

Transnational Workers Rights

Emerging Strategies from
the Global North and South

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Preface

This report was commissioned by the Society for Labour and Development (based in India), the Project of Economic, Social and Cultural Rights (ProDESC, based in Mexico), and the National Guestworkers Alliance (based in the United States), three labor rights organizations that are developing transnational strategies for organizing workers in low-wage industries. Economic globalization has created new strains on labor forces and communities, and the increasing mobility of capital (and with it the threat of exit, disinvestment, and job loss) poses unique challenges to traditional models of labor organizing. The substantial power wielded by transnational corporations and their supplier firms must be met head on through transnational worker organizing that raises standards across supply chains and in workplaces throughout the Global North and South. The leverage transnational corporations exert over national development agendas, regulatory systems, and labor market institutions must be counteracted by collective strategies on the part of workers and their organizations to ensure that the global race to the bottom in wages and working conditions is reversed. Without such strategies, global inequalities will surely continue to widen.

This report identifies several key trends shaping the global economy, and highlights innovative strategies to build worker power, raise labor standards, reduce poverty, and increase the returns from trade for low-wage workers and their communities. The report has four chapters. The first examines three major trends shaping employer demand for labor—financialization, the globalization of production, and the informalization of employment—and how these have shaped emergent approaches to transnational worker organizing. Chapters two, three and four present case studies of transnational organizing: (a) the Asia Floor Wage campaign which seeks to establish a regional living wage in Asia's apparel industry; (b) ProDESC's approach to bi-national organizing focusing on the impacts of extractive industries in Mexico and temporary guestworker programs in the US; and (c) the National Guestworkers Alliance's efforts to organize workers along the retail supply chain, with a focus on an organizing campaign at Wal-Mart supplier, C. J.'s Seafood, in the US.

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GLOBALIZATION AND THE NEED FOR TRANSNATIONAL STRATEGIES TO PROTECT WORKERS RIGHTS

Nik Theodore

Each year, the International Labour Organization (ILO) publishes its Global Employment Trends Report, the 2014 edition of which makes for sobering reading.¹ According to the ILO:

- Nearly 202 million job seekers worldwide are unemployed, a figure that is expected to rise in the coming years.
- Spells of unemployment have lengthened, particularly in advanced economies, where they have doubled since the 2008 financial crisis.
- Reductions in working poverty—those workers earning less than \$2 per day—have slowed.
- Informality remains persistently high, slowing the further reduction of poverty.
- Wage gains have not kept pace with productivity increases, suggesting that the time-honored link between productivity and wages has been disrupted.

Like many other recent assessments of employment conditions worldwide, the Global Employment Trends Report frames its analysis with reference to the 2008 financial crisis and the protracted jobless recovery that has followed. Without question, the Great Recession delivered a heavy blow to the employment prospects of low-wage, underemployed, and unemployed workers throughout the world. It has contributed to wage stagnation and widening inequality, both within and between countries.² It has eroded the jobs bases of local economies. And it has plunged millions deeper into poverty. But, to focus on the Great Recession

as the source of the problems plaguing workers in the developed and developing economies is to place inordinate emphasis on cyclical swings in economic conditions, to the neglect of a set of profound secular changes that have been remaking employment relations the world over. As product markets, distribution systems, and consumer markets have become increasingly interconnected through vast networks that span continents and link far-flung locales within a given production system, competitive pressures have become more intense, and more unforgiving. Product cycles in many industries have shortened, leading firms to prioritize flexibility in response to rapid changes in prices and overall market volatility. Changes in corporate investment decisions can quickly lead to mass layoffs in one region, and employment growth in another. At the same time, the influence of financial markets has grown, and capital markets punish those firms that are deemed to be too slow to adapt.

The internationalization of production, and with it the reworking of global divisions of labor, has had important implications for how, where, and under what terms workers are employed. Firms increasingly pursue flexibility on their own terms, the search for low-cost (but reliable) labor supplies leading to the proliferation of distended production networks that connect advanced economies with emerging markets. In an effort to make their economies more attractive to mobile capital, many countries offer corporate subsidies and other inducements to lure foreign direct investment, including the weakening of labor and environmental regulations, and the creation of special economic zones that exempt employers from a range of tax and labor laws. Many have entered into free trade agreements as well, further enhancing the mobility of capital and deepening the integration of regional economies.

Global economic integration, and the intensifying capital and product flows this has enabled, calls into question the existing framework of labor protections, one that relies on the ability of national governments to regulate their domestic economies. However, in a globalizing world, many government officials are quick to assert, heightened capital mobility creates

Thanks to Anannya Bhattacharjee, Jamie Peck, Laine Romeo-Alston, and Valeria Scorza for comments on earlier versions of this paper.

¹ ILO (2014) *Global Employment Trends Report 2014: Risk of A Jobless Recovery?* Geneva: ILO.

² ILO (2010) *Global Wage Report 2010/11: Wage Policies in a Time of Crisis*. Geneva: ILO.

a regulatory dilemma. Governments must attract foreign investment to support business development, spur job creation, and alleviate poverty. But because corporate investors search for jurisdictions where labor and environmental regulations only minimally impinge on business operations, governments contend that they are constrained in their efforts to implement and enforce the types of protections that are needed to ensure that the gains from investment benefit the domestic labor force. It is argued that investors will shun jurisdictions that institute strong labor protections, leading to disinvestment and decline. That this is a flawed argument has done little to undermine its authority. Without effective labor protections, the gains from trade overwhelmingly benefit firms and investors, and domestic workforces remain mired in a low-level equilibrium where low wages leave workers unable to climb out of poverty (and thus unable to save or invest), limiting per capita national income growth and placing a drag on domestic economic performance. Nevertheless, the global race to the bottom that has resulted from the false choices it postulates has set in motion successive rounds of regulatory undercutting, leading to the degradation of work, an erosion of labor standards, and growing inequality.

In recent years, nongovernmental organizations have launched a series of innovative initiatives to strengthen labor protections. These initiatives have sought to fill the void created by inadequate government enforcement of labor standards, and they are signs that a new movement is forming to create transnational strategies that place a floor under wages and working conditions. The aim of this chapter is to sketch the contours of the changing global economy and to present a framework for envisioning a new transnational workers' rights agenda. The next section examines a set of macro-level processes that have been central to the restructuring of employment relations and it considers what these have meant for the location of production. This is followed by a discussion of factors that are shaping the global supply of workers. The concluding section outlines an agenda for strengthening labor protections and raising workplace standards.

Changing Landscapes of Production

“The global economic map is always in a state of ‘becoming,’” Peter Dicken has written, “it is always, in one sense, ‘new’. But it is never finished. Old geographies of production, distribution and consumption are continuously being disrupted and new geographies are continuously being created. Today’s global economic map ... is the outcome of a long period of evolution during which the structures and relationships of previous historic periods help to shape the structures and relationships...” in evidence today.³ This section considers how three interrelated processes—the financialization of capital, the globalization of production, and the informalization of employment—have combined to remake the employment landscape in developed and developing economies. As Dicken suggests, these processes of economic restructuring interact with existing institutional arrangements, established business practices, and extant patterns of uneven development, disrupting and remaking them, sometimes in unpredictable ways. More importantly, they have been key drivers of economic change, the benefits and costs of which have been highly selective and unevenly distributed.

The financialization of capital refers to “the increasing role of financial motives, financial markets, financial actors and financial institutions in the operation of domestic and international economies.”⁴ More specifically, it “involves the continuous evaluation and switching of capital through financial markets and the consequent exposure of [locales and sectors] to these assessments and, potentially very large, flows of capital.”⁵ Changes in corporate strategy, particularly the move away from the retention and reinvestment of profits to

³ Dicken, Peter (2011) *Global Shift: Mapping the Changing Contours of the World Economy*, sixth edition. New York: Guilford Press, p. 14.

⁴ Epstein, Gerald A. (2005) “Introduction: Financialization and the World Economy,” in Gerald A. Epstein, ed., *Financialization and the World Economy*, 2-16. Cheltenham: Edward Elgar.

⁵ Lee, Roger (2003) “The Marginalization of Everywhere? Emerging Geographies of Emerging Markets,” in Jamie Peck and Henry Wai-chung Yeung, eds., *Remaking the Global Economy*, 61-82, pp. 61-62. London: Sage.

support firm growth and towards achieving short-run returns on investment that allow the redistribution of profits to shareholders, have been accompanied by changes in corporate governance that privilege the maximization of shareholder value, tilting the balance of power away from managers and towards shareholders.⁶ Market valuations increasingly drive corporate decision-making, while the liquidity of finance has allowed firms to extend their reach geographically in their search for labor, production inputs, consumer markets, and new investment opportunities. Roger Lee has argued that the liquidity and influence of financial markets, in effect, leads to “the marginalization of everywhere,” as capital can be switched between investment opportunities arising virtually anywhere in the world via a widening array of financial instruments.⁷

Financialization and its effects have been far reaching. It has contributed to greater volatility within commodity markets, it has been associated with price instability (along with the creation of speculative bubbles that when burst can lead to the large-scale destruction of wealth), and it has led to the spread of systemic risk and uncertainty. Furthermore, because financial flows must eventually touch down in specific locations and in particular sectors, this process of fast-moving creative destruction is inextricably bound up with prevailing patterns of uneven development. This, in turn, has had ramifications for where production locates and where labor is employed. Financialization has been instrumental to the globalization of production, providing as it does both a means (liquidity) and a motive (maximizing shareholder value) for capital mobility.

