the ILO have evolved over time and have been influenced by other instruments developed in the United Nations. Not surprisingly, the instruments have focused on the prevailing forms of forced labor at the time, and their scope continues to evolve as do contemporary forms of forced labor, many resulting from globalization.

### Convention No. 29 on Forced Labor

In 1930, following a 2-year negotiation, the ILO adopted Convention No. 29 concerning forced labor.<sup>1</sup> The convention was directed specifically against the conscription of workers by the colonial powers for public and private enterprises for the development of communications and economic infrastructure, mining, and the forced production of crops on plantations and other export goods. As such, the convention's primary purpose was to

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<sup>1</sup>The content of Convention No. 29 was influenced by Article 5 of the Slavery Convention of 1926 that was adopted by the League of Nations. In addition to requiring the prevention and suppression of slavery and the slave trade, the Slavery Convention called on states to "take all necessary measures to prevent compulsory or forced labour to develop into conditions analogous to slavery." Furthermore, it stated that forced labor could only be "exact-ed for public purposes," "shall always be of an exceptional nature, shall always receive adequate compensation, and shall not involve the removal of the labourers from their usual place of residence."

protect “native labor” from exploitation. Today, more than 160 countries have ratified the treaty. The convention requires ratifying countries to suppress the use of forced or compulsory labor in the shortest period of time (ILO Convention No. 29, Article 1, para. 1).

“Forced or compulsory labor” is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (ILO Convention No. 29, Article 2, para. 2). In particular, governments were prohibited from imposing or permitting imposition of forced or compulsory labor for the benefit of *private* individuals, companies, or associations (ILO Convention No. 29, Article 4), including any concession for the production or the collection of products they use or in which they trade (ILO Convention No. 29, Article 5, para. 1).

For purposes of the convention, five kinds of work or service are exempted from this definition (ILO Convention No. 29, Article 2, para. 2):

- compulsory military service—any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
- normal civic obligations—any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
- prison labor under governmental supervision and control—any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies, or associations;
- work in cases of emergencies—any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; and
- minor communal work—minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.



Convention No. 29 laid down rules limiting forced labor to essential public works, specifying that it must be paid at prevailing wage rates in cash (ILO Convention No. 29, Article 14), must not exceed 60 days (ILO Convention No. 29, Article 12, para. 1), must involve normal working hours (ILO Convention No. 29, Article 13), and must take place near home and be for the benefit of the community performing it (ILO Convention No. 29, Article 10). Under Article 25 of Convention No. 29, both public and private forced or compulsory labor was a penal offense, and ratifying countries have an obligation to ensure that the penalties are adequate and strictly enforced.

### **Convention No. 105 on Forced Labor**

With the end of the colonial period and the onset of the Cold War following the end of World War II, it became evident that forced labor was also occurring on a mass scale outside the colonial setting, particularly in the political and economic use of labor camps for the dual purpose of quelling opposition and providing cheap labor by the Soviet bloc countries. As a result, in 1957, the ILO adopted Convention No. 105 as a supplement to Convention No. 29. It specifically requires the abolition of forced labor in five circumstances where it occurs (Article 1):

- 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;
- as a method of mobilizing and using labor for purposes of economic development;
- as a means of labor discipline;
- as a punishment for having participated in strikes; and
- as a means of racial, social, national, or religious discrimination.<sup>2</sup>

The treaty has been ratified by more than 155 countries.

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<sup>2</sup>The substance of Convention No. 105 was influenced by a U.N. treaty adopted in 1956. In the 1950s, as countries in Asia and Latin America began to undertake agrarian and land tenancy reforms, the Supplementary Slavery Convention in 1956 set out specific forms of forced labor that were to be abolished by states' parties : (a) debt bondage, (b) serfdom, and (c) any institution whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor.

### **Convention No. 182 on the Worst Forms of Child Labor**

Inherent in compulsory and forced labor is compulsory child labor, especially bonded child labor. Although the U.N. Supplementary Convention on the Abolition of the Slave Trade addressed bonded child labor in 1956 (ILO Convention No. 29, Article 5, para. 1), the international community did not specifically and comprehensively address the situation of children in forced labor until the ILO adopted Convention No. 182 on the worst forms of child labor in 1999. The definitional, monitoring, and assessment questions surrounding child labor in forced labor circumstances are addressed in Chapter 6.

### **Declaration on the Fundamental Principles and Rights at Work**

In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. By virtue of their membership in the ILO, each of the 175 member countries is committed to realize the principles of the eight fundamental conventions (see Chapter 1), which include Convention Nos. 29, 105, and 182 concerning abolition of forced and child labor, regardless of whether they have ratified these conventions. Thus, the declaration is an international commitment of human rights decency in the workplace. Although the Declaration does not encompass the more detailed legal obligations that come when conventions are ratified, with respect to compulsory and forced labor, each country commits to promote under the Declaration, “the elimination of all forms of forced and compulsory labor” and “the effective elimination of child labor” (ILO Declaration, 1998, Article 2(b) and (c)).

The first global report on forced labor under the declaration’s follow-up procedures identified seven major categories of forced labor that constitute pervasive failures to achieve the elimination of forced labor (International Labour Organization, 2001b):

- slavery and abductions,
- compulsory participation in public works projects,
- mandatory forced labor in remote rural areas,
- bonded labor,
- involuntary labor resulting from trafficking in persons,
- domestic workers in involuntary labor situations, and
- prison labor and rehabilitation through work.

The rest of this chapter uses these seven forms of forced labor to analyze and discuss forced labor definitions, direct and indirect forced labor indicators, legal framework, government performance, and outcomes assessment issues. The discussion makes clear that these broad categories overlap, and there is frequently an absence of bright lines between acceptable and illegal forced labor.

## DEFINITIONS

We use as the central definition of forced labor the one found in ILO Convention No. 29: all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily. Underlying this definition there are seven major categories of forced labor, detailed below.

### Slavery and Abductions

There is no one universal definition of slavery, even though the proscription of slavery is a peremptory norm in international law for which there are no derogations. At one end of the spectrum is chattel slavery (ownership) and the other end is freedom. In its worst form, slaves are possessions whose bondage is lifelong. They can be bought, sold, given away, inherited, paid as a tax, and otherwise used by their owners as they wish. They have no separate social identity and no political rights. They are totally dependent on their owners, who usually are private individuals. As defined by Bales (2002, p. 4), slavery is: "A social and economic relationship marked by the loss of free will where a person is forced through violence or threat of violence to give up the ability to sell freely his/her own labor power." This definition is especially applicable to slavery and "practices similar to slavery," such as debt bondage<sup>3</sup> and serfdom.<sup>4</sup>

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<sup>3</sup>Debt bondage is defined in Article 1(a) of the Supplementary Convention on the Abolition of Slavery as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

<sup>4</sup>Serfdom is defined in Article 1(b) of the Supplementary Convention on the Abolition of Slavery as "the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status."

ILO definitions take a different approach and are primarily concerned with economic exploitation, although Convention No. 182 (on the worst forms of child labor) does prohibit “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 labour, including forced or compulsory recruitment of children for use in armed conflict.” “Clearly, when experts and multilateral agencies find it a challenge to arrive at any uniform definition of an activity that they all agree exists, and that they all agree should be eradicated, it is not surprising that researchers face a similar challenge in developing measures of forced labor or slavery (Bales, 2002, p. 6).”

Contemporary forms of slavery include a wide range of exploitative practices, including compulsory participation in public works, mandatory labor in remote rural areas, bonded labor, domestic workers in involuntary labor situations, and involuntary labor resulting from trafficking. In many parts of the world, slavery may be overt in the community because it is tacitly accepted and managed by community leaders but relegated to a status of invisibility. Counting the number of slaves is difficult because they cannot be surveyed in any reliable way.

### **Compulsory Participation in Public Works Projects**

In a number of societies, particularly within Asia and Africa, individuals are required to participate in aspects of community and national development. Many communities have a long-standing tradition of participatory, voluntary labor, including arrangements in which families assist each other in agriculture and other activities. The definitional and resulting measurement challenge is to differentiate between practices that are “minor communal services” or “normal civic obligations,” which are exempt from the ILO forced labor prohibition, from situations that are in fact forced labor. These differentiations are often difficult to make.

Convention No. 29 exempts any work or service that forms part of the normal civic obligations of the citizens of a fully self-governing country (ILO Convention No. 29, Article 2(2)(b)). As noted above, the exemption includes military service (ILO Convention No. 29, Article 2(2)(a)), work in case of emergencies (ILO Convention No. 29, Article 2(2)(d)), and minor communal services. Other examples may include compulsory jury service and the duty to assist a person in danger or to assist in the enforcement of law and order (International Labour Organization, 1979).

The exception for military service is based on the necessity for national

defense. It is not intended for public works projects. Similarly, the exception for emergencies is intended to apply to genuine emergencies and not to public works projects. The emergency exception encompasses any circumstance that would endanger the existence or the well-being of the whole or part of the population, including war or a calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests (ILO Convention No. 29, Article 2(2)(d)). Moreover, the nature and duration of the compulsory labor must have a direct correlation to the nature of the event and be limited to what is strictly required by the situation (International Labour Organization, 1979).

Similarly, the ILO supervisory bodies that monitor compliance with ratified ILO forced labor conventions consider minor communal services to be minor services relating primarily to maintenance work and, in exceptional cases, to the erection of buildings intended to improve the social conditions of the community, for example, building a small school or a medical treatment room. Such services must be of direct interest to the community and not relate to the execution of works intended to benefit a specific group (International Labour Organization, 1979).

These exceptions are narrow. Although there are a number of examples of compulsory participation in public works, perhaps the most dramatic example has been the situation in Myanmar (Burma) that led to a commission of inquiry and the invoking of Article 33 economic sanctions for the first time in ILO history. Specifically, the commission found (International Labour Organization, 1998, para. 528):

There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks, none of which comes under any of the exceptions listed in Article 2(2) of the Convention.

A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law. Whatever may be the position in national law with

regard to the exaction of forced or compulsory labour and the punishment of those responsible for it, any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity.

### **Mandatory Forced Labor in Remote Areas**

Although traditional systems of peonage (coerced labor in payment of a debt created by a contract between two individuals) and serfdom have been significantly reduced in recent decades, coercion and compulsion of agricultural workers continues, primarily through monetary advances to workers that result in a debt that compels their future labor. In remote areas, workers have no choice but to incur further debt for food and other necessities supplied by the landowner or contractor or to accept goods in lieu of wages. After money has been advanced, there can be varying kinds of restriction on the freedom of the worker to terminate employment, or even to leave the workplace, that can be difficult to discern.

Problems of coercion are often connected with seasonal migration within countries and across national borders. There is no well-accepted international standard regarding who pays recruitment fees—the employer or the employee—or the level of those fees in relation to the worker’s wages. Seasonal workers are often far from home and in inhospitable and inaccessible tropical areas. This isolation increases their vulnerability to abuse and lessens the prospect of effective enforcement of conventions on forced labor.

### **Bonded Labor**

Of all the contemporary forms of forced labor, bonded labor is the most widespread, although precise estimates of its dimensions are hard to determine. The precise meaning of the term “bonded labor” and whether this phenomenon is distinct from debt bondage can also be difficult to discern. Moreover, not all debt bondage is forced labor. In some instances, the issue may be not about whether the debtor entered into bondage voluntarily but over the terms of the bond. This issue is often a reflection of the borrower’s being illiterate, with little understanding of the nature of the bond.

As defined by the ILO, “bonded laborer” refers to a worker who ren-

ders service under conditions of bondage arising from economic considerations, notably indebtedness through a loan or advance. 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 for a specified or unspecified period until the loan is repaid (International Labour Organization, 2001a). Debt bondage may be distinguished by a relatively short duration of obligation, while bonded labor is a derivation of traditional forms of agricultural serfdom.

The variety of practices and relationships that could appear as amounting to conditions of bonded labor does not lead easily to measuring its prevalence or the efficacy of a state's efforts to eradicate it. The ILO has noted several difficulties in accurately estimating the number of bonded laborers in a particular country or region. The first difficulty is determining the population to be measured because land-holding and land-use patterns tend to be common to both bonded and nonbonded labor. For example, the exchange of services in lieu of pay is fairly common among sharecropping tenant farmers.<sup>5</sup> Such work, however, in turn involves both those workers who are indebted, in the sense of bonded labor to the landowner, and those who are not. The matter is further complicated by the fact that being indebted to a landowner does not automatically imply bondage, nor does noninstitutional debt (International Labour Organization, 2001a).

### **Involuntary Labor Resulting from Trafficking in Persons**

With the emergence of the global economy, trafficking of women and children, primarily for prostitution, domestic service, and sweatshops, has increased dramatically over the past two decades. The points of origin are poorer nations, especially the most economically deprived rural areas of those countries; the destination countries are among the wealthiest countries; in between are transit countries.

Trafficking involves domestic and international networks and conspiracies. Consequently, effective enforcement can be hampered by prohibitions on undercover investigation and surveillance, as is the case under the Macedonian Constitution, for example. In Macedonia, law enforcement is further complicated by the lack of conspiracy laws. In other countries, effective enforcement of anti-trafficking laws, if they exist, may be hampered

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<sup>5</sup>Other industries in which bonded labor exists are quarrying, carpet making, fishery, and brick kiln industries.

by provisions that also criminalize the acts of the victim. Trafficking victims are often perceived by public authorities as illegal aliens rather than as victims of organized crime. Victims' fears of the exploiters' reprisals against them or their family members back home, coupled with such constraints as physical confinement and the retention of victims' identity documents, are factors that contribute to the relatively few prosecutions of exploiters. As a consequence, a generally recognized serious problem continues essentially unabated.

Although not as widespread as bonded labor, trafficking in persons is a global problem found in no less than 60 countries, including developed economies. Trafficking in persons exists within individual countries as well as across international borders and is broader in scope than the particular form that often receives the most attention—the movement of women and girls engaged in the sex sector. Workers are also frequently trafficked for the exploitation of their labor on rural farms or in urban households.

The Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, adopted in December 2000, provided the first agreed-on definition of trafficking. Article 3(a) of the Protocol defines “trafficking in persons” to mean:

. . . the recruitment, transportation, transfer, harbouring 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

By including all stages of the process, including “receipt of persons,” the definition of trafficking covers issues beyond being an illegal form of migration. But the frequent transnational aspect of the crime creates complications, requiring examination not only of the manner in which migrants entered the country but also of their working conditions, and whether the migrants consented to the irregular entry or these working conditions.

Trafficking and more voluntary forms of undocumented migration are best thought of as “a continuum, with room for considerable variation between the extremes” (Salt and Hogarth, 2000). Illicit trafficking involves



in most instances sending, transit, and receiving countries. At the most basic level, it involves the movement of persons for the purposes of performing labor that most likely involve illicit activities or under working conditions that are below statutory standards (International Labour Organization, 2001b). Trafficking has been aided by globalization, opening of borders and improved, and low-cost transportation among nations; the social and cultural factors underlying labor trafficking include poverty and indebtedness, illiteracy and low levels of education, and gender-based discrimination.

### **Domestic Workers in Involuntary Labor Situations**

Exploitation of domestic workers is not specifically defined as a separate violation of forced labor standards. “Domestic work per se is not forced labor. But it can degenerate into forced labor when debt bondage or trafficking is involved—or when the worker is physically restrained from leaving the employer’s home or has his or her identity papers withheld” (International Labour Organization, 2001b, para. 83). This vulnerability can also be exacerbated by workers’ frequent exclusion from protections provided under national legislation. The isolation of these workers presents a challenge to recognizing abuses, a necessary precedent to eliminating illegal practices. Working largely in private households, domestic workers experience a degree of vulnerability that is unparalleled to that of other workers.

### **Prison Labor and Rehabilitation Through Work**

Under ILO Convention No. 29, the definition of forced labor excludes: “Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations” (ILO Convention No. 29, Article 2(2)(c)). In the context of modern prison practices in developed countries, the precise contours of this exception continue to be debated.

Two forms of prison labor are at issue. The first involves government-driven prison rehabilitation programs involving the forced labor of prisoners who are viewed by the government as being antisocial or having engaged in such antisocial behavior as political speech, breach of labor discipline, or strike activity. Convention No. 105 specifically prohibits

forced labor as a means of political coercion or education or punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system. Differentiating political coercion from forced labor punishments for violence or inciting violence, which is permitted, can be difficult. Similarly, distinguishing normal labor discipline for endangering the operation of essential services, for which a forced labor punishment is authorized, from a more generalized labor discipline breaching a contract of employment can be difficult. As a general matter, workers have an unrestricted right to terminate their employment except in emergency situations.

The second category of prison labor relates to the exception that “The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations” (ILO Convention No. 29, Article 4(1)). Seventy years after the adoption of Convention No. 29, which was adopted in a colonial era, the application of the exception has become more controversial when applied to modern-day prison practices in such countries as New Zealand, the United Kingdom, and the United States. It is clear that there is no forced labor when the prison labor has no connection with private enterprise and is performed within or outside prisons that are operated solely by a public authority and under the sole control and supervision of the public authority. Prison labor in those circumstances is exempted, and prisoners may be compelled to perform all types of work, including the functions needed to run the prisons, the production of goods or services that may be sold to market by the public authority, and public works (International Labour Organization, 2001b). But modern prison practices in some developed countries increasingly rely on private sector work programs, like those in New Zealand, the United Kingdom, and the United States. In addition, some countries permit private-sector operation of prisons. Consequently, questions have been raised by a number of countries who ratified Convention No. 29 about the relevance of an absolute rule that forecloses privatization of prisons and private prison labor in circumstances when it is to be under the monitoring or supervision of a public authority.

### **Other Forms of Forced Labor**

In addition to the seven major categories of forced labor just discussed, there are other circumstances in which potential questions concerning forced labor occur:

- requirements to work—Statutory provisions that require citizens to work do not constitute forced labor conventions as long as they do not take the form of a legal obligation enforced by sanctions (International Labour Organization, 1979).
- forced overtime—Imposition of overtime does not constitute forced labor so long as it is within the limits permitted by national legislation or collective agreements. This definition leaves the possibility for a wide variation among different nations and difficulty in monitoring compliance.
- strike activity—The applicability of prohibition of forced labor for strike activity is subject to definitional issues. For example, there is no protection from forced prison labor for political strikes, illegal strikes, strikes involving violence or property damage, or strikes involving essential services. The absence of a clear blanket rule makes measurement difficult.

### ASSESSING COMPLIANCE

At present, there are, at best, unreliable statistics on the numbers of persons in forced labor and the number of enforcement actions, inspections, and effective rehabilitations that take place. With the statistical evidence on both sides of the forced labor equation subject to healthy skepticism, assessing compliance with labor standards requires a number of information and data indicators. In developing its indicators the committee has applied the following criteria:

- Does the indicator or factor provide direct evidence of forced labor or evidence as to the level and effectiveness of enforcement and remediation?
- If the indicator is an associated factor or indirect measure, does it provide the basis for understanding the conditions that define the labor market, that contribute to forced labor or lead to the elimination of forced labor, or assess whether enforcement and remediation have been effective?
- Is the information or data for the indicator or factor readily available and reliable?
- Is the information or data for the indicator sustainable, that is, susceptible to be kept current on an ongoing basis?

### Legal Framework

The first essential requirement for the elimination of forced labor is a statutory and regulatory regime that comprehensively addresses forced labor. The committee proposes four such indicators:

A-1. ratification of ILO Convention No. 29;  
A-2. ratification of ILO Convention No. 105;  
A-3. ratification of ILO Convention No. 182; and  
A-4. constitutional provisions, statutes, or regulations prohibiting the principal forms of forced labor, including:

- slavery and abductions;
- compulsory participation in public works projects;
- coercive recruitment systems, particularly in rural areas;
- bonded labor, including bonded child labor;
- trafficking in persons;
- domestic workers in forced labor situations; and
- prison labor and rehabilitation through work.

These legal framework indicators need to be considered in context, however. Forced labor today is universally condemned. The ILO forced labor conventions—Conventions No. 29 and 105—are the most highly ratified of the ILO workplace-based human rights treaties, encompassing 80 percent of the world's nations. And Convention No. 182, on the worst forms of child labor, has had the fastest ratification rate in ILO history. Clearly, there is a global consensus to eliminate forced labor. Yet there are today seven major categories of forced labor involving millions of workers whose numbers can only be roughly estimated. As the preceding section has highlighted, there are definitional issues within these categories. The problem is so large, however, that the definitional issues become subsidiary to effective implementation of national laws prohibiting forced labor. For example, in 1970, Oman was the last country to outlaw chattel slavery, yet it is clear that chattel slavery still exists in the world.

The existence of credit institutions is a particularly important contextual factor to recognize. In the majority of circumstances, forced labor is a product of poverty. In South Asia and other regions, millions of men, women, and children are tied to their work because of unrelenting debt and inability to get credit. Even after making efforts for 25 years to measure and eradicate bonded labor, India is, in reality, no closer to eliminating it. Because of migration flows, rehabilitated workers in one part of the country fall into debt when they move elsewhere in the country in search of jobs. Solutions in which productive assets and credits were given to bonded male laborers that allowed them to escape their bonded work status have had the consequence of increasing the number of women falling into bondage as a result of family debts shifting to them.

Ratification of ILO conventions abolishing forced labor and enactment of relevant laws is, at best, a commitment to observe their provisions. Elimination of forced labor requires, at minimum, a national will to eliminate it, an effective system of labor administration, an adequate number of labor inspectors, an independent judiciary, authority for courts to order fines, incarceration and penal sanctions, community awareness including local vigilance committees, an effective system of rehabilitation, development of a functioning labor market, and the existence of credit institutions and a growing economy.

### **Government Performance**

The committee proposes eight indicators of government performances to eliminate forced labor:

B-1. an effective system of labor inspection with responsibility for identifying, remedying, and enforcing forced labor prohibitions;

B-2. an independent judiciary to redress forced labor violations;

B-3. courts with authority to order fines and penal sanctions, including incarceration, for forced labor violations;

B-4. community awareness and use of local vigilance committees to identify and monitor forced labor situations;

B-5. government-sponsored credit institutions; and

B-6. national, state, and local resources devoted to identification, remediation, and enforcement, measured by:

- the percentage of labor department budget devoted to enforcement of forced labor prohibition;
- the number of labor inspectors per 100,000 workers in the formal and informal sectors; and
- annual arrests, prosecutions, and penalties for crimes related to forced labor;

B-7. receipt of technical assistance from the ILO, U.S. government, or other sources for:

- establishing statutory and regulatory schemes,
- establishing a system of labor inspection, and
- establishing rehabilitation systems;

B-8. government support of NGO activities related to forced labor, such as victim rehabilitation services, advocacy and awareness-raising programs, and microcredit lending practices.

### **Overall Outcomes**

The committee proposes four indicators of the overall outcomes of governmental policies abolishing forced labor:

C-1. statistics and reports on the number of persons that have been taken out of forced labor;

C-2. statistics and reports of persons who have been rehabilitated from forced labor;

C-3. statistics and reports of persons who have returned to forced labor; and

C-4. statistics on the number of workers still in the prohibited forms of forced labor:

- slavery and abductions;
- compulsory participation in public works projects;
- coercive recruitment systems, particularly in rural areas;
- bonded labor, including bonded child labor;
- trafficking in persons;
- domestic workers in forced labor situations; and
- prison labor and rehabilitation through work.

These statistics need to be assessed with caution. As discussed above, obtaining precise, reliable statistics on outcomes is difficult for a number of reasons. With the criminalization of forced labor, the perpetrators operate in an underground economy that escapes national statistical data gathering. Even if forced labor is occurring in plain view in many societies, it is either relabeled as something else or so accepted that it is not noticed. If forced labor practices are invisible in certain communities, they are not amenable to reliable surveys and measurement. As a consequence, estimates of the magnitude of forced labor can vary widely even when the government openly acknowledges that there is a serious problem.

For example, in 1999, India reported that its state governments had identified 280,340 cases of bonded labor and that 243,375 had been rehabilitated. The Study Group on Bonded Labor of the National Commission

on Rural Labor later reported that there had been wrongful identification of bonded laborers in order to gain access to rehabilitation funds (International Labour Organization, 2001a). In contrast, Anti-Slavery International estimated in 1999 that there were 10 million bonded laborers in India. Twenty years earlier, the Gandhi Peace Foundation and the National Labour Institute placed the number of bonded laborers at 2.6 million. In 2000, the U.N.'s Working Group on Contemporary Forms of Slavery found that most of the nongovernmental organizations agreed that it was difficult to obtain reliable figures concerning the number of bonded laborers in India or in any other country. Estimates varied from 44 to 100 million people in bondage in India, and some organizations said there were an estimated 65 million children in a similar condition, of which 92 percent lived in rural areas (U.N. Commission on Human Rights, 2000).

When assessing the effectiveness of enforcement of forced labor prohibitions, the illegal and underground nature of the practices requires information from many sources outside of the labor inspectorate, which may only cover regulated labor market activities. Although strengthened labor inspectorates can improve a nation's capacity to enforce its forced labor prohibitions, the violent, corrupt nature of forced labor practices frequently exceeds the capacity of national labor departments by themselves (International Labour Organization, 2001b, para. 38).

Measuring positive enforcement efforts can include statistics on arrests and prosecutions where available, but factors such as the reluctance of the victim to report may be as serious a hindrance as a lack of political will. Where forced labor is pervasive, regional variations of enforcement effort make it difficult to assess overall national compliance. Significantly, the effectiveness of enforcement may have to be measured relative to an uncertain determination of the extent of forced labor.

### **Associated Factors**

*Poverty* Forced labor, in whatever form, is in part a product of poverty, in which individuals' circumstances result in insufficient economic power to avoid being placed in forced labor. The percentage of population in poverty is therefore an important descriptive indicator of whether the economic circumstances of the population is improving or getting worse at the lowest end of society.

*Employment-Population Ratio* The employment-population ratio measures the proportion of the working-age population that is employed in

the regular labor market. It provides information on the extent to which an economy generates work in the formal sector. Empirical evidence suggests that the employment-population ratio has a higher correlation with economic development and legal work activity (measured by gross domestic product [GDP] per capita) than the labor force participation rate.<sup>6</sup>

*Percentage of Population Located in Rural Areas* With so much forced labor originating or taking place in rural areas—e.g., trafficking, slavery, or bonded labor—knowing the percentage of the population located in rural areas will spotlight populations where forced labor may be more likely to occur.

*Percentage of Children Under 14 Not in School* Regrettably, children, especially in poor countries, are highly susceptible to forced labor, as they are frequently the primary breadwinner for their families. ILO research has shown that there is a strong correlation between nonenrollment in school and economic activity of children.<sup>7</sup>

*Percentage of Children Under 14 in Wage Employment* Children under 14 who are reported to be working full-time or are self-employed are an indication of forced labor.<sup>8</sup>

*Percentage of Labor Force Earning Less Than 50 Percent of the Median Wage* Low pay or no pay increases the propensity of falling into forced labor or being unable to get out from under this status. Hourly earnings below half of the median wage are considered to be low and approximates where the minimum is set in the 30 developed countries of the Organisation for Economic Co-operation and Development (1997). As a percentage of

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<sup>6</sup>The correlation between the employment-population ratio and economic development as measured by GDP per capita is stronger when the employment-population ratio is calculated for the prime-age population, 25-54 years old, and restricted to civilian employees (Akycampong, 1996).

<sup>7</sup>Data for 14 developing countries from Africa, Asia, and Latin America compiled by the ILO/IPEC shows that the primary school nonenrollment rate and the economic activity rate of children aged 10-14 are strongly related. A similar positive relationship is found for some 25 African countries, based on unpublished UNICEF data from their multi-purpose indicators cluster survey (MICS). It should be recognized that school enrollment is not the same as school attendance, but nonetheless it provides valuable information for assessing child labor in potential forced labor circumstances.

<sup>8</sup>Existing national labor force surveys that collect data for persons less than 15 years of age could be used for this purpose to collect data on this topic, recognizing there would be systematic underreporting of children's economic activity.



the median wage in a particular country, it is independent of currency fluctuations, which facilitates international comparisons.

*Percentage of Labor Force Working 60 or More Hours a Week* Excessive hours of work can signal low pay rates and conditions susceptible to forced labor. By any international measure, a work week of 60 hours or more constitutes extreme hours of work if performed on a regular basis.

*Percentage of the Population in the Informal Sector* A large, unregulated, underground informal sector is an important indirect indicator of the likelihood of forced labor. For example, in India, where bonded forced labor exists on a large scale, at least 40 percent of the population is in the informal sector.

*Informal Economy Employment as a Percent of Employment* The relative size of the formal and informal labor markets is an important barometer of legal and illegal activity. In particular, informal economy employment is most often associated with low pay and absence of social protection and benefits.

## SOURCES OF INFORMATION

### Follow-Up to the ILO Declaration on Fundamental Principles and Rights

The promotional follow-up procedures under the ILO Declaration on the Fundamental Principles and Rights at Work includes the *Annual Review*; it 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 workers' and employers' organizations. The *Annual Review* report contains a commentary by a group of independent expert-advisers who comment specifically on the forced labor circumstances found in countries that have not ratified the ILO's forced labor conventions.

Every 4 years, there is a global report on forced labor, submitted by the ILO director-general. The first report in 2001—*Stopping Forced Labor*—described on a country basis the pervasiveness of forced labor in the world today.

