



Monitoring Labor Rights: A Resource Manual for NGOs

Written by
Jonathan Rosenblum

Monitoring Labor Rights:
A Resource Manual for NGOs

Written by Jonathan Rosenblum

The production of this manual was facilitated and financially supported by the UK Department for International Development (DFID).

Published by the AAAS Science and Human Rights Program
1200 New York Ave., NW
Washington D.C. 20005
United States
tel: +1 202 326 6790
fax: +1 202 289 4950
email: shrp@aaas.org
<http://shr.aaas.org>

The American Association for the Advancement of Science, "Triple A-S" (AAAS), is an international non-profit organization dedicated to advancing science around the world by serving as an educator, leader, spokesperson and professional association. In addition to organizing membership activities, AAAS publishes the journal Science, as well as many scientific newsletters, books and reports, and spearheads programs that raise the bar of understanding for science worldwide.

Published by HURIDOCS
48, chemin du Grand-Montfleury
CH-1290 Versoix, Switzerland
tel. 41.22.7555252
fax 41.22.7555260
e-mail : info@huridocs.org
<http://www.huridocs.org/>

HURIDOCS (Human Rights Information and Documentation Systems, International), established in 1982, is a global network of human rights organisations concerned with human rights information. HURIDOCS champions effective documentation and information handling, including the use of information and communication technologies, as a force to defend, assert and promote human rights.

HURIDOCS Cataloguing in Publications Data

TITLE: Monitoring Labor Rights : A Resource Manual for NGOs

PERSONAL AUTHOR: Rosenblum, Jonathan

PLACE OF PUBLICATION: Washington D.C.

PUBLISHER: AAAS Science and Human Rights Program ; HURIDOCS

ADDRESS: 1200 New York Ave., NW, Washington D.C. 20005, United States

ELECTRONIC MAIL: shrp@aaas.org

DATE OF PUBLICATION: 20041200

PAGES: 118 p.

ISBN: 0-87168-703-8

LANGUAGE: ENG

BIBLIOGRAPHIES: Y

INDEX: Right to work / Labour / Workers / Working conditions / Trade unions / NGOs

FREE TEXT: This manual is part of a series on how non-governmental organisations can monitor particular economic, social and cultural rights. It describes the contents of labour rights under international law and how NGOs can use it to defend and promote labour rights, providing several examples of best practices. A basic toolkit for monitoring is described, with a sample case. Separate chapters are devoted to monitoring: the freedom of association; wages and benefits; hours of work and overtime; discrimination, harassment, and discipline at work; child labour and forced labour.

Table of Contents

Acknowledgements

Foreward

Chapter One	Monitoring Labor Rights: The long and the short of it	1
1.1	A short, not so pretty history of labor rights enforcement	3
1.2	NGOs as Global Police: How much can an NGO do?	3
1.3	Breakthroughs and obstacles in NGO labor rights promotion and monitoring	4
1.4	Constructive NGO interventions	4
1.5	Destructive NGO interventions	5
1.6	Identifying rights, seeking compliance: The raw resources	6
Chapter Two	What IS a labor right? How are they defended and promoted?	9
2.1	Introduction	9
2.2	The labor contract	9
2.3	National labor law and regulation	10
2.4	International regulations	12
2.5	Nongovernmental trends in regulation: Codes of conduct, certification, and “independent monitoring.”	16
2.6	A debate over hierarchies of labor rights	18
2.7	Identifying violations	19
2.8	What qualifies as progress towards realization of labor rights?	21
2.9	The troubling private sector-public sector divide on labor rights	22
Chapter Three	A Basic Tool Kit for Monitors	23
3.1	What do NGOs do?	23
3.2	What is labor rights monitoring?	24
3.3	What are the primary skills necessary to labor rights monitoring?	25
3.4	“CAVAR”: “Digging” is the key to basic monitoring	26
3.5	NGO monitoring: A case study in summary form	29
3.6	Some tentative conclusions	31
Chapter Four	Freedom of Association: The right to organize and collectively bargain	33
4.1	Introduction: Union monitors	33
4.2	International, national and code of conduct standards regarding the right of association	34
4.3	CAVAR methodology: “Digging” for freedom of association	42
4.4	Let’s be practical: Common worldwide violations of freedom of association	47
4.5	Measuring compliance and progress	48
Chapter Five	Wages and Benefits	50
5.1	Introduction	50
5.2	International, National and Code of Conduct Standards on Wages	51
5.3	CAVAR methodology: “Digging” for wage information	58

5.4	Let's be practical: Common worldwide violations of wage and benefit rights	63
5.5	Measuring compliance and progress.	64
Chapter Six	Hours of Work and Overtime	66
6.1	Introduction.	66
6.2	International, national and code of conduct standards regarding work and overtime	66
6.3	CAVAR monitoring methodology: How NGOs "dig" for information.	71
Chapter Seven	Discrimination, harassment, and discipline at work	78
7.1	Introduction.	78
7.2	International standards, national treatment, and codes of conduct.	79
7.3	CAVAR: "Digging" for information regarding workplace discrimination	85
7.4	Common problems in discrimination	90
7.5	Measuring progress in discrimination	90
Chapter Eight	Child Labor	92
8.1	Introduction.	92
8.2	International, national, and code of conduct standards on child labor.	93
8.3	CAVAR methodology: "Digging" for child labor violations	98
8.4	Measuring compliance and progress.	103
Chapter Nine	Forced Labor	106
9.1	Introduction.	106
9.2	International, national and private sector standards on forced labor	107
9.3	CAVAR methodology: "Digging" for forced labor issues at the "workplace"	110
9.4	Common problems in forced labor	114
Selected References	116

Acknowledgements

This resource manual for NGOs on monitoring labor rights was commissioned by the American Association for the Advancement of Science (AAAS) and HURIDOCS in 1999 from the International Labor Rights Fund (ILRF). It is one in a series of rights specific monitoring manuals that AAAS and HURIDOCS are sponsoring. Others available in the series are manuals on monitoring the rights to health and food.

The ILRF turned to Jonathan Rosenblum to draft the manual. Each of the chapters in the manual went through numerous drafts. We appreciate the author's work and willingness to incorporate the changes we requested.

A human rights manual of any kind usually has the input of many collaborators. We would like especially to express our appreciation for the hard work of Jonathan Rosenblum and to thank him for persisting with the project despite all kinds of problems, including broken fingers in the final months of drafting. We would like to acknowledge the role of two AAAS staff members, Sage Russell, a Senior Program Associate in the Directorate for Science and Policy Programs at AAAS, who commissioned the manual, and Audrey Chapman, who worked with the drafter. We are also appreciative of Molly Wade's assistance in editing the manual and Richard Huggard's contribution with the layout and formatting. Finally we would like to thank Terry Collingsworth, the Executive Director of the ILRF, for his support and assistance.

We would also like to express our appreciation for the funding from the Ford Foundation that enabled us to launch the project on developing rights-specific manuals, assistance given by the Mertz-Gilmore Foundation, and most importantly, the generous financial support from UK Department for International Development (DFID) that enabled us to complete and publish the manual.

Foreward

The proliferation of codes of conduct in the last few years was initially viewed by labor activists as a positive sign—multinational firms were ready to commit to ending sweatshops in their supply chain by improving labor standards. However, it soon became clear that implementation of these codes was, with a few exceptions, not part of the public relations exercise of launching a code of conduct. “Monitoring” became the buzzword, but there were very few examples of independent monitoring. Rather, most monitoring was a charade of self-monitoring in which companies either used in-house monitors, or hired consultants to monitor, whose weekly paychecks were likewise dependant upon a long term relationship with the company.

There were a few important pilot programs started by the exceptional companies that really did want to learn how to better ensure that workers in their supply chain were laboring under decent conditions, the most notable of which started in Guatemala. A true model of independent monitoring was launched in a Guatemalan factory, Choi Shin, which produced for Liz Claiborne. The company agreed to work with the International Labor Rights Fund (ILRF), the labor rights advocacy group of which I am currently the director, and COVERCO, a new entity founded by Homero Fuentes and established with the firm principle that post-conflict Guatemala needed models of transparent application of the rule of law. The center of this collaboration was Jonathan Rosenblum, who as an ILRF consultant, won the confidence of Liz Claiborne officials and helped to launch a monitoring regime with COVERCO that today stands alone as a model of what can be done if all the responsible parties proceed in good faith to provide honest reporting on factory conditions and then work to bring conditions into compliance with the applicable code of conduct.

One of the many byproducts of the pilot program is that much was learned and is now thoroughly documented by Jon Rosenblum in this manual, *Monitoring Labor Rights: A Resource Manual for NGOs*. The manual fills a much-needed void in the world of sweatshops and codes of conduct because the lack of real examples of legitimate programs necessarily means that there are few people who know how to go about the job of independent monitoring. The manual reflects the depth of actual experience gained by COVERCO in mastering the art of independent monitoring. Indeed COVERCO is now working regionally in Central America with other like-minded groups to develop a monitoring protocol that can be universally applied.

Jon’s manual preempts companies from claiming they would do proper monitoring if they only knew what is was. Read this manual and get a sense of the art of the possible. This is a very important first step in ending the charade that merely issuing a code of conduct means anything at all. Companies must be pressured to take the next step and develop an implementation plan that meets the standards outline in the manual. Progress is possible with a good faith effort. It is clear from Jon’s work that all of the participants began with that spirit to get over the times of doubt and end up with a program that strikes the right balance between credible monitoring and what we can reasonably expect.

Terry Collingsworth,
Director, International Labor Rights Fund
www.laborrights.org

Chapter One Monitoring Labor Rights: The long and the short of it

On July 9, 2003, a labor agreement was signed in Guatemala City between a union of mostly women apparel workers in Villa Nueva, Guatemala and a Korean-owned factory that makes clothing worn by women and men all over the world. How that contract came to be signed—after years of conflict—is an important case study in the dynamic, confusing, and challenging role that nongovernmental organizations (NGOs) can play in investigating and documenting labor conditions for workers. The goal of this manual is to remove some of the confusion and offer some instructions for NGOs who wish to help give workers a voice in their workplace.

NGO advocates for fair working conditions must work with a wide variety of tools in order help solve workplace conflicts and correct injustices. One of the reasons that NGOs seek to participate in labor rights monitoring is that local, national and international enforcement programs often fail to adequately protect workers. There are usually local laws, such as those protecting the right of a union to organize and carry out its programs, but can workers truly gain enforcement of these rights? There may be ethical codes of corporate conduct posted on the factory wall, but will workers find an independent and fair contact person with which to communicate? The national government may have even ratified or promised compliance with international rules. But, almost by definition, there is a large gap between that promise and making that international compliance language work for workers. The global economy, many say, has fostered even greater distance between those who have favorable working conditions and those who do not. Perhaps this is one reason that even economists sometimes call it the “winner-take-all” economy.

Today, there are few formal or “authorized” answers to the question of how to document, report, and get a just resolution of workplace problems. The breakdown in enforcement systems—in other words, the lack of an effective authority—is one of the reasons that this could be called the “unauthorized” guide to labor rights monitoring. We therefore offer this guide to the interested, or perplexed, NGO.

One surprising message in the Guatemala story from 2003 is that when NGOs act thoughtfully and wisely—and with information about the role of representative workers’ organizations—their actions can help solve workplace problems. In fact, NGOs cannot only help solve problems at one workplace, but they can also bring pressure for change at the local, national and even international levels. One union at one factory in Guatemala does not by any means establish a permanent success story (indeed, with each success there have been many failures, and this one is only a beginning), but the Guatemala story is instructive for other groups seeking to sharpen new tools for workers.

So what happened on July 9, 2003? In the most basic terms, several years of persistent efforts by mostly women workers at the Choi Shin and Cima Textiles factories in Villa Nueva, Guatemala led to a tense meeting between government officials, the union leadership, factory managers, and the affiliated international union representatives. Because the union leaders could document that the company had violated their rights to create their own workers’ organization, the government put pressure on factory management to agree to a first contract. This contract established wage increases and a new complaints system for the workers.

A key participant in the background of this conflict was an NGO called the Commission for the Verification of Codes of Conduct (Coverco). For several years before this important contract agreement, Coverco had been documenting labor conditions at two factories that supplied apparel to the U.S. manufacturer, Liz Claiborne. In establishing its own labor investigation branch, Coverco first created a board of leading local human rights and labor specialists. This Board then raised some funds through churches and international foundations to directly employ one (originally part-time) labor education specialist. This education specialist, Homero Fuentes, was a former public sector union leader, and he had earned the respect of both industry and worker-led organizations.

With a training and education role carried out by the authors of this manual and the Coverco leadership, Coverco gradually hired and trained several “independent monitors”—individuals with who were committed to developing and putting into practice a system of examining, evaluating, and reporting on working conditions. Coverco conducted community-based worker interviews and received complaints through confidential contacts. Coverco’s

goal was not to solve each worker's problem, but, rather to document and investigate grievances in an effort to ensure that applicable laws and internal company rules were observed. Without the effective role of Coverco, the apparel workers' voices at the Choi Shin and Cimertextiles factories probably would have been silenced at a very early stage.

How did Coverco make a difference? The monitors and directors there examined and helped test many newly available tools in the toolbox of modern NGOs. They did not have a staff attorney, and, until recently, they didn't even have a web page. Instead, they had a good library (on their book shelf and on the internet), increasingly perceptive eyes and ears, and well-organized notepads. They worked hard to make contacts with reliable sources of information; they insisted upon access to important decision makers at all levels of labor disputes. They became good at writing reports and sending them to the right people at the right time. Coverco learned by doing—and failing—and later succeeding.

When a pregnant young worker lost her child after being denied the right to immediately seek medical care (she had become ill at work), Coverco did not hire her a lawyer or become her representative. It provided the worker and her family important community information about her rights-and, with family support, she arrived at a settlement with the factory. When workers collectively came to Coverco to protest unfair overtime, Coverco did not call a meeting with management on behalf of the workers to represent the workers' grievances. It investigated and documented the allegations both to the company and in public reports that quickly were received by international NGOs and the human rights community. Its conclusions—including the story of the worker who lost her child—even appeared in an international business magazine. When the workers organized a union—and management organized a campaign of intimidation—Coverco did not coordinate the union meetings or file actions in court. It appeared at the factory, observed the events, and wrote a special, urgent report, detailing the names, dates, times, and actions of the various parties. Coverco also monitored the progress of a formal complaint in the Guatemalan labor courts, which, to the surprise of many, resulted in temporary orders of protection for the new union. Eventually, Coverco's research found its way into protest letters filed by an international union confederation at the International Labor Organization (ILO) and the Organization for Economic Cooperation and Development in Europe. A U.S. NGO filed a complaint under U.S. trade laws that led to formal expressions of concern by the U.S. Trade Representative. The documentation of the union struggle even led to a factory visit by a U.S. senator who was concerned that new trade negotiations needed to include a promise of fair labor conditions, with improved enforcement by the Guatemalan government.

In the end, Coverco and the workers utilized national labor law, local labor inspectors, corporate codes, judges, ministry officials, international mechanisms, grass roots internet networks, trade negotiation procedures, and church appeals to make the voices of these workers heard. Coverco's immediate advantage in helping to achieve these results—as compared to other types of investigators, such as corporate auditors—was that the workers trusted the monitors with sensitive information that they might not have reported to anyone else. Eventually, all of these dynamic events produced a meeting, which then produced a labor agreement between the factories and the union.

If you are an NGO representative and you read about Coverco's activities, however, you do not yet have a roadmap to your own success. Every labor context and every labor dispute is different from another. No organization should intervene in a dispute, or even propose to assist workers, without carefully seeking to understand both the general context of the dispute and the technical details of the individual problem. And NGOs must possess a degree of humility about their role: they will never be the best answer to workers (though they might be a good answer). NGOs are not usually created as democratic, representative organizations run by their members. Unions are created and nurtured by the workers themselves. However, in many cases encountered by NGOs, no representative union exists. And when such a union does exist at the workplace, it is rare, especially in the case of developing countries, that such unions are treated with mutual respect and good faith by the employers. Instead of filling the space of such a representative organization, NGOs should see their role as creating space for workers. One universal way to create space for workers is to become familiar with the context of labor conflicts and to become expert at documenting the conditions under complaint. It is worth repeating: NGOs do not get the

best results by substituting themselves for the voices of workers. They get results, and nurture the next success, by creating space for workers to represent themselves.

1.1 A short, not so pretty history of labor rights enforcement

Why are NGOs increasingly called upon to help workers? In some ways, the necessity of NGO involvement in labor disputes is an admission that the idea of workplace democracy in the form of unions is in dangerous decline. Or it is at least an admission that the tools designed to protect unions have lost some of their effectiveness. Once upon a time—beginning in 1919, to be more precise—there was a clear international vision for how labor rights would gain effective enforcement on a local and global basis. Governments would write and ratify labor laws and enforcement procedures, usually based on their own legal systems and historic circumstances. Unions and employers would represent their respective economic interests, with negotiations leading to a kind of industrial or workplace democracy. Meanwhile, countries would “harmonize” their laws, coming together in a special three-way dialogue in the United Nations, at the conferences convened every year by the International Labor Organization. Employers groups, workers groups, and government representatives would vote upon what were called “Conventions” and “Recommendations” in the International Labor Organization. They would establish minimum standards for everyone on important labor issues like hours of work and overtime, and they would recommend the best practices for countries to use as measuring sticks on their path to higher levels of industrial development. Countries would then ratify these new rules as treaties in order to coordinate and unify their rules.

In order to avoid the problem of one country lowering its standards in order to take jobs from another country, any of the representatives—whether workers or governments or sometimes even employers—could file complaints against another government. And because these complaints would embarrass the governments that were caught “cheating” (usually by unfairly lowering workplace standards), the governments would correct their policies and practices and make sure that workers were protected. Because governments would take this process seriously, the employers themselves would respect the rules and always protect workers. No one would want to be the “sweatshop nation.” Instead, everyone would want to be like Henry Ford, the creator of the Ford automobile, who famously insisted that his workers earn enough wages (and enjoy sufficient free time) to own and use their own cars. If that respect did not occur, then the company-and society-were failing at their most basic task.

Unfortunately, this roadmap to global fair labor standards will go down in the history of the 20th Century as something fantastical. The ILO succeeded brilliantly at building a data base of basic interpretations to essential labor rules. Even today, these interpretations and guidance principles are within reach of most government labor ministries and their enforcement. However, they mostly gather dust on the bookshelf or the “cyber” shelf in unvisited websites. On the whole, governments around the world did not ratify enough of the ILO Conventions. The workers and employers delegations argued with each other. The Cold War damaged the ILO’s voting system and created distrust. After the Cold War, governments’ concerns shifted to promoting companies that sought trade opportunities, not to workers seeking fair conditions. The ILO’s lack of a kind of “Security Council” for labor abuses meant that no bad deed went truly punished. For example, even when the ILO used its strongest possible language to condemn forced labor in Myanmar at the beginning of the 21st Century and called on member nations to take all necessary steps to force compliance with the ILO rules, the government basically ignored the demands and still found many trading opportunities.

1.2 NGOs as Global Police: How much can an NGO do?

If the ILO could not gain permission from governments to create a fully functional complaints and inspection system for labor violations, what can a several-person NGO in El Paso or Lahore or Hermosillo possibly hope to accomplish? A lot more than most people might expect, provided that they work with care, intelligence, and a community attitude. But NGOs must brush the dust off the ILO’s and others’ books and prepare to concentrate on a number of new and sometimes difficult challenges.

As a first step, NGOs must decide whether they wish to undertake the kinds of inquiries that typically arise in what some call the “local globalized” economy. (Few businesses, even though locally owned and operated, really operate as an island in the local economy anymore.) There are many variations in these inquiries. If you are the NGO, will a worker or a group of workers contact you in a crisis? Or will you hear about a community problem that leads you to seek out workers? How should you prepare? Should you seek to initiate contacts with workers in order to inform them about their rights? Or will you act as an amplifier of workers’ voices by assisting them in a complaint to the company, the government, or to the international community? Perhaps you will find the need to investigate an issue rather than a particular conflict, such as the system by which migrant workers must recruitment fees to job brokers just to get and keep jobs. What can you do with your information to help workers—should you seek to participate at the international level where, despite the failures, the United Nations continues to have special labor protections that sometimes influence governments and employers?

NGOs also need to understand different challenges posed by different sectors of the economy. Who and where are the workers? For example, is the possible target labor community employed in agriculture (traditionally one of the most difficult groups of workers to assist on all aspects of labor standards) or in industry? How would that affect the ability of your NGO to respond to requests for assistance? If the workers are in industry, are they in a “light” and relatively low technology industry, such as apparel, or are they in a heavy industry (such as machine manufacture) or an export industry such as high technology (traditionally one of the industries most subject to special government control, often to the detriment of the workers). Are the workers in an industry most subject to health and safety issues, or severe child labor problems, such as mining? Are they in a traditional “piece work” or “home” work industry, such as carpet-knotting in Asia, in which women and children are often exploited? Is the “industry” not really an industry in the traditional sense, but, rather an illegal, exploitative business, such as bonded laborers or trafficking in prostitution? As an NGO identifies the type of industry and the context of the worker, it will also begin to see the “package” of concerns that are most likely to affect these workers.

1.3 Breakthroughs and obstacles in NGO labor rights promotion and monitoring

In order to help provide a “best practice” guide to NGOs, the authors of this manual sought to take a “snapshot” of some of the most instructive labor disputes involving NGOs during the past decade or so. In addition to our own experience in Guatemala, for example, we asked other prominent internationally-oriented NGOs to help us identify the conflicts and to point out useful examples of effective—and ineffective or even destructive—interventions. It should be understood by the reader of this manual that the most recent intensive NGO attention to conflict and capacity building for NGOs has occurred in the global apparel, textile, and footwear industries. One reason for this is that these low-wage, trade-oriented industries have captured the concern of international consumers and increasingly get media attention. The names Nike or Adidas have been a lightning rod for attention. Contacts with international NGOs tend to occur most quickly and conveniently as a result of collaborations regarding these industries. While, as noted earlier, each labor conflict is unique, the practices established in these early monitoring experiences tell a story that is relevant to many other industries and situations.

1.4 Constructive NGO interventions

Recognizing that most NGOs play many roles at once, here are some of the most constructive examples of NGOs in furthering labor rights:

1. **The investigative NGO.** The investigative NGO, such as Coverco in Guatemala, refines its skills in all aspects of labor investigation and becomes an independent and interactive investigative organization. (Special trainings are available from a number of organizations, such as the Maquila Health and Safety Network, the International Labor Rights Fund, or Social Accountability International.) Monitors identify key labor standards and evaluate the application of these standards at the factory level. Often they are

invited into the factory (for example, by a brand name retailer that wishes to have an independent assessment of conditions). They interview workers and managers, audit records, and confer with a range of knowledgeable groups, especially unions that typically deal with this group of workers. In some ways, the NGO develops capacity like a professional workplace auditor. But there is at least one essential difference: the NGO must be committed to effectively document and communicate labor conditions, with emphasis on the community interest in fair conditions, not the private interest of maximizing profits at the factory. It should be noted that the “investigative NGO” on a local level seems to be a relatively new phenomenon in labor matters. As a practical matter, some NGOs may initially develop expertise in one limited area, such as interviewing workers, as opposed to mastering many subjects at one time. In addition to Coverco, prominent examples of the NGOs that fit this investigative model include: GMIES (El Salvador), Toan Tin (Vietnam), Kenan Institute (Thailand), Phulki (Bangladesh),

2. **The local labor coalition of NGOs:** Quite often, there will not be any single NGO with adequate capacity to respond to an inquiry from workers during a crisis or conflict. In Thailand, recently, a conflict occurred among workers at a factory called “Bed and Bath” producing products for Nike and other brand name companies. A diverse group of NGOs joined together -some dealing traditionally with women’s rights, some with labor rights, some with migrant rights. As a coalition, they contacted international NGOs, such as the Clean Clothes Campaign. From this collaboration, information and advice moved back and forth and many networks of concern were activated. Multiple points of pressure were created on the companies, factory, and the government. Like in Guatemala, workers achieved a union contract, although they used different techniques. The difference between the local labor coalition and the investigative NGO is that the coalition usually operates as a direct advocate for particular workers’ concerns, and not necessarily as a gatherer of objective information. These NGOs sometimes exist in response to specific crises and do not necessarily continue aid beyond those crises. As advocates for particular workers, these NGOs also may find their credibility challenged as to details of investigations. Investigative NGOs may find their credibility tested somewhat less, since their announced “advocacy” concerns agreed-upon labor standards, not necessarily a particular group of workers.
3. **The information NGO:** Some NGOs do better at organizing and communicating information than working at the grassroots level with workers. However, they still may have a special knowledge and interest in labor issues. At a time when information and communication is less expensive than ever, NGOs that have strong knowledge bases can be highly effective during conflicts and in ongoing ways. For example, information-oriented NGOs help collect information that can be submitted in response to government reports about compliance with labor regulation. This role becomes especially important during the designated reporting periods for governments that participate in the UN’s various labor reporting obligations, such as at the ILO or the UN Covenant Committee of the International Covenant on Economic Social and Cultural Rights.
4. **The civil society NGO:** Some grassroots NGOs have put special emphasis on linking the appropriate networks of local organizations. Such groups may focus upon a specific interest, such as indigenous peoples or women, rather than the industrial setting. However, often these interests blend together. In Colombia, for example, an organization called Cactus assists mostly women flower workers in getting legal advice about unfair working conditions. One of the noteworthy roles of such groups has been to add new voices to the typically male leadership of traditional union organizations.

1.5 Destructive NGO interventions

Experience has also taught the important lesson that NGOs can sometimes make problems worse for workers. Here are a few examples of cases in which NGO involvement may have made circumstances more difficult for workers.

5. **The special interest NGO:** Frequently, businesses create their own NGOs in an attempt to support their own business interests. For example, textile associations in industrial and developing countries have attempted to establish membership organizations that sponsor their own factory monitoring. Such groups often appear as investigative NGOs but do not offer transparency, public accountability, or independence as core aspects of their work. For example, in the 1990s, the Guatemalan textile trade group sought to create such a monitoring system to compete with civil society NGOs. Special interest NGOs are often market-driven; they see a new regulatory framework as an opportunity to protect or expand industry profits.
6. **The parachuting NGO:** When the footwear giant, Nike, first experienced highly publicized labor problems in Indonesia and Vietnam in the early 1990s, it hired a renowned civil rights activist with a hastily created NGO identity. Andrew Young and his associates possessed no real labor expertise, yet they agreed to conduct an “independent” investigation, tour factories, and interview workers. His report was universally criticized for a lack of depth and understanding of labor conditions. Only the photographs were clear -they showed mostly smiling workers. Even when a group has labor expertise, it must have the commitment to conduct adequate and complete interviews and investigations, with the assurance of unannounced visits. A foreign-based monitor with a fixed return date on an airline ticket is often ineffective, and counterproductive.
7. **The overly-eager NGO:** While the special interest NGO tends to be biased and the parachuting NGO is disoriented and overextended, other NGOs may be locally based and have excellent intentions. However, they can undermine useful monitoring by underestimating the commitment of time and resources necessary to the labor context. For example, many workers and union organizations have spent a great number of hours with local NGOs, only to find that the NGO has no institutional stability of its own. For example, perhaps it was only really available on that particular day, without a chance to follow up. Sometimes NGOs are overly eager in the sense that they believe that they have the answer to an industrial dispute, instead of helping workers find the answer by identifying and documenting workplace problems. For example, in El Salvador, the civil war of the 1970s and 1980s led many groups to see civil rights in stark terms of justice and injustice. Such an NGO might repeat such habits in a situation of unfair labor conditions without carefully and patiently examining the industrial context of the problem. Resentment between union and NGO organizations often results from such well-meaning, determined, but over-eager relations. One unique quality of labor rights monitoring is that it should always occur with a view to the next opportunity for participation by workers, rather than a final resolution of one issue.
8. **The profit seeking NGO:** It is a sad fact of international NGO experience that some groups are simply opportunistic (despite perhaps starting out with a genuine intention to help). They are in the right place at the right time—and may have charismatic and multilingual leadership—but are not deeply committed to the issue. Such groups can cause great damage to labor rights monitoring because they briefly attract grant support and occupy the terrain but evidently leave behind a vacuum. Meanwhile, another capable group has been disfavored.

1.6 Identifying rights, seeking compliance: The raw resources

Let us continue our introduction to labor rights monitoring by establishing a list of sources for basic labor rights. When an NGO seeks to (or is asked to) participate in a labor dispute, it is essential for the NGO to identify and become familiar with the many different sources from which knowledge of labor standards might be gained. Such knowledge offers power: from these sources, an NGO can begin to document conditions, respond to conflict, and potentially bring about change. It is from these various sources that each monitoring tool is derived. We will elaborate more about these in the next chapters, but here is a basic list:

Rights and resources

- The union and union contract (if any), and any local, regional, or international union organization with representative involvement in the relevant sector of employment. It should be noted that a union contract is the local “law” of the workplace because it is an agreement that receives legal protections. Usually such a contract includes its own binding dispute resolution procedure.
- National law and regulations, as implemented through labor and other tribunals and/or government inspectors (these laws and union contracts must be every NGO’s “Bible” of labor rules).
- International Labor Organization Conventions and Recommendations, as interpreted by the ILO’s experts and supervisory bodies (such as the ILO Governing Body’s Committee on Freedom of Association). Many countries have incorporated ILO instruments into their laws. However, the ILO is not particularly friendly to NGOs because its constitution recognizes unions, not NGOs, as the mouthpiece for workers. But in the past few years, the ILO has begun to explore a role for NGOs in its effort to enhance an institution-wide program known as “Decent Work.”
- Monitoring Certification Organizations (we will create the new designation “MCOs” for this new institution) are organizations that may involve but are not controlled by corporations. Two recently-established examples from the 1990s are “Social Accountability International” and the “Fair Labor Association” (USA). These kinds of organizations accept complaints about their participating companies, they are committed by their bylaws to respond promptly, and they often require engagement with local NGOs.
- Company codes of conduct, meaning the ethical rules that the companies promise to follow (and which sometimes connect them to the monitoring certification organizations above.) There has been an explosion in popularity of these ethical codes by companies, and one of the new challenges to NGOs is to determine whether these codes can bring about ground-level compliance.
- Trade-related labor rights clauses, such as the European and U.S. “General System of Preferences” and regional trading agreements. For example, in the U.S., NGOs can file petitions to complain about unfair labor conditions, sometimes (though not always) with favorable results that help workers.
- Internationally-focused NGOs that give priority to labor issues, such as the Clean Clothes Campaign (Europe), the Ethical Trading Initiative (Europe), the Worker Rights Consortium (USA-students), the International Labor Rights Fund (USA), Amnesty International, etc.
- United Nations International Covenant on Political and Civil Rights reporting system
- United Nations International Covenant on Economic, Social, and Economic Rights reporting system
- United Nations Global Compact (a general and relatively new promotional set of standards for corporations)
- United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (the newest set of guidelines, as passed in 2003 by the UN Sub-Commission on the Promotion and Protection of Human Rights)
- Regional governmental agreements, such as the Inter-American Commission on Human Rights, the Organization for Economic Cooperation and Development in Europe, the European Union, the Organization of African Unity, etc.
- The “Fair Trade” alternative model (NGOs, such as in the coffee industry, that start or help build networks of not-for-profit businesses, promising a living wage and decent labor conditions for the workers).

Compliance and results

Once an NGO has become familiar with the “package” of rights that might be applied in a labor setting, the obvious question is whether the NGO can actually help achieve compliance with those rights in a particular conflict. Today, many NGOs are especially active in developing—on their own and in collaboration with many

other groups—instruments for measuring compliance with labor standards. In a very basic sense, most NGOs push for change starting at the grassroots level in order to change the labor environment for specific workers. When that work is well documented, it can serve to help improve national and international policy, as is beginning to be seen, for example, in the concrete cases of the Guatemalan and Cambodian apparel sectors.

This manual is designed to help NGOs select tools both in the realm of rights and compliance. We will devote Chapter Two to a deeper discussion of the many sources of rights. For example, should an NGO use the code of conduct, national law, or an international complaints system to get results for a particular dispute? Does that decision change when the issue is wages, or hours of work, or imprisonment of a union leader for leading a strike? Absolutely. That chapter may not be the easiest of all the chapters to understand in a first reading. That is because we will be describing some debates about how change occurs in labor rights. We will also devote some of Chapter Two to a discussion of how to document and measure violations and compliance with those rights. One of the most difficult problems that NGOs face as investigators and reporters of compliance is that it is difficult to measure compliance. When is compliance “real” or “complete” or “adequate” or blatantly a failure? Does it matter that a company shows good faith and progress when conditions are still bad? There are even some groups that would say that such involvement by NGOs is a waste of NGOs’ time because the place for NGOs is in the street, protesting! We can only say in response to that challenge that we have been in the street, and we have protested. We have been, and we are, in the court rooms, appealing to judges. There is a place for each of these actions in the overall effort to improve enforcement of labor rights. But as much as we have been in the street and in the court room, we also know that there is a place for investigations and measures of compliance at the workplace level. If a union is not there to do it, then perhaps a wise, dedicated NGO can be.

Chapters 3 through 8 deal with core issues in labor rights: the right to organize a union and to seek a collective contract; wages; hours of work (including overtime); discrimination and harassment; child labor; forced labor; health and safety. In our conclusion, we will try to summarize how we see the future paths for NGOs. We will ask your help in measuring whether our collective work as NGOs in attempting to monitor labor rights can prove itself useful to workers.

Finally, we will offer a basic bibliography that we will call “a work in progress.” We know of many vital texts that can help monitors, but the world is a big place and full of big and not always useful books. We know of many texts that do not prove so useful to NGOs because they are difficult to read and interpret. We therefore seek your own reports and advice to build a proper bibliography that is useful to NGOs.

Chapter Two What IS a labor right? How are they defended and promoted?

2.1 Introduction

There is a joke about two economists. One of them sees a \$20 dollar bill on the ground. Before he can pick it up, the other economist says: “Don’t waste your time. If it were really there, someone would have picked it up before us.”

Does this joke offer some serious lesson for NGOs examining the definition of “labor rights?” There is no question that in most countries, labor rights are already on the front pages of national legislation. The only thing that should be necessary is for workers (or NGOs) to “pick them up” off the page or, in other words, to insist upon their enforcement.

However, given the experience of recent years, the labor rights advocate might ask: is that labor right really there at all? What right? The recent experience of some NGOs is that labor rights are there only if we insist they are there—by identifying the right, and then investigating, documenting, reporting, and persevering until the employer or government makes the right(s) real.

In Chapter 1, we listed many sources of labor rights. In this chapter, we will consider how NGOs might choose from among the available sources of labor rights, from national law to international conventions to company codes of conduct. NGOs must learn to make such choices because of one unavoidable reality: state regulation of labor standards has been weakened in the global economy. Such regulation has been given a back seat in favor of national policies that favor international trade and development schemes. NGOs need to help rebuild effective national labor regulation. They also need to help workers who call out for urgent assistance from their workplaces. How to begin these actions is not obvious. It is not simple. But it is necessary.

The reader may find this chapter to be somewhat theoretical and sometimes difficult to follow. If that is the case, and you are seeking to understand the content of basic rights, it may help to skip to the chapters on substantive rights and then return to this chapter later.

2.2 The labor contract

The first labor rights-producing source is the collective or individual labor agreement between an employer and workers. If a union exists at the worksite or in the industry, this is called the “collective agreement” or union contract. Such a contract contains the promises made between the employer and a union. These contracts contain “rights” because (if there is a union) the workers and the employer agreed in advance to make them into the “law” of that workplace. An independent dispute resolution specialist is often the means by which unions and the employer seek resolution of contract conflicts. An NGO is less likely to become involved in a dispute over an existing contract between the union and employer because the union and the employers will have already designated representatives to resolve such disputes. However, because employers (or even the courts) will sometimes refuse to give proper respect to such contract promises, it is still possible that a union may seek out an NGO to help put pressure on an employer to obey its promises. Disputes that occur when a union contract is in effect usually involve such issues as employee discipline, wage payments, health and safety or working hours—issues that we describe in more detail in later chapters of this manual. Sometimes employers refuse to obey contract agreements in an effort to discredit the elected union and its leadership. This is a particularly serious issue that is often called an “unfair labor practice.” Most countries have special labor courts or administrative agencies that are designed to respond to such claims. And most strikes by unions occur as a result of alleged unfair employer practices. Unions will often seek to work with NGOs in order to defend themselves against employers’ efforts to ignore, weaken or even destroy a union association.

In the most common situation, NGOs encounter workers who do not have union representation, either because such efforts have failed or because the workers have not yet sought to create a representative leadership of their own. These workers still have protected rights, under individual contracts or by national laws that protect individual rights of workers. Therefore, NGOs that seek to monitor workplace conditions should inquire whether individual contracts between workers and the employer exist. In most of Central America, for example, national law requires factories to provide individual contracts for workers that establish the pay levels, health and other workplace benefits, dismissal payments (or “severance”), etc. These laws may also require a factory to have “workplace rules” that demonstrate how an employer observes national laws regarding health and safety and other provisions. It should be noted, however, that if we were suddenly (and magically) able to view every job in every country, probably less than 20 percent would be governed by union contracts. Of the remaining 80 percent, very few of these jobs would have individual contracts. In most jobs, the relationship between employers and employees is determined by national laws and regulations, rather than internal written contracts. Most of these national laws and regulations are rather complicated and difficult for individual workers to use—and at least as difficult for the establishment of unions, but NGOs can help.

2.3 National labor law and regulation

The most common rights-producing source for workers is national labor law and its accompanying regulations. This is really a group of documents, some of which an NGO will only find by literally knocking at the door of a labor ministry official and asking for them. Internet access will help NGOs because many countries now publish their laws on the web. Very few NGOs will ever have expertise in each aspect of a country’s labor laws. Still, NGOs must become familiar with what these laws and regulations contain.

The reason that it is so important for NGOs to become familiar with labor laws is that even in a weakened form, national governments—their laws, inspectors, and courts—are really the only clear authority to an employer other than the marketplace. NGOs may, in the long run, create the greatest positive impact for workers by finding ways to influence national law and enforcement. Conversely, without knowledge of the laws, NGOs will be less likely to bring about positive change.

Let us consider an example of how national laws address labor issues. Your NGO is contacted by workers who were dismissed from their jobs—or even jailed—because they formed a union and went on strike. In many cases, the first laws an NGO will look at deal with general civil rights of all citizens. As the ILO has pointed out many times, one of the most essential protections for workers is the basic civil rights protection available to citizens of a country. (When this writer worked at the ILO, it was not uncommon for the ILO to receive several protests each year from workers whose governments had arrested them simply for organizing a rally in honor of Labor Day.) In Guatemala, for instance, the national constitution declares in Article 34 that “the right of freedom of association is hereby guaranteed.” The constitution is part of a nation’s law, and it establishes fundamental rights. In this case, the right of association is supposed to protect, for example, both the rights of a citizen who wishes to worship at a church, and the rights of a worker who joins a union. That is how many labor rights can also be identified as “civil rights.” It follows from Guatemala’s basic constitutional guarantee that workers have the right to create labor unions, and they cannot be jailed for doing so. The nation’s court system therefore protects—or should protect—the basic right of association.

NGOs can also be almost certain that somewhere in the national laws there exists a specific labor law that protects the right of workers to form a union and to strike. In our continuing case example, the NGO in Guatemala would find in a government-published book of labor laws (also known as the “labor code”) a section called Article 241. The section gets even more specific: workers have the right to form a union and to strike, as long as the decision is “peacefully agreed to, executed and maintained.” In most countries, an NGO seeking to protect a worker arrested for creating a union and striking usually can find a number of rights that have been established under national laws. In fact, according to one authoritative study, virtually every nation in the world—with the noteworthy exception of China—has laws that protect the right of workers to strike to protect their workplace rights. One of an NGO’s first tasks is to identify and obtain copies of these laws.

But perhaps you have already noted from this description that a labor “right” may not be so perfect and solid and well-defined as the word “rights” or “laws” suggests. Just because there is a law protecting the “right to strike” does not mean that all actions taken by workers during a strike are supported by law. For example, Guatemalan law requires that all actions during a strike be taken “peacefully” and most national laws also require that a majority or even more than a majority of workers vote to support taking strike action. Sometimes, the closer the NGO gets to the language of the law, the less clear the answer is as to what rights the law protects.

Let us consider an example of how to understand the blurry or unclear definitions within labor laws. Most nations forbid “child labor.” We appropriately call that a labor right: children under a certain age must not work. Each labor right usually contains some minimum content below which no government (or employer) should fall. Under most national laws and international conventions, no child below the age of 12 is permitted to work in a full-time job during the school year. An employer who employs an 11-year-old, such as children who have worked in mines in Colombia, is flagrantly breaking the law. In addition, the employment of a child in a hazardous or immoral industry, such as prostitution, must be absolutely forbidden. A violation could be easily recognized. But NGOs must be aware that many labor laws contain “grey areas” that call for close attention and interpretation. In the case of child labor, a 14-year old child might legally work in an apparel factory, as long as certain protections are also provided. It is well-recognized that it would be better for the child to be in school. Finding the minimum standard that defines laws against child labor (or any other labor right) is one of an NGO’s challenges. That is why we have written chapters that provide some elaboration about the labor rights that are most commonly recognized. (For example, in a later chapter entitled “Freedom of Association,” we will describe the minimum that most national laws protect in terms of the right to strike, and what variations and breakdowns in enforcement most commonly occur.) In any case, the role of the NGO is to identify which laws apply to the current situation, and, later, to explore ways to make the law real through enforcement.