Firms are increasingly reliant on inter-firm networks, or supply chains, to organize their activities, access markets, and meet their demands for labor. And in an era characterized by the deepening financialization of

capital, the vertical disintegration of production—the disassembling of stages of the production process and outsourcing these to separate companies—has been a key corporate strategy for maintaining profitability. Founded on the rationale of focusing on core competencies (the maxim that firms should only engage in those activities in which they have a comparative advantage), the vertical disintegration of production has facilitated the geographical dispersion of economic activity. This has led to an escalating search for “suitable” locations, fueling an outsourcing movement that has remade the global landscape of production, while recursively reinforcing the primacy of financialization. Global outsourcing has provided large corporations with a dual advantage: reductions in factor costs as vertically disintegrated activities are relocated to firms and locales where profits can be maximized, combined with a diminishing “need to reinvest profits at home, leaving a greater share of profits for distribution to shareholders.”⁸ Firms at the top of outsourcing chains, those that orchestrate the global production networks that increasingly have come to form the “infrastructure of international trade,”⁹ are able to “shop” among multiple supplier firms in various locations in an effort to maximize their returns. Supplier firms in the middle tiers of production networks too may wield substantial power over domestic labor forces, establishing employment norms and acting as labor-market gatekeepers that control entry into employment in traded sectors.

Financialization and the globalization of production via outsourcing have enabled firms to engage in global labor arbitrage. In addition to preferring locales where wage costs can be minimized and greater returns on capital can be secured, firms increasingly are seeking out countries where regulatory “burdens”—such as labor protections and environmental regulations—are lowest, further adding to their profitability. The greater the diversification of supplier relations and locations,

⁶ Milberg, William and Deborah Winkler (2013) *Outsourcing Economics: Global Value Chains in Capitalist Development*. Cambridge: Cambridge University Press.

⁷ Lee, Roger (2003), p. 62.

⁸ Milberg and Winkler (2013), p. 25.

⁹ Bair, Jennifer (2009) “Global Commodity Chains: Genealogy and Review,” in Jennifer Bair, ed., *Frontiers of Commodity Chain Research*. Stanford, CA: Stanford University Press, 1-34, p. 9.

the greater the scope for engaging in labor arbitrage. By invoking the competitive discipline of increasingly globalized production—the very real possibility that economic activity will be redistributed elsewhere within a production network—firms are able to exert leverage over suppliers and their workforces, while also issuing a powerful warning to countries that are reliant on foreign direct investment about the price to be paid for raising regulatory standards. The threat of exit, through downsizing and disinvestment, has served to dampen wage demands, undermine efforts to improve working conditions, limit recourse for environmental degradation, and otherwise constrain regulatory responses to corporate irresponsibility. These threats, whether explicit or implicit, affect both developed and developing economies, and they have contributed to the ongoing erosion of labor standards that has occurred throughout the world.

In its most pronounced form, the deterioration of labor standards and their enforcement leads to the informalization of employment, a process that has taken hold not only among microenterprises and the self-employed, but among workers in waged employment, including many whose activities are part of global production networks.¹⁰ Informality occurs when enterprises evade the state's regulatory gaze, leading to the erosion of labor standards. It also refers to employer strategies to casualize employment through the use of just-in-time employment relations (such as piece work, temporary staffing, and day labor), unsecured employment contracts, and other forms of precarious work. In short, it describes the conditions under which workers are employed, with specific reference to the nature of employment contracts and to the efficacy of enforcement regimes and their capacity to maintain standards.

The specific form that informalization takes varies from

region to region, and is dependent on the employment norms and regulations that are present in different domestic economies. Informalization is, after all, a process that reworks established conventions regarding employment tenure, work hours, pay scales, and labor protections. With that said, there has been a general tendency for employers to favor flexibility in hiring and to seek to render formerly fixed costs variable, and these motives in large part account for a rise in subcontracting, temping, and other just-in-time employment arrangements. The aim has been to more closely calibrate hiring with fluctuations in production cycles, to reduce employer costs for maintaining a stable workforce, and to shift risk from product markets into labor markets.

The vertical disintegration of production systems, and the corresponding resort to subcontracting, has expanded the number of firms that are now links in global supply chains. Moreover, because global production systems are marked by heightened levels of competition, both between firms and across countries (and their corresponding regulatory regimes), their operation is characterized by a distinct competitive dynamic: downward pressures on costs lead to a vicious cycle of regulatory undercutting and wage suppression. In its most exploitative form, these downward cost pressures encourage firms at the far end of global supply chains to locate in areas with weak regulatory enforcement; to consciously violate labor protections, including child labor laws and minimum wages; to avoid making investments that safeguard worker health and safety; to intensify production through speed-up, threats of unemployment, and the pervasive use of contingent employment; and to seek out vulnerable labor pools who can be compelled to work under such substandard conditions. Informalization is driven by, and contributes to, financialization since it is one of the principal means through which profits are generated, as production costs are minimized at the expense of labor standards. It also has come to characterize a low-road route to competitiveness within global production networks, as risk and uncertainty are outsourced through supply chains and across continents, the demands of corporate reinvestment within production systems are minimized,

¹⁰ Chen, Martha Alter (2005) *Rethinking the Informal Economy: Linkages with the Formal Economy and the Formal Regulatory Environment*. United Nations University, World Institute for Development Economics Research.

and profits circulate and are distributed through financial markets and instruments.

New Geographies of Opportunity

As the landscapes of production have changed through the tripartite processes of financialization, globalization, and informalization, they also have remade the complex geographies of opportunity that workers encounter. Two additional shifts on the supply-side of labor markets—the expansion of the global labor force and increases in international migration—have conferred additional benefits to firms. The first of these shifts has been what Richard Freeman has called “the great doubling”—an increase in the size of the global labor pool from approximately 1.46 billion workers to 2.93 billion workers.¹¹

Before the collapse of Soviet Communism, China’s movement toward market capitalism, and India’s decision to undertake market reforms and enter the global trading system, the global economy encompassed roughly half of the world’s population.... Workers in the United States and other higher-income countries and in market-oriented developing countries such as Mexico did not face competition from low-wage Chinese or Indian workers or from workers in the Soviet empire. Then, almost all at once in the 1990s, China, India, and the former Soviet bloc joined the global economy, and the entire world came together into a single economic world based on capitalism and markets.¹²

In the context of financialization and the vertical disintegration of production, the “great doubling” has had far-reaching effects on the location of economic activity, and on the terms and conditions under which workers labor. This expansion of global labor supplies has provided employers with unprecedented access

to workforces with varying skills, greatly broadening the scope for engaging in labor arbitrage and likely limiting the extent to which governments have been willing to strengthen labor protections. As mentioned above, there is a danger that countries that are reliant on foreign direct investment will be reluctant to unilaterally improve regulatory standards and enforcement for fear of dissuading foreign investment, and the expansion of the global labor market has reinforced such sentiments.

The second of these shifts concerns the uneven impacts of global economic integration and its implications for international migration. On the one hand, firms may indeed have unprecedented access to global labor supplies (as well as new consumer markets and sources for production inputs), but on the other hand the insertion of emerging economies into global circuits of investment and trade has been highly uneven. Orthodox studies of economic globalization posit that international trade and increasing global flows of the factors of production will lead to the convergence of prices cross countries. The same is said for wages. But as Freeman has noted, “Reductions in barriers to trade and liberalization of capital markets notwithstanding, wages in similar occupations vary more around the world than do prices of nominally similar bundles of goods and the cost of capital.”¹³ In other words, globalization has failed to drive a convergence in wages between countries or regions. The persistence of large wage differentials have been a spur to international migration, particularly among low-wage workers who stand to realize the greatest gains from migration, since “advanced country wages typically exceed those of developing countries by four to twelve times.”¹⁴

The International Organization for Migration (IOM) estimates that today approximately 214 million persons are international migrants, an increase of more than 40 percent since 2000.¹⁵ And although the

¹¹ Freeman, Richard B. (2008) “The New Global Labor Market,” *Focus* 26(1): 1-6.

¹² *Ibid.*, p. 1.

¹³ Freeman, Richard B. (2006) *People Flows in Globalization*. No. w12315. National Bureau of Economic Research, p. 10.

¹⁴ *Ibid.*, 16.