## U.S. Department of State

### *Country Reports on Human Rights Practices*

The prohibition of forced or bonded labor is discussed in Section 6(c) of the Department of State's annual human rights reports. Instructions for U.S. embassy staff assigned to complete these sections of the annual country reports on human rights practices include the following questions (U.S. Department of State, Bureau of Democracy, Labor, and Human Rights, 2002):

- “Is forced labor or bonded labor, including by children, prohibited by law? Is the law effectively enforced? If not, why not?”
- “Are there national obligations or instances of government required work without compensation?”
- “Is prison labor imposed by administrative or legislative authority (rather than by a court of law pursuant to conviction for a crime)?”
- “Does slavery exist? If so, how extensive is it? Who does it affect? Describe the mechanism used to practice slavery.”
- “Does the government tolerate or support forced, bonded, or indentured labor?”

Trafficking in persons is discussed in Section 6(f). The instructions for embassy personnel are more detailed for this section, including more than 20 questions in the following categories:

- law and prosecution—“Provide details on whether the law specifically prohibits all forms of trafficking in persons and, if not, whether traffickers could be prosecuted under other statutes.”
- extent of the problem—“Note whether the country was a source, transit point, or destination for trafficked men, women, and/or children and whether internal trafficking was a problem.”
- methods—“Describe how victims were obtained/recruited and transported and the methods used, such as force, fraud, or coercion.”
- traffickers—“Describe who was responsible for trafficking, for example organized criminals, employment agencies, or marriage brokers.”
- official involvement—“Provide details on any reports that government officials participated in, facilitated, or condoned trafficking.”
- assistance and protection of victims, and
- prevention.

*Report on Trafficking in Persons*

The first annual *Trafficking in Persons Report* was released by the Department of State in June 2001. As one of the requirements of the Trafficking Victims Protection Act of 2000, the report is to address “severe forms of trafficking in persons,” defined as sex trafficking in which a commercial act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The report is described as “a major diplomatic tool for the U.S. government, which hopes that other governments will view this as an instrument for continued dialogue, encouragement for their current work, and an instrument to help them focus their future work on prosecution, protection, and prevention programs and policies” (U.S. Department of State, 2002, p. 7). The report includes countries of origin, transit, or destination for a significant number of victims of trafficking. The threshold for “significant” is 100 or more victims in the reporting period. These countries are then placed in one of three “tiers” depending on their efforts to meet four minimum standards for the elimination of trafficking:

- The government should prohibit trafficking and punish acts of trafficking.
- The government should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault, for the knowing commission of trafficking in some of its most reprehensible forms (trafficking for sexual purposes, trafficking involving rape or kidnapping, or trafficking that causes a death).
- For knowing commission of any act of trafficking, the government should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the offense’s heinous nature.
- The government should make serious and sustained efforts to eliminate trafficking.

The 2000 act also sets out seven criteria that should be considered as indicators of the fourth standard: serious and sustained efforts to eliminate trafficking:

1. whether the government vigorously investigates and prosecutes acts of trafficking within its territory;
2. whether the government protects victims of trafficking, encourages victims' assistance in investigation and prosecution, provides victims with legal alternatives to their removal to countries where they would face retribution or hardship, and ensures that victims are not inappropriately penalized solely for unlawful acts as a direct result of being trafficked;
3. whether the government has adopted measures, such as public education, to prevent trafficking;
4. whether the government cooperates with other governments in investigating and prosecuting trafficking;
5. whether the government extradites persons charged with trafficking as it does with other serious crimes;
6. whether the government monitors immigration and emigration patterns for evidence of trafficking, and whether law enforcement agencies respond appropriately to such evidence; and
7. whether the government vigorously investigates and prosecutes public officials who participate in or facilitate trafficking, and takes all appropriate measures against officials who condone trafficking.

Tier placement is intended to indicate the following:

**Tier 1:** The governments of countries in Tier 1 fully comply with the act's minimum standards. Such governments criminalize and have successfully prosecuted trafficking and have provided a wide range of protective services to victims. Victims are not jailed or otherwise punished solely as a result of being trafficked, and they are not summarily returned to a country where they may face hardship as a result of being trafficked. In addition, these governments sponsor or coordinate prevention campaigns aimed at stemming the flow of trafficking.

**Tier 2:** The governments of countries in Tier 2 do not fully comply with the act's minimum standards but are making significant efforts to bring themselves into compliance. Some are strong in the prosecution of traffickers but provide little or no assistance to victims. Others work to assist victims and punish traffickers but have not yet taken any significant steps to prevent trafficking.

**Tier 3:** The governments of countries in Tier 3 do not fully comply with the minimum standards and are not making significant efforts to bring themselves into compliance. Some of these governments refuse to acknowledge the trafficking problem within their territory.

Placement in one of the three tiers is based on the information relating to the four minimum standards and seven indicators. Starting in 2003, countries in Tier 3 are subject to certain penalties, “principally termination of non-humanitarian, non-trade-related assistance. Consistent with the Act, such countries also would face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions, specifically the International Monetary Fund and multilateral development banks such as the World Bank” (U.S. Department of State, 2002, p. 10).

Some human rights groups have criticized the Trafficking Report, including Human Rights Watch, which claims that the report “falls short as a rigorous tool to assess a country’s efforts to combat trafficking” (Human Rights Watch, 2002). The organization states that the reports lack basic facts on the numbers of trafficking victims, the types of forced labor for which they are trafficked, and the actual number of prosecutions and convictions for these crimes. Furthermore, it criticizes the lack of assessment of government programs and the inconsistencies among the State Department’s own reports. Pakistan is cited as an example, since it moved from Tier 3 to Tier 2 in the 2001 Trafficking Report, while the Department of State’s country human rights report indicates that Pakistan “has done little to stem the flow of women trafficked into the country or to help victims of trafficking” (Human Rights Watch, 2002).

The specific numbers of victims or prosecutions are not generally included in the report even though this information can sometimes be found in the cables that are sent from the embassies. However, these cables are not available to the public.

### **International Organization for Migration**

The International Organization for Migration addresses trafficking as a subset of migration, implementing programs for the return and rehabilitation of victims, conducting a series of major research projects, and producing a quarterly bulletin, “Trafficking in Migrants.” A recent bulletin focuses on Europe and includes articles prepared by international organizations and field offices illustrating progress in prevention efforts, prosecution of perpetrators, and protection of victims.<sup>9</sup>

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<sup>9</sup>See <http://www.iom.int/iomwebsite/Publication/ServletSearchPublication?event=detail&id=1694> [November 24, 2003].

### Nongovernmental Organizations

There are a variety of NGOs that address issues related to forced labor. Reporting by these organizations can be sporadic, without detailed documentation, and geared toward moving public opinion. Anti-Slavery International and Human Rights Watch have good overall records on reporting.

### RECOMMENDATION

Unlike the other core labor standards, there has been relatively little empirical research on forced labor and the conditions that support it.

**5-2 The committee recommends that systematic in-depth national studies of the kind that the ILO has conducted with respect to child labor be conducted on forced labor by the ILO, with support by the U.S. government, as a priority, taking into account a variety of labor market factors that bear on the economic environment in which forced labor takes place.**

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## 6

# Child Labor

Children need a nurturing household and social environment in order to grow into economically active, productive adults with the ability to participate effectively in the social, cultural, and political activities in society. In a nurturing household, a child receives not only adequate and nutritious food for normal and healthy physical growth, but also appropriate health care, affection, and intellectual stimulation. A nurturing and caring society would ensure that each child receives education at least up to the primary level and has opportunities for healthy social interaction. In such societies few, if any, school-age children would be working and not in school.

However, hundreds of millions of children around the world are engaged in some work, many of them for long hours and in hazardous conditions. According to estimates for 2002 from the International Labour Organization (ILO) (2002b) there are about 246 million child laborers (aged 5-17) in the world, 180 million of whom are working in what are referred to as the worst forms of child labor, often involving hazardous conditions. Of these, 8 million children are working in the “unconditional worst forms” of child labor, which include armed conflict, forced and bonded labor, prostitution, pornography, drug trafficking, and other illicit activities.<sup>1</sup>

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<sup>1</sup>As we discuss below, all estimates of child labor, including those of the ILO, are subject to potentially serious measurement errors and biases: this caution has to be kept in mind throughout this chapter.



Some limited amount of work by children during off-school hours may be desirable for their healthy growth into adulthood. However, most of the children at work in the world are engaged in activities and for lengths of time in each day that are detrimental to their healthy physical and intellectual development, their education, and their productivity or earning capacity in adulthood. Child labor not only harms the child, but also perpetuates poverty and compromises economic growth and equitable development. In this chapter and the report, we follow the ILO usage and use the term “child labor” to mean work that is hazardous to the emotional and physical development of children below a specified minimum age, as distinguished from “child work,” which is not automatically considered problematic.

This chapter offers a framework for assessing the progress toward the elimination of child labor, identifying the problems encountered, and suggesting effective means for accelerating progress. A realistic assessment of the cost, in terms of both lost family income and the private and social cost of providing education to the children who are removed from the labor market, and an acceptable scheme for raising the resources from domestic and external sources for meeting the costs, are important parts of an effective plan to eliminate child labor.

Many conceptual and practical problems arise in monitoring the extent of child labor and the progress toward eliminating it. The next section discusses background and contextual factors to set the stage for the rest of the chapter. The section covers definitional issues as well as data quality and availability problems. The next three sections follow the structure of the previous chapters on core labor standards: assessing compliance; the available data sources from the perspectives of coverage, quality, reliability, and possible biases; and our conclusions and recommendations.

## UNDERSTANDING CHILD LABOR

Understanding the reasons for child labor is essential for assessing and monitoring progress toward reaching the goal of eliminating child labor and for developing appropriate indicators for this purpose. Both supply and demand for child workers are important to developing such an understanding. On the supply side, the most common reason for parents to put their children to work is extreme poverty. Very poor parents cannot afford to forgo the income that a child worker brings to the family, let alone meet the out-of-pocket costs of sending the child to school, even though they

realize that depriving the child of an education will most likely condemn her or him to a life in poverty as an adult. In this sense, as the ILO has noted, child labor is both a cause and a consequence of poverty, contributing to a perpetuation of household poverty across generations.

A large proportion of child labor occurs in poor rural areas: nearly 70 percent of the economically active children in developing countries in 2002 worked in rural areas, mostly on family subsistence farms. In many developing countries, poverty is largely, though not wholly, a rural phenomenon, and most of the rural poor are marginal farmers and agricultural laborers. In these areas, schooling may be inaccessible and of poor quality, as well as costly.

Another reason for child labor is that when faced with a loss of income from temporary shocks, such as a failed harvest or an illness that keeps the breadwinning parent from work, poor parents take their children out of school and put them to work to compensate in part for the lost income. Even though parents understand the long-term deleterious consequences of interrupted schooling, they do not have savings or access to credit in order to smooth over temporary shocks to household income. Opportunities to borrow, other than from friends and relatives, are limited in developing countries because they do not have functioning financial systems, either microcredit institutions or more traditional banks. Friends and relatives may not be in a position to lend because they themselves may be facing adverse shocks (for example, harvest failures) at the same time.

Some children are forced into working because they have no living parents or other close relatives who can provide for them. HIV/AIDS and armed conflict in certain regions have been a major cause of increased orphanhood in recent years. Others work because their home environment was so hostile that they ran away from home to work. Whatever the reason for children's working the conditions in which they work are often injurious to their health and growth.

Turning to demand for child workers, most often it is cheaper to use child workers than adults for the same work. Households find it cheaper to use children than to hire adult wage laborers as household help and in their farms and enterprises. Nonhousehold-based enterprises also hire children for the same reason in certain sectors. Apart from being deprived of education, child workers are exploited by employers, who take advantage of the poverty and hence the weak bargaining position of parents. Often, children are bonded to work with employers from whom their parents have borrowed. Since both child workers and their parents are often illiterate, em-

ployers are able to manipulate the amount they deduct from wages of children toward debt service and thus keep children in bonded labor for a long time (Human Rights Watch, 2003). Also, the occupations in which children are valued as workers because of their dexterity (e.g., carpet making) often involve unhealthy working conditions and long working hours. Lastly, the fact that children as workers are in no position to organize collectively means that they are more vulnerable to being exploited by their employers in wages, benefits, and conditions of work.

Almost all countries have formally recognized that child labor is injurious to the healthy development of children to become productive adults and to future economic development. This recognition has led to domestic legislation that, in most cases, sets a minimum age for the employment of children and prohibits the employment of children in hazardous activities.

At the international level, many countries have signed and ratified the two key ILO conventions relating to child labor, Conventions No. 138 and No. 182, on establishing a minimum age for employment and on the elimination of worst forms of child labor.

The enactment of domestic laws and the ratification of international conventions are certainly indicative of laudable intentions, not just to eliminate child labor, but also to ensure that children who are not working get an effective education and other help to grow to be productive adults. However, the extent to which domestic laws are enforced and international conventions are observed depends on many factors, including the availability of resources and the level of priority for enforcement by the government. Therefore, it is important to understand the realities of enforcement capabilities and availability of resources to avoid a narrow legalistic approach to eliminating child labor. It is also crucial to provide developing country governments with both technical assistance and resources to make a successful transition away from child labor. In this context, historical experience from developed countries of their success in eradicating child labor and the role of laws in it is useful.

In his review of the history of labor standards, Engerman (2003) finds that the first laws were designed to protect children, followed soon afterwards by laws protecting adult women and only much later by laws protecting adult males. English labor standards were approved over the course of the nineteenth century in the context of the industrial revolution, urbanization, rising incomes, growing international trade, and increasing literacy rates. These laws were often extended to British colonies around the world and set the model for European and U.S. laws. It is important to

distinguish laws that regulate employment of children through minimum age and maximum hours of employment and so on from laws relating to schooling, health (e.g., immunization), and other aspects of child welfare: from the perspective of child labor core labor standards, the former have a direct bearing while the latter have an indirect bearing.

Although an early English law, approved in 1788, established a minimum age of eight for chimney sweeps, Engerman traced the origins of British child labor laws to an 1802 law applying only to pauper apprentices and to the Factory Act of 1819, which prohibited children under age nine from working in cotton mills. Over the following decades, limits on child labor were gradually extended to other industries, and the age of work was increased, while legal requirements for education were introduced. By the turn of the century, children under the age of 12 were prohibited from working in all factories and workshops. In the United States, first in the northeastern states, and later in the southern and western states, legal prohibitions were placed on child labor in the late nineteenth century. By 1913, most states prohibited children under age 14 from factory work, although a few southern states had established a minimum age of 12, and a handful of states (e.g., Wyoming) had no child labor laws in place. The Fair Labor Standards Act, the first national law restricting child labor, was not approved until 1938.

Engerman (2003, p. 60) found: "It seems clear that in the period after the introduction of labor standards, there have been reductions in hours worked in affected sectors, increases in wages, reductions in child labor along with substantial increases in education and child literacy. . .". However, while history clearly shows a correlation between laws and enforcement restricting child labor and requiring compulsory schooling and actual declines in the number of children working, the causes of those declines has been long debated. That debate still continues. There are several factors besides laws, such as trends in poverty, returns to education (in economic terms), and employment opportunities that affect the trend in child labor. There is absolutely no reason to think that the relative importance of each factor in explaining the trend would be the same in every country or every time. Moreover, as econometricians have cautioned, estimating the relative contribution of each factor from the available data is difficult (see, e.g., Brown et al., 2003; Fishback, 1998). Some of the differences in empirical findings can be attributed to differences in econometric methodologies. This has to be kept in mind in judging them.

Some retrospective studies of child labor in England and the United

States indicate that child labor and compulsory schooling laws have had their intended effect, reducing the incidence of child labor. For example, Bolin-Hort (1989) found that legal restrictions played a substantial role in the removal of child workers from the cotton mills in Manchester, England, during the industrial revolution. Brown et al. (1992) found that U.S. laws restricting child labor and requiring school attendance played a role in reducing the proportion of children employed in fruit and vegetable canning in the early 1900s. Adriana Lleras-Muney (2001) estimates the effect of several laws on educational attainment for individuals who were 14 years old between 1915 and 1939. The results show that legally requiring a child to attend school for one more year, either by increasing the age required to obtain a work permit or by lowering the entrance age, increased educational attainment by about 5 percent. The effect was similar for white males and females, but there was no effect for blacks. Continuation school laws, which required working children to attend school on a part-time basis, were effective for white males only, and these laws increased the education only of those in the lower percentiles of the distribution of education. Nardinelli (1990) reinterprets the British industrial revolution and concludes that child labor laws were not the principal reason for the decline of child labor. A comprehensive comparison of several countries (Austria, England, Germany, Japan, the United States, and several developing countries) by Weiner (1991) led him to conclude that compulsory education is necessary for the elimination of child labor. Angrist and Krueger (1991) examined more recent census data from 1960 and 1970 and found that state laws requiring young people to stay in school until age 17 or 18 were effective. Acemoglu and Angrist (1999) used the same census data and methods to analyze state child labor laws and found that child labor laws effectively increased boys' school attendance. Margo and Finegan (1996) applied the same methods retrospectively to census data from 1900 and found that compulsory schooling laws had a positive effect on schooling.

In contrast, however, many historical studies have found that child labor and compulsory school laws followed declines in child labor, rather than causing them. Landes and Solmon (1972) found that nineteenth-century compulsory school laws had little effect. Scholliers (1995) found that the proportion of children under 12 working in Belgian factories had declined substantially by the middle of the nineteenth century without any legal restrictions on child labor. Moehling (1999) conducted a detailed statistical analysis of work and schooling patterns among U.S. 13- and 14-year-olds in the early 1900s, when most states had established 14 as the

minimum age for factory work: she concluded that child labor legislation usually followed, rather than led, the large declines in levels of child labor between 1900 and 1910. In a summary of several studies, Fishback (1998) concluded that U.S. factory managers' demand for child labor fell during that period because of changes in technology, massive immigration of unskilled adult labor, and rising real wages.

It is evident that the relative importance of laws and their enforcement and other factors related to the decline in child labor are hard to assess, and the findings of historical research are ambiguous. However, it is clear that it took several decades before child labor was effectively eradicated in developed countries. Although this does not mean that an equally long time would be needed in contemporary developing countries, since the world economy today is very different, the historical evidence provides a cautionary perspective.

## DEFINITIONS

Children perform different types of work under a variety of conditions and for a variety of reasons. Therefore, in assessing child labor, the types and conditions of work, the age of the children who perform the work, and the developmental level of the country must all be taken into account. Because not all child work is considered to be detrimental to the growth and well-being of children, it is particularly important to distinguish among the different terms that are used in the literature. This section provides an overview of the ILO standards as codified in the Minimum Age Convention (No. 138) and the Convention on the Worst Forms of Child Labor (No. 182) and the proxy measure most often used to measure child labor, "economically active children."

### **Minimum Age and Worst Forms of Child Labor**

ILO Conventions No. 138 and No. 182 distinguish between unacceptable "child labor" that is to be abolished and "child work" that may contribute to a child's healthy development. The Minimum Age Convention (No. 138) stipulates, "national legislation should fix a minimum age or ages at which children can enter into different types of work" (International Labour Organization, 2002b). Although the convention states that the general minimum age should not be less than the age for completing compulsory schooling and in any event should not be less than 15 years of age—

the ultimate aspiration being 16 years—it offers some flexibility for developing nations that are unable to meet this target by allowing them to set a minimum age of 14 until they are able to comply fully with the convention. Light work may be allowed for children 12 and older, and nonhazardous work is allowed for children 15 and older. Hazardous work and the worst forms of child labor are never allowed for children.

The ILO defines light work as work that is not likely to be harmful to children's health or development and not likely to be detrimental to their attendance at school or vocational training. In determining whether work is likely to be harmful, the ILO takes into consideration the duration of work, the conditions under which the work is done, and the effects on school attendance, among other factors. However, the ILO does not provide any operational guidance for assessing these factors and determining whether any given form of work would qualify as light work. Hazardous work includes "work which by its very nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons" (International Labour Organization, 1973). It is left up to individual governments to determine which types of work fall under the rubric of light or hazardous.

The Convention on the Worst Forms of Child Labor (No. 182) was adopted unanimously in 1999 and has already been ratified by 132 countries. It provides further limits to the kinds of work children may do. It identifies the following kinds of labor that are to be categorically abolished:

- 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 recruitment into the armed forces;
- the use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances;
- 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
- 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.

The first three fall into the category of the "unconditional worst forms" of child labor that are absolutely prohibited. According to the ILO, about 8.4 million children aged 5-17 are engaged in this category of labor. The fourth type of work falls under the category of hazardous, as defined by national

legislation. Hazardous work may be carried out in legitimate sectors of the economy but is not acceptable work for children (International Labour Organization, 2002b).

With respect to certain elements in the definition of child labor, the ILO has deliberately built in a large degree of national discretion, both in defining different categories of work (e.g., light or hazardous work) and in setting minimum ages for employment of children (which may vary with the level of development and with the ages of compulsory schooling). Although it is understandable and appropriate to allow national discretion in setting standards, variations across nations in standards make cross-country comparisons quite difficult. And the variability of national laws can also yield a seemingly odd result in terms of measuring progress. Countries that set higher or more ambitious standards for themselves may appear to be making less progress than countries that set lower standards. For example, if in one country some activities are declared as hazardous to children, but not in another country, even if the same proportion of children are found to be working in these activities, the former country would seem to be making less progress in meeting its own standards than the latter.

Collecting reliable data for measuring progress toward meeting child labor standards presents another problem. The problem arises in part from the fact that conventional data collection instruments, such as labor force surveys, are poorly designed to reflect in their questionnaires or protocols the nuances in the ILO definition of child labor, such as the distinction between acceptable and unacceptable forms of work for children. It also arises in part from the fact that the sample frame for household surveys, by definition, does not include children who are not part of any households (e.g., street children). It is also extraordinarily difficult to elicit truthful answers from respondents about children engaged in illegal activities (e.g., drug trade, pornography, and prostitution).

### **Economic Activity as a Proxy for Child Labor**

Although the ILO distinguishes between child labor (defined as harmful to children's emotional and physical development) and child work, most readily available data on child labor actually measure another, simpler, but less satisfactory concept: whether or not a person (child or adult) is engaged in "economic activity." The economically active population is commonly defined as persons who "furnish the supply of labor for the production of economic goods and services as defined by the U.N. Systems of National



Accounts and Balances during a specified time-reference period” (International Labour Organization, 2000). The definition includes paid and unpaid employment, unemployment, and activity for household consumption (for a full discussion of “economic activity,” see Ritualo, 2002).

Many countries have undertaken labor force surveys that define participation in the labor force as being engaged in “economic activity.” Such surveys do not adequately capture the participation in economic, but illegal, activity and work that is unpaid and undertaken in household enterprises and whose product is mainly for household consumption. Also, some activities, while certainly involving work, are not deemed “economic” and are therefore excluded from the survey. While many of these problems arise in canvassing information about adults as well as children, they are particularly severe in canvassing information about the work of children.

An economically active child may or may not be engaged in child labor by ILO definitions. For example, a 14-year-old child working in a family shop after school is considered economically active but is probably not engaged in child labor, because this work may be categorized as light work appropriate for children over 12, since it is not physically or emotionally harmful and does not interfere with the child’s education, or a child kept home from school to do unpaid heavy household work for long hours may be engaged in child labor but might not be considered economically active.

Another serious problem involves children who are neither classified as economically active nor as students enrolled in or attending schools. In India, for example, this category of “nowhere children” accounted for 45.2 percent of all children in the age group of 5-14 in India in 1991, while the economically active children accounted for only 5.4 percent of that age group (Government of India, 2002). In parts of Africa where “child fostering” is prevalent, it is often difficult to determine whether this is in fact disguised child labor. As such, economic activity as a proxy for child labor could understate the number of working children.

### ASSESSING COMPLIANCE

As in other chapters, the committee proposes indicators for assessing compliance in three categories: (A) legal framework, (B) government performance, and (C) overall outcomes. In addition, for this subject, we include a fourth category of associated factors that are important in evaluating the prevalence of child labor and its causes but do not directly measure it.

In suggesting the following indicators, we are aware that data on some of them may be unavailable for many countries. Even when available, they may be biased, subject to serious measurement errors, and noncomparable over time and across countries. Nonetheless, we list them to encourage the collection of more and more reliable and comparable data in the future, perhaps with assistance from the international community.

### **Legal Framework**

The indicators on legal framework start with whether the country has ratified the conventions on minimum age and worst forms of child labor. Nonratification does not necessarily mean that a country is not working toward the abolition of child labor. In fact, many nonratifying countries have domestic laws that conform to the conventions. Nor does ratification mean that a country has the resources, capability, or even the will to enforce the conventions. Nonetheless, ratification signals some political will for making progress toward the abolition of child labor, as ratification requires submission of country reports for review by the ILO Committee on the Application of Standards and opens a country for technical assistance.

The second level of analysis is to look at the laws of a country to determine whether they conform with the ILO's standards regarding minimum age and worst forms of child labor. Since developing countries may have different minimum ages of schooling and admission to work as allowed by the minimum age convention, it is not necessary to find that countries' laws are fixed at the goal of age 16 for minimum compulsory schooling. However, the age for compulsory schooling should not fall below the lowest allowable by Convention No. 138, which is 12 years. Also, the laws should comport with the convention's requirement with regard to minimum age for admission into work. That is, children should not be allowed to work while they are still under the minimum compulsory schooling age.

With regard to the worst forms of child labor, the first three categories (slavery, prostitution and pornography, and other illegal activities, including drug trafficking) should be categorically outlawed. If these activities are not illegal, the country is not adhering to the convention. For the last category of worst forms of child labor, hazardous work, careful attention must be paid to the country's definition of what is hazardous and at what ages this kind of work can be undertaken.

The two additional indicators that need some explanation are whether child labor is included in a country's constitution or in bilateral or other

trade agreements, such as the Generalized System of Preferences, the African Growth and Opportunity Act, or the Caribbean Basin Partnership Trade Act. The former is important to assess the legal obligation on governments regarding child labor, as well as their national aspirations. Although some countries establish universal primary education as an explicit goal in their constitutions, this goal is often difficult to achieve. And unless such a constitutional provision is legally binding, it is of limited practical relevance.

Bilateral treaties or trade agreements become national law either automatically in some countries or by the enactment of enabling legislation in others. The North American Free Trade Agreement (NAFTA), for example, has a side agreement committing the three signatories (the United States, Canada, and Mexico) to effectively enforce their domestic laws relating to core labor standards. The U.S.-Jordan Free Trade Agreement also includes enforceable commitments on core labor standards. Because treaties and trade agreements create legally binding commitments if they are part of national law, they can be a relevant part of the legal framework with respect to core labor standards. Also, since the demand for child pornography and child prostitutes in wealthier countries contributes to their supply by poorer countries, it is useful to have an indicator on whether a country's laws punish patrons of child pornography and prostitutes across national borders.

The committee proposes 11 indicators for assessing the legal framework related to child labor:

- A-1. ratification of ILO Convention No. 138;
- A-2. whether the country has ratified ILO Convention No. 182;
- A-3. whether the country has ratified the U.N. Convention on the Rights of the Child and its two optional protocols;
- A-4. whether national laws discourage the economic exploitation of children and whether the country is a party to a bilateral or multilateral trade agreement that contains a provision prohibiting child labor;
- A-5. whether there is universal, compulsory education for children under 15;
- A-6. whether laws establish minimum ages for employment;
- A-7. whether legislation prohibits the sexual exploitation of children and establishes punishment for offenders;
- A-8. whether legislation prohibits all forms of child slavery and slavery-like practices;

A-9. whether legislation discourages the use of children in illicit activities;

A-10. whether the minimum age for conscription or voluntary recruitment into the military is less than 18 years; and

A-11. whether laws prohibit hazardous work for children under the age of 18.

### **Government Performance**

In this category we identify the legal, administrative, and social indicators of national mechanisms and efforts (and their efficacy) of enforcement. Clearly, indicators of the resources spent on enforcement of child labor laws and investigations of violations, legal cases against violators, and enforcement of legal decisions are important.

It is also important to look at government expenditures (current and capital) to eradicate child labor as a percentage of total government expenditures and of the country's gross domestic product (GDP). Although developing countries may be severely handicapped by a lack of resources and should not be penalized for their poverty, it is important to look at expenditures on education and the elimination of child labor in comparison with the other areas (e.g., defense, health, industry) to determine whether there is political will to eliminate child labor.

Some countries have programs for remediation of child workers, including explicit assistance to ensure that child workers have access to affordable education, which is clearly important. International assistance received by countries in support of programs to end child labor is another factor that may indicate a government's commitment to ending child labor. Indicators of social actions would include the number of nongovernmental organizations engaged in eradication of child labor and possibly their resources.

The committee proposes 11 indicators of government performance:

B-1. whether there is an administrative agency charged with promoting or enforcing the child labor standard;

B-2. whether the country has a labor inspectorate;

B-3. the breadth of labor inspections in the country (e.g., number of visits, frequency of visits, number of workers covered);

B-4. the level of resources devoted to the labor inspectorate (e.g., num-

ber of personnel, absolute or relative to workers; budget, also absolute or relative to other spending, or other resources);

B-5. whether the labor inspectorate is trained and focused on assessing compliance with child labor standards;

B-6. whether there is an administrative or judicial complaint mechanism;

B-7. the effectiveness of the complaint mechanism (e.g., number of cases heard, number of complaints brought, number of prosecutions, fines or arrests, length of time for complaint process resolution, or other factors);

B-8. whether there are government programs to combat child labor;

B-9. whether there are government-sponsored education campaigns focusing on the elimination of child labor;

B-10. whether the government has received international technical assistance related to child labor; and

B-11. whether the government supports nongovernmental activities designed to support child labor standards.