National labor laws, like other laws, usually require some kind of “police”-like role in order to implement the law. Therefore, NGOs need to determine whether the particular government has created an administrative bureau or agency to implement and inspect whether employers obey the labor rule. This is particularly important for NGOs because sometimes government agencies create the practical regulations that help define the law. And these agencies usually employ officials whose job it is to investigate the implementation of a labor law as well as allegations of an employer’s failure to protect the worker’s rights. In the example of collective union organizing activity, there are often labor courts that interpret the law in order to make rulings about disputes between employers and the worker organizations. Other labor laws tend to concern individual worker issues, such as the right to minimum wages, or to be free from discrimination, or to have safe workplace conditions. These individual worker issues are often addressed within a government’s Ministry of Labor, by subgroups such as a “Division of Wages and Hours” or an “Office on Safety and Health” or a “Bureau of Equal Employment Opportunity.” When governments create such agencies, they usually establish mechanisms for inspection and for filing complaints with the goal to help solve problems that occur in each area of labor rights.

NGOs must have some optimism that the national legal system could work for workers. In some countries, including newly democratic countries, a court action could genuinely lead to a court order for protection of workers. NGOs sometimes have the opportunity to participate in a legal action, such as when U.S. NGOs assisted workers in the U.S. protectorate of Saipan by filing a lawsuit on their behalves for violations of minimum wage payments. Similarly, in some countries, a contact with labor inspectors could result in remedies for health and safety or minimum wage violations (for example). Workers must test the system, and NGOs can help direct them towards that goal. After all, the only way to change bad employer behavior is to have some certainty and continuity of enforcement power against the employer, which national governments and functioning court systems do best.

On the other hand, many national and local governments devote their attentions to creating what they like to call “flexible” and unprotected pools of workers. Protective labor laws become an illusion—the economist’s “unreal” \$20 bill. In addition, some governments directly change their laws to remove labor protections, such as in so-called “export processing zones.” In these cases, workers cannot even raise a piece of paper that contains the language of protection.

As NGOs, we may be optimists in the long run, but our daily reality makes us skeptics. Even in industrialized countries, labor inspectors are often overworked and underpaid, and there are too few to cover the vast number of workplaces. We have encountered incident after incident of government inspectors who are paid so little that they accept “tips” or “gratuities” from employers. That means that labor inspectors may be biased, and take their work seriously only for the highest “tip” or for the worst cases of law violations. Court cases, especially in developing countries, often move so slowly that by the time a labor right is enforced, the worker has had to change not only jobs but locations or possibly even move to another country. To delay justice, especially in the case of workers, is to deny justice. In such cases, an NGO must look for other alternatives to gaining enforcement of a law.

Whatever the issue, national law and the accompanying regulations and inspection system should be the first tools examined in the NGO toolkit. In order to participate in building or rebuilding an effective labor rights enforcement system, NGOs need to understand the basic terms of their national labor law. Understanding the content of the law, and the alternatives to law, enables the NGO to make an informed decision about whether, how, and when to intervene in a labor situation. In a particular crisis, if the NGO does not spend its time seeking to reform the labor laws, it nonetheless needs to consider the impact of the law on its activities. The whole reason for NGOs becoming involved in labor rights monitoring is to help workers achieve real enforcement of their rights as part of the “rule of law” of their own country’s legal system. Of course, the reason for this manual is to offer alternatives when the law simply isn’t enough.

2.4 International regulations

A. The ILO

We have just offered a very basic introduction to national law. Now, it is important to supplement that description with the role of international labor law and standards. When we began this manual in Chapter One, we described how some policy makers believed that governments could act together to adopt and enforce international labor laws and standards. In fact, more than 180 very specific “Conventions” of the UN’s International Labor Organization have been created, containing legal language drafted and approved by representatives of most of the world’s nations. Even though the enforcement system has not worked very well, many of these Conventions have been ratified as law by governments, which means that NGOs could use the language of the Conventions at the local level, as well as raise concerns at the international level. Therefore, the next step for an NGO after exploring the content of national labor law should be to review whether its country is a member of the ILO (most countries are), and which Conventions the country’s legislature has approved. One universal way to examine which countries have adopted ILO Conventions is to use the internet to conduct a review of what is known as “ratifications” of ILO Conventions. For example, by using the address www.ilo.org in English, Spanish, or French, an NGO can find a list of every Convention that has been ratified by a government, as well as get the text of the Convention. (By using the ILO website map located on the main “home” web page, the NGO will find a section called “ratifications” that can be searched by each country name.)

There are two primary reasons for NGOs to consider using international labor Conventions in their investigations and reports about labor rights concerns. The first is that, if your government has ratified the ILO Convention, then its language and the ILO interpretations of the language may be as important as the language of the national law. (It may seem confusing that there would be a national law as well as a ratified ILO Convention on the same subject, but that is often the case.) In this situation, the ILO Convention is really a parallel text to national law and can be spoken of in the same way as national law. In other words, the ILO Convention cannot be an illusion—like the economists’ \$20 dollar bill!—if the government has ratified it. So NGOs can put pressure on the government, as well as on an employer, by referring to the ILO’s language and interpretations.

How does an NGO determine what the ILO’s interpretations of the Convention are? First, as described above, if your government has ratified a particular convention, you should review the text of the convention at the ILO website. (If your government has not ratified the convention, that does not mean that the ILO becomes irrelevant to you, but we will explain that situation a little bit later in this chapter.) Next, you can use the ILO website data

base, called ILOLEX (also in the www.ilo.org database) to review the ILO's committee of experts and other commentaries regarding your country's practice regarding that Convention. This initial research may help determine whether you are dealing with concerns that already have received some commentary and criticism at the international level.

By combining some ILO research with the simplified (but practical) information available in this manual, you will bring together the most common interpretations of a particular labor right. We will not claim to provide authorized or definitive ILO interpretations, as this is the "unauthorized" guide to labor rights monitoring, but we expect that our interpretation will follow the ILO quite closely. For a more definitive answer, the NGO should take note that the ILO has published its own booklets examining and explaining the language and meaning of each of its Conventions. These booklets are available in major libraries, especially university libraries and at Labor Ministries that have library sections. Some countries also have ILO regional offices, including technical advisers, who can be useful resources for NGOs. Our bibliography, to be included at the end of this manual (but which is still a "work in progress") will also refer to each of these substantive ILO texts. With this information in hand, along with the national law and interpretations, an NGO will be in a position to begin to understand the labor right in question and to raise appropriate questions about whether it is being realized in practice by the national government, by governmental enforcement practices, and by employer practice.

A second important reason for an NGO to refer to the ILO is that this UN agency has complaint mechanisms that can be used by NGOs in concert with union organizations. For example, in our Chapter 1 Guatemala incident, factory management was intimidating workers who sought to form a union. The union sought government protection in the courts, but, even then, the union was unable to get effective protection through sanctions against the employer. The information compiled by the NGO Coverco and others was used by an international union confederation (the International Textile, Garment and Leather Workers Federation) to write a complaint to the ILO's Committee on Freedom of Association. Even though the Committee meets in Geneva, Switzerland, and the letter of complaint had to travel a great distance, the Committee is also one of the fastest-acting human rights boards in the world. Within a few months, the ILO had rendered a decision that raised questions for the government about whether its laws regarding the right to organize a union were being realized in fact. Important international pressure was added to local pressure on the factory, the U.S. apparel company, and the Guatemalan government to comply with the basic definitions of the right of association.

Although the ILO often does not act as quickly regarding complaints about rights beyond freedom of association, this UN organization does have procedures for complaints and comments about enforcement of all the ratified ILO conventions. (The ILO website describes these complaint and "representation" procedures.) On an ongoing basis or at the ILO's annual conference, governments, employers and unions can file complaints to bring concerns to the attention of the international community. Occasionally, the ILO even establishes "commissions of inquiry" that conduct very detailed examinations of certain labor rights in a given country, although the government in question must consent to the inquiry.

When a government has not ratified an ILO convention, NGOs—if they work through union organizations—may comment on and criticize the following rights: forced labor, child labor, freedom of association, and discrimination. This is because national governments agreed in 1998 to make special reports on these rights in observance of the ILO's "Declaration of Fundamental Principles and Rights at Work." For example, even though China fails to include the right to strike in its laws, China has been subject to public criticism in the ILO under the Declaration of Fundamental Principles and in the Committee on Freedom of Association for failing to observe the fundamental rights of association of workers. China's ILO representatives even voted in favor of implementing the Declaration, an unprecedented endorsement of principles that China once rejected as interference in its internal affairs. The "oddity" of the ILO's Declaration of Fundamental Principles is that it seems to contradict the ILO's Convention adoption system: the Declaration calls for what critics might call a soft and even mushy "progressive improvement" approach to rights: government must "respect," "promote" and "implement" the four core labor principles described above. Conventions, in contrast, contain terms that a government is obligated to adopt as law, and include progressive implementation only where specifically noted in the Convention. In fact, this is not really a contradiction at the ILO, but recognition of an unfortunate reality. The

Convention adoption system simply has not attracted enough formal ratifications to enable an enforcement system to work properly on its own. This is why you will sometimes hear criticism that the ILO cannot solve your labor problems. (Nonetheless, there have been many important individual examples of effective ILO intervention.)

NGOs might take note that even when there is no acute crisis in a labor situation, documenting, measuring, and reporting on the practice regarding a particular right can create a kind of “promotional” pressure on a country. As a result, with an NGO’s prodding, the ILO might examine the subject’s working conditions more closely and probably communicate in more detail with governments, employers, and unions about the ground level situation. Such communications especially have been productive for NGOs in recent years regarding the implementation of stronger child labor protections, as well as monitoring child labor in various countries. In the past few years, the ILO has also begun to explore a role for NGOs in its effort to enhance an institution-wide program known as “Decent Work.” The practical language of that policy would suggest that the ILO is seeking to listen to a broader range of voices, including NGOs. We will provide some greater elaboration on monitoring techniques and communications with the ILO in each substantive rights section of this manual.

B. Other International and Intergovernmental instruments

i. The International Covenant on Economic, Social and Cultural Rights

As we have pointed out, NGOs must find unions to partner with them in order to fully participate in ILO procedures. (The ILO’s reason for this is more or less that unions represent their members (i.e., workers) while NGOs do not have a representation duty to workers.) This limitation on NGO standing at the ILO can be a genuine obstacle, one that we hope the ILO will change in the coming years. (For example, the ILO was asked by some governments and NGOs to open its reporting procedures directly to NGOs for the Declaration of Fundamental Principles, but it declined.) One alternative source of authority that NGOs should consider when seeking to promote observance and enforcement of labor rights is the International Covenant on Economic, Social and Cultural Rights (the ICESCR). This Covenant—which is administered by a separate branch of the UN in Geneva, Switzerland—does not carry the same legal power as ratified ILO conventions. But in certain respects, the Covenant is both more accessible to NGOs and more responsive to the concerns of workers on economic rights issues as compared to ILO conventions. In particular, the Covenant has more to say than the ILO or any other international instrument on the issue of living wages (see “Wages” Chapter 5 of this manual.)

The first step for any NGO in participating in the Covenant system, as with the ILO, is to determine whether its country has ratified this Covenant. Such a review may be done on the internet by searching www.unhchr.ch. Upon determining that your country has signed this Covenant, an NGO may wish to refer to the Covenant as another basis to insist upon immediate observance by your government of the same core labor rights as the ILO—freedom of association, forced labor, child labor and discrimination. In addition, the Covenant calls on governments to respect, promote and fulfill all of its rights clauses, which include the remaining subjects of this manual (decent wages, hours of work, and health and safety) and more. In contrast to the ILO, NGOs in the Covenant process are encouraged to provide information to the UN regarding a country’s implementation of the Covenant. The NGO can even be included in UN correspondence when the NGO puts itself on a UN contact list regarding the relevant issue. The Covenant Committee offers official access to NGOs through consultations, hearings, and publication of the NGO’s statements. NGOs are encouraged to provide input to the UN at the following stages of UN procedures:

- When a government that has ratified the Covenant is due for periodic review by the Covenant Committee (this information is published on the UN website), the government must submit a report on Covenant implementation several months before the Covenant Committee’s meetings. NGOs may submit to the Covenant Committee either a “shadow” report to the government’s report, following the same format as the government’s report (which is set out in Covenant Committee document E/C.12/1991/1) or the NGO might provide to the Covenant Committee a response to the government’s formal State Party report.

- NGOs may submit information directly to the member of the Covenant Committee responsible for drafting the “list of issues” which will be the focus of the Committee’s attention in deliberations on the government’s report; in this way, NGOs are offered input in shaping the actual subject matter and priorities in Committee deliberation and review of country performance.
- NGOs may submit other written statements or reports, or may make oral presentations in official “NGO hearings” that are an integral part of a country review; NGOs may also attend the actual country reviews (without right of comment) to hear the exchanges between the Committee and government representatives. The written reports are generally translated and published by the Covenant Committee and, in recent years, are accessible via the UN High Commissioner for Human Rights data base on the World Wide Web.
- NGOs may submit information to the Committee regarding implementation of any or all of the Committee’s concluding observations.

NGOs might appreciate a productive example of participation in the Covenant Committee from Canada. In the mid-1990s, for example, several Canadian NGOs provided the Committee with very detailed research regarding income and the right to organize among Canada’s working poor. The Covenant Committee included this information in its review of Canada’s compliance with labor issues in the Covenant. The Committee stated in a public report that it is “concerned that the minimum wage is not sufficient for a worker to have an adequate standard of living, which also covers his or her family.” On the wage issue, the Committee also found “a clear violation of Article 8 of the Covenant (freedom of association) and calls upon the State Party to take measures to repeal the offending provisions” of laws excluding subsidized poor workers from organizing unions. While there is no way to measure any precise impact, these communications received publicity in Canada and provided worker advocates with an additional means of putting pressure on the government for changes in the law.

The UN requirements for NGO participation are described in the UN publication “NGO participation in the activities of the CESCR” (the Committee on Economic Social and Cultural Rights) available at www.unhcr.ch by searching for the document labeled E/C12/2000/6. For example, communications to the Covenant Committee must be “relevant,” “based on documentary sources and properly referenced,” “concise and succinct” and “reliable and not abusive” (E/C12/2000/6). Formal steps for NGO participation are also described in great detail in *Promoting and Defending Economic, Social and Cultural Rights: A Handbook* (AAAS 2000).

Other labor rights instruments that receive periodic review within the UN system include:

- The Convention on the Elimination of all Forms of Discrimination Against Women
- The Convention on the Rights of the Child
- The United Nations International Covenant on Political and Civil Rights reporting system (exclusively dealing with “civil rights” as labor rights: freedom of association, forced labor, child labor, and discrimination).
- United Nations Global Compact (see: <http://www.un.org/Depts/ptd/global.htm>) We are not devoting any significant attention to this topic simply because it appears to be designed to create social responsibility more by consultation with businesses than either resolution of particular disputes or engagement with NGOs.
- United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (the newest set of guidelines, as passed in 2003 by the UN Sub-Commission on the Promotion and Protection of Human Rights) [elaboration to come]

ii. Intergovernmental trade agreements and social clauses

Labor rights specialists point out that trade relations between countries have always had a moral basis: trade is supposed to create economic benefits that improve the standard of living for people in each trading country. Trade is not appropriate if it fosters injustice. Yet, as the pace of economic activity increases, often so do the examples of injustices suffered by workers—whether it is children picking cocoa beans or bonded laborers producing carpets. One way to stop injustices is to ensure that trade agreements contain language that addresses basic labor

rights in the same way as national law addresses (or should address) them. In that way, the trading countries coordinate their attention to workers rights and do not create a competitive trading advantage by being unjust to workers. Moreover, a “social clause” can allow for complaints, sometimes by NGOs themselves.

NGOs can use trade agreements as opportunities for labor rights advocacy, and in some instances can also use trade agreement provisions to register complaints about labor rights abuses occurring in the trading country. Not all trade agreements offer such opportunities, but there is a growing international effort among labor rights advocates to create trade “social clauses” that contain basic labor rights requirements. Current examples include: the North American Free Trade Agreement between the U.S., Mexico, and Canada; the European General System of Preferences (which offers tariff preferences to developing countries); and a number of U.S. trade laws involving developing countries. Possible additions to this list include the Mercosur trade group in South America.

For example, in the U.S. General System of Preferences and in the North American Free Trade Agreement, NGOs may file complaints that must be addressed by trade officials of the relevant countries. In the General System of Preferences, the U.S. government has on several occasions suspended trade benefits or put countries on a “watch” list due to a failure to take steps to implement core labor standards. Both the U.S. and European countries have also created promotional trade benefits in which positive steps to improve labor rights can result in additional trade benefits.

An NGO should research with its relevant Trade Ministry whether any trade agreements are in effect that contain labor rights obligations. The NGO might then determine whether its investigation, documentation, and reporting should be directed in the form of information or a complaint to the office governing the trade agreements.

NGOs might also consider taking part in promotional campaigns that put pressure on governments to create social clauses as new attachments to existing trade agreements.

2.5 Nongovernmental trends in regulation: Codes of conduct, certification, and “independent monitoring.”

In the mid-1990s, while governments were adopting “neoliberal” economic policies that often reduced worker protections, and the ILO was caught up in long debates about how to deal with the lack of global enforcement of labor rights, some global companies began to adopt what they called labor “codes of conduct.” In general, codes were not a new idea. As long as companies have existed, they have had internal principles of operation, some of which explain the company’s ethical expectations of employees and some that deal with the company’s commitments to employees (and customers). The difference in the 1990s was that codes, such as one established by blue jeans company Levi Strauss, began to be specifically aimed at employee and contractors’ employee working conditions. These new codes of conduct stated that companies would seek to ensure fair labor conditions with business partners—such as a contractor producing blue jeans for Levis. Many unions and NGOs expressed cautious appreciation at the time. It was important that some companies would take steps to improve working conditions, especially in parts of the world where a lack of laws or enforcement left workers most vulnerable to abuse. But we also asked: who would determine whether these codes helped workers or were really a kind of wallpaper—a cover-up for bad conditions?

In the early history of codes of conduct, companies sought to maintain complete control over any investigation or reporting about their codes. For example, Levi Strauss created what it called its own “human rights” staff and conducted audits of factories based upon their code of conduct. In public reports, they periodically announced that they were terminating business with some of contractors because these business partners had failed to observe the labor code of conduct. But there was no independent means for NGOs or others to verify what Levis or anyone else said it was doing.

Meanwhile, as global trade in many industries increased throughout the 1990s and the World Trade Organization was created, more companies followed the trend of adopting codes of conduct. Perhaps some companies wanted to improve conditions. And others—as they entered into new markets that could be sure to have abusive or unfair working conditions—wanted to protect their image for their consumers. Some codes of conduct contained very

strong language of protection, similar to the international conventions of the ILO. Other codes contained very weak language and omitted important labor standards, possibly offering even less protection than national law. Although it could not offer much of an alternative, the ILO criticized the trend of codes of conduct because it appeared that too many unauthorized definitions of labor rights were being discussed and applied, threatening to destroy any consensus on the definitions of labor rights that already existed.

Several events involving NGOs channeled the somewhat chaotic trend of company codes of conduct into a second phase, which could be described as a more transparent labor rights “certification” approach. First, an informal international coalition of NGOs in 1995 caused the apparel manufacturer, The Gap, to agree to allow outside or “external” monitors at their factory in El Salvador. Church and civil rights groups in the “consuming” country, the U.S., coordinated their activities with “producing” country NGOs, including churches, civil rights groups, and a labor education organization. The result was that for the first time, a company agreed to allow monitoring of a code of conduct by outside groups, groups that genuinely could be called advocates for enforcement of labor rights. The proverbial fox was no longer guarding the proverbial chickens (at least for that one “farm”). At about the same time, several experiments in monitoring factories began in Europe and the United States. In Europe, the “Clean Clothes Campaign” and the “Ethical Trading Initiative” established guidelines based upon ILO standards that companies should follow if they wished to create codes of conduct. In the U.S., a White House task force reached an agreement on a group code of conduct with external, “certified” monitors. This process became known (and now functions globally) as the Fair Labor Association. Another certification organization soon arose in the U.S., called Social Accountability International. These various movements shared the requirement that codes of conduct had to be based upon ILO conventions, not corporate creativity or opportunism. These new groups also required that some kind of outside, trustworthy source should evaluate or “certify” compliance with the ILO-inspired codes of conduct. Activists began to use the word “independent monitoring” to express the idea that only unbiased evaluators coming from within civil society should be viewed as credible reporters of workplace conditions. (For a very useful glossary of the terms used in monitoring the apparel business, please visit the Clean Clothes Campaign website, www.cleanclothes.org)

Coverco, the Guatemalan NGO, is an excellent example of how the code of conduct movement evolved. When it began its work in 1997-1998 the standards that it monitored were from the individual company code of conduct agreed to by the retail company Liz Claiborne Inc. Although Coverco’s independence and civil society identity made it an excellent choice for credible monitoring, its results were not necessarily possible to compare to other groups or other settings. Nor was Coverco’s work at one factory likely to have effects at other factories or on government inspection or enforcement. When the Fair Labor Association was established, Coverco’s monitors had to meet new and higher professional standards for monitoring (see Chapter 3) and its work expanded to other factories with other brands. Its reports gained broader distribution. The code of conduct that it monitored also evolved into a set of rights that bore an increasing resemblance to ILO conventions. And these labor rights were more likely to be carried out in practice because the retail company would have more negative publicity if it failed to carry out enforcement. Liz Claiborne (or other participating companies in this code of conduct system) could threaten economic penalties to its contractors for non-compliance, including and up to withdrawing the work itself.

Today, in the early years of the second millennium, all of the “group” code of conduct organizations—the FLA, SA International, the WRC, ETI—still remain an experiment in nongovernmental efforts to achieve basic labor rights compliance. Some international unions still believe that codes offer a false sense of accomplishment to companies. They worry that companies are “organizing” their own means of avoiding serious public pressure against bad working conditions through codes. They worry that codes will distract governments and activists from the task of improving national enforcement systems. However, involvement by NGOs in code of conduct systems have in recent years produced important and sometimes precedent-setting changes in local labor conditions, including a significant number of union contracts. Even the ILO—which has been reluctant to become involved in NGO activities—has sponsored some training of NGOs as well as workers in basic labor rights and has involved itself at least informally in code of conduct enforcement activities.

An example of how code of conduct organizations view the NGO role is found in the NGO section of the FLA's website, www.fairlabor.org/all/ngo/index.html.

“The FLA particularly hopes to involve local workers rights advocates and NGOs in the following activities:

“**Monitoring:** The FLA accredits monitors to conduct independent external monitoring of facilities used by companies participating in the FLA. The FLA monitoring methodology requires monitors to demonstrate independence, impartiality and a high degree of rigor and thoroughness in assessing compliance with the FLA Code of Conduct....

“**Remediation:** NGOs work with FLA participating companies and factories to implement preventative measures or corrective actions following monitoring visits...

“**Verification:** The FLA requires that participating companies verify the remediation they have implemented in factories...

“**Third Party Complaint Procedure:** ...NGOs or ‘third parties’ [may] report serious labor problems or patterns of noncompliance with the FLA Code of Conduct directly to FLA Staff.

“**Training:** Training by NGOs of workers and management is important to building a culture of code compliance in factories and preventing Code violations...The FLA also encourages NGOs with a background in monitoring and remediation to train other NGOs in their compliance work.”

These FLA categories of participation provide a useful “menu” to NGOs as they determine what, if any, role to play in the documentation and reporting of labor rights abuses. Of course, it is not the only menu. There are other code of conduct groupings with somewhat different relationships with NGOs, including the university student-driven Worker Rights Consortium (www.workersrights.org), the Social Accountability International (www.cepaa.org), the Clean Clothes Campaign (www.cleanclothes.org), and the Ethical Trading Initiative (www.ethicaltrade.org). Moreover, industry-specific codes of conduct have been especially prominent in sectors well known for child labor issues, including carpets (www.rugmark.org), soccer balls (see www.fifa.com), and cocoa (see www.globalmarch.org for that and other child labor-related topics <http://www.globalmarch.org> <http://www.sai.org>)

Ultimately, the role that an NGO decides to play is for the NGO to answer in its own way, by determining its capacity, its goals, and its politics. As noted in Chapter 1, an NGO has a wide range of options—from small inputs to large and from unquestioning advocacy of particular workers’ grievances to “professionalizing” its capacity and becoming labor rights investigators. In making this decision about roles, NGOs should understand one practical fact. Every employer and probably most governments will initially regard you as an unquestioning advocate for particular workers. Perhaps that will be your self-definition. If, instead, you choose to be advocates, investigators, and reporters regarding “fair labor standards,” you will eventually gain a broader credibility. The distinction is simple but important: by advocating fair labor standards, you apply the law (and other rules) to the conflict that you are investigating. By being an advocate for particular workers, you will more likely be repeating and amplifying the claims of workers. There is nothing wrong—and a lot that is right—with being the pure advocate in a time when corporations tend to be pure advocates for cheap and unregulated labor forces. But you may find it more challenging and educating to take the route of becoming investigators, reporters, and advocates for fair labor standards.

2.6 A debate over hierarchies of labor rights

Imagine that you are a human rights organization that has for the first time decided to engage in investigations and promotions of labor issues. Is there an appropriate “starting point”? How do you make a decision about what rights to give priority?

The ILO itself initiated the tradition of putting certain labor rights into a kind of priority package. The first set of rights has emphasized political and civil freedoms (freedom of association, forced labor, child labor,

discrimination). A second set of rights has emphasized economic issues (wages, hours of work, health and safety). The problem with this kind of hierarchy of rights should be evident. Because health and safety rules can determine the life or death of a worker, why shouldn't that be the fundamental right? Or, because a worker who does not make a living wage may, with her family, suffer disease or starvation that clearly should be the "fundamental right," right? But, after all, a sweatshop is mostly defined by the non-stop hours and the exhaustion of the workforce. Are the outrageous hours, combined with low pay, really at the heart of the problem?

Recently, labor advocates have given more attention to the dynamic and shifting quality of political, civil, and economic rights. As described above, any right at a given moment could be the most fundamental for a particular set of workers. As one journalist has written, the most fundamental, life-saving change that could most cheaply and easily be made at all workplaces would be to ensure that fire extinguishers are present and fire exits are clear. Yet deadly fires needlessly occur every year, whether in chicken processing plants like Oxford, North Carolina or in toy factories in Bangkok, Thailand.

Still, it is worth a moment of meditation to consider the relative importance of each labor right in your own context at your own time. An NGO might consider what is lost to a society (in contrast to what is lost to the individual) when workers systematically are denied the opportunity to participate in decision-making at the workplace; when children are denied educations because they are at work; when certain groups of workers are "sold" for some time to their employers or otherwise forced to work; when women or minorities are abused or placed unendingly in the most menial jobs.

The right to organize has sometimes been considered first among these so-called "fundamental" rights. That is because it is one part of the right to association, a universal, collective, civil right. Denying the right to associate means that workers will not have the collective power to organize a defense of all the other labor rights. It is important for an NGO to understand that while individual rights can improve each individual worker and family—a very valuable improvement—collective rights offer the potential to increase participation in the entire civil society. Creation of a union offers workers a first direct opportunity to exercise democratic governance. (It is no wonder that, after the fall of the dictator Suharto in Indonesia, workers' interest in independent unions grew rapidly. Workers were thirsty to participate in democratic trade unions that would give them some voice in their workplaces after years of control by the official government union.)

As authors of this manual, we wish to state openly our own bias, that the right of association—in the absence of any other life-threatening situation at the workplace—appears to us to provide the best opportunity for workers to defend their other rights and to gather experience in democratic governance. If an NGO chose to make this its primary focus in documenting, measuring, reporting and remedying violations, it would be difficult to question that judgment.

Of course, as stated, each of the other rights occupies a central place in the life of a worker. In fact, many NGOs might argue that limiting our list to seven essential rights is inadequate. For example, we will not be discussing the issue of worker's compensation systems or details of social security. These are for another day. But we have collected seven basic workplace rights, each of which could be the basis for NGO action to help workers: freedom of association, forced labor, child labor, discrimination (including harassment), wages, hours of work (including overtime), and health and safety. Violation of these worker rights should be an important concern of NGOs.

2.7 Identifying violations

Let us assume that your NGO has decided to respond positively to a group of workers that seeks your assistance on a labor conflict (whatever the issue). How is an NGO to decide what action to take? The NGO action will probably depend on the kind of violation alleged by the worker(s).

Violations

It is a fact of life for NGOs today that most of their attention is dedicated to especially serious claims of injury by workers—to their rights and sometimes to their person. Often, these are cases that "shout out" for attention.

Perhaps a dedicated trade union advocate is being jailed by the government for labor organizing. Or perhaps a group of workers has been forced to work on a pipeline by the government, as part of an agreement with a private oil company (these are real examples). Certainly some NGOs will have the time, expertise, and resources to carry out more gradual, promotional inquiries about how rights are observed. Most often, though, especially in the de-regulated state of the current global economy, NGOs will be engaged in response or evaluation of more urgent allegations.

When an NGO is alerted to a possible workplace rights violation (we will examine the tools of investigation in Chapter Three), it will become engaged in a task of establishing a record of events and determining what happened in a rather unique setting: the workplace. Like a city street, a workplace usually has many events occurring at the same time, with many different perspectives present. Most workplaces are more complicated than the city street, however, because most activities (certainly industrial activities) include a technology of production—peculiar machines, specialized activities, regimented responsibilities. To identify a violation of a workplace right, NGOs will need to identify the particular labor right (as defined by the sources we earlier described, including national law, regulations, inspection systems, UN/ILO conventions and covenants, regional trade or human rights agreements, codes of conduct, etc.). The NGO will then sift through its information to separate certainty from possibility from uncertainty, and to separate minor matters from major matters. This manual’s approach is to help NGOs rapidly identify practices within each category of rights that would be generally recognized by labor experts as essential minimum elements of the labor right. In other words, by using minimum standards as the starting point for identifying rights (rather than “best practices” or detailed, “maximum” definitions) we can ensure that NGOs are able to address the most serious issues with the greatest speed. For lack of a better term, we call these instances that fall below the minimum elements, “violations.”

“Violations” of labor rights compared to “Indicators” and “Benchmarks”

As noted above, violations usually occur in a fast-moving, confusing, sometimes politically-charged workplace. While NGOs have been dealing with crises, researchers have been at work more quietly and calmly to help create useful categories for NGOs and others to identify, measure, and understand rights. They are searching to find ways of sharing information with others—perhaps even globally—about their labor rights experiences. These researchers sometimes use the word “indicators” to describe categories of information. For example, one statistical category of information essential to understanding the fight against child labor is, “The proportion of children under age 14 who work full time.” An indicator helps direct us towards information that is important to the issue we are investigating. It is a “signal.” When we can’t have an exact answer to a question about labor rights, we wish to know in which direction to go for useful and relevant information. A recent ILO study describes indicators as categories of information that “help to gain, at a glance, a picture of where things stand and how they change over time.”

NGOs can use indicators to help examine a problem that has already been studied, and they can create new indicators to help define a problem that is not well known. Indicators can be useful in a crisis when they help NGOs decide where to seek information. Mostly, indicators are useful when an NGO is undertaking a study of labor issues in order to help promote observance of a labor right.

In contrast to an arrow or a signal that leads us to information about rights (as from an indicator), a “benchmark” is a statement about the actual observance of a right. For example: “No child under the age of 14 works at the facility.” A benchmark in health and safety might be that “less than 10 needle punctures occur per 1,000 workers annually.” (In contrast, the “indicator” on that same issue might be: “the statistical frequency of accidents per 1,000 workers.) Some researchers think about benchmarks as “goals” to be reached in an ongoing way. For our purposes, assessing labor rights violations, we do not just think of benchmarks as “goals.” When we are already talking about minimum or “core” labor standards, many benchmarks that we use will really be immediately necessary for a worker to enjoy his or her basic rights. We will try to indicate when the benchmark is flexible (such as when the ILO has identified special conditions for developing countries) and when it seems fundamental. And because labor rights are important mostly in the setting of workplaces, we will also make a distinction between “process” benchmarks (such as an employer’s failure to collect or provide proper workplace records) and

“substance” violations (such as the actual harm caused to a worker under the particular category of rights). NGOs will note the importance of these definitions as they turn to the chapters of this manual dealing with specific labor rights.

Why should you as an NGO spend any time in this rather confusing language of indicators and benchmarks? Isn't it enough to respond to an alleged violation, examine the law, apply some pressure, and achieve some good outcomes for workers? Indeed, it is a very good thing to solve problems that improve the situation of workers at the greatest speed and at the simplest level of conflict. But labor settings, as noted above, can be very complicated. It is important to seek as many tools of measuring labor rights as possible. One practical reason for learning about indicators and benchmarks in the labor setting is that eventually, you as an NGO are likely to want to use some kind of labor rights auditing document or checklist. (In fact, we will present some examples of these in the chapters about rights.) To explore and use indicators and benchmarks will not only help you understand what is written on a labor rights checklist, it will enable you to begin to identify appropriate examples on your own. Instead of limiting your attention to what constitutes a violation of minimum labor rights, you will become more skilled at measuring details of rights, and perhaps in helping to influence longer term changes in policy. You are engaging in a process of social and legal reform. After all, most NGOs are NGOs because they wish to improve some aspect of their civil society. You will join a network of other NGOs and researchers in an effort to use information as power. It is another idealistic vision, but it has begun already to show some promise.

2.8 What qualifies as progress towards realization of labor rights?

The answer to what qualifies as progress towards the realization of labor rights depends initially upon whether we as NGOs are looking at the employer or the government. At the level of an employer, progress must be measured first and foremost by whether the employer achieves compliance with the set of fundamental labor protections described in this manual and detailed by authoritative reviews such as by the UN. Because very few employers in the current state of the global economy comply today with even the basic set of labor rights, a set of measures must be established for each of these rights. We offer a beginning set of such measures in the manual's section on substantive rights.

Measuring progress towards the realization of labor rights on an international level has been complicated immensely by the historic failure of nations to agree upon appropriate measures at the ILO. When the ILO's system of ratification of Conventions was essentially declared to be in crisis in 1998, the door was opened for new, competing approaches. There is a great deal of work now taking place on establishing measures of progress of labor rights, both at the ILO and elsewhere. Today, NGOs may contribute information and attention directly to this debate through a number of channels. We have created our own short list of what we consider the most interesting (although sometimes complicated) sources for measuring progress:

1. The ILO. The best and most continuous source for measuring progress in labor rights is the reports of ILO supervisory committees, especially the Committee of experts when a government has ratified a Convention. We firmly believe that NGOs should partner with unions that have worked with the ILO in order to communicate information about a government's progress with ratified Conventions and reporting regarding the Declaration of Fundamental Principles. The ILO has also initiated an intriguing but somewhat complex enterprise called a “GAP”-measuring methodology. A number of ILO researchers in recent years have sought to correlate available ILO indicators to make a statement about whether a country is suffering an “Adherence Gap” (meaning a failure to adopt core rights) or an “Implementation Gap” meaning that the country has been criticized in ILO reporting processes. While this approach represents the only one we know of that seeks to measure both law-based actions (Conventions) and compliance-based measures (such as the ILO Declaration and reviews by the ILO Committee on Freedom of Association), it is perhaps too complicated still for any direct NGO input. References to this work are available at www.ilo.org.
2. The Covenant Committee. Perhaps the best documentation specifically designed for NGOs exists within the UN Covenant Committee for the Covenant on Economic, Social and Cultural Rights. NGO papers

are even published on the UN website and become an interactive part of Committee deliberations when the Committee communicates with governments that have signed the Covenant.

3. Code of Conduct accreditation groups. The most interesting ground-level measures of progress have been taking place regarding corporations in the above mentioned code of conduct systems. To date, only the Fair Labor Association has released company-wide information regarding a number of apparel and footwear companies, which provide extraordinary detail—often gathered by NGOs—of both violations of labor rights and the remediation that has been promised in response. Specific investigations have also been detailed by the FLA (www.fairlabor.org), the WRC, (www.workersrights.org), the Ethical Trading Initiative and the Clean Clothes Campaign.
4. Indicator and benchmark research efforts. Both the National Academies of Science (www7.nationalacademies.org) and the American Association for the Advancement of Science (www.aaas.org) in conjunction with HURIDOCS (www.huridocs.org) have undertaken detailed if sometimes technical efforts to measure progress in labor rights. The AAAS has in particular created practical manuals such as this one that offer advice on how to measure progress on social and economic rights.
5. Global reporting initiative. A somewhat less advanced but dynamic project of the United Nations is the Global Reporting Initiative, affiliated with the UN Environment Program. The reporting initiative is noteworthy in that it links labor and environment reporting concerns under the heading of “Social” standards. (www.globalreporting.org).

2.9 The troubling private sector-public sector divide on labor rights

These are perilous times for NGOs—as well as times of new opportunity and experimentation. The peril is that times are already difficult for workers in the global economy, and NGOs can make things worse. Governments and even the UN have been tempted by the idea that labor laws—meaning real, enforceable laws—can be supplemented or even replaced by nongovernmental initiatives that usually do not carry the force of law. Governments and the UN are increasingly tempting NGOs to participate in such systems by offering funds and collaborative opportunities. NGOs must be especially careful in this regard. Just because you are a nongovernmental organization does not mean that you should advocate nongovernmental solutions. NGOs must use private sector actions, such as code of conduct investigations, documenting and reporting, to influence public policy. And public policy should promote the rule of law.

Coverco of Guatemala is again a helpful example. When the code of conduct trend among corporations was becoming popular, corporations that agreed to work with NGOs asked them to publish their factory reports only to the companies. According to the corporate rationale, what really mattered was that workers at the factory level were having their grievances resolved. Perhaps on some theoretical level this idea makes sense: if all workplaces complied with labor rights requirements because they have instituted effective codes of conduct, then normal public processes of investigation, analysis, complaints, and administrative or legal action might technically be unnecessary. But that time is far, far away, if it will ever come. In Coverco’s case, it refused to limit its work to a two-way communication, and insisted that it publish quarterly reports, available to the public, at least twice a year. In that way, Coverco could adapt confidential company information in a format that could publicize labor abuses and help advocate for change on a number of levels at the same time. That is how Coverco’s information became useful to the ILO, to the US Trade Representative, as well as to Liz Claiborne in addressing its problems at the ground level. Coincidentally, during the period of all this pressure, the Guatemalan legislature also established new protective labor legislation for the first time in many years.

Such activity on the private and public sectors is one of the reasons that we have created this manual. NGOs should learn to navigate these difficult and troubled waters in order to improve the situation of workers in the global (and local) economy.

Chapter Three A Basic Tool Kit for Monitors

A monitor's first decision after choosing—or, just as likely, being urgently requested—to become involved in a labor conflict is this: which set of tools best serves the situation in question?

Let us assume for this manual that you are making your first step into a labor rights conflict. You know that the workers are upset about some kind of allegedly unfair treatment. And you know that the legal system and its enforcement provisions have often failed to provide an answer or a resolution to workers' complaints.

3.1 What do NGOs do?

Your first step is to make an assessment of your own capacity. You must determine what you are capable of and committed to doing. It is very important that you make an accurate assessment of this capacity in order to have the greatest possible impact with your resources. For example, one of the first questions for your organization to determine is whether you wish be an advocate for particular workers, or an advocate for the principle of fair labor conditions.

We have written this manual so that it can be used by many NGOs in different situations. But we have mostly written it for NGOs that are interested in undertaking quality research, investigations, documentation, and reporting of labor conditions so that their data is reliable and useful.

We recognize that many NGOs are so frustrated with bad working conditions that they feel their primary role should be to agitate and advocate for the workers rather than to investigate and report. Let us call that “amplifying” rather than “monitoring.” These NGOs are correct that most workers' voices do not have an adequate voice at their workplaces. They are also correct that one of the fears of global business is that a public perception of unfair conditions—whether the allegations are true or impossible to fully determine—could damage the company's reputation and sales. Historically, it is this fear that brought many companies to the table with human rights groups and unions to agree to new methods of monitoring conditions. So, in many instances, an NGO campaign that adopts and amplifies workers' struggles may be a very effective way to put pressure for change on management and government authorities.

But pressure campaigns are often limited by their particular circumstances and do not necessarily lead to broader lessons or to data that can help bring about systematic change. We have seen the rise and fall of many worker rights pressure campaigns that do not include a systematic sorting, assessment, and documentation of information. Some campaigns last only as long as their loudest voices. When the advocates move on to another struggle, the accomplishments of the first struggle can be limited to the individual setting or to the very short term.

We believe that we are at a historic moment in the evolution of labor rights enforcement. Investigation, along with reporting, may be very effective, especially when the workers' fundamental rights to freedom of association are emphasized. That is the main point of this manual. Because information can be organized and communicated better than ever before, such information should be targeted directly at people and institutions that can bring about change. When NGOs cause a corporate “culture” of noncompliance to change in favor of compliance—and when they record it and report it—they may cause other companies who are in a similar situation to change as well.

When NGOs cause a government culture of noncompliance to change in favor of compliance—even one government or one incident of noncompliance at a time—they may improve conditions for workers in many places.