¹⁵ *International Organization for Migration (2010) World Migration Report 2010*. Geneva: International Organization for Migration.

impetuses for migration decisions are many, there is little doubt that wage differentials increase the allure of international migration, holding open the promise that labor migrants can significantly increase their earnings from employment abroad. Moreover, because wage differentials are greatest for low-skilled workers, there is also little doubt that this is one of the leading reasons why migration is predominantly undertaken by individuals with lower skill levels. Douglas Massey and colleagues have summarized the link between migration and uneven development, noting “most immigrants today come from countries characterized by a limited supply of capital, low rates of job creation, and abundant reserves of labor.”¹⁶ And as Milberg and Winkler have argued, despite the explicitly expansive reach of the term globalization, “much of the world has been left out of the process, with parts of South Asia, South America, and Africa destitute, with little prospect for sustained economic growth and development in the foreseeable future.”¹⁷ It is not surprising, therefore, that the IOM reports that migratory flows now principally originate in the Global South, with migrants born in developing countries accounting for between 69 and 84 percent of total international migration.¹⁸

The typical response to these developments by the governments of destination countries has been to impose restrictions on migration, targeting low-skilled workers in particular, thereby raising the costs and risks associated with crossing international borders¹⁹ and creating new sources of social stigma for workers who migrate without authorization. These, in turn, have combined to contribute to downward pressures on wages and working conditions in countries with large numbers of migrants, since undocumented migrants enter labor

markets where their ability to exercise their rights is sharply circumscribed and where their occupational mobility is constrained. Faced with the need to defray the costs of migration, while at the same time eluding immigration enforcement authorities, undocumented immigrants have tended to enter low-wage industries where employers have been emboldened to flagrantly violate basic labor standards, including wage laws, health and safety regulations, and other worker protections.

Towards an Agenda for Transnational Labor Protections

Writing in his 2002 Letter to Stakeholders, General Electric CEO Jeffery Immelt succinctly summarized the allure that global economic integration holds for corporate elites intent on maximizing returns on investment over both the short and long run: “The most successful China strategy is to capitalize on its market growth while exporting its deflationary power.”²⁰ This short statement encapsulates the motives and aspirations that are driving the tripartite processes of the financialization of capital, the globalization of production, and the informalization of employment. Global economic integration has indeed expanded access to new and emerging markets, and the increasing ability of firms to enter into relationships with suppliers operating in these markets has contributed to downward pressures on prices—and on wages and working conditions. At the same time, new vistas into consumer markets have opened, offering avenues to tap consumer spending in countries previously excluded from global mass consumption. And finally, in an increasingly integrated world, countries where low wages are prevalent and labor rights are widely disregarded can be standard setters in their own right. They offer mobile capital an escape route when labor unrest erupts or when regulatory measures increase the costs of doing business or when competition within supplier networks needs to be intensified. In terms of global regulatory standards, they also send market signals of their own,

¹⁶ Massey, Douglas S., Joaquin Arango, Graeme Hugo, Ali Kouaouci, and Adela Pellegrino (1999) *Worlds in Motion: Understanding International Migration at the End of the Millennium: Understanding International Migration at the End of the Millennium*. Oxford University Press, p. 6.

¹⁷ Milberg and Winkler (2013), p. 14.

¹⁸ International Organization for Migration (2013) *World Migration Report 2013 – Migrant Well-Being and Development*. Geneva: International Organization for Migration.

¹⁹ Ruhs, Martin (2013) *The Price of Rights: Regulating International Labor Migration*. Princeton, NJ: Princeton University Press.

²⁰ Accessed at: <http://www.ge.com/ar2002/editorial/ltr.jsp>

so to speak, to other countries that are considering ways to strengthen labor protections. The source of the “deflationary power” Immelt eagerly sought to “export” is, in fact, the low wages and substandard working conditions of workers in the Global South, the presence of which has served to restrain wage demands in both developed and developing economies.

The problems facing workers in this era of globalization defy simple solutions. The structural shifts within the economy discussed in this chapter—financialization, the globalization of production, and informalization—have fundamentally altered workers’ bargaining position, and they have undermined the ability of national governments to effectively enforce worker protections. New sources of leverage will need to be created if workers are to realize greater economic gains from globalization.

In this time of global economic uncertainty, the organizing and advocacy efforts of workers-rights organizations represent one of the primary defenses against the downloading of the costs and risks inherent in a volatile economy onto labor markets, and they are an important means through which the problem of growing inequality will be redressed. Transnational strategies are central to these efforts, since they attend to two key dimensions of the current global order—the increasing interconnectedness of regional product and consumer markets, combined with the growing interpenetration of labor markets by globalizing production networks. In this context, advocacy to improve labor standards in a given country is necessary but insufficient. Transnational strategies to create new labor market institutions and norms, and to develop regional approaches to raising labor standards, are urgently needed. Crucially, to ensure that responses address changing realities in countries of the Global South, strategies should be developed by, or at least in close collaboration with, organizations in the Global South.

Devising new sources of leverage will require experimentation, and the list of possible strategies is a long one. This concluding section identifies a few

emerging approaches that are being developed by workers rights organizations, labor unions and advocacy organizations.

1. Setting regional labor standards. Globalizing production networks extend across jurisdictions, linking countries and spanning regions. The geographical extent of these networks, and with it the ability of lead firms to shift production from country to country, challenges the traditional structure of national employment and labor laws. Reducing the threat of exit that is implicit in global value chains, as well as narrowing the scope for practicing global labor arbitrage, requires regional approaches to setting labor standards. The Asia Floor Wage, which targets the enormously profitable apparel industry, is an example of such an approach.²¹ It requires that an Asia-wide regional living wage be applied and enforced throughout the supplier networks of multinational brands. The precise living wage rates in a given country account for national differences in purchasing power for a basket of goods including food as well as non-food items, such as housing, clothing, healthcare, childcare, education, fuel, transportation, and savings. As a policy intervention aimed at reducing poverty by raising wages and strengthening labor protections, the Asia Floor Wage is unique in its emphasis on leveling the playing field in a major apparel-producing region. It does not rely on the governments of newly industrializing countries to operate in a way that is out of step with other economies in the region, nor does it rely on corporate self-governance, which has proven difficult to maintain in an industry characterized by decentralized production. Instead, it proposes to shift the paradigm of labor standards enforcement by instituting a regional policy that is sensitive to conditions within apparel-producing countries

²¹ Merk, Jeroen (2009) *Stitching a Decent Wage Across Borders: The Asia Floor Wage Campaign*. Asia Floor Wage Alliance; Bhattacharjee, Anannya, Sarita Gupta, and Stephanie Luce (2009) “Raising the Floor: The Movement for a Living Wage in Asia,” *New Labor Forum* 18(3): 72-81.

while also setting a floor under wages, thereby limiting the downward drag on working standards that is produced by global labor arbitrage.

2. Developing community-based interventions. The voice and active participation of workers and communities in the Global South is essential for creating regulatory and policy changes that safeguard employment and living standards, as well for guaranteeing that reforms are actually implemented and monitored. The Project of Economic, Social and Cultural Rights (ProDESC), a Mexico-based human rights organization, has crafted a holistic strategy that utilizes a community-based approach involving community and worker organizing, legal action, policy advocacy, participation in national and international forums, as well as other efforts to ensure a participatory, inclusive, and effective defense of human rights. In its campaigns, ProDESC prioritizes collective action and democratic decision-making, guided by a gender-equality perspective. It works with those directly affected by corporate actions to link the human and labor rights violations they face in workplaces and communities to broader domestic and international developments, such as the impacts of changing corporate and government investment decisions on industries and communities; the problem of corporate capture of government regulatory agencies and its impact on employment, job quality, and living standards; and the disruptions associated with the increased mobility of capital. In this way, ProDESC supports the creation of long-term strategies to engage companies and governments to protect worker and community rights. By building upon an innovative model of community organizing that puts communities' and workers' self-empowerment at the center of its legal and advocacy work, ProDESC has consistently challenged a long-established pattern of North-to-South solidarity that assigned a more passive role to communities in the Global South while keeping most decisionmaking about resource allocation and identification of targets in the hands of professional staff in the global North. Moreover,

ProDESC's strategic litigation in Mexican courts debunks the myth that transnational justice is only achievable in the United States or in other Global North legal systems, or that transnational justice consists only of litigation in international regional courts. ProDESC's model shows that the use of international human rights standards in national litigation strategies, and in community and worker organizing, is an effective approach for people affected by the overexploitation of natural resources and workers in the Global South.

3. Labor contracting. A variety of labor contractors—recruitment firms, temporary staffing agencies, labor brokers, and other intermediaries—are involved in the recruitment, hiring and placement of workers with employers in a range of service, manufacturing, agricultural, and construction industries. These intermediaries can be directly involved in setting labor market norms (particularly those governing pay and conditions) and structuring employment pathways into industries and occupations.²² Workers may be employed under a variety of employment arrangements, including as guestworkers, temp workers, contracted labor (as in agricultural production), pieceworkers, direct hire employees, on-call workers, and so forth. Labor contracting can have significant implications for the enforcement of labor standards. It may (a) obscure employment relationships and reduce accountability by creating uncertainty over the entity that is the employer of record under national labor laws; (b) allow worksite employers to establish an arm's-length relationship with their employees, thereby facilitating the misclassification of employees and reducing workers' recourse against employers that violate labor standards; and (c) complicate government enforcement of labor standards, especially when "fly by night" contractors shutter

²² Fudge, Judy and Kendra Strauss, eds. (2013) *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work*, New York and London: Routledge; Peck, Jamie and Nik Theodore (2001) "Contingent Chicago: Restructuring the Spaces of Temporary Labor," *International Journal of Urban and Regional Research* 25(3): 471-496.

and then re-open operations when enforcement investigations reveal workplace violations.