### Overall Outcomes

The most generally available outcome measure of whether progress has been made toward the abolition of child labor is the reduction in the incidence of child labor, as evidenced by a fall in the economic activity of children. Measures of child labor—rather than of economically active children—are more desirable, but less available. The committee proposes seven indicators of outcomes:

C-1. number and proportion of children (ages 5-17) economically active (disaggregated by age, gender, and urban or rural);

C-2. number and proportion of children (ages 5-17) in child labor if it can be distinguished from child work (disaggregated by age, gender, and urban or rural, including those working below minimum wage, excessive hours, and worst forms);

C-3. proportion of children (disaggregated by gender) engaged in household chores by ranges of hours;

C-4. percentage of children working in various employment sectors (agriculture, mining, construction, transport, manufacturing);

C-5. estimates of the number and percentage of children working in each of the worst forms of child labor (slavery, prostitution, pornography, armed conflict, illegal activities, and hazardous work);

C-6. time worked; and

C-7. an estimate of the number of children living outside their households (e.g., street children, fostered children) who are engaged in child labor.

### **Associated Factors**

Associated factors are indirect measures that provide a basis for understanding conditions that either contribute to or lead to the elimination of child labor and for assessing whether remediation has been effective. Indicators of factors associated with child labor include the obvious ones of poverty; fertility; inequality (mortality and morbidity rates); and adult literacy (particularly female literacy), which is meant to capture the awareness of parents of the consequences of child labor, particularly their understanding of accounts and deductions relating to bonded child labor. A list of related indicators would include: labor force participation rate, socioeconomic status of households with working children, poverty rate, adult employment rate, income per capita, income inequality, total fertility rate, life expectancy rate, infant mortality rate, child malnutrition rate, and adult literacy rate.

Because the cost and quality of available schooling influence parental decisions regarding sending children to work rather than to school, government expenditures relating to schooling, accessibility of schools, and school quality indicators (such as student-teacher ratios) are relevant factors, particularly in any attempt to reduce or eliminate child labor. These indicators would include: expenditures on public schools (as a percentage of GDP), net school enrollment (children enrolled in school as a percentage of children of mandatory school age), proportion of school children repeating grades, retention rates, student to teacher ratios, and cost of attending school.

Also included in this category is the access to microcredit. As noted above, access to credit is an important factor in insulating families from the temporary shocks to income that often result in children's entering the workforce. Although access to credit can mean that children are not as readily put to work, it can in certain circumstances have the opposite effect: For families that receive credit to start a home-based enterprise, there is an increased demand for labor, which is sometimes met by the labor of children in the family. Therefore, access to microcredit should not be taken, on

its face, as a factor that indicates less demand for child labor (Brachman, 2002).

Other socioeconomic factors that affect child labor include: indicators of demand for child labor (such as sexual tourism and child pornography), HIV/AIDS prevalence rate, and existence of war or other civil or political turmoil.

### SOURCES OF EVIDENCE

During the past 10 years, a vast amount of experience has been gained and information gathered using quantitative and qualitative data collection methodologies for better understanding of the complex phenomenon of child labor. Quantitative data collection methodologies concerning working children have taken the form of censuses, household surveys (i.e., national labor force surveys, ILO child labor surveys, and UNICEF and World Bank surveys), establishment and workplace surveys, and school-based surveys. Such surveys, when appropriately designed and canvassed, allow estimation of the scale, incidence, distribution, characteristics, and causes and consequences of child labor. Quantitative estimates from surveys can be used for planning, monitoring, and developing policies and programs aimed at the abolition of child labor.

Researchers have also made progress in learning about hidden and illegal forms of child labor through qualitative methods. Qualitative methodologies help to shed light on the activities of children that are difficult to measure using conventional household survey methodologies or in gathering information in a region where little prior information exists. In addition, qualitative methodologies help to provide a more thorough understanding of concepts and indicators of child labor that can be used to better refine survey methodologies and instruments (Grimsrud, 2001).

The complementary use of both quantitative and qualitative data collection methodologies can provide a more complete picture of the causes and consequences of child labor that will eventually improve decision making, program planning and monitoring, and the development of sound policies aimed at the elimination of child labor. This section provides an overview of the various sources of qualitative and quantitative data collected by governments, international agencies, and nongovernmental organizations (national and international).

### General-Purpose Household Surveys and ILO Database<sup>2</sup>

In the early 1990s, the ILO through the International Programme on the Elimination of Child Labour (IPEC) and the Bureau of Statistics designed and tested special approaches in order to find an appropriate survey methodology to probe into the work of children. Four approaches were tested and carried out in Ghana, India, Indonesia, and Senegal: (1) household surveys (with community level inquiry as a prerequisite, where relevant); (2) employer surveys (establishment/enterprise); (3) street children surveys; and (4) time-use surveys. The ILO concluded that the household-based sample survey, supplemented by surveys of employers and children living in the streets with no usual place of residence, was the most appropriate methodology for inquiring about the schooling and nonschooling activities of children (International Labour Organization, 1998).

It is not surprising that household surveys are the best means to collect information on the work of children. Because children normally live in households, households are best able to identify all their members and to describe their activities. However, household surveys have some limitations. First, children who do not live or work within a traditional household, such as homeless children, are not covered. Second, although foster children should, in principle, be included in a household survey, the respondent (often the head of the household) often may not include the foster children living in the household. Such failure to report is even more likely for children who are household servants but not members of the family. Third, survey respondents may be reluctant to report accurately on the work of children engaged in the worst forms of child labor, as many of these activities are illegal, and household heads are unlikely to admit that they and their children are involved in such activities. Finally, where child laborers are concentrated in a specific area or in specific sectors, if the survey design does not take this into consideration (such as through oversampling of households or enterprises in such sectors or regions), the estimate will tend to have sampling errors. More generally, the estimates from general-purpose household surveys not designed to collect data specifically on child labor are often subject to measurement errors.

In addition to possible measurement errors, all sample surveys discussed below, whether household based or enterprise based, are subject to

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<sup>2</sup>This section of the report draws heavily from Ritualo (2002).



the usual nonsampling biases, such as nonresponse, erroneous response, interviewer errors, data entry and processing errors. These errors and biases can be reduced through interviewer training, pretesting, and data quality controls (see, e.g., Ashagrie, 2001).

There are two general-purpose household surveys that collect data on child labor: The Living Standards Measurement Study conducted by the World Bank and the national labor force surveys that are conducted by national governments.

### *Living Standards Measurement Study Surveys*

The World Bank developed the Living Standards Measurement Study (LSMS) in 1980 to generate national-level data on the welfare and living standards of households. The LSMS uses multitopic questionnaires to collect general information, such as household expenditures, income, composition, and economic activity. Their sample sizes are typically very small (1,500-5,000 households), which present difficulties in providing reliable, detailed disaggregated data on employment of household members by industry and occupation. Also, these surveys have only recently begun to pay special attention to child work. Their small sample size results in estimates of child labor with high sampling errors. Also, the early surveys did not capture such activities as household work and illegal child labor.

In general, the estimates of the economically active population of children from the LSMS surveys are lower than estimates from another ILO survey (discussed below). This is likely due to the fact that the main objective of the other survey is to capture the work activities of children so the sampling methodology and the questionnaires are designed around that objective.

In general, individual household members answer the questions regarding work activities and conditions and characteristics of work. However, an adult usually responds to the economic activity questions addressed to children under the age of 10 or 12, depending on the country. In these cases, every effort is made to address the questions regarding the economic activity of young children to the adult most knowledgeable about the child's activities.

In terms of measuring child labor, the LSMS surveys generally collect information on occupation and industry, hours of work, and school attendance. A few of the more recent surveys include information on household chores and hours spent on household chores and injuries and illnesses

(though not necessarily work-related injuries or illnesses). However, it is often difficult to obtain the detailed information necessary to determine whether the work a child is doing constitutes hazardous child labor.

### *National Labor Force Surveys*

We discuss above the strengths and weaknesses of labor force surveys as instruments for collecting data on child labor, the most serious weakness being that they are generally based on economic activity. However, to what extent the data from labor force surveys are biased in estimating child labor as defined by the ILO varies across countries and over time within each country. The most serious shortcoming is that some surveys do not collect data on persons under the age of 15 under the assumption that such children are not in the labor force. Even if children are covered, the fact that they often work on a part-time basis, in seasonal work, or as unpaid family workers creates inherent difficulties in estimating child labor from such surveys. In addition, the fact that there may be a large number of children who are categorized as neither at work nor at school in such surveys indicates that these surveys are not capturing crucial information. Given these problems and variations, the data from national labor force surveys on child labor tend not to be comparable across countries and over time.

Although labor force surveys and censuses have many limitations for measuring child labor, they can be a useful source of information when no other sources of data on working children exist. In addition, labor force surveys and censuses, depending on their quality, can be used to cross-check data from other sources, such as the Statistical Information and Monitoring Programme on Child Labour (SIMPOC) or LSMS programs. For example, labor force surveys tend to include fewer probing questions compared to child labor surveys. Therefore the extent to which more detailed questions affect estimates of children's work participation rates can be evaluated.

### *ILO Database on the Economically Active Population*

In 1996, the ILO released the fourth edition of the database on the economically active population for the years 1950 through 2010. This database contains estimates and projections of the economically active population for the 10-year intervals from 1950 to 1990 and for the years 1995, 2000, and 2010. Population data, numbers of economically active persons,

and activity rates are presented by 5-year age groups, for the total population and for males and females separately. Data are presented for 178 countries with populations of 200,000 or more and world and regional aggregates. The lack of annual data make this data source less useful for the purposes of this project.

The ILO did not directly collect these data. It only compiles and tabulates the estimates and projections of the economically active population that are derived from national labor force surveys and censuses. The population data are midyear population estimates and projections (medium variant) and are from the U.N. Population Division's *World Population Prospects 1950-2050: 1996 Revision* (United Nations, 1996) which is also based on national censuses and surveys. The data reflect adjustments and extrapolations where necessary to conform to a standard concept of the economically active population, comparable age categories, reference periods, and date of surveys or censuses.

Data on the economically active population are presented for children aged 10 to 14 for most countries. However, due to the paucity of data for all children in this age group, these data need to be used with caution. The lower age limit for which data on economic activity are collected in national surveys and censuses differs greatly by country, ranging from ages 10 to 15. In countries where economic activity data are collected for persons 12 and older, for example, the activity rates presented in the ILO database are not adjusted to account for the economically active children aged 10 and 11. Therefore, the activity rate for the 10-14 age group is the ratio of economically active children 12 to 14 to the population 10 to 14: for these countries, the ILO estimates of the economically active population aged 10 to 14 are likely to be underestimates.

Two studies in particular suggest that the estimates derived from the ILO data for the economically active child population could be underestimates. First, the estimates of the economically active population aged 10 to 14 based on the ILO database are lower by about 11.7 percentage points than the corresponding estimates of other sources. The difference decreases as the age range increases: for children ages 15 to 17, it was only 5.9 percentage points. For both age ranges, the difference is greater for girls than for boys (International Labour Organization, 2002a). A study that compared the economic activity rates of children 10 to 14 from the ILO database with information on school enrollment (Mehran, 2000) concluded that the economic activity estimates were too low by about 15 percentage points. Although those studies suggest that ILO estimates of child labor are

low given the problems of the ILO database, as well as of the surveys compared with it, one has to be cautious in taking any of the estimates as relatively more accurate than others.

### **Surveys with Child Labor as Their Primary Focus**

With the problem of child labor gaining prominence on the global human rights and labor rights agenda, there has been a concerted effort to gather data through surveys that focus primarily on child labor. Two surveys currently collect these data; unfortunately, they have not been in existence long enough to provide the data needed to assess properly the full extent of and changes in child labor, nor do they cover sufficient countries at the present time to be of use in broad cross-country comparisons. However, they are promising starts and may over time provide the kind of data that are critical in monitoring and assessing countries' attempts to reduce child labor and abolish the worst forms.

#### *Statistical Information and Monitoring Programme on Child Labour*

SIMPOC is administered by the ILO's International Programme on the Elimination of Child Labour (IPEC). Since its inception in 1998, 20 countries have completed the SIMPOC survey and published reports, an additional 17 countries have completed field data collection and are conducting data analysis, and 11 countries are in various stages of survey development and data collection (as of May 2003). This survey is designed specifically to collect data on child labor and thus is likely to be the most reliable source of statistical data currently available for the countries covered. Because SIMPOC surveys are specifically designed to collect data on child labor, they are discussed at some length here.

SIMPOC surveys, which are designed to either stand alone or be attached as a module to labor force surveys, are usually carried out at the request of participating IPEC countries in collaboration with the national survey offices of the host country, labor ministries and ministries responsible for child welfare, nongovernmental organizations, academic and research institutions, and international organizations (UNICEF and World Bank).<sup>3</sup> Because of this collaboration, SIMPOC relies on the infrastruc-

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<sup>3</sup>For a complete discussion of SIMPOC's methodology, see Ritualo (2002).

ture and capacity of the host country. Technical assistance aimed at building the capacity of countries to collect data is thus an important part of SIMPOC. Because SIMPOC is the only program to date that focuses solely on the collection of child labor data, it is important that the surveys be continued in countries over time and that more countries participate in IPEC and SIMPOC. It is probably costly to undertake SIMPOC surveys, although the committee has not been able to obtain precise cost estimates from the ILO. Currently, surveys have neither been conducted by enough countries nor over a sufficient period of time to confidently assess the status of child labor worldwide. Also, because the survey instruments have been evolving since their inception, year-to-year comparisons of their data may be problematic.

Key to the implementation strategy of SIMPOC is to support the existing national infrastructure for collecting child labor statistics, in particular, and socioeconomic statistics, in general. Through SIMPOC, the ILO hopes to ensure that child labor surveys are sustainable at the national level and considered an integral part of national statistical programs. Because they rely on, and support, existing national survey programs, each SIMPOC survey is different and tailored to the situation of each country. In all cases, the appropriate government agency focused on data collection—most often the national statistical office—carries out the child labor surveys with technical assistance and, in most cases, funding from SIMPOC.

The SIMPOC surveys include numerous questions on the characteristics of working children, such as the type of work, hours of work and time of day the work is carried out, conditions of work and characteristics of workplaces, the physical and mental safety of workplaces, schooling, and parent's perceptions of child work, and household chores and hours spent on household chores. In addition, data are collected on the basic demographic, social, and economic characteristics that are often related to work among children.

Unlike most household surveys, SIMPOC interviews both children and the household head (or other most knowledgeable person). Questions regarding the demographic, social, and economic characteristics of each member of the household are asked of the designated head of the household or other appropriate person. Included are questions about the work activities and conditions of work of the children aged 5 to 17 years living in the household. Interviewers also ask the children themselves a special set of questions regarding the children's work activities, conditions of work, and the characteristics of their work. In some SIMPOC surveys, questions are

addressed to the household head regarding children aged 5 to 17 not currently residing in the household. The questions are intended to capture children who are living away from the household. In addition, some surveys include inquiries about the household's awareness of child recruitment for work.

The methodology required by SIMPOC is designed to ensure that a large enough sample of working children is captured in the survey. In general, SIMPOC surveys consist of relatively large sample sizes (10,000 households or more). The sampling design methodology used in SIMPOC surveys requires an up-to-date master frame of households with information on the total number of children ages 5 to 17. In some cases, level of income, region or provincial residency, and urban or rural residency are used for stratification and the selection of the required number of households. Unfortunately, in many poor countries, an up-to-date master frame with accurate income information is unlikely to be available. In some cases, households in the lower income levels or slum areas are oversampled because it is assumed that the incidence of child labor is greater among low-income households. In the majority of SIMPOC surveys, urban areas are oversampled in order to capture the diversity of children's employment and allow for sample sizes large enough to describe the different types of occupations and industries, as well as the wage levels of working children. Segmentation by region, province, or other relevant geographic area ensures that reliable estimates can be computed at subnational levels. It also ensures that certain types of child labor will be captured within the national surveys if it is known a priori that there are a large proportion of working children in specific regions.

SIMPOC surveys, particularly the more recent surveys, typically include probing and detailed questions in addition to basic work questions, in order to better capture the work activity of children than in other surveys. This approach has led in general to higher child work-population ratios than found in other surveys (International Labour Organization, 2002a). In contrast to LSMS, SIMPOC also includes a measure of unpaid labor.

Many SIMPOC surveys include questions designed to measure the extent of child labor and hazardous child labor as defined by ILO conventions and national laws. All SIMPOC child labor surveys include questions regarding the type of work children are engaged in, such as industry and occupation. Information on hours of work, which is relevant in the measurement of light work and excessive work, is also included in the SIMPOC

surveys. In many newer surveys, a question on the time of day children carry out their work is also included. Many SIMPOC surveys also address the extent to which children participate in household chores and the hours they spend on these activities. Finally, the more recent SIMPOC surveys include questions on whether a child is exposed to a hazardous work environment (i.e., work at heights or underground, work with tools or machinery, work in excessive noise or dust, work in extreme temperatures, etc.) or hazardous agents or chemicals (such as oxygen, ammonia, pesticides, or glues).

### *Multiple Indicator Cluster Survey*

The Multiple Indicator Cluster Survey (MICS), conducted by UNICEF is similar to SIMPOC in that it can either be conducted as stand-alone surveys or attached as modules to other surveys. MICS is comprised of three modules: the household module, the education module, and the child labor module. The child labor module generally contains seven questions; they focus on the hours worked, whether the work was conducted outside the home, what kind of household chores were done, and whether children worked in family enterprises.

The questions in the child labor module are addressed to the caretaker, usually the mother, of each child aged 5 to 14 who resides in the household. There may be some measurement problems related to the caretakers' responding to the questions on the children's work activities rather than the children themselves. The caretakers may tend to underestimate the activities of their children, particularly if there is a negative societal view toward children's working. Furthermore, caretakers may not recall in detail or accurately the activities of their children. Further research about the various proxy respondents in regard to working children is needed.

By 1996, 60 countries had implemented MICS on a stand-alone mode and 40 others had added MICS modules to other surveys. At the end of the 1990s, 66 countries had implemented MICS, with 49 reporting on working children for the first time. An independent evaluation of the data collected by MICS has shown that the data are of a high quality (Ritualo, 2002). However, because MICS is not targeted at collecting child labor data, it falls short in some key areas. First, it does not gather information on the industry and occupation of child laborers, which makes it impossible to establish whether children are working in hazardous conditions or occupations. MICS also only covers children between the ages of 5 and 14, while

the ILO standard considers all persons under 18 to be children. Therefore, a large population that is covered under Conventions No. 138 and No. 182 is not covered by MICS. Nevertheless, because education and health are indicators linked to child labor, MICS is an important source that can supplement data from other sources, as well as fill gaps in data for countries where SIMPOC surveys have not been conducted.

### *Rapid Assessment*

The ILO initiated the rapid assessment methodology out of an urgent need for data on the worst forms of child labor when Convention No. 182 was adopted. Rapid assessment provides qualitative, descriptive information at the microlevel on the worst forms of child labor. The ILO has conducted over 40 of these rapid assessments in conjunction with trade unions, NGOs, research institutions, and universities. The methodology is participatory, flexible, and inexpensive, and it yields high-quality data.

The ILO selected countries for rapid assessment on the basis of three main criteria: (1) political will, (2) local research capacity to carry out the project, and (3) the need for the research on the worst forms of child labor. Strong political will is key to ensuring the program's swift implementation, along with a government's willingness to use the information generated to improve awareness of child labor and reinforce efforts to eliminate it. The second criterion is necessary to ensure the quality and reliability of the results. Finally, one of the goals of the program was to test the methodology on the worst forms of child labor—from drug trafficking to commercial agriculture—so the type of child labor and the need for the research in a particular country were also taken into consideration when countries were chosen.<sup>4</sup>

The rapid assessment methodology is intended to provide qualitative and descriptive information on the characteristics of working children, their families, and communities at the local or micro level. It can provide a more detailed picture of the daily lives of working children and the conditions within which they work than other methodologies. It can also be used in the first stages of program planning when little information is available

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<sup>4</sup>The first round of Time-Bound Program countries—El Salvador, Nepal, and Tanzania—were also given priority when the countries were selected for research; for more information on the Time-Bound Program, see <http://www.ilo.org/childlabor>.



about the working lives of children and what interventions would be appropriate.

The rapid assessments carried out by the ILO have been conducted by research institutions, universities, NGOs, and in one case, a trade union. The teams of researchers that conduct them are generally comprised of persons with high-level technical and analytical capacities, as well as persons familiar with working children. The latter group includes social workers, psychologists, child labor experts, statisticians, and people with a deep knowledge of the local community, culture, and worst forms of child labor. In many cases, the researchers partner with local NGOs to help locate and reach the working children and help the children feel at ease with the researchers. In order to ensure that the children feel as comfortable and as safe as possible when they are being interviewed, members of the community who speak the local dialect are involved in the study and gender sensitivities are taken into consideration.

The great difficulty in obtaining quality information on the worst forms of child labor arises for a number of reasons. First, many of them (e.g., use of children in drug production and trafficking, prostitution, and pornography) are illegal in most countries, making it difficult to locate the children exploited by criminal activities. Even if the children are located alone, they may refuse to talk to the interviewers for fear of being further harmed. If the employers, parents, or guardians are present during the interviews, the children may be afraid to answer the questions truthfully. Furthermore, children may not want to participate in the data collection efforts because they can lose time and money by forgoing earnings during the time taken by the interview. In other cases, children may have been interviewed previously by a researcher promising changes in their lives and now be unwilling as their circumstances did not change.

In the rapid assessment of child domestic workers in Nepal, for example, employers were present during most of the interviews. In 14 cases, participants were dropped from the study after their employers refused to continue with the interviews. In the rapid assessment on child porters in Nepal, "adult porters were often present and influenced [the] responses" of the children being interviewed (Ritualo, 2002).

The rapid assessment methodology is not designed to extrapolate figures or make generalizations. The number of respondents is on average only a little more than 100 children. The selection of the respondents varies greatly from study to study. In some cases, the children are contacted through the rehabilitation programs they are involved in or through the

knowledge of other key informants. In other cases, the interviewers take to the streets and interview any child they find working in the particular worst form of child labor being studied. In others, households are selected and interviewed. Rapid assessments can be important precursors to SIMPOC and provide background information in creating targeted programs, but as noted, they are not designed to gather statistical data and cannot be used to make generalizations beyond those children interviewed.

### **Other Sources of Evidence on Child Labor**

#### *U.S. Department of Labor Reports*

The U.S. Department of Labor's International Child Labor Program has produced several congressionally mandated reports on various aspects of child labor, including the use of child labor in such U.S. imports as manufacture and mining, agriculture, and the apparel industry; specific topic areas such as consumer labels and child prostitution; and broad topics such as the efforts to eliminate child labor and the economic considerations of child labor. The other reports in the series are similar to most academic research reports that provide an overview of the field and the progress that has been made in answering specific research questions, for instance, *An Economic Consideration of Child Labor* (U.S. Department of Labor, 2000).

The Department of Labor's case study methodology consists of holding a public hearing to gather information from a wide range of stakeholders, including U.S. trade unions, consumer groups, corporations, human rights groups, and trade associations; foreign governments and NGOs; and international organizations. The department then conducts field visits during which staff meets with government officials, trade unionists, journalists, and human rights groups. It also visits production facilities. Finally, other reports and sources of information are taken into consideration.

In 2000, the U.S. Congress passed the Trade and Development Act of 2000 (TDA) (P.L. 106-200). The TDA requires the Secretary of Labor to submit an annual report on the progress of countries that are beneficiaries of the U.S. Generalized System of Preferences in the implementation of international commitments to eliminate the worst forms of child labor (U.S. Department of Labor, 2002).

In accordance with this legislation, in 2002 the Department of Labor released a comprehensive report on the worst forms of child labor. The report provides a broad overview of child labor in 138 countries and terri-

ories. It draws on data gathered by the U.S. Department of State and on reports and materials from foreign countries, the ILO, and the World Bank (U.S. Department of Labor, 2002). It also provides an overview of government initiatives that combat the worst forms of child labor, the incidence and nature of child labor in each country, and child labor laws and enforcement.

These Department of Labor reports do not generally provide new data; however, the information gathered from site visits is helpful in providing a context for statistical data. The 2001 report provides a useful overview, particularly on the worst forms of child labor. However, it is not designed as an in-depth study of the problem of child labor in any particular country.

### *National Governments*

Some national governments publish their own data and reports on child labor. However, many countries conduct surveys and report on child labor in conjunction with either the ILO (SIMPOC) or the World Bank, as described above. Some state reports are listed on the U.N. High Commissioner for Human Rights (UNHCR) website for the Committee on the Rights of the Child and the Committee on Economic, Social, and Cultural Rights, but these reports do not always address child labor.

### *Reports from Nongovernmental Organizations*

Numerous NGOs, both at the national and international level, have taken up the cause of child labor and have begun to produce reports of their own. Of the international NGOs, the most noteworthy is the Global March Against Child Labour, headquartered in New Delhi, India. It is a coalition of more than 1,400 social organizations and people—including national NGOs, trade unions, religious groups, government ministries, schools, and individuals from 144 countries—that seeks to eradicate child labor globally.

The Global March produces the *Global Report on the Worst Forms of Child Labour* (updated November 2001) with data from a wide variety of sources, ranging from ILO studies and government reports to newspaper articles. These sources are not evaluated or screened for reliability. An interest in providing “complete” information has resulted in the inclusion of some data that the organization itself considers unreliable. Because there are no controls on the quality of the data presented, the usefulness of the

report is limited to providing a broad and sometimes anecdotal outline of the child labor problem, particularly in countries for which no other data exist.

Other NGOs whose reports are incorporated in the Global March's reports fall prey to similar problems in evaluation and screening of data. Most of these reports rely on ILO reports and statistics and do not offer competing primary sources; as a result, they may only add new analysis to the mix of available information.<sup>5</sup> We note some of the more prominent NGO sources and reports as examples. Most of these reports are on individual countries and specific industries or sectors, mostly for a particular year. Given the diversity in their approaches to gathering information and data and the difficulty in assessing their representativeness, these reports could at best be used as a starting point for a more scientifically based inquiry.

The Children's Rights Division of Human Rights Watch has largely focused its efforts on forced and bonded child labor. It has published several reports on child labor in individual countries, as well as globally. Its recent publications include *Child Labor in Agriculture* (Human Rights Watch, 2000b) and a section on "Children's Rights: Child Labor" in its *World Report 2002*. Individual country reports include *Small Change: Bonded Child Labor in India's Silk Industry* (Human Rights Watch, 2003), *Child Labor in Egypt's Cotton Fields* (Human Rights Watch, 2001), *Child Farm Workers in the U.S.A.* (Human Rights Watch, 2000a), *Bonded Child Labor in India* (Human Rights Watch, 1996), *Trafficking in Nepali Girls and Women to India's Brothels* (1995b), *Street Children and Child Soldiers in Sudan* (Human Rights Watch, 1995a), and *Trafficking of Burmese Women and Girls into Thailand's Brothels* (Human Rights Watch, 1993).

Anti-Slavery International was set up with the specific objective of ending slavery throughout the world. The organization has produced several publications on child labor, child trafficking, and child slavery. Some of these publications are country-specific, while others are more general treatments of a particular subject matter. For example, publications on child labor include *The Impact of Discrimination on Working Children and on the Phenomenon of Child Labour* (Anti-Slavery International, 2002), *Child*

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<sup>5</sup>There are some exceptions, for example, a survey of cocoa plantations that used survey methodology to collect data funded by the U.S. Agency for International Development (USAID). However, these studies are generally single-year surveys and do not provide the time-series data that are necessary to measure changes in child labor.

*Labour in Nepal* (Sattauro, 1993), *Children in Bondage: Slaves of the Subcontinent* (Anti-Slavery International, 1991), and *Kashmiri Carpet Children: Exploited Village Weavers* (Cross, 1991).

Education to Combat Abusive Child Labor, an activity of Creative Associates International, Inc., based in Washington, D.C., has developed a database of information related to child labor by country. The database includes a country overview of child labor, child development indicators, child labor by sector, USAID activities, other child labor program activities, and ratification status on international conventions.

Other NGOs that are also engaged in work to eliminate child labor are Defense for Children International, Free the Children, International Save the Children Alliance, and World Vision International. Like those mentioned above, these NGOs periodically publish newsletters, articles, and other materials that provide information on the child labor situation in a particular country or sector.

Certain NGOs work in several countries to eliminate child labor in a particular sector of the economy. RUGMARK Foundation, for instance, is a global NGO working to eliminate child labor in the carpet industry. Similarly, the Clean Clothes Campaign focuses on the garment industry and issues reports and news regarding child labor in that sector specifically.

There are several umbrella organizations that bring together NGOs working in the child labor field. Child Workers in Asia and End Child Prostitution in Asian Tourism (ECPAT) International are examples of such networks. Child Workers in Asia produces a few publications; however, its main focus is in “mapping” the NGOs that work locally in Asian countries. ECPAT International is a network of organizations and individuals focused on the elimination of child prostitution, child pornography, and trafficking of children for sexual purposes. It maintains a searchable database that provides information by country or category on implementing actions and a profile of commercial sexual exploitation of children. It also provides information on the organizations working on these issues within the country.

Trade unions are also a source of information on child labor. The International Confederation of Free Trade Unions (ICFTU) has launched a worldwide campaign to stop child labor. The ICFTU provides annual reports on labor rights violations by country, including child labor (see discussion in Chapter 2). Finally, there are several organizations that provide news, online libraries, or compilation of secondary sources related to child labor. Some examples are Child Slave Labor News, Child Rights Information Network, and Childwatch International Research Network.