When change occurs repeatedly in individual locations, it can become custom or the norm, rather than the exception. Finally, when newly-respected local norms are compiled and reported, they can become a part of something greater, perhaps even the renewal of an international consensus on labor rights and, especially, their genuine enforcement.

So perhaps you have mapped your own NGO's capacity, and you have decided to engage in labor rights monitoring. Now what?

3.2 What is labor rights monitoring?

Labor rights monitoring might be best understood as a process of: 1) gathering background information about local working conditions 2) checking and rechecking the actual workplace for sources of information about basic labor rights (by engaging effectively with workers and/or managers) 3) carefully evaluating the quality of information 4) establishing and measuring the extent of any labor violations and, later, 5) determining whether violations have been addressed and corrected.

But before the first step in monitoring may be taken, the new monitor must consider a few philosophical and educational commitments. Together, these can help ensure high quality monitoring. We have found the following ingredients to be important:

- **Independence**

A monitor's role is to help determine whether labor standards have been fairly and legally applied at the workplace. That means that the monitor carries a responsibility to independently investigate workplace conditions, as well as to investigate particular allegations. Sometimes NGOs already have committed themselves to be advocates for particular workers. The new role as monitor requires an NGO to view the situation from a new point of view—one in which the monitor is an advocate for enforcement of internationally-recognized fair labor standards instead of the particular worker or union. One practical difference in these two situations is that the monitor is not the “representative” of the worker and does not assume that either the employer's or worker's accounts are true. Our favorite lesson in independence and impartiality comes from journalism. Editors like to teach new reporters to doubt their first instincts, and to establish a healthy habit of skepticism. “If your mother says she loves you, go verify this with a second reliable source,” they say. Well, of course your mother loves you! (Or she should!) But the effective labor rights monitor cannot really assume that anything is true. Instead, she must investigate a question with new tools and insights.

- **Technical capacity to monitor**

Technical capacity means becoming very familiar with one or more of the labor rights typically monitored, including child labor, forced labor, discrimination (including harassment), the right to organize and collectively bargain, health and safety, wages, and hours of work. This list is sometimes referred to as the “basic rights” of workers. (We have included chapters on each right in this manual in order to elaborate on these rights.)

An NGO is unlikely to have expertise in all of these areas and may be best known for its work on just one of the issues (such as health and safety or discrimination). Whatever the issue or issues, a monitor and monitoring organization needs to understand the labor condition(s). And they need to develop the means to monitor the conditions. This means the ability to monitor easily between paper and people and worksites. The tools for such monitoring are increasingly available through education programs and literature, whether by sharing knowledge between NGOs, trainings from local and international groups dedicated to capacity building efforts (such as the collaboration between the Guatemalan group, COVERCO, and the U.S. group, the International Labor Rights Fund), and human rights groups that are increasingly “posting” information to the internet (such as the new data base offered to monitors worldwide by Human Rights First, at www.humanrightsfirst.org.)

Some global or regional labor rights investigative organizations are themselves offering assistance through pilot projects, such as those developed by the Worker Rights Consortium and the Fair Labor Association. If an NGO is really more of an advocate than an investigator, the NGO might be asked to help provide a link to local workers in order to gain their perspective about a conflict. (This could be a role for your NGO if you determine that your interest is in amplifying workers' voices.) If the NGO is equipped to conduct independent monitoring, then these organizations may help pay for the NGO's investigation of labor conflicts. In this latter case, the international monitoring organization will require that the monitors demonstrate their capacity to conduct effective monitoring.

There is one fundamentally important requirement to gaining a technical capacity to monitor specific labor rights: the monitor **MUST** become very familiar with established definitions, if they exist, both of national law and of

the International Labor Organization. That is because monitoring creates the risk that different groups will use different definitions of rights. If that happens, monitoring can make workers' rights less clear instead of more clear. Exploring ILO conventions that have been ratified by your own country is an important first step in understanding the ILO system (see www.ilo.org and the search tool ILOLEX.) The later chapters in this manual will help provide benchmarks that—while not authoritative—reflect basic ILO standards.

- **Accountability and methodology.**

A monitor must be able to account for each step that has been taken to investigate a labor conflict. The monitor must be able to explain how any conclusions were reached and why they are valid. A monitoring organization should always be ready to take responsibility for its actions, and to reevaluate itself when flaws or errors are discovered. In other words, a monitoring organization must have in place a means of discovering potential faults in its own system of monitoring, such as the possibility that monitors might falsify data or fail to conduct the work that they have been assigned.

- **Transparency**

Monitors also need to understand the concept of transparency. Although your work may require you to protect information as confidential (see below) you will also want to ensure that sufficient work is available and understandable to the public to show that you are engaged in a process of improving the public guarantee of labor rights.

In Guatemala, COVERCO issued reports every six months that documented its work to the public, including specific examples of important violations of labor rights at factories. If a monitor is limited to private reporting, it may actually limit the chances that future workers at other workplaces will see their rights addressed. In contrast to transparency, a monitor must also have a system for protecting information that is sensitive or that has been “loaned” to the monitor for the purpose of evaluating labor conditions. For example, a monitor may investigate allegations of sexual harassment at the workplace. Releasing the names of those workers making the allegations or those who have been alleged to harass may expose them to serious prejudice. Moreover, some information about the workplace, such as the type of products or the system for making the product may be the property of the factory and could give an advantage to a competing company. Monitors need to be able to distinguish such kinds of information from that which should be “transparent” and available for public review.

3.3 What are the primary skills necessary to labor rights monitoring?

As a former journalist, the primary author of this manual has been impressed at how the first tools of labor monitoring are often similar to the basic tools of a journalist. Regardless of what the conflict or story is, the journalist must ask, in varying degrees: what is alleged to have happened, why, where, when, and how? The special context of the industrial setting does not change the questions. It just makes them a little more technical and challenging. For example: a worker says she has been cheated out of a wage payment. The monitor examines “what”: the factory and government wage system. She may learn that wages are made up of the minimum wage, plus a government-mandated bonus, plus a discretionary factory bonus based on productivity, plus a holiday bonus. The monitor examines “when”: when did the worker work, and how much should she be paid? The monitor asks “why” there is a difference of understanding between the worker and the factory, along with when or how the dispute occurred. Somewhere within this set of questions, the monitor will discover the primary basis of the dispute—perhaps a failure to record wages properly, causing distrust and bad feeling. Most often, monitors discover the truth of a conflict only after exploring it in great detail—by examining the context of the dispute, gathering information, comparing oral and documentary records, analyzing the information, and reviewing their impressions with the parties

that they first contacted. Monitors who master the first steps of information gathering and analysis will be very pleased to find that this information can be used to help workers more generally improve their workplace conditions.

3.4 “CAVAR”: “Digging” is the key to basic monitoring

In Spanish, the verb “cavar” means “to dig.” There is no more appropriate metaphor for monitoring than to dig into workers’ stories, into factory records, into the workplace system, into each labor right that is the subject of monitoring. But each letter of C-A-V-A-R (no matter what your mother tongue really is) also helps us remember each aspect of monitoring. In this way, monitors can achieve a clearer picture of what happened at the workplace. Our Coverco colleague, Homero Fuentes, helped us to create this metaphor and memory device. Therefore, this manual is itself an example of global networking. Wherever you may be reading this, you will now learn one word in Spanish, and how that word helps us remember the steps of monitoring:

A. CAVAR.

1. “Context”: community, industry, and government

The first letter, “C” reminds us that we must first learn the context (in Spanish, “contexto”) of the labor situation. It may be that workers contact us during a crisis, but, ideally, we will already know something about the context of the workers by earlier preparatory research. We will already know this information either because of our own work, or because we have researched the subject or interviewed community groups with local knowledge. For example, a first and very valuable contribution by monitors to an understanding of possible workplace issues is the monitor’s understanding of the community where the workers live. Is the community largely a locally born or immigrant population? (Possible monitoring issue: workplace conflict due to language differences or exploitation of precarious citizenship status, such as undocumented workers in the United States.) Is the education system functioning in such a way that children legally must be in school until a certain age? (Monitoring issue: avoiding child labor and addressing the needs of children when they are found improperly at jobs). Are there community traditions that disfavor work by women? (Monitoring issue: equal pay for equal work, discrimination, harassment). What kind of public or other transportation systems exist in the community (Issue: safety of transit of workers, capacity of young workers to be in school and work, cost of getting to and from work.) The existence of employer-controlled housing usually means that workers have migrated from some other place to work and are sending money home. Often, these workers are not granted full freedom of movement or visitation and their legal documentation is often controlled by the company (migrant workers in China are one example).

Monitors should not feel intimidated if they are not experts or not already deeply knowledgeable about a particular industry or work system. Not very many people are. But they should be aggressive and systematic in gaining the appropriate knowledge. Gathering contextual information means contacting other people with helpful knowledge. For example, monitors might interview representatives of organizations with knowledge about the local community. Monitors should take some interest in the kind of work and the nature of advocacy of these organizations in order to weigh the value of information of each source that they interview for information. Perhaps some of these sources have more credible information or longer histories of work in the particular area.

In examining workplace context, monitors should seek to identify important issues for when they enter the factory setting, including information about what may be culturally sensitive issues. In each case, monitors should seek to gather information about common problems, good practices, trends, and, of course, relevant laws and regulations that may be applicable to workers. NGOs should note that sometimes learning the laws and regulations helps to expose what has NOT been enforced or applied, rather than what is enforced or applied at the level of the workplace. For example, if child labor is used in factories, the monitor can be almost certain that this is well known in the nearby communities.

Examples of organizations to contact include local NGOs, unions, or international organizations that work in the area. For example, in Coverco's early work in Guatemala, it was very helpful to have contact with the UN's peace accord staff that often also worked on labor issues in areas near factories or farms. One of the most important outcomes of this "context"-focused step in monitoring is a better ability by the monitor to meet and interview workers and ensure that the workers trust the monitors because they have knowledge of both the community and industrial conditions.

Monitors may find that, as they explore the workplace context, it is already possible to begin to create a "checklist" composed of issues that have been identified during this background work. For example, besides useful community information, a monitor should note in his interviews or research any topics that should be raised at visits to the factory or with workers regarding each of the core labor standards: child labor, forced labor, discrimination (notably, women's issues, such as the trend of workplaces to require pregnancy tests), right to organize and collectively bargain, wages and hours of work, and health and safety. Then this checklist can be tested in worker interviews to determine whether the information is applicable to particular workplace settings.

2. "Archivos": Workplace records are a key to labor rights investigations

It is a fact of life-and, especially a fact of doing business-that employers create massive amounts of documentary records about the work process. This is because successful employment depends upon an employer consistently gaining a profit from the workers' labor (whether picking bananas or sewing blue jeans). Archivos (the second letter in CAVAR, and the Spanish word for "record keeping") are a second major focus of monitors. When it comes to the subject of record-keeping, what is good for employer profitability is also good for worker rights monitoring. One of the most significant innovations in labor rights monitoring is to require employers to be as careful and accurate with their workplace records as with other economic records. For example, when the Fair Labor Association examined problems in wage payments at apparel factories, one of the most common complaints was that workers did not receive or did not understand the pay receipt that was supposed to describe their wages and deductions for the previous work period (usually the previous two weeks). Thus, a requirement for all companies and factories that participate in that system is that adequate records be provided to workers. When such records are not available to a monitor, there can be a presumption that factory management has failed to provide the compensation or certainly failed to adequately explain what a worker is entitled to. In other words, without the records, managers (and not the employees) should carry the burden of showing that the proper rules were followed and that workers were paid. We have seen many, many cases in which a manager's failure to produce records signaled a violation of workplace rights.

Therefore, in many work settings, a very substantial amount of paper or computer records will usually be available to monitors, from the documents issued to workers to the internal reports of production and workers' personnel files. It may be surprising to hear that monitors will have access to company records. That is the case if the monitor is working within the labor rights certification context of monitoring. In other circumstances, a factory or brand name will probably refuse to reveal internal records. But it is increasingly the case that manufacturers seek out monitors for records review when there is a conflict because the manufacturer itself will not have much credibility with the public.

Monitors should become familiar with the various kinds of workplace records that are produced. This is not necessarily an easy task, because workplace records can be produced in computer systems that require some familiarity to understand (and one deceptive practice used by some factories is to keep more than one set of records). Once a monitor does become familiar with the records keeping system, it is also important to learn to use these records in what is called a "cross-checking" process. That is, monitors might compare the employer's records about particular employees and production lines to the actual employee wage records receipts, and then compare that to the testimony of employees. For example, if transportation records show that workers were engaged in significant overtime, and workers' testimony indicates that they were working very late hours on a deadline production job, then it would be very surprising to find that workers were only paid for the minimum hours during that same time period. Yet, monitors have already encountered precisely this underpayment situation.

3. “Visite”: Entreviste Monitors should interview workers and visit workplaces

The third letter in CAVAR is V and we use it to remind us of the importance of “Visite”-the visit and interviews with workers and management. In fact, one of the most important and difficult jobs for monitors is interviewing workers about allegations of unfair working conditions. A monitor’s goal is to get an accurate picture of the workplace, as actually experienced by the worker. One of the essential reasons that NGOs become involved in monitoring is that workers are more likely to trust (and speak openly) with individuals who are part of a civil society organization that has had effective contacts with workers. Still, the fact that a worker may trust a monitor does not mean that the information received will be accurate. A monitor has much work to do to become a good interviewer. For example, a well-conceived interview will not introduce ideas or the information of others to a worker. Rather, the interview should raise the subject of labor relations in an open-ended and conversational way. An example might be the difference between the monitor who asks “Did Supervisor X discriminate against you?” and the monitor who asks “How would you describe the treatment of workers in sewing line 12?” “What would you describe as positive or negative experiences?” (Again, some indications of useful issues will be described in the upcoming sections on specific labor issues.)

Sometimes where an interview takes place will help determine the reliability of the information. Is management aware of the interview and the identity of the worker who is being interviewed? (This will often restrain a worker from speaking openly, unless sufficient numbers of workers are interviewed to help ensure a feeling of mutual support and protection.) Moreover, a monitor must receive an absolute commitment from the factory and the brand that no worker can be disciplined for speaking to monitors.

4. “Analysis”: The NGO monitor must assess the various forms of information

The fourth letter in our Spanish verb CAVAR (“to dig”) is another A, for “analysis.” When a monitor has identified the issue(s) for monitoring and has collected both factory records and worker interviews, the monitor then must begin to analyze and judge the information. This involves making an analysis of what the law (or code of conduct or international standard) requires. The monitor must weigh the quality and content of the information. Some of the information will be objective and quantifiable. Some of it will be subjective and difficult to judge. For example, a worker tells a monitor that she was touched in an insulting or intimate way by her supervisor. The supervisor’s manager says that the worker stood on a table and screamed personal insults at the supervisor because she had been criticized for slowing down her production line during a social conversation. The monitor must carefully assess such a situation and evaluate all the available sources of information, including using all available resources to judge the credibility of the parties. What do workers who were not directly involved remember about the incident described by management? Information that comes from someone who heard about an incident is not as credible as information from an individual who experienced the incident herself. But multiples sources of information are important. (Details about monitoring skills will also appear in the specific labor rights section, enabling NGOs to compare the quality of different forms of information.)

5. “Reporte”: The NGO must report its findings

The word CAVAR ends with the “R” for “reporte.” We described earlier how the Guatemalan monitor, COVERCO, insisted that its reports about specific factories must be available to the public at least twice a year. These reports itemized the labor standards and provided a commentary, with concrete examples, about degrees of compliance with labor rights. Factory locations were not always identified because the brand sought to protect certain product designs or factory information. But the public monitoring report represents an important improvement over the traditional “internal audit” used (and kept confidential) by most companies. Monitors should seek to become skilled at creating clear and well-organized statements of labor conditions, and should seek to include the result of their monitoring in terms of the agreement or disagreement to remediate labor conditions.

In many cases, monitoring certification organizations such as SA International, the Fair Labor Association, or the Workers Rights Consortium have used a standardized reporting document or audit instrument in order to shape or pre-determine monitor reports. However, it should be noted that a standardized audit instrument may sometimes limit the creativity and attention of a monitor to a particular set of issues that has not been emphasized in a standardized instrument. We therefore encourage monitors to develop or refine their own monitoring format.

You will now never forget the basic elements of monitoring (and, if you don't speak Spanish, you will have learned a new verb!): CAVAR—to dig. To discover the Context and Archives or records of a workplace; to Visit and interview the managers and workers; to Analyze the various forms of information; and to Report on the information. This is the basic work of monitoring. Although there is certainly a place for aggressive amplification of workers' grievances, monitoring work must usually be done in a spirit of independence and professionalism to contribute to social change and effective rule of law.

3.5 NGO monitoring: A case study in summary form

With the help of Coverco, let us now consider a summary of monitoring that gives life to some of the examples above. (This is derived from the NGO's own publications.)

How does Coverco define its mission?

“In 1997...leaders in Guatemala's civil society, formed the Commission for the Verification of Codes of Conduct.” Coverco's governing board includes professionals from a range of disciplines: law, medicine, sociology, communication, business administration, education and pastoral theology. Coverco's director, Homero Fuentes, has gained the respect of both management and labor as a negotiator and labor education specialist. He and Coverco's board together hired and trained monitors—men and women that were not specialists in labor relations but who demonstrated integrity, commitment, and intelligence with respect to investigating workers' conditions.

“Ours is a deeply polarized society. We have divisions born of economic inequality and almost 40 years of civil war.... Institutionalized violence and endemic corruption make it difficult to cultivate and strengthen civil society.... The absence of the rule of law means that those with economic, political and military power are sheltered from being held accountable for their actions.”

What does Coverco do?

Coverco describes its work as “social auditing.” “We capture the flavor of labor relations on the factory floor (for example, checking if there is a grievance procedure and how well it works). We execute a thorough review of payroll and employee records (checking, for example, if overtime, employee benefits and production bonuses are paid according to the law...)

Before Coverco carries out a social audit, it negotiates with the corporation for access to workers both on and off the job as well as access to all records. We also negotiate when and how the findings of our social audit will be made public.

What Coverco does NOT do

Coverco is not a substitute for unions, management or joint union-management endeavors, nor for government or advocacy groups. We believe in the right of workers to organize and in practice, this means we do not serve as agents for workers, even when they have legitimate complaints. But we do document their complaints, and we explain to inquiring workers where they can go for help. We also never serve as consultants to management.

D. Coverco's Monitoring Experiences

In 2000, Coverco issued its first public report, 25 pages long, regarding the labor conditions it examined during a six month period at two apparel factories employing 900 workers.

Coverco's monitors conducted many factory visits, interviewed workers away from the factory as well as at the factory, received complaints by telephone, interviewed managers, and audited factory records. Access to the factory was promised and required by the brand name producer, a U.S. clothing maker. Here is a very short summary of one public report of conditions.

1 Forced Labor

- a. After examining Guatemalan law and ILO Conventions and standards, Coverco has found no evidence of any use of forced labor, be it prison labor, indentured, bonded or otherwise.

2 Child Labor

- a. No workers found who are younger than 15 years of age. (The company code of conduct contains a higher standards than ILO requirements.)
- b. Minors under 18 years of age feel pressured to work overtime, a violation of Guatemalan law. These workers are paid for their overtime after their seventh hour, which is the daily legal limit of hours. That means that even though they receive overtime pay, the law is still being violated.
- c. Work schedules prevent young workers from pursuing education during weekday evenings or on weekends.

Remediation: The U.S. company and factory agreed that a special shift would be created to enable young workers to complete their work at an earlier hour and attend school. Many young workers protested that they wished to continue to work overtime hours despite legal prohibitions, and the factory and workers agreed to confer about changes to comply with the law.

3. Discrimination, Harassment, or Abuse

- a. A pregnant worker was refused the right to leave the workplace when she complained of being sick.
 1. Some days earlier, the local social security health clinic had refused to give the worker a certificate for approved leave time for a high risk pregnancy.
 2. On the morning she felt ill, factory management stated that it did not have resources to transport the worker and that perhaps rest time would solve her illness.
 3. After five hours delay, the worker's husband arrived to take her to the hospital
 4. Later that night, the worker's baby was still born.
- b. Workers of Mayan ethnic origin assert that they are denied promotions.

Remediation: Coverco provided information about available legal representation to the worker who lost her baby. The factory and company engaged in discussions with the worker to seek a settlement of her claims. A nurse was hired at the factory to ensure that health issues were addressed. Management agreed to ensure that a vehicle was always available to transport a worker during emergencies. Regarding workers of Mayan ethnic origin, the factory denied that such workers were limited in their promotions and Coverco would continue to note and observe this allegation.

4. Hours of work, overtime

- a. On 25 January, 15 workers left the production line and complained of an ongoing problem of forced overtime work. They wished to be with their families after eight hours in the day on that week.
- b. On 26 January, five of these workers were required under order of management to sign resignation papers. They received severance pay.
- c. It was reported that one worker refused to sign the resignation document and that a manager took her thumb and forced her to place her thumbprint on the resignation document.
- d. See Child labor overtime allegations above.

- e. Administrative files kept by managers are disorganized and are not usually available when requested.
- f. Workers complain that deductions are made for social security and other “benefits” but that they have not been registered in the national social security system.
- g. The factory does not allow vacation time, other than national holidays. Instead workers are paid overtime for the time that would have been mandated as vacation.
- h. In general, overtime pay is not recorded on pay stubs. Management states that this is because the piece rate system of pay is used for this apparel production, but that makes it difficult for workers to know if they are being compensated at the legally required overtime rate.

Remediation: The workers who lost their jobs due to forced resignations could not be located to investigate whether they might be entitled to reinstatement in their jobs. The factory denied that a worker was coerced to sign her resignation and this could not be verified with the worker. Management stated that it was in the process of upgrading its computer record keeping and that it would provide complete and up to date records in the future, including details about wages and bonuses on pay stubs. Management stated that workers who wished to take their vacation time instead of receive overtime for time worked would be permitted to do so.

5. Wages

- a. Some 40 workers complained that they had received wage deductions due either to allegedly being late (though the factory hired the buses) or to allegedly low quality work product.
- b. Production bonuses are not explained and are handed out arbitrarily by supervisors in cash.
- c. See Child Labor above.
- d. Wage increments and the wage system in general is not adequately explained to workers and factory records are not adequately recorded.

Remediation: Management asserted that it had a legal right to diminish worker’s pay when workers were late to work, according to the time not worked. Management asserted that quality-based deductions dealt with the piece-rate pay system but agreed to cease making deductions for low quality work if those deductions took workers’ pay below the minimum wage. Upgrades of record keeping system would enable workers to understand their wages and bonuses. However, management asserted that it had the right to distribute discretionary bonuses on the basis of performance results noted by supervisors.

6. Freedom of Association

- a. See first paragraphs of this manual for Coverco’s freedom of association investigations and the certification of the only union in the apparel industry.
- b. Although not expressly a freedom of association issue, Coverco points out that the factory does not have a functioning grievance system that would enable workers to communicate their grievances with the promise of confidentiality and non-retaliation.

7. Health and Safety

- a. See Discrimination case above regarding pregnant worker.
- b. The two factories have different types of emergency exits. Some are rolling steel doors while others are regular doors. In repeated monitoring visits, we found both types of doors locked. Management asserted that these were locked because workers might steal apparel and because the doors allow rain to enter the factory. Management agreed to keep the doors unlocked and slightly open. Upon subsequent monitoring visits, the doors were again found to be locked.
- c. A diagram for fire exits is posted in the factory but workers have never had any training or drills to carry out an evacuation.
- d. Supervisory personnel do not have first aid training.

- e. Inadequate and unsanitary toilet conditions prevail for men and women.
- f. Nursing mothers do not receive mandatory paid nursing time.
- g. Workers have been denied the opportunity to go to the state health clinic, which is only open during working hours.

Remediation: Although management repeatedly asserted that it was taking steps to improve health and safety, return monitoring visits have shown that management fails to fulfill its promises. Coverco plans to undertake additional training for its own monitors to be more detailed and more vigilant in monitoring health and safety conditions.

3.6 Some tentative conclusions

The sketch above illustrates how one monitoring organization went about its business, most notably by issuing public reports that provided a basic picture of working conditions as well as provisional remediation. Of course, there are also examples of factory denials of problems and factory refusal to remediate problems. That is an honest portrayal of how monitors find the interactions with factory officials. In fact, even to get this degree of participation, the brand name apparel producer at one point had to insist upon the replacement of a high level factory manager who did not accept the idea of independent monitors visiting the factory. Once monitoring was allowed to be carried out according to the terms negotiated by Coverco, the working relationship between all parties became smoother. Perhaps most important, workers trusted Coverco and increasingly provided an accurate flow of information about conditions. We have already noted that Coverco's public reports were widely distributed. Eventually, these reports—notably on the freedom of association issues—built a credible body of evidence regarding violations of basic labor rights at these factories. Some of the important changes and improvements can be directly attributed to the role of Coverco and civil society monitoring at this factory.

As monitoring progressed, the monitors also became increasingly more skilled at identifying issues and investigating them. One of the most helpful undertakings in this respect were trainings that dealt with individual benchmarks and techniques in monitoring labor standards. This manual now turns to a discussion of substantive standards and how to identify, at the least, the minimum standards necessary to help prevent abuses of particular workers' rights.

Chapter Four Freedom of Association: The right to organize and collectively bargain

4.1 Introduction: Union monitors

Why do workers experience injustices at work?

Some workplace experts use a description from sports and say that the “playing field” between workers and managers is uneven. The angle favors the employers.

Certainly the workers’ team has more members than the managers. But employers have unique authority. They hold the whistle as well as the ball. They have the momentum and the speed. They have a strong claim to some authority: they undertook the business and helped create the jobs. But they do not necessarily use that authority with fairness. Unless workers have organized themselves—the main subject of this chapter—a supervisor can always call a worker into the office (or out in the field or the mine or wherever the workplace) and tell the worker that she has been dismissed. Thus, a worker with a grievance may remain silent simply out of fear of losing her job.

When workers organize themselves into a union—when they truly can exercise the right to freedom of association—they create workplace protections that individual workers without a union do not enjoy. One of the most common features of union-negotiated contracts is the requirement that an employer have “just cause” to dismiss a worker. Not just “any” cause. And, with a union, if a worker has a grievance, many more eyes will see the actions of the employer. A neutral arbitrator may even make the final decision about the merit of a worker’s complaint, not the employer.

When unions form, they also seek to negotiate many other issues, such as the level of wages, hours, and benefits and features of the health and safety system, etc. A contract between a union and management creates a book of rules, designed for that workplace relationship. That is why some people call the right of association an “enabling” or “empowering” right. It empowers workers to improve all their other workplace conditions as well. In other words, the right of association creates a democratic space at work, where workers can give voice to their concerns and choose representatives to convey these concerns to managers.

Perhaps this is also one of the reasons that employers fight so hard—sometimes with lawyers, sometimes with their own schemes—to prevent workers from forming unions. When a union forms, the employer no longer possesses the absolute right to dictate the terms of employment to workers. Some employers think that unions make production more expensive. Some just do not like to give up even a small bit of control to workers.

And so, workers form unions frequently. Right?

Perhaps they try. However, in the low-wage, globalized workplace, they usually fail. Employers often act rapidly and harshly to dismiss workers who seek to form a union. Most national laws, if they were designed to protect workers, cannot keep up with the speed and control that employers exert over the workplace. That is especially the case today, where financial transactions can move at the speed of light, but labor moves at the speed of...humans.

Factories sometimes can shift locations in a matter of days or weeks. The threat to workers of a shut down if they do not comply with management demands seems realistic—even though it is a fundamental violation of workers rights when managers shut down solely because of union organizing.

This situation was vividly apparent in our opening chapter example of the women who sought to create an apparel workers union. They were soon met with a riot by other workers who had been encouraged by managers to stop the process of unionizing. The employer’s message was “If you form a union, we will move the factory somewhere else.” Such a threat can force low wage workers into a difficult choice: cooperate with the managers or lose your job.

Most governments have laws against antiunion action by the employer. However, in reality, many governments deliver the same message as the employers by discouraging the formation of unions, such as by failing to enforce the laws. Even a lack of labor inspectors can be a message to employers that they are free to make whatever employment decisions they wish. Some governments even require workers to join a government-sponsored union instead of their own independent group, or they allow “solidarist” associations that are sponsored by the companies, not the workers. This section of the manual will help define the right of association and assist the NGO in identifying and acting on violations of this fundamental right. For there is much that NGOs can do to help workers find their voice and to help insist that government and employer, both, respect the right of association.

Basic Definitions

“Freedom of association” describes workers’ freedom to choose, join, and govern their own organizations without discriminatory action from the employer or from the government. Freedom of association is defined or monitored under virtually every nation’s laws, as well as in many international instruments and regional treaties and organizations. Because the International Labor Organization (ILO) has established the most universally accepted definition of this right, we are emphasizing the ILO’s work above all other definitions. But NGOs should keep in mind that their work in investigating and reporting on the right of association will often be directed at more than one governmental or nongovernmental group, including other UN bodies (such as the UN committees that enforce the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Political and Civil Rights), as well as regional organizations such as the InterAmerican Commission on Human Rights. NGOs might also note that freedom of association is not just a worker’s right—it includes all rights to associate, such as the right of citizens to join a church or a civil organization. In this manual, we will examine the worker’s version of this right—situations in which workers seek to create a union and to carry out its programs, including the right to bargain for a contract.

4.2 International, national and code of conduct standards regarding the right of association

In the 1940s, ILO member nations (meaning most countries) created two conventions to define the right of association. The first, called the “Freedom of Association and Protection of the Right to Organize Convention,” No. 87, deals primarily with the obligations of governments to workers. The second convention, called the “Right to Organize and Collective Bargaining Convention,” No. 98, deals primarily with the obligations of employers to their workers. Government always has a role in balancing the rights of employers and workers—balancing the “playing field” we described earlier.

By the act of joining the ILO, all governments today agree to follow the ILO’s definitions of the freedom of association conventions. An NGO that is able to work with some knowledge about the ILO’s definitions on freedom of association may make a positive impact both on their government and employers because the NGO will be making reference to longstanding ILO “jurisprudence” or legal understanding of these rights of association.

Indeed, if unions were truly permitted to function as provided under the terms of the ILO conventions, there might be little need for monitors. That is because, by definition, the union *is* the workers’ own choice of monitor. If the government and employer respect the union’s rights, then the union could function without the need for additional involvement by groups such as NGOs. As we have stated earlier, *a worker’s best monitor is a union*. An NGO should not step into a dispute when it is not invited by workers, and especially when an independent union and employer are engaged in their own dispute resolution. But sometimes a union will call on an NGO when a dispute occurs and the agreed upon system of resolution breaks down. Even when a union does not immediately need the involvement of an NGO, the NGO might later play a very useful “civil society” role in collecting and distributing information of value to the public about the dispute in order to encourage future compliance by employers and governments.

But, as noted, few workers today, especially in low wage work, are represented by unions. In our experience, one reason for that lack of workplace representation is that violations of the right of association are the most repeated and significant ongoing worldwide violations of workers' rights.

A. ILO definitions of freedom of association

The following section presents a checklist of the essential elements of freedom of association, meaning the right to organize and to collectively bargain (Based in part upon: *Freedom of Association: A Worker's Manual*, ILO, Geneva, 1987). The ILO freedom of association conventions first address governments' obligations (Convention No. 87), and secondly, employers' and governments' together (Convention No. 98). In this manual, we will mostly avoid such formalities. We will move easily between the contents of the two ILO conventions—because most NGO monitors are likely to encounter conflicts and violations at the workplace at the same time as they assess the laws and actions of their governments. NGOs should not only be familiar with these conventions, but they are so easily accessible and so important, and the interpretations so readily available (in this manual and at www.ilo.org), that NGOs should have special familiarity with these provisions.

Initial government obligations

Freedom of association—the right of workers to establish their own organizations—must be guaranteed by national laws, without discrimination with respect to the type of job, or the worker's gender, color, race, creed, nationality or political opinion. Only one exception exists to this list: police and military may be limited by national law in their right to form unions.

In practice, this provision of Article 2 of the ILO Convention No. 87 means that governments must take all necessary steps to:

- Permit all workers—including farm workers, members of cooperatives, tenants, share-croppers, home workers, etc.—to form unions.

And governments must not:

- Restrict the civil rights of union members, such as by arbitrary arrest, detention, suppression of communications or meetings, surveillance, or by invasion of union property. (In fact, the ILO has stated: “the absence of civil liberties removes all meaning from the concept of trade union rights.”)
- Discriminate against particular groups or individuals in order to keep them from forming and participating in unions.

There is much more that governments must guarantee to workers, and we will return to these below. But we expect that NGOs may first be examining the right of association at a time of conflict or tension between employers and workers. So let us look at freedom of association now through key ILO principles that mix employer and government responsibilities—a format that may help us avoid creating an artificial fence between the two authorities that most affect worker rights, the employer and the government. NGOs should keep in mind that using the CAVAR monitoring methodology regarding employer and government practices of freedom of association can help workers ensure that their rights are respected.

Employer and government obligations checklist: Formation of unions

Employers must not discriminate against union members, such as by blocking workers from joining a union, or dismissing, disciplining, or otherwise mistreating workers on account of their union membership.

- An employer's refusal to hire (such as blacklists), as well as threats of, or actual dismissal, transfers, demotions, and severance offers comprise the most common actions retaliatory against employees who support unions. One of the most common antiunion tactics encountered by NGOs is the employer's payment of severance amounts in order to “buy out” a union supporter. Many legal

systems fail to make such buy-outs a specific legal violation, which is, in itself, a violation of the right of association. National laws also often fail to ensure rapid reinstatement of union supporters when there is an initial finding in favor of the worker. Thus, interrupting communications and leadership that unions depend upon can be as destructive to unions as dismissing workers.

- The ILO requires that *governments* provide protections against anti-union discrimination. That means that national legislation should prohibit employer actions such as those described above and create significant penalties for such discrimination. Effective and timely enforcement against employer discrimination is an essential part of the ILO requirements.
- The ILO considers that legislation is inadequate if, as a practical matter, prohibited antiunion actions occur and persist in spite of protective laws. In other words, *prevention* of antiunion discrimination is essential to the well-being of unions. A government that fails to prevent prohibited behavior by employers therefore violates the freedom of association conventions.

NGO monitors will typically find that employer discrimination and government inaction is precisely why they've been contacted. The government system of union protection often does not work because it is too slow or favors employers. So NGOs will sometimes play a more prominent role than government inspectors in discovering and reporting such violations due to governments' lack of resources or interest in enforcing these provisions.

- Union officers, in particular, should be protected from antiunion discrimination, given the importance of their role in sustaining the union. The NGO might note that in this provision, the ILO is really calling for "positive" action by employers.

Control or "domination" of unions

Employers must not interfere with or otherwise control or "dominate" union organizations, such as by providing funding for them or their officers.

- Employers often create "solidarist" organizations, such as by sponsoring loan associations or committees to administer other workplace programs. These committees end up by violating the right of association when they become a substitute for unions by helping to set the terms and conditions of employment. They help the employer avoid a union, violating ILO Convention No. 98.

Other important government obligations from ILO Conventions No. 98 and No. 87:

Simplifying the registration of unions

Governments must not require advance "authorization" or create extraordinary restrictions that limit workers from forming unions. Governments may, and do, create some formal responsibilities for unions in order to become listed or registered with the government, like most other legal associations. Here are some "tests" for whether a government's rules are fair:

- Do governments create such technical rules for unions to register or to establish their constitutions and bylaws that, in practice, unions cannot form? If so, then the government violates the convention. A government would violate the right of association by making the regulations especially difficult to fulfill and/or by denying unions registration without workers having an independent right of judicial review.
- Do governments delay registration of unions? The ILO holds that only serious faults or violations in registration procedures may justify a delay in registering unions. For example, in Guatemala and Mexico, the ILO has recognized and commended legal reforms in which registration has become more routine and takes only a matter of days for the governments to process. As any union member can attest, it is difficult to win and keep the attention of workers during organizing campaigns. Delays by government and employers can destroy such efforts and workplace democracy.

- Do governments limit workers' choices of unions by creating specific membership numbers in order for unions to gain recognition? The ILO considers access to representation by workers, not necessarily the specific number of members that belong. But the numbers do matter. For example, the ILO has found governments in violation of the convention when they require 50 members to establish a union, but a requirement of 20 workers was not a violation when the restriction did not actually forbid the establishment of smaller unions (but instead limited their access to government resources).
- Do governments designate a particular union as the legal representative of workers? Such direct intervention violates the right of freedom of association. However, it is not a violation of the right of association if a government establishes a majority "certification" of unions. In other words, a union that wins 50 percent plus one of the workers vote may be "certified" as the most representative union and granted special rights to collectively bargain. In that case, workers who belong to smaller, non-majority unions should still have the right to communicate with the employer regarding grievances of their members.

Workers should govern workers

Governments must allow workers' organizations to create their own constitutions, rules, and programs. The right of association includes the right to elect representatives and affiliate with union federations on whatever level workers choose—local, national, and international. (ILO Convention No. 87, Article 3)

- Does a government seek to establish the definition of who is eligible to lead the union, such as by age, occupation, or political preference? These are violations of Article 3 of Convention No. 87.
- Does the government seek to limit the eligible term of union leadership or interfere with a legitimate election? This, too, is a violation of the convention.
- Does the government suspend union leaders or dissolve the union? Other than a union acting under its own constitution and bylaws, only judicial authorities under appropriate safeguards of the right of judicial appeal should have the right to authorize such disciplinary actions. In other words, no suspension should occur without the judiciary's review because the mere fact of temporary suspension can deeply damage a union. (Articles 3 and 4 of Convention No. 87).

The right to strike

- Does a government forbid the right to strike or create restrictions that effectively deny workers the right to strike? The ILO did not include specific language guaranteeing the right to strike, but it has strongly pronounced that this right was already in existence and respected in laws at the time the freedom of association conventions were written. A government that forbids the right to strike therefore violates the freedom of association, except in rare situations of preserving the operation of essential services (meaning those services that protect the life, health, or safety of all or part of the population).

An example of a restriction that effectively denies the right to strike is an obligation imposed by the government in which a union must receive two-thirds of the votes before it can call a strike. Temporary restrictions that require a union to meet and attempt to conciliate with an employer do not violate the freedom of association, but mandatory dispute arbitration does constitute a violation. (Derived from Articles 3, 6, and 10 of Convention No. 87).

Unions associating with each other

- Does the government limit the union from associating with other levels of union leadership, such as federations or confederations? In practice, such federations may offer greater bargaining power to a union, as well as enable unions to engage in political activities related to the economic interests of union members. Thus, governments sometimes do not like to allow unions to link to other union

groups. But it is a violation of the ILO convention No. 87 to limit a union's affiliation with such federations, or to limit the right of the federations to form and develop their own programs. The ILO adheres to a broad definition of workers' organizations: any organization "furthering and defending the interests of workers." (Article 10). However, an organization that is primarily a political organization and does not play a role in the economic representation of workers' interests at the workplace might not receive protection under the conventions.

- Does the government intervene in the finances of the union, such as by restricting the use of funds, without due legal process? If so, the government, again, violates the workers' rights of association.

Promoting the right to negotiate

- Governments, where necessary, shall "encourage and promote the full development and utilization of machinery for voluntary negotiations between employers...and workers..." (Convention No. 98, article 4). In practice, this provision means that governments should create rules that require employers and workers to negotiate in good faith with each other. When there is a dispute about commitment or bargaining table behavior (such as by forbidding or refusing to discuss a certain subject), the government should have some means of stepping in to examine the allegations that one of the parties is failing to participate in good faith. However, governments do not generally impose contracts on either the employer or worker, except when a serious violation has occurred that effectively undermines the workers' rights.

What to do with the ILO?

NGOs unfortunately are not formal participants at the ILO, which organizes its own programs around union, employer and government representatives. Still, NGOs can participate in several concrete types of information-gathering and reporting activities in order to help ensure that the right of association is properly enforced. For one, NGOs can contribute information via trade unions that can appear in required ILO reports, such as those involving core rights described in this manual. Moreover, in collaboration with a trade union, NGOs can assist in the filing of complaints before the ILO's Committee on Freedom of Association, the most efficient labor rights disputes body in the world. Moreover, if a government has ratified ILO Conventions No. 87 or 98, NGOs (via unions) can assist in the filing of official complaints at the ILO, in which ILO officials examine whether a government is living up to its convention obligations. Such contributions have effectively put pressure on a substantial number of governments to improve their industrial relations systems in order to guarantee the right of association.

NGOs should review Chapter 2 for more detail about how they may use their investigations to report to the ILO and other UN-related organizations, such as the High Commissioner for Human Rights' Covenant Committee on the International Covenant of Economic, Social, and Cultural Rights.

B. National laws and trade treaties protecting freedom of association

Earlier in this manual, we pointed out that NGOs must become familiar with their own national laws as the "bible" for interpreting specific violations of labor rights. That is because, in the long run, workers will never gain adequate protection unless the government's laws effectively guarantee their rights. But national systems differ widely in their specific content (despite the simplicity and brevity of ILO rules). This manual cannot explain each national labor code, or it would be as long as the famous Belgian labor scholar, Roger Blanpain's, labor encyclopedia (and that is thousands of pages long!) Here we repeat a few important points.