4. **Supply-chain organizing.** It is generally understood that firms in the upper tiers of global supply chains are able to monitor their suppliers and exert pressure on those that are violating labor standards. It is also understood that lead firms benefit from the unscrupulous practices of suppliers, practices that hold down labor costs, accelerate the time from the point of production to the marketplace, and provide production flexibilities that allow lead firms to rapidly change product and fluctuate order volumes. In the unequal relationship between lead firms and suppliers, the former outsources risks to the latter, which in turn negatively impacts labor conditions further down the supply chain. Supply-chain organizing seeks to increase the transparency of contracting and labor practices across production networks, to make employment relationships explicit and subject to enforcement oversight, and to hold lead firms responsible for the practices of supplier firms that violate labor standards, often by extending contractual obligations to supplier firms. In addition to efforts to hold lead firms accountable for supplier practices, supply-chain organizing targets “downstream” links in production networks where worker organizing has been actively dissuaded, providing a means for collective bargaining and the redress of labor standards violations.
5. **Organizing informal economy workers.** Informality has re-emerged as a core feature of most economies in the Global South and many in the North as well. Working beyond the reach of government enforcement of labor standards, employed for meager wages, exposed to economic uncertainty and health risks, and rarely benefitting from pathways out of degraded sectors of the economy, the bargaining power of informal economy workers is weak. Worker centers, and in some countries labor unions, are organizing informal economy workers so that they can collectively bargain over wages and working conditions; seek redress for labor standards violations through courts and government enforcement agencies; advocate for employment-law reforms that extend basic protections to excluded workers; and exert greater control over their terms of employment.²³
6. **Extending labor rights to migrant workers.** Even in cases, as in the United States, where all workers, regardless of citizenship and immigration status, are covered by labor protections, the status of unauthorized migrants exposes them to heightened vulnerabilities, including employer reprisals when they assert these rights. Employers in many low-wage industries exploit undocumented migrants’ vulnerabilities, using their precarious status to pay below-market wages and to violate basic labor standards. In addition to compounding the hardships faced by workers, exploitation of migrant workers can have far-reaching impacts on competitive pressures in these industries. As greater numbers of employers pursue low-road employment practices, the competitive dynamics can shift, rewarding low-road firms with increasing profits and expanding market share while placing employers that “play by the rules” at a distinct competitive disadvantage. Extending labor rights to all workers, regardless of citizenship—in law and in practice—is a crucial step towards raising the floor on wages and working conditions in low-wage industries and reducing the scope of employer evasion of labor standards. Within Latin America, for example, labor rights increasingly are being framed in terms of human rights to underscore the universality of claims based on fundamental human needs.

²³ Kabeer, Naila, Ratna Sudarshan, and Kristy Milward, eds. (2013) *Organizing Women Workers in the Informal Economy: Beyond Weapons of the Weak*. London: Zed Books.

A REGIONAL STRATEGY TO RAISE LABOR STANDARDS: THE ASIA WAGE FLOOR CAMPAIGN

Nik Theodore

Labor Standards in the Global Apparel Industry

The apparel industry is, in many respects, the epitome of a globalizing sector. Apparel production systems are highly decentralized, both in terms of the number of firms involved and where they are located. They also are highly integrated, with commodity chains linking producers and consumers across continents. The globalization of apparel manufacturing has been driven by large retailers, principally those based in the US, Europe, and Japan. “The highly concentrated purchasing power of the large retail chains gives them enormous leverage over clothing manufacturers,” and they have used this leverage to drive down supplier costs in an effort to boost profits and increase returns to shareholders.²⁴

With its high labor intensity and low barriers to entry, the apparel industry has been eager to exploit the vast differentials that exist between countries in the labor costs of textile workers (Figure 1). Differentials between production sites in the Global North and Global South have been widening over the past two decades, and newly industrializing economies have emerged as the key sites of production in this restructuring industry.²⁵ Lured by the creation of special economic zones that lower the costs of doing business; the ready supplies of workers who are employed for a pittance, particularly those who comprise the growing ranks of home-based production in the most informalized segments of the industry; and the weak enforcement of labor protections, and the advantages this confers to businesses seeking to

boost profits, manufacturers have targeted Asia in their search for low-cost labor.²⁶ The locus of apparel industry production is now centered in the region, primarily in Bangladesh, Cambodia, China, India, Indonesia, and Sri Lanka.

In governing their distended supply chains, industry leaders have pursued a strategy of regionalization, leading to the rise of “triangle manufacturing” within Asia. Under this system, retailers place orders with lead suppliers, which in turn outsource some or all of this production to lower-tier contractors. “The triangle is completed when the finished goods are shipped directly to the overseas buyer. . . . Triangle manufacturing thus changes the status of . . . manufacturers [in newly industrializing countries] from established suppliers for US retailers and designers to ‘middlemen’ in buyer-driven commodity chains that can include as many as 50 to 60 exporting countries.”²⁷



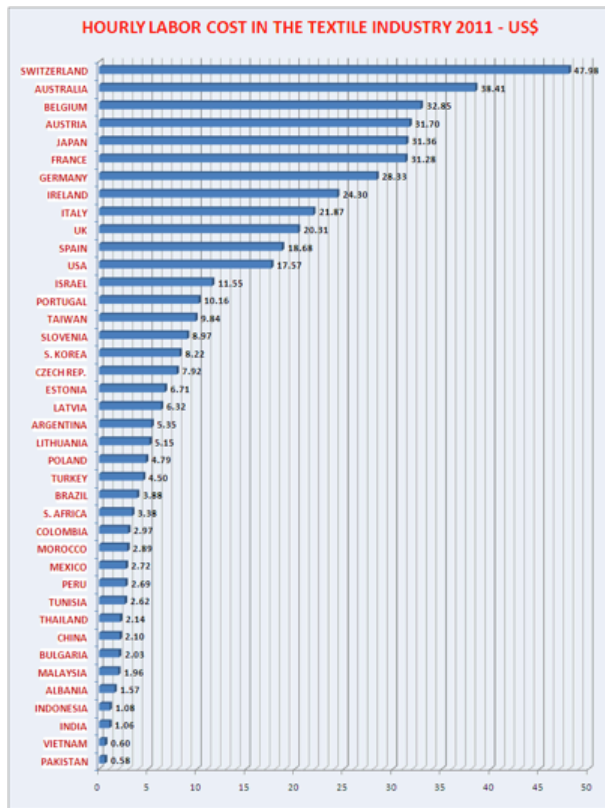
With global supply chains crisscrossing jurisdictional boundaries, and with international competition for inward investment mounting among the newly industrializing economies, the apparel industry has been able to reap enormous benefits by engaging in global labor arbitrage. Governments have been unable—or unwilling—to effectively monitor and enforce labor protections. This absence of effective mechanisms for protecting workers’ rights has led to an entirely predictable result: the widespread deterioration of labor standards.

²⁴ Dicken (2011), p. 315.

²⁵ Werner *International (2012) International Comparison of the Hourly Labor Costs in the Primary Textile Industry Winter 2011*. Herndon, VA: Werner International.

²⁶ Dicken (2011), chapter 10.

²⁷ Gereffi, Gary (1996) “Commodity Chains and Regional Divisions of Labor in East Asia,” *Journal of Asian Business* 12: 75-112, p. 97.



Strategies to raise wages and strengthen labor protections cannot proceed employer by employer, or even country by country for that matter. The globalization of apparel production systems exposes a flaw in the traditional paradigm for enforcing labor standards, one that relies on lower-income countries to police firm behavior and sanction violators. For newly industrializing countries that are reliant on foreign-direct investment, this approach carries with it clear risks of divestment. The threat of firm exit has dissuaded many government officials from fully enforcing employment laws, while heightened competitive pressures among lower-tier apparel suppliers mean that rising costs due to labor standards enforcement in one country might result in a shift in production to other countries where standards are less adequately enforced. The globalization of production also reveals a fundamental weakness in newer, firm-based models of standards enforcement that rely on employer goodwill and voluntaristic actions in the name of corporate social responsibility. The orientation of buyer firms towards their supply-chain networks is one that prioritizes cost minimization and flexibility enhancement, objectives that too often are at

odds with the enforcement of worker protections.²⁸ In addition, the multiplication of subcontracting tiers under triangle manufacturing means that it is increasingly difficult for buyer firms to adequately monitor—and sanction—subcontractors that violate labor standards. Firm-based enforcement is necessary, and its mechanisms certainly should be strengthened, but it also is inadequate to the task of ensuring subcontractor compliance with labor protections.