### *Legal Evidence*

In determining whether national laws comply with the ILO Conventions No. 138 and No. 182, there are two main sources of information. The NATLEX database lists national laws, which can help determine whether a country's laws comply with the ILO child labor conventions. ILOLEX provides information gathered by the ILO's supervisory process and documents compliance issues for those countries that have ratified the two conventions. Beyond the existence of laws, an assessment of the adequacy of the laws and the rigor of enforcement requires research on a country-by-country basis. Our proposed government performance indicators are designed to assist this process.

The University of Chicago's *Foreign Law: Legal Resources on the Internet*<sup>6</sup> provides data on laws on child refugees, child prostitution and sexual exploitation, children in armed conflict, child slavery, and child labor. The University of Iowa's Center for Human Rights has a Child Labor Research Initiative funded by the U.S. Department of Labor to collect, translate, and establish a database of national laws dealing with the worst forms of child labor in 25 countries.

### *Academic and Other Research*

The economics of child labor has attracted a lot of analytical attention from economists, economic historians, and other social scientists. A recent literature survey on child labor in South Asia (Srivastava, 2003) lists more than 20 papers and books, not including papers reporting on surveys and statistics. Brown et al. (2003) provide a comprehensive analysis of child labor research and policy. Levison (1998) is a valuable, but as yet unpublished, source.

The ILO, World Bank, and UNICEF initiated a joint interagency research program entitled Understanding Children's Work and its Impact in December 2000. The project, based at the Innocent Research Centre in Florence, Italy, is aimed at providing more and better data on child labor. The project website provides access to child labor statistics, interventions to combat child labor, and research papers.<sup>7</sup>

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<sup>6</sup>Available at <http://www.lib.uchicago.edu/~llou/foreignlaw.html> [October 15, 2003].

<sup>7</sup>See <http://www.ucw-project.org> [October 15, 2003].

Many serious research gaps that remain were identified at the Global Network Meeting of Child Labor Researchers organized by IPEC in Geneva on December 5-6, 2002. These gaps relate to every aspect of child labor, including its economics, worst forms, interaction with education, and public policies. The difficulties for researchers caused by alternative definitions and lack of data were found to be serious. The researchers also noted that very little research on child labor is available on large parts of the globe, including China, sub-Saharan Africa, and Islamic and postcommunist countries. Researchers also noted that work by social scientists other than economists needs to be given more weight than it has received in the debates on child labor. The meeting stressed the importance of interdisciplinary exchange and research. To facilitate this exchange, IPEC plans to maintain an interactive web-based database where researchers will be able to share information about child labor projects. One of the goals of this on-line exchange is to identify areas where gaps exist.

## CONCLUSIONS AND RECOMMENDATIONS

Much of the information available on child labor is subject to serious limitations because the data collection methods are not focused specifically on child labor. A system that generates data periodically and is focused primarily on child labor is essential in monitoring the implementation of child labor conventions and in assessing the progress of countries toward its elimination. In our judgment, ILO's SIMPOC survey seems to be the best effort thus far.

The committee recognizes that mounting SIMPOC-like surveys on an adequate scale in many countries would involve significant resource costs. IPEC researchers estimate that the unit cost per household of a SIMPOC survey ranges from \$6 to \$30, not including the fixed cost for overhead. The average unit cost for a modular survey per household (implemented in conjunction with an ongoing national survey) is \$11, and it is \$23 for a stand-alone survey. Even at a modest cost of \$15 per household, a survey of a minimum of 10,000 households would cost \$150,000 per year just for data collection. We encourage governments and the international organizations to allocate the necessary funds to improve the available data in this important area. In addition, compensating parents for lost income from labor of their children and providing adequate schooling for children taken out of child labor would also involve substantial resource cost. Where feasible, these programs have potential to help ease the transi-

tion away from child labor to a more socially responsible and healthy labor market situation.

While the private and social benefits from educating children are likely to be significant, several factors can nonetheless contribute to the perpetuation of child labor, including the poverty of parents. First, even if there are long-term benefits to a family of keeping children in school and out of the workforce, households may be forced to look only at short-term costs and benefits as a matter of survival. Second, household heads may misjudge the costs and benefits of child labor (possibly due to cultural bias against schooling girls, for example) and thus make decisions that are not economically rational, even on private terms. In other cases, the private costs of keeping children in school may exceed the benefits: in these cases, households are unlikely to invest in their children's education unless their costs are subsidized or they are compensated in other ways. Of course, given the social benefits, governments ought to find it worthwhile to subsidize or compensate for education, provided that they have the resources to do so. Although the fiscal situation of many developing countries and their current budgetary priorities leave little resources for subsidizing education, there is often room for reallocating resources and raising more. Developing countries and the broader international community can work together to address the causes of child labor, including through the promotion of economic and social development, the enforcement of appropriate laws, and raising resources to fund effective enforcement and education programs to realize the goals of eliminating child labor and providing access to quality education.

Further study needs to be done on programs that have removed children from work and provided their parents with compensation in order to assess whether these programs can be replicated on a broader basis and to determine the costs of such programs. In this regard, the experience with taking children out of work by the Bangladesh Garment Manufacturers Exporters Association (BGMEA) and the RUGMARK Foundation in Nepal would be worth studying. At the National Academies forum in Sri Lanka on March 5-6, 2003, BGMEA reported setting a milestone in the history of child labor by removing children from a large number of BGMEA factories and placing them in special schools jointly administered by BGMEA, the ILO, and UNICEF. The first Memorandum of Understanding between BGMEA, ILO, and UNICEF was signed in July 1995 with a view to achieving this objective. As part of this project, a joint survey identified 10,546 child workers under the age of 14 in the garment manufac-



turing sector in Bangladesh. Initially, more than 9,500 children were enrolled in 336 schools. BGMEA has spent over \$600,000 for the project. Following the success of this first initiative, BGMEA signed a second Memorandum of Understanding with the same partners in June 2000. A recent ILO report indicates that BGMEA member factories are virtually free of child labor at the present time.

The RUGMARK Foundation reported successful outcomes for its child labor rehabilitation project at the same forum in Sri Lanka. RUGMARK reported that 497 children (342 boys and 155 girls) have been rescued. The cost of rehabilitation, including schooling at the primary level per child, was estimated at \$500 per child. These costs are expected to go down over time, given that RUGMARK is involved in additional activities related to child labor. Even if the replication of such initiatives is possible, it should be undertaken simultaneously with SIMPOC or SIMPOC-like surveys, so that baseline data are available to assess their impact.

**6-1 The committee recommends that national and international agencies cooperate in creating a system of data generation focused primarily on child labor, such as the ILO's SIMPOC surveys.**

**6-2 The committee recommends that research be done on the scalability and cost-effectiveness of successful pilot programs (e.g., RUGMARK Foundation in Nepal, the Bangladesh Garment Manufacturers and Exporters Association, and PROGRESA in Mexico) that have removed children from work, rehabilitating and educating them and involving their parents.**

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## Discrimination

To discriminate, according to *Webster's New Collegiate Dictionary*, is “to mark or perceive the distinguishing or peculiar features of.” The policy issue addressed here involves identifying the circumstances under which it is unacceptable for governments, employers, or unions to distinguish among various groups when making decisions on the terms or conditions of employment. This entails identifying both the grounds on which distinctions among workers are to be prohibited and the range of activities in which such distinctions shall not be permitted.

The International Labour Organization (ILO) approaches the problem of discrimination in employment and occupation differently from the other core standards because it starts from the presumption that *no* country is in compliance. This is both because discrimination against various groups is rooted in politics and culture and therefore takes time to change, and because definitions of what constitutes unacceptable discrimination are constantly evolving. Even more than the other core labor standards examined by the committee, it is crucial, therefore, to focus on the direction of change and whether countries are taking appropriate, proactive steps to address discrimination.

This chapter begins by reviewing the issues involved in defining discrimination in employment and the approaches that the various international conventions in this area have taken. The second section then discusses the pluses and minuses of the committee's proposed indicators to assess compliance with international nondiscrimination norms. The third

section discusses the most useful sources of information on discrimination issues. The final section presents the committees conclusions and recommendations.

## DEFINITIONS

From its founding in 1919, the ILO recognized the importance of protection for vulnerable groups, such as women, children, and migrants, and the need to address discrimination. The Philadelphia Declaration of 1944, in which the ILO reaffirmed the importance of its mission and principles in an age of rebuilding and decolonization after World War II, included a commitment to equal opportunity in work and education and vocational training for all people, “irrespective of race, creed, or sex.” One of the first acts by the new United Nations in 1948 was approval of the Universal Declaration on Human Rights, which states that, “Everyone is entitled to all of the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>1</sup> In addition to basic civil and political rights, the Universal Declaration on Human Rights also includes a prohibition of forced labor and promotes freedom of association, the right to organize, and other labor rights.

In subsequent years, both organizations adopted more focused and detailed instruments to promote nondiscrimination, in general and in the workplace. The ILO adopted two conventions that are now listed among the eight core conventions, Convention No. 100 (1951) on equal remuneration and Convention No. 111 (1958) on nondiscrimination in employment and occupation. Other noncore conventions that address the special needs of vulnerable groups are discussed below.<sup>2</sup>

ILO Convention No. 100 addresses the need for “equal remuneration for men and women workers for work of equal value,” an issue originally

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<sup>1</sup>Written at a time of emerging decolonization, the declaration also clarified that the rights apply in all territories, regardless of “political, jurisdictional or international status; whether [they] be independent, trust, non-self-governing or under any other limitation of sovereignty.”

<sup>2</sup>The key U.N. instruments are the Convention on the Elimination of Racial Discrimination (1965) and the Convention on the Elimination of Discrimination Against Women (1979).

raised in the preamble to its constitution. Convention No. 111 is broader, both in terms of the grounds for and applications of discrimination that it prohibits. The later convention includes “terms and conditions of employment,” including wages and benefits, and it bars discrimination, defined as “any distinction, exclusion, or preference . . . which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.” There are seven prohibited grounds for discrimination:

- race,
- color,
- sex,
- religion,
- political opinion,
- national extraction, and
- social origin.

The interpretation of each of these grounds, as well as the other terms of the convention, is discussed in detail in the 1996 ILO Committee of Experts General Survey on Equality in Employment and Occupation (available in the ILOLEX database).<sup>3</sup> The 2003 global report under the Declaration on Fundamental Principles and Rights at Work, *Time for Equality at Work*, also discusses the definition of discrimination in employment and the various forms that it can take. The report emphasizes that the ILO definition includes direct as well as indirect sources of discrimination and that intent to discriminate is not necessary to find that a problem exists (International Labour Organization, 2003).

Convention No. 111 notes that distinctions among groups based on the “inherent requirements” of a particular job are acceptable, as are “measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the state,” as long as the person can appeal to a “competent body.” The legitimate scope of these exceptions is one of the more frequent sources of debates, particularly as they relate to political opinion or national extraction as grounds for discrimination in public employment. During the Cold War, for example, party loyalty was often a condition of public employment in communist or socialist single-party states. In West Germany, Communist Party members were barred

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<sup>3</sup>See <http://www.ilo.org/ilolex/english/iloquery.htm> [October 16, 2003].

from some government jobs on the grounds of national security, leading to an Article 26 case in the 1980s (see Chapter 2 for a discussion of ILO Article 26 procedures). Similar issues, as well as allegations of discrimination against Hungarian and other minorities, led to another Article 26 complaint against Romania, also in the 1980s.

Complaints about unjustified discrimination have also arisen frequently in conflict situations where workers suspected of sympathizing with the “wrong side” were fired, for example, Serbs and Bosnians in Croatia, Eritreans in Ethiopia, and Senegalese in Mauritania in various conflicts in the 1990s. In general surveys on Convention No. 111 in 1988 and 1996, however, the Committee of Experts noted that the security exception applies only to *individual* activities and that discriminatory measures taken “by reason of membership of a particular group or community . . . could not be other than discriminatory.”

The 1996 survey also notes that conditions related to political opinion must be linked to the inherent qualities of the job, such as high-level government jobs that involve policy implementation. The ILO over the years has also clarified that national extraction is generally understood to refer to legal citizens of a country who have family roots in another country or who may be naturalized citizens, but that it does not necessarily refer to those of a different nationality. There are protections for migrant workers but nationality can be used as a legitimate criterion in some jobs, such as public-sector jobs. In general, the approach of the ILO is to emphasize that any distinctions must be closely linked to the requirements of the job or based on documented individual activities and not on membership in a particular group.

The convention also specifies that “special measures of protection or assistance” provided in other ILO conventions or recommendations, for example, maternity protections, shall not be regarded as discriminatory. Nor are other “special measures” to overcome discrimination, including affirmative action programs, necessarily ruled out as discriminatory. Chapter 3 of the 1996 Committee of Experts General Survey addresses the conditions under which such special measures may be appropriate and emphasizes that they should be designed “to restore a balance and are or should be part of a broader effort to eliminate all inequalities.”<sup>4</sup> Among the safe-

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<sup>4</sup>See <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=32&chapter=25&query=%28C111%29+%40ref&highlight=on&querytype=bool&context=0> [October 16, 2003].

guards listed are requirements that any such measures should be the result of consultation with worker and employer representatives, “adapted to national circumstances,” reexamined periodically, and eliminated as soon as they are no longer necessary. But beyond this, ILO guidance is rather vague and it does not rule out, for example, explicit quotas, which are anathema in the United States but accepted in other places, such as India and Malaysia (International Labour Organization, 2003, p. 64).

With respect to the activities where discrimination may occur, the convention bars distinctions in hiring, firing, remuneration, or other conditions of work. It also explicitly prohibits discrimination in access to vocational training. ILO experts who supervise application of the convention also look for differences in educational opportunities more broadly because of the effects on employability. Thomas (2002) lists the following areas as being covered by Convention No. 111:

- access to vocational guidance and training and placement services;
- access to self-employment, wage and salaried employment, and public service;
- access to workers and employers organizations;
- promotion;
- security of tenure;
- equal remuneration;
- inclusion in collective negotiations;
- social security; and
- other conditions of work, including safety and health, hours, and holidays.

Other international legal instruments reinforce the nondiscrimination principle and, in some cases, add more specific grounds that are unacceptable. The 1965 U.N. Convention on the Elimination of Racial Discrimination includes a provision guaranteeing equal rights to work, “just and favorable conditions of work,” and “equal pay for equal work,” though the latter is narrower than the ILO standard for equal remuneration for “work of equal value.” The Universal Declaration on Human Rights adds language and property, birth, or status to the list, but these could be encompassed in one or another of the grounds specified in Convention No. 111 (national extraction or social origin). For example, in response to concerns that *internal* migrant workers in China are not covered by Convention



111, an ILO official noted that they are considered to be covered by the prohibition on discrimination on the basis of social origin.<sup>5</sup>

In 1979 the United Nations adopted the Convention on the Elimination of Discrimination Against Women, which according to at least one observer, “contains the fullest description of all these instruments of the measures to be taken to prevent discrimination in employment and occupation.”<sup>6</sup> In addition to enumerating the equal rights that women should enjoy in the workplace, this convention also emphasizes the steps that government should take to “prevent discrimination against women on the grounds of marriage or maternity and to ensure their *effective* right to work” (emphasis added). These measures include:

- protection from dismissal on the grounds of pregnancy, maternity leave, or marital status, as well as special protections for women during pregnancy in types of work proved to be harmful to them;
- maternity leave with pay or with comparable social benefits without loss of former employment, seniority, or social allowances; and
- provision of the necessary supporting social services, in particular through promoting the establishment and development of a network of child-care facilities.

However, in many countries, legal provisions that mandate maternity leave or other protections lead employers to institute pregnancy testing or conditions related to marital status when hiring young women.

In addition to women and racial minorities, two other particularly vulnerable groups have been singled out for special attention, migrant workers and indigenous peoples. ILO Conventions No. 97 (1949) and No. 143 (Supplementary Provisions, 1975) address discrimination against migrant workers who are in a country legally with respect to employment, remuneration, trade union membership, social security, payroll taxes, and due

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<sup>5</sup>Comment by Constance Thomas, section chief of the Equality and Employment Branch in the ILO Department of International Labour Standards, at a committee workshop; National Research Council (2003) summarizes the discussion.

<sup>6</sup>Thomas (2002) also discusses other international legal instruments that address discrimination in employment, including ILO conventions on other issues that include nondiscrimination provisions, the International Covenant on Economic, Social and Cultural Rights, and regional instruments in Europe, the Americas, and Africa.

process. The United Nations also adopted a convention in 1990 on the protection of migrant workers and their families; it did not come into force until 2003 when East Timor became the 20th member country to ratify. In 1957, the ILO was the first organization to codify the rights of indigenous peoples in international law with Convention No. 107, rights later clarified in 1989 in Convention No. 169. These conventions provide protections similar to those provided for migrant workers to “indigenous and tribal populations.” In addition, however, they add “medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing . . .”.

A final definitional issue regards potential new grounds for discrimination. Convention No. 111 leaves it to national governments to determine distinctions or preferences on grounds other than those listed above that may require attention. If sufficient consensus emerges, additional grounds that might be added to ILO jurisdiction in the future include discrimination based on age, sexual orientation, disability, and other health conditions, most notably HIV/AIDS. The recent global report on discrimination, under the Declaration on Fundamental Principles and Rights at Work, discusses possible discrimination problems associated with age, disability, and HIV/AIDS (International Labour Organization, 2003).

In addition, at a U.N. special session in June 2001, the ILO unveiled a new “ILO Code of Practice on HIV/AIDS in the World of Work,” which is aimed at supporting efforts “to prevent the spread of HIV, manage its impact, provide care and support for those suffering from its effects and *staunch stigma and discrimination* which arise from it” (emphasis added) (International Labour Organization, 2001, pp. 4-6). The anti-discrimination provisions are not just hortatory but also discourage HIV/AIDS screening as a general condition of employment, the solicitation or disclosure of private information relating to HIV, termination as a general response to HIV-positive status, or discrimination against HIV-positive workers or their dependents in the provision of safety net programs. The U.N. General Assembly adopted a “Declaration of Commitment on HIV/AIDS” at the same special session that, among other things, calls on governments to “develop a national legal and policy framework that protects in the workplace the rights and dignity” of those living with or at the greatest risk of contracting the disease (International Labour Organization, 2001, pp. 4-6).

## ASSESSING COMPLIANCE

As with the other core labor standards, government policies to eliminate discrimination has negative as well as positive aspects, with the latter usually being more important than the former. The government must not only eliminate all laws or regulations that explicitly or implicitly discriminate among groups, but it must also take proactive steps to ensure that private actors (employers and unions) do not discriminate and that vulnerable groups are given sufficient support to ensure they can take advantage of the opportunities theoretically open to them. As elsewhere in this volume, indicators of compliance with nondiscrimination standards are divided into three areas: legal framework; government performance; and overall outcomes.

The first step is to examine whether there are laws that either explicitly discriminate based on one of the prohibited grounds or could result in de facto discrimination and whether laws provide positive protections to the right of nondiscrimination. Thomas (2002) argues that broad constitutional provisions are often not enough and that statutes explicitly prohibiting discrimination in employment are usually needed. The next step is to examine how vigorously laws are enforced and whether policies to promote nondiscrimination are being effectively implemented. Failures in this area, particularly among developing countries, will often be sins of omission rather than of commission, arising more from a lack of financial and other resources than from intent. Nevertheless, it is useful to examine the level of human and financial resources allocated to discrimination in employment issues and to assess whether a government is doing the best it can with the resources available.

Failure to deal with discrimination, however, often results from the unwillingness of governments to confront powerful groups or deep-seated cultural traditions and to take steps to level the playing field for vulnerable groups. Thus, in addition to having laws, indicators of whether the government is serious in combating discrimination include the implementation of educational campaigns to ensure that people understand their rights and to ensure that employers, unions, and others respect them. Affirmative action programs may be appropriate in cases of long-standing or entrenched discrimination.

Effective grievance procedures are also crucial because nondiscrimination is often subtle and difficult for outside observers to identify. To make such procedures effective, however, certain other policies also have to be in

place. First, since the groups most vulnerable to discrimination are often relatively poorer and less educated than other groups, supportive services, such as subsidized or free legal advice, may be necessary. Second, the law has to protect complainants from retaliation.

Since effective grievance procedures are unlikely to exist in countries where discrimination problems are the most severe, some international agencies have either adopted or are considering complaints procedures that allow individuals or groups to bypass their national governments and appeal directly at the international level. Under Article 24 of the ILO constitution, any employer or union group that becomes aware of problems can file a complaint regarding violations of the discrimination conventions against any government that has ratified them. The U.N.'s Convention on the Elimination of Racial Discrimination provides for complaints by either individuals or groups to be submitted directly to the committee overseeing the convention. In 1999, the Convention on the Elimination of Discrimination Against Women added an optional protocol creating a similar procedure, but fewer than 50 countries had accepted it as of the end of 2002. Though they are little known or used today, these mechanisms could eventually become an important source of evidence on compliance.

Finally, when available, quantitative indicators can be helpful in assessing how well antidiscrimination policies are working and in identifying areas in need of particular attention. Differences in literacy rates or school enrollment rates for different groups are likely to be a sign of problems because this will affect the opportunities available when members of the disadvantaged group enter the labor force. As with the other core labor rights, however, caution has to be used in interpreting some of the quantitative indicators. High numbers of complaints under grievance procedures or prosecutions for discriminatory practices, for example, can indicate a system that works well rather than one that works poorly. Small numbers of complaints could simply mean that citizens view the system as costly, ineffective, or too risky to use.

Labor market data must also be interpreted with caution. Lower labor force participation rates for women, for example, could reflect voluntary decisions by families to have mothers withdraw from the (paid) labor force while children are young; the same might be the case if more women than men are in part-time work because of family choices. In such cases, however, it is also necessary to look at whether there are such national policies as parental leave and adequate child care so that outcomes reflect the family's true preferences and not external constraints. Relative wages are an obvious

indicator of potential discrimination. But, again, it is difficult to control for everything that affects wages, and family constraints or preferences may result in women's wages being on average lower than men's for legitimate reasons. Nevertheless, the larger the wage gap, the more likely that it is an indicator of a problem.

Other indicators are also relatively more likely to indicate discrimination problems that need to be addressed. For example, disproportionately small numbers of women or ethnic, racial, religious, or other minorities in certain types of jobs or in certain sectors may be an indicator of problems. Low numbers of women or other minorities in management positions may reflect not intentional discrimination by employers but could indicate a failure by society to provide equal opportunities to some groups, such as an adequate basic education. If public schools do not exist or are of low quality in poor neighborhoods that are populated disproportionately by ethnic or racial minorities, children from those families will find it far more difficult than other children to get, retain, and move up the ladder in jobs with management potential.

Although individual indicators are the most important sources for assessing compliance with nondiscrimination standards, the U.N. Development Programme's "gender development index," added to the *Human Development Report* in 1995, may also be useful to flag cases of particular concern and, as the series grows longer, to assess trends. The index includes several indicators of inequality: differences in life expectancy (adjusted for the fact that women, on average, have a longer life expectancy than men); differences in adult literacy and combined school enrollment (primary, secondary, and tertiary); and a measure of women's earned income relative to men's (U.N. Development Programme, 1995).

Some of the individual components of this index are included in the list of the committee's indicators. In addition, the difference between a country's ranking on the human development index, which aims to capture quality of life aspects of development not reflected in national income, and its ranking on the gender development index might be useful in identifying countries with potential problems with gender-based discrimination. Differences between the per capita income and gender development index rankings can also be used to identify both those countries that are doing better than their income level would suggest and those that are doing worse.

Such comparisons should only be used as a starting point for further research, however, and should not be taken as definitive. These indices are crude and, by necessity, simplify very complex relationships. As noted in the *Human Development Report*, they also miss much that is important

because they “can capture only what is measurable” and, even then, data gaps mean that heroic assumptions have to be made to fill in the blanks (U.N. Development Programme, 1995, p. 72).

### Legal Framework

Ratification of international conventions does not necessarily mean that the legal framework is consistent with international standards. Reporting requirements associated with ratification, however, mean that useful information may be available from ILO and U.N. sources. In addition, a new ratification could signal a commitment to improve conditions.

When looking at a country’s laws, if they do not cover all the prohibited grounds, one needs to see which are excluded and why. If laws in these areas do not exist, is it because the custom is to treat all groups equally? Or is it because the political will to tackle discrimination is lacking? It is also important to determine whether there are penalties for noncompliance and assess whether those penalties are sufficient to deter discrimination. The committee proposes 10 indicators of the legal framework on eliminating discrimination, 4 on ratification of international conventions, and 6 on laws:

- A-1. ratification of ILO Convention No. 100 on equal remuneration;
- A-2. ratification of ILO Convention No. 111 on discrimination (employment and occupation);
- A-3. ratification of the U.N. International Convention on the Elimination of All Forms of Racial Discrimination;
- A-4. ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women;
- A-5. whether there are laws that prohibit discrimination in employment on the grounds of race, color, sex (including sexual harassment), religion, political opinion, national extraction, and social origin;
- A-6. whether there are laws that cover additional grounds on which employment discrimination is prohibited, for example disability or sexual orientation;
- A-7. whether there are laws that also protect migrant workers from discrimination in employment;
- A-8. whether there are laws that prohibit discrimination in access to and ownership of assets, including property ownership, inheritance, and access to other assets or credit;
- A-9. whether there are laws that make nondiscrimination in employ-

ment meaningful in practice with equal access to education, training, vocational guidance, and placement services; maternity protection; and parental leave; and

A-10. whether there are laws or a legally established or recognized machinery for wage determination that ensure equal remuneration for work of equal value.

### **Government Performance**

The ILO supervisory process can be an important source of information about countries' laws, policies, and practices with regard to labor standards. These data should not be used as quantitative indicators (e.g., numbers of complaints or comments), however, since some sources apply only to countries that have ratified conventions, and small numbers of complaints can indicate a system that is repressed rather than one that is working well. Quantitative enforcement measures should be adjusted for income level of country, size of labor force, and magnitude of discrimination problem relative to other standards problems. The committee proposes 11 indicators on government performance:

B-1. whether there is a national mechanism to promote equality and whether it has an employment focus or employment component in a broader policy;

B-2. whether the country has a labor inspectorate;

B-3. the breadth of labor inspections in the country, in terms of number of visits, frequency of visits, number of workers covered, etc.;

B-4. the level of resources devoted to the labor inspectorate in terms of number of personnel and budget, absolute or relative to number of workers or spending;

B-5. whether nondiscrimination issues are explicitly included in labor inspections and inspectors trained in them;

B-6. whether there is a grievance mechanism for airing and investigating discrimination complaints, "whistle-blowers" or complainants are protected from retaliation, and the grievance mechanism is adequately supported and funded;

B-7. measures of utility of grievance procedures, including number of complaints, length of process, penalties imposed if complaints upheld, and annual prosecutions and fines for violations of nondiscrimination laws;

B-8. where applicable, whether there are affirmative action programs aimed at promoting equality and not at elevating one group over another;

B-9. whether there are public education or sensitivity campaigns, both to educate vulnerable citizens about their rights and to change cultural and traditional attitudes that contribute to discrimination;

B-10. whether there are requests for or implementation of international technical assistance programs, which can signal improvements in government efforts and, possibly, effectiveness; and

B-11. whether there are relevant supportive policies, such as child care.

### Overall Outcomes

There are two broad categories of outcomes: employment opportunities and employment outcomes and conditions. Widely available international sources are likely to disaggregate many indicators only by gender, if at all. Statistical abstracts and other national sources, when available, may provide additional information on race, religion, or other groups. In looking at educational opportunities, differences in educational attainment that are due to discrimination in turn affect employment opportunities available to different groups. The data on this indicator will be more difficult to get and available largely from national sources but would be a more precise indicator of potential discrimination in labor markets than general educational attainment outcomes.

When employment outcomes and conditions are considered, women are generally more likely to be involved in activities, such as household work, domestic work, or other informal sector activities that are uncounted or undercounted. This should be kept in mind when assessing the proposed indicators. In addition, differences in female work and wage outcomes must be evaluated with care because they typically reflect a mix of individual and family choices, as well as indirect and direct discrimination. (Indicators that are relatively more likely to reflect family or other choices are listed below under “associated factors.”) The indicators listed here also reflect complex interactions but are also more likely to involve an element of direct discrimination.<sup>7</sup> For racial and other groups, it seems relatively

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<sup>7</sup>The discussion of indicators draws on (and additional discussion of issues relating to collection and interpretation of the data may be found in) International Labour Organization (1999).



more likely that differences in the indicators reflect discrimination and are less likely to be the result of personal choice.

In general, women are more likely than men to be unpaid family workers and less likely to be self-employed; when self-employed, women are less likely than men to employ others. In addition to cultural norms possibly restricting women's activities, various combinations of cultural or legal impediments may result in women having less access to credit, land, and other assets. However, differences in reporting on men's and women's activities may result in women's work that is qualitatively similar to men's being classified as unpaid family work rather than self-employment (International Labour Organization, 1999).

Women are more likely to be employed in agriculture in developing countries and in the services sector generally, which explains at least some of the persistent wage gap between men and women (International Labour Organization, 1999).

The informal sector is often a fallback for women or other groups that confront cultural or other discrimination in the formal sector; thus, data showing disproportionate numbers of women or minorities in the informal sector may be an indicator of discrimination elsewhere in the economy, rather than in this sector. At the same time, however, women may be undercounted in the informal sector because the international definition excludes household production activities exclusively for the household's use, paid domestic service in private households, and homework carried out for an employer in the formal sector (International Labour Organization, 1999). Data on the distribution of employment in the urban informal sector are available for only 35 countries.