Every national legal system contains statutes and regulations. That means that most disputes at the workplace should trigger review under one of these statutes or regulations, such as through the work of a government inspector. Monitors should seek to become familiar with the national rules and regulations, and especially with the enforcement system that exists to address violations of rights. Depending on their chosen or preferred role, monitors may engage with that system, the international system, or the local code of conduct, or all of them together. We must note, however, that the rules and regulations of governments regarding the right of association

can often be very detailed and confusing (in addition to being poorly enforced). Where possible, an NGO might seek contact with respected worker-oriented labor attorneys who can help them understand and simplify the content of national law.

Given the importance of trade relations to most countries, NGOs will also find that many trade agreements involving their government contain requirements that the trading countries must observe with respect to labor standards. For example, both the United States and Europe provide trade preferences to developing countries that require those countries to at least take steps to realize the core rights included in this manual. NGOs will want to examine the content of their countries' trade agreements in order to determine whether they can report their investigations, or even register complaints, to officials of the trading countries that are responsible for these agreements. (For example, such a system has played a role in putting increased pressure on Central American and Caribbean basin employers to observe the right of association during some conflicts.)

1. How governments usually regulate the right to organize and collectively bargain

NGOs will wish to have a basic understanding of how governments usually regulate the right to organize and collectively bargain in order to understand what steps they might take under the national system to provide information, report to others, and assist in resolving a workplace conflict.

Most governments create a system of labor administration or labor courts that operates as a specialized division of the government, focused on labor-management relations.

An NGO should examine its countries laws and regulations to see what kind of system operates. Typically, there is a complaints system of some kind in which workers can request that investigators examine allegations that their rights to organize and/or collectively bargain have been restricted. For example, under Convention No. 98, governments should *promote* a system of collective bargaining. Usually that means that rules have been established to make the employer communicate and act with fairness towards a union during bargaining—and allegations of violations can trigger the right to a mediator or conciliator to assist the parties.

Of course, if the government itself appears to be restricting the right to organize or collectively bargain, it is unlikely that any labor inspector or conciliator will offer any real assistance to workers. In that case, under ILO provisions, workers (themselves or through unions or with the assistance of NGOs) should be able to petition an independent judiciary to examine allegations that the government is failing to enforce its rights. Knowing this, an NGO's investigations and reports can be directed to such petitions, or to outside groups such as the ILO.

On the other hand, when laws do promise protection to workers, it is usually worth entering that legal system in order to seek enforcement of a right. In such cases, workers often must document in detail any allegations, tasks that they will often need assistance in carrying out. Complaints filed by workers take time—usually during the working day—and NGOs may be well-situated to offer assistance in the investigation and reporting of complaints. It is a fact of working life that employers regularly engage in administrative activities and can afford to challenge workers, while workers have little time or resources to challenge employers. Again, the playing field is not in balance. For that reason, NGOs can sometimes play a useful role in reporting to the government—or to those who can put pressure on the government—in order to enforce fair conditions.

Moreover, NGOs can play a very useful role in assessing more generally (even beyond a particular conflict) whether government mechanisms are functioning and providing assistance to workers. For example, by researching the time that government officials take to investigate and resolve complaints, and by comparing the number of complaints to the outcomes, NGOs may develop very useful data for reporting both in their own reports and to international bodies like the ILO that evaluate their governments' compliance with conventions and other duties.

In summary, many and perhaps most NGOs find that when the national system does not adequately address workers' complaints, they need to investigate and report on conflicts at the grass roots level in order to seek workplace level justice. Later (or simultaneously), they may work to change the national laws and enforcement system. When independently enforced codes of conduct exist, these can provide very useful supplements or

“detours” to ineffective national laws. Still, many NGOs should at some point engage with the national legal system or trade-related enforcement of labor rights in evaluating the right of association. This manual’s writers believe that when monitors carefully investigate, analyze and report on workplace violations, they can create pressure for enforcement and/or compliance at many levels: the grass roots relationships, codes of conduct, national legislation, and international settings such as the ILO.

C. Private sector codes of conduct and freedom of association

Recently, in the United Kingdom, United States, Netherlands, and elsewhere, companies have become participants or members in independent associations that work to monitor and enforce at the factory level the same core basic rights as described in this manual. Usually, these rights are linked to the definitions used by the ILO, but they may contain additional or specific provisions that an NGO should seek to understand. (See Chapter 2)

Here are two examples of the freedom of association definitions from monitoring associations that have recently become prominent in the United States, the Worker Rights Consortium, and the Fair Labor Association. These groups coordinate independent investigations—often at the request of workers who communicate through NGOs—regarding whether participating companies or universities permit products, such as apparel and footwear, to be made under sweatshop conditions:

Worker Rights Consortium (WRC) (Representing more than 100 U.S. colleges and universities)

Definition of freedom of association:

Employers “shall recognize and respect the right of employees to freedom of association and collective bargaining. No employee shall be subject to harassment, intimidation or retaliation in their efforts to freely associate or bargain collectively. [Employers] shall not cooperate with governmental agencies and other organizations that use the power of the State to prevent workers from organizing a union of their choice. [Employers] shall allow union organizers free access to employees. [Employers] shall recognize the union of the employees’ choice.

This code of conduct is noteworthy in the following respects:

Noncollaboration with government violations

- More than the ILO, the private sector WRC actively calls on companies not to collaborate with oppressive government practices when the systems prevent workers from organizing a union. Therefore, a “violation” of the right of association can include what the government considers legal, a concept that is suggested by Convention No. 87 but rarely emphasized by the ILO in the context of company behavior.

Union access to workers

- In many settings globally, such as “free trade zones,” security guards and a fence separate workers from the daily world around them. Under the WRC, special emphasis is given to unions enjoying access to employees. Access usually means contacts at or near the workplace. However, even under the WRC, it is unlikely that a union that does not already represent workers would have an automatic right to meet with workers on company property.

Despite these innovative code of conduct provisions, the WRC has not published a guidance document, so its definitions are not formally established.

Fair Labor Association (which includes hundreds of “participating companies” or university licensees)

Definition:

“Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.”

In addition, the FLA has recommended benchmarks and guidelines on freedom of association that the authors of this manual helped to draft.

An NGO that combines these benchmarks with the ILO principles would have a very useful checklist of basic rights of the freedom of association for the monitoring process. (See “CAVAR” section below.)

- A worker’s right to freedom of association begins at the time that a worker seeks employment and continues throughout the course of employment.
- Employers will not interfere to the detriment of workers’ organizations with government registration requirements regarding the formation of workers’ organizations
- Employers will not dismiss, discipline, or otherwise coerce or threaten workers seeking to form, join or participate in workers’ organizations.
- Employers will not use force or the presence of police or military to intimidate workers or to prevent peaceful organizing or assembly.
- Employers will not interfere with the right to freedom of association by controlling workers’ organizations or favoring one worker’s organization over another.
- Employers will not discriminate against workers who seek to exercise their right to organize and bargain collectively.
- In cases where one union already represents workers, the employer will not interfere in any way in workers’ ability to form other organizations that represent workers.
- Employers will comply with all national and local laws and regulations concerning collective bargaining and free association. Where conflicts are known to exist, employers will use the standard that provides the greatest protection for workers.
- Employers will not shift production or close a factory for the direct purpose of retaliating against workers who have formed or are attempting to form a union.
- Workers’ organizations have the right to elect their representatives and conduct their activities without employer interference.
- Employers will not dismiss, discipline or otherwise coerce or threaten workers because of their exercise of the right to freedom of association. When union officers are dismissed, demoted, or otherwise suffer a loss of rights at work, a monitor should look with special attention at the possibility of antiunion discrimination.
- Employers will negotiate in good faith with any union that has been recognized by law or agreement between the employer and that union as a bargaining agent for some or all of its employees.
- Employers and employees will honor in good faith for the term of the agreement, the terms of any collective bargaining agreement they sign. Employees shall be able to raise issues regarding compliance with the collective bargaining agreement by the employer without retaliation.
- In any case where the industrial relations system specified certain unions as the exclusive bargaining agent, employers will not be required to engage in collective bargaining with other worker groups or organizations on matters covered by the collective agreement.
- Trade unions that are not recognized as bargaining agents...should have the means for defending the occupation interests of their members, including presenting grievances on their behalf.
- Workers’ representatives should have the facilities necessary for the proper exercise of their functions, including access to the workplaces.

- Employers will not use blacklists of any kind.
- Employers shall not offer or use severance pay as a means of restricting union formation or union operations.

4.3 CAVAR methodology: “Digging” for freedom of association

Introduction: The NGO reader will recall that we introduced a methodology for monitoring all labor standards in the previous chapter. That methodology includes understanding the context of a labor right and/or dispute; examining records; visiting the workplace, and interviewing workers and managers; analyzing the data, including cross-comparisons and returning to original data sources for more information; reporting the findings of violations or compliance; and sometimes following up to ensure that violations have been remediated. Here are some priorities that NGOs will find useful in exploring each of these practical monitoring issues regarding freedom of association at the workplace.

A “Contexto”: Understanding the context of freedom of association

- For an overview of freedom of association in the setting appropriate to your own work, meet with national and regional union organizations, get copies of collective agreements and national laws, and seek to include an expert on union organizing and collective bargaining in the regular deliberations of your organization. That way you can begin to separate the sometimes complicated rules about union organizing and bargaining from the fundamental principles that must be understood and protected in order for workers to even have a chance at achieving their own voice.
- Meet with government representatives in order to understand laws, regulations, and enforcement systems regarding freedom of association and determine if they serve workers and meet ILO requirements.
- Because earlier sections of this manual describe the information that is most useful for government reporting, we will assume for now that your research is aimed at a particular conflict. However, all of the following points can also be useful in evaluating government as well as local conflicts.
- After you have learned the essential rules that apply to freedom of association, meet with local unions, if any, and local grass roots organizations. Often, groups that you might not expect will possess valuable information about freedom of association (such as health care and transportation providers). Learn from them what the “word on the street” is about how workers have been treated when they seek to organize a union and/or seek a contract with the employer. Are there successful local examples of organizing and/or collective agreements?
- Identify past or current conflicts that involve freedom of association issues, including any that may have involved government enforcement, and seek to understand the issues and the outcome of the past conflicts.
- Ask groups whether workers who have had union affiliation are able to find work in local employment.
- If incidents of union organizing have occurred, what has been the government’s response?
- Do employers have their own association? What is that association’s position regarding freedom of association?
- If an international company is involved in production, what has their role been during disputes? Are they involved in a code of conduct association or do they have their own, distinct code of conduct?

B ***“Archivos, Visite”:*** **Investigating workplace records, site visits, interviewing workers and management**

Introduction

Because an NGO will physically and directly explore “archivos” and “visites” (records and visits) at the workplace, we are putting these two descriptions together in this freedom of association section.

It is important to recognize that workplace documents are a kind of photograph or summary of certain moments in a worker’s workplace activity. Understanding the importance of documents to monitoring may become more evident in our later discussion of wages and hours than in freedom of association. But even under the heading of freedom of association, it is possible to see that certain documents help describe local practice regarding this right.

An NGO that is investigating a workplace on the basis of freedom of association issues will want to review records involving workplace discipline and dismissals. It is important to view and sample such documents in order to see how and why the employer has recorded discipline and dismissals of workers. The picture of the workplace in documents offers insight into how often discipline and dismissals occur, as well as the reason asserted by management. The records themselves may state why a worker has been disciplined, but that may not be the whole story. But combined with interviews, investigators can learn whether discipline seems related to union activities. Documents, site visits, and interviews may together inform a monitor’s understanding about a workplace. (But, remember, always be a skeptic and double-check your information! By offering an example here we do not mean to say that this is the situation that you will find in your own investigation.)

1. ***“Archivos”:*** **Workplace records**

The most important workplace records that may relate to issues of the right to organize and collectively bargain are:

- A collective agreement, if any, between workers and management.

A collective contract with a union is the most important of all workplace documents because it establishes the rules of the workplace that have been negotiated between workers and management. A monitor would use such a contract to examine, at the invitation of union leaders, whether the agreement is being carried out in fact, and not just written on paper. The existence of a contract between the employer and worker does not mean that the workplace has a “collective agreement” with a union. Some national laws require that each worker receive a contract stating her terms and conditions of employment, even without the presence of a union. A monitor should certainly look closely at individual contract rights as well, but these usually involve subjects such as wages and hours that we will discuss later in the manual.

- Disciplinary documents.

It may be evident from our introduction that if any document specifically records discipline or termination as a result of a worker’s interest in joining, promoting, or carrying out a union’s activities, a monitor should make special note of this discipline and seek to further investigate the matter through interviews. If managers deny that the discipline or termination resulted from union activity, then other disciplinary documents might be important to examine if workers have had similar allegations with similar results. Monitors should note that improper discipline often becomes visible as a pattern of behavior by management, discovered both through documents and interviews.

- Severance agreements.

NGOs *must* review severance pay documentation in order to determine whether the pay is related to legal dismissal or whether the employer may sometimes use severance pay to eliminate union support. The legal tradition in most countries allows managers to dismiss workers for almost any reason they wish—but union support is one of a few important exceptions to that management right.

- Management training materials.

A monitor may inquire whether the factory has any documents that instruct managers about how to respond to union organizing activity by workers. Such documents will help establish what management's attitude is toward union activity and whether there is a policy of fairness towards such activity.

- Grievance documentation.

The NGO should examine the types of grievances submitted by workers and the outcomes of the grievances. Few grievances will themselves concern subjects of freedom of association—they will deal with how supervisors treat workers, or whether a worker has been adequately paid. However grievances, together, may also tell another story. For example, in one case with which we are familiar, a monitor learned that when five workers came to management to present a grievance about too much overtime, they were dismissed. Such a dismissal IS a freedom of association issue in the sense that the workers sought to collectively represent their concerns about the terms and conditions of work. This led management to believe that a union was being organized and management reacted unfairly and illegally by firing the workers instead of responding to the grievance.

- “Do not hire” lists.

The monitor should request any lists of names of any kind that may be used in the hiring process. These lists may sometimes be distributed in factory zones by managers of various workplaces who have been identified as union supporters or organizers. It is a violation of ILO standards (as noted above) to refuse to hire or otherwise discriminate against such workers, so such a list might indicate a violation of this right.

2 “*Visite*”: The workplace walk-through and interviews

Introduction: Unless there is a union, freedom of association is not really a very “visible” right, unlike, for example, health and safety. Most of the site visit will involve determining whether workers basically are free to communicate with each other and to communicate their grievances. A few visual suggestions do apply:

- If a workplace has union representation, are union members permitted space to meet and post communications to their membership?
- Does management communicate in good faith with the union or groups of workers regarding grievances?
- Are there any rules, posted or otherwise, that limit workers from communicating freely with each other at nonwork times?
- Do workplace guards or security permit workers to gather without restriction outside the workplace?
- If there is union support at the factory, do managers take steps to divide workers into groups between union supporters and opponents?
- Do employers sometimes require workers to attend meetings in which the employers discourage union representation? In many countries, this practice is legal “free speech” by the employer, but it is usually limited speech. For example, the employer is not permitted to threaten retaliation against workers if they wish to join a union.

2.1 Interviews about the right of association

A. Workers

Introduction: As we described earlier in the summary of the CAVAR methodology, interviews with workers are one of the most important information gathering tools available to NGOs. You may be the only person(s) that workers truly trust to speak with about problems at the workplace. At the same time, you may be asked to intervene—to become the workers’ representative, which is really an invitation to interfere with right of association. Workers must generate their own support for unions, while being free from prohibited action by employers. The NGO must recall that its role is to gather information about the right of association and to analyze, evaluate, and report on the right.

If a union already exists, an NGO’s priority should be to interview union leadership, including multiple leadership if more than one union represents workers. If the union prefers, or if the union and employer are in a situation of conflict, it is important that interviews take place away from the workplace where the workers feel comfortable. In some circumstances, an established union may feel comfortable undertaking the interview at the workplace. If there is no union, workers will feel most comfortable undertaking interviews on this and other subjects away from the workplace where they do not feel observed or at risk by management. Finally, be sure to ask open-ended questions about what has happened if and when union-related issues arise so that the worker is free to describe in her own language what occurred.

Before using this checklist of questions, be sure to review the interviewing section and question-forming methodology described in the “CAVAR” briefing in Chapter 3.

- What is the history, if any, of workers’ efforts to organize or collectively bargain at the workplace? What role has management played, if any? (A historical question is an easier way to begin a discussion because it does not require a worker to talk about current, and perhaps more sensitive, matters at the beginning of an interview.)
- If a collective bargaining agreement is in place, have union members found that management is responsive to its requirements, such as grievance resolution?
- Have unions been able to gain access to workers in order to discuss union organizing?
- Have managers interfered in any way (and in what way?) with workers’ efforts to collectively meet and discuss problems?
- Have any workers been disciplined for their participation in union support activities?
- Have workers been disciplined for attempting to work together to raise matters of concern with management?
- To the recollection of workers, has a strike ever occurred? In what ways did management and/or the government respond to the strike?
- Be sure to interview workers with knowledge about any workplace committees or associations other than unions, including any that may be supported by the employer (such as in providing loans or other benefits from the company). Do these organizations respect the special role of unions in bargaining regarding the terms and conditions of work? Or do they compete for that role?

B. Managers

- Ask the appropriate human resource managers to explain the meaning of the right to organize and collectively bargain. (If they don’t know, that presents an important training issue for management.)
- Inquire into any history of conflict at the workplace (do the managers’ answers agree with the worker’ answers?)
- If there is a collective agreement (which you should already have received and reviewed in worker communications), ask for a copy and review its terms with management.

- Inquire into whether there is a grievance system available to workers and how it functions in practice. When workers present grievances together, they are practicing an initial kind of freedom of association. Do the employers respect that collective action?
- Management should be asked to offer examples of how the grievance system works.

C. **“Analysis”: Analysis of freedom of association data**

Freedom of association analysis often requires that the monitor work back-and-forth between interviews and records. Consider the following rather common example: workers allege that an employer created an association or competing union to defeat a union already chosen by the workers. A monitor would need to interview workers and managers, examine registration documents, and probably make judgments about whether the allegations are true. Such a determination is not easy, and depends upon the willingness of an NGO to study and become familiar with the particular issue of freedom of association. Perhaps the NGO’s role will be limited to gaining interviews of the workers—that is a bit easier. But a full investigation means that the analysis of a problem sometimes will make you look like a university student working on a research paper: after visiting the workers and managers, and after reviewing and getting copies of records, the monitor sits at a desk with the interviews on one side, the ILO principles on another side, national law nearby and the code of conduct present, if any.

A proper analysis may not always offer a complete conclusion, but, instead, offer credibility assessments of the statements or claims of the different positions asserted by workers and managers.

In a genuine case of this sort, it was very important to the monitor’s analysis that the union had used the court system to seek protection and had created a very reliable record of its own efforts. That made the actions of the “new,” competing union appear less credible. The company was determined to have supported the formation of the competing association (they called it a “union” but the ILO would not have recognized it as one), and therefore, in the conclusions of the NGO reviewers, a violation of freedom of association was reported.

Sometimes the monitor enters a workplace with the general task of evaluating freedom of association as just one among many issues. But frequently, the monitor will be called upon to analyze a particular complaint. Because the most frequent complaint concerns freedom of association, monitors should prepare in advance for these kinds of concerns to arise.

To offer useful analysis of freedom of association data and interviews:

- Become familiar with the particular kinds of violations that are alleged by interviewing knowledgeable workers, and examine laws, regulations and codes of conduct for how they deal with the allegation.
- Explore ILO www.ilo.org and NGO literature by the internet or through other means in order to become familiar with the type of allegation and the recommended kinds of treatment of such allegations.

For example, the ILO’s Committee of Experts publishes comments on freedom of association that offer a profound discussion of basic principles that appear in our checklist. In fact, sometimes ILO technical assistance officials even have offices in major countries (the list is also available at the website). An NGO should also consider using internet labor rights guidance, such as the data base and “measurement index” created by the human rights group “Human Rights First.” (Access to this website is available at www.humanrightsfirst.org and via links at www.workersrights.org) In this way, NGOs with knowledge at the grass roots can help add to the overall NGO community’s knowledge about how to analyze and measure the right.

- Establish your own set of questions for interviews and data collection credibility.
- Remember that analysis often requires a monitor to return to another step in CAVAR. Often a worker interview will require a new look at documents that had already been reviewed; documents may lead

to a second or third interview, even with workers who have already been contacted. Monitors should be comfortable in returning to a different level in order to verify and analyze information.

- Be patient! Freedom of association requires careful collection of interviews from many sources and conclusions should only be reached after adequate deliberation over data. Becoming familiar with the employer and workers' relationship over a period of time is sometimes the only way to truly understand whether the right of association is respected.

D. “Reporte”: How does a monitor report on the right of freedom of association?

Introduction

Most likely, an NGO undertakes its investigation already aware of the audience. Frequently, NGOs are asked to investigate complaints by workers, which means that a report will focus on specific allegations and will be available to the workers, the companies, and the public. It may be useful, then, for the NGO monitor to review (as guidance) previous reports that have been produced on such subjects. The most complete (that is, complete reports, rather than summaries) appear at www.coverco.org and at www.workersrights.org. These are the investigations at local factories dealing with freedom of association and other issues by the NGO, Coverco, and by the monitoring group, the Workers Rights Consortium (developed, in part, by university students). A summary of reports that is useful but less complete (and somewhat difficult to access) is also available in the “public reports” section of the Fair Labor Association web site, www.fairlabor.org.

If you are preparing a report that reviews governmental behavior, such as for a UN agency, some of the ingredients of your report may be determined by the agency. Such reports are sometimes called “shadow” reports because the NGO is answering the same questions in their own way as the government is answering, and submitting them for review and publication by the UN.

Some checklist points for reporting:

- Seek to create a standard format that easily identifies the subject matter and conclusions over a period of time. A standard format allows report topics to be measured and compared. When a monitor performs audits or interviews, it is essential to record and report the dates of visits, interviews, and record reviews.
- Note that some monitoring associations will describe a preferred format for reporting.
- A report should include a description of the NGO's methodology, including the criteria, time and personnel necessary to gather data, so that the reader can fully understand how data was gathered and conclusions were reached. In that way, monitoring reports promote transparency, the lack of which is one of the reasons that sweatshops exist in the first place. A clear methodology also allows for discovery of errors that can help improve future reports.
- A report should include findings of compliance and noncompliance, as determined by the analysis of the monitors. Such findings should seek to identify the degree of noncompliance, emphasizing urgent issues in a special section.
- Many monitors will propose the appropriate remediation of a matter, while recognizing that employer or brands may propose alternative means of remediation.
- Some reports are written so that employers will have the opportunity to remediate and present their remediation in the final draft. However, monitors should not withhold reports when the passage of time may make remediation more difficult (indeed, when workers are in danger of losing their jobs, rapid reporting may be essential.)
- Reports must not compromise promises of confidentiality granted to workers or employer when it is necessary to make such promises in order to avoid a risk of retaliation.

- When retaliation against workers occurs as a result of a monitor’s work, reports should make special mention of such retaliation because protection of workers’ rights to report conditions is an essential part of any monitoring mission. If workers suffer due to monitoring they may be less likely to participate.
- When reports occur on an ongoing basis, a summary of previous reports can be helpful to the overall understanding of compliance.

4.4 Let’s be practical: Common worldwide violations of freedom of association

NGOs should benefit from the work of those who have already preceded them in exploring the most typical types of violations of freedom of association. At the level of the workplace, the most common violation in developed and developing economies is employers dismissing union supporters. Sometimes the dismissal is brutish: a manager simply tells a worker to leave. Sometime the dismissal is “soft”: the worker is invited into the office and paid a severance amount, while still being ordered not to come back. Employers—and sometimes even the workers—often believe that it is entirely within their rights to dismiss a union supporter. In many countries, government enforcement systems often declined to investigate whether a dismissal is due to union activity because there is a tradition of allowing employers to dismiss workers for any reason at all.

Similarly, when a union organizing campaign causes some kind of disruption at the workplace, there are common harsh and “soft” varieties of responses by the employer. Sometimes, employers have special relationships with police authorities, who respond to labor disturbances as if they are fires that need to be extinguished. The leaders end up with charges against them, intimidating them from further activity. In other situations, we have seen employers organize other workers against the union workers by incentives or threats, leading the workers to effectively carry out the intimidation. In both cases, unless some protection of the union occurs, the message has been delivered that the employer will not tolerate union organizing. Some recent reversals of these destructive behaviors has occurred when NGOs or unions have been able to demonstrate with convincing evidence that illegal or discriminatory tactics have been used against a union. In particular, if a global company with high name recognition is involved in the issue, some greater and more immediate attention is likely to be paid to credible allegations of worker rights violations. That is why investigations and reports have become newly useful instruments to NGOs.

In our experience, the biggest difficult in defending the right of association is the prior experience that factory owners have had in controlling or avoiding unions. In other words, the employers have learned and shared tactics of union suppression, which tend to receive global priority. NGOs and local unions themselves have not had similar sophistication in promoting unions. Governments, meanwhile, have tended to favor the prospect of foreign direct investment (which they usually believe is more likely to arrive when unions are suppressed) over their longstanding obligation of defending and promoting democratic choice by workers at their workplaces. In other words, both the employers and governments neglect the long term gains to their national economies and political systems by workers experienced in self-governance and who can effectively have a voice at work.

By investigating and revealing company control of “solidarist” associations and company-controlled unions, by exposing the practices of dismissals and buyouts of union supporters at work, and by investigating and reporting the failures of governments to protect union rights, NGOs can help restore the right of association to its rightful place as workers’ most fundamental protection at work.

4.5 Measuring compliance and progress

NGOs will wish to carry out a number of steps, perhaps together with union organizations, in order to measure compliance and progress regarding the right of association.

First, to the extent possible, NGOs need to use common definitions of labor rights by using ILO definitions. In that way, progress can be measured along a commonly recognized line from noncompliance to compliance. For example, in Mexico a few years ago, a local government and an apparel factory together violated workers' rights by ensuring that the factory (and government)-preferred union represented the workers. When other workers created an independent union and found that the local government and factory refused to recognize the union, they complained and an NGO investigation began (through the Workers Rights Consortium, at a factory called "Kuk Dong.") Two surprising developments occurred: first, the companies acknowledged that the independent union was preferred by the workers, and they supported the NGO findings. Second, they solicited the support of the ILO to help train workers and management in proper understandings of freedom of association provisions.

It is perhaps wishful thinking that other NGOs could achieve such breakthroughs at the local level, in which violations are not only recognized, but remediated with technical assistance from organizations with expert knowledge and interpretive skill regarding each element of the right of association.

But NGOs can seek to replicate this example in the following ways:

- Use the benchmarks set forth in this chapter as "minimum standards" and measure compliance at least on these issues.
- Attempt to provide a qualitative assessment of each benchmark by indicating what actions in particular at the factory or government level support or fail to support the benchmark.
- Use, as much as possible, connections to international NGOs dedicated to labor standards to help refine the evaluations at the local and governmental levels.
- Seek in any and all discussions with factories and companies the right to periodically follow up and measure assessments of worker rights when violations have been found. That way, companies and governments will not feel that limited or momentary compliance truly means "progress."
- Work on your own or with other NGOs to create a larger picture of freedom of association according to the industry that you are monitoring, or by seeking national statistics on the same subject. Often one of the most difficult problems in advancing the cause of worker rights is the lack of information that shows trends in enforcement or lack of enforcement. For example, when it was discovered in the United States that employers were using a legal right to hire replacement workers during strikes to undermine or destroy unions, researchers discovered that the US Department of Labor did not keep records of strikes and the use of permanent replacement workers. Many union supporters were certain that the hiring of replacement workers was an important cause of the decline of strikes and of unions, but no one could prove it because no one was keeping watch. NGOs can play an important role in sharing and standardizing information.
- NGOs should seek to participate in global reporting networks, so that their reports may become available to a wider audience, and so that researchers can examine their work and use it as a basis of comparison to other monitoring in other places. Often, even without the NGO's knowledge, the same global company may be involved in similar disputes somewhere else. The relatively simple act of publishing a report on the internet can lead another NGO to benefit from the benchmarks and standardization used in another location. This process has become known as the "ratcheting" of labor standards, in which companies and governments are always called upon to improve their systems, and prevent them from falling below the levels that have already been reported by monitors.
- Of course, when recurrences of violations take place in the same factory despite previous remediation, NGOs should be particularly vigilant and active in reporting the lack of compliance and loss of forward progress. In that way, other groups, including consumers, can become informed of the problem and take appropriate action, including the demand for governmental action.

Chapter Five Wages and Benefits

5.1 Introduction

Few, if any, languages have an easy translation for the word “sweatshop.” The word originates in 19th Century English, and it describes industries that regularly subcontract jobs to the lowest bidder, usually to the most miserable work setting. In recent times, the word has been used to describe many different kinds of bad conditions, ranging from factories that use child labor to employers whose wages are insufficient to support a family (meaning virtually every factory in developing countries). The most common example of a “sweatshop” workplace is probably one that drains the sweat from a worker through extraordinarily long hours at very low wages.

In the next chapters, we bring together the classical “sweatshop” categories of labor: wages, benefits and working hours, including overtime hours.

Wages are among the most controversial and poorly defined labor standard, despite the fact that wages are among the most readily measurable features of work. NGOs that monitor wage issues will quickly enter a controversy of definitions between the “minimum wage” and what many call a “decent” or “living wage.” The history of this distinction is long and sad: early advocates for a “minimum wage” believed that they were creating the basis for ensuring that workers received enough to meet their basic needs, including such costs as food, housing, education, health care, and some discretionary income.

In practice, the minimum wage has become an excuse for extremely low wages, especially in countries that are engaged in economic “restructuring,” according to the terms of international economic institutions such as the International Monetary Fund (IMF). Moreover, governments do not always raise minimum wages to account for inflation or other factors. In a 1996 study, the ILO reported that in many countries, workers were earning lower real hourly wages as the 20th Century ended than they had been making in previous decades.

Such trends are surprising given the direct connections between workplace fairness and wages. When the ILO was established in 1919, one of its founding documents stated that workers throughout the world deserved a “living wage.” However, the ILO never established a formula for establishing or even explaining a decent or “living” wage. At least as perplexing, the ILO has not included wages or hours among its “fundamental” or “core” labor standards. This means that from an institutional perspective, the ILO does not pay the detailed attention that it might to these labor standards.

Instead, the ILO requires governments (if they have ratified the ILO wages conventions) to create wage-setting “machinery.” This ILO process requires the establishment of a bureaucratic process to examine a number of wage-related issues, a process that offers enormous flexibility to governments. Some economists say that such flexibility to pay very low wages may be the “comparative advantage” of a particular developing country’s economy (meaning that more global jobs will be attracted to the low cost labor). But the word “advantage” would hardly seem appropriate to the worker who makes the low wage. Other economists point out that low wages may reduce the incentive for managers to invest in their workers and in their machinery. Low wages also have been shown to depress consumer consumption in the economy.

There is no happy resolution to this story. There is merely the possibility of reform. NGOs can create pressure for improvements by combining their work on such rights as freedom of association with investigation, analysis and reporting on wages, benefits and hours of work. Indeed, based on the reports and investigations we have made and reviewed, if workers genuinely were to receive the wages and benefits that national laws currently require, then workers would already be making substantial progress. Our studies indicate that many employers confuse, falsify, and miscalculate wages even at the low levels that currently prevail. Because benefits are often part of a complicated mix of employer and government responsibilities, they present another common area of abuse. For example, we are directly aware of frequent failures of employers to pay government social security taxes on behalf of workers, undermining not only the workers’ rights, but also government benefit programs.

Some codes of conduct put upward pressure on wages—beyond that of international conventions—by requiring that simplified and enhanced wage information is disclosed to workers. Workers are at least able to exchange information with each other to ensure that their rights are protected. Such codes also generally require that factories pay at least the “prevailing” or average export industry wage. When that wage information can be collected, it is usually higher than the minimum wage. Moreover, the wage issue offers NGOs a unique alternative avenue of reporting: where the ILO has fallen back in its treatment of wages, the International Covenant on Economic, Social, and Cultural Rights contains strong language regarding the need for a “decent” wage, as well as reporting requirements that could lead to important reforms. We will therefore offer special attention to the ICESCR system in this chapter so that NGOs can utilize that alternative reporting and monitoring mechanism

5.2 International, National and Code of Conduct Standards on Wages

A. ILO Standards

1. Wages

For the many countries (excluding the United States) that have ratified ILO Convention No. 131, governments are required to take into account the following factors when they establish minimum wages:

- the needs of workers and their families
- the general level of wages in the country
- the cost of living
- social security benefits
- the relative living standards of other social groups
- requirements of economic development
- levels of productivity
- the desirability of attaining and maintaining a high level of employment.

In practice, this ILO definition means that governments balance so many factors that it is usually difficult to say which factor has predominated—other than that workers cannot satisfy their family’s needs on the established minimum wage. Nonetheless, because the ILO convention calls for employers and worker to participate in the establishment of minimum wages, there is always the possibility of NGOs participating at least by providing information and emphasizing the first ILO criterion on wage-setting: “the needs of workers and their families.”

Indeed, the ILO Committee of Experts has pointed out that minimum wages have always been intended to establish at least subsistence wages for workers and their families. (“The meeting of subsistence needs are both a criterion of minimum wage fixing and one of the objectives of the Convention.”) It would appear to follow from such language that if government economic policies undermine subsistence wages (as is clearly the case in many economies), then these policies couldn’t comply with the convention.

The ILO’s Committee of Experts has interpreted the Convention to call for the following additional features of wages:

- paid to a worker at an agreed amount per hour of work (or per piece of product completed)
- paid in negotiable currency (and not in a company’s own credit or money system)
- paid promptly and fully, except for customary deductions
- criminal or economic penalties should be assessed against employers who do not comply with the law.

In practice, workers should receive a check and a pay stub that enables a worker to understand how much she has earned and for which work, whether it is paid by the hour or by the piece. In addition, workers should receive a written description of wage bonuses, and nonwage benefits (such as vacation, sick leave) and deductions (such as social security).

The ILO's Committee of Experts has called on governments to follow at least six steps to ensure the protection of wages: 1) inform workers in their own languages of their rights; 2) employ sufficient numbers of skilled inspectors; 3) establish adequate penalties for violations; 4) simplify legal procedures for workers to enforce their rights; 5) consult with worker and employer organizations regarding enforcement; 6) protect workers against victimization. NGOs might therefore seek to monitor government performance on each of these provisions as part of their attention to minimum or decent wages.

NGOs should recall that, as with the other ILO conventions discussed in this manual, when their own country has ratified the ILO Conventions on wages, the government must report to the ILO every few years on the status of observance of the convention(s). The ILO's Committee of Experts, in turn, examines these reports and may give very specific attention to issues of law and practice. Thus, NGOs (via the ILOLEX data base at www.ilo.org) should be familiar with the reports regarding their own countries and can have an impact on these studies and reports by supplying information to the ILO directly or through union organizations. In addition, certain sectoral groups within the ILO often debate wage issues as part of their mandate—for example, the apparel sector's ongoing reports at e.g.,: <http://www.ilo.org/public/english/dialogue/sector/techmeet/tmlfi00/>

2. Benefits

It is extremely difficult to make any strong statement about any global standards regarding benefits because of the broad variations in types of benefits and the lack of ratification of ILO conventions relating to benefits. Only the very straightforward Weekly Rest Convention No. 14, requiring one day of rest each week, has received overwhelming confirmation by ILO members. On other benefit matters, an NGO should promptly consult the ILO's database to determine which conventions a given country has ratified. When an NGO determines that a government has ratified a particular convention, then the ILO web page enables the reader to review a great deal of information about the convention as well as about the ILO's Committee of Expert reviews of that convention. With respect to wages, working hours, and benefits, the ILO has created some very practical guides. One is a summary of standards, available at:

<http://www.ilo.org/public/english/standards/norm/whatare/standards/condtra.htm>

The other (published as a book and on the internet) is the very useful "Conditions of Work Digest" that provides individual country practice on a number of benefit issues:

<http://www.ilo.org/public/english/protection/condtrav/pdf/1995digest.pdf>.

The chances are good that your own country's practices will be listed towards the end of this digest regarding such benefits as vacation pay, overtime, rest periods, holiday pay, and "special leave" (such as sick leave, education leave and religious leave.)

In sum, NGOs should place a priority on reviewing the ILO's web page and consulting with labor specialists who are familiar with the conventions your government has ratified. Even assuming that your government has not ratified the ILO convention in question, such conventions may still provide a useful measure of how national law compares with international standards. For example, although only about 50 nations have ratified Convention No. 1 requiring a 48 hour work week, more than 100 nations actually observe those terms, according to studies.

We offer some brief mention here of basic ILO benefit conventions that have become common both under national and international standards: the Holidays with Pay Convention No. 132 (calling for three weeks of holiday leave); the Weekly Rest Convention No. 14 (requiring one day of rest each week); the Weekly Rest (Commerce and Offices), 1957 (No. 106) (requiring ratifying States to provide a minimum of twenty-four consecutive hours of rest per week in commercial and office sectors, not just factory work).

Somewhat obscure, but nonetheless significant, the Paid Educational Leave Convention, 1974 (No. 140), obliges ratifying States to promote education and training (vocational, general, social and civic, trade union) during working hours, with financial entitlements. The Convention is supplemented by Recommendation No. 148; the Night Work Convention, 1990 (No. 171), which requires governments to offer special health protections for night workers, especially women, and to provide opportunities for advancement, and adequate compensation. The Convention is supplemented by Recommendation No. 178.

The Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and Recommendation (No. 131), which essentially call on governments to create contribution-based and government pension-based benefits for workers.

Importantly, Convention No. 103, the Maternity Protection Convention (Revised) provides that women should receive at least 12 weeks of compensated pregnancy leave, and at least six weeks of that should occur after childbirth. Moreover, women should have the right to nurse their infants during a special break at work. Again, developing countries often exceed industrialized countries in their ratification rates of these conventions, leading to oddities such as very poor countries paying for pregnancy leave while such countries as the United States do not. This is not really the case because ratification does not equal implementation. Alas, if it were only that easy. Also, the national laws in many countries have provisions that provide for maternity leave.

Finally, within the less formal economy, benefits arise in such ILO instruments as the Part Time Work Convention, 1994 (No. 175), which requires ratifying States to measure part-time workers' wages in accordance with the wages of full-time workers and to receive equivalent working in the fields of maternity protection, termination of employment, paid annual leave and public holidays, and sick leave. The Convention is supplemented by Recommendation No. 182.

The Home Work Convention, 1996 (No. 177), requires governments to implement and periodically review policies aimed at improving the working conditions of home workers.

Finally, the ILO has created a number of conventions intended to extend benefits and/or special protections to migrant workers, including workers from other nations: such conventions include Convention No. 86 (with Recommendation No. 100) and Convention No. 143 (with Recommendation No. 151).

B. The International Covenant on Economic, Social and Cultural Rights on wages

In almost every category of labor rights and standards, this manual emphasizes the primary substantive importance of the interpretations and supervisory activities of the longest-standing UN body specializing in labor standards—the ILO. On the subject of wages, there is some significant additional coverage under the International Covenant on Economic, Social and Cultural Rights, as administered by the UN High Commissioner for Human Rights and its Covenant Committee. The International Covenant on Economic, Social and Cultural Rights is not administered by the UN High Commissioner for Human Rights. It has a treaty monitoring body—the Committee on Economic, Social and Cultural Rights—that provides oversight of the performance of state parties, the countries that have ratified the Covenant. That Committee is never referred to as “its Covenant Committee.” As noted in our freedom of association chapter, the ICESCR is especially responsive to NGOs—unlike the ILO, which does not formally recognize NGOs except as observers. Therefore, NGOs may seek to give priority attention to the Covenant's standards on wages, as set forth in the following provisions:

“Decent” Wages

ICESCR Article 7: “The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work, which ensure, in particular: a) remuneration which provides all workers, as a minimum, with:

- i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with

equal pay for equal work

- ii) a decent living for themselves and their families in accordance with the provisions of the present covenant (emphasis added).

According to the Committee on Economic, Social and Cultural Rights, Article 7 includes the requirement of “fair wages,” meaning wages, as defined in subsection (ii), sufficient to guarantee a “decent living.” Moreover, “Wages must be equitable and just in order to be considered fair.” According to the Committee, the article takes important elements of its meaning from the ILO’s minimum wage and equal remuneration conventions (Nos. 131 and 100).

See <http://www.unhchr.ch/html/menu6/2/fs16.htm>

In order to determine whether governments are facilitating the right of workers to “fair wages” and a “decent living...” across various industries, the Committee on Economic, Social and Cultural Rights has asked the following questions to governments, and NGOs would do well to consider the same questions:

- Has a system of minimum wages been established? Specify the groups of wage earners to which the minimum wage applies, the number of persons covered by each group, as well as the competent [official] authority for determining these groups. Are there any wage earners remaining outside the protection of the system of minimum wages in law or in fact?
- Do these minimum wages have the force of law and in which ways are they secured against erosion?
- To what extent and by which methods are the needs of workers and their families as well as economic factors taken into consideration and reconciled with each other in determining the level of minimum wages? What standards, goals and benchmarks are relevant in this respect?
- Describe briefly the machinery set up for fixing, monitoring and adjusting minimum wages;
- Supply information on the development of average and minimum wages 10 years ago, five years ago, and at present, set against the respective development of the cost of living;
- Indicate whether, in practice, the system of minimum wages is supervised effectively.
- Please indicate what proportion of the working population of your country holds more than one full-time job in order to secure an adequate standard of living for themselves and their families. Describe this development over time.
- Please indicate the income distribution of employees, both in the public and private sector, taking into account both remuneration and non-monetary benefits. If available, give data on the remuneration of comparable jobs in the public and private sector.