Rather than relying on the altruistic impulses of global corporations, “third generation” strategies are needed to safeguard labor standards and ensure corporate social responsibility by institutionalizing labor protections. This requires that standards be applied and enforced through supplier networks and across national borders. In other words, it requires a regional approach to standard setting, one that extends protections to workers while also leveling the playing field between countries. The Asia Floor Wage (AFW) campaign is a one such effort that could alter the prevailing paradigm of labor standards enforcement.



²⁸ See Christopherson, Susan and Nathan Lillie (2005) “Neither Global nor Standard: Corporate Strategies in the New Era of Labor Standards,” *Environment and Planning A* 37(11): 1919-1938; Compa, Lance and Tashia Hinchliffe-Darricarrere (1995) “Enforcing international labor rights through corporate codes of conduct.” *Columbia Journal of Transnational Law* 33: 663-689; Bhattacharjee, Anannya, Sarita Gupta, and Stephanie Luce (2009) “Raising the Floor: The Movement for a Living Wage in Asia,” *New Labor Forum* 18(3): 72-81; Luce, Stephanie (2009) *Raising Wages on a Regional Level: The Asia Floor Wage*, New Delhi: Asia Floor Wage Alliance.

The Asia Floor Wage

The Asia Floor Wage (AFW) seeks to establish “a new framework for the global economy: one that is based on labor rights and prioritizes the demand for a living wage.”²⁹ From the vantage point of global production networks, the regional characteristics of the labor market of a given industry in large part determine the cost structure of its products, with each producing country accounting for a share of average product costs. Within the apparel industry, when workers seek to unionize or otherwise assert their fundamental labor rights, employer threats of capital flight, or threats to reallocate production among establishments within a supply chain, are typically confined to Asia—in other words, they are not spread globally. In short, the geography of potential production relocation is primarily regional.

The AFW is founded on the recognition that Asia is home to large labor reserves as well as more than one third of the global working poor. Therefore, the large-scale relocation of labor-intensive apparel production away from Asia is highly improbable, at least until Asian labor supplies are exhausted. These factors suggest that the field of action for the defense of labor rights and protections should be the region—Asia.

Garment workers in Asia, the majority of whom are women, currently earn roughly half of what they require to meet the basic needs (such as for food, water, education and healthcare) of themselves and their families. The establishment and enforcement of a living wage standard has been a key demand among workers and labor activists. The demand has been presented to major apparel brands for years, with very little progress beyond rhetorical gestures of support. Trade unions and labor rights organizations across Asia, after years of experience negotiating with leaders in the apparel industry, joined to frame a demand that is both bargainable and deliverable, and that is appropriately targeted given the structure and economics of the industry.

The campaign’s objectives include (1) raising wages and strengthen labor protections by removing wage differentials as a key source of competition within the apparel industry; (2) strengthening workers’ ability to collectively bargain with their employer; and (3) increasing the gains from trade for workers and newly industrializing countries. The AFW does this by setting a wage that is higher than the poverty-level, national minimum wages in producing countries, and that brings workers within the parameters of a living wage.”³⁰

Setting the Asia Floor Wage

The AFW has been designed using a basic-needs approach to the setting of a living wage based on a basket of goods that includes food and other items.³¹ It accounts for national differences in food consumption by establishing a measure of nutritional adequacy based on calories, and it has adopted the Indonesian threshold of 3,000 calories as the benchmark standard. The AFW also takes into account a range of non-food costs, such as housing, clothing, healthcare (including maternity care), childcare, education, fuel, transportation, and savings, estimating the cost of these items as a percentage of spending on food items. The resulting wage level is then adjusted assuming a family size of two adults and two children. The AFW is thus set as follows:³²

- The cost of food is based on a standard caloric intake—3,000 calories per adult (and 1,500 per child).
- The ratio between the cost of food and of other basic needs is 1:1.
- Family-size adjustment (2 adults and 2 children) = 3 consumption units.
- A family is supported by one income, as this is a credible way to account for childcare.

³⁰ Ibid., p. 73.

³¹ This section is based on Merk, Jeroen (2009) *Stitching a Decent Wage Across Borders: The Asia Floor Wage Campaign*. Asia Floor Wage Alliance.

³² Ibid., pp. 50, 52.

²⁹ Bhattacharjee et al. (2009).

- The wage is earned during each country's legal maximum working week, though not above 48 hours.
- The wage is a basic wage excluding overtime and benefits.

The costs associated with food and other basic necessities are calculated in the local currency to establish a monthly minimum wage requirement for a given country. The concept of Purchasing Power Parity (PPP), the notion that a bundle of goods should cost the same between countries once the exchange rates have been taken into account, is then used to index costs to the US dollar, allowing comparisons to be made across countries. In 2013, the AFW was set at PPP\$725 per month.

The AFW campaign presented its demands through an International Public Launch in October 2009. The Asia Floor Wage Alliance (AFWA) wrote letters to almost 60 brands requesting meetings in order to present the AFW. From 2009 onwards, the AFWA has engaged in numerous debates and discussions with brands; and several meetings with the International Labor Organization and global labor federations. Over two years, the AFW achieved international credibility and legitimacy and began to be used as a benchmark by some Brands/MSIs and quasi-governmental agencies, and it became a key feature of the global living wage debate.

The AFW bargaining process targets the leading brands—who are, after all, the firms that govern the buyer-driven global subcontracting commodity chains that comprise the apparel industry's production networks and that establish the competitive terrain within the industry—in order to ensure decent wages for workers in the industry. Within the apparel industry, global buyers (both brands and major retailers) exercise maximum influence over the organization of production systems. They set prices and determine how and where production takes place. These practices decisively impact the ability and scope for suppliers to pay a living wage. Scholars have found that brands orchestrate inter-firm competition with supply chains, thereby forcing suppliers to provide goods at prices that are below actual

production costs, leading firms to recoup these costs by driving down workers' wages.³³ If brands and retailers' would share just a negligible fraction of their profits, millions of workers and families could be lifted out of poverty.

Central to the demands of the AFW is the need for concerted efforts by brands and retailers to address the issue of unfair pricing as an important first step towards the implementation of a living wage in the garment industry. Global sourcing companies pay approximately the same prices to their supplier factories in Asia: around 25% of the retail price. Garment workers' wages make up a very small proportion of the final retail price for clothes – around 1% to 2% – substantial wage rises could be achieved without increasing retail prices.

Since the Asia Floor Wage was unveiled on October 7, 2009, it has gained recognition as a credible benchmark for a living wage in the apparel industry. The AFW has become a point of reference for scholarly living-wage debates,³⁴ it has been adopted as a living wage benchmark by the multi-stake holder forum, the Fair Wear Foundation, and it is a point of reference for brand level associations such as the Fair Labor Association. In addition, the AFW has been adopted by a few brands as a comparative benchmark for wage analyses.

For its part, the Asia Floor Wage Alliance (AFWA) has developed the Asia Brand Bargaining Group (ABBG), consisting of Asian unions, to enable greater coordination and regional bargaining that complements national priorities and struggles. The ABBG has four common demands for the welfare of garment workers in Asia: a living wage, freedom of association, abolition/regulation of contract labor, and an end to gender-based discrimination. The AFWA has conducted four National People's Tribunals in India, Sri Lanka,

³³ Vaughan-Whitehead, Daniel (2010) *Fair Wages: Strengthening Corporate Social Responsibility*. Cheltenham and Northampton, MA: Edward Elgar.

³⁴ Anker, Richard (2011) *Estimating a Living Wage: A Methodological Review*. Geneva: International Labour Organization; Vaughan-Whitehead, Daniel (2010) *Fair Wages: Strengthening Corporate Social Responsibility*. Cheltenham, UK and Northampton, MA: Edward Elgar.

Indonesia and Cambodia on the issue of living wages and working conditions in the global garment industry supply chains, revealing shocking deficits in labor standards and dangerously low wages. For example, in Cambodia, the mass fainting of women workers in the workplace was clearly attributed to malnutrition and poverty wages. The juries in all four tribunals have unanimously recommended that living wages need to be paid immediately. In terms of its social impacts, the implementation of the AFW would help decrease the gender gap in pay by raising the wages of lowest paid workers in the apparel industry. Worldwide, women are the vast majority of garment workers, and they face systemic obstacles to their upward mobility in the sector.



A Regional Approach to Labor Standards

As a policy intervention aimed at reducing poverty by raising wages and strengthening labor protections, the Asia Floor Wage is unique in its emphasis on leveling the playing fields in a major apparel-producing region. It does not rely on the governments of newly industrializing countries to operate in a way that is out of step with other economies in the region, and it does not rely on corporate self-governance, which has proven difficult to maintain in an industry characterized by the dramatic decentralization of production. Instead, it proposes to shift the paradigm of labor standards enforcement by instituting a regional policy that is sensitive to conditions within countries while also setting a floor under wages thereby limited the downward drag on working standards that is produced by labor arbitrage.