Higher unemployment rates for women could in part be the result of more frequent exit from and reentry into the labor market for personal reasons but it could also reflect more constrained educational and occupational opportunities (International Labour Organization, 1999).

Where it exists in disaggregated form, data on wages for most countries also will not be detailed enough to assess equality of remuneration because that requires controlling for a large number of factors, many of which will not be directly observable (International Labour Organization, 2003).

The committee offers 10 indicators on overall outcomes on eliminating discrimination:

C-1. differences in illiteracy rates between men and women and among different ethnic, racial, religious, or other groups;

C-2. differences in school enrollment rates (primary, secondary, and tertiary, or combined) between men and women and among different ethnic, racial, religious, or other groups;

C-3. differences in vocational training enrollment rates between men and women and among different ethnic, racial, religious, or other vulnerable groups;

C-4. documented discriminatory practices, such as widespread sexual harassment or pregnancy testing for job applicants;

C-5. employment status—wage or salaried worker, self-employed, or contributing family worker;

C-6. distribution of women and other potentially vulnerable groups by sector;

C-7. distribution of employment in the urban informal sector;

C-8. distribution of women and other potentially vulnerable groups by occupation within sectors, including in administrative and management positions;

C-9. relative unemployment rates, especially changes over time and during adjustments; and

C-10. relative wage data could be an indirect indicators of occupational or sectoral discrimination that channels women and minorities into lower paid types of jobs, but they are not available for large numbers of countries or consistently over time.

### **Associated Factors**

There are four other indicators that can be helpful in assessing a country's compliance to eliminate discrimination. One is a country's ranking on the U.N.'s human development index minus its ranking on the gender development index: large differences between the rankings on this index and the human development index could indicate a particular problem with gender discrimination issues. The second is fertility rates, which are highly correlated with higher illiteracy and lower primary and secondary school enrollment rates for females relative to males. This associated factor, however, is available for more countries than are data on illiteracy and school enrollment.

The third factor is the labor force participation rate by gender and by other relevant classifications: very low labor force participation rates by

women or minorities could be a sign of restricted opportunities. For example, in some Middle Eastern countries, where gender segregation is strictly enforced it may be significant. However, high female labor force participation rates, for example in sub-Saharan Africa, where many women work in agriculture, are not necessarily an indicator that discrimination does not exist. Low levels of female labor force participation may also be due to undercounting. These data should be used in conjunction with other indicators (International Labour Organization, 1999).

The fourth associated indicator to consider is the distribution of part-time work. It is not clear why ethnic or other minorities would disproportionately choose part-time work, and large differences between these groups and others could be a sign of indirect or direct discrimination. Higher rates of part-time female workers could also be due to choices related to family responsibilities and thus are more difficult to assess (International Labour Organization, 1999).

## SOURCES OF INFORMATION

There are far more resources on gender discrimination than on other forms of discrimination, particularly when it comes to quantitative indicators. This is not very surprising, both because women constitute half the global population and because other forms of discrimination are usually context-specific. In addition, the World Bank, ILO, and other institutions and organizations are increasingly emphasizing gender empowerment as a key contributor to economic development.<sup>8</sup> However legitimate this particular bias in international attention and data-collecting, it does make the job of assessing compliance with nondiscrimination norms on other grounds more difficult.

As for the other core standards, the ILO is a principal source of information on nondiscrimination in employment. Unfortunately, unlike the treatment of other core standards (and acceptable conditions of work), the U.S. Department of State report on human rights treats discrimination separately from these other worker rights. The U.S. definition of internationally recognized worker rights, incorporated in trade laws that condition

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<sup>8</sup>There is a large and growing literature on the role of gender-related policies in development. Among the most important are the U.N. Development Programme report cited above and World Bank (2001).

certain preferences or public assistance on worker rights (and predating the ILO Declaration on fundamental rights), lists “acceptable conditions of work,” instead of nondiscrimination, as the fourth core standard. Fortunately, the Department of State’s annual *Country Reports on Human Rights Practices* does have a section on discrimination based on “race, sex, religion, disability, language, and social status,” but since it is separate from the discussion of worker rights, the treatment of employment issues is uneven.

This section is divided into four parts: the ILO; the United Nations; other official sources, including the U.S. Department of State reports; and unofficial sources.

### **The International Labour Organization**

As detailed in Chapter 2, the ILO has a variety of reports and databases that provide information on the application of labor standards, including discrimination in employment, and on labor market outcomes. The NATLEX, ILOLEX, and APPLIS databases, along with self-reporting by member countries, provide extensive information on national laws, policies, and practices, though the country coverage is incomplete. All are searchable by convention or issue area.

*Key Indicators of the Labor Market* (International Labour Organization, 1999) is a useful source for quantitative indicators on labor market outcomes, but the data are usually disaggregated only by gender, if at all. Moreover, as with all other statistical sources, there are substantial gaps in the data for many developing countries, particularly the poorest, and there are problems with comparability across countries and within countries and in consistency over time (see discussion in Rama and Artecona, 2002).

A specific source of material on law and policy in the nondiscrimination area is a new gender-focused database created by the ILO’s Employment Branch, [e.quality@work](mailto:e.quality@work). It pulls together international, regional (mainly European Union [EU]), and national laws, guidelines, policies, and practices on gender equality in employment and occupation.<sup>9</sup> The website has links to international and national authorities that address these issues, as well as to legal and other documents. The goal is to make the database as comprehensive as possible, but it currently covers just over 40 countries and has varying amounts of information on both large and small

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<sup>9</sup>Available at <http://www.ilo.org/public/english/employment/gems/eo/> [June 6, 2003].

developing countries, including Bangladesh, China, Ivory Coast, and Jamaica.

The ILOLEX database gathers together a great deal of information from the ILO's supervisory process and makes it available in searchable form on the ILO website and on a CD-ROM. In addition to providing the texts of the ILO constitution and all conventions and recommendations in force and a list of ratifications (searchable by country or convention), ILOLEX provides other information that will be helpful in creating a database on compliance with international labor standards.

There are various documents that address compliance with specific conventions in general terms and with illustrative rather than systematic references to particular countries. This category includes periodic "general surveys" of convention implementation by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and informal interpretations of conventions by the ILO, which are issued when a member requests advice on whether a particular law is in conformity with the relevant convention.<sup>10</sup> On nondiscrimination the CEACR conducted general surveys of the application of the core conventions in 1996 (equality in employment) and 1986 (equal remuneration), as well as in the related areas of treatment of migrant workers (1999) and workers with family responsibilities (1993).

There are also reports on compliance with particular conventions by particular countries. These include reports by the CEACR and by the Conference Committee on the Application of Standards that highlight both cases of progress and cases of serious or long-standing problems. The complete reports on implementation that countries must submit to the CEACR under Article 22 are also available for research, but only from ILO files and not on the Internet. ILOLEX, however, includes reports from investigations of Article 24 and Article 26 (more serious) complaints regarding specific violations. These reports, like the Article 22 reports, can be helpful in identifying discrepancies between national laws, policies, and practices and the international standard in question, but two caveats are in order. First, they are typically only available for countries that have ratified the convention in question, in this case No. 100 or No. 111 on discrimination in employment. Second, as with other complaints-based sources of informa-

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<sup>10</sup>The office emphasizes that only the International Court of Justice can issue definitive interpretations of ILO conventions.

tion, the number or frequency of Article 24 and 26 reports should not be taken as evidence that one country is “worse” than another since the fewest complaints might be expected in situations where conditions are worst due to political repression and a lack of avenues to express dissent.

Finally, the follow-up mechanism to the ILO Declaration on Fundamental Principles and Rights at Work (discussed in more detail in Chapter 2) provides additional information. Countries that have not ratified the core conventions must submit reports annually on what they are doing to implement each of the core principles in turn (beginning with freedom of association in 2000 and concluding the first cycle with nondiscrimination in 2003). Some ILO officials believe that these reports are not serious or as useful as the Article 22 reports because they do not undergo the same degree of scrutiny by experts (Thomas, 2002). But at least these reports are posted on the ILO website, while the Article 22 reports are available only to those willing and able to go to Geneva. More potentially useful are the global reports prepared by the International Labour Office and submitted to the conference by the director-general. The first such report on nondiscrimination was released in 2003 and includes a great deal of information on sources and manifestations of discrimination in employment, as well as examples both of continuing problems in some countries and of progress in others (International Labour Organization, 2003). However, the country treatment is neither comprehensive nor systematic.

### The United Nations

The United Nations has three major sources relating to nondiscrimination that also address occupational issues. *The Human Development Report* and the Committee on the Elimination of Discrimination Against Women (CEDAW) provide information on gender-based discrimination, while the Committee on the Elimination of Racial Discrimination (CERD) addresses that set of issues.

Since 1995, the *Human Development Report* of the U.N. Development Programme (UNDP) has included information on differences in social, political, and economic outcomes by gender. In addition to the human development index, UNDP also now publishes a gender development index and a gender empowerment measure, as discussed above. The 1995 *Human Development Report* focuses on gender discrimination issues and may be useful as background material. In addition to the development

reports, the United Nations also has a website containing social indicators that can be searched based on gender.<sup>11</sup>

CEDAW and CERD reports are qualitative sources of information on national laws, policies, and practices with respect to gender and racial discrimination, respectively. The Convention on the Elimination of Discrimination Against Women has roughly 170 parties and the Convention on the Elimination of Racial Discrimination more than 120. As with ILO Article 22 reports, treaty parties are required to submit reports on what they are doing to implement the conventions' provisions (usually every 4 years). The committees that oversee implementation then review the reports at their biannual meetings and prepare their own reports with comments under such headings as, "factors and difficulties affecting" implementation, "positive aspects," and "areas of concern." Each country section in each committee's report concludes with "suggestions and recommendations." These reports could be used for countries that have ratified one of these conventions but not ILO Convention No. 100 or No. 111, or to complement ILO supervisory comments on the application of those conventions.

The CEDAW reports are supposed to include a section on equality in employment that includes a description of labor laws, basic labor market statistics, and levels of education among women in the workforce. Even a brief look of some of the country reports reveals the varied quality of the reports, however. Some are quite detailed and focused while others are more political or unfocused. Azerbaijan's initial report, for example, spent many pages blaming the problems of Azerbaijani women on the conflict with Armenia and far less on describing its own actions to prevent discrimination. In addition, as of May 2002, more than a quarter of the countries that should have submitted initial reports had not done so; many others were late in submitting required updates. The country reports, information on ratification status, and compliance with reporting requirements are available electronically.<sup>12</sup>

The Fourth U.N. Conference on Women held in Beijing in 1995 also encouraged additional reporting that could supplement the routine CEDAW reports, including providing information for countries, like the

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<sup>11</sup>See [http://www.socwatch.org/en/indicadoresDesarrollo/flash\\_content/index.html?lan=en&ind=A4](http://www.socwatch.org/en/indicadoresDesarrollo/flash_content/index.html?lan=en&ind=A4) [October 16, 2003].

<sup>12</sup>See <http://www.un.org/womenwatch/daw/cedaw/> [October 16, 2003].

United States, that have not ratified CEDAW (or the ILO conventions). In addition to national reports that were supposed to be submitted in advance of the conference, the Beijing conference declaration included a Platform for Action, requiring that each country prepare a national plan of action for achieving equality for women. In 1998, the secretary-general sent a questionnaire to member countries asking them to report on three kinds of information:<sup>13</sup>

- overall trends in implementing the Platform of Action, highlighting both major achievements and problems in implementation;
- status of implementation of national plans of action, focusing “in particular, on resource allocations and institutional arrangements; and
- policies, programs, and projects related to implementing the 12 “critical areas of concern” specified in the Platform of Action (women and . . . poverty, education and training, health, violence, armed conflict, the economy, power and decision making, institutional mechanisms, human rights of women, the media, the environment, and the girl child).

Responses to this questionnaire, as well as national action plans and other information on the implementation of the Beijing Plan of Action, and from subsequent U.N. meetings that focused on women’s rights, are accessible from the Division for the Advancement of Women section on the U.N. website. The country information page includes a summary chart showing which countries have submitted information on their national machinery for achieving equality, their national action plans, and replies to the questionnaire; it also shows when the most recent CEDAW report was examined by the committee and which countries have signed and ratified the optional protocol allowing the committee to receive individual complaints.<sup>14</sup> Finally, data on the status of women and an analysis of overall trends since Beijing are available in *The World’s Women 2000: Trends and Statistics* (United Nations, 2000), which also discusses gaps and weaknesses in the available data. This report, also available on the U.N. website, could be particularly useful to assessors who are trying to determine whether conditions in countries are improving or deteriorating.

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<sup>13</sup>Available at <http://www.un.org/womenwatch/daw/followup/question.htm> [October 16, 2003].

<sup>14</sup>See <http://www.un.org/womenwatch/daw/country/index.html> [October 16, 2003].



CERD reports also suffer from gaps and quality problems. In addition, for reasons that are not revealed, statistical annexes that could be useful are not published electronically with the reports. An online report from Italy at the committee's website lists 17 annexes at the end on issues such as migratory flows, "cases of intolerance and racial discrimination," criminal offenses "aggravated by racial discrimination," and non-EU workers by "activity of supervision" and "sectors of activity," but annexes are not attached. Finland's report states that its annexes are available in secretariat archives. It would be extremely useful if the ILO could make these annexes available electronically. Information on ratifications, reporting status, and the country and committee reports can be accessed from the CERD website.<sup>15</sup>

### Other Official Sources

As noted above, the U.S. Department of State's annual country reports on human rights include discrimination, but in a separate section that is not focused on labor rights. Moreover, as noted in Chapter 2, the country reports are variable in quality and sometimes toned down for political reasons. Because it is addressed separately from worker rights, the treatment of discrimination in employment can be particularly spotty. The chapter on Bangladesh, for example, has two full paragraphs with some detail on how the economic structure affects women, some data on labor market outcomes, and information on government programs to address these problems. The chapter on Sri Lanka, by contrast, has only two brief sentences noting that, while protected in law, women's rights at work are regularly violated in practice, with no detail or concrete examples. Still, the human rights report is one of the few sources that is comprehensive in terms of country coverage and broad in covering grounds for discrimination other than gender. While it would be useful to change U.S. law to reflect the international consensus on nondiscrimination as one of the core labor standards, the Department of State report is still an important source.<sup>16</sup>

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<sup>15</sup>See <http://www.unhcr.ch/html/menu2/6/cerd.htm#60th> [October 16, 2003].

<sup>16</sup>The absence of nondiscrimination as one of the "internationally recognized" worker rights for purposes of determining eligibility for trade preferences and financing, Export-Import Bank and Overseas Private Investment Corporation, however, does mean that investigations under those laws are generally not available as sources for assessing compliance with this standard (see Chapter 2).

The World Bank's *World Development Indicators*, available both online and on CD-ROM, provide data on some of the outcome indicators and associated factors, as well as on broader social indicators that could signal potential discrimination problems in labor markets. In addition, gender-specific data are available online.<sup>17</sup> The availability of data varies widely, but for the indicators presented in this chapter, data for at least some years are available for more than 100 countries. The data, collected by national authorities, are often based on differing definitions and are therefore not always comparable across countries. If the goal is to assess each country's compliance primarily against its own past and to determine whether progress is being made, then cross-country comparability is not a major problem, though there will still be problems with gaps in time series and with changes in definitions over time in the same country (see discussion on labor market data quality and comparability in Rama and Artecona, 2002).

National sources are crucial for filling in and ensuring the accuracy of the information on legal codes and policies promoting nondiscrimination. In addition, national sources, such as statistical abstracts or other statistical reports, are the major source for information on nongender-based forms of discrimination, at least in some cases. The United States publishes detailed economic data that are disaggregated by various groups, and many developing countries also publish extensive economic data that can be useful in this context. Malaysia's Department of Statistics, for example, publishes at least some data on population, health, education, other social indicators, and some employment outcomes by state, nationality, gender, and ethnic group. But the least developed countries are likely to be underrepresented, and even many developed European countries avoid collecting data based on race or ethnicity because of past abuses.

### Other Sources

Reports from nongovernmental organizations (NGOs) and research by academics are discussed in detail in Chapter 3. Many of the sources discussed there are also potential sources for information on discrimination issues, particularly for severe problems, but the same caveats noted above regarding coverage, depth and quality of analysis, and potential bias apply

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<sup>17</sup>See <http://devdata.worldbank.org/genderstats/home.asp> [October 16, 2003].

here as well. Also, like the Department of State human rights reports, the discrimination issues addressed in human rights NGO reports are likely to be broad-based and may not address employment issues specifically. One exception is the series of country reports to the World Trade Organization (WTO) by the International Confederation of Free Trade Unions (ICFTU), which review compliance with each of the four core standards. These reports have been prepared for 70-plus countries or regions since 1997 in parallel to the WTO's trade policy review mechanism because the ICFTU believes that mechanism should address labor standards issues.<sup>18</sup>

A number of gender-specific websites provide quite useful, if noncomprehensive information. Two that provide information on international law are described here. The International Women's Rights Action Watch (IWRAP), based at the Hubert Humphrey Institute of Public Affairs at the University of Minnesota,<sup>19</sup> has prepared "shadow reports" on 50-plus countries, supplementing these countries' own reports to the U.N. committees that supervise compliance with CEDAW and the International Covenant on Economic, Social, and Cultural Rights.<sup>20</sup> In addition to providing information to the U.N. process itself, the organization also encourages dialogue by providing a "procedural guide" for local NGOs interested in preparing and submitting shadow reports on their own countries. The guide provides advice on how to get the report from the government, how to prepare the shadow report to maximize its effects, and explains the CEDAW process and how best to get access to it. This guide could serve as a model for other official organizations, such as the ILO, and to NGOs interested in promoting information exchange and dialogue in the other standards areas.

As with most of the other reports discussed here and in Chapter 2, the

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<sup>18</sup>These reports are available in the "Trade and Labor Standards" section of the ICFTU website at <http://www.icftu.org/focus.asp?Issue=trade&Language=EN> [October 16, 2003].

<sup>19</sup>See <http://iwrw.igc.org/> [November 24, 2003].

<sup>20</sup>The International Covenant on Economic, Social, and Cultural Rights is intended to promote these rights, including the right to work, to "just and favorable conditions of work, and the right to join unions (among others), and emphasizes that these rights are to be enjoyed by all people and prohibits discrimination on the same grounds specified in the Universal Declaration. Reports submitted to the convention committee could be used to supplement the reports from CEDAW and CERD but more countries have ratified those conventions than the ICESCR (170, 165, and 146, respectively, as of December 2002) and therefore the CESCR process is not treated separately here.

IWRAW reports themselves are of variable depth and quality, but the most comprehensive can be quite useful. The reports provide general background information on the political, economic, and human rights situation in a country, sometimes including specific information on worker rights and freedom of association in particular (usually derived from other NGO sources, such as the ICFTU and Human Rights Watch). Some also highlight “critical issues” facing a country with respect to women’s rights (see, e.g., the report on Portugal). The basic template of the core of the reports follows the CEDAW reports article by article, commenting on the government’s report in each area. In some cases, there is also a section at the end that summarizes the conclusions and recommendations of other U.N. convention committees, including, where applicable, CERD and Covenant on Economic, Social, and Cultural Rights.

The second useful NGO website for information on gender issues, especially of a legal nature, is Women’s Human Rights Resources, based at the Bora Laskin Law Library of the University of Toronto.<sup>21</sup> This site provides a research guide on international women’s human rights law and describes important sources at both the international and national levels, with links to some of them. The website also has a “women’s human rights resources database” that includes summaries of and, in some cases, links to article citations, NGO reports, and official documents, including international conventions, national legislation, and case law. These sources are searchable by topic, including those of most relevance here: education, equality rights, labor and employment, property law and housing rights, slavery and trafficking, and social and economic welfare.

## CONCLUSIONS AND RECOMMENDATIONS

As discussed here and in Chapters 2 and 3, the information to assess compliance with nondiscrimination norms is all too often missing or inadequate. Action by the Department of Labor or other U.S. agencies, as well as international agencies, to strengthen data collection capacity in general in developing countries is clearly needed. In addition, however, the survey instruments and other methods used to collect labor market data need to be adapted so they do a better job of capturing potential discrimination in employment.

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<sup>21</sup>See <http://www.law-lib.utoronto.ca/diana/> [October 16, 2003].

Some countries, even though able to do so, do not collect data that are disaggregated by race, ethnicity, or other categories because they fear that it might be misused. Some groups vulnerable to potential discrimination, for example HIV-positive individuals, are also concerned about how the data might be used and whether their privacy will be respected (International Labour Organization, 2003). But employment information that is disaggregated to reflect the experience of other potentially vulnerable groups is necessary to identify problems and to develop policies to address them. The ILO director-general's global report on discrimination (International Labour Organization, 2003) notes that while efforts have been made to improve the gender sensitivity of labor market statistics, little theoretical or methodological work has been done for other kinds of discrimination. ILO or bilateral technical assistance should be provided to countries that lack the resources to collect this information or that have privacy or other concerns about how it should be used.

While data disaggregated by gender are more readily available than for other characteristics, they are still not available for many developing countries, and in many countries, they still need improvement. In fact, some of the same weaknesses with household and other surveys identified in Chapter 6 on child labor also affect the quality of gender-specific data. As with children's, surveys typically interview only the head of the household, often a male, and that person may either be unaware of or undervalue the work done by women. In addition, questions that ask women to list just primary and secondary occupations may miss work done in the household or on family farms. Women are also more likely to be classified as "unpaid family workers," even when they work alongside husbands or other family members on family farms or in family enterprises (International Labour Organization, 1999). If resources are available, one way to addressing these problems is to use time-use surveys to supplement existing data collection instruments.<sup>22</sup> Adding questions to existing household surveys to ask women themselves about the work they do would also be useful and is likely to be relatively inexpensive.

### **7-1 The committee recommends that national and international agencies cooperate in either modifying household surveys or creat-**

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<sup>22</sup>For a discussion of current weaknesses in gender-sensitive data collection and of how some countries and organizations are trying to address it, see U.N. Development Fund for Women (2003).

**ing a new system of data generation that better captures informal sector or household work that women do and that current methods often miss.**

**7-2 The committee recommends that the ILO, with U.S. Department of Labor support, assist national statistical agencies in gathering labor market information on ethnic, religious, migrant worker, or other groups that may be vulnerable to discrimination and post that information, along with other labor market information, on a public website.**

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## 8

# Acceptable Conditions of Work

The Trade Act of 2002 requires that nations provide their workers with what it calls “internationally recognized worker rights” in order to receive certain trade preferences. The act defines these “internationally recognized worker rights” as:

- 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 a prohibition on the worst forms of child labor; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The first two are, together, one of the four core labor standards of the International Labour Organization (ILO) as are the next two. Missing is the standard to eliminate discrimination. The last item on this list, “acceptable conditions of work,” originally entered U.S. law in the Trade and Tariff Act of 1984 and is not a core labor standard. The committee uses this term with its three components, even though full compliance with the components would not necessarily result in “acceptable” working conditions in the everyday usage of the term.

Acceptable conditions of work differs fundamentally from the core international labor standards in two respects (Hagen, 2002). First, world

leaders agreed in 1995 and 1998 that all nations, regardless of their level of development, should support and make good faith efforts to achieve four core international labor standards (see Chapter 1). There is no comparable international consensus supporting a defined set of standards governing working conditions. Second, reflecting this international consensus, a large majority of the 175 member nations of the ILO has ratified the eight ILO conventions on the four core international standards (see Table 8-1). Ratification of an ILO convention is an imperfect measure of a nation's commitment to international labor standards, and some countries that have not

TABLE 8-1 The Four Core International Labor Standards

Four Fundamental Principles	Corresponding ILO Conventions	Convention Ratifications as of June 6, 2003 (of 175 ILO members)
Freedom of association and effective recognition of the right to collective bargaining	No. 87: Freedom of Association and Protection of the Right to Organize (1948)	142
	No. 98: Right to Organize and Collective Bargaining (1949)	152
Elimination of all forms of forced or compulsory labor	No. 29: Forced Labor (1930)	161
	No. 105: Abolition of Forced Labor (1957)	159
Effective abolition of child labor	No. 138: Minimum Age (1973)	125
	No. 182: Worst Forms of Child Labor (1999)	138
Elimination of discrimination in respect of employment or occupation	No. 100: Equal Remuneration (1951)	161
	No. 111: Discrimination (Employment and Occupation) (1958)	159



TABLE 8-2 Major ILO Conventions on Wages, Hours, and Health and Safety

Convention	Number of Ratifications as of June 6, 2003 (of 175 ILO members)
<b>Minimum wages</b>	
No. 26 (1928), Mechanisms to set minimum wages	103
No. 99 (1951), Mechanisms to set minimum wages in agriculture	53
No. 131 (1970), Mechanisms to set minimum wages, especially in developing countries, and considering needs of workers and their families and level of economic development	45
<b>Hours</b>	
No. 1 (1919), 8-Hour day, 48-hour week	52
No. 14 (1921), Weekly day of rest for industrial workers	117
No. 30 (1930), 8-Hour day, with 10 hours allowed in special circumstances, 48-hour week	30
No. 47 (1935), 40-Hour week	14
No. 52 (1936), Holidays with pay—superseded by No. 132 (1970)	54
No. 101 (1952), Holidays with pay in agriculture	46
No. 106 (1957), Weekly rest in commerce and offices	62
No. 132 (1970), Holidays with pay, revised	33
<b>Health and safety</b>	
No. 155 (1981), Occupational safety and health	40
No. 161 (1985), Occupational health services	22
No. 174 (1993), Prevention of major industrial accidents	9

NOTES: Many additional ILO conventions address working conditions for particular groups of workers (e.g., No. 79, night work of young persons) and particular industries (e.g., No. 167, safety and health in construction). Several conventions also address particular hazards (e.g., No. 162, asbestos; and No. 170, chemicals). All of these have low ratification rates.

ratified the core conventions have equivalent legal provisions. Nevertheless, as shown in Table 8-2, the smaller number of ratifications of ILO conventions on working conditions suggests there is less international agreement on wages, hours, and working conditions than on the core labor standards.

When launching the “Decent Work” campaign in 1999, ILO Direc-

tor-General Juan Somavia emphasized the importance of creating jobs in countries at various levels of development (Somavia, 1999, p. 3):

In order for work to be decent, there must first be work. Employment creation is already the first political priority worldwide; it must now become the first economic priority. Unemployed people know well one basic reality: there are few workers' rights without work.

Reflecting the lack of consensus on any uniform wage levels around the world, Somavia has continued to emphasize the need to create jobs within a broader context of economic development. For example, in a report to the 2001 International Labour Conference, Somavia called on each member nation of the ILO to set its own goals for reducing its deficit of decent work within the context of a "dynamic development strategy" (Somavia, 2001). At the same time, however, he emphasized that the four core international labor standards are to be applied uniformly, stating that "the principles and rights of the ILO Declaration are valid everywhere." (Somavia, 2001, p. 7).

## DEFINITIONS

To define "acceptable conditions of work," the committee first examined the legislative history of the term and then considered several alternative interpretations.

### Legislative History

The Trade Act of 2002 does not define "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health," and no regulations defining these terms have been promulgated. Because the 2002 law continues worker rights provisions that were originally approved by Congress in 1984, it is useful to look at the history of that law.

When Congress inserted the phrase "internationally recognized worker rights" in the 1984 Trade Act, it did not draw from established international law. U.S. foreign relations law does refer to "internationally recognized *human* rights" (emphasis added) and recognizes some worker rights (such as the prohibition of slavery) as human rights (Potter, 2003). However, U.S. foreign relations law recognizes only those labor rights that vio-

late a human right common in all legal systems and does not refer to any internationally recognized worker rights.

The Senate Finance Committee Report on the Omnibus Trade Act of 1988 offers<sup>1</sup> some insight on what Congress meant by “internationally recognized worker rights”:

The particular worker rights and standards specified by this provision . . . are each covered by conventions of the International Labour Organization ratified by a large number of countries which in turn are bound to uphold and enforce its provisions. For example, with respect to the right to organize and bargain collectively, 113 countries have ratified International Labour Organization Convention Number 98.

Finally, the legislative history suggests that acceptable conditions of work might vary with a nation’s level of development. The House Ways and Means Committee wrote, “It is recognized that acceptable minimum standards may vary from country to country” (U.S. House of Representatives, Ways and Means Committee, 1983). The conference report states, “It is the intention of the Conferees that this definition of internationally recognized worker rights [the list of rights included in the Trade and Tariff Act of 1984 and most recently in the Trade Act of 2002] be interpreted to be commensurate with the development level of the particular country” (U.S. House of Representatives, Ways and Means Committee, 1984).

### Alternative Interpretations

One possible interpretation of the intentions of the U.S. Congress is that acceptable conditions of work are those provided by widely ratified ILO conventions, perhaps by at least 100 nations. Following this interpretation, those working conditions governed by ILO conventions ratified by at least 100 nations would be “acceptable.” Based on this interpretation, U.S. government officials might consider a nation as providing workers with “acceptable conditions of work,” if there is a mechanism to set a minimum wage, as called for in ILO Convention No. 26, and industrial workers receive a weekly day of rest, as called for in Convention No. 14. As

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<sup>1</sup>The provisions of this act, which allow the United States to retaliate with higher tariffs against a nation that gains competitive advantage by systematically denying basic internationally recognized worker rights, have never been implemented.

shown in Table 8-2, these two conventions have been ratified by more than 100 nations.