NGO Strategies

It may be clear by now that NGOs face some strategic decisions in determining how to monitor their government’s treatment of wages under the Covenant. They might seek to monitor a government’s overall treatment of minimum wages, using a combination of ILO and Covenant issues. Or NGOs might seek to focus on the very practical problem workers face in achieving a “decent” wage—an aspirational approach that lacks concrete legal foundation.

When examining the issue of “decent wages,” NGOs might examine a number of definitions of decent wages, including the actual local cost of such necessities as housing, food, education, health, leisure, clothing, and transportation. Moreover, most groups consider a wage “decent” only when workers are able to save a portion—perhaps ten percent—of their income or use it at their own discretion. See, for example, www.sweatshopwatch.org, and www.globalexchange.org. It may also be useful for the NGO to build a “decent” wage formulation on top of a government’s assessed poverty level—usually a pre-determined amount of income required to fulfill basic food and other needs. However, the NGO will want to determine how recently and how often the poverty formula is updated to reflect changes in prices and the proportion of expenses typically spent for the given items. In Europe, under the European Social Charter, for example, a committee of experts has utilized an equity formulation by comparing “decent” wages to the average wages of the population. That simple

formula establishes that minimum wages should not be less than 68 percent of average national income. In measuring “decent wages,” it is important for NGOs to make a complete measure of wages and benefits. In some early reviews of wage levels, international NGOs sometimes used the abstract figure of minimum wages without accounting for whether workers received additional wage increments based upon national legal requirements (such as 13th and 14th month and seventh day bonuses that have commonly been used in Central American countries).

In its wage reviews, NGOs should recall the various options for communicating to the UN Committee (as noted in Chapter 2): shadow reports (covering the same or similar content as the government’s report on wage issues); responses to the government’s formal State Party report; information submitted directly to the member of the Committee responsible for drafting the pre-session “list of issues” or to the Committee’s staff; submissions of a written or oral nature at official NGO hearings during the Committee’s sessions; or submission of information to the Committee regarding implementation of any or all of the Committee’s concluding statements.

NGOs should also recall that NGO communications to the Committee are likely to be effective only when they are sufficiently documented, relevant, concise and reliable.

C. National law and practice regarding minimum wages

In order to monitor wage-setting systems, NGOs need to become familiar with how national governments establish minimum wages, and how these wage systems often become stagnant or are easily evaded by employers (such as through waivers in export processing zones).

- ***How governments set wages***

Because neither ILO conventions nor the International Covenant prescribe a specific means for governments to determine minimum wage rates, NGOs will need to research what system is used in their country, locality or industrial sector. In surveys of wage systems, the ILO has located wage setting guidelines in virtually every governmental form imaginable: constitutions, statutes, governmental ministries, wage boards, industrial or labor courts, and collective agreements between workers and employers that are given the force of law. When a government has ratified the ILO conventions on wages, the NGO will find that official consultations to set wages periodically take place between governments, worker representatives, and employer representatives (for example, in Guatemala, these take place every year). The consultations are supposed to cover such issues as how to give weight to the above ILO criteria for determining the level of minimum wages; setting the actual rate of wages; periodic cost-of-living change to minimum wages; problems encountered in enforcement; and the collection of data for setting and adjusting minimum wages. NGOs should note, however, that minimum wage setting may also be delegated to a regional or local level (for example, China provides that each locality sets its own minimum wages), and may sometimes be set according to industrial sectors. Thus, NGOs must note the multiple possible sources of information about minimum wages within a given country. NGOs might also evaluate how workers can enforce mandated wages—a crucial problem in many parts of the world that is often overlooked at the institutional level by advocates.

- ***How governments measure workers and families’ “needs” and “benefits” under ILO conventions***

It is common for many governments to refer in wage-setting legislation to “material, social, moral or cultural needs” as well as to “housing, food, education, health, leisure, clothing, hygiene, transport, social security, or the practice of sports.” Some countries have created a “basic family basket” of food and other basic requirements to determine the appropriate level of wages to meet the “basket.” (Such baskets are often calculated to enable workers to reach an established poverty rate). In Europe, under the European Social Charter, a committee of experts has gone so far as to suggest that minimum wages should not be less than 68 percent of average national income.

Many governments also require wage and non-wage supplements to the minimum wage. Examples of these wage benefits might be the “seventh day,” “13th and 14th month” and mandatory hourly wage bonuses in some Central American government legislation. NGOs engaged in broader policy reviews of wages might seek to monitor and

report on the sufficiency of minimum wages and supplements in an effort to formulate an approach to decent wages.

- ***How governments measure “economic factors” in determining minimum wages***

As noted above, ILO Convention No. 131 states that “economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment” should be taken into account in wage setting. In practice, the economic balancing approach to wage setting has often meant that governments emphasize economic factors (rather than need-based factors) in setting wage levels. During the historic waves of neoliberal economic restructuring policies of the 1980s and 1990s from the United States to Europe to developing countries, minimum wages worldwide largely remained stagnant, losing much of their former correlation to poverty rates and the cost of living. Economists may offer strong reasons for correlating minimum wage rates to production and social benefits. But the overall weight of each economic category should be closely measured by NGOs in order to evaluate a government’s policies on minimum wages. Many developing governments appear to hold that comparative economic advantage over other countries, as a matter of policy, should always be based, in part, upon low wage rates. Yet, such a persistent pattern on wages would appear to run against the progressive realization of wage rights. Therefore, in countries experiencing economic growth that, nonetheless, maintain persistently low minimum wages, monitors may wish to report on and apply Committee principles of progressive realization of Covenant articles.

Moreover, a sophisticated monitor seeking to assess the track record of a government’s minimum wage policy might examine long-term government policies in relation to unemployment, productivity, and particular work settings, such as rural and urban work.

- ***Exceptions to minimum wage laws***

In general, governments must not set different minimum wage rates for population groups, such as younger workers, indigenous workers, women workers or any other such group. Besides violating basic principles of discrimination, such wage rates would run afoul of the ILO’s equal pay for equal work convention. Apprentices, on the other hand, may be exempted from minimum wage requirements and receive lower starting wages. The ILO does not appear to have set limits on apprenticeship terms, however, whereas codes of conduct usually specify that such rates should not exceed three months of work.

D. Codes of Conduct regarding wages

Alongside the right of association, well-conducted NGO monitoring for wage provisions in codes of conduct can provide very useful assistance to workers—sometimes putting money that they earned rightfully in their pockets. In addition, such monitoring can form the basis of reports about wage issues to other organizations, including national governments and international institutions.

In 2002, the first extensive group criteria for monitoring minimum wage provisions at the local level was published by the Fair Labor Association (FLA) (see www.fairlabor.org). It would be helpful to explain what the FLA is and the status of the criteria, for example, how widely are they being used? And have major organizations endorsed them? The FLA’s guidelines and benchmarks for monitoring wages should be useful to any NGO reviewing wage conditions. While the FLA has received some criticism because its board of directors includes company representatives in addition to human rights and consumer groups, we have participated in the development of its guidelines for monitoring labor rights and find that its benchmarks provide important direction to NGOs as well as some innovations in monitoring. For example, under the FLA, the basic code provision on wages states: “Employers recognize that wages are essential to meeting employees’ basic needs. Employers will pay employees, as a base, at least the minimum wage required by local law or the prevailing industry wage, whichever is higher, and will provide legally mandated benefits.” Although that code does not present a basic needs formula, the stated “goal “ has been backed up by initial meetings and research on wage/poverty comparisons in many exporting countries. See <http://www.fairlabor.org/all/resources/livingwage.html#2>

In its benchmarks, the FLA requires factories to fully inform workers in their own languages (orally, if they cannot write, but on paper as well) about what they earn and why. They must receive a written explanation every pay period, as well. As a practical matter, such improvements would assist many workers that we have encountered at factories where paychecks are not explained and records are often omitted in order to avoid government benefits. Moreover, NGOs can help workers to present complaints to the FLA, a feature not even available at the ILO. The FLA's basic benchmarks on wages should be used as additional guidance to the CAVAR monitoring methodology below in order to frame appropriate questions to workers and management, as well as to help define appropriate document reviews.

These benchmarks include:

- Employers will pay workers the legal minimum wage or the prevailing industry wage, whichever is higher.
- Where training wages are legally allowed, no worker will be paid a training wage for more than three months cumulatively.
- Employers will communicate orally and in writing to all employees (in the language of the worker) the wages, incentive systems, benefits and bonuses to which all workers are entitled in that company and under the applicable law.
- All notices that are legally required to be posted in the factory work areas will be posted. All legally required documents, such as copies of legal code or law, will be kept at the factory and available for inspection.
- In general, workers will have access to understandable information about their wages and benefits, and will not express dissatisfaction with their ability to get information.
- All workers have a right to use or not to use employer provided services, such as housing or meals.
- Deductions for services to employees will not exceed the cost of the service to the employer. If questioned, employers will demonstrate the reasonableness of these charges.
- Accurate and reliable payroll reporting, including pay stubs will be provided.
- Employers will provide workers a pay statement each pay period, which will show earned wages, regular and overtime pay, bonuses and all deductions.
- Time worked by all employees, regardless of compensation system, will be documented by time cards or other accurate and reliable recording systems such as electronic swipe cards.
- All compensation records will be maintained accurately and should be acknowledged by the employee as accurate.
- Employers will provide all legally mandated benefits to all eligible workers.
- Legally mandated bonuses (e.g. 13th month payments and severance payments will be paid in full and in a timely manner.
- Legally mandated benefits will be provided or paid in full within legally defined time periods. All legally mandated deductions for taxes, social insurance, or other purposes will be deposited each pay period in the legally defined account or transmitted to the legally defined agency. This includes any lawful garnishments for back taxes, etc. The employer will not hold any of these funds over from one pay period to the other unless the law specifies that deposits are to be made less frequently than pay periods (e.g., monthly deposits, weekly pay). If the law does not specify, then deposits will be made before the next pay period in all cases.
- All voluntary deductions (savings clubs, loan payments, etc.) will be credited to proper accounts and funds will not be held illegally or inappropriately by employers.
- Workers will be paid for holidays and leave as required by law.
- All hourly wages, piecework, bonuses, and other incentives will be calculated and recorded accurately.
- All compensation shall be paid in a timely manner.

- Workers paid on the basis of incentive quotas will be paid not less than the minimum or prevailing wage, whichever is higher.
- Regardless of any production quotas, incentives will not be reduced or unpaid if the result will be wages below the minimum wage.
- Employers will not use hidden or multiple payroll records in order to hide overtime, to falsely demonstrate hourly wages, or for any other fraudulent reason.
- All legally required payroll documents, journals and reports will be available complete, accurate and up to date.
- All employees will be credited with all time worked for an employer for purposes of calculating length of service to determine the benefits to which workers are entitled.

NGOs should recall that they can become certified as official monitors of the FLA code of conduct and/or they can assist workers in registering complaints to the FLA, a process that has yielded productive results for many workers' organizations.

Similar to the FLA code and benchmarks, the Worker Rights Consortium has established definitions for minimum or prevailing wages in its code of conduct (see www.workersrights.org), but has not yet published benchmarks. Instead, it has published investigative reports about individual factories (dealing with wages among other issues). The WRC is currently soliciting wage information from companies in order to inform the public of country-by-country minimum wage rates and to emphasize the importance to companies of the transparency and availability of wage information. As with each of the substantive labor rights topics in this manual, another useful compilation of code of conduct standards examples regarding wages may be found at the Human Rights First labor rights database, http://workersrights.lchr.org/yardsticks_report/wages.htm.

5.3 CAVAR methodology: “Digging” for wage information

A. “Context”

As with each labor right, the NGO's first steps in examining issues of wages and benefits consists of developing a background understanding of basic issues:

- Examine national law and any industry-specific regulations or exclusions that are used to establish wage and benefit levels, notably using sections A(1) and A(2) above as guides.
- Review national ratifications of international instruments that involve wage and benefit obligations, including ILO Conventions and the International Covenant on Economic, Social and Cultural Rights.
- If your government has ratified such international instruments, review the findings of these organizations regarding periodic review.
- Review the codes of conduct, if any, that apply to relevant companies and industries in the area in which you are working.
- “Localize” your context inquiry by interviewing grassroots organizations that are familiar with the particular industry/regions/groups of workers that you may be asked to assist or monitor regarding wage issues.
- Seek to determine whether workers at the local level are able to use governmental mechanisms to gain investigation and enforcement of unpaid wage claims.
- Inquire in particular into the background of industries, the stability of such industries, and whether the industries are known broadly (such as in the apparel industry) for widespread minimum wage employment.
- Seek to become familiar with the basic needs and cost of goods in the area in which you are working.
- Seek to identify particular issues that grassroots groups and workers believe are most important regarding wages and benefits: for example, if health insurance and/or social security is a government

benefit, do workplaces comply with their obligations of paying the required benefit amounts to workers?

- Ascertain whether workers are eating meals and living in dormitories at the work site. If so, benefit issues, such as the amounts charged by the employer for food and housing, are important areas of inquiry. For example, the ILO says such prices must be “fair.” The FLA recommends that such prices be “nonprofit.”
- To the extent possible, seek to become familiar with the accounting processes used in local industries so that you will be able to read and understand payroll information at the factory level.
- Build your information base in a methodical and gradual way: wage and benefit information is often quite complicated because it varies depending on the levels of skill and seniority of workers. Your primary focus in order to cover the issues of minimum or “decent” wages will be workers earning base wages and whether their requirements are met.
- Monitors should also examine worker promotion and mobility within the workplace. For example, if a worker has worked at the same job and for the same base wage for a matter of years, the monitor may wish to look more closely at the reasons why wages have stagnated.

B. “Archivos”: Records review

1. Reviewing records

NGOs should begin their workplace visits with some knowledge of the compensation system that is used by the factory (See “Context” section above.) Unlike some other workplace standards, wage and benefit reviews will certainly require special attention to company files and require special skills and patience in reviewing data. In this section, we will include the records review and management interviews together because these are usually coordinated topics due to the nature of the wage records review. In other words, with each entry here, monitors should establish questions for managers. In addition, monitors should create a duplicate list of their questions in order to randomly ask supervisors on the shop floor whether they are able to answer workers’ questions about their wage rates.

Although many different types of computer and hand-written wage and benefit data programs exist, most wage information has some uniformity, regardless of the type of workplace: the rate of pay per hour or per piece of production; total hours worked or products produced each day, each week and each month; overtime hours; vacation credits; sick time (if any); legally-required deductions; optional deductions; legally-required bonuses, if any; optional bonuses; government wage supplements, if any; other benefits. Reviewing records requires both solitude and the opportunity to confer and interview management, as required.

- Examine workplace policies, contracts, and processing systems that form the wage payment system. Usually managers will be necessary to help explain these systems.
- Examine and inquire into the format in which workers receive information about wages. Such inquiry includes reviewing the receipts that workers receive showing their wages and the information used by the employer to explain the wage system to workers. In many cases, employers fail or refuse to explain wage systems to workers, which makes it extremely difficult for workers themselves to determine the adequacy of their wages.
- Note that internal documents typically available for review and comparisons include: Identification cards, worker lists, payroll journals, piecework tickets, time cards, attendance sheets, personnel records, pay receipts, and checking account records.

The Fair Labor Association has included a helpful checklist of core issues in its guidance document for NGOs and others, which we have paraphrased and updated according to our own experience:

- Are all hours recorded?

- Is each worker paid the minimum wage?
- Is each worker receiving the correct premium pay for overtime?
- Is incentive pay fairly calculated and correctly (and fairly) applied?
- What deductions occur and are all deductions legally authorized?

Are apprenticeships limited to a reasonable period (usually no more than three months) and paid at at least the minimum wage?

Moreover, the factory should have available for a monitor’s sampling the most recent year’s records regarding:

- Time cards for all employees;
- Payroll journals, showing base wages, incentive or bonus earnings, hours, deductions, net pay and gross pay;
- All piecework rates and piecework calculations (or other incentive system rates and calculations—base plus, attendance bonuses, quality incentives, etc.);
- Payroll deposit slips, payroll checking account ledgers and deposit receipts for tax and benefit deductions;
- Payroll tax calculations, records and reports

C. **“*Visite*”:** **Site visit**

- The order or disorder of factory records will tell monitors a great deal about wages and benefits at a workplace. Disorder, surprisingly, can be a tool of management—a means of creating confusion in an already complex issue. It is our experience that managers at many low wage workplaces believe that when a monitor cannot review records, the monitor’s interest in the records may waver. On the contrary, monitors should become more vigilant when records are not produced and make it clear that the absence of records is in itself one of the most serious violations regarding wages and benefits. (Of course, evaluating the lack of records in light of workers’ response will help evaluate violations. In some cases, the workers, in fact, are receiving their basic pay, but the employer does not keep appropriate records in order for the factory to avoid government taxes and other regulations).
- In a walk-through of the factory, while gathering information regarding all workplace rights, be sure to use your eyes and ears to observe wage and benefit-related aspects of production. How are these visible? For example, where workers are being paid under an incentive system in a factory, a “scoreboard” is often placed at the front of each work line. Such observations enable monitors to become familiar with the means and frequency by which employers adjust incentives in order to stimulate productivity.
- Incentive programs, benefits, and wage information should be posted on bulletin boards for workers to review and discuss. Be sure to look for such information.
- In general, a monitor should witness each aspect of production and become familiar with the pay rate for such production. For example, it is very difficult for monitors to understand piece rate pay systems without witnessing the production and incentive methods for the piece rate production.
- When monitors are familiar with production by regular walk-throughs and by reviewing documentation, they will eventually be able to assess whether the employer has the capacity to produce the orders that have been made. In that way, monitors can determine whether unregulated and low-wage subcontracting, such as to home workers, including child laborers, is occurring.

1. **Interviewing managers**

Given the extraordinary focus on documentation of records for wage and benefit purposes, most of the issues in the document section create relevant questions for managers—in fact, the management interviews will probably

be “interactive” interviews in which documents and questions are reviewed at or near the same time. Often, the documents will provoke the questions:

- For example, as we have experienced in one country’s fruit processing sector, documents indicated that one group of workers received a high wage and government social security deductions, while another group of workers did not. The document led to questions for management. (The answer turned out to be that one group had a union-bargained contract while the other group had a different job classification and did not have the union contract. Moreover, the lack of government payments resulted from an inappropriate accounting technique that defined the nonunion workers as part-time and exempt from government benefits, when, in fact, they were not.)

Monitors should freely stop supervisors and ask them whether they are able to answer basic questions about wages and benefits for workers. If the managers are not trained to answer such questions, monitors will already have some idea of the lack of depth of attention to the labor rights issue.

Other questions to management should follow from similar documentary reviews. In any case, monitors should build their own questions, while also following any audit instrument provided by monitoring agencies.

2. Interviewing Workers

Before reviewing this list of questions, the reader should be sure to review the interviewing section and question-forming methodology described in the “CAVAR” briefing in Chapter 3. It is very important for NGOs to keep in mind that their questions must not suggest “appropriate” answers, but, rather, give workers an open-ended opportunity to express and describe their experiences at the workplace on each labor right issue. In addition, monitors should be sure to create their own list of questions and use the enclosed list only as suggestions for issues that they should cover. Finally, keep in mind that one of the biggest problems faced by monitors is that workers often perceive that they are speaking to management, not independent reviewers. Thus, off-site interviews are certainly more likely to solicit earnest answers to questions.

One of the most important question for monitors when asking workers about their wages is simply: “What do you know about your wages and benefits and how did you learn it?” That is deceptively important. Most workers have difficulty understanding their wages. And one of the most useful requirements of ILO and code of conduct standards is the obligation of employers—not just to pay workers what they are due—but to explain the pay system so that workers can defend their rights.

Interviews should inquire into whether workers are aware of their base compensation rate, piece rate, the overtime premium rates, and the application of these formulas.

Review wage and benefit documentation with workers. Workers can help inform monitors about what kinds of benefits they receive—in other words, anything beyond their basic wages—and determine whether these benefits are applied consistently with the documentary records provided by the employer.

Does the employer pay for all hours worked, in regular currency, and on a regular basis?

Does the employer pay for all overtime earned?

What, if any, deductions occur to wages, and why?

For questions related to the International Covenant on Economic, Social and Cultural Rights, as well as the “needs of workers and their families” under the ILO, NGOs may inquire into workers abilities to pay for food and other basic necessities, as well as whether workers are able to save any of their money for discretionary purchases or savings.

Are workers ever denied the opportunity to work their usual hours, or is their workflow ever limited at the workplace by managers as a form of discipline?

If wages have not been correctly paid, what means of securing proper wages have been used (grievances, legal action?) and what has been the outcome of such efforts? That is, does a factory grievance process or the

government's legal processes effectively protect workers' rights to their wages, a priority of ILO and Covenant wage protections?

**D. “Analysis”:
Analysis of context, records, site visit and interviews**

With the above records, monitors should:

- Perform “cross checks” for correct computation of minimum wage; weekly wage; and incentive, piecework or quota compensation. Crosschecking means comparing the paper or computer records with such items as workers' actual receipts and information from worker interviews. The CAVAR system is basically built on the idea of crosschecking because workplace rights are only understandable when monitors use their eyes and ears on many levels at the same time, and always with the ability to doubt and re-check their first impressions or conclusions.
- Perform multiple checks for hours and days worked per week at various times of the year.
- Assess whether the rate of pay for piecework is at least equal to the minimum wage, and the required overtime rate after the regular workday;
- Cross check documentation of benefits, such as tax and social insurance deposits by the employer, with whether such benefits have actually been received by the appropriate agencies.
- Check deductions for accuracy—and, again, cross match with employee interviews and bank or agency deposit records.
 - Job benefits are sometimes the most complicated aspect of a monitor's assessments. For example, many factories offer meals and housing to employees. While there is no fixed international standard for such benefits, most code of conduct systems, such as the FLA, hold that when meals and housing are offered by the employer, the cost should be based upon a non-profit model. Other benefits that require NGO time and focus in order to understand and evaluate: government benefit deductions, such as social security payments, as well as employer medical and vacation leave.
 - In an ongoing way, NGO monitors should seek to determine whether the factory is able to do the work that it has contracted to perform. Subcontracting work to other factories or to home workers that may operate “off the books” is a common way for factories to hide substandard labor conditions. Such an inquiry is difficult to conduct at an early phase of monitoring because if such production does occur it is often well-hidden; however, such production may become apparent after the monitor has become familiar with the type of production and the capacity of the factory to produce certain items.
 - In their final analysis, monitors are seeking to determine whether the employer's wage and benefit system is transparent, understood by workers, accurately implemented, and in some legal or code of conduct definition, “fairly applied.” Monitors should also put a priority on discussing what happens when workers seek to file grievances or raise legal actions regarding alleged wage or benefit violations. As discussed earlier, the latter issue is the most controversial. Monitors should recall our earlier discussion of the difference between advocacy and monitoring. A monitor whose primary interest is in securing a living wage for workers at factories that have no recognized legal obligation to pay a living wage should make their own advocacy transparent in their reporting. It is worth recalling that many workers are not receiving even their legally mandated wages and benefits, and that monitors may have the most practical initial impact by ensuring that such wages and benefits are paid. A monitor's focus on “decent” and/or “living” wages may be best directed at comments to the Covenant Committee and focus on government obligations to ensure a decent wage.

E. “Reporte”: How does a monitor report on wage issues?

As discussed in the Freedom of Association reporting section and in Chapter 3’s basic reporting guidelines, NGOs will create different kinds of reports for different audiences. NGOs may also create different kinds of reports depending upon their own self-definition as advocates for particular workers or as advocates/monitors of labor rights. For example, a report to a UN body should largely focus on compliance with government standards and mechanisms, followed perhaps by experiences at the workplace level; on the other hand, a monitoring report for a code of conduct agency, or a complaint on behalf of workers, is likely to focus first on the local workplace conditions and subsequently offer a critique of government enforcement systems (or the lack thereof). It is therefore helpful for monitors to review several models of reports: the UN version of reports available at the ILO web page by reviewing Committee of Expert reports relating to Convention No. 131; Covenant Committee reports produced by NGOs and reviewing specific government behavior (perhaps including your own government) under Article 8 of the Covenant; code of conduct association reports, such as those available at www.coverco.org and www.workersrights.org; living wage-oriented NGO reports, such as those written or linked by www.sweatshopwatch.org, www.globalexchange.org or www.ethicaltrade.org. A summary of reports that is useful but less complete (and somewhat difficult to access) is also available in the “public reports” section of the Fair Labor Association web site, www.fairlabor.org.

Let us review some checklist points for reporting from the Freedom of Association section that apply equally to reporting on wages:

- Seek to create a standard format that easily identifies the subject matter and conclusions over a period of time. A standard format allows report topics to be measured and compared. When a monitor performs audits or interviews, it is essential to record and report the dates of visits, interviews, and record reviews.
- Note that some monitoring association—such as the FLA or the SA International—will describe a preferred or required format for reporting for “certified” monitors.
- A report should include a description of the NGO’s methodology, including the criteria, time and personnel necessary to gather data, so that the reader can fully understand how data was gathered and conclusions were reached. In that way, monitoring reports promote transparency, the lack of which is one of the reasons that sweatshops exist in the first place. A clear methodology also allows for discovery of errors that can help improve future reports.
- A report should include findings of compliance and noncompliance, as determined by the analysis of the monitors. Such findings should seek to identify the degree of noncompliance, emphasizing urgent issues in a special section.
- Many monitors will propose the appropriate remediation of a matter, while recognizing that employer or brands may propose alternative means of remediation.
- Some reports are written so that employers will have the opportunity to remediate and present their remediation in the final draft. However, monitors should not withhold reports when the passage of time may make remediation more difficult (indeed, when workers are in danger of losing their jobs, rapid reporting may be essential.)
- Reports must not compromise promises of confidentiality granted to workers or employer when it is necessary to make such promises in order to avoid a risk of retaliation.
- When retaliation against workers occurs as a result of a monitor’s work, reports should make special mention of such retaliation because protection of workers’ rights to report conditions is an essential part of any monitoring mission. If workers suffer due to monitoring they may be less likely to participate.
- When reports occur on an ongoing basis, a summary of previous reports can be helpful to the overall understanding of compliance.

5.4 Let's be practical: Common worldwide violations of wage and benefit rights

We have already emphasized in the sections above what we believe are the most common problems and violations regarding wage and benefits for workers. The first is, simply enough, that workers often do not receive even their legal minimum wages and benefits. Sometimes this is because a government is completely detached from enforcing its own regulations: for example, in Guatemala employers that employ more than a specified number of workers have long been required to offer the benefit of on-site child care. Upon review, exactly one factory in the apparel industry among hundreds under the mandate, actually provided this benefit. And none to our knowledge was sanctioned for not having the benefit. This is the practical reality of the lack of rule of law (or enforcement of regulations) in an unfortunately vast universe of factories and governments throughout the world.

Now, let us take a more subtle (but also not uncommon) wage problem: many governments provide special monthly bonuses that fall somewhere in between a “wage” and a “benefit.” In addition, these supplements are often required to be counted in the employer’s overtime pay calculations. So here is a complex but important problem for an NGO monitor: you must understand the basic legal wage. You must understand the government supplement system, if there is one. You must be able to read and review company wage documentation to determine how actual calculations occur. You must be able to discuss with workers what their experience (and paycheck) provides. And you must be equipped to assess whether the full, legal wage is paid. When you discover that a factory has (for years) violated the worker’s wage rights and that the government has taken no interest in enforcing that right, you may have the opportunity to make a very real difference in the daily life of workers. This might occur through a code of conduct, through UN reporting, or through direct advocacy. It is now up to you to decide which among the choices offers the best path. Yet, it is always worth remembering that other NGOs elsewhere in your country or in the world confront similar problems. A network of shared information may therefore be a very useful component of your work.

5.5 Measuring compliance and progress

NGOs will wish to carry out a number of steps, perhaps together with union organizations, in order to measure compliance and progress regarding the right to minimum and/or “decent” wages as well as to benefits.

First, to the extent possible, NGOs need to use common definitions of labor rights by using ILO definitions and supplementing these in the case of wages with the provisions of the International Covenant on Economic, Social and Cultural Rights. In that way, progress can be measured along a commonly recognized line from noncompliance to compliance. In the case of wages, it has been widely noted that one of the problems in terms of factories and governments, both, is that there is little continuity of measurement of progress (or erosion) of wages.

NGOs should seek to:

- Use the ILO benchmarks set forth in this chapter as “minimum standards” and measure compliance at least on these issues. Use the FLA benchmarks as minimum standards in actual FLA monitoring and as advisory standards in other work, including commentaries to the Covenant Committee.
- Attempt to provide a qualitative assessment of each benchmark by indicating what actions in particular at the factory or government level support or fail to support the benchmark.
- Use as many connections as possible to international NGOs dedicated to labor standards to help refine the evaluations at the local and governmental levels.
- Seek in any and all discussions with factories and companies the right to periodically follow up and measure assessments of worker rights when violations have been found. That way, companies and governments will not feel that limited or momentary compliance truly means “progress.”
- Work on your own or with other NGOs to create a larger picture wage and benefit compliance according to the industry that you are monitoring, or by seeking national statistics on the same

subject. Often one of the most difficult problems in advancing the cause of worker rights is the lack of information that shows trends in enforcement or lack of enforcement.

- NGOs should seek to participate in global reporting networks, so that their reports become available to a wider audience, and so that researchers can examine their work and use it as a basis of comparison to other monitoring in other places. It is worth repeating from our other chapters that the relatively simple act of publishing a report on the internet can lead another NGO to benefit from the benchmarks and standardization used in another location. (However, publishing reports to reviewing organizations without following up in some personal way on whether they have been used may simply add clutter to the world of monitoring rather than order.)
- When recurrences of violations take place in the same factory despite previous remediation, or when workers face retaliation due to reporting, NGOs should be particularly vigilant and active in reporting the lack of compliance and loss of forward progress. In that way, other groups, including consumers, can become informed of the problem and take appropriate action, including the demand for governmental and consumer action.

Chapter Six

Hours of Work and Overtime

6.1 Introduction

One of the longest-standing labor standards worldwide is the eight-hour day. Indeed, it is Convention No. 1 of the ILO, passed in the very first year of the ILO's existence in 1919. The Convention sought not only to limit hours but also to establish overtime payments as an international standard. Under the Convention's specific terms, only industrial operations that operated on a 24-hour basis, or with union-bargained contracts, and other rare exceptions, could require overtime work. Yet, today, wage earners in industrial nations and the developing world may regularly work 10 to 12 hours a day or more, and often without a choice. ILO Convention No. 1 and the worldwide movement that led to it has certainly helped establish a global "norm" for the eight-hour day and a 48-hour "regular" work week. But nothing seems likely to stop the global momentum for ever-increasing mandatory overtime. Even the ILO has in some sense minimized the priority of working hours by failing to include the topic in its list of "fundamental" rights. Nor have developed countries offered much of an example for others. In 2004, the United States Congress was on its way to significantly reduce the overall number of jobs protected by overtime pay laws. More workers would work more hours without overtime pay.

Why are hours so long? A story from this writer's negotiations with global apparel and footwear companies a few years ago might be instructive. We asked manufacturers why factories could not limit work to a 48-hour workweek, the ILO's basic standard. One prominent apparel manufacturer's representative responded that competitive pressures required substantial overtime work, and, besides, the workers wanted to work long hours in order to make more money. Company statistics certainly confirmed the rigorous schedules: more than one third of all workers in global apparel production were required by their employers to work more than 60 hours per week to meet production needs. Yet, as we pointed out in the previous chapter, many workers probably needed to work at least 60 hours in order to even approach the wage necessary to meet their families' basic needs.

Workers seem ever to be pushing the same heavy rock up a hill: they need to work long hours because they cannot make enough money for their families during "regular" hours. And when they work long hours, they may not have enough time with their families to free the next generation of children from the same fate.

As noted in this manual's wages chapter, an unusually detailed, country-by-country account of national regulation of working hours may be found on-line in the ILO's Conditions of Work Digest at:

<http://www.ilo.org/public/english/protection/condtrav/pdf/1995digest.pdf>

The chances are good that your own country's practices (at least as of the mid-1990s) will be listed in this digest regarding "normal" or "regular" hours of work, vacation pay, overtime, rest periods, holiday pay, and "special leave" (such as sick leave, education leave and religious leave.) Thus, NGOs have a way to get a basic snapshot of their own country even before making an in-depth assessment of how to investigate, monitor and report on hours of work.

6.2 International, national and code of conduct standards regarding work and overtime

A. ILO Standards

An NGO's first step is to determine whether the national government whose laws it is reviewing has ratified the particular ILO convention. If so, the ILO's basic benchmarks may be enforceable as law. If not, the ILO's benchmarks remain relevant in establishing common standards. Indeed, the terms of the conventions have had an important effect by establishing a blueprint for national laws. (See list of relevant conventions below.)

Among the key ILO hours conventions are:

- The Hours of Work (Industry) Convention, 1919 (No. 1), which obliges ratifying governments to set the working hours of persons employed in any public or private industrial undertaking, with limited exceptions, at not more than eight in the day and forty-eight in the week. Although only about 50 countries have ratified this convention, more than 130 countries have passed laws that observe the basic maximum hour requirements of the convention. Still, despite many efforts, ILO General Conferences have agreed to no more than a general convention calling on governments to further reduce working hours to 40 in the week. This convention has received very few (14) ratifications by governments, despite the fact that the basic 40-hour work week is met or exceeded in practice by many industrialized countries.
- The Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices), 1957 (No. 106) requires ratifying States to provide for a minimum of twenty-four consecutive hours of rest per week. Convention No. 106 is supplemented by ILO Recommendation No 103, all of which may be viewed at www.ilo.org.
- The Holidays With Pay (Revised) Convention, 1970 (No. 132), obliges ratifying States to ensure paid annual holidays of three weeks or more (earlier conventions sought to ensure at least one week of holiday for workers).
- To protect maternity rights, the ILO has created Convention No. 103, the Maternity Protection Convention (Revised), which provides, among its benefits that, women should have the right to nurse their infants during a special paid break at work. (See “Wages and Benefits” section for other non-hours benefits.)
- The Paid Educational Leave Convention, 1974 (No. 140), obliges ratifying States to promote education and training (vocational, general, social and civic, trade union) during working hours, with financial entitlements. The Convention is supplemented by Recommendation No. 148.
- The ILO is also very well known for industry-specific standards, such as those governing the hours of work of truck drivers (Convention No. 153, which requires governments to set standards concerning driving time and rest periods. The Convention is supplemented by Recommendation No. 161.)

B. International Covenant on Economic, Social, and Cultural Rights

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular ...

(d) ...reasonable limitation of working hours[the benefit elements of this Article are discussed in the Wages and Benefits chapter].

As we have discussed other sections of this manual, a government undertakes obligations to observe the Covenant only by ratification. In this case, the numbers of ratifications are nearly equal between the key ILO hours convention and the Covenant, meaning that most NGOs will be able to work with the texts of both standards in order to judge government compliance.

As a practical matter, the Covenant Committee that interprets this Article solicits information from the ILO and generally follows the content of ILO conventions. Thus, an NGO that wishes to monitor a country or company’s performance on wages should become familiar with the relevant ILO conventions listed above.

The general questions posed by the Covenant Committee to governments regarding hours of work are the following:

“Please describe the laws and practices in your country regarding rest, leisure, reasonable limitations of working hours, periodic holidays with pay and remuneration for public holidays.

(a) Indicate the factors and difficulties affecting the degree of realization of these rights.

(b) Indicate which categories of workers are excluded by law or in practice, or both, from the enjoyment of which of these rights. What measures are contemplated or currently taken to remedy this situation?

6. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, or administrative rules, procedures and practices during the reporting period affecting the right to just and favorable conditions of work.

7. Please indicate the role of international assistance.

While using these questions as a starting point for research, NGOs must recognize that progress to enforce fair working hours rarely occurs without vigilant monitoring and broadly applied pressure from many sectors of the civil society. Moreover, it is often only the worst incident or violation that prompts governments to act. Thus, it bears repeating that the most effective use of the Covenant for NGOs is to offer formal feedback to the UN regarding a government's violations of standards. Violations occur when a government systematically (and actively) violates the right or when a government fails to protect the core right. NGO reports to the Covenant Committee about government actions or inactions can ensure that NGO findings receive wide distribution, are formally communicated to governments, and receive due UN consideration. NGOs may use all or any of the above elements of the ILO standards, as well as the CAVAR methodology below, to gather and report their concerns. NGOs must also recall from Chapter 2 that the Covenant Committee has rules about what NGO reports must seek to include: For example, NGOs communications to the Covenant Committee must be "relevant," "based on documentary sources and properly referenced," "concise and succinct," and "reliable and not abusive."

- NGOs can choose from among the following reports that are received by the Covenant Committee:
- information may be submitted directly to the member of the Covenant Committee responsible for drafting the "list of issues" that will be directed to the signatory government;
- NGOs can author "shadow" reports that cover the same topics as the government's report;
- NGOs may submit written statements or reports, or oral presentations in official "NGO hearings" at the time of a government review. NGOs may also attend the actual country reviews.
- Finally, NGOs may submit information to the Covenant Committee regarding implementation of any or all of the Committee's concluding statements.

In sum, NGO participation in the Covenant Committee can help give voice to workers' concerns about the implementation and enforcement of work hours in the relevant country.

Moreover, the Covenant, when ratified, may give an NGO a higher platform to address issues of hours than even the ILO Conventions. That is because, at the same time as undervaluing NGO participation, the ILO's conventions on hours of work occupy a kind of "second rung" on the ILO's ladder of labor rights. Only so-called "fundamental rights" provisions—freedom of association, forced labor, child labor and discrimination—receive automatic review by the ILO whether a government has ratified the relevant conventions or not. Therefore, a country's treatment of working hours is not subject to formal review by the ILO's supervisory offices unless the government has ratified the convention or makes a special request of governments

C. National Laws

Most governments establish what is known as a "normal" or "regular" work week—and often normal work days as well—and require overtime pay to be paid after that basic total has been reached. Depending on the country, this "regular" week usually falls somewhere between 40 and 48 hours of work, although a few countries, such as France and Spain have reduced the regular week below 40 hours. Exceptions that have been noted include Thailand (54 hours in a week and even Switzerland where the basic legal week is 50 hours). The normal work day is usually eight hours. (Typical exceptions are in agricultural work, but many governments adjust the limits so that if harvest weeks allow high numbers of hours, then lower total monthly or annual requirements adjust downward.)

As to systems of counting overtime, many governments use a daily or weekly limit on total overtime hours. For example, Guatemala requires that workers work no more than four hours of overtime per day (although such a "limit" means that the potential work week could total at least 64 hours, given that 44 hours are permitted in the

week and another 20 or, counting Saturdays, even 24 hours of overtime could be required by the employer without violating the law.) According to the ILO, of nearly 100 countries that legislate daily overtime limits, about half limit the daily overtime to two hours or less. Overtime pay is usually required to be provided at a premium rate (either 1 1/4 or 1 1/2 the regular rate, and often 100 percent more than the regular rate when the work is on a holiday.) These overtime pay premiums are sometimes required after the worker has reached eight hours in a day, or sometimes counted only after a worker has reached the necessary weekly total. An NGO must check her own national laws and regulations to determine what provision applies locally—even though a code of conduct may have stricter provisions.

As noted above, most governments—whether or not they have ratified the ILO conventions on rest—require at least one 24 hour rest period per week. Many governments also mandate minimum time periods of rest between work days (another way of limiting “mandatory” overtime) and within work days (such as half-hour or one hour breaks for lunch or for rest). Finally (and perhaps most importantly for the exhausted workforce of today’s low wage global economy), nearly four out of five governments surveyed by the ILO provide for paid public holidays, averaging between 10 and 13 such paid holidays each year. Many countries also mandate paid annual leave based upon the number of years or months of employment.

As may now be clear, “hours of work” involves much more than simply how many regular hours the average employee works (or should work) during the day. There exist many important nuances and exceptions for special categories of work. For example, most national laws create limits for the working hours of young people. A failure by governments to enforce such laws might not only constitute violations of the hours provisions of ILO or Covenant provisions, but also child labor laws as well. Hazardous work often leads to special hours restrictions for workers, as well—a relatively common violation of laws in our experience.

The labor relations term for the overall “package” of workplace conditions is “conditions of work” (Hence, the title of the ILO’s “Conditions of Work Digest.”) NGOs should examine not only the basic content of national laws and international conventions, but should give special attention to what enforcement actions workers can (or cannot) take when their employer fails to guarantee their basic rights.

D. Codes of Conduct

NGO monitors will find that codes of conduct reflect—and occasionally supplement—a government’s legal definition of “regular” hours (such as 44-hour) workweeks, and often also provide special requirements for overtime pay. It is important that an NGO review the specific terms of the code of conduct—and recall that codes approved by groups that include employers, worker representatives, human rights groups, and other public institutions, such as universities, generally adhere to the highest standards, including the opportunity for NGO-based independent monitoring.