Crucially, this is an intervention that appears to be viable in terms of garment prices and the dynamics of competitions within the industry. Pollin, Burns and Heintz have suggested that even substantial increases in the wages of workers engaged in apparel production would result in minor increases in the price of final products, perhaps as little as 1 to 3 percent.³⁵ Furthermore, as Weller and Zucconi have argued, enforcement of labor standards can create a virtuous circle of economic development: rising wages allow low-paid workers to increase their consumption, thereby stimulating domestic demand which in turn creates jobs locally.³⁶ As the cycle repeats, the local economy grows. In short, increasing the wages for garment workers is a strategy to reduce poverty; redistribute a greater share of the gains from global production to workers in lower-income countries while stimulating local economic development; and institute a more sustainable wage floor while reinforcing the importance of labor protections.³⁷ Moreover, there is a possibility that such a strategy could be “scaled up” to include other major garment-producing regions, such as Africa, the Caribbean, Central America and Eastern Europe, thereby further taking the wages of the lowest paid workers in the apparel industry out of competition, and urging producers in the industry to make in situ investments that improve worker health and safety as well as productivity. It can also be replicated in other industries that depend on global supply chains, for example food production.



³⁵ Pollin, Robert, Justine Burns, and James Heintz (2004) “Global Apparel Production and Sweatshop Labour: Can Raising Retail Prices Finance Living Wages?” *Cambridge Journal of Economics* 28(2): 153-171.

³⁶ Weller, Christian E. and Stephen Zucconi (2008) *Labor Rights can be Good Trade Policy: An Analysis of U.S. Trade with Less Industrialized Economies with Weak or Strong Labor Rights*. Washington, DC: Center for American Progress.

³⁷ Merk (2009).

BUILDING LOCAL POWER FOR TRANSNATIONAL JUSTICE: PRODESC'S APPROACH

J. Alberto Fernández

The global economy has undergone dramatic changes in recent decades, some of which have undermined the regulatory frameworks of nation-states and their ability to enforce their own labor protections. In North America, a more integrated economy has contributed to the fragmentation of the labor force and the disempowerment of workers, both in the workplace and the political arenas of the three countries. The same global trends that attract international companies to set up mining operations in rural Mexico, for example, also push Mexicans in those very communities to migrate to the United States as part of a mobile labor force. Policymakers and corporate actors have wasted no time advocating for international trade agreements that facilitate capital's movement across international borders, as well as international movements of the labor force such as temporary worker programs. Although many countries acknowledge human rights or include democratic clauses within international trade agreements, the development of a transnational framework for the protection of workers and communities has proceeded at an extremely low pace.

ProDESC (the Project of Economic, Social and Cultural Rights, by its Spanish initials) works with communities affected by the development of extractive industries and energy operations in their lands, as well as with workers employed in the US seafood industry through temporary work visas. Its work has highlighted the many ways in which international trade agreements have negatively affected workers across borders, as well as how the absence of effective transnational regulatory frameworks and mechanisms to protect the rights of workers and communities in the global South has diminished the economic gains that could potentially arise from trade. This case study reveals how ProDESC's community-based model for the defense of economic, social and cultural rights can form the basis for an effective, new understanding of transnational justice, one that transcends the North-to-South solidarity paradigm.

The False Promise of Corporate-led Globalization

The control of global supply chains by transnational corporations (TNCs) has resulted in increased pressures on local/domestic producers to minimize costs, increase production, and deliver more standardized products. This, in turn, has resulted in increasing levels of exploitation in the workplace. Within the US and Canada, the growing control of TNCs over the means and methods of production has driven employers to seek the "most subservient" workforces, often by increasing their dependence on foreign workers. TNCs have nurtured this foreign-worker preference by using their formidable political sway to design and promote temporary worker programs to source an exploitable workforce for their producers and suppliers.³⁸

Since the early 1980s, the Mexican government has promoted a development vision based on the idea that increased foreign direct investment would provide quality jobs, protections for workers, and development alternatives for communities. This is the underlying promise behind the promotion of international free trade agreements such as the North American Free Trade Agreement (NAFTA). But the intended results have failed to materialize: job growth has been volatile and poverty rates have remained persistently high. The latest Public Citizen Global Trade Watch report, *Nafta at 20*, reveals that "real wages in Mexico have fallen significantly below pre-NAFTA levels as price increases for basic consumer goods have exceeded wage increases. Despite promises that NAFTA would benefit Mexican consumers by granting access to cheaper imported products, the cost of basic consumer goods in Mexico has risen to seven times the pre-NAFTA

³⁸ Lourdes Gouveia and Arunas Juska (2002), "Taming Nature, Taming Workers: Constructing the Separation Between Meat Consumption and Meat Production in the U.S.," *Sociologia Ruralis* 42(4): 370-390; Aziz Choudry (2008) "Free Trade, Neoliberal Immigration and The Globalization of Guestworker Programs," Speech to International Migrant Allies

Founding Assembly, available at: <http://www.scoop.co.nz/stories/HL0806/S00213.htm>.



level, while the minimum wage stands at only four times the pre-NAFTA level. As a result, a minimum wage earner in Mexico today can buy 38 percent fewer consumer goods as on the day that NAFTA took effect.³⁹ In addition, over the past two decades there has been a shift away from formal, wage- and benefit-earning employment towards informal, non-wage- and benefit-earning employment under NAFTA, while those formal jobs that remain often carry fewer benefits than they did prior to the treaty's passage. Maquiladora employment, where wages are almost 40 percent lower than those paid in non-maquila manufacturing, surged

³⁹ Public Citizen Global Trade Watch (2014), *NAFTA at 20*, available at: <https://www.citizen.org/documents/NAFTA-at-20.pdf>.

in NAFTA's first six years.⁴⁰ Finally, in many cases, TNCs have violated Mexican labor laws and colluded with authorities to suppress human rights.

Unemployment, development instability, and violence within Mexico have exacerbated United States-bound migration. Thousands of Mexicans cross the country's northern border every day in search of better economic opportunities. Recruitment of workers, documented and undocumented, often results in conditions equivalent to human trafficking. Employers in the United States who wish to recruit temporary migrant workers abroad rely on private recruitment companies to find eligible workers. Workers are often forced to sign employment contracts in English, which they rarely understand. Recruiters then threaten to blacklist workers who complain of the recruitment tactics or file lawsuits against employers in the United States.⁴¹

The situation facing women is especially grim. In Mexico, as in many parts of the world, women are disproportionately represented in the informal sector, which is generally precarious, underpaid, and lacking in legal protections and social security. Additionally, occupational segregation and the gender gap in wages have been enduring problems. As a result, many women are compelled to migrate. Women now constitute 44% of the 9.9 million Mexican citizens who reside in the U.S., and in 2010 they contributed 60% of the remittances received in Mexico. As migrants, women and girls are especially vulnerable to human trafficking and sexual exploitation.

⁴⁰ Carlos Salas (2006) "Between Unemployment and Insecurity in Mexico: NAFTA Enters Its Second Decade," in Robert. E. Scott, Carlos Salas, and Bruce Campbell, eds., "Revisiting NAFTA: Still Not Working for North America's Workers," Economic Policy Institute, Briefing Paper 173, available at:

<http://s2.epi.org/files/page/-/old/briefingpapers/173/bp173.pdf>

⁴¹ Southern Poverty Law Center (2007) *Close to Slavery: Guestworker Programs in the United States*, Montgomery, AL: Southern Poverty Law Center; see also Steven Greenhouse, "Low Pay and Broken Promises Greet Guest Workers," *New York Times* (February 28); Jennifer Ludden (2007) "Corruption Leads to Deep Debt for Guest Workers," *All Things Considered* (May 8).