A second interpretation of acceptable conditions of work would be based on the facts that, as discussed in previous chapters, a nation's decision to ratify an ILO convention does not necessarily mean that that nation's workers enjoy the rights embodied in that convention and that a nonratifying country may enforce domestic laws that ensure workers enjoy those rights. If so, one could interpret acceptable conditions of work as those conditions that a large number of countries have affirmed *either* by ratifying a relevant ILO convention *or* by enforcing equivalent provisions in domestic law. Under this interpretation, the U.S. government would not only look at the status of ratification of ILO conventions, but also examine national laws to see whether they contain similar provisions governing wages, hours, and occupational safety and health. Common international norms in ratifications or laws would become the standard for assessing acceptable conditions of work. For example, although only 52 nations have ratified ILO Convention No. 1, providing for a 48-hour workweek (see Table 8-2), a much larger group of 138 nations has legislated regular working hours of 48 hours or less, and 96 nations have daily overtime limits (see Table 8-3). Following this interpretation, the U.S. government might find

TABLE 8-3 Laws on Hours of Work

Maximum Regular Workweek	Number of Countries
48 hours	53
More than 44, less than 48 hours	16
44 hours	17
More than 40, less than 44 hours	8
40 hours	42
Less than 40 hours	2
Total countries with 48 hours or less	138
Daily overtime limits	
4 hours	32
3 hours	19
2 hours	40
1 hour	5
Total countries with daily overtime limits	96

SOURCE: International Labour Organization (1995, p. 337), available at <http://www.ilo.org/public/english/protection/condtrav/pdf/1995digest.pdf> [October 2003].

it acceptable if a nation meets this international norm by legislating and enforcing a regular workweek of 48 hours.

In the committee's view, long workweeks do not necessarily indicate that working conditions are not acceptable in the ordinary usage of the term. As the committee was preparing this report, the South Korean government briefly proposed that the standard workweek be reduced from 5 1/2 to 5 days. At first, organized labor strongly supported this change. However, once unions learned that the law would have reduced weekly pay proportionately, they quickly withdrew their support. In this case, and in others, workers may prefer longer workweeks.

A final interpretation of acceptable conditions of work is that a condition is judged to be acceptable or not with reference to some external standard. For example, the United States has official poverty lines for families of different sizes. By this external standard, a wage level that does not provide a worker and his or her family with wages above the poverty line might be deemed unacceptable. Because this issue is so important, both with regard to ILO conventions and with regard to the U.S. Department of State's reports, the next section of the report deals specifically with it.

### **Challenges in Defining an Acceptable Minimum Wage**

Defining an acceptable minimum wage level, or a "living wage," in various countries is particularly difficult because of the challenge of finding a common basis across countries and over time. For example, in India, an official committee concluded in 1954 that a living wage,

should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but a measure of frugal comfort including education for the children, protection against ill health, requirements of essential social needs and a measure of insurance against the more important misfortunes including old age (Government of India, Ministry of Labour, 1954, p. 7).

To carry out these recommendations, the Indian Labour conference assumed that a family included the wage earner and three dependents, with corresponding specific food, clothing, housing, and fuel requirements.

However, even ignoring the gender bias in the assumption that only the male earns wages, other assumptions may not accurately reflect reality. In India, the majority (52 percent) of those who worked in 1999-2000

were self-employed as workers (often unpaid) in family farms, informal enterprises, or as artisans and traders. Because they do not earn wages, a living wage does not apply. Another third of India's work force in 1999-2000 were casual workers, often employed by the day. Enforcing a living wage for these workers would be impossible as a practical matter. Finally, available data from household surveys indicate that the assumptions made in 1957 about number of dependents, food, clothing, and other needs are no longer correct.

A U.S. Department of Labor (2000) study of wages and workers' needs in the apparel and footwear industries in 35 developing countries, found:

For the countries considered, there appears to be little conclusive evidence on the extent to which wages and non-wage benefits in the footwear and apparel industries meet workers' basic needs.

The Department of Labor noted that "opinions vary widely" on such question as whether a single wage earner should be expected to support the entire family, how many dependents would be supported, and whether income from other sources should be considered.<sup>2</sup> In addition, nonwage benefits account for a substantial portion of average compensation costs in some developing nations. Finally, even if it had been possible to account for all of these factors to establish a correct "living wage," a lack of high quality, comparable data on minimum wages and on prevailing or average wages in the footwear and apparel industries hampered the analysis. The authors concluded:

For several countries where data are available, the minimum wage (and in a few more countries, the prevailing wage in the footwear or apparel industries) may yield an income above the national poverty threshold for an individual (and perhaps one dependent, but not for a family of 4 or 5 with one wage-earner). However, whether this wage is a "living wage" is likely to lie in the eye of the beholder.

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<sup>2</sup>There is an extensive academic debate about both the potential benefits of requiring employers to pay a "decent wage" or "living wage" and the possibility that such a requirement might discriminate against certain groups of workers, regions, or countries (see, e.g., Moran, 2003; Srinivasan, 2001).

### Department of State Definitions

The Trade Act of 2002, in reauthorizing the Generalized System of Preferences (GSP) Program, requires that the President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country (19 U.S. Code, Sec. 2464). Before its amendment in 2002, the law was more specific, requiring the Secretary of State to submit to Congress:

. . . a full and complete report regarding the status of internationally recognized human rights . . . in countries that receive assistance . . . and in all other foreign countries which are members of the United Nations and which are not otherwise the subject of a human rights report under this Act (The Trade Assistance Act of 1974, as amended).

As required by these laws, the Secretary of State has submitted annual reports on countries' human rights and worker rights practices since 1977. The first reports covered only the 82 countries that received U.S. aid at that time, but by 2001 reports were prepared on 195 countries (see U.S. Department of State, 2002).

For the purpose of preparing these reports, the Department of State Bureau of Democracy, Human Rights, and Labor has defined acceptable conditions of work (U.S. Department of State, 2002, Appendix B):

“Acceptable conditions of work” refers to the establishment and maintenance of mechanisms, adapted to national conditions, that provide for minimum working standards, that is: wages that provide a decent living for workers and their families; working hours that do not exceed 48 hours per week, with a full 24-hour rest day; a specified number of annual paid leave days; and minimum conditions for the protection of the safety and health of workers. Differences in the levels of economic development are taken into account in the formulation of internationally recognized labor standards. For example, many ILO standards concerning working conditions permit flexibility in their scope and coverage. They also may permit governments a wide choice in their implementation, including progressive implementation, by enabling them to accept a standard in part or subject to specified exceptions. Governments are expected to take steps over time to achieve the higher levels specified in such standards. However, this

flexibility applies only to internationally recognized standards concerning working conditions. The ILO permits no flexibility in the acceptance of the basic human rights standards, that is, freedom of association, the right to organize and bargain collectively, the prohibition of forced labor, and the absence of discrimination.

The bureau has expanded on this definition in a memo to U.S. embassies providing guidance for the preparation of the annual country reports. The guidance memo for preparation of the 2001 reports asked posts to address the following questions on acceptable conditions of work (U.S. Department of State, 2002):

- **Minimum Wage:** Is there a legislated or administrative minimum wage rate (set nationally, or by province or industry) and, if so, are there significant parts of the workforce outside of its coverage? What is the (hourly or daily) rate in U.S. dollars?

- Is it effectively enforced?
- By which agency?
- Given the level of economic development in the country, does it provide a decent standard of living for a worker and his/her family?

- If there is no national minimum wage, posts should indicate whether the average wage provides a decent living for a worker and family.

- **Standard Language:** Posts must use or adapt the following language: “The national minimum wage (average daily wage) provides (does not provide) a decent standard of living for a worker and family.

**Note:** In addition to stating the minimum wage in U.S. dollars, give the local currency equivalent in parentheses. For example: “The daily national minimum wage is \$5.55 (24 francs).” (If national standards are set in accordance with hourly or weekly, rather than daily minimum wage rates, adapt this language accordingly).

- **Hours of Work:** Is there a standard legal workweek of 48 hours or less?

- Is there at least one 24-hour rest period provided per week?
- How effectively are such laws/regulations enforced?
- Are there legal limits on hours per week?
- Does the law require overtime payment for hours in excess of the standard?
- Are there prohibitions on compulsory overtime?



- **Health and Safety:** Does the government set occupational health and safety standards?
  - Are they effectively enforced?
  - By what agency?
  - Do any workers suffer physical or sexual abuse?
- **Right to Remove:** Do workers have the right to remove themselves from work situations that endanger health or safety without jeopardy to their continued employment?
  - Do laws protect workers who file complaints about such conditions?
  - What preventive measures, if any, has the government taken when industrial accident rates are unusually high or where well-known occupational health problems exist?
- **Foreign Workers:** Does the law protect (legal) foreign workers? Are illegal foreign workers protected from exploitation by the law?
  - Do they receive equal treatment in terms of wages and working conditions?
  - Are they concentrated in certain geographical areas or industries?
  - Does the situation of domestic and/or foreign workers (especially those without documentation) in effect amount to coerced or bonded labor? If so, why and to what extent?
  - Are a significant percentage of the foreign workers children or trafficking victims? (If so, briefly indicate the extent of the problem.)

### Working Definitions

To carry out workers' rights provisions in trade laws and trade agreements, the U.S. government reviews worker rights in other countries. Any interested person may file a petition with the U.S. Trade Representative (USTR) requesting action to remove GSP trade benefits because of alleged violations of internationally recognized worker rights (U.S. Code, Title 19, Chapter 12, Section 2412). When it receives such a petition, the USTR conducts an initial review. If it believes the allegations have merit, USTR convenes the Trade Policy Staff Committee (TPSC), made up of representatives from the Departments of State and Labor and other interested agencies, to conduct a formal review. The USTR also convenes the TPSC to conduct formal labor rights reviews when the United States enters into negotiations about a free trade agreement with another country. At other times, such as when a country receives designation as a GSP beneficiary,

USTR gathers information and reviews the country's labor rights informally.

Interviews with current and former TPSC participants indicate that the group often relies on the definition of acceptable conditions of work developed by the U.S. Department of State for use in preparing the *Country Reports on Human Rights Practices*. They do so both directly and indirectly. Directly, the definition helps to assess whether or not working conditions are acceptable. For example, if the country's laws allowed working hours to exceed 48 hours per week, it is possible that the TPSC would find this unacceptable (although this is unlikely, as the TPSC recognizes that labor standards may vary with a country's level of economic development). Indirectly, the TPSC relies on the Department of State's *Country Reports* as a prime source of information, and these *Country Reports* are based on the even more detailed guidance questions listed above. At other times, the TPSC and other branches of the government interpret acceptable conditions of work to mean that a nation enforces its own labor laws (this is the second alternative interpretation noted above).

The USTR currently uses this approach in carrying out the labor provisions of the U.S.-Cambodia Bilateral Textile Agreement, signed in 1998 as part of a larger bilateral trade agreement. The textile agreement calls for the government of Cambodia to improve working conditions in the textile and apparel sector "including internationally recognized core labor standards, through the application of Cambodian labor law" (Trade Compliance Center, 1999). During the 1998 trade talks, U.S. negotiators knew that Cambodia's labor laws had undergone a comprehensive 3-year revision with ILO assistance and provided the internationally recognized worker rights included in U.S. trade law. Thus, the textile agreement calls for the application of Cambodian labor law as the way to achieve acceptable conditions of work and core labor standards.

Under the textile agreement (which was later extended through 2004), the United States reviews labor conditions in the textile and apparel sectors annually and may increase U.S. imports by as much as 14 percent if the review is positive. Following its initial review of labor conditions in December 1999, the U.S. government allowed imports to increase 5 percent, in recognition that Cambodian factories had made progress toward compliance. The United States offered additional quota increases if Cambodia would allow the ILO to monitor its textile and apparel plants, and Cambodia agreed after the United States provided technical assistance funding to Cambodia's labor ministry, as well

as most of the cost of establishing an ILO monitoring project. Since 2000, ILO staff and local inspectors have monitored conditions at 195 Cambodian textile and apparel factories. These inspectors measure compliance with Cambodian labor laws. In this case, then, acceptable conditions of work are assumed to be those conditions that are guaranteed by Cambodia's own labor laws. As shown in Table 8-4, those conditions are quite similar to those required by the U.S. Department of State's definition of acceptable conditions of work.

TABLE 8-4 Department of State Definition of Acceptable Conditions of Work and Cambodian Labor Law

Acceptable Condition	Provisions in Cambodian Law
Wages that provide a decent living for workers and their families	The minimum wage for the garment sector is \$45 per month for regular workers, \$40 per month for workers on probation, and \$30 per month for apprentices. If a piece rate worker falls below \$45 per month, the employer must make up the difference. The law also provides for seniority bonuses, overtime pay on nights and weekends, and a meal allowance.
Working hours do not exceed 48 hours per week, with a full 24-hour rest day and a specified number of annual paid leave days	Hours of work cannot exceed eight hours per day, or 48 hours per week. Overtime must be voluntary. Weekly time off shall last for a minimum of 24 consecutive hours. All workers shall be given in principle a day off on Sunday.  All workers are entitled to 18 days of paid annual leave after 1 year of service. In addition, the Ministry of Labor has declared 24 paid public holidays for 2002, with work on those days to be paid at twice the normal rate.
Minimum conditions for the protection of the safety and health of workers	All establishments must maintain working conditions necessary for workers' health and must guarantee the safety of workers.

SOURCE: International Labour Organization (2001).

Although Cambodian laws, if adequately enforced, appear capable of providing most of the requirements of the Department of State definition of “acceptable conditions of work,” there is one important difference. In enforcing the trade agreement, USTR follows the ILO review, and this review focuses on enforcement of Cambodia’s wage and overtime laws, without considering whether such laws provide a “decent wage.” Following its stricter interpretation, the U.S. Department of State’s review of wages in 2001 found, “prevailing wages in the garment sector . . . were insufficient to provide a worker and family with a decent standard of living” (U.S. Department of State, 2002).

In the three reports on Cambodian textile and apparel workers completed to date, monitors have found only a few violations of core labor standards prohibiting child labor and forced labor. However, each report has found problems of incorrect payment of wages and extensive, involuntary overtime (Sibbel, 2002). Because Cambodia has made progress, but has not yet reached full compliance with “acceptable conditions of work,” the U.S. Trade Representative allowed Cambodia’s export quotas to increase 9 percent in 2000, 2001, and 2002, rather than the full 14 percent possible under the Cambodia Bilateral Textile Agreement (American Embassy Cambodia, 2002). In early 2002, the United States and Cambodia negotiated a 3-year extension of the trade agreement, including the export increase incentive for compliance with international labor standards.

### **Committee Interpretation of Acceptable Conditions of Work**

The committee recognizes that the U.S. government does not use a single interpretation of acceptable conditions of work. Using alternative interpretations has the benefit of allowing the government to interpret the law flexibly, as called for by the legislative history. The Department of State definition, incorporates many elements that are also found in ILO conventions and are often found in national laws and regulations. However, actually determining on a country-by-country basis whether or not they meet the standards of wages that provide a decent living for workers and their families is problematic. As indicated in the Department of State’s guidance memo to embassies, Foreign Service officers around the world are expected to make judgments about whether wages in their host nations provide a decent living. Over the past decade, the number of Foreign Service officers with specific training and responsibility to deal with labor issues has declined (Advisory Committee on Labor Diplomacy, 2000). Even those who

have some training are unlikely to be able to accurately access data on average nationwide wage levels and determine whether those levels provide a “decent living.”

The committee proposes the following minimum, tractable, easily identifiable, and comparable list of indicators of acceptable conditions of work:

- a mechanism exists to establish minimum wages (based on ILO Convention No. 26);
- the regular workweek is 48 hours or less (based on ILO Conventions No. 1, 30, 47 and on widespread national law);
- the nation has and enforces a law providing for a specified number of paid holidays days each year for covered workers (based on ILO Conventions No. 52, 101, 132);
- all workers in covered jobs receive a full day of rest every 7 days (this expands ILO Convention No. 14, which applies only to industrial workers); and
- there is a mechanism for setting health and safety standards (ILO Convention No. 155).

The committee recognizes that, unless a large share of the labor force is covered by these provisions, compliance with them might not improve the welfare of all workers to a significant extent. The committee also recognizes that it would be possible to supplement this list with additional indicators.

## ASSESSING COMPLIANCE

Because acceptable conditions of work is a construct of U.S. law, rather than a core international labor standard, measuring compliance has a somewhat different meaning. This section of the chapter discusses indicators and data to assess compliance with the committee’s proposed definition of acceptable conditions of work.

### Legal Framework

The committee proposes 19 indicators on the legal framework governing wages, hours, and health and safety:

A-1. ratification of ILO Convention No. 131 on minimum wage fixing machinery;

A-2. national constitution or law establishing one or more minimum wages;

A-3. application of the minimum wage law or laws (to whom do the minimum wage law/laws apply? Do the legal minimums vary by geographic region, economic sector, and/or by establishment size?);

A-4. minimum wage level(s) specified in the law (in local currency and in U.S. dollars and, if possible, adjusted using the World Bank's Purchasing Power Parity exchange rate for the local currency);

A-5. ratification of ILO Conventions No. 1, 30, or 47, limiting the regular workweek to 48 hours or less;

A-6. national constitutional or legal provision for a regular workweek of 48 hours or less;

A-7. the coverage of laws limiting the regular workweek (e.g., only establishments of a certain size, only those in certain industrial sectors or regions);

A-8. provision in national laws or regulations for overtime beyond the regular workweek;

A-9. ratification of ILO Convention No. 14, providing a weekly day of rest;

A-10. provision in the national constitution or law for a weekly day of rest;

A-11. ratification of ILO Convention No. 101, providing paid holidays for workers in agriculture;

A-12. provision in the national constitution or laws for paid holidays for agricultural workers;

A-13. ratification of ILO Convention No. 52, providing for an annual paid holiday of at least 6 days;

A-14. ratification of ILO Convention No. 132, providing for an annual paid holiday of at least 3 weeks (supersedes C. 52);

A-15. provision in national laws/constitution for a specified number of paid holidays for employed workers;

A-16. ratification of ILO Convention No. 81 on labor inspection;

A-17. provision in national laws for inspection of workplaces;

A-18. ratification of ILO Convention No. 155 on a mechanism to provide health and safety; and

A-19. provision in the national constitution or laws for workplace health and safety.

### **Government Performance**

The committee proposes 13 indicators of government performance. Government performance is indicated based on the presence (or absence) of the following:

- B-1. a mechanism for fixing minimum wages;
- B-2. an agency to promote and enforce laws governing hours of work;
- B-3. an agency to promote and enforce laws protecting occupational safety and health;
- B-4. a labor inspectorate;
- B-5. the breadth of labor inspections in the country (number and frequency of visits, geographic regions, or industry sectors inspected);
- B-6. the level of resources (e.g., personnel, pay, or budget) devoted to the labor inspectorate;
- B-7. a labor inspectorate trained to and focused on wages, hours, and occupational safety and health standards;
- B-8. an administrative or judicial complaint mechanism;
- B-9. effectiveness of the complaint mechanism (in such terms as number of complaints brought compared with number of complaints heard, number of prosecutions, fines, or arrests, and length of time for complaint resolution);
- B-10. government programs to combat problems in the areas of wages, hours, and occupational safety and health;
- B-11. government-sponsored education programs focusing on wages, hours, and occupational safety and health;
- B-12. government receipt of international technical assistance in the areas of wages, hours, and occupational safety and health; and
- B-13. government support for NGO activities designed to improve compliance with wage, hour, and occupational safety and health laws.

### **Overall Outcomes**

The committee proposes five indicators of outcomes:

- C-1. average and median manufacturing wages compared with minimum wage(s) in local currency and in U.S. dollars;
- C-2. average earnings in industries that export to the United States;
- C-3. average hours worked per week;

C-4. number of work-related fatalities per 100,000 workers, both overall and by industry sector; and

C-5. number of occupational injuries, both absolute and as a fraction of the total workforce and the workforce covered by health and safety laws.

## INFORMATION SOURCES

To assess a country's legal framework on minimum wages, hours, and occupational health, an assessor may first turn to sources at the ILO. The ILO regularly updates its NATLEX database, with bibliographic references and full texts of national labor, social security, and human rights laws and regulations. NATLEX currently includes the laws of approximately 175 countries, along with 50 territories, provinces, or states. Each entry is available in either English, French, or Spanish (the three working languages of the ILO). The assessor may turn to another ILO resource—the ILOLEX database—for information on the extent to which a nation's wages, hours, and health and safety laws comply with related ILO conventions that the nation has ratified. Within ILOLEX, the comments of the ILO Committee of Experts on the Applications of Conventions and Resolutions, which focuses on comparing national labor laws and regulations with ratified conventions, are a particularly useful resource. In addition to ILO sources on national labor law, many research libraries around the world maintain online databases of national laws and regulations, including labor laws.<sup>3</sup>

Country reports to the United Nations under the International Covenant on Economic, Social, and Cultural Rights provide another useful source of information on laws and their enforcement governing wages, hours, and occupational health and safety. Many nations routinely prepare reports that address working conditions (as well as other matters) to the U.N. Committee on Economic, Social, and Cultural Rights under this covenant. These country reports are available to the public through the United Nations website.<sup>4</sup>

Nearly a decade ago, Behrman and Rosenzweig (1994, p. 167) examined education and employment data from around the world and reported:

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<sup>3</sup>For example, national laws are available from the University of Chicago at <http://www.lib.uchicago.edu/~lhou/foreign^law/html>.

<sup>4</sup>See [http://www.unhcr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhcr.ch/html/menu3/b/a_cescr.htm) [November 24, 2003].



There is a serious problem in comparability in aggregate employment statistics that may affect inferences about the size of and trends in the labor force and its productivity . . . data gaps are systematically related to the level of a country's development.

In their article, Behrman and Rosenzweig noted that the ILO, which was (and still is) the primary source of such aggregate data, had acknowledged that its aggregate data were not necessarily comparable across countries or over time (International Labour Organization, 1991, p. xi). These problems reflect the fact that the ILO did not (and still does not) collect primary data in the field. Instead, the ILO compiles global data bases from data provided by various nations' National Statistical Offices (NSOs). Although the ILO develops guidelines, provides technical assistance, and holds regular meetings with these offices, it has only limited influence on their data collection methods. At the most basic level, NSOs define "employed" or "economically active" differently, varying in the extent to which they include workers in family enterprises, the time period required to be considered employed, and the ages of workers included.

Today, the lack of accurate, comparable aggregate data on wages, hours, and health and safety continues. Rama and Artecona (2002) have developed a global database of labor market indicators across countries including several indicators of compliance with International Labor Standards. The authors note that available data are plagued with problems and are usually not comparable across countries. To create the database, they went through hundreds of individual, country-level data sets, selecting those indicators they felt most accurately reflected each country's labor market conditions.

Given these data problems, an ideal assessment of compliance with acceptable conditions of work would use country-level data sources to inform the indicators listed above. However, the assessor would need to carefully evaluate each national data source, selecting only those that used similar definitions and survey methods if the data were to be used to compare compliance across countries. For example, "national" data on wages and hours, to inform overall outcome indicators C-2 and C-3 above are often derived from surveys limited to large firms in the formal sector. In Korea, data on wages are based on surveys of firms with more than 10 employees, excluding the many individuals who are self-employed or working in small family enterprises. These data are much less representative of the average national wage than are U.S. data on average wages, which are based on

regular monthly surveys of a broad national sample of U.S. households. Similarly, data on hours of work in Argentina are available for only one region of the country—Greater Buenos Aires (International Labour Organization, 1995), and employment data for Brazil is based on surveys that exclude the rural population in the northern part of the country (Behrman and Rosenzweig, 1994).

It was not possible, within the real-world constraints of time and resources, to take this ideal approach. The committee could not assess the quality of the various surveys or censuses that NSOs in different countries use to collect primary national data on wages, hours, and working conditions. Instead, the committee chose to draw on aggregate data sources to develop our set of compliance indicators. Most national-level data (including those related to acceptable conditions of work) are applicable only to a specific country, using a country-specific definition. These national level data may or may not be comparable within countries over time, and they are often not comparable across countries. Rather than excluding data that do not meet a strict set of quality criteria, it is important to document each indicator and record the drawbacks as fully as possible, allowing users to judge the quality for themselves.

The general problems with labor market data from developing countries also pose a challenge to accurately assessing occupational health and safety in developing nations. Outcome indicators C-4 and C-5 above require data on injuries and fatalities resulting from work, but accurate data on work-related injuries are particularly difficult to obtain. Researchers have found that occupational injuries and illnesses are systematically underreported, even in the United States, a developed nation with both extensive health and safety regulations and expertise in surveys and statistics, (Azaroff et al., 2002). At the ILO, experts developing indicators of “decent work” have chosen to focus only on occupational fatalities because of the limited reliability of data on occupational accidents and diseases (Hagen, 2002). In addition to fatalities, their indicators include the number of labor inspections (indicator B-5, above), the number of employees covered by occupational injury insurance, and an indicator of “excessive hours of work.”

Although these data problems pose a challenge to accurately measuring wages, hours, and health and safety conditions in developing countries at any given time, measuring improvement or deterioration in compliance with acceptable conditions of work is even more difficult because definitions, sampling frames, and questions often change over time. For example, in India, the census definition of a worker was changed between the 1961

and 1971 population censuses and again in the 1981 census (Srinivasan, 1994). Thus, an assessor who wants to determine whether a country is making progress or going backward in wages, hours, and working condition must carefully examine the sources of data to determine whether they are comparable over time. Only a few developing countries—including Taiwan, Indonesia, Costa Rica, and Brazil—obtain data on wages and conditions of work through household surveys using consistent questions and a consistent sampling frame over time (Fields and Bagg, 2003).

## CONCLUSION AND RECOMMENDATIONS

The committee concludes that the U.S. Department of State's requirement for "wages that provide a decent living for workers and their families" is difficult to make operational.

**8-1 The committee recommends, based on its development of indicators for the database, that the U.S. government develop and use a common definition of acceptable conditions of work. At a minimum, this definition should identify a nation's working conditions as fulfilling the "acceptable conditions of work" clause in U.S. trade law if that nation has:**

- a mechanism to establish minimum wages,
- a regular workweek of 48 hours or less,
- a specific number of paid holidays each year for covered workers,
- a provision that all workers receive a full day of rest every 7 days, and
- a mechanism for setting health and safety standards.

**8-2 The committee recommends examining whether funds for household surveys could be more efficiently used by designing fewer, more comprehensive household surveys.**

**8-3 The committee recommends analysis of approaches to combining data from household surveys with data from administrative records (such as payroll data).**

**8-4 The committee recommends that a team of experts in statistics, industrial relations, labor law, and labor market economics**

**conduct case studies to assess the data needs of a small number of countries.**

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## 9

# Human Capital and International Labor Standards Compliance

In previous chapters the committee has explored definitions, indicators, and sources of data related to core labor standards compliance in order to develop an integrated and comprehensive monitoring system. In addition to this work, the U.S. Department of Labor requested that the committee, as part of its charge, explore the relationship between labor standards compliance and national policies related to human capital issues. The committee focused its work on exploring the extent to which investments in human capital create capacity within nations to comply more effectively with core international labor standards. The committee has interpreted its charge to explore the extent to which investments in human capital create capacity within nations to comply more effectively with core international labor standards. This examination is a critical piece of the international labor standards debate because human capital is an important factor in understanding the socioeconomic context in which these standards operate.<sup>1</sup>

Although human capital and labor standards compliance are much studied topics in and of themselves, the linkage between the two represents a new and unique field of investigation. Investments in human capital, or

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<sup>1</sup>Other factors are important in understanding the socioeconomic context in addition to human capital (e.g., social capital, political participation, and international market integration). While the committee's charge only *specifically* addresses the linkage with human capital, these factors are included in the committee's database as background information.

the lack thereof, can be an indicator of a failure to comply with labor standards, as discussed in the chapter on child labor. Human capital investments have also been cited in previous chapters as associated factors with respect to other labor standards, such as elimination of discrimination. Investments in human capital may also represent a tool for compliance with labor standards, and this compliance in turn may result in greater investments in human capital and an increase in the development capacity of a country.

In the committee's analysis, human capital includes both formal education—that is, primary, secondary, and tertiary education offered through traditional schooling—and nonformal education and training that may be available to both children and adults. Nonformal programs may include, for instance, vocational training, apprenticeships, literacy programs, and other programs by which both children and adults can obtain learning and job skills.

Because this chapter explores new territory, it differs from previous ones: rather than exploring definitional issues and data sources and quality, it reviews empirical work on education, training, economic development, and labor standards and presents ideas for future research. A framework of human capital measures is offered as a means of assessing a country's level of investment in education and training. In contrast to the indicators in previous chapters which are proposed as tools for measuring compliance toward core labor standards, the measures in this chapter provide contextual background that links with the core standards.

This chapter focuses on the role of human capital as a catalyst in improving observance of core international labor standards. It reviews the empirical work on the measurement of direct and indirect effects of education on labor standards; proposes a broad framework of educational indicators to assess educational attainment in a country; and lays out a research agenda in broad terms to explore the linkages between human capital and labor standards compliance, particularly in developing countries.

While this chapter focuses on the linkage in terms of human capital investment enhancing labor standards compliance, the relationship can also be examined in the other direction—in terms of labor standards being a form of human capital investment. Workers with the right to unionize and bargain collectively might fight for more or better quality education and training. Groups who are free from discrimination or forced labor have equal access to education and training and greater incentive to invest in their own human capital. Children who attend school regularly become

more productive workers as adults (Betcherman, 2003). The concepts presented in this chapter lay the groundwork for future analysis about the role of human capital in labor standards compliance.