As in our previous chapters, we will elaborate somewhat on model “group” codes of conduct that deal with hours and overtime, such as the Worker Rights Consortium and the Fair Labor Association. In the Fair Labor Association, see www.fairlabor.org, an employer should follow the requirements of national law in defining the regular work week. As noted above, “regular work weeks” can vary country-to-country, such as 40 hours in the United States, 36 hours in France, 44 hours in Guatemala, 48 hours in many other countries. Under the FLA code, an employer can require only an additional 12 hours of overtime beyond the regular work week. That provision means that monitors have just a bit of math to do in order to determine what the employer may require as an upper limit of overtime hours. (No one ever promised that monitoring could be done without a bit of arithmetic in addition to good investigations.) Under the FLA’s computation for Guatemala, for example, the regular work week of 44 hours could be supplemented by an additional 12 hours of overtime, resulting in a maximum requirement of 56 hours of work. The FLA code of conduct provision is therefore more strict than many national laws. For example, the United States does not have a legal limit of overtime, so the FLA represents a cap on required hours that otherwise would not exist.

Under many codes, including the FLA and WRC, an employer can require overtime beyond the regular work week only in “extraordinary circumstances.” The definition of “extraordinary” remains a work-in progress (although the

apparel industry's current standard of about one third of all work weeks certainly exceeds any notion of "extraordinary"). The ultimate goal of such group codes of conduct as the FLA, WRC and Social Accountability International is to put some pressure on employers to pay wages that meet a family's basic needs during regular working hours.

Useful benchmarks on the issues of hours and overtime have been elaborated by the FLA (but NGOs should recall that code of conduct benchmarks are usually applicable to the companies that agree to abide by them). The FLA's benchmarks include:

- Employees will be paid for all hours worked in a workweek. Calculation of hours must include all time that the employer allows or requires the worker to work.
- Employers shall comply with applicable law for premium rates for overtime compensation.
- Workers shall be informed about overtime compensation rates, by oral and printed means.
- Where workers are paid on a piece rate, the payment for overtime work performed shall result in no less payment than the premium pay required by law.
- Overtime hours worked in excess of the code standard will be voluntary.
- Under extraordinary business circumstances, employers will make extensive efforts to secure voluntary overtime work prior to mandating involuntary overtime.
- Positive incentives will be utilized and known by workers.
- Negative incentives or punitive actions will not be used to induce overtime in excess of code standards.
- The employer will demonstrate a commitment to reduce mandated overtime and to enact a voluntary overtime system to meet unforeseen situations.
- If the employer repeatedly requires overtime in order to respond to the same situation, the employer will explain why it will not have sufficient staff on hand to avoid the necessity of overtime.
- Employers shall be able to provide an explanation for all periods when the extraordinary business circumstances exception has been used. Employers shall take reasonable steps to inform workers about the nature and expected duration of the circumstances.
- The factory will comply with all applicable laws governing work hours, "including those regulating or limiting the nature and volume of work performed by women or workers under the age of 18.
- Employers will ensure reasonable meal and rest breaks, which, at a minimum, must comply with local laws.

Moreover, benchmarks from the wages section usefully may be applied to the hours provisions:

- Employers will provide workers a pay statement each pay period, which will show earned wages, regular and overtime pay, bonuses and all deductions.
- All compensation records will be maintained accurately and should be acknowledged by the employee as accurate.
- All hourly wages, piecework, bonuses, and other incentives will be calculated and recorded accurately.
- Workers paid on the basis of incentive quotas will be paid not less than the minimum or prevailing wage, whichever is higher.

6.3 CAVAR monitoring methodology: How NGOs “dig” for information

A. “Context”

An NGO seeking to monitor the basic conditions of work starts out with the “Bible”—national laws and regulations regarding the hours of work. Such an inquiry should begin by determining the “normal” workweek (usually between 40 and 48 hours in the week and/or eight hours in the day). An NGO also should find out what the basic laws require regarding overtime, rest time, holidays and leave time, as well as determine whether any special provisions protect young workers and pregnant or nursing women. Once well acquainted with national law, the NGO should review which ILO Conventions relating to these subjects have been ratified by the government, as well as whether the government has ratified the International Covenant on Economic, Social, and Cultural Rights (in which case see the above section, I C, regarding NGO reporting to the UN’s Covenant Committee).

Besides learning the basic national legal context of hours of work, the NGO should cover the same ground as described in the freedom of association and wages sections. Indeed, there is a great deal of overlap between hours of work and wages—to begin with, if a living wage were paid during a 48 hour day, then workers would be realizing particular gains. We have presented them separately in order to emphasize certain unique issues, such as:

- If your government has ratified international instruments, review the specific findings of the international organizations regarding periodic review, including internet or direct communication with the ILO and/or UN;
- Review the codes of conduct, if any, that apply to relevant companies and industries in the area in which you are working;
- “Localize” your context inquiry by interviewing grassroots organizations that are familiar with the particular industry/regions/groups of workers that you may be asked to assist or monitor regarding hours of work, rest periods, holidays, etc. It is important to place a particular emphasis as well on learning about the context of “protected” workers, such as young workers and pregnant or nursing women;
- Seek to determine whether workers at the local level are able to use governmental mechanisms to gain investigation and enforcement of hours of work, overtime, leave, and holiday pay issues;
- Inquire in particular into the background of industries, and whether the industries are known for routine and high levels of overtime hours (as noted, the apparel industry typically exceeds a 60 hour work week nearly a third of all weeks worked);
- Seek to identify particular issues that grassroots groups and workers believe are most important regarding hours of work;
- To the extent possible, seek to become familiar with the accounting processes used in local industries so that you will be able to read and understand payroll information at the factory level. For example, a monitor must be able to measure the piecework system of productivity pay in order to determine whether legally-required overtime wages are adequately paid. Even if workers are not technically being paid by the hour, it is a universal rule that employers must not pay less than the legal overtime wage.

To evaluate whether and how national laws are enforced, NGOs might wish to interview government officials, including inspectors, about hours of work, as well as examine actual complaint files and system productivity records. In that way, NGOs might determine whether the labor court or other dispute resolution system efficiently and adequately responds to workers’ complaints about inaccurate or unfair reporting of hours of work.

B. “Archivos”

If you have followed the “context” suggestions above, you have begun your hours of work investigation with some knowledge of the national legal system (such as maximum hours and any daily or weekly overtime hours limit). Next, a monitor at the local level would look at the particular system that is used by the factory. Like wage and benefit reviews, a factory-level assessment of hours of work will certainly require special attention to company files and require special skills and patience in reviewing data. In this section, we will bring together some aspects of the records review and management interviews because the measure of working hours usually requires such coordination. With each aspect of hourly records, monitors will likely need to go back and forth between file or computer data and questions to managers.

Although many different types of computer and hand-written wage and benefit data programs exist, most wage information has some uniformity, regardless of the type of workplace: such data includes the rate of pay per hour or per piece of production; total hours worked or products produced each day, each week and each month; overtime hours; vacation credits; sick time (if any); legally-required deductions; optional deductions; legally-required bonuses, if any; optional bonuses; government wage supplements, if any. Of course, often these measures involve both the wage system and the hours of work since the two are often dependent on each other. Reviewing records requires both solitude (that is, no one from the factory should interrupt or influence your review and selection of information) and the opportunity to confer and interview management, as required.

Examine workplace policies, contracts, and processing systems that establish the number of hours that workers are required (or allowed) to work. Usually managers will be necessary to help explain these systems—and whether they do or do not know the answers to hours questions will tell a monitor a great deal about whether managers observe their own (or the law’s) requirements.

Examine and inquire into the format in which workers receive information about their hours of work. Such inquiry includes reviewing the receipts that workers receive showing their wages and hours.

Inquire into the information used by the employer to explain the hours of work requirements workers. In many cases, employers fail or refuse effectively to explain the wage and hour systems to workers. For example, workers often do not know whether their overtime is mandatory, meaning that refusal to work long hours could lead to dismissal. They also often do not know when their time away from work will be excused (such as a medical visit) and when it will be penalized (such as in starting late on the assembly line).

Note that internal documents typically available for review and comparisons include: Identification cards, worker lists, payroll journals, piecework tickets, time cards, attendance sheets, personnel records, pay receipts, and checking account records.

To summarize in a checklist format, a monitor should ask and see evidence regarding:

- Whether all working hours are recorded;
- Whether each worker receives the correct premium pay for overtime;
- Whether piece rate work is compensated at the equivalent of at least the minimum hourly wage? (And, similarly, whether piece rate work completed during overtime hours is compensated at least at the legal overtime wage?)
- Whether different standards are applied appropriately to different workers, such as protected and limited hours of work for younger workers and nursing mothers (see also “child labor” and “discrimination” sections of this manual).

A monitor cannot effectively evaluate hours of work provisions without personally selecting and reviewing (to maintain independence from management) a sampling of:

- Time cards for all employees;
- Payroll journals, showing base wages, incentive or bonus earnings, hours, deductions, net pay and gross pay;

- All piecework rates and piecework calculations (or other incentive system rates and calculations, including basic pay plus, attendance bonuses, quality incentives, etc.);
- Payroll deposit slips, payroll checking account ledgers and deposit receipts for tax and benefit deductions;
- National and/or local payroll tax calculations, records and reports.

Of course, monitors should always note that when records are not available that should be, an element of trust is diminished with management. Monitors must avoid allowing employers to use a lack of response as a means of distracting the monitors from their work.

C. **“Visit”: To the workplace**

It is not easy to “see” an employee’s hours of work while walking through a factory. However, it certainly is possible for monitors to observe and check the time clock, if any, and to determine whether managers direct employees to use it correctly. Some observations may only be available through records; but others may be available through the monitor’s eyes. Indeed, as we have pointed out in earlier chapters, the order or disorder of factory records may tell monitors a great deal about the credibility of hours of work records, at a workplace. Disorder, surprisingly, can be a tool of management—a means of creating confusion in an already complex issue. It is our experience that managers at many low wage workplaces believe that when a monitor cannot review records, the monitor’s interest in the records may waver. On the contrary, monitors should become more vigilant when records are not produced and make it clear that the absence of records is in itself one of the most serious violations regarding wages and benefits. (Of course, evaluating the lack of records in light of workers’ response will help evaluate violations. In some cases, management avoids keeping adequate records of the hours of work (as with wage records) in order for the factory to avoid government taxes and other regulations).

Among some “eye-opening” issues relating to hours, a monitor might look for the following:

Incentive programs affecting hours of work often is posted on bulletin boards for workers to review and discuss. Be sure to look for such information.

In general, a monitor should witness each aspect of production and become familiar with the time or piece rate system for such production. For example, it is very difficult for monitors to connect their understanding of the production process, pay and hours of work witnessing the production system at work.

An hours of work review can lead to important information about other labor rights issues and violations. When monitors are familiar with production by regular walkthroughs and by reviewing documentation, they will eventually be able to assess whether the employer has the capacity in the allotted work schedules to produce the orders that have been made. In that way, monitors can obtain some evidence of whether unregulated and low-wage subcontracting, such as to home workers, including child laborers, is occurring.

One common avoidance scheme that has been encountered by advocates for low wage workers in the United States is employers who instruct employees to “punch out” early on the time clock. At the risk of losing her job, the employee is then required to complete a project. Yet, under most laws, if a worker is truly unproductive, the employer’s option is to terminate the employee, not to limit a worker’s credited of hours of work.

As a part of site visits, monitors may wish to arrive at early and late hours in order to view whether the time system is properly utilized at all hours and to determine who is at work during unusual time periods. A cross check of records could help a monitor conclude whether such time at work is properly recorded. Such commitments by monitors will also distinguish the work of NGOs from “professional” monitors who might not wish to surprise an employer.

In many industries, although a clock may be used, the pay basis for workers is established by “ticket” records that are issued for each item produced—the so-called “piece rate system.” If an employer uses this system, monitors will need to observe and compare the ticket system to the time the worker registers on the clock. In that way, the

monitor may determine whether the hours worked by an employee are properly measured alongside production. Frequently, new workers will not meet production goals within the time required. However, employers cannot fail to count a worker's hours and must pay the workers at least the minimum wage.

1 Management interviews

NGOs should review the “records” (“archivos”) section above and create questions for management that relate to issues that seem most relevant at that workplace. At the same time, investigators should remember to keep matters simple in the early phase of questions, as they begin to determine whether there is a “culture” of compliance or noncompliance at the particular employer (or, in the case of a government review, at the government agency). Complex questions are likely to yield complex answers, rather than an early picture of whether workers' rights are understood and protected.

As a starting point, for example, monitors should ask managers:

- how they explain hours of work and overtime requirements to workers;
- how records are kept and how working hours and overtime rights or responsibilities are presented to workers;
- and managers should also be invited to explain whether they have a system for seeking voluntary overtime—as opposed to mandatory overtime—from their employees. (Model employers now make advance voluntary requests so that workers can put their family lives ahead of heavy work demands).

2 Worker interviews

Even more than with management, NGOs must keep questions with workers at a level that is basic and open-ended. Questions should provoke conversation, not tension or guided answers.

The first and most important question for monitors when asking workers about their hours of work, like wages, is simply: what do you know about how your hours are recorded and paid? And how did you learn about this? That is deceptively important. Most workers have difficulty understanding the employer's record keeping. One of the most useful requirements of international standards and codes of conduct is the obligation of employers—not just to pay workers what they are due—but to explain the system so that workers can defend their rights.

Monitors should be sure to interview a varied sampling of workers to determine whether certain groups may face unique requirements for hours of work. For example, during production deadlines, certain groups may face extremely long hours.

Among other useful questions for monitors to consider:

- Inquire into whether workers are aware of their base compensation rate, piece rate, the overtime premium rates, and the application of these formulas.
- Review wage and benefit documentation with workers. Workers can help inform monitors about what kinds of benefits they receive—in other words, anything beyond their basic wages—and determine whether these benefits are applied consistently with the documentary records provided by the employer.
- Does the employer pay for all hours worked, in regular currency and on a regular basis?
- Does the employer pay for all overtime earned? What, if any, deductions occur to wages, and why?
- Are workers ever denied the opportunity to work their usual hours, or is their workflow ever limited at the workplace by managers as a form of discipline?
- If hours of work have not been correctly recorded, what means of correcting the record (grievances, legal action?) have been used by workers and what has been the outcome of such efforts? Clearly, a correct record of the hours of work is directly related to the adequate payment of wages, so a monitor may wish to link this section with the previous section on payment of wages. As noted in our introduction, workers often must work extremely long hours in order to make enough money to pay

for their basic needs. Therefore, one long-term policy concern of monitors should be whether long hours of work and low pay rates are intentionally linked in order for the factory to meet production quotas.

D. “Analysis”

As we have pointed out in each monitoring section, with work records, interviews, site visits and work context in mind, monitors should:

- Perform “cross-checks” for correct computation of hours and overtime, including piecework or quota assessments. Cross-checking means comparing the paper or computer records with such items as workers’ actual receipts and information from worker interviews. The CAVAR system is basically built on the idea of cross-checking because workplace rights are only understandable when monitors use their eyes and ears on many levels at the same time, and always with the ability to doubt and re-check their first impressions or conclusions.
- Perform multiple checks for hours and days worked per week at various times of the year.
- Assess whether the rate of pay for piecework is at least equal to the minimum wage, and the required overtime rate after the regular work day.

Like most workplace data, the monitor must work back and forth between interviews and records. For example, consider workers’ allegations that an employer required overtime hours during the week and on holidays, and paid a portion of that time in cash. Pay stubs lacked any reference to the overtime. A monitor would need to interview workers and managers, examine payroll documents, and probably make judgments about whether the allegations are true. Such a determination is not easy, and depends upon the willingness of an NGO to study and become familiar with the particular issue. In other words, monitors should use each level of “CAVAR” and be comfortable in returning to a different level in order to verify and analyze information. Often a worker interview will require a new look at documents that have already been reviewed; and documents may lead to a second or third interview, even with workers who have already been contacted. Eventually, to analyze the problem, there may be no substitute for sitting at a desk with the interviews, ILO Conventions and interpretations, national law, codes of conduct, factory records in an effort to make the best judgment possible .

A proper analysis may not always offer a complete conclusion, but, instead, a monitor can offer credibility assessments of the statements or claims of the different positions asserted by workers and managers.

To further assist in such an analysis, NGOs might consider using the internet labor rights analysis tools created by NGOs such as the Fair Labor Association, the Workers’ Rights Consortium and “Human Rights First” (the latter of which collects and seeks to refine measurements regarding what it calls “units” of particular rights.) An NGO’s interactive participation in such rights assessments can help add to the overall NGO community’s knowledge about how to analyze and measure a right. Access to these websites include www.fairlabor.org, www.humanrightsfirst.org and www.workersrights.org.

Above all, be patient and do not take shortcuts to important conclusions!

E. “Reporte”:

How does a monitor report on hours of work?

As discussed in the earlier chapters (and summarized again here) NGOs may create different kinds of reports for different audiences. NGOs may also create different kinds of reports depending upon their own self-definition as advocates for particular workers or as monitors of labor rights. For example, a report to a UN body should largely focus on violations of the ratified rights, as well as an assessment of government standards and mechanisms. Such a report might later describe experiences (and violations) at the workplace level.

On the other hand, a monitoring report for a code of conduct agency, or investigation of a complaint on behalf of workers, is likely to focus first on the local workplace conditions and subsequently offer a critique of government

enforcement systems (or the lack thereof). It is therefore helpful for monitors to review several models of reports that provide both guidance on the substantive standard and some examples of how others create reports:

- For example, see ILO Committee of Expert reports relating to Convention No. 131 on wages (see www.ilo.org);
- Covenant Committee reports regarding the International Covenant on Economic, Social, and Cultural Rights from the Committee, governments, and NGOs and reviewing specific government behavior (perhaps including your own government) under Article 7 of the Covenant (see “human right bodies” data base for ESCR (economic, social, and cultural rights) at www.ohchr.org)
- Code of conduct association reports, such as those available at www.coverco.org and www.workersrights.org; living wage-oriented NGO reports, such as those written or linked by www.sweatshopwatch.org, www.globalexchange.org or www.ethicaltrade.org. A summary of reports that is useful but less complete (and somewhat difficult to access) is also available in the “public reports” section of the Fair Labor Association web site, www.fairlabor.org.

Let us review some checklist points for reporting from the Freedom of Association and Wages section that apply equally to reporting on hours of work:

- Seek to create a standard format that easily identifies the subject matter and conclusions over a period of time. A standard format allows report topics to be measured and compared. When a monitor performs audits or interviews, it is essential to record and report the dates of visits, interviews, and record reviews.
- Note that some monitoring association—such as the FLA or the SA International—will describe a preferred or required format for reporting for “certified” monitors.
- A report should include a description of the NGO’s methodology, including the criteria, time and personnel necessary to gather data, so that the reader can fully understand how data was gathered and conclusions were reached. In that way, monitoring reports promote transparency, the lack of which is one of the reasons that sweatshops exist in the first place. A clear methodology also allows for discovery of errors that can help improve future reports.
- A report should include findings of compliance and noncompliance, as determined by the analysis of the monitors. Such findings should seek to identify the degree of noncompliance, emphasizing urgent and/or specific issues of concern in a special section.
- Many monitors will propose the appropriate remediation of a matter, while recognizing that employer or brands may propose alternative means of remediation.
- Some reports are written so that employers will have the opportunity to remediate and present their remediation in the final draft. However, monitors should not withhold reports when the passage of time may make remediation more difficult (indeed, when workers are in danger of losing their jobs, rapid reporting may be essential.)
- Reports must not compromise promises of confidentiality granted to workers or employer when it is necessary to make such promises in order to avoid a risk of retaliation.
- When retaliation against workers occurs as a result of a monitor’s work, reports should make special mention of such retaliation because protection of workers’ rights to report conditions is an essential part of any monitoring mission. If workers suffer due to monitoring, they may be less likely to participate.
- When reports occur on an ongoing basis, a summary of previous reports can be helpful to the overall understanding of compliance.

3. Common Problems

The most obvious problem regarding hours of work is, simply, that there are too many working hours required. Employers not only require excessive hours, they often make extreme demands on protected workers, such as

minors and nursing women, despite the protections provided by law against such work. Moreover, factory records sometimes understate total hours of work, and overtime pay is often distributed in cash without any records or receipts. In addition, employers often do not notify workers in advance of predictable overtime needs. Distinguishing between overtime, incentive pay, and bonuses may sometimes be very difficult for a worker.

4. Measuring Progress

The most basic measures of progress regarding hours include the following: whether the employer's hours of work requirements and record keeping are or become transparent, understood by workers, accurately implemented, and in some legal or code of conduct definition, "fairly applied." In the case of government monitoring, the monitor is also seeking to determine whether the government is observing and/or making progress in its basic national and international obligations regarding hours of work. It is worth recalling that many workers are not receiving even their legally mandated wages and benefits because their hours of work have not been correctly recorded. Thus, monitors may have a very important early impact by ensuring that progress is rapidly made to reach a minimal baseline of compliance. Typically, employers that do not even meet such basic requirements are the ones that receive the label of "sweatshops."

The next level of progress from basic compliance at the workplace is basic quality of life of the worker. As noted in our introduction, workers often must work extremely long hours in order to make enough money to pay for their basic needs. Therefore, one long-term measure of progress is whether it becomes increasingly possible for workers to work a "regular work week" (e.g. 44 hours) and earn sufficient income to pay for basic needs. Such progress is measured both by the number of overtime hours (which should not exceed an average of 60 in the week, and should progressively drop below that number) and the wages earned by the worker.

A challenge for monitors is to become familiar enough with factory production systems to judge whether the reasons asserted by the factory for mandatory overtime—from a lack of raw materials, to a lack of workers, to poorly calculated production needs—are in any way rational. A common claim by employers is that it is "market forces" rather than any human being that is responsible for the high hours and low pay. Because codes of conduct require factories to keep proper records and to supply detailed information regarding hours of work, such monitoring should be somewhat easier to conduct than in the past. Monitors also will want to determine, in general, whether employers are becoming more adept at explaining hours of work requirements at the factory. Such understanding is essential in order for workers to resolve their own doubts or grievances about wages. Under the FLA, factories are also required to provide explanation of pay and hours systems upon demand by workers.

Monitors should be especially aware of certain bad practices. As described in the wages section of this manual, employers may have incentives to fail to report hours of workers, in order to avoid paying government-required assessments. In order to evaluate such underreporting, monitors who seek to conduct full audits of factories must become skilled in examining factory hours records. These records, combined with worker testimony, can determine whether overtime hours are properly paid and recorded. Monitors should be especially attentive to situations in which workers who are unable or unwilling to work overtime hours beyond the established standard are dismissed, suspended or discriminated against at the workplace (such as by a change of work assignment or limits on future opportunities to work overtime).

Chapter Seven Discrimination, harassment, and discipline at work

7.1 Introduction

Discrimination

Despite a global economy that increasingly is driven by international agreements, labor laws tend to remain locally enforced. That means that even where international conventions have been ratified, governments—and employers—do not necessarily observe the obligations. Our experience also demonstrates that the passage of national laws and regulations by no means ensures enforcement. Many notorious labor practices remain a problem. Such practices often include discrimination and harassment, especially against women and minority groups. Because a substantial proportion of low wage workers in the global economy is female—more than three-fourths of workers in export processing factories around the world—many of these workers are at particular risk of abuse at work. NGOs, in turn, need to have an enhanced understanding of the workplace problems that affect women and minority groups.

Discrimination protections for workers are usually thought of as “negative” rules that forbid certain kinds of behavior or job actions. Employers are told by laws and regulations: “Don’t Do That!” For example, employers are generally prohibited from actions such as disciplining, underpaying, failing to promote, or firing workers for reasons not related to production criteria. Most governments also adopt “positive” provisions: they tell employers, “Do this!” On the “positive” side, an employer must usually offer benefits to pregnant and nursing women. Many governments also allow employers to use preferences in hiring groups that have previously suffered discrimination. Violations of the positive and negative provisions protecting women, minorities, the disabled and others are dealt with under the heading of “discrimination.” NGOs should note that discrimination is one of the “fundamental” rights provisions of the International Labor Organization, meaning that by virtue of membership alone, governments have been required since 1998 to “respect, promote and realize” the principles of the two primary ILO discrimination conventions, No. 111 (Discrimination in Employment and Occupation) and No. 100 (Equal Remuneration). Still, as history has vividly shown, such language as “promote and realize” does not necessarily mean that compliance with the laws follows.

Though we have suggested that women in the global economy are the largest group at risk of discrimination, they are by no means the only group, and international conventions reflect that reality. ILO conventions cover all individuals and groups whose rights are violated. In the U.S., many Muslims have alleged that they have faced discrimination since the 9/11 terrorist attacks; black workers historically have faced discrimination due to race. In Germany, the Turkish minority has alleged frequent discrimination. Phillipino migrant workers allege discrimination in various countries that import these workers for service economy jobs. And the list goes on. It is essential that monitors gain a thorough understanding of the workplace, including production and supervisory job responsibilities, in order to distinguish permissible work-related actions from the many possible forms of discrimination—gender, race, nationality, disability etc. Because gender discrimination is the most universal form of discrimination, we recommend that NGOs give particular emphasis to this aspect of their work.

Harassment

A particularly abusive form of discrimination is called “harassment.” Many governments have been slow to recognize a specific legal category of workplace harassment, often considering the problem as a matter for workers and managers to sort out themselves. Some governments propose to address harassment under other legal frameworks outside of labor laws. We strongly disagree with the view that harassment can be addressed solely within the workplace or by traditional criminal or civil law. Due to the extraordinarily destructive impact on the workplace experience, NGOs should take special note of workplace harassment and use international conventions

and codes of conduct (and national laws where they exist) to document and report such abuse. A typical instance of sexual harassment includes sexual demands placed on workers by supervisory personnel, in exchange for workplace advancement or under threat of adverse action. Another form of harassment involves the creation or allowance of a workplace atmosphere that is hostile to a particular group. For example, some employers traditionally have permitted men to speak in demeaning language about women workers or to post sexually provocative photographs of women, which can lead to a feeling of debasement among the workforce. Usually harassment occurs over the course of more than one incident, although one particularly blatant or severe incident may also meet the definition of harassment. Often, the evidence of harassment is deeply suppressed, and only comes to light after the victim has been fired or denied promised benefits. As in the case of discrimination, harassment is not at all limited to women. Monitors need to be sensitive to the many potential forms of harassment.

Abuse and workplace discipline

Problems of basic workplace verbal and physical abuse at the workplace are somewhat easier to identify than harassment and discrimination, given the public nature of such actions. Workers have reported with some frequency, no matter where on the globe, that supervisors sometimes slap workers or make threatening statements or gestures when they are displeased with individual or group production. Workers have literally died from extreme forms of abuse, as reported in a recent publication by Human Rights First, a publication that we urge NGOs to review when they undertake monitoring. (See www.humanrightsfirst.org worker rights links). Often the global economy itself can lead to cultural clashes, in which supervisors act in aggressive or offending ways to local and indigenous peoples with different traditions. In 1997, the legal counsel to one of the foreign embassies in an apparel-producing country explained to us in a monitoring visit that foreign supervisors sometimes used discipline that was tolerated in their home country but is considered unacceptable elsewhere. We expressed our disagreement that the abuse would have been acceptable even in their own countries. In any case, NGOs need not specify any particular culture or nationality to state that problems of abuse are ongoing, widespread, and must be stopped. Proper workplace discipline should be limited to progressive warnings and possible dismissal for legitimate reasons—and must exclude physical threats or abuse.

7.2 International standards, national treatment, and codes of conduct

A. ILO Standards

Discrimination

Under ILO Convention No. 111 (Discrimination in Employment) gender-based discrimination, as well as racial and other discrimination, must be prohibited by national laws. This is one of the ILO's most universally approved conventions, with more than 129 countries having ratified it. As noted above, discrimination may affect far more groups than just women. The Convention defines discrimination as

any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation... “ The only exception to that list regards “Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements ...”

Like much legal language, this sentence is easier to understand when it is broken down into its parts.

According to the ILO, discrimination includes:

- a single extreme action by a member of management that unfairly limits the rights of a worker as a result of non-workplace related status.

- a pattern of negative actions, like those above, that unfairly limit the rights of workers
- subtle but continuous actions whose negative impacts on a particular group are only clear over a prolonged period (for example, hiring of women for lower paid positions, or men receiving pay or bonuses at a higher value than women despite equal work).
- discrimination as described above affecting any aspect of the work experience, from hire to wage payment to promotion to basic protection of health and safety.
- Only in very limited circumstance can an “inherent requirement of a job” allow discrimination. For example, a female fashion model who models women’s clothing might be a good example of an “inherent requirement.” In some limited circumstances, health issues might also limit access to work, such as jobs that include toxic substances that could harm the reproductive system of pregnant women.
- Special protections of certain groups, including women and the elderly are allowed under the convention.

ILO members must take measures to promote equality of opportunity and treatment with a view to eliminating discrimination, including through legislation and education programs.

The ILO has taken particular notice of unfair treatment of women (and other groups) with respect to pay. Convention No. 100 (Equal Remuneration) requires governments to pay workers equally for the same work. In addition, the convention requires governments to compare the value of different kinds of jobs to ensure that one kind of job does not become a low wage sector designated to certain groups, such as women and minorities, who might have less power to represent their interests. Like the ILO’s Discrimination Convention, the Equal Remuneration Convention has among the highest degree of national ratifications (more than 135 countries), giving strong justification for the convention’s obligations to be considered minimum core rights for all workers. (And, for an NGO’s purposes, this means that you very likely will need to study and master the contents of these two conventions, on discrimination generally and equal pay in particular.)

Most NGOs that deal with labor conditions have probably encountered workplaces where women tend to be assigned to menial and low paid jobs while men carry out better paid work. In fact, it is not an exaggeration to point out that certain work in many cultures is still called “men’s work” and some work is called “women’s work.” In addition, in many cultures, men are presumed to be the heads of their households and receive pay consistent with that status. (In fact, it took until the 1990s—and repeated criticisms from the ILO supervisory bodies assessing the government’s laws under Convention No. 111—for one Central American government to repeal a law that gave men veto power over women who wished to work.)

The ILO’s Equal Remuneration Convention No. 100 requires governments to:

- Promote, as well as enforce, the application of the principle of equal remuneration for equal work.
- Ensure that “equal remuneration” applies to all wage and benefit issues, not to wages alone.
- Encourage application of the convention both through law and collective bargaining between employers’ and workers’ representatives.
- Undertake objective measurements of various kinds of work to determine whether the comparable jobs are paid at comparable rates of pay.

Harassment

International protections against harassment are derived from the same ILO discrimination convention, No. 111, as described above. It should be noted that the word “harassment” does not appear in the discrimination convention, but that the ILO Committee of Experts has interpreted the convention to include sexual harassment. Among other ILO conventions, the convention on the rights of indigenous workers (Convention No. 169, Article 20 (3)(d)), states that indigenous workers must “enjoy ... protection from sexual harassment.” The ILO has also made a general condemnation of sexual harassment in a 1985 Resolution of the International Labor Conference,

stating that “sexual harassment in the workplace is detrimental to an employee’s working conditions and to employment and promotion prospects.”

NGOs should keep in mind that, when reviewing a country’s ratifications of ILO conventions in all aspects of this manual, they may well find that other protective conventions have been ratified. Regarding discrimination, such conventions include, for example, ILO Convention No. 103 (Maternity Protection), and the ILO’s Convention No. 169, protecting indigenous peoples, which provides that governments must “do everything possible” to prevent discrimination in employment, including the recruitment of indigenous workers. When a government has ratified other conventions, it is essential that the NGO consider the details of such conventions in their reviews both of government performance and application of the Conventions. Moreover, monitors should recall that when a government has ratified a convention, the ILO reviews that country’s performance in periodic reports by the Committee of Experts, which are published according to Convention number and country on the ILO web page, www.ilo.org. A specific country review of these reports is essential to good monitoring, both of government and employer performance.

Moreover, NGOs should recall from above that discrimination has been identified as one of the ILO’s “core” rights of the Declaration on Fundamental Principles and Rights and Work, along with freedom of association, child labor, and forced labor. Governments must report on their observance of these principles every two years, and NGOs can encourage unions to include NGO reports in their information to the ILO regarding the practical response of governments to these obligations. Unfortunately, the ILO did not provide a direct mechanism for formal NGO reporting regarding the Declaration, although that should not deter NGOs from sending their reports to the ILO as a matter of information.

NGOs might note that the ILO conventions deal primarily with the worst cases of abuse, such as discrimination and harassment, leaving daily workplace disciplinary systems primarily to national legal systems.

B. International Covenant on Economic, Social, and Cultural Rights

In earlier chapters, we provided a description of the role that NGOs can play in pressing for labor rights compliance by governments through provisions of the International Covenant on Economic, Social and Cultural Rights (See Chapter 2 and related comments in the chapters on freedom of association and other substantive standards). Because the UN’s Covenant Committee is particularly friendly to participating NGOs, such as by inviting their detailed participation and by integrating NGO reports into the Committee’s labor rights reviews, your organization should strongly consider using this process as a means of refining your research and disseminating your work.

The Covenant establishes several provisions against workplace discrimination:

Article 2

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Because the right to work is later established among the “rights enunciated in the ... Covenant,” Article 2 covers essentially the same ground as ILO Convention No. 111 on discrimination. Moreover, with respect to equal pay for equal work, the Covenant states:

Article 7:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

Perhaps the only criticism that has been leveled against the Covenant with regard to this “equal pay for equal work” provision is its outmoded reference to women enjoying workplace conditions “not inferior to those enjoyed by men.” However, nothing in the Covenant interpretations suggest that affirmative or promotional action for women and minority groups would violate the Covenant.

To assist governments in interpreting the Covenant and to gather information, the UN’s Covenant Committee periodically sends out inquiries to governments regarding the enforcement of these provisions. NGOs may benefit by reviewing these questions and integrating them into their own contextual work as they seek to understand issues of discrimination, harassment, and abuse in their own areas of attention. The basic list of questions includes the following:

- Please indicate whether there exist in your country any distinctions, exclusions, restrictions or preferences, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, color, sex, religion, political opinion, nationality or social origin, which have the effect of nullifying or impairing the recognition, enjoyment or exercise of equality of opportunity or treatment in employment or occupation. What steps are taken to eliminate such discrimination?
- Please indicate the main cases in which a distinction, exclusion or preference based on any of the above-named conditions is not considered in your country as discrimination, owing to the inherent requirements of a particular job. Please indicate any difficulties in application, disputes or controversies which have arisen in relation to such conditions.
- Please indicate whether there exists in your country any inequality in remuneration for work of equal value, infringements of the principle of equal pay for equal work, or conditions of work for women which are inferior to those enjoyed by men.

What steps are taken to eliminate such discrimination? Please describe the successes and failures of these steps with regard to the various groups that are discriminated against.

Please indicate what methods, if any, have been adopted to promote an objective appraisal of jobs on the basis of the work to be performed.

- Please supply information on the actual realization in your country of the principle of equal opportunity for promotion.

(a) Which groups of workers are currently deprived of such equal opportunity? In particular, what is the situation of women in this respect? (b) What steps are taken to eliminate such inequality? Please describe the successes and failures of these steps with regard to the various disadvantaged groups.

(Derived from: Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights : 17/06/91. E/C.12/1991/1. (Basic Reference Document)

As we have pointed out in other chapters, the most effective use of the Covenant for NGOs is to offer formal feedback to the UN regarding a government’s violations of standards. Violations occur when a government systematically (and actively) violates the right or when a government fails to protect the core right. NGO reports to the Covenant Committee about government actions or inactions can ensure that NGO findings receive wide distribution, are formally communicated to governments, and receive due UN consideration. NGOs may use all or any of the above elements of the ILO standards, as well as the CAVAR methodology below, to gather and report their concerns. NGOs must also recall from Chapter 2 that the Covenant Committee has rules about what NGO reports must seek to include: For example, NGOs communications to the Covenant Committee must be “relevant,” “based on documentary sources and properly referenced,” “concise and succinct,” and “reliable and not abusive.”

NGOs can choose from among the following reports that are received by the Covenant Committee:

- information may be submitted directly to the member of the Covenant Committee responsible for drafting the “list of issues” that will be directed to the signatory government;
- NGOs can author “shadow” reports that cover the same topics as the government’s report;
- NGOs may submit written statements or reports, or oral presentations in official “NGO hearings” at the time of a government review. NGOs may also attend the actual country reviews.
- Finally, NGOs may submit information to the Covenant Committee regarding implementation of any or all of the Committee’s concluding statements.

In sum, NGO participation in the Covenant Committee can help give voice to workers’ concerns about the implementation and enforcement of hours of work in the relevant country.

C. How governments regulate discrimination, harassment and abuse

Most governments establish laws that grant the right to fair treatment in employment to all persons—fulfilling at least in part (and on paper) the ILO Conventions’ and UN Covenant’s requirements that governments declare national policies that promote antidiscrimination efforts. Such laws usually extend protection to training and vocational programs in order to avoid a cycle of discrimination in which individuals and groups are kept out of certain kinds of employment.

Many governments have special “equal opportunities” divisions, including specialized administrative judges, that deal with discrimination claims. Cases may be proved by direct evidence of actions against an individual or a group of workers; or discrimination may be found by the ongoing impact of policies that have the effect of limiting opportunities for particular individuals or groups.

As to harassment, the ILO has set forth descriptions of behaviors that many national laws or practices may sanction, depending on the severity of the incident, such as: insults, remarks, jokes, insinuations and inappropriate comments on a person’s attire, physique, age, family situation, etc; a condescending or paternalistic attitude undermining dignity; unwelcome invitations or requests; lascivious looks or other gestures; unnecessary physical contact.

In order to be considered harassing behavior, the action must be carried out as a condition of employment (that is, the behavior calls into question the worker’s ability to obtain or maintain employment or achieve promotion) and must damage the worker’s ability to work.

(See the ILO publication, *Equality in Employment and Occupation, General Survey of the Committee of Experts on the Application of Conventions and Recommendations*, 75th Session, at 43–45 (1988).

D. Codes of Conduct on Discrimination, Harassment and Abuse

Discrimination

The Fair Labor Association workplace code of conduct, similar to other codes, echoes the ILO’s language with respect to discrimination: “No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.” (See www.fairlabor.org.) In practice, the FLA, unlike other code of conduct associations, has created and published to the public a series of benchmarks that will assist an NGO in monitoring these standards. (NGOs will find less detailed but otherwise useful references to particular standards at such sites as the Worker Rights Consortium at www.workersrights.org, Social Accountability International at www.cep.org, the Ethical Trading Initiative, www.ethicaltrade.org, and the Clean Clothes Campaign, www.cleanclothes.org. We have also pointed out that for the more technically advanced NGO, a very useful site that creates links to monitoring reports is housed at www.humanrightsfirst.org under the workers’ rights link.) NGOs will note that many of the FLA benchmarks are more specific and sometimes more

stringent than the core ILO standards regarding women. It has been the view of the FLA board—which includes representatives of companies as well as human rights NGOs and universities—that one of the most serious global problems is the mistreatment of women workers.

Although most of the benchmarks below were written for a particular code of conduct, NGOs may find the provisions useful in whatever monitoring of discrimination they may conduct:

- Education, training, and demonstrated skills or abilities should be the sole basis for hiring, assignment, wage and promotion decisions.
- There shall be no differences in compensation and benefits attributable to gender.
- Employers will not prohibit the employment of married women.
- Employers will not use pregnancy tests or use of contraception as a condition of hiring or employment.
- Employers will not require pregnancy testing except as required by law.
- Employers will ensure that pregnant women are not engaged in work that creates substantial risk to the health of the pregnant woman.
- Reasonable accommodation will be made in the event of pregnancy, in a manner that will not unreasonably disadvantage the pregnant woman.

Harassment and Abuse

The FLA code of conduct definition of harassment is somewhat less formal and less technical than most legal definitions:

“Every employee will be treated with respect and dignity. No employee will be subject to any physical, sexual, psychological or verbal harassment or abuse.”

To start with, the FLA expressly adds the concept of “abuse” to its prohibitions, meaning that a number of actions short of harassment, such as shouting and hitting, regardless of gender issues, are considered violations of this code element. As stated in the FLA harassment code element, “dignity” and “respect” are the starting points for the relationships management must have with workers. The code holds out the goal that a person’s work experience should be a means to life advancement and not merely a day without abuse. Under the FLA definition, abuse or harassment can occur through many kinds of actions, including those of a physical, sexual, psychological or verbal nature.

FLA Benchmarks regarding harassment include:

- Employers shall not offer preferential work assignments or other preferential treatment of any kind in actual or implied exchange for a sexual relationship, nor subject employees to prejudicial treatment of any kind in retaliation for refused sexual advances.
- Management will discipline... anyone who engages in any physical, sexual, psychological or verbal harassment or abuse.
- Employers will prohibit screaming, threats, or demeaning verbal language — Security practices will be gender-appropriate and non-intrusive.

Other benchmarks provide guidance regarding disciplinary action against workers:

- Employers will utilize progressive discipline, [such as] ... using verbal warnings, written warnings, suspension, and termination.
- Employers will not use physical discipline, including slaps, pushes or other forms of physical contact or threat of physical discipline.
- Employers will provide training to managers and supervisors in appropriate disciplinary practices.
- Employers will maintain written records of disciplinary actions.