The Darker Side of Globalization: Temporary Worker Programs and Transnational Non-compliance with Human and Labor Rights

The premise of corporate-led globalization is to secure a freer flow of capital and goods across national borders while putting in place a myriad of regulations governing the international movement of the labor force. Corporations operating in the global North greatly benefit from access to labor from the global South that meets specific skill requirements while keeping low wage expectations. The case of Mexican migrants in the U.S. employed through the H-2 visa program illustrates how international temporary migrant worker programs can be utilized to undermine basic rights and working conditions, while ensuring a continuous flow of labor to key economic sectors, including agriculture, manufacturing, and services.⁴²

In order to secure a steady supply of migrant workers to the U.S. industries, employers rely on recruitment agencies to find and enlist temporary migrant workers in their home countries.⁴³ Their recruiters often charge aspiring migrant workers exorbitant fees – sometimes thousands of dollars – for managing visa applications, travel, and logistics, which workers can often only cover by securing high-interest loans.⁴⁴ In addition, in-country recruiters contracted by employers may sub-contract recruitment responsibilities to local recruiters, who profit by demanding additional fees from the workers they recruit.⁴⁵ It is also not uncommon for in-country

recruiters to require that workers pay significant sums of money simply to be placed on a list of eligible workers – meaning that workers often go into debt without ever securing a visa or work placement abroad.⁴⁶ For all these reasons, workers who are successfully recruited have very strong incentives not to object to the exploitative conditions they encounter in their new places of work.⁴⁷

One consequence of such complex recruitment schemes is the ever-growing number of intermediaries between a temporary migrant worker and his/her actual employer, each of which seeks to profit from the guestworker's labor.⁴⁸ Because workers are heavily indebted to and dependent on the goodwill of many layers of recruiters, even before they receive their first paycheck, the already diminished bargaining power that this subcontracted labor has in contingent labor markets, devolves into a work relationship more akin to that between a patron and a client, rather than that of an employer and an employee.⁴⁹

The second reason why guestworkers are a particularly vulnerable workforce is the fact that, in many jurisdictions, including the United States, their legal status is contingent upon a relationship with a specific employer. Upon termination of this relationship, these workers become deportable, rendering them a literally “disposable” form of labor. What makes temporary migrant workers especially attractive to employers, therefore, is the fact that they can be “promptly and unceremoniously ‘repatriated’ and ‘replaced’” at their employer's discretion.⁵⁰ Temporary migrant workers thus lack “the most fundamental protection of a competitive

⁴² The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs while the H-2B program is designed to facilitate the hiring of foreign nationals fill temporary nonagricultural jobs.

⁴³ Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States 2013 Edition (2013)*, available at: <http://bit.ly/15QUBxe>; U.N. Expert Group Meeting on International Migration and Development, *Managing Labour Migration: Professionals, Guest Workers and Recruiters*, at 4, UN/POP/MIG/2005/01, (June 20, 2005) (by Philip Martin).

⁴⁴ Center for Immigrant Rights (2012), <http://www.uscis.gov/working-united-states/temporary-workers> Dickinson School of Law, *Leveling the Playing Field: Reforming the H-2b Program to Protect Temporary Migrant Workers and U.S. Workers*, available at <http://bit.ly/YgxPtn>.

⁴⁵ See e.g. SPLC, *supra* note 1, at 12.

⁴⁶ *Id.*; Center for Immigrant Rights, *supra* note 2, at 17.

⁴⁷ SPLC, *supra* note 1, at 11 (As noted in *Close to Slavery*, “[i]t is almost inconceivable that a worker would complain in any substantial way while a company agent holds the deed to the home where his wife and child reside”).

⁴⁸ Bridget Anderson and Ben Rogaly (2005) *Forced Labor and Migration to the UK*, available at:

<http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Forced%20Labour%20TUC%20Report.pdf>

⁴⁹ *Id.* at 29.

⁵⁰ Cindy Hahamovich (1999) “The Politics of Labor Scarcity: Expediency and the Birth of the Agricultural “Guestworkers” Program,” available at: <http://www.cis.org/AgriculturalGuestWorkersProgram-LaborScarcity>.

labor market – the ability to change jobs if they are mistreated.”⁵¹

Elements of ProDESC’s Community-based Transnational Justice Model

Since its inception, ProDESC has developed an innovative community-based transnational justice model to confront the steady decline in respect for economic, social, and cultural rights (ESCRs) throughout Mexico and beyond its borders. Unlike traditional human rights organizations, ProDESC focuses on building capacity for workers and communities to engage in legal and advocacy strategies targeting the political and corporate spheres in their region. ProDESC believes that the engine of any campaign seeking to improve and maintain the promotion of ESCRs must be organizing strategies that empower communities through a gender perspective.

ProDESC’s strategy utilizes a community-based approach based on organizing tactics, legal action, public policy advocacy, participation in national and international forums, and other collective efforts to ensure a participative and sustainable process of defense of ESCRs. In each campaign, ProDESC prioritizes collective action and democratic decision-making processes with a gender equality perspective. These are the fundamental tools to overcome the power imbalance between local communities and transnational companies in non-outsourcable industries such as mining, energy, and immigrant labor. The bulk of the organization’s work requires organizing and education, with a focus on human rights and gender equality, of both groups of workers and entire communities. ProDESC helps create mechanisms for democratic decision-making and unified action, and it works with workers and communities to link the human and labor rights violations that they face global and domestic investment policies, corporate capture of government regulatory agencies, and the increasing mobility of capital. In this way, ProDESC supports the creation of long-term strategies to engage

companies and governments in the defense of worker and community rights.

ProDESC’s transnational legal strategy involves taking actions traditionally associated with human rights organizations, such as advocacy work with the Special Procedures Branch of the Office of the High Commissioner for Human Rights and filing of lawsuits at the national level, as well as less conventional forms of action, such as attending and speaking at company shareholder meetings and filing complaints through non-judicial mechanisms in a company’s country of origin. ProDESC’s policy work involves the identification of legislation or policies that adversely affect workers and communities, advocating for making these instruments human rights-friendly, and working with other human rights organizations and authorities with the aim of implementing policies that comply with international human rights standards. ProDESC also develops media campaigns to raise awareness of human rights violations, and it regularly distributes press releases to national and international media. In addition, ProDESC has a growing presence in both conventional and social media. ProDESC wed the strategies of the labor and the human rights movements to provide an integrated defense, with a gender perspective, to communities and workers suffering from violations of ESCRs throughout Mexico.

Finally, ProDESC promotes and is an active participant in transnational collaborations with organizations from Canada, the United States and beyond to ensure that workers and communities are able to defend their human rights vis-à-vis transnational companies and governments in an increasingly interconnected world. Since 2007, ProDESC has been an active promoter of exchanges among advocates and organizers of migrant workers. This international work has also included carrying out international shareholder legal and advocacy campaigns to put pressure on TNCs. These campaigns are traditionally used by unions in the United States, but have not been widely used in labor and human rights struggles in Mexico. ProDESC argues that by engaging companies directly on the ground and in boardrooms, organized communities will be able to apply pressure on them to comply with their human rights obligations.

⁵¹ SPLC, *supra* note 1, at 1.

Organizations in the South, such as Mexico, work in a hostile environment where death threats, harassment, and other types of intimidation are common. For example, in the last year, ProDESC has been subject of a defamation campaign, which raises security concerns. Furthermore, as ProDESC has witnessed and experienced through its collaboration with Mexican labor rights organizations, retaliation can also take the form of violence. Migrant workers and sending communities struggling for corporate accountability face a bleak political landscape in Mexico and the countries where TNCs are based. Nonetheless, ProDESC believes that the lack of government leadership at the national level to ensure corporate accountability means that there is a need to advance corporate social responsibility at the local and state level. By partnering directly with workers and communities as agents of their own change, ProDESC is able to engage with other political partners who can support the strengthening of local labor authorities and, in turn, pressure companies to respect the rights of communities and workers.

Transnational Justice for Temporary Migrant Workers: Coalición de Trabajadores y Trabajadoras Sinaloenses

As explained above, the proliferation of subcontracted labor along global supply chains provides an opportunity for firms to cut costs without having to take responsibility for being directly involved in any unethical business practices. Additionally, as subcontracted labor has become ubiquitous, a worker's employment increasingly depends upon contracts over which workers have no direct negotiating power.⁵² The growing use of subcontracted labor has opened the door to transnational labor recruitment based entirely upon the short-term needs of employers, with workers being denied even the most basic employment

rights.⁵³ Employers evade liability for violations by shifting the blame to contractors, whose activities are often unregulated or covered by regulations that are not enforced.⁵⁴ This situation is magnified in the case of temporary migrant workers, whose employers can blame recruiters based abroad for a range of violations. Before temporary migrant workers are able to secure work placements abroad, they are commonly required to navigate a complex recruitment scheme that represents an additional hurdle in the already labyrinthine supply chains that predominate today's globalizing economy.⁵⁵

The H-2 visa program is monitored unilaterally by the US, without any participation by the Mexican government. Meanwhile, the Mexican government, until recently and after a protracted advocacy campaign propelled by ProDESC, had little involvement in minimizing the risk of labor violations faced by Mexican workers in the US. Furthermore, incipient regulations have been created in the United States and Mexico regarding this recruitment process and the nexus with employers in the United States, creating an ambiguous space where temporary migrant workers are extremely vulnerable due to inadequate protections. Some of the most frequent violations include recruitment fraud, a lack of workplace security, the use of blacklists against workers who demand their rights, and a lack of compensation for work-related accidents.⁵⁶

ProDESC has identified the protection gap that was leaving thousands of temporary migrant workers defenseless in the face of systematic human rights violations year after year. In 2007, ProDESC formulated an integrated strategy aimed at achieving transnational justice for temporary migrant workers. As part of this strategy, ProDESC has collaborated with workers from Sinaloa in northern Mexico, a large number of whom travel to the United States every year to work in the

⁵² Id., at 17.

⁵³ Bridget Anderson and Ben Rogaly (2005) COMPAS and Trades Union Congress, *Forced Labor and Migration to the UK*, available at: <http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/Forced%20Labour%20TUC%20Report.pdf>

⁵⁴ Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States 2013 Edition*, (Feb., 2013), available at <http://bit.ly/15QUBxe>.