## **THE DEVELOPMENT CONTEXT FOR LABOR STANDARDS**

Human capital investment is an important factor in the development context and affects labor standards directly and indirectly through at least five channels:

(1) At a macro level, education is a critical source of economic growth and development. The level of economic development, in turn, is closely correlated with compliance with labor standards. It is widely observed that, on average, the higher the level of economic development, the better is the level of compliance.

(2) At a micro level, investment in education and training increases productivity and personal earnings over a lifetime. Differences in wage earnings are explained largely by differences in the level of education and skills. In addition, working conditions improve substantially as production moves from lower skilled processes to higher skilled ones. In their own self-interest, companies improve working conditions to attract and retain better workers, so as to ensure quality control and productivity.

(3) Schooling and other forms of education can help to lower the incidence of child labor. In a number of developing countries, targeted enrollment subsidies have been used as an effective way to break the cycle of poverty and illiteracy by addressing both the income loss to parents and education for children.

(4) By strengthening the civic institutions and democratization, higher educational attainment in a country raises the level of awareness of human and workers' rights and helps workers form effective coalitions with other segments of society to ensure enforcement of labor standards. With freedom of association, worker organizations can develop in which individuals develop leadership and entrepreneurial skills and learn the value of cooperation and trust through democratic processes.

(5) The education and training of all stakeholders in the system improves enforcement mechanisms through enhanced capacity and understanding. In addition to workers, stakeholders include employers, managers, and government officials (i.e., labor inspectors).



The effects of human capital through channels (2), (3), and (5) are direct on wages, working conditions at the plant level, child labor, and plant and organizational efficiency. The effects through channels (1) and (4) are indirect. Higher educational attainment creates an environment that is conducive to growth, broader economic development, and democratization. These, in turn, are closely associated with better observance of labor standards. The indirect effects operate with longer time lags.

Central to the issue of advancing labor standards compliance is an understanding of the causes of noncompliance and the development of interventions to affect positive outcomes. Betcherman (2003) offers a conceptual framework for understanding the polar views in this debate. At one extreme of the spectrum, he argues, is the legalist view that sees regulation as a three-stage process, i.e., the design, monitoring, and enforcement of standards through national or international law. From this perspective, enforcement is the missing link in the regulatory chain. One of the limitations of this perspective is that it does not take into account the informal sector. Between 30 and 90 percent of the workforce in developing countries is in the informal sector, essentially beyond the reach of any legal protections, either in the form of court actions as individuals or in collective agreements with employers. At the other extreme of the spectrum, he argues, is the economic view. Compliance is seen as a result of economic development. From this perspective, a demand for better labor standards will be created once a country has reached a certain level of development, so the appropriate strategy is to encourage economic growth. One of the limitations of this perspective is that it does not adequately address the costs of making the transition from a poor country with bad labor conditions to a rich country with good labor practices.

Given the limitations of these polar views, Betcherman (2003) argues for a third perspective that builds on the legal and economic arguments to include the development context. He states:

[W]hile realizing the objectives of the core labor standards requires legal enforcement and economic growth, that is not enough. It also requires a more complex, and in a sense, proactive focus on the development context including an understanding of the causes and determinants of non-compliance and consideration of how policies and interventions can change the context, change the incentives, and change the outcomes.

The committee finds this perspective useful in looking at the evidence on human capital and development.

## ROLE OF EDUCATION

### Education, Growth, and Economic Development

There is a vast macro economic literature that examines the relationship among educational attainment and economic growth and the measurement of social returns to educational investment. For example, Mingat and Tan (1996), in estimating social returns to education based on countries' economic growth performance, conclude that investments in human capital through formal education can produce high economic returns to society (see also Psacharopoulos, 1994). Their analysis demonstrates that social returns to educational expansion varies by a country's income level, with highest social returns in primary education for low-income countries, in secondary education for middle-income countries, and higher education for high-income countries.

A recent paper by Castelló and Doménech (2002) further examines the influence of human capital distribution on economic growth. The authors provide new human capital inequality measures to analyze inequality and economic growth for a broad number of countries. The results from this study suggest "human capital inequality negatively influences economic growth rates not only through the efficiency of resource allocation but also through reduction in investment rates" (Castelló and Doménech, 2002, p. 3).

Hanushek (2002) and Hanushek and Kimko (2002) emphasize the importance of school quality on economic growth. In his analysis of international science and mathematics assessment scores, as a measure of cognitive skills, Hanushek (2002) finds a positive relationship between test scores and both individual productivity and economic growth. "One standard deviation difference on test performance is related to one percent difference in annual growth rates of per capita GDP [gross domestic product]" (Hanushek, 2002, p. 12). The effect of such differences on growth rates is very large: Hanushek notes that 1 percent higher growth over a 50-year period yields incomes that are 64 percent higher. He concludes that higher educational achievement is associated with faster growth of a nation's economy.

There are a number of studies that shed doubt on the relationship of human capital to economic growth. These studies, which use time-series, cross-country data on education and the labor force, have been questioned on grounds of data quality, particularly comparability and coverage

(Behrman and Rosenzweig, 1994). Behrman and Rosenzweig demonstrate the flaws in educational investment data, such as problems with enrollment rates and the lack of data on school quality. They also note that “. . . if the interest is in education as opposed to schooling, . . . nonschooling forms of education (e.g., training) are not included in the measures usually used” (Behrman and Rosenzweig, 1994, p. 153). They conclude that the use of weak empirical data to draw conclusions about development can be misleading and that investment in data quality would substantially improve understanding of the determinants and consequences of development.

More recently, Krueger and Lindahl (2000) have examined the effects of measurement error on basic results for a number of the studies that conclude that increases in educational attainment are unrelated to economic growth. Their findings indicate that, once measurement error in education is accounted for, change in years of schooling is positively associated with economic growth. Their analysis addresses some of the concerns raised regarding data quality, but further work is required to address country-level infrastructure for data collection and to formulate measures for nonschooling education.

Pack (2003) argues that the low payoff to education in developing countries may be explained by the absence of complementary and simultaneous characteristics, such as local innovation, imports of new foreign technology, and a relatively competitive environment. He examines the Nelson-Phelps (see, e.g., Nelson and Phelps, 1966) view that education has its greatest effect when rapid technological change challenges workers and managers to understand and adapt the innovation to local conditions. Pack cites research from a large sample of factories in Ghana, Kenya, and Zimbabwe that shows no productivity benefit from the presence of highly educated managers and workers because of the long-term use of static technologies that workers have learned how to use effectively:

Given that the firms are incapable of obtaining foreign exchange for the import of new technological elements (such as technology licenses or new equipment), the presence of educated personnel has no benefit. The firms lack of new inputs reflects in turn bad economic policies that limit the ability of the country to earn foreign exchange (Pack, 2003, p. 2).

Yet, Pack concludes that this evidence does not imply that education is unimportant:

It does suggest that education or human capital more broadly may not solve the problems of nations unless many complementary characteristics are simultaneously present—local innovation, imports of new foreign technology, and a relatively competitive environment (Pack, 2003, p. 2).

The relationship between core labor standards and economic performance, in particular on foreign direct investment, seems relevant. A recent publication from the Organisation of Economic Co-operation and Development (OECD) (2000) explores a number of studies that suggest that respect for core labor standards increases economic efficiency and foreign direct investment. A recent study by Kucera (2002) explores the ways in which worker rights may affect that investment by facilitating human capital development and political and social stability. He finds no evidence to support the argument that countries with more child labor and greater gender inequality have a comparative advantage in attracting foreign direct investment. Kucera argues that the effects of worker rights on such investments are multifaceted. “That is, the effects of worker rights may be transmitted not only through the labor cost-labor productivity nexus, but also through the enhancement of political and social stability (particularly through freedom of association and collective bargaining) and levels of human capital (particularly regarding child labor and gender inequality)” (Kucera, 2002, p. 63).

Although the relationship between human capital and economic growth remains controversial, evidence exists to support a link between the two. Clearly, human capital is an important factor in understanding the socioeconomic context in which labor standards operate.

### **Education, Earnings, and Working Conditions**

The microlevel research in this field investigates private rates of return on investment in education by examining the correlation between educational attainment and increased productivity and earnings over a lifetime. The OECD (2001a) reports that an additional year of education is associated with raised earnings of, on average, between 5 and 15 percent. In a study of labor income inequality in urban Bolivia, regression results indicate that each year of education is associated with an increase in earnings of approximately 10 percent, implying that a worker who has attained the mean level of education (9.5 years) earns 147 percent more than a worker without education (Fields et al., 1998). Fields and colleagues conclude:

“. . . education accounts for between seventy and eighty percent of the inequality of labor income [explained by their model of decomposition analysis for sources of income inequality] implying that education is the most important place to look to reduce poverty” (1998, p. 12). In addition, Carneiro and Heckman (2002) argue that early investment in human capital has an effect on higher returns in the future. They demonstrate the importance of the early years in developing abilities and motivations that affect learning and foster productivity. They state that cognitive and noncognitive deficits emerge early and, if uncorrected, lead to low-skilled adults.

In determining the returns to education it is important to recognize that individuals who stay in school longer may have other characteristics, such as unobserved ability, that would result in higher wages. If this unobserved ability is correlated with measured years of schooling and not taken into account, the estimated returns would be too high. However, as detailed in Griliches (1977), once one also takes into account problems with measurement error associated with measuring years of schooling that would bias the returns to education downward, the two biases cancel each other out. Although this issue continues to be debated (see, e.g., Behrman and Rosenzweig, 2002; Organisation for Economic Co-operation and Development, 2002, Chapter 5), more recent research that takes advantage of “natural experiments” to estimate the returns to education as detailed in Krueger and Lindahl (2001) concludes that education is an important determinant of individual income and that unobserved ability does not appear to cause upward bias in the return to education. In particular, the returns to the most disadvantaged appear to be the highest.

Learning and training affect working conditions, too. Using evidence from operations of foreign investment in export processing zones in the Philippines, the Dominican Republic, and Costa Rica, Moran (2002) compares treatment of workers in very low-skill-intensive production, such as garments and footwear, to the treatment of workers in slightly higher-skill-intensive operations, such as electronics, auto parts, and other industrial products. The results indicate that as investors move from low-skill to higher-skill operations they are forced to institute good worker-management practices and improve the treatment of workers substantially to attract and retain better workers so as to ensure quality control and productivity. An interesting finding of Moran’s study is the strong spillover effects of this transformation. It occurs not only in the newer and more sophisticated plants, but also in older plants and in those engaged in low-skill operations as well.

Moran's study shows that there is a high payoff to governmental support for elementary and high school or vocational training programs in attracting foreign direct investment and moving foreign operations from low-skill to higher-skill operations. The higher-skill operations pay wages two to five times those of low-skill occupations and have far superior human resource management policies, including access to health care, child care, and evening classes. When low- and high-skill foreign direct investment plants coexist, there is an empirically observable tendency for the more advanced investors to insist that the investors in low-skill operations improve their worker treatment to pull the standards up to the higher level (Moran, 2002). Given that education and training affect earnings, productivity, and working conditions, the question becomes how does human capital investment affect labor standards compliance.

### Education and Child Labor

While human capital investment may be related to compliance across *all* the labor standards, the standard with which the linkage is most clear is child labor. Unlike the other standards, human capital investment is already one of the key policy interventions of the International Labour Organization (ILO) in reducing the incidence of child labor. In the committee's proposed list of indicators on child labor (see Chapter 6) the main process indicator is schooling, under which other indicators, such as the availability of schools, quality of schools, enrollment ratios, student-teacher ratios, and remediation programs, fall.

The committee maintains that investment in schooling and other forms of education may help to lower the incidence of child labor. This argument is borne out by the academic literature on child labor in two ways. First, investment in human capital addresses some of the root causes of child labor, in part through breaking the "child labor trap." The trap is created when a child with no skills becomes a low-wage-earning adult. Then, because of poverty, the adult has to send his or her children into the labor force, thereby depriving them of an education. The cycle has a negative effect at both the household level, carrying poverty forward from one generation to the next, and the national level (Basu, 1999).

At the microlevel, investments such as targeted enrollment subsidies offer a way to break the vicious cycle of poverty and illiteracy by addressing both the income loss to parents and the education of children. Examples include *bolsa escola* in Brazil, PROGRESA in Mexico, and Food-for-Education in Bangladesh. These programs provide stipends to poor families to

keep their children enrolled in school. PROGRESA, for example, distributes educational grants to poor families every 2 months, the level of support determined in part by what a child would earn in the labor force. Grants are slightly higher for secondary school girls, who may be more likely to drop out at earlier ages. The benefits are given exclusively to mothers, recognizing that they are more likely to use resources to meet the immediate needs of their families. Initial analysis of PROGRESA shows a positive effect on the welfare and human capital of poor rural families in Mexico (Skoufias and McClafferty, 2001).

Investments in nonformal education programs provide basic literacy and teach job skills, usually in a setting near where children work outside of working hours. "By scheduling classes at night, or bringing teachers to where children are working, nonformal education can reduce the opportunity cost of time spent learning" (Stern, 2003, p. 4). They may be particularly effective in reaching working children who live and work apart from their families, such as street children, populations that would not be served by targeted enrollment subsidies.

Bhima Sangha, in Karnataka, India, is an example of a program that provides education for local political involvement. It is one of the few organizations that has been created *by* working children, with the main goal of unionizing working children, to strengthen their voices and to fight exploitation at the political level. The educational curricula offered include vocational training, literacy, and civic education designed to meet the needs of working children. Stern (2003) notes that these types of programs do not eliminate child labor directly. The larger goal, as viewed by the nongovernmental organizations that promote them, is to give children a space and support to reflect on and analyze their situation to empower them to become active agents in their own development.

At the macrolevel, it has been recognized that an outright ban on child labor in developing countries can harm the poor, particularly the working children, because it fails to address the root causes of child labor (Grootaert and Patrinos, 1999; Ravallion and Wodon, 1999). Bans might actually exacerbate the child labor problem by driving children underground, into the worst forms of child labor. Torres argues that trade sanctions are another counterproductive intervention for a number of reasons (National Research Council, 2003). First, child workers are often employed in rural agriculture and therefore not exposed to trade. Second, sanctions may only serve to aggravate the child labor situation because they ignore one of the root causes, poverty. If interventions do not go hand in hand with education programs and family income support, they are likely to fail. Indeed, in

several cases in recent years, threats of consumer boycotts or of trade sanctions have stimulated the negotiation of multistakeholder agreements that removed children from work, provided them with educational or other rehabilitative services, and maintained support for trade in clothing, soccer balls, and cocoa (Elliott and Freeman, 2003).

Barriers to enforcement of interventions are another complicating factor. Basu (1999, p. 1090) argues that “it is more effective to legislate for compulsory education instead of simply banning child labor” in part because it is easier to monitor a child’s presence in school than a child’s absence from work. Thus, the promoted policy interventions have focused on providing education. For example, international organizations, including the World Bank and the United Nations, are promoting the “Education for All” initiative that calls for providing primary education for all children by 2015.

Investments that affect adult literacy and education also affect child labor. One of the most influential household determinants of child labor is parents’ education and their participation in the labor force (Grootaert and Patrinos, 1999). Ray (1999) examines the role of parents in child labor decisions, comparing data from Pakistan and Peru. In Pakistan, household poverty results in reduced schooling for children, especially girls. In Peru, however, poverty does not reduce schooling. Ray attributes the difference in part to Pakistan’s lack of schools, but he also argues that the value a parent puts on education is an important factor in the overall equation. The data also reveal differences in child labor hours in response to adult wages in each country. Child labor hours for girls are reduced significantly as adult male wages increase in Peru; rising adult female wages have a large and significantly positive effect on labor hours for girls in Pakistan. Ray concludes that findings from both countries reveal the positive role that increasing adult education, especially mother’s education, can play in child labor and child schooling. “A large and sustained investment in adult education and schooling infrastructure is a necessary condition” (Ray, 1999, p. 22) to keep one generation’s lack of education from causing the next to remain uneducated.

In sum, the research and policy interventions discussed above that are designed to help eliminate child labor link human capital issues with the child labor standard. Experts, including those from the ILO, recognize that compliance with child labor legislation cannot be effectively enforced if measures do not take account of human capital investments. Therefore, the long-term solution to the causes of child labor must include investment in



both parental and child education. The social effects of such investment are described below.

### **Education, Democracy, and Empowerment**

Education is also a tool of emancipation and the key to achieving wide political and social rights, including more representative government, the eradication of child labor, and basic trade union rights. Education makes this possible by empowering people and by creating the skills needed to assess and monitor government actions. It also creates the demand to be heard. Constitutions, legislation, and international treaties may provide the judicial backing for civil, political, and human rights, but education amplifies the “voice” through which rights can be claimed and protected (Watkins, 2000).

Using data from 78 countries in East Asia, sub-Saharan Africa, Latin America, and the OECD, McMahon (1999) tests the relationship between education and democracy and human rights econometrically in two stages. In the first stage, the effect of education (measured by the secondary education enrollment rate) is estimated on the degree of democratization (represented by the Freedom House Index of Civil Liberties). The author concludes that “. . . the dependence of democratization on the growth of per capita income is very robust. But the expansion of secondary education at the leading edge of this not only contributes to growth indirectly, but also makes a robust direct contribution to democratization” (McMahon, 1999, p. 101).

The author then estimates the effect of education on the level of observance of human rights. Human rights, measured by the Freedom House index, include freedom of assembly and free trade unions. The results show that the direct effects of education on the expansion of human rights are positive but not strong. However, the results also reveal that progress of human rights, including free trade unions, is also dependent on democratization and economic growth, which in turn are associated with prior secondary education. This indicates existence of significant social-benefit externalities from education.<sup>2</sup>

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<sup>2</sup>McMahon (1999) also shows empirically the critical importance of education in improving other dimensions important to the quality of life, such as good health, reduction in poverty and inequality, improvements in political stability, a sustainable environment of forests, wildlife, air, and water, and less violent crime (see also Behrman and Stacey, 1997, on the social benefits of education).

### **Compliance Mechanisms Through Stakeholder Education and Training Workers**

Marshall (2003) further describes the importance of freedom of association and the right to collective bargaining to human capital formation. Unions and other associations are learning processes, through which individuals develop leadership and entrepreneurial skills and learn the value of cooperation and trust through democratic processes. He argues that unions play a major role “. . . as a force for high value added economic strategies that increase the demand for educated labor” (Marshall, 2003, p. 27). They can counteract income inequalities that impede human capital formation. Collective bargaining and labor-management cooperation are learning processes facilitated by information sharing. Marshall cites joint apprentice training programs as an example of how labor and management can cooperatively overcome problems that the parties could not solve independently.

Meehan describes worker training programs sponsored by the U.S. Agency for International Development (USAID) that further exemplify the relationship between labor standards and human capital (National Research Council, 2003). USAID views trade unions as incubators for democracy and provides education and training to promote labor rights. An economic literacy program in Brazil, for example, educates workers about basic economic theory through practical application. This program helps workers understand the economic consequences of negotiating for higher wages, striking, and lobbying the government regarding its position in international organizations. Thus, workers are better informed about their rights and the choices they make.

#### *Management*

Management training is a mechanism to overcome two causes of non-compliance with labor standards, ignorance and incompetence. Schrage argues that managers are often ignorant of labor law and of labor standards that exist, or should exist, in their home market or supply chains and ill-equipped to implement steps toward compliance because of incompetent management systems and poor education (National Research Council, 2003).

The ILO provides training to managers about core labor standards through its collaborative work with the U.N.'s Global Compact. Two elements of the training include making the business and moral case for stan-

dards and implementing the principles in practice. In the business case, trainers discuss the link between good labor practices and improved productivity. This module includes showcasing practices from the ILO field offices to demonstrate successful initiatives. The “principles to practice” module is designed to equip managers with action planning tools to design solutions. Urminsky notes that the module addresses the general lack of knowledge about workers rights in practice (National Research Council, 2003). For example, the ILO training team finds that managers rarely think about discrimination in terms other than gender. In their experience, managers are not aware of ethnic or political discrimination. The problem-based training helps managers work through real-life situations to resolve, for example, anti-union discrimination. In order to ensure sustainability, the ILO builds training capacity within employer groups and industry associations in a train-the-trainer approach. This type of training addresses the ignorance and incompetence described by Schrage that lead to non-compliance.

### *Government*

Another key stakeholder group is the government ministry in charge of labor inspection. Schrage explains that government officials have to have a much better sense of training and education to know how national laws interact with management practices (National Research Council, 2003). This interaction can help managers develop appropriate systems for compliance with international core labor standards.

Von Richthofen (2003) characterizes labor inspectorates as organizations that are often poorly performing, stagnant, and staffed by officials who lack a clear purpose or motivation. He argues that training is the single most important tool in building a more efficient and effective organization through improved performance. He writes:

Training is the instrument of choice to bring about change in an organization. It is the main management strategy used to transfer knowledge, develop skills, change attitudes, and impart a set of organizational and societal values (Von Richthofen, 2002, pp. 110-111).

A comprehensive training strategy should be well organized and relevant to the organization’s needs. He argues that the wrong kind of training is probably worse than no training at all. Low-performing inspection systems tend

to allocate few resources to training, with little understanding of its central role as a management tool. High-performing systems, on the other hand, tend to make considerable investment in training that operates under a well-organized and regularly reviewed policy.

## **EDUCATION MEASURES**

The critical importance of human capital investment for observance of labor standards requires an assessment of educational attainment to identify the main weaknesses in the education system and suggest steps to improve it. To help make such an assessment, the committee proposes a framework of human capital measures in four broad groups: children and youth, adults, allocation of public resources, and awareness of rights. Unlike previous chapters, these data are not direct measures of compliance with core labor standards. Rather, they are presented as complementary factors to the indicators of compliance discussed in previous chapters, to provide socioeconomic contextual information, recognizing that the linkages between human capital and labor standards compliance can go in both directions.<sup>3</sup>

### **Children and Youth**

The population of young people in a country represents its future labor force. The degree to which a country invests in the human capital of its youth affects national development and the economy, as described above. The child labor trap perpetuates the cycle of children with no skills becoming low-wage earning adults who go on to send their young children into full-time work. Human capital investment is a key component in breaking this cycle of poverty and illiteracy.

To assess the degree to which a country is investing in human capital of youth, the committee proposes five measures.

- **Compulsory schooling:** A country's laws requiring children of certain ages to attend school represents its commitment to promoting education. In addition, measures of compliance regarding the abolition of child

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<sup>3</sup>Definitions and data sources in the database draw on work by the Organisation for Economic Co-operation and Development (2001a), the World Bank (2002), and the United Nations Educational, Scientific and Cultural Organization (2003).

labor relate the laws governing minimum age of work with compulsory schooling laws (see Chapter 6).

- Size of school population: This measure represents the potential demand for education/training and renewal of the workforce.
- Net enrollment, at the primary and secondary levels, by gender and ethnicity: This measure of the percentage of the relevant age group attending primary and secondary schooling demonstrates the extent to which children are in school. The distribution by gender and ethnicity provides information about the differences between boys and girls and different ethnic groups in educational opportunities and investment, which partly relates to the nondiscrimination standard.
- Gross enrollment ratio at the primary level: This is the total number of students enrolled at the primary level of education, regardless of age, expressed as a percentage of the population corresponding to the official school age of primary education in a given country. This ratio may be higher than 100 percent because total enrollment includes students above and below the primary school age, as well as repeaters.
- Participation and completion rates of higher education: Participation rates in tertiary education are a measure of high-level skills and knowledge acquisition. Completion rates are an indicator of the current production rate of higher-level knowledge by a country's education system. These measures relate to the development and maintenance of a highly skilled labor force.

### Adults

Adults represent the existing labor force population in a country. A well-educated work force is critical for economic and social development and contributes to a country's capacity to meet or even exceed labor standards. To measure the degree to which a country is investing in the human capital of adults, the committee proposes three measures.

- Participation in continuing education and training: This measure shows the extent of skills maintenance and upgrading for the workforce.
- Educational attainment: This measure is the percentage of the adult population by highest level of education completed through secondary school in total and by gender and ethnicity. It provides a quantitative measure about the amount of schooling a population receives and is the most commonly used proxy to measure human capital.

- **Illiteracy rates:** This measure is a proxy for the performance of the national education system. This measure also provides information about the human resource capacity within a country in relation to their potential for growth and contribution to development and quality of life.

### **Allocation of Public Resources**

Allocation of resources is a good indicator of country's priorities. The emphasis here is on the public (budgetary) resources because information about private resources in the education sector is not available in most countries. The committee proposes three measures.

- **Public expenditure on education relative to GDP:** This measure serves as a point of reference for the volume of educational spending in relation to size of national wealth.
- **Public expenditure on education relative to total budgetary expenditure:** This measure serves as a proxy for the extent to which countries value education relative to other sectors.
- **Public educational expenditure per student:** This measures the resources devoted to prepare each student for life and work and serves as another proxy for quality of education.

### **Awareness of Rights**

Monitoring compliance with labor standards depends a great deal on workers' awareness of rights and their ability to act on those rights. With respect to freedom of association, for example, workers who are aware of protections under national legislation to form unions and bargain collectively will be more likely to act on those rights. To what extent does education and training, then, impact on compliance? Important indicators to consider, as described in previous chapters, include the extent to which governments promote education programs or campaigns related to freedom of association, forced labor, equality, and child labor.

## **RECOMMENDATION AND RESEARCH AGENDA**

**9-1 The committee recommends research at the micro and macro levels to explore the mutually reinforcing links between the investments in education and training labor standards compliance.**

Although evidence exists to substantiate the linkages between human capital investment and labor standards compliance, the limited amount of empirical research linking the two warrants attention. The committee has been asked to suggest a research agenda as part of its charge in exploring human capital. Based on its review of the literature and discussions with experts in development and labor economics, human capital, and labor standards compliance (see also National Research Council, 2003), the committee proposes three areas for future research: the mutually beneficial linkages between human capital and labor standards, human capital indicators, and evaluation of best practices.

### **Future Research Agenda**

#### *Mutually Beneficial Linkages Between Human Capital and Labor Standards*

This chapter has provided a preliminary analysis of the links between human capital investment and labor standards compliance, focusing primarily on the investment in education and training to improve labor standards compliance. Further analysis is needed from the policy and research perspectives at the micro and macro level. Additional analysis is also needed to explore the linkage in the opposite direction. An analysis of how compliance with core labor standards promotes human capital enhancement would be useful in furthering an understanding of the linkage. What economic incentives exist to invest in labor standards as a form of human capital investment? A comprehensive analysis of human capital policy should account for the full range of institutions that produce it—families, schools, and firms (Carneiro and Heckman, 2002). This research and policy agenda must then consider policies that affect human capital formation through various institutions as it relates to labor standards. Of particular relevance would be examining the complexities of providing universal primary education in developing countries with limited resources, improving the quality of education and training, and increasing access to education and training.

#### *Human Capital Indicators*

Existing proxies for human capital are useful measures in assessing a country's level of investment in education and training. However, these

indicators are limited in many respects. Educational attainment is a common measure of the quantity of education received but it does not take into account the skills developed through nonformal education and experiential learning (Organisation for Economic Co-operation and Development, 2001b). Quality of education clearly matters in skills development. To better understand how cognitive skills and knowledge affect economic performance and labor standards, better measures of quality are needed. Indicators such as class size are limited because of the lack of analysis of cultural context. Methodological advances in large-scale cross-national assessments, such as the Third International Mathematics and Science Study (TIMSS) and the Program for International Student Assessment (PISA), have improved measures of student achievement as a proxy for schooling outcomes (National Research Council, 2002). Unfortunately, participation by developing countries has been limited, and these are the countries of most concern in terms of labor standards compliance.

The social capital research offers proxy measures related to freedom of association that are useful in theory but require survey data that is culturally relevant. Building on existing indicators and devising new ones will increase the capacity to assess how a country's level of investment in human capital affects labor standards compliance. It is also imperative to build capacity within developing countries to collect reliable data on indicators of human capital investment. Such capacity is especially important with respect to the measurement of postschool investments in human capital, such as employer-provided training. The measurement of the amount, duration, and costs of adult training is an important omission in the availability of data on investment in human capital. Although there are some data available on the amount of public expenditures on training, private expenditure for education and training is unevenly covered, and in some countries the coverage is extremely poor. It is therefore difficult to arrive at a picture of how much total expenditure is devoted to different levels of education or training, not to mention the relationship between investment and outcomes for different actors.

If current human capital measures and empirical studies capture only a limited range of human capital investments, the risk is that the policy debate will focus exclusively on those more easily (and perhaps inaccurately) measured human capital indicators. This may result, for example, in underinvestment in postschool training simply because the data to evaluate the returns to those types of investments are not readily available. Expanding the information set available to policy makers on human capital indica-



tors helps to ensure that funding is directed to the best investments, not what is just easily measured.

### *Evaluation of Best Practices*

Evidence presented in this chapter indicates that education and training programs raise the level of human capital, with positive effects on labor conditions. The question remains regarding the effectiveness of such programs. Evaluations of PROGRESA, for example, show increases in school enrollment by 10-15 percent for boys and girls ages 12-14 (National Research Council, 2003). However, child labor and school enrollment are not completely incompatible in Latin America. Children work and go to school, but the evidence shows negative effects of child labor on school progression and quality of education (National Research Council, 2003). Measuring the effect is critical to ensuring effective policies and strengthening programs; additional work is needed to develop better performance indicators, particularly with respect to nonformal education programs.