- Access to food, water, toilets, medical care or health clinics or other basic necessities will not be used as either reward or punishment.
- Employers will not unreasonably restrain freedom of movement of workers, including movement in canteens, during breaks, using toilets, accessing water or to access necessary medical attention.
- Employers will not use monetary fines and penalties for poor performance.

7.3 CAVAR: “Digging” for information regarding workplace discrimination

A. “Context”

- NGOs may find it useful to begin their review of the context of discrimination, harassment and abuse by carrying out the following steps (while endeavoring to create and supplement their own case-specific list of priorities):
- Inquire into what laws your government has passed restricting discrimination, harassment, and abuse and/or promoting “positive” rights for protected groups.
- Has the government ratified international conventions that create binding obligations to review and enforce those laws? (A review of our earlier description of the ILO and Covenant Committee provisions regarding discrimination should give NGOs some perspective on what to look for).
- Is there a union, a union contract and/or individual contracts at the workplace(s) that you are reviewing? (Any and all of these would contain workplace rules that are binding on the employer.)
- Review the codes of conduct, if any, that apply to relevant companies and industries in the area or at the workplace that you are reviewing.
- “Localize” your context inquiry by interviewing grassroots organizations that are familiar with the particular industry/regions/groups of workers that you may be asked to assist or monitor regarding discrimination, harassment and abuse issues.
- Inquire in particular into the background of industries, the stability of such industries, and whether the industries are known broadly (such as in the apparel industry) for discrimination and abuse, including inappropriate discipline, harassment or abuse.
- Seek to determine which groups, if any, are most likely to be subject to discrimination.
- Determine whether workers at the local level are able to use governmental mechanisms to gain investigation and enforcement of such issues.
- Identify particular issues that grassroots groups and workers believe are most important regarding discrimination, harassment, and abuse; for example, is there a community, cultural or religious stigma attached to women undertaking wage work?
- Identify culturally appropriate interview techniques and ideas for questions that can be posed in the Visit and Interviews section of the CAVAR methodology.
- Become familiar with basic workplace record- keeping practices regarding discipline.
- Monitors should also examine worker promotion and mobility within the workplace. For example, if a worker or groups of workers have worked at the same job and for the same base wage for a matter of years, the monitor may wish to determine whether there may be discriminatory management decision-making involved.

B. “Archivos”: Records review

Although workplace discipline should be recorded by managers and should be available for review by monitors, discrimination and harassment are often unreported and unrecorded. Gaining the trust of workers and developing a careful and open-ended interviewing technique is most likely to yield relevant information. The following examples of written records are most likely to help monitors understand employer behavior in the area of discrimination, harassment, abuse and workplace discipline:

Discrimination and harassment

- Written policies on discrimination, harassment, abuse or routine discipline.
- Records of prior discipline of workers and supervisors, both, regarding discrimination, harassment, abuse and workplace discipline. (If women workers have complained about harassment by fellow workers or supervisors but there is no record of any communications or discipline, then the employer clearly has not responded adequately to the problem.)
- Has the employer used employee health care information in its hiring, firing and promotion decisions—for example, might records show whether pregnancy testing or other aspects of the reproductive status of women are used in employment decisions?
- Whom has the employer declined to hire and why?

Workplace discipline

Monitors should select samples of employer records regarding discipline and dismissals. Such records at the very least will give a picture of the degree of turnover of employees, as well as the reasons that employees leave or are disciplined. Such information in itself may not speak to the fairness of a dismissal or a disciplinary event. But in combination with interviews and contextual background work, monitors should begin to get a picture of the way workplace discipline operates.

C. “Visite”: Site visit and interviews

A visit to the employer will enable the monitor to see the workforce and get an initial sense, with the help of the monitor’s contextual briefing, whether certain groups or individuals may be more likely than others to be subject to mistreatment.

1. Management interviews (discrimination, harassment, abuse, and discipline combined)

- Review disciplinary practices, processes and policies with the appropriate management personnel (And note in particular whether the materials are familiar to the manager who reviews them with the monitor).
- Ask managers to explain how they train supervisors and implement factory policies on discipline. Request some examples of such implementation and/or violations.
- Meet with line supervisors to gain an understanding of how to address disciplinary practices. When disciplinary incidents are described, ask for documentation of the incidents. (This step will help a monitor verify whether a disciplinary system with appropriate record keeping exists.)
- Ask supervisors how they are trained by their managers in factory disciplinary policies.
- Suggest some scenarios or create case examples of worker behavior that might call for discipline and ask what the supervisors/managers would do.

- Ask supervisors to describe what constitutes inappropriate and appropriate behavior by managers as well as by employees.
- Examine security personnel policies and on-site housing policies for potential issues of discrimination or harassment.
- Determine whether guidelines exist and have been communicated to security personnel regarding appropriate and inappropriate treatment, including searches, of workers.
- Ask management personnel for examples of prohibited forms of discipline.
- Ask management what the employer policy is regarding presence of police or military authorities inside company premises.
- Ask managers how hiring, assignment, promotion and compensation decisions are made.
- Ask for the criteria by which new employees are hired and how prospective employees are recruited. (See also, records review)
- Ask management what processes exist to address the needs of pregnant women.
- Ask management whether pregnancy tests are used for any purposes, and, if so, for what purpose?

2. Worker interviews

Given the special sensitivity of discrimination issues, the reader should again review the interviewing section methodology described in the first “CAVAR” briefing in chapter 3. It is very important for NGOs to keep in mind that their questions could unintentionally suggest “appropriate” answers to workers. In such cases, a monitor’s data would be counterproductive. Instead, questions should be written to give workers an open-ended opportunity to express and describe their experiences at the workplace. Monitors should also be prepared to develop additional questions, based upon how workers respond to their initial questions. NGOs might also keep in mind that one of the biggest problems faced by monitors is that workers often perceive that they are speaking to management, not independent reviewers. Thus, off-site interviews, especially on sensitive issues, are certainly more likely to solicit the most earnest answers to questions.

Answers to questions such as the following may offer a monitor some introduction to a typical worker’s experiences:

Discrimination/harassment

- What does the worker like or enjoy most and least about his/her job?
- What happens if a worker needs to use the bathroom during a work shift? Are workers granted unrestricted access?
- Ask workers what kinds of complaints they have had, if any (or complaints they have heard about from others) with respect to how workers are treated at the workplace?
- How are women/other groups treated at the workplace? Do workers raise complaints with managers/supervisors? What are some examples of how managers respond?
- Is there a grievance procedure at the workplace? How is it used? — Has the worker ever used any of these mechanisms?
- Is the worker aware of any kind of prohibited forms of discipline?
- Ask workers how they learned about their job and if they know how new employees are hired. What kinds of job announcements are used? What kinds of questions are asked during interviews? Such information may assist monitors in determining whether management has a policy of hiring and/or excluding certain groups of workers.
- Ask workers how job assignments, promotions, and compensation decisions are made. The monitor should listen closely for discriminatory practices, but not necessarily use the terms “discrimination” or “harassment” unless prompted to do so by the worker. These questions will also help determine

whether management is adequately informing workers, in general, about their rights at the workplace.

- Ask workers what, if any, steps are taken to address the needs of pregnant women. If workers cannot name any, it may indicate bias based on pregnancy status.
- Does the factory offer maternity leave and nursing time? A monitor should already know the basic national law and regulations at the time this question is posed.

Disciplinary actions/abuse

- Are workers aware of factory policy regarding discipline? Can they offer examples of when and how workers are disciplined and for what types of infractions?
- Have workers ever had wages deducted due to alleged poor work performance (rather than lateness or absence)?
- If there is a grievance procedure, how is it used?

D. “Analysis”: Analysis and synthesis of data

Analyzing data and interviews regarding discrimination allegations is different from other possible workplace violations. It is difficult to get reliable information, and it is difficult to be a good and non-biased judge of sources. In particular, monitors need to be able to distinguish between an employer’s legitimate explanation for treatment of a group or person, and an illegitimate explanation, sometimes called a “pretext” for discrimination. For example, consider a worker’s allegations that an employer has singled her out for inferior pay, benefits or conditions. A monitor would need to interview workers and managers, examine payroll documents, and make some credibility judgments.

Or consider the plight of pregnant workers. They are entitled in many countries to leave time and reduced hours. Yet, such workers are sometimes reassigned to lower paid jobs, face reduced wages, or are fired. A relatively common discriminatory practice that is often not dealt with in national laws is the requirement of pregnancy tests as a part of prehire interviews, and refusal to hire if the worker is pregnant. In general, employers will not acknowledge discriminatory behavior, so the determination of whether an employee’s allegation of discrimination is valid or invalid will depend on solid and sensitive research and interviewing by a monitor.

Monitors should use each level of “CAVAR” and be comfortable in returning to a different level in order to verify and analyze information. Often a worker interview will require a new look at documents that had already been reviewed; documents may lead to a second or third interview, even with workers who have already been contacted. Eventually, to analyze the problem, there may be no substitute for sitting quietly and alone at a desk with the interviews, ILO Conventions and interpretations, national law, codes of conduct, factory records and simply making the best judgment possible. In many respects, a monitor will find it easier to evaluate the state of national law and policies on such issues, than to evaluate individual workplaces.

Monitors must recognize that investigating harassment is quite complicated, and may be limited both by management’s refusal to cooperate and by workers’ unwillingness to complain. The most likely means for monitors to become effective verifiers of harassment allegations is to earn the long-term trust of workers—and respect of management—by being scrupulously independent in all matters. Only under such conditions of trust are workers likely to report, for example, a state of fear or uncertainty about an instance of harassment. Monitors must avoid becoming the sources of rumors or stories about workers or management.

It is essential for monitors to understand that harassment often involves an action or a demand by someone in management and, generally, a benefit in return. Where the allegations come from someone other than the victim, monitors should be vigilant in evaluating the sources before pursuing an investigation. When harassment appears as a pattern, as alleged by one or more persons independently over a period of some time, monitors may find investigations easier to conduct and allegations easier to verify. Moreover, monitors should be careful to credit only specific verifiable allegations, as opposed to general ones. Caution must be exercised not to invade the

privacy of workers' lives. Relationships that are otherwise fair and do not involve workplace discipline or benefits as a result of the relationship may be agreed upon between consenting adults, depending upon the employer's policies.

With respect to workplace discipline, monitors must assess all the relevant sources of authority in order to evaluate the respective rights of management and workers. Without a union, it is a worldwide fact of life for workers that they may have little defense against an employer's decision to discipline or terminate an employee. At the same time, by their very presence, monitors can play an important role in ensuring that national law and regulations are followed and that workers are aware of their rights.

An NGO's analysis of discrimination, harassment, abuse, and workplace discipline may not always offer a complete conclusion, but a monitor can offer credibility assessments of the statements or claims of the different positions asserted by workers and managers.

An NGO's interactive participation in labor rights assessments can also add to the overall NGO community's knowledge about how to analyze and measure a right. Access to the NGO websites can be helpful, including, in particular, www.fairlabor.org, www.humanrightsfirst.org and www.workersrights.org.

E. *“Reporte”*

Perhaps more than any other topic, a monitor's report on discrimination, harassment, abuse, and workplace discipline is a sensitive matter. We have already pointed out how important it is that a monitor use careful judgment in creating impartial questions. Now the monitor's selection of publishable materials must be equally as careful. For example, when Coverco in Guatemala reported on a worker's stillbirth of a child after the worker was refused medical attention at the workplace, the monitoring organization openly stated that it needed to protect the identity of that worker. When a monitor's conclusions are not definitive, it is all the more important that a report state its own limitations. Confidentiality may also be important in order to avoid retaliation against a worker.

A few general rules apply to discrimination reports, as they apply to other rights topics:

Most likely, an NGO undertakes its investigation already aware of the audience, its readers. For example, if you are preparing your report for a UN agency in order to comment on a government's overall treatment of discrimination and harassment, then certainly you will be reporting on the government's response (or lack of response) to the many categories of rights listed above, and perhaps also to data and incidents from many workplaces. The specific ingredients of your report may be determined by questions that are determined by the agency, such as those asked by the Covenant Committee on Economic, Social and Cultural Rights. Such reports are sometimes called “shadow” reports because the NGO is answering the same questions in their own way as the government is answering, and submitting them for review and publication by the UN.

Frequently, NGOs are asked to investigate complaints by workers, which means that a report will focus on specific allegations. It may be useful, then, for the NGO to review previous reports that have been produced on such subjects. The most complete (that is, complete reports, rather than summaries) appear at www.coverco.org and at www.workersrights.org. These are investigations at local factories by the NGO, Coverco, and by the monitoring group, the Workers Rights Consortium (developed, in part, by university students). A summary of reports that is useful but less complete is also available in the “public reports” section of the Fair Labor Association web site, www.fairlabor.org.

NGOs should:

- Seek to create a standard format that easily identifies the subject matter and conclusions over a period of time. A standard format allows report topics to be measured and compared. When a monitor performs audits or interviews, it is essential to record and report the dates of visits, interviews, and record reviews.

- Note that some monitoring associations -such as the FLA or the SA International-will describe a preferred or required format for reporting for “certified” monitors.
- A report should include a description of the NGO’s methodology, including the criteria, time and personnel necessary to gather data, so that the reader can fully understand how data was gathered and conclusions were reached. In that way, monitoring reports promote transparency, the lack of which is one of the reasons that sweatshops exist in the first place. A clear methodology also allows for discovery of errors that can help improve future reports.
- A report should include findings of compliance and noncompliance, as determined by the analysis of the monitors. Such findings should seek to identify the degree of noncompliance, emphasizing urgent issues in a special section.
- Many monitors will propose the appropriate remediation of a matter, while recognizing that employer or brands may propose alternative means of remediation.
- Some reports are written so that employers will have the opportunity to remediate and present their remediation in the final draft. However, monitors should not withhold reports when the passage of time may make remediation more difficult (indeed, when workers are in danger of losing their jobs, rapid reporting may be essential.)
- Reports must not compromise promises of confidentiality granted to workers or employer when it is necessary to make such promises in order to avoid a risk of retaliation.
- When retaliation against workers occurs as a result of a monitor’s work, reports should make special mention of such retaliation because protection of workers’ rights to report conditions is an essential part of any monitoring mission. If workers suffer due to monitoring, they may be less likely to participate.

7.4 Common problems in discrimination

- Employees often do not report discriminatory practices because they fear being fired -indeed, one researcher states that many workers “don’t know they have the right to be treated as human beings at work.” In addition, often workers simply don’t know they have rights under codes of conduct or law.
- Women may be paid less than men for the same work, and women are often not given the opportunities to work in the same higher paid jobs as men.
- Indigenous or migrant workers, as well as racial minorities may be targeted for unjust treatment by supervisors due to their precarious economic, educational or citizenship status.
- Factories often refuse to hire older or married women.
- Employers often interview applicants with questions that may be used in a discriminatory fashion, such as “Are you pregnant, married, or planning to have a child?”
- Employers force women to take pregnancy tests, and these tests are used to avoid hiring or to fire women. More informally, employers may bring female supervisors into a meeting room to scrutinize the employee or prospective employee for signs that she is pregnant.
- Nursing mothers are often pressured to work overtime, even though laws often provide special protection to these women.
- According to the ILO, developing countries are almost uniformly under equipped to respond to the needs of disabled workers. Discrimination is constant. Monitors will likely need to make special notice of the lack of opportunities for disabled workers in such settings, and press governments to make progress in the provision of opportunities.

7.5 Measuring progress in discrimination

We have already reviewed earlier in this chapter the requirements of governments to “respect, promote and recognize” the principles of ILO antidiscrimination conventions, even if they have not ratified the Conventions. We also know that, under the International Covenant on Economic, Social and Cultural Rights, governments must progressively achieve the full realization of the rights stated in the Covenant. NGOs will no doubt discover in the monitoring of discrimination issues that while governments gradually make progress, workers individually may face misery. Thus, NGOs face a dilemma. Should they focus primarily on monitoring violations of discrimination provisions at the government level, and press for progress by reforming laws and inspection systems; or should they seek to enhance progress by documenting and reporting on workplace violations? Our answer is to hope that NGOs can engage in varying degrees in both efforts to spur progress.

Among the very important measures of progress that NGOs should monitor is the inequality of income and benefits of different groups in society, notably women and minorities as compared to majority groups. For example, in the U.S., many women’s groups speak of a “glass ceiling” in which women simply do not achieve the higher wages and better jobs that men receive. The ceiling is thought of as “glass” because employers operate almost invisibly (perhaps sometimes even unaware of cultural biases) to create barriers to income and achievement. NGOs should seek ever more precise measurement tools and documentation methods to explore and explain income inequalities—and insist upon progress in ridding the workplace of unfair restrictions. NGOs should encourage studies that focus on the conditions of groups that traditionally have faced discrimination and use such studies to push standards higher.

Moreover, NGOs would be well-advised to examine the legal system that is applied to discrimination claims in order to determine whether laws create adequate standards, and measure as well whether claims are processed in a timely and thorough way. Only by establishing a baseline of knowledge can groups demand and measure progress.

At the level of the workplace, NGOs should consider the benchmarks described in the code of conduct section primarily as minimum “negative” standards—aids to identifying violations—and seek to measure progress in remediation of such violations and promotion of better treatment. For example, when one global apparel maker in Guatemala was subjected to the attention of consumers and NGOs, it established for the first time a child care facility for the children of its mostly female workforce. Guatemalan laws had for years required such facilities at large workplaces, but nonenforcement was the norm. NGOs insisted on progress, and, slowly, it began to occur. Similarly, NGOs can monitor the types and pay rates of specific employers in which women and minority groups prevail, and seek to demand progress in the distribution of better jobs and higher pay scales. In that way, employers that refuse such progress may begin to be called to account.

Chapter Eight Child Labor

8.1 Introduction

Of all the labor rights discussed in this manual, perhaps only one has received nearly universal attention as a common and urgent problem: child labor. This does not mean that child labor is being eradicated—or that the global community has really reached a consensus on how to eradicate it. In many cases, governments recognize the problem, but struggle without success to control it. Their economies are so impoverished that children, like their parents, are driven to scrape for whatever job they can find. Governments lack the will or means to enforce the various policies that could stop children from working. Some governments fail adequately to build up their education systems, either because of bad planning, no funding, or faulty advice (notably from the international economic institutions that tend to call for economic reforms before educational reforms). In some countries, local traditions of bonded child labor persist, and the damage is done very early. As for employers, they often see profit margins, where they should see children. They perceive that a child worker is cheaper than an adult worker—without considering the long-term costs to the society. Even when employers recognize the problem of child labor and cease such employment, they rarely foster educational alternatives.

The basic description of child labor has changed little in the last hundred years: children of all ages in the streets selling whatever they can sell, working in the back of shops, knotting carpets, harvesting crops, operating mining machinery, assembling products. They are out there by the tens of millions.

For example:

In the United States, more than 600,000 young workers are illegally employed, especially in agriculture.

Globally, approximately 186 million children ages 5 to 14 are engaged in labor that violates ILO conventions; an estimated 59 million children ages 15-17 also work in jobs that violate ILO conventions.

More than 180 million children are engaged in what the ILO has designated the “worst forms of child labor,” primarily hazardous jobs in agriculture, manufacturing, and trades, especially restaurants.

More than eight million children work in jobs that cross the line from hazardous to horrendous—forced and bonded labor, child soldiers, prostitution and pornography (including international trafficking rings). The ILO calls such work “unconditional worst forms of child labor.”

An estimated 300,000 children are forced to fight by government-sponsored armed forces or by other armed groups around the world.

http://www.dol.gov/ilab/media/reports/iclp/tda2003/introduction.htm#_ftn26

Geographically, child labor occurs at the highest rates in Sub-Saharan Africa (29 percent of the total child population); Asia and the Pacific (19 percent); Latin America and the Caribbean (16 percent); and the Middle East and North Africa (16 percent). Industrialized economies employ an average of two percent of children, also in violation of ILO conventions.

(Source: Note especially Chapter 1, pp 16-22 of the following data base:

http://www.ilo.org/dyn/declaris/DECLARATIONWEB.GLOBALREPORTDETAILS?var_language=EN&var_PublicationsID=37&var_ReportType=Report#)

Some concrete examples of child labor illustrate the problem in a daily context:

Children in Burma have been forced to build military camps, roads, and railways, and to serve as sentries, porters, messengers, and even human shields and minesweepers—sweeping roads with tree branches or brooms to detect or detonate mines.

In Cambodia, children are known to work as commercial sex workers under conditions of debt bondage to pay off loans taken out by their parents.

In Cote d’Ivoire, children are reported to work under bonded conditions on cocoa farms in many cases having been trafficked from neighboring countries. According to a 1998 report some 1,500 children from Mali between the ages of 7 to 10 years were living in work encampments in Côte d’Ivoire.

In India, there are reports of bonded child labor in several sectors, including the carpet manufacturing industry, agriculture (particularly on small-scale, rural farms), and in the construction industry.

Children from Bangladesh, India, and Pakistan—some as young as four and five years old—have been trafficked to the Middle East to work as camel jockeys.

In the Philippines, some 300,000 children under the age of 18 are estimated to be working as domestic servants, many as bonded laborers.

(Source: http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/Advance%20Camp_II.htm)

Despite the dismal picture, there is progress. NGOs—such as the globally-represented “Global March Against Child Labor” (see www.globalmarch.org)—have already played a significant role in what many consider a small decrease in child labor during the past ten years. Nationally-based NGOs, such as the Child Labor Coalition (www.stopchildlabor.org), have used recent ILO convention adoptions to trigger new calls for governmental and employer reforms. Even the ILO, in rare form, has acknowledged the need for many voices in monitoring and eradicating child labor. NGOs, now more than ever, can play a role in both local and global efforts.

8.2 International, national, and code of conduct standards on child labor

A. ILO Standards

1. The “Worst Forms of Child Labor”

As noted in our introduction, there exists one bright spot in the realm of global legal attention to labor rights. More governments, in a shorter time frame, have ratified the ILO’s recent convention No. 182 (the “Worst Forms of Child Labor” convention) more than any other convention in the history of the organization. It is possible that this 1998 convention will become the first ILO convention to be ratified by all 177 member states. In that case, for the first time in the ILO’s history, all complaint and supervisory mechanisms would apply to all member countries for one convention. Still, NGOs and others would need to determine whether the convention is implemented in practice.

Convention No. 182 prohibits forms of labor that “have a debilitating effect on the health, morals or psychological well being of children,” according to the ILO. A primary focus of the convention is hazardous work, such as mining, although national governments themselves must define most hazardous work upon consultation with other groups (an important entry point for NGO input). Another important focus of the convention is to stop child labor in illegal activities such as prostitution, pornography and drug trafficking. The convention defines “children” as all persons under the age of 18.

ILO Convention No. 182 defines the “worst forms of child labor” as follows in its Article 3:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

- (d) work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

In Article 6, the convention calls on governments to create national programs in consultation with the traditional employer and union partners to eradicate the worst forms of child labor—and also to “[take] into consideration the views of other concerned groups” (This latter sentence may be as close as the ILO gets to referencing NGOs in the regular course of its work.)

In Article 7, the ILO calls for penal and other sanctions for those who fail to observe laws restricting child labor. Moreover, under this Article, educational measures must:

- (a) prevent the engagement of children in the worst forms of child labor;
- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration;
- (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor;
- (d) identify and reach out to children at special risk; and
- (e) take account of the special situation of girls.

We will discuss some of the steps governments have begun to take with this relatively new convention in the “What Governments Do” section below.

2 The “catch-all” child labor convention: ILO Convention No. 138

Although in certain respects Convention No. 182 reflects the failure of previous international legislation, the ILO’s *philosophy* of eradicating child labor is still best expressed in Convention No. 138, (the “Minimum Age Convention”). Until 1973, child labor was often dealt with on an industry-by-industry basis both nationally and internationally. This convention emphasizes the universality of the child labor problem, while offering some flexibility to “raise progressively the minimum age for admission to employment...to a level consistent with the fullest physical and mental development of young persons.” (ILO Convention No. 138, Article 1). A key point of this convention is to link the government’s age of compulsory education to the permissible age of work. Thus, with some exceptions, a child cannot work when laws require the child to be in school. ILO writers have pointed out that the convention calls on governments to restore the idea of childhood as “a period of life that should not be devoted to work.”

The Convention contains the following important elements, among others:

- The minimum age of employment “shall not be less than 15 years” although developing countries may “initially” specify a minimum age of 14.
- In cases of likely hazardous work, the minimum age should be 18 years (except that governments may allow employment of 16 and 17 year olds where the health, safety, and morals of the younger workers are fully protected). (This provision is essentially the provision that spawned Convention No. 182 as referenced above.)
- Governments must link the minimum age of employment to the completion of compulsory schooling. (But NGOs might note that barely one third of the 91 countries for which ILO data is available effectively establish that link.)
- Children between the ages of 13 and 15 (or as young as 12 in developing countries) may be permitted to engage in “light work”—meaning work that is not likely to be harmful to their health or development and that will not impede their attendance in school.
- Employers must create registries of workers below the age of 18 in order to effectively protect the rights of those minors who legally may work, but under special provisions.

- Special waivers with specific time limits and restrictions may be created for children involved in artistic performances.

The essential problem with Convention No. 138 is that its exceptions and progressive elements—including the lack of any concrete definition of “hazardous” work—tend to undermine its quality as legislation. The “worst forms of child labor” convention helps to correct that problem, leading to substantially greater clarity and a stronger global push for ratification. NGOs should become familiar with the language and meaning of both conventions. To uncover some of the intent of these conventions, NGOs may wish to refer as well to the ILO Recommendations No. 146 and 190 that, though they lack any binding authority, do reflect the goals of the ILO. It bears repeating that the texts of these conventions and recommendations are easily accessed in a number of languages at the ILO website. See www.ilo.org.

3. Other ILO instruments and conventions

NGOs should note that they need to review the ILO’s database for the relevant government’s ratified conventions regarding child labor because the current ILOs child labor conventions evolved from earlier industry-by-industry conventions. In other words, if a government has failed to ratify one of the consolidated conventions (No. 138 and No. 182) it may still have legal obligations under earlier conventions related to child labor. Rather than go into the contents of those conventions in this chapter, we urge NGOs to conduct a review of the ILO database “ILOLEX” in order to get a list of their government’s ratifications and review it for child labor references.

Moreover, NGOs should recall that the prohibitions against child labor have been identified as “core” rights of the ILO’s Declaration on Fundamental Principles and Rights and Work, along with freedom of association, forced labor and discrimination. That means that every ILO member country must report regularly on its practices regarding child labor, and, notably, must “respect,” “promote,” and “realize” this right. Governments must report on their observance of these principles every two years, and NGOs can encourage unions to include NGO reports in their information to the ILO regarding the practical response of governments to these obligations. The Declaration expressly integrates ILO Conventions No. 138 and No.182 as governments. Thus, NGOs can partner with unions to provide commentary on national practice in biannual ILO reviews even when governments have not ratified the conventions. This Declaration process is quite similar to UN’s Covenant Committee in the “progressive” realization of the rights of the conventions, but, as noted, apply even to governments that have not ratified the conventions or Covenant. The role for NGOs at the ILO may be more pronounced regarding child labor because of the aforementioned reference to “other concerned groups” in Convention No. 182.

Separate ILO Conventions, notably, No. 79 and No. 90. restrict night work to workers at least 18 years of age.

B. International Covenant on Economic, Social and Cultural Rights

1. Covenant provisions on child labor

The Covenant mirrors the two primary concepts of the ILO conventions: protection from the worst forms of child labor, and age limits for child labor, with sanctions for violators.

More specifically, Article 10 of the Convention provides that:

“The States Parties to the present Covenant recognize that: [...]

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

2. Covenant Committee questions for government

As with other labor rights described in this manual, the Covenant Committee has drafted questions that are sent to all ratifying countries. Most of these questions could be thought of as “indicators,” in the sense we put forward in Chapter 2 of this manual. That is, the questions target information that is essential to understanding aspects of the child labor problem, from the general to the more specific. These Covenant Committee questions also form the basis at least of initial inquiries about national practice regarding child labor. NGOs should recall that they, too, may wish to use these same questions in order to evaluate government compliance with child labor prohibitions. The Committee’s questions include the following (viewable at www.unhchr.org under the Treaties data base by reviewing document E/C.12/1991/1 as well as at:

www1.umn.edu/humanrts/esc/revisedguidelines1991.html

Child labor-related questions (excerpted):

Please describe the special measures of protection and assistance on behalf of children and young persons, especially measures to protect them from economic and social exploitation or to prevent their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development.

- (a) What are the age limits in your country below which the paid employment of child labor in different occupations is prohibited?
- (b) Please specify how many children, and of which age groups, engage in paid employment, and to what extent.
- (c) Please specify to what extent children are being employed in their families’ households, farms or businesses.
- (d) Please indicate whether there are in your country any groups of children and young persons that do not enjoy the measures of protection and assistance at all or that do so to a significantly lesser degree than the majority. In particular, what is the respective situation of orphans, children without living biological parents, young girls, children who are abandoned or deprived of their family environment, as well as physically or mentally handicapped children?
- (e) How are the persons mentioned in the preceding paragraph informed of their respective rights?
- (f) Please give details of any difficulties and shortcomings. How have such adverse situations developed over time? What measures are being taken to remedy these situations? Please describe the effect of these measures over time and report on successes, problems and shortcomings.

In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions as well as administrative rules, procedures and practices during the reporting period affecting the right enshrined in article 10.

Please describe the role of international assistance in the full realization of the right enshrined in article 10.

As noted in earlier sections of this manual, the most effective use of the Covenant for NGOs is to enhance formal feedback regarding government violations of workers’ rights. These violations may occur when a government systematically (and actively) violates child labor provisions or when a government more passively fails to uphold the core rights protecting children. Covenant Committee reporting can ensure that NGO findings receive wide distribution, are formally communicated to governments, and receive due UN consideration. NGOs may use all or any of the above elements of the ILO and Covenant-related obligations, as well as the CAVAR methodology below, to shape their own questions and reports. NGOs must also recall from Chapter 2 that the Covenant Committee has rules about what NGO reports must seek to include in their reports: For example, NGOs communications to the Covenant Committee must be “relevant,” “based on documentary sources and properly referenced,” “concise and succinct,” and “reliable and not abusive.”

NGOs can choose from among the following reports that are received by the Covenant Committee: information regarding child labor may be submitted directly to the member of the Covenant Committee responsible for drafting the “list of issues” that will be directed to the signatory government; NGOs may draft “shadow” reports that cover the same topics as the government’s report; other written statements or reports, or oral presentations in official “NGO hearings” that may occur at the time of a government review. NGOs may also attend the actual country reviews. Finally, NGOs may submit information to the Covenant Committee regarding implementation of any or all of the Committee’s concluding statements.

3. How governments carry out child labor eradication programs

One of the successful insights of child labor studies around the world during recent decades—notably by NGOs—is that governments can best restrict child labor when they coordinate the many programs that impact children. For example, a family or education benefit that is distributed through a government’s social security system may influence whether a child seeks or does not seek work. At the same time, perhaps the government’s labor ministry limits its inspections to the narrow question of whether child laborers are found at a work place. If officials from the two systems neither meet nor confer, national policy is likely to fail. In cases of particularly hazardous child labor, there are so many incentives for the employer and others to hide the children that a government without very careful coordination of policies is almost certain to fail in its efforts at regulation.

Thus, the most successful government programs against child labor tend to include the following features:

- Clear, publicized, and enforced laws defining the minimum age of employment and linking that age to the age of compulsory education. (Of course, a national education system must also be available to the children.)
- Strict penalties for employers and “traffickers” who use child labor, while assisting the children engaged in child labor to find educational and vocational alternatives.
- Adequately funded national “Programs of Action” that coordinate agencies and actions in the fight against child labor. Labor law reviews must also be coordinated with such programs as poverty reduction and vocational training.
- Establishment of national “commissions” and “steering committees” that involve civil society organizations in the coordinated fight against child labor.
- Programs that target particularly vulnerable groups of children, such as street children, rural children, and children of families living below the poverty level.
- Review of birth registration programs to ensure a reliable national system of age verification.
- Registries required of employers listing all workers below the age of 18 and any restrictions on their work.
- Promotion of collective bargaining agreements that specifically prohibit employment of children.

NGOs should note that the current international focus on the “worst forms of child labor” may nonetheless miss some of the more common problems that we have encountered in monitoring labor conditions at the grassroots level: underpayment of young workers especially when national law provides special benefits and protections; inadequate rest periods; illegal overtime of minors who otherwise are permitted to work; lack of government benefits; assignment to hazardous jobs, often on an informal or periodic basis.

4. Codes of Conduct

Child labor is probably the primary issue that has led to the vast increase in adoption of private sector codes of conduct by global companies during the past ten years. No company wishes to be accused of forfeiting the futures of children in order to sell products to consumers. Thus, sectoral reforms, notably in the apparel, carpet and soccer ball industries (see, for example, www.rugmark.org and www.cleanclothes.org/publications/child_labour.htm) have been driven by nongovernmental coalitions focused importantly on the elimination of child labor through codes of corporate conduct.

We will continue to use the apparel industry-driven Fair Labor Association as one example of a private sector code of conduct association that has fostered grassroots monitoring of labor rights, including child labor. To the extent that other codes of conduct refer to international standards (such as the Ethical Trade Initiative, based in the United Kingdom), a monitor may refer directly to the ILO and Covenant standards, but may also benefit from a review of FLA benchmarks.

The FLA's basic code of conduct provision regarding child labor states:

No person will be employed at an age younger than 15 (or 14 where the law of the country of manufacture allows) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15.

The FLA supplements the code element (whose language mirrors that of the ILO conventions) with a series of benchmarks that an NGO should find useful whether it is actually monitoring for the FLA or examining practices of another type of employer:

If the law requires government permits or permission from parents, as a condition of employment, the employers will keep documentation on-site for inspection at all times.

Employers will maintain proof of age documentation for all workers, such as a birth certificate, which verifies date of birth.

In those cases where proof of age documentation is not readily available, employers will take precautions to ensure that all workers are at least the minimum working age, including medical or religious records, or other means considered reliable in the local context.

Apprentices or vocational students will be at least the minimum working age.

Employers will comply with all regulations and requirements of apprentice or vocational education programs, and will be able to document ... that these are legally recognized programs.

Informal arrangements, which result in students leaving school prior to attaining the compulsory age for schooling, are not acceptable.

Childcare facilities will not physically overlap with production areas, and children will not have access to production areas.

Children under the local minimum working age will not be allowed in the factory work area at any time, unless they are part of a guided school group tour or other such unusual event. Children must not visit parents in the factory production areas.

Employers will comply with applicable laws that apply to young workers, i.e., those between the minimum working age and the age of 18, including regulations relating to hiring, working conditions, types of work, hours of work, proof of age documentation, and overtime.

Employers will have a system for identifying work stations and operations that are inappropriate for young workers according to applicable laws.

Employers will ensure that, all workers engaged in operating or working close to hazardous equipment, working at dangerous heights or lifting heavy loads, or exposed to hazardous substances, are above the legal age for such work.

8.3 CAVAR methodology: “Digging” for child labor violations

A. “Contexto”

As NGOs will note from previous sections, the “Context”-seeking role of a monitor will bring your organization closest to the larger questions (and answers) that can help make labor rights real. For example, what is the

prevalence of poverty among children in your country? What types of work are children commonly found in? To what extent do laws establish a minimum level of education, and are they enforced in practice?

The monitor's first task is to determine whether how broad or narrow its mission should be. Only you can decide whether to focus attention on a government's role in enforcing national and international law, or by monitoring child labor in a particular employment sector or with a particular employer(s). Depending on this choice, there are a number of important streams of information that a monitor can enter. For example, a monitor that is seeking to link up immediately with the policy goals of the ILO's conventions or the International Covenant on Economic, Social and Cultural Rights may wish to focus its contextual search on those elements.

These include (see also the Covenant Committee questions above in Section I. 2):

- identifying the kinds of work that are likely to harm the health, safety or morals of children. Such work includes seemingly routine agricultural work in which pesticides, hazardous equipment, and other subtle features of the work should be kept off limits for children. "Light work," in which hazards are minimal, on the other hand, may be permissible, depending on the ages for such work established under law.
- whether the sale and trafficking of children, including debt bondage and serfdom and forced or compulsory labor, occurs in your country;
- whether children are engaged in armed conflict;
- whether children have been either trafficked or otherwise drawn into prostitution, including the production of pornography;
- whether children are drawn into other illicit activities, such as production and trafficking of drugs;

Aside from seeking out other NGOs and groups that have focused on child labor issues, information is increasingly available from studies published on the internet. For example, up-to-date country reports regarding types and extent of child labor are available through the ILO's reports on two conventions (C. 131 and C. 182) as well as in periodic reports regarding the ILO's Declaration on Fundamental Rights (see www.ilo.org). Moreover, some labor ministries, such as the U.S. Department of Labor, have conducted their own country reports in an effort to evaluate and assist developing countries. (see, for example:

<http://www.dol.gov/ilab/media/reports/iclp/tda2003/overview.htm>).

Our basic formulation of contextual elements from other sections of this manual also apply here, including:

- examine national law and any industry-specific regulations regarding child labor. If your government has ratified the ILO's child labor conventions, a coordinating agency should exist within your government that can help identify the many crossing points for information about child labor.
- If your government has ratified the international instruments described above, review the findings (usually available on the internet at www.ilo.org and www.unhchr.ch) of these international organizations regarding periodic review.
- Review codes of conduct, if any, that apply to relevant companies and industries in the area in which you are working and seek contacts with the relevant employers.
- Identify and interview organizations nationally or locally that have played prominent roles in the ongoing struggle against child labor in your country. NGOs can be sure that such organizations exist given the long history of child labor in virtually all countries.
- "Localize" your context inquiry by interviewing grassroots organizations that are familiar with the particular industry/regions/groups of workers that you may be asked to assist or monitor regarding child labor.
- Identify particular issues that grassroots groups and workers believe are most important in their region or industry, such as the quiet and corrosive tradition of bonded child labor.

- Familiarize yourself with the actual age certification systems used by the government and by employers, and keep a watchful eye for commonly-used methods by employers and/or families in evading detection of underage workers.
- Inquire in particular into the background of industries, the stability of such industries, and whether the industries are known broadly (such as in large or small agriculture, and the apparel industry) for the use of child labor.
- Seek to become familiar with the variations of possible child labor in different industries, including home work (such as stitching work), illegal (and therefore often uncompensated) overtime, and special limitations of hours and types of jobs for legal young workers, such as those between the ages of 14 and 18, who may have special restrictions on their jobs.
- To the extent possible, seek to become familiar with the records and hiring systems used by employers to ensure that they are not employing children.

B. “Archivos”: Records review

We have already pointed out that every employer has an obligation at the time of hiring a worker to review the worker’s eligibility for employment. In that process, the employer may have an incentive to use child laborers and therefore look past inadequate age documentation. Industry to industry, child laborers in impoverished countries are agile, docile, desperate for work—and often very productive.

If your NGO is reviewing child labor documentation, then:

- Review age verification records for young workers. Note in particular whether the youngest legal workers—whoever they are—appear to have clear, legal documentation for their work status. Is the documentation the best documentation available or merely an informal age statement or record? Such records will help you assess whether the employer’s (usual) insistence that no child labor is used holds up to scrutiny. In our own reviews, it is common that actual copies of birth certificates and permission from parents are required by law and available for review.
- Review documentation of apprenticeships and job training records for the age of workers.
- Determine what system the employer uses to identify young workers who are nonetheless subject to restrictions against certain hazardous jobs due to their age.
- Review the total hours actually worked by workers below the age of 18, including the degree of overtime, and contrast that with law, regulations, and codes of conduct. NGOs might note that their collection of information regarding actual time worked versus school attended of young workers can be an important part of coordinating national restrictions on child labor.
- Review the work schedules of young workers to determine whether the employment impedes their ability to attend school.
- Where possible, seek to determine the average weekly hours worked of young workers.
- Seek to determine whether home work is a part of work assignments and whether, as a practical matter, children are being contracted with off the work site.

C. “Visite”: Site visit and interviews

We might note again that this manual assumes that demand for NGO monitoring of codes of conduct will continue to grow, especially demand for regular skilled monitoring. Therefore, NGO access to factories will also continue to grow, fostered in part by brand name companies that increasingly respond to demands for transparency of labor conditions. NGOs could be called on in a particular crisis, on a particular issue, or for regular monitoring, all of which call for advanced preparation regarding knowledge of labor issues.

In general, an unannounced site visit by a monitor will enable the monitor to see all workers who normally attend work (whereas announced visits will almost certainly lead to the disappearance of underage workers, if any). That means that the monitor should attempt to train his or her eyes to recognize age distinctions and/or attempts at concealing underage workers.

A monitor should also seek to determine whether, as we have seen in some countries, young workers are placed on specific lines or schedules that conform to school times or hazardous work restrictions.

A site visit can also provide information to the trained observer regarding whether all jobs described by the employer are actually performed at that site, or whether there is some likelihood that work has been subcontracted to other employment locations, including individuals' homes (leading back to the possibility of employment of children).

- Determine whether any secured or restricted work areas may contain child laborers. For example, in a food processing factory, we noted in one visit that all young workers had been sent to an obscure section of the factory during a monitoring visit. A number of these workers were under-age, according to later work interviews.
- Are there areas of the workplace that are abandoned at the time of a visit? Is this a sign of possible child labor?
- Examine the workplace for hazardous jobs and determine whether younger workers are assigned to them.
- Where workers live in employer housing, what provisions or facilities are used for children? Where such facilities are either near or within factory compounds, there is a greater likelihood that they may serve an additional purpose of supplying informal labor.