Most policy makers would agree that education is important: The issue in developing countries is funding initiatives that are most effective, given limited resources. Finding better ways to measure costs and benefits for initiatives such as "Education for All" and PROGRESA would help increase awareness of their economic impacts and tradeoffs. If one extrapolates the cost of eliminating child labor through programs like PROGRESA, which costs approximately \$80 a month, the expense is an estimated \$200 billion (National Research Council, 2003). How would policy makers evaluate the expenditures and benefits of nonformal education as an alternative? How would businesses conduct cost-benefit analyses of worker training programs? And the question of who pays remains to be addressed.

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## APPENDIX

### A

# Database Description

**W**ebMILS is a database system designed to provide convenient access to all available data indicators that relate to compliance with international labor standards. This database was designed for the U.S. Department of Labor by the Committee on Monitoring International Labor Standards during 2001-2003.

The database structure consists of a data cell for every combination of variable and political jurisdiction. To illustrate how to populate the data cells, the committee has populated the structure for a single country: South Africa. It remains for others to populate the database for all the political jurisdictions.

#### **INTERNATIONAL LABOR STANDARDS COVERED**

WebMILS provides information on the four international labor standards included in the 1998 International Labour Organization's Declaration of Fundamental Principles and Rights at Work:

- 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 in respect of employment and occupation.

In addition, in accordance with the U.S. trade law, information is provided on a fifth standard:

- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

### INDICATORS DEVELOPED

For each of these standards, the committee organized its indicators into three domains: (1) legal framework, (2) government performance, and (3) overall outcomes. A fourth domain (4) covers relevant, associated factors. Within these four domains, indicators are grouped in terms of the five primary categories:

- freedom of association and collective bargaining,
- forced labor,
- child labor,
- discrimination and equality, and
- acceptable conditions of work.

In addition, a sixth category concerns measures of human capital.

To a large extent, the committee sought to create a list of indicators that should be included, regardless of whether information on them is currently being collected. WebMILS will contain data on these indicators, which are relevant to an assessment of compliance or noncompliance with each of the five labor standards.

Many indicators are operational and data or information is currently being collected; such indicators are included in the database. For several indicators, the indicators are operational, but no data or information is currently collected; these indicators are presented with the hope that data will be available in the future. Users may notice that the same indicator appears for multiple standards. The committee's view is that a country's compliance should be judged against each standard and that some indicators are relevant for more than one standard.

## POLITICAL JURISDICTIONS

The database structure is designed to allow for an examination of many political entities. Examples of political entities are independent nation-states and territories and special dependencies (e.g., as listed in the annual *CIA World Factbook*). Over time, more and more entities and more and more data can be added to the database.

### MAIN COMPONENT: THE COUNTRY PAGE

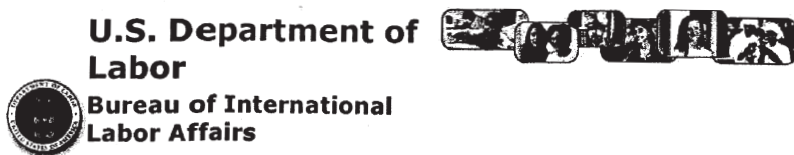
After entering WebMILS through the Home page (see Figure A-1), assessors may access data through the Country page. Using the drop down menus on the Country page, assessors may select a country of interest and then one of the five labor standards or human capital (see Figure A-2). These two selections are linked to further information on that topic, directing the user to a brief discussion by the committee on the topic that has been selected (see Figure A-3). By following the link at the bottom of the page, assessors are directed to a list of indicators (or measures in the case of human capital). From this list, (see Figure A-4), the user can select an individual variable. Doing so will open a new page, (see Figure A-5) which contains information for that specific country and variable. This page always follows the same structure, and includes:

- Definition: this is the definition of the variable.
- Assessment/discussion of indicator: here, the committee discusses the nature of the indicator, how it might be interpreted, issues, complexities, etc.
  - Information: the committee presents any information on that variable.
  - Available Sources: the committee presents a list of potential sources of information on the indicator, for this country. (Additional sources may be added later by those who are charged with maintaining the database.) For most sources, the committee identifies a link to the available data (e.g., a link to a particular agency and report, such as an ILO publication) and a link to the committee's own assessment of the source of information (see Figure A-6).
  - Further information: a place for further information. Again, additional sources may be added later and a feedback option is included for users to suggest further resources.



### **THE STANDARDS PAGE**

The Standards page (see Figure A-7) presents two types of information. Links to the full text of the eight ILO core conventions are provided here. Second, there are links to other websites of interest (either generally on the international labor standards—e.g., to the International Labour Organization—or specifically on a particular standard—e.g., the International Confederation of Free Trade Unions).



WebMILS: An On-Line Resource for Monitoring Compliance with International Labor Standards

[www.dol.gov](http://www.dol.gov)

[Search / A-Z Index](#)

[Find it!](#) | [Home](#) | [Country](#) | [Standards](#)

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## Monitoring Compliance with International Labor Standards

Welcome to WebMILS, a Department of Labor database system designed to provide quick and convenient access to a wide range of qualitative information and statistical data focusing on country-level progress toward compliance with international labor standards. This database was designed by the Committee on Monitoring International Labor Standards, at the National Academies, during 2001-2003. For more information on the Committee and its work, please [click here](#). To see the full report of the Committee, please [click here](#). Goals of the Committee included identifying indicators which would be useful for assessing compliance with international labor standards and identifying relevant sources of information.

### International Labor Standards Covered:

WebMILS provides information on the international labor standards included in the 1998 ILO Declaration of Fundamental Principles and Rights at Work, with the addition of 'acceptable conditions of work.' These are:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labor;
- the effective abolition of child labor;
- the elimination of discrimination in respect of employment and occupation; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

### [Finding Information on WebMILS](#)

#### The Committee's Approach:

The Committee organized its indicators for each standard into three categories: (A) legal framework; (B) government performance; and (C) overall outcomes. In addition, the Committee included a fourth category (D) for relevant, associated factors.

Assessing compliance along the three dimensions proposed by the committee requires consideration of both qualitative reports and quantitative data. But the quality of both types of information is uneven and research methods for measuring compliance with international labor standards and acceptable conditions of work are still in the developmental stages.

Given the emphasis on legal frameworks and government performance, qualitative sources are essential. Such sources provide on-the-ground reporting on working conditions and workers' rights. Ideally, such sources would be developed independently of the stakeholders directly involved—governments, employers, and workers—and would be prepared by experts in the field. But, as examined below, qualitative sources of information reflect the perspective of the reporters and may be biased in one direction or another. Some of these reports are complaint-driven, which can introduce selection bias, while others may be written by a committee, or skewed or muted for political reasons. They often lack consistency over time because many of these reports are ad hoc rather than regular and systematic. In developing countries with large informal sectors, both qualitative and quantitative sources are likely to be unrepresentative of conditions overall within an economy.

The order in which sources appear is roughly the order in which assessors retrieve evidence from the database to perform assessments, and the order in which subsequent efforts to fill out the database be conducted, based on criteria of independence and expertise, and ready availability of information. In populating the database, the committee focused first

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FIGURE A-1

on sources that were international, covered a majority of countries in the world, were secondary, were easily accessible electronically, and which would be relatively easy to sustain. Such sources were both quantitative and qualitative in nature. Although no source is ideal, the International Labor Organization is the obvious starting point for information on member countries' laws and practices with respect to labor standards. For countries or standards not covered by ILO sources, other official sources, such as the United Nations, require similar country reporting under other relevant international conventions, such as the Convention on the Elimination of Discrimination Against Women, that are also sometimes accompanied by third-party review. The World Bank is also beginning to pay attention to labor standards issues in its country reports, but not as systematically as the other international sources.

After international sources, other official sources at the national level can provide supplemental information. Similarly, nongovernmental organization reports are often quite detailed and can quite be useful, particularly those that cover large numbers of countries. But they will also often be subject to selection bias and, whatever the quality of their information, will be viewed with suspicion by the parties they criticize. When attempting to assess compliance with regard to any given country, NGO and other unofficial sources are most valuable, therefore, to provide complementary or contrasting perspectives for matching against other sources.

Labor market, economic and other quantitative data are also essential for assessing compliance, particularly for the indicators in the overall outcomes. Ideally, quantitative data should meet a number of criteria:

- The data were collected in an actual census or survey and are not estimates that extrapolate from data collected in earlier surveys.
- Survey recipients in the survey sample are drawn from an actual census, which permits issues of representation, selection bias, and nonresponse to be assessed and reported, which is important in judging the validity and reliability of data that emerge from the survey.
- The data are national in coverage. In some countries, labor data may be collected only for urban areas or only for limited industries. As a consequence, the data are inherently biased because not all parts of the labor force are represented.
- Survey questions are consistent over time, in order to allow assessments of trends. Any necessary changes in data definitions, survey questions, or collection methods should be fully documented.

In general, national-level data included in the database are applicable to that country using country-specific definitions. The data are often not comparable across countries, and database users are cautioned against using them in this manner. The data may or may not be comparable within countries over time. In addition, assessors using the database should be sensitive to issues related to questionnaire design, sample design and sampling error, data collection and nonsampling errors (e.g., nonresponse), and data preparation problems (e.g., the possibility of data entry errors).

The committee is not presenting this database as complete. The committee determined that it was appropriate to include some of the information in the database although it does not meet the ideal criteria. Also, there are other sources of information that have yet to be tapped, such as information collected by national statistical agencies that is not compiled by international agencies, such as the ILO. In spite of inherent weaknesses in data generated from national statistical agencies, they may be the only source of national-level data on labor practices and policies, especially for data on government performance in endorsing and enforcing labor legislation.

Additionally, local nongovernmental organizations (NGOs) may produce information on violations of a specific labor standard within a single country that has not yet been identified or entered into the database. The committee's database uses information from a number of nongovernmental organizations (NGO) on various aspects of core labor standards. NGO reports vary considerably in the validity and reliability of data reported. In addition, many NGO reports are restricted in terms of time frame, geography, and industrial focus—with some reports focusing on one manufacturing facility in one city for one time period. Many NGOs also have strong political orientations that may introduce a selection bias in the data that are published. However, NGO reports may provide early warning of an emerging compliance problem or may provide more detailed information than other sources. As a result of the potential for selection or other bias, NGO reports should be used primarily to supplement official sources and should be cross-checked with other sources.

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FIGURE A-1 CONTINUED

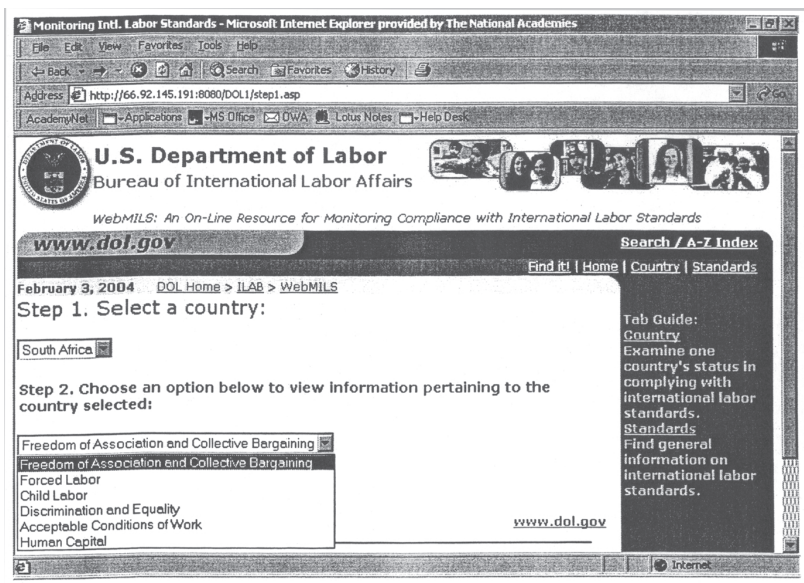


FIGURE A-2

## U.S. Department of Labor



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## South Africa

### Freedom of Association and Collective Bargaining

The evaluation of sources of information on compliance with freedom of association and effective recognition of the right to collective bargaining requires some introductory cautions and caveats. Most information that might be used to investigate compliance is likely to come from relatively large firms within the formal sector. In developing nations, such firms usually comprise a tiny proportion of all firms. As a result, for developing nations, information on freedom of association and collective bargaining is generally not based on a representative sample and cannot be used to draw inferences about the situation for workers may be treated in the overall economy. Information about governmental efforts and effectiveness in enforcing freedom of association and collective bargaining may likewise be nonrepresentative. Although evidence about enforcement might be presented as national in coverage, enforcement efforts may be limited to certain regions, economic sectors, or occupations.

[Freedom of Association and Collective Bargaining indicators](#)

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FIGURE A-3



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## South Africa

### Freedom of Association and Collective Bargaining

#### Legal Framework (International Conventions)

- [ILO 87 - Freedom of Association and Protection of the Right to Organise Convention, 1948 \(A-1\)](#)
- [ILO 98 - Right to Organise and Collective Bargaining Convention, 1949 \(A-9\)](#)

#### Legal Framework (National Laws)

- [Rights of workers or employers to establish and join organizations of their own choosing without previous authorization \(A-2\)](#)
- [Restrictions on the ability of certain categories of workers to organize \(and numbers of workers in each category\) \(A-3\)](#)
- [Certain sectors where there is no right to organize \(A-4\)](#)
- [Forms of distinction or discrimination in the right to organize \(A-5\)](#)
- [Provisions that permit the government to interfere in freedom of association by workers or employers \(A-6\)](#)
- [Restrictions on political activities of unions or employers' organizations \(A-7\)](#)
- [Protection of workers from discrimination if they join a union or participate in union activities \(A-8\)](#)
- [Protection of collective bargaining \(A-10\)](#)
- [Restrictions on the mechanism of collective bargaining \(A-11\)](#)
- [Categories of workers not permitted to negotiate a collective bargaining agreement \(and numbers of workers in each category\) \(A-12\)](#)
- [Certain sectors where there is no right to negotiate a collective bargaining agreement \(A-13\)](#)
- [Recognition of the principle of a strike as a means of action of organizations \(A-14\)](#)
- [Government restrictions on certain kinds of strikes \(A-15\)](#)
- [Government limitations on picketing or occupation of the workplace \(A-16\)](#)
- [Bans on employer lockouts \(A-17\)](#)
- [Workers' ability to ratify or reject agreements reached by union leaders \(A-18\)](#)
- [Employers' ability to dismiss striking workers or the hiring of permanent strike replacement workers \(A-19\)](#)
- [Requirements that workers join a given trade union as a condition of employment or that new workers be hired through a given trade union \(A-20\)](#)
- [Workers' and employers' organizations ability to affiliate with international bodies \(A-21\)](#)

#### Government Performance

- [Retaliation on union organizers and strikers \(B-1, B-2\)](#)
- [Government complaint process \(B-3\)](#)
- [Government interference in freedom of association \(B-4\)](#)

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FIGURE A-4

- . Independence of trade unions (B-5, B-6)
- . Government actions to combat labor-related corruption (B-7)
- . Labor Regulation Departments (B-8)
- . Government supported worker education efforts (B-9)
- . Government supported capacity-building efforts for government labor officials (B-10)
- . Government actions to promote and disseminate best practices in labor-management cooperation (B-11)
- . Government actions to hinder or facilitate labor-advocate NGOs and independent labor inspection (B-12)
- . Government actions to enable utilization of domestic and international channels for violations and problems (B-13)

**Overall Outcomes**

- . Union density (C-1)
- . Frequency, length and person-days of legal strikes (C-2)
- . Percentage of workers covered by collective bargaining agreements (C-3)
- . Incidents of discrimination against union organizers, unions, or employer organizations (C-4)

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## South Africa

### Definition:

Whether there are legal provisions that entitle workers or employers to establish and join organizations of their own choosing without previous authorization

National Research Council (2004), Chapter 4

### Assessment/Discussion of Indicator:

Turning to national laws, it may be possible to determine with relative ease whether the legal system affords freedom of association to workers. Laws that require workers to become members of government-run federations, that place extensive prohibitions on bargaining, or that ban strikes altogether or in "essential" industries so as to support a particular national economic policy are markers of a lack of commitment to freedom of association and the right to collective bargaining.

For many countries, the inspection of its laws and regulations would immediately reveal that the legal framework does not meet the principle embodied in Convention No. 87, that:

... all workers and employers, without any distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing.

Many laws exclude agricultural workers, for example, from freedom of association and collective bargaining rights, and some countries restrict or prohibit public sector workers from organizing or collective bargaining. Some countries exclude domestic workers or other workers who do not work under contracts of employment. In ILO jurisprudence, the only exceptions to the guarantees of right to organize under Convention No. 87 are the armed services and the police. Provisions prohibiting the right to organize for public servants, domestic workers, or agricultural workers, for example, have been held to be incompatible with Convention No. 87 (Tajjman and Curtis, 2000, p. 13).

National Research Council (2004), Chapter 4.

### Information for this Indicator:

#### South African Constitution

Section 18 states:

"Everyone has the right to freedom of association."

Section 23 states:

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FIGURE A-5



- (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right to form and join a trade union; to participate in the activities and programmes of a trade union; and to strike.
- (3) Every employer has the right to form and join an employers' organisation; and to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right to determine its own administration, programmes and activities; to organise; and to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).

#### Labour Relations Act (1995)

Chapter 2 addresses "Freedom Of Association And General Protections"  
Chapter 6 covers the "Registration And Regulation Of Trade Unions And Employers' Organisations"

#### **Available Sources:**

Below is a list of potential sources identified during the Committee's work. Under each source, you may select "Available Data" which is a hyperlink to the data, where available. Select "Committee's Assessment" to read about the Committee's discussion of the strengths and weaknesses of the data source.

#### **International Sources**

ILO-NATLEX

[Available data](#)

[Committee Assessment](#)

APPLIS Database: Information on ratification status, Article 22 reports and comments from the Committee of Experts on the Application of Conventions and Recommendations. (also, see Indicators on Ratification of Conventions 87 and 98)

[Available data](#)

[Committee Assessment](#)

#### **U.S. Government Sources**

U.S. Department of State

[Country Reports on Human Rights Practices](#)

2002 Report on South Africa

Section 6A provides information on The Right of Association

[Available data](#)

[Committee Assessment](#)

#### **Further Information:**

"National Labor Law Profile of South Africa" (ILO International Observatory of Labour Law, 2002)

South African Law Commission

<http://wwwserver.law.wits.ac.za/salc/salc.html>

FIGURE A-5 CONTINUED

Congress of South African Trade Unions (COSATU)

Federation of Unions of South Africa (FEDUSA)

National Council of Trade Unions (NACTU)

[!\[\]\(a870788d6ed9b8fd294b7654a8c8526b\_img.jpg\) \*\*Back to Top\*\*](#)

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FIGURE A-5 CONTINUED

**Committee's Assessment of:  
U.S. Department of State Country Reports on Human Rights Practices**

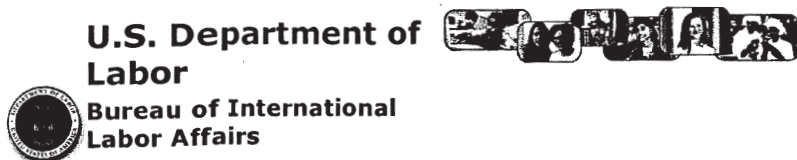
Three sets of comprehensive reporting are particularly important for assessing compliance with freedom of association and right to collective bargaining: the U.S. State Department's annual Section 6 reports on workers' rights, the International Confederation of Free Trade Unions (ICFTU) and its annual survey of violations of trade union rights, and annual reports by the ILO's Committee of Experts and Committee on Freedom of Association and "Follow Up" reporting. In a memorandum to embassies about the reports, the State Department instructs those preparing the report to first note any ILO, GSP and OPIC cases that may pertain to freedom of association in the country, as well as information in ICFTU and other NGO reports (U.S. Department of State, 2001). It then presents 15 general questions (with subquestions) on rights of association, organizing and bargaining that must be answered, with explanatory amplification. Some of the questions require reporting of facts: "Note the percentage of the total work force that is organized." "Were there legal or illegal strikes during the year? If so, how many?" "Has the government lost GSP or OPIC benefits on worker rights grounds?" Some require an assessment of laws and regulations: "Cite any categories of workers that are not permitted to join a union." "Does the law protect workers from employer interference in their right to organize and administer their unions" "Are there significant restrictions in EPZ's [export processing zones]?" Still others require State Department personnel to form a judgment "Are unions subordinate to the government, political parties, or any other political forces in law or in practice?" "Do labor administrative and judicial bodies function independently?" "Is collective bargaining freely practiced?" "Is the law effectively enforced?" It is clear that how such judgments are made are crucial to interpreting a country's compliance, making strict comparison among countries difficult. Although these Section 6 reports constitute an important resource for assessing freedom of association and right to collective bargaining, they may exhibit weaknesses relating to the inherently politically charged nature of the editing process.

**Literature cited:**

U.S. Department of State. (2001). Human rights instruction package (unpublished memo). Washington, DC: Author, Bureau of Democracy, Human Rights and Labor.

From National Research Council, 2004, Chapter 4.

FIGURE A-6



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## Standards

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- [Convention 98](#)
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### Forced Labor

- [Convention 29](#)
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### Child Labor

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FIGURE A-7

## APPENDIX

### B

# Biographical Sketches of Committee Members

**Theodore Moran** (*Chair*) holds the Marcus Wallenberg Chair at the School of Foreign Service, Georgetown University, where he teaches and conducts research at the intersection of international economics, business, foreign affairs, and public policy. He is founder of the Landegger Program in international business diplomacy and serves as director in providing courses on international business government relations and negotiations to some 600 undergraduate and graduate students each year. His most recent books include *Beyond Sweatshops: Foreign Direct Investment, Globalization, and Developing Countries* (2002) and *Parental Supervision: The New Paradigm for Foreign Investment and Development* (2001). From 1993-1994 he served as senior adviser for economics on the policy planning staff of the U.S. Department of State, where he had responsibility for trade, finance, technology, energy, and environmental issues. He is a consultant to the United Nations, to governments in Asia and Latin America, and to the international business and financial communities. In 2000 he was appointed counselor to the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. He holds a Ph.D. degree from Harvard University.

**Jarl Bengtsson** is a consultant and former counselor and head of the Center for Educational Research and Innovation at the Organisation for Economic Co-operation and Development (OECD) in Paris. At OECD, he directed a wide-ranging research program on such issues as lifelong learning, the school-to-work transition, the links between education and eco-

conomic development, and sustainable development, and he led the analysis of education statistics and indicators, particularly as they relate to analysis of human and social capital. Prior to joining OECD, he was a professor of education at the University of Gothenburg, Sweden, and adviser to the Swedish Minister of Education. He is a member of several international groups analyzing education and the economy. He has published many articles and books on education and its links to the economy and society.

**Maria S. Eitel** is vice president and senior adviser for corporate responsibility at Nike, Inc., where she provides strategic direction for Nike's corporate responsibility initiatives, including labor practices and compliance, environmental affairs, and global community involvement. Formerly she served as European corporate affairs group manager for Microsoft Corporation, where she managed corporate, public, and community affairs initiatives. Before joining Microsoft in 1995, she was director of public affairs for the Corporation for Public Broadcasting. She is a director of the Operating Council of the Global Alliance for Workers & Communities and a member of the Leaders Group of Business for Social Responsibility. She holds a B.A. degree from McGill University and an M.S. degree from Georgetown University.

**Kimberly Ann Elliott** is a research fellow at the Institute for International Economics and has a joint appointment with the Center for Global Development. Her research and writing focuses on various aspects of U.S. trade policy and, more broadly, on globalization. She has also written about the causes and consequences of transnational corruption and the efficacy of economic sanctions and trade threats. Her most recent book, with Richard B. Freeman, is *Can Labor Standards Improve Under Globalization?* (2003).

**Gary S. Fields** is a professor in the Department of Labor Economics, chair of the Department of International and Comparative Labor in the School of Industrial and Labor Relations, and professor in the Department of Economics in the College of Arts and Sciences, all at Cornell University. Previously, he was in the Department of Economics and at the Economic Growth Center at Yale University. His research interests are in the areas of poverty, inequality, and economic development, labor market models of developing countries, economic mobility in the United States and France, the microeconomics of income distribution, employment and earnings dynamics in South Africa, and labor economics for managers. His most recent

books are *Distribution and Development: A New Look at the Developing World* (2001) and, coedited with Guy Pfeffermann, *Pathways Out of Poverty* (2003). He holds B.A., M.A., and Ph.D. degrees in economics from the University of Michigan.

**Thea M. Lee** is assistant director for international economics in the Public Policy Department of the AFL-CIO, where she oversees research on international trade and investment policy. Previously she worked as an international trade economist at the Economic Policy Institute in Washington, DC, and as an editor at *Dollars & Sense* magazine in Boston. Her research projects include reports on the North American Free Trade Agreement and on the impact of international trade on the domestic steel and textile industries. She has testified before several committees of the U.S. House of Representatives and the Senate on various trade topics, and she has also appeared on the MacNeil-Lehrer News Hour, C-Span, CNN, and numerous radio programs. She holds a B.A. degree from Smith College and an M.A. degree in economics from the University of Michigan.

**Lisa M. Lynch** is academic dean and William L. Clayton Professor of international economic affairs at the Fletcher School of Law and Diplomacy at Tufts University and a research associate at the National Bureau of Economic Research and the Economic Policy Institute. From 1995-1997 she was the chief economist at the U.S. Department of Labor, and she has been a faculty member at the Massachusetts Institute of Technology, Ohio State University, and the University of Bristol. She is also a member of the Federal Economic Statistics Advisory Board and the Academic Advisory Board for the Federal Reserve Bank of Boston. She has published more than 50 papers and books on issues ranging from the impact of technological change and workplace practices (especially training) on productivity and wages to determinants of youth unemployment and the school-to-work transition. Dr. Lynch has worked extensively with issues on survey design and methodology associated with large longitudinal surveys of households and firms. She holds a B.A. degree with honors from Wellesley College and M.Sc. and Ph.D. degree in economics from the London School of Economics.

**Dara O'Rourke** is assistant professor in the Department of Environmental Science, Policy, and Management at the University of California at Berkeley. Previously, he lived and worked in Vietnam, where he continues to conduct research. He has worked for the United Nations in Thailand and

as a consultant to the U.N. Industrial Development Organization, the U.N. Development Program, the World Bank, and the U.S. Environmental Protection Agency on cleaner production, industrial ecology, and sustainable development issues. His current research focuses on systems for monitoring multinational firms' environmental and labor practices and new strategies of information-based regulation and public disclosure. He holds a B.S. degree in mechanical engineering and political science from the Massachusetts Institute of Technology and a Ph.D. degree from the University of California at Berkeley.

**Howard Pack** is professor of business and public policy, economics, and management at the Wharton School of the University of Pennsylvania. He is currently evaluating the effects of government economic intervention in selected Asian countries and analyzing productivity in African manufacturing. He is a consultant to the World Bank on industrial development policies in Asia and Africa. Previously, he was a professor at Swarthmore College and at Yale University. The author of numerous books and articles on industrialization, trade, foreign aid, and exports, he is on the board of editors of the *Journal of Development Economics* and *World Bank Research Observer*. He holds a B.A. degree in business administration from the City College of New York and a Ph.D. degree from Massachusetts Institute of Technology.

**Edward E. Potter**, an expert in international employment law, represents foreign and domestic companies, as well as the U.S. Council for International Business. He serves as the U.S. employer delegate to the annual International Labour Organization Conference and is a member of various federal panels dealing with international worker rights. He is president of the Employment Policy Foundation, a leading economic policy research organization that analyzes workplace trends and policies. He is coauthor of *Keeping America Competitive: Employment Policy for the 21st Century* (1995). He is a member of the Tripartite Advisory Panel on International Labor Standards and a member of the District of Columbia Bar and the American Bar Association. He holds a B.A. degree from Michigan State University (Phi Beta Kappa), an M.S. degree from Cornell University, and a J.D. degree from the Washington College of Law, American University.

**S.M. (Mo) Rajan** is an independent consultant. Previously, he was with Levi Strauss & Co. for over 25 years in various positions. As director of



labor and human rights issues in the Worldwide Government Affairs and Public Policy Department, he was responsible for developing policy positions related to labor and human rights and representing the company to external stakeholders, including officials in the U.S. government, governments in Central and Latin America, and selected countries in Asia, on public policy issues relating to labor and human rights issues, trade initiatives, and intellectual property protection. Earlier, he served as director of global code of conduct compliance, partnering with regional managers to implement the company's code of conduct in facilities operated by business partners throughout the world. He also spent extended periods of time in India, Argentina, Indonesia, and Singapore as operations director, responsible for starting up international company affiliates. He holds an M.B.A. degree from St. Mary's College (California) and a Ph.D. degree in chemical engineering from the University of Washington.

**Gare A. Smith** heads the corporate social responsibility and risk management practice at the law firm of Foley Hoag in Washington, DC. He advises nations and multinational companies on legal, political, and economic aspects of globalization, including the development and implementation of codes of conduct, compliance programs, and monitoring systems. Previously, he was vice president for external affairs at Levi Strauss & Co., where he supervised global implementation of Levi's code of conduct. He has also served as principal deputy assistant secretary in the U.S. Department of State's Bureau of Democracy, Human Rights and Labor; as U.S. Representative to the International Labor Organization; and as senior foreign policy adviser and counsel to Senator Edward M. Kennedy. He serves on the boards of a number of human and labor rights organizations. He holds a B.A. degree from Johns Hopkins University (Phi Beta Kappa) and a J.D. degree from the University of Michigan Law School.

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