1. Management Interviews

The hiring manager's response to very basic questions about the employer's criteria for hiring workers may be the clearest signal of workplace policy regarding child labor. A lack of knowledge about child labor restrictions is a good sign that child labor may be nearby. (Of course, the fact that a manager is knowledgeable and well-organized does not mean that child labor will not be found.) Many questions of management and workers, both, can be framed around the requirements of the ILO conventions and FLA benchmarks. However, it is important to recall that the FLA benchmarks formally apply only where that code of conduct is posted for the workers. Otherwise, it provides merely an advisory set of questions and information. NGOs should also be ready to adjust and cross-check their questions based upon documents, site visits, and their interviews with workers.

A few likely questions for employers include:

- What are the relevant legal prohibitions and limitations on young workers, including ages, types of work, hours of work, and special wage or benefit issues?
- What are the compulsory school laws and availability/flexibility of local educational opportunities?
- Ask the appropriate manager to explain the procedures used to verify the age of workers.
- Is a registry kept of young workers and of the jobs that are off limits to such workers?
- Is management familiar with the chemicals used at the workplace and whether younger workers are exposed to such chemicals?
- To what extent does night work and/or overtime work include younger workers? (Such a question may function as a cross-check of documents already reviewed or yet to be reviewed.)

2. Worker interviews

In general, NGOs should recall the importance of off-site interviews that enable workers, especially young workers, to feel comfortable in talking about their work experience. The questions below are not as easily applicable to jobs that comprise what the ILO considers the "unconditional" worst forms of child labor. Moreover,

monitors need to avoid turning interviews on the topic of child labor into investigations of the very workers that the monitor is supposed to help and protect.

- Ask relatively “soft” initial questions about work, such as what led the worker to seek work at the particular employer. Certainly a worker should not be made to feel that an interview is an investigation into the legality of their work.
- Create your own questions for assessing the age of young workers, such as by inquiring into their year of birth or cultural markers that indicate birth year, rather than asking them their age.
- Inquire about the job assignment that the workers receive and whether there are any restrictions for workers under age 18.
- Ask young workers whether the employer offers special hours or opportunities for those interested in continuing school and/or vocational education.
- Often monitors will find that they are best able to learn about the employer’s policies regarding young workers not by the personal information disclosed by the worker, but by information disclosed by the worker about other workers regarding the employer’s policies with respect to those workers.

D. “Analysis”: Analysis of context, records, site visits, interviews

As with other elements of the CAVAR monitoring methodology, an NGO should plan to work back-and-forth between data, such as interviews and records, in order to achieve an accurate “synthesis” of information, as well as to probe the depth of any problem.

The monitor must answer a number of questions based on the information that has been gathered: is there underage child labor? Are there violations of the rights of young workers by virtue of their hours, the type of work, their pay, their benefits? Is the employer using child laborers in an informal setting rather than at a central location? Are workers engaged in hazardous labor? Is the hazardous labor one of the prioritized “unconditional” worst forms of child labor, under ILO definitions? Such information is important not only to local reports, but to reporting under international guidelines as well.

NGOs might wish to recall that analysis often requires a monitor to return to another step in CAVAR. Often a worker interview will require a new look at documents that had already been reviewed; documents may lead to a second or third interview, even with workers who have already been contacted. Monitors should be comfortable in returning to a different level in order to verify and analyze information.

A monitor may wish to determine whether the data indicates a particular type of pattern, such as bonded child labor or another kind of child labor. Is the child labor an isolated instance—faulty records examination, deceptive records—or an intentional effort to take advantage of young workers? We have found that employers commonly believe that they are doing young workers and their families a favor by employing them because of the impoverished state of the family. Obviously, it is important that monitors understand and appreciate the reasons for limiting child labor.

Monitors should also take note when their data suggests problems or information that may be especially useful to the coordinated national efforts at eradicating child labor—which makes child labor a somewhat unique category among labor rights issues.

E. “Reporte”: How to report on child labor

Of all the labor rights reviewed in this manual, there is certainly the greatest international call for reform regarding the issue of child labor. Moreover, claims that global companies sometimes use child labor have made strong impressions on consuming publics in the industrialized nations, causing companies to take steps against child

labor. The ILO itself has broken from its strict habits of tripartism to call on “other concerned organizations” besides governments, employers, and workers’ organizations to help eradicate child labor.

Thus, NGOs have been called on to participate in a wide range of forums, issuing reports on government performance (or priorities) as well as local employment conditions. We invite NGOs to review the earlier sections of this chapter on ILO and Covenant Committee questions, as well as visit their web pages, in order to help shape questions that respond directly to the terms of these conventions and covenants. As a general rule, the following points will also prove useful to NGOs in all forms of reporting:

- Seek to create a standard format that easily identifies the categories of child labor. A standard format allows report topics to be measured and compared. When a monitor performs audits or interviews, it is essential to record and report the dates of visits, interviews, and record reviews.
- Note that some monitoring associations, like the UN’s Covenant Committee, will describe a preferred format for reporting.
- A report should include a description of the NGO’s methodology, including the criteria, time and personnel necessary to gather data, so that the reader can fully understand how data was gathered and conclusions were reached. In that way, monitoring reports promote transparency, the lack of which is one of the reasons that sweatshops exist in the first place. A clear methodology also allows for discovery of errors that can help improve future reports.
- In order to fully respond to the call for greater participation in eradicating child labor, NGO reports should include details from the NGO’s exploration of the context and causes of child labor, as well as accounts of specific violations.
- A report should include findings of compliance and noncompliance, as determined by the analysis of the monitors. Such findings should seek to identify the degree of noncompliance, emphasizing urgent issues in a special section.
- Many monitors will propose the appropriate remediation of a private sector matter.
- Some reports are written so that employers will have the opportunity to remediate and present their remediation in the final draft. However, monitors should not withhold reports when the passage of time may make remediation more difficult.
- Reports must not compromise promises of confidentiality granted to workers or employer when it is necessary to make such promises in order to avoid a risk of retaliation.
- When retaliation against workers occurs as a result of a monitor’s work, reports should make special mention of such retaliation because protection of workers’ rights to report conditions is an essential part of any monitoring mission. If workers suffer due to monitoring, they may be less likely to participate.
- When reports occur on an ongoing basis, a summary of previous reports can be helpful to the overall understanding of compliance.

[Please refer to the beginning of this chapter for a practical account of violations regarding child labor]

8.4 Measuring compliance and progress

At least since the passage of ILO Convention No. 138 in 1973, child labor has been measured using a rather inexact methodology of “progress.” In theory, governments would declare their “starting point” for eradicating child labor—by employment sector and by age of workers—and, as their economies grew, they would move their standards upwards towards the ILO’s “goal” of a minimum working age of 16. Thus, full-time working children aged 14 or 15 would soon be a thing of the past, as would “light work” by 12 or 13 year olds. Educational systems would mature and children could again be children.

However, economic realities and widespread impunity regarding child labor violations largely corrupted this “progress” regime. Both governments and employers failed the test of commitment and time. Child labor remained a common problem in much of the developing world, and in certain sectors of industrialized nations, as

well. This is one of the reasons that this manual seeks to take a “violations” approach to measuring labor rights issues rather than a “progress” approach. We do not deny that measuring progress is possible or important, but given the severity of violations, it may be that more progress will actually occur when violations are more boldly and broadly exposed.

In 1998, the ILO’s Convention on the Worst Forms of Child Labor contributed to some extent to a violations approach regarding child labor when it announced a new urgency to ending work by the more than 100 million children engaged nearly every day in hazardous occupations.

Most intriguing, this Convention has seen extraordinarily rapid ratifications and has stimulated the participation of NGOs in the evaluation and investigation of child labor problems.

Still, a number of terms remain somewhat unclear for those seeking to measure compliance and violations. For example, individual governments remain empowered to define most of the terms of the convention, including the meaning of “hazardous” work and even the meaning of “pornography.” Certainly national and other international standards (such as the UN Convention on the Rights of the Child as well as the ILO’s own Recommendations) can be expected to play a role in providing concrete meaning to these terms—but NGOs might take the definition issue as a challenge to their own work and reporting.

For example, when children are working at jobs that from any reasonable perspective would appear to be hazardous, NGOs should report them as such in their monitoring efforts. When in doubt, NGOs should emphasize appropriate national and international definitions of hazardous work, including in the ILO recommendations and in the writings of organizations, governments, and labor specialists regarding the various types of work.

In general, NGOs might wish to follow the following formula as a starting point for monitoring reports:

- Use the ILO and Covenant elements as “minimum standards” or “benchmarks” (while noting any flexibility that is built into the ILO language) and measure compliance on these issues.
- Where feasible in your NGO’s mission, enter the formal reporting process of both the ILO’s conventions (through collaborations with unions) and the Covenant Committee (if your government has ratified this Covenant) and follow the steps and criteria described in Chapter 2 for reports directed to these international bodies.
- Attempt to provide a qualitative assessment of each benchmark by indicating what actions (in particular at the employer or government level) that you are monitoring support or fail to support the benchmark.
- Use connections to international NGOs dedicated to labor standards to help refine the definitions and evaluations at the local and governmental levels.
- Seek in any and all discussions with factories and employers the right to periodically follow up and measure assessments of worker rights when violations have been found. That way, companies and governments will not feel that limited or momentary compliance means “progress.”
- Work on your own or with other NGOs to create a larger picture of child labor, according to the industry that you are monitoring, or by seeking national statistics on the same subject. Often one of the most difficult problems in advancing the cause of worker rights is the lack of information that shows trends in enforcement or lack of enforcement. For example, the ILO’s earlier convention on child labor has been especially problematic in terms of measuring “progress” because governments generally did not comply with requirements that they gradually raise the minimum working age in their countries.
- NGOs should seek to participate in global reporting networks, so that their reports become available to a wider audience, and so that researchers can examine their work and use it as a basis of comparison to other monitoring in other places. Often, even without the NGO’s knowledge, the same global company may be involved in similar disputes somewhere else. The relatively simple act of publishing a report on the internet can lead another NGO to benefit from the benchmarks and standardization used in another location. The phenomenon in which companies and governments are

constantly under pressure to improve their systems—and keep them from dropping back— has become known as the “ratcheting” of labor standards.

- Of course, when recurrences of violations take place at the same employer despite previous remediation, NGOs should be particularly vigilant and active in reporting the lack of compliance and loss of forward progress. In that way, other groups, including consumers, can become informed of the problem and take appropriate action, including the demand for governmental action.

Chapter Nine Forced Labor

9.1 Introduction

- Children in Nepal, Bangladesh, India, and Pakistan forced to work in carpet, brick-making or other enterprises for years to pay off their parents' debts.
- Globally, adults and children, often from indigenous communities, forced to work in agricultural settings.
- In California in the United States, dozens of Thai workers trafficked into forced labor and hidden behind barbed wire, effectively enslaved to mass market apparel production.
- Workers in Sudan and Mauritania in outright slavery, a throwback to the forms of forced labor prominent more than a century ago.

In some ways, it is a positive development that examples of forced labor such as those above are discovered and revealed to the global community. The many forms of forced labor are perhaps becoming more transparent to the public. In turn, the international community has forcefully expressed moral outrage. Yet the cycle has not been broken: when forced labor is discovered, the workers may be liberated but the bosses and their helpers often go unpunished. Add to this picture that forced labor often is not discovered—and therefore remains completely unregulated. One of the trademarks of our current times is the almost invisible migration of workers from country to country. They give up their transit documents, and, in turn, their most essential legal protections to contractors, only to be trafficked into either the most precarious or outright illegal streams of work. Indeed it has taken some of the most extreme forms of forced labor in the sex industry to draw truly international attention to the plight of many children and women in the global setting. The ILO has pointed out that a key question today in controlling forced labor is how to gather and manage information about perils to workers, and how to regulate and inspect what the ILO calls the “massive growth of the shadow economy and of the vast numbers of vulnerable persons who fall victim to it.” (Stopping Forced Labor, ILO, 2001, reviewed at www.ilo.org/declaration)

In its moment of revealed ugliness, forced labor creates a shocking narrative. But monitors must also understand the problem as a basic failure of local, national and international regulation—a failure that NGOs increasingly are needed to help solve.

NGOs can play important roles in identifying instances of forced labor and, sometimes in combination with trade unions, can seek greater pressure on governments to establish and enforce prohibitions. ILO conventions, the UN's Covenant on Economic, Social and Cultural Rights, private sector codes of conduct and other instruments all offer the NGO some potential role in reporting abuses and publishing communications. As pointed out in previous chapters, this manual is intended to encourage NGOs to enhance their investigative and reporting role. That role may be to develop expertise in labor rights in order to monitor employment conditions in particular industries, particular laws, or some combination of both. Because forced labor is one of the ILO's four “fundamental rights,” it is subject to a heightened level of ILO attention through various conventions, declarations, and reporting processes. However, NGOs may not feel that their voices regarding forms of forced labor are sufficiently heard in ILO forums. Therefore, where a government has ratified the UN covenants, or where an NGO can participate in a code of conduct process involving individual employers, it may have its greatest opportunity to investigate, evaluate and report on forced labor issues.

9.2 International, national and private sector standards on forced labor

A. ILO Standards

Two ILO conventions describe right of workers to be free from forced labor. Under ILO convention No. 29 (1930), forced labor is generally 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.” A later ILO convention, No. 105 (1957) expanded the definition of forced labor to specifically abolish forced labor as punishment in “political” crimes and as retribution for participating in strikes. These conventions are among the most ratified of all ILO conventions, and the ILO has taken extraordinary measures to obtain observance of these conventions. As noted above, the ILO includes forced labor in the Declaration on Fundamental Principles Concerning Rights at Work in 1998, meaning that governments must regularly report on their efforts at avoiding forced labor even where they have not ratified the conventions.

ILO published interpretations concerning forced labor include the following:

- A government’s “menace of a penalty” for refusing to work, as ordered by the government, is forbidden under the Convention. So also is a threat of the loss of rights and privileges (such as a suspension of community benefits), rather than active punishment alone.
- Whether work is “voluntary” depends on whether the employee has the right to give consent to work and to freely revoke consent. Sometimes an employer operates to gain consent by deceit or false statements, which means that a worker has not been granted a true right of consent. The Convention bans such actions, meaning that a government is required to establish sanctions against employers that violate this provision. (Moreover, as we will see in the Code of Conduct section, an employer violates forced labor code of conduct provisions for such deceit or falsity.)
- Forced labor includes work that is required by the state in the form of political coercion or political education for expressing views opposed to the established political, social or economic system.
- Labor that is required as punishment for strikes or to force a particular labor discipline is considered forced labor under the more recent of the two ILO forced labor Conventions, Convention No. 105.
- Labor that is forced for reasons of racial, social, national or religious discrimination, including the illicit trafficking of workers, is also considered forced labor under the ILO conventions. For example, trafficking in child laborers and women, such as for purposes of prostitution, has gained increasing attention under the forced labor convention.
- Labor that is required in prison is not usually considered forced labor except under certain conditions, such as:
 - 1) when the individual who is required to work has not been convicted of a crime through normal judicial processes, or
 - 2) when the work is agreed to, but under the threat of a loss of rights or privileges. For example, a prisoner who is contracted to work for a private corporation at the risk of losing prison benefits may not have the opportunity to genuinely choose his work.
- Labor that is required in a true state of emergency or that is a minor obligation of communal service is not considered forced labor.

[For a recent review of ILO forced labor provisions, see “The abolition of forced or compulsory labor” in the ILO publication *Fundamental Rights at Work and International Labour Standards* (2003).]

B. The International Covenant on Economic, Social, and Cultural Rights

As we have noted throughout this manual, when a government has ratified the International Covenant on Economic, Social, and Cultural Rights, NGOs have an especially useful instrument with which to communicate

concerns and information about government behavior on a labor right. (On the other hand, if the government has not ratified the Convention, then the NGO may have little leverage by reciting the Covenant other than in demanding its ratification and looking to ILO or code of conduct standards.)

NGOs should begin by reading the ICESCR section that relates to forced labor:

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. (Emphasis added).

As NGOs might note, the described “right to work” is a very broad topic. A separate article in this AAAS series helps to explain what the UN meant by saying that all people should have a right to a job. But the “right to work” free from forced labor (that is, work which is “freely chosen or accepted”) is not so large a subject. Governments have two primary responsibilities in guaranteeing this right under the Covenant: 1) to sanction employers and individuals who violate the right to be free from forced labor; and 2) to create positive resources—such as technical and vocational guidance and training programs and policies to safeguard workers against forced labor.

In seeking to implement these rights, the UN’s Covenant Committee periodically poses questions to governments regarding forced labor that should interest NGOs. Such questions offer the opportunities for NGOs to focus independently through research and/or investigations in the NGO’s selected area of work and submit reports to the UN; and/or to present official, publishable comments to the UN on the government’s responses to the UN’s questions.

In the case of forced labor, the Committee has been straightforward in asking governments to:

Please state whether particular difficulties have been encountered in attaining the objectives of full, productive and freely chosen employment, and indicate how far these difficulties have been overcome.

Please indicate the role of international assistance in the full realization of the right enshrined in Article 6.

It is apparent from this brief treatment under the Covenant that the Committee has up to now referred much of its attention to forced labor issues to the ILO and to such other UN bodies as the Covenant Committee dealing with the UN Covenant on Civil and Political Rights.

C. How governments regulate (or should regulate) forced labor.

When international conventions were first put forth decades ago, the problem of forced labor had a number of very clear forms, such as when governments forced (and still force) certain populations to work with little or no compensation, often as collective punishment for “crimes” of political dissent. (A well-known, contemporary example of this form of forced labor occurred when Burmese villagers were forced by the military to work on oil project pipelines in the 1990s.) Another common practice was a lack of government enforcement or lack of legal prohibition against employers that forced workers into forms of debt bondage. However, until the surge in global economic interdependence, governments simply didn’t have much interest in the protests from outside (or inside). Indeed, as the many recent reports seeking to measure forced labor attest, governments have not really regulated forced labor so much as reacted to individual instances of bad publicity or serious abuse of workers. Until the conditions of women and children in forced labor became more evident towards the end of the millennium, governments had no real pressure on them to measure forced labor and faced no real sanction in failing to live up

to obligations undertaken under ILO conventions or other instruments. One ILO report asserts that governments have punished drug trafficking more severely than trafficking in humans.

The clear trend today both within national governments and among international analysts is to raise the question how should governments (and employers) measure and regulate forced labor? (See, for example, the ILO publications *Forced Labor: Time for Action* (ILO 2003) and *Forced Labour: Definition, Indicators and Measurement* (ILO 2004). The ILO's priority is to persuade governments to create as a matter of urgency "National Action Plans" to address forced labor in its various forms.

For example, according to the ILO, governments (and, we might add, NGO monitors) should start by examining the most common sectors where forced labor is found: agriculture, domestic work, the informal (sometimes known as the "street") economy, mining, and sexual services. Action plans call for 1) identifying the problem through special surveys and investigations, including mapping of problem areas; 2) creating a broader public awareness of forced labor through publicity campaigns (a process that can lead victims to step forward); 3) prevention programs that operate through publicity and investigations, such as through targeting vulnerable populations of children, rural women, indigenous peoples and impoverished minority groups; 4) remedial programs for victims; 5) publicized sanctions against the perpetrators of forced labor. Governments must operate aggressively to break national and international crime syndicates that sometimes operate to exploit workers in many of the sectors described above.

One of the most practical insights that has emerged from recent studies is that formal government mechanisms often do not work very well in revealing the hidden informal economy. Labor inspectors are so preoccupied with their assignments in traditional industries that they are unlikely to form the knowledge or establish the contacts to identify situations of forced labor. Governments now seek to coordinate bureaucracies in order to begin to measure and address the problems of forced labor. (Even so, when the United States government and the UN's International Migration Organization sought to measure trafficking in forced labor in 1997, one concluded there were 700,000 workers trafficked worldwide, while the other concluded that 4 million workers were illegally trafficked.)

A few model governmental responses to forced labor problems have emerged. These include Russian, European, and U.S. legislative initiatives to increase inspection and penalties for trafficking in forced labor, notably involving women and children. Forced labor in rural and remote areas in Brazil has been successfully reduced by a program that puts federal agents into what were once areas of local control. (*Stopping Forced Labor*, ILO, 2001)

D. Codes of conduct regarding private employers

Among the many code of conducts provisions regarding forced labor, the Fair Labor Association (FLA) provision states: "There shall not be any use of forced labor, whether in the form of prison labor, indentured labor, bonded labor or otherwise." Monitors will note the broad coverage, including indentured labor, bonded labor, or other such practices. The FLA has also issued a guideline that forbids the use of all prison labor, whether it could be described as forced labor or paid labor. Thus, although voluntary prison labor is permissible under international forced labor conventions, such labor is not permissible under the FLA—an example of where certain codes of conduct can create obligations more stringent than national law or even international standards. The effect of this provision is to enable these apparel and footwear companies to communicate to consumers that they have avoided the controversies of prison labor that is sometimes used in other commercial contexts.

NGOs will note that FLA guidelines for monitors, as paraphrased below, focus on the voluntariness of work and workplace requirements, rather than merely describing when labor is forced. Monitors should plan to examine factories based on the following key guidelines, which might be considered relevant to other monitoring systems as well:

- Employers must not require employees to work as a condition of repaying a debt to another person or to the employer.
- Advances (or "loans") on pay from the employer must not exceed three months pay or legal limits, whichever is less.

- Although job referral payments to third parties are permitted, workers must not be hired in such a way that a family member, friend or associate receives continuing money or benefits as a result of the worker’s continued employment.
- Employers must maintain sufficient hiring and employment records to demonstrate and verify compliance with the code provision against forced labor.
- If factory entrances are locked or guarded during work hours, employees nonetheless must have the right to exit at all times.
- Workers will not be required to live in employer-owned or controlled residences.
- The freedom of movement of workers who live in employer controlled residences will not be unreasonably restricted.
- All workers will have the right to enter into and to terminate their employment freely.
- Employment terms shall be those to which the worker has voluntarily agreed.
- Employers must not restrict a worker’s ability to terminate his or her employment. Further, employers must not restrict a worker’s freedom of movement, including: physical or mental coercion; deposit; unreasonable financial penalties or recruitment fees; and access to and renewal of identity papers and/or work permits or other legal identification documents.
- Workers will retain possession or control of their passports, identity papers, travel documents or any other personal legal documents. Employers may obtain copies of original documents for record-keeping purposes. Employers will provide, at employee request, secure storage for employee documents. Such storage will be freely accessible to workers.
- There can be no employment terms (including contracts, recruitment arrangements, or any other instruments) that: allow employees to be confined or subjected to restrictions on freedom of movement or that punish workers for terminating employment.
- Deductions for repayment of any recruitment fees will not be made without the consent of the worker.

9.3 CAVAR methodology: “Digging” for forced labor issues at the “workplace”

In the case of forced labor, the CAVAR system unfortunately is not so easily applied. In part, that is why we have put quotation marks around the word “workplace” in our title. Both the worker and the workplace easily fade out of sight in situations of forced labor. Because efforts to gather information on this topic are in an experimental phase even at the highest levels of national and international governance, we will modify our investigative suggestions somewhat to reflect the state of the art in digging for forced labor issues. Monitoring for some early forced labor signs remains both possible and important, and will constitute the practical focus of this section. The NGO will note, in particular, that some common recruitment and employment practices even in traditional industries can lead to forced labor. But the more entrenched problems of forced labor simply do not conform to such inquiries as records reviews and factory visits.

A. “Contexto: Context

As with each element of our inquiry into monitoring labor rights, NGOs need to review the context of a labor right to become familiar with its most basic elements, as applied at the workplace and under applicable laws or codes of conduct.

Therefore, the NGO should try to carry out the following steps:

- Inquire into what laws your government has passed restricting forced labor and/or promoting “positive” rights for vulnerable groups—this is especially important now that many governments are responding to the ILO call for “National Action Plans” on forced labor.
- Has the government ratified international conventions that create binding obligations to review and enforce its laws? (A review of our earlier description of the ILO and Covenant Committee provisions regarding forced labor should give NGOs some perspective on what to look for).
- Make a list of employment practices that are common in forced labor settings (such as illegal prison labor or bonded labor of children) and form questions according to such lists.
- Review the codes of conduct, if any, that apply to relevant companies and industries in the area in which you are working. Note any distinctions between what codes require and the applicable national or international laws.
- “Localize” your context inquiry by interviewing grassroots organizations that are familiar with the particular industry/regions/groups of workers that you may be asked to assist or monitor regarding forced labor.
- Seek to determine which groups, if any, are most likely to be subject to forced labor and seek to determine whether workers at the local level are able to use governmental mechanisms to gain investigation and enforcement of such issues. In particular, are such workers able to choose to leave their jobs even when advance recruitment fees have been paid?
- Inquire in particular into the background of industries, the stability of such industries, and whether the industries are known for informal or “precarious” work forces that change frequently, involve unfamiliar workers, and appear and disappear in an irregular manner.
- Seek to identify particular issues that grassroots groups and workers believe are most important regarding forced labor.
- Seek to identify culturally appropriate interview techniques and ideas for questions that can be posed in the Visit and Interviews section of the CAVAR methodology—for example, questions regarding an industry dealing in the sex trade will be more difficult to receive answers about than questions regarding children working at brick kilns, even if both implicate forced labor.

Summary: a specialized inquiry for forced labor

The NGO should inquire of local community groups whether they have noted any warning signs of the trafficked forms of forced labor—such as rural women or children employed in agriculture or in illegal jobs such as sexual services? Are there teams of foreign or migrant workers in the area, unusually high security around otherwise commonplace production facilities or residences? Is there any organization that appears to be marketing workers and making its profits from recruitment fees paid by these workers? Are workers granted genuine freedom of movement and do they maintain their own identity papers? These are not easy questions to raise in a community, so an NGO should expect to establish good contracts before undertaking such an inquiry.

B. “Archivos”: Records

Review the employer’s basic wage and benefit records. Unpaid wages may be a sign either that the employer is simply failing to pay wages that are due and/or that the employer is requiring workers to work “off the book.” That does not mean that they are bonded or forced laborers but additional inquiry should be conducted. See the wages section of this manual for guidance on the wage review.

A more technical review might include an effort to determine a factory’s capacity to complete the work that has been assigned to the workers who are present. Such a review, if it produces unrealistic results, may also help a monitor determine whether workers located away from the site (and possibly hidden for inappropriate reasons) may be doing the work.

C. “*Visite*”: Visit

In general, monitoring visits to workplaces can reveal many details to the trained eyes and ears. For example, in the typical low wage factor setting, there are often periods of production in which a factory owner subcontracts out some work—and perhaps even falls into the habit of such subcontracting when the subcontracted labor is especially cheap or skilled. In established business relationships, such subcontracting must be reported to the retail firm or brand name manufacturer. Where a monitor of such production learns that subcontracting occurs—and further discovers that this subcontracting has not been previously reported—there is a chance that some kind of more serious violation is occurring, including the possibility that forced labor is being used by the subcontractor. Thus, monitors should measure the flow and movement of goods, especially when it is determined that undisclosed work locations are being used.

1. Management interviews

It is up to the monitor whether to begin interviews with managers or workers, but typically monitors will find that they go back and forth between record reviews and interviews of both workers and management as issues arise. In the case of management, the following questions may assist in determining whether a risk of forced labor exists at the workplace:

- How did workers arrange for their employment (for example, did agents select the workers and deliver them from a particular region or even country? Where do the workers live?)
- To what extent did the workers have to pay (or did the families of workers receive loans) for the work of their family member?
- What steps must workers take to leave the workplace and/or dormitory, to terminate their employment contract, to travel? Do they possess or have access on demand to their identification documents?
- To what extent does the employer loan workers money and how are such loans repaid?
- Perhaps after asking questions such as these, a monitor may wish to ask the manager how the facility avoids employing forced laborers, and inquire into whether the manager understands what actions constitute forced labor. (For example, the FLA has pointed out that loans must not exceed three months wages—less if the legal limit is less than that.)
- Monitors should keep in mind that particularly in the informal economy, questions about forced labor must often be conceived and raised spontaneously, albeit with care. Thus, there is no perfect list of questions. Monitors may help to create models for questioning as they engage in the study of forced labor. (This point applies equally to worker interviews.)

2. Worker interviews

- How did the worker arrange for employment and were they aware of their right to choose (or not choose) the employment?
- Did family members or other agents receive payments for bringing the worker to the work place?
- How did the worker arrange for housing and what are the restrictions in living in such housing?
- What steps must the worker take if she wishes to terminate the employment—have other workers experienced problems in ending their employment?
- Are the workers identification papers readily available to them (as in many questions in this manual, an answer from the workers may differ from the answer from managers)?
- Monitors should note that if they are interviewing workers engaged in forced labor they must take careful steps to protect such workers from the possibility of retribution by employers whose livelihood—after all—depends upon authorities being unaware of the workers they are exploiting.

D. “Analysis”: Analysis

Monitors examining issues of forced labor are likely to face two fundamentally different work settings: 1) professionally organized factory production and 2) almost intentionally disorganized informal economy production. The monitor’s approach to analysis of workplace problems will undoubtedly be influenced by the type of work setting.

In the factory setting, the monitor will likely find sources that can help determine whether workers have freely chosen their employment, and enjoy freedom of movement and access to their identification papers. In that setting, analysis of data—as, for example with freedom of association—will involve the comparison of information gathered in the “context” review above with documents, interviews and notes from visits to the work site.

In the informal economic setting, it may be a great challenge to determine whether workers are engaged voluntarily in employment. The nature of the underground economy is to make the source, flow and end point of production (whatever the product) difficult to trace. As discussed in the context section, appropriate and constructive analysis (analysis that can reach reliable conclusions) is being newly studied and invented. Monitors must seek to become familiar with the many experiments in data gathering and analysis.

A few general rules of analysis can be suggested here:

- Be sure to reach a contextual understanding of the type of work before attempting to analyze—or even gather—data on particular kinds of forced labor. For example, a monitor must have substantial understanding of bonded labor in Pakistan before reaching a conclusion that a particular work place, such as a brick kiln, employs bonded labor.
- Gather sufficient information from sufficient numbers of sources (workers, managers, community representatives) to reach valid conclusions about the particular workers.
- Try to keep from using informal means of information gathering and analysis in your own work. A lack of transparent methodology in analysis will make your analysis less credible. The ILO has already found that many NGO reports suffer from a lack of solid and verifiable information, making the reports about such a fundamental rights violation less credible than it otherwise could be.
 - A proper analysis may not always offer a complete conclusion, but, instead, offer credibility assessments of the statements or claims of the different positions asserted by workers and managers.
 - Remember that interviews can supplement records or documents; documents can help verify or identify additional issues from interviews. In other words, monitors should use each level of “CAVAR” and be comfortable in returning to a different level in order to verify and analyze information. Often a worker interview will require a new look at documents that had already been reviewed; documents may lead to a second or third interview, even with workers who have already been contacted.

E. “Reporte”: How does a monitor report on forced labor?

As we pointed out in the freedom of association section, an NGO often undertakes its investigation already aware of the audience, its readers. For example, if you are preparing your report for a UN agency in order to comment on a government’s overall treatment of freedom of association, then certainly you will be reporting on the government’s response (or lack of response) to the many categories of rights listed above, and perhaps also to data and incidents from many workplaces. The specific ingredients of your report may in fact be determined by a set of questions that is determined by the agency, such as those asked by the Covenant Committee on Economic, Social and Cultural Rights. Such reports are sometimes called “shadow” reports because the NGO is answering the same questions in their own way as the government is answering, and submitting them for review and publication by the UN.

Frequently, NGOs are asked to investigate complaints by workers, which means that a report will focus on specific allegations. It may be useful, then, for the NGO to review previous reports that have been produced on such subjects. The most complete (that is, complete reports, rather than summaries) appear at the ILO's web page dealing with forced labor and the Declaration on Fundamental Principles and Rights at Work at www.ilo.org. These are the investigations of varying forms of forced labor, often by NGOs. A summary of reports regarding private sector codes of conduct that is useful but less complete is also available in the "public reports" section of the Fair Labor Association web site, www.fairlabor.org.

Some checklist points for reporting:

- Seek to create a standard format that easily identifies the subject matter and conclusions, such as by using the ILO's categories of government and employer obligations. A standard format allows subsequent reports to be easily compared. When a monitor is performing a series of audits or interviews, it is essential to record and report the dates of visits, interviews, and record reviews.
- Note that some monitoring associations will describe a preferred format for reporting.
- A report should include a description of the NGO's methodology, including the criteria, time and personnel necessary to gather data, so that the reader can fully understand how data was gathered and conclusions were reached. In that way, monitoring reports promote transparency, the lack of which is one of the reasons that sweatshops exist in the first place. A clear methodology also allows for discovery of errors that can help improve future reports.
- A report should include findings of compliance and noncompliance, as determined by the analysis of the monitors. Such findings should seek to identify the degree of noncompliance, emphasizing urgent issues above issues that can be addressed in an ongoing or routine manner.
- Many monitors will propose the appropriate remediation of a matter.
- Reports must not compromise promises of confidentiality granted to workers or employer when it is necessary to make such promises in order to avoid a risk of retaliation.
- When retaliation against workers occurs as a result of a monitor's work, reports should emphasize that retaliation because protection of workers' rights to report conditions is an essential part of any monitoring mission. If workers suffer due to monitoring, they may be less likely to participate.
- When reports occur on an ongoing basis, a periodic summary report can be an important component of reporting.

9.4 Common problems in forced labor

We summarize here the most common problems that NGOs can expect to encounter in the two levels of forced labor that we described above, that which may occur at the level of the factory and that tends to occur in the informal economy.

A. Formal economy

Monitors can especially expect to encounter aspects of forced labor that may not be immediately visible as forced labor: high recruitment fees, contractors who travel with (and may control) the employees, excessive loans, restrictions on movement at work or in dormitory life, families that have placed their children into debt bondage.

B. Informal economy

The ILO's focus on National Action Plans has helped reveal a number of patterns in forced labor in the informal economies of the world. First, what is called "informal" may very well be organized but in a shadow world of organized crime and hidden leadership. Such is especially the case in the sexual services industry, which preys on children and poor women. Other common trends are the employment of children, women and indigenous persons as bonded laborers and involuntary labor extracted from migrant workers employed in agriculture.

Sadly, the most powerful reason for NGOs to become involved in investigating and reporting forced labor is that...no one else is doing it.

Selected References

American Association for the Advancement of Science

<http://www.aaas.org>

Anti-Slavery International.

<http://www.antislavery.org/>

Asia Monitor Resource Centre (AMRC).

<http://www.amrc.org.hk/>

Business & Human Rights Resource Centre.

<http://www.business-humanrights.org/Home>

Campaign for Labor Rights.

<http://www.campaignforlaborrights.org/>

Child Labor Coalition.

<http://www.stopchildlabor.org>

Child Workers in Asia.

<http://www.cwa.tnet.co.th/>

Clean Clothes Campaign.

<http://www.cleanclothes.org>

Clean Clothes Campaign. Sialkot, Pakistan: The Football Industry From Child Labour to Workers' Rights.

http://www.cleanclothes.org/publications/child_labour.htm

Concerned for Working Children.

<http://www.workingchild.org/>

Coverco. First Public Report: Independent Monitoring Pilot Project with Liz Claiborne, INC.

<http://www.cleanclothes.org/ftp/coverco.PDF>

Department of Labor. Chapter II: The Worst Forms of Child Labor.

http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/html/Advance%20Camp_II.htm

Department of Labor. 2003 Findings on the Worst Forms of Child Labor.

<http://www.dol.gov/ilab/media/reports/iclp/tda2003/overview.htm>

Ethical Trading Initiative.

<http://www.ethicaltrade.org>

Fair Labor Association.

<http://www.fairlabor.org/all/ngo/index.html>

Fair Labor Association. Measuring Living Wages.

<http://www.fairlabor.org/all/resources/livingwage.html#2>

Fédération Internationale de Football Association.

<http://www.fifa.com>

Global Alliance for Workers and Communities.

<http://www.theglobalalliance.org/>

Global Exchange.

<http://www.globalexchange.org>

Global Labour Institute.

<http://www.global-labour.org/>

Global March Against Child Labour.

<http://www.globalmarch.org>

Global Reporting Initiative.

<http://www.globalreporting.org>

Globalization And Labor Standards - GALS Bibliographic Library.

<http://www.laborstandards.org/>

Human Rights First.

<http://www.humanrightsfirst.org>.

Human Rights First. Yardstick for Workers' Rights: Learning from experience.

http://workersrights.lchr.org/yardsticks_report/wages.htm

HURIDOCS.

<http://www.huridocs.org>

International Centre for Trade Union Rights.

<http://www.ictur.labournet.org>

International Commission for Labour Rights.

<http://www.labourcommission.org/>

International Confederation of Free Trade Unions.

<http://www.icftu.org/>

International Labour Conference. Equality in Employment and Occupation: General Survey by the Committee of Experts on the Application of Conventions and Recommendations ILO, 23. 1988, Geneva.

International Labour Organization.

<http://www.ilo.org>

International Labour Organization. "The abolition of forced or compulsory labor." Fundamental Rights at Work and International Labour Standards, 2003.

International Labour Organization. Conditions of Work Digest.

<http://www.ilo.org/public/english/protection/condtrav/pdf/1995digest.pdf>

International Labour Organization. A Future Without Child Labour.

http://www.ilo.org/dyn/declaris/DECLARATIONWEB.GLOBALREPORTDETAILS?var_language=EN&var_PublicationsID=37&var_ReportType=Report#

International Labour Organization. Freedom of Association: A Worker's Manual. 1987, ILO, Geneva.

International Labour Organization. Listing of ILO databases.

<http://www.ilo.org/public/english/support/lib/dblist.htm>

International Labour Organization. Stopping Forced Labor. 2001, ILO. Reviewed at

<http://www.ilo.org/declaration>

International Labour Organization. Tripartite Meeting on Labour Practices in the Footwear, Leather, Textiles and Clothing Industries.

<http://www.ilo.org/public/english/dialogue/sector/techmeet/tmlfi00/>

International Labor Rights Fund (ILRF).

<http://www.laborrights.org/>

LaborNet.

<http://www.labornet.org/>

LabourStart.

<http://www.labourstart.org/>

Maquila Solidarity Network.

<http://www.maquilasolidarity.org/>

McChesney, Allan. Promoting and Defending Economic, Social and Cultural Rights: A Handbook. 2000, AAAS, Washington, DC.

Movimento dos Trabalhadores Rurais Sem Terra – Landless Workers Movement, Brazil.

<http://www.mstbrazil.org/>

National Academies of Science.

<http://www7.nationalacademies.org>

No Sweat.

<http://www.nosweat.org.uk/>

Rugmark.

<http://www.rugmark.org>

Social Accountability International.

<http://www.cepaa.org>

Society for the Promotion of Human Rights in Employment.

<http://www.sphre.org/>

Sweatshop Watch.

<http://www.sweatshopwatch.org>

Transnational Information Exchange Asia (TIE Asia).

<http://www.tieasia.org/>

United Nations Committee on Economic, Social, and Cultural Rights. *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights* (Basic Reference Document E/C.12/1991/1)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/903e9a1332660f74c12563ef004ea4b0?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/903e9a1332660f74c12563ef004ea4b0?Opendocument)

United Nations Committee on Economic, Social, and Cultural Rights. *NGO participation in the activities of the Committee on Economic Social Cultural Rights* (Document E/C12/2000/6)

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/79b3595b0ab945afc125693d0047a504/\\$FILE/G0043093.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/79b3595b0ab945afc125693d0047a504/$FILE/G0043093.pdf)

United Nations General Assembly. Committee on Economic, Social and Cultural Rights.

<http://www.unhcr.ch/html/menu6/fs16.htm>

United Nations Committee on Economic, Social, and Cultural Rights. *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights* (Basic Reference Document E/C.12/1991/1)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/903e9a1332660f74c12563ef004ea4b0?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/903e9a1332660f74c12563ef004ea4b0?Opendocument)

United Nations Committee on Economic, Social, and Cultural Rights. NGO participation in the activities of the Committee on Economic Social Cultural Rights (Document E/C12/2000/6)

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/79b3595b0ab945afc125693d0047a504/\\$FILE/G0043093.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/79b3595b0ab945afc125693d0047a504/$FILE/G0043093.pdf)

United Nations General Assembly. Convention on the Elimination of all Forms of Discrimination against Women.

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

United Nations General Assembly. Convention on the Rights of the Child.

<http://www.unhchr.ch/html/menu3/b/k2crc.htm>

United Nations General Assembly. International Covenant on Political and Civil Rights.

<http://www.hrweb.org/legal/cpr.html>

United Nations Procurement Service. United Nations Global Compact.

<http://www.un.org/Depts/ptd/global.htm>

United Nations Sub-Commission on the Promotion and Protection of Human Rights. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights.

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En?Opendocument)

Worker Rights Consortium.

<http://www.workersrights.org>

World Confederation of Labour.

<http://www.cmt-wcl.org/>

HURIDOCs

HUMAN RIGHTS INFORMATION AND DOCUMENTATION SYSTEMS, INTERNATIONAL



ADVANCING SCIENCE, SERVING SOCIETY