⁵⁵ Id., at 18.

⁵⁶ Alejandra Ancheita (2013) *Quo Vadis? Recruitment and Contracting of Migrant Workers and their Access to Social Security*, Working Paper, INEDIM.

seafood industry, in order to document the human rights violations many of these workers suffer. The process of documentation has facilitated the identification and investigation of major players in the recruitment process. October 2013 marked the fourth meeting between ProDESC and workers in the city of Topolobampo. At that meeting, the Sinaloa Temporary Migrant Workers Coalition was formed by residents from the towns of Topolobampo, Leyva, Colorado and Los Mochis, who had a shared experience of being victims of fraud at the hands of recruiters who requested money in exchange for work visas. The workers believed that they had a greater chance of success if they demanded their rights as a coalition, rather than continuing to struggle individually. This is the first organization of its kind, and it is hoped that it will prove to be a model for transnational labor activism.

In addition to workers who have experienced fraud at the hands of recruiters, the Sinaloa Temporary Migrant Workers Coalition is also made up of those who seek to redress cases of workplace misconduct, both in Mexico and the United States. Although labor rights violations related to the recruitment and hiring process are the primary concerns facing the Coalition members, workplace accidents, health and safety at the workplace, sexual harassment, and blacklisting also remain major concerns. For example, members have reported being placed on blacklists by recruiters in Mexico after protesting poor working conditions in the United States, and these workers are no longer able to find work, either abroad or in Mexico.

Immediately after its creation, Sinaloa Temporary Migrant Workers Coalition formally requested that the Mexican Labor Ministry conduct an inspection regarding exploitative practices by a recruitment agency that illegally collected illegal but failed to connect applicants to the promised jobs in the United States. The resulting inspection detected 27 violations of the law regarding recruitment of temporary migrant workers. The recruiter received administrative penalties and a fine. This was the first time that the Mexican government has penalized an agency that recruits temporary workers for placement abroad. By utilizing such tools

ProDESC will be able to promote transnational justice within Mexico and create pressure in the United States to continue to strengthen protections for temporary migrant workers. ProDESC argues that the labor rights violations that are so common in temporary worker programs will not stop until workers on both sides of the border are able to negotiate with their employers in a more equitable fashion. For this reason, the transnational defense of worker rights is imperative.

Turning Challenges into Opportunities for Transnational Justice for Migrant Workers

By directly and continuously engaging Mexican, Canadian, and U.S. authorities ProDESC, along with their civil society partners, have shown that there are opportunities for reform. There have been promising signs suggesting that the Mexican government might have a renewed commitment to enforcing its own labor provisions regarding the recruitment of Mexican workers for temporary work abroad. Last year, Labor Ministry officials requested that ProDESC propose changes to the Recruitment Agency Regulation to include standards that would ensure more comprehensive protections for temporary migrant workers in the recruitment process. The new regulation was published in May 2014, and includes some of ProDESC's proposals.⁵⁷ Additionally, ProDESC, in collaboration with other Mexican organizations such as INEDIM, CDM, Jornaleros SAFE and Global Workers, is working with the Mexican Foreign Ministry and Labor Ministry in an outreach and information campaign for workers highlighting common misconduct in the recruitment process that constitute serious crimes. This campaign includes training staff at call centers providing advice to workers on the existing mechanisms to address violations of their rights.

In addition to these administrative programs, in the last year there have been several major legislative reforms, in particular a 2012 Mexican Constitutional reform

⁵⁷ Reglamento de Agencias de Colocación published on the Diario Oficial de la Federación, March 21, 2014.

that recognized the legal preeminence of human rights as protected by international treaties to which Mexico is a party, meaning that Mexican national and local courts must now conform their rulings to international human rights standards. Similarly, in the United States, regulatory changes by the U.S. Department of Labor have created important new policy tools for advocates.⁵⁸ But employers are fighting even these common-sense measures, and it remains to be seen how they can be implemented in a binational context in which violations occur on both sides of the border.

By their very nature, the myriad of abuses suffered by Mexican temporary migrant workers in the U.S. require legal and advocacy responses that go beyond the legal frameworks of the countries involved. In ProDESC's experience, government agencies do not take significant steps to enforce their own standards unless they understand the breadth of the problems faced by guestworkers in their constant struggle to find and retain dignified work. For these reasons, there is a need for transnational advocacy that increases the capacity of workers to defend and exercise their rights through community-based organizing. This goes well beyond policy changes; it requires the involvement of workers and the creation of new worker-led entities that will learn and be empowered to engage in the future changes to relevant US law and push for legal remedies in Mexico.

Building upon Mexican and international law, as well as on its own community-based and binational outreach, ProDESC has designed a transnational strategy to expose and confront recurring cases of violations of the rights of Mexican migrant workers in the United States, as well as Mexican communities affected by the operations of TNCs. The case the Sinaloa Temporary Migrant Workers Coalition provides a prime example of how these issues unfold on the ground.

⁵⁸ Julia Preston (2012) "Labor Dept. Issues New Rules for Guest Workers," *New York Times* (February 10), available at: <http://www.nytimes.com/2012/02/11/us/rules-revised-for-h-2b-guest-worker-program.html>.

Conclusion

ProDESC has developed a community-based, transnational justice model to address human rights violations faced by workers and communities in key sectors, such as the extractive, energy, and seafood industries. The goals of ProDESC's campaigns include the promotion of policy changes, development of domestic and international accountability mechanisms to prevent human rights violations, and the reduction of vulnerabilities of communities and workers. An important aspect of the temporary worker campaign is the focus on the labor supply chain as a whole, and on the responsibility of large retailers whose policies determine working conditions throughout the supply chain. In collaborating with the Ministry of Labor and Ministry of Foreign Affairs to design landmark policies for temporary worker programs in Mexico, ProDESC has helped develop concrete mechanisms for the defense of worker rights.

By building upon an innovative model of community organizing that puts communities and workers' self-empowerment at the center of its legal and advocacy work, ProDESC has consistently challenged a long-established paradigm of North-South solidarity that assigned a more passive role to local communities and kept most decision-making about resource allocation and identification of advocacy targets in the hands of professional staff in the global North. Moreover, ProDESC's strategic litigation in Mexican courts debunks the myth that transnational justice is only achievable in the United States or in other global North legal systems,⁵⁹ or that transnational justice consists

⁵⁹ Since the 1980s many victims of human rights violations perpetrated by corporations had sought justice outside their jurisdictions. US based organizations for example had used the Alien Tort Claim Act to present cases against corporations in US courts, example of this cases are: *Doe v. Unocal*, *Wiwa v. Shell*, *Kioble v. Royal Dutch Petroleum Co.* and *Manzanarez v. C&Y Sportswear, Nien Hsing Textile Co., Ltd. and Chentex Garments*. Although, these cases opened new legal ground, the US Supreme Court decision in *Kiobel* narrow its application. Moreover, in *Manzanarez* the district court judge dismissed the case, ruling that there were no labor rights recognized under international law. Global South organizations, including ProDESC, have been able to address corporate abuses in national courts, for example in *La Sierrita v. Excellon Resources, Comité de Resistencia Union Hidalgo v. Demex & Renovalia Energy* (both litigated by ProDESC), *Pascua Lama v. Barrick Gold*.

only of litigation in international courts. ProDESC's model shows that the use of international human rights standards in national litigation, and in community and worker organizing, is an effective tool for people in the global South affected by the overexploitation of natural resources and workers by TNCs.

From ProDESC's perspective, transnational collaborations have an important role to play in addressing the most severe impacts of the corporate-led global economy on workers' communities, but they must bolster workers' power at the community level, rather than a substitute for it. Only in this way can local communities and workers' organizations have their voices heard, and participate meaningfully in mechanisms that truly achieve transnational justice.



ORGANIZING DOMESTIC SUPPLY CHAINS: THE CAMPAIGN AT C.J.'S SEAFOOD

Nik Theodore

Holding Retailers and Suppliers Accountable for Labor Standards

Beginning in the 1980s, a series of changes swept through the retail sector in the United States and elsewhere, forever altering the relationship between retailers and their suppliers. “Big box” stores achieved market dominance, their large sales volumes enabling them to undercut competitors’ prices based on increasing economies of scale. Advances in communications technologies allowed order volumes to be more closely calibrated with consumer demand, and large retailers responded by requiring new forms of flexibility, responsiveness, and cost cutting from supplier firms. The advent of just-in-time production and logistics systems as an industry best practice meant that suppliers would have to adapt to the demanding uncertainties of fluctuating consumer markets or risk exclusion from retail supply chains. As retailers’ expectations of suppliers came to include not just the timely production and delivery of goods but also cost minimization and improved quality control, the relationships between retailers and firms in their expanding supply chains grew more complex and, paradoxically perhaps, more close. Large retailers became price-setters in a range of consumer-goods markets, a leadership position that was achieved through the market dominance of the largest retail firms and the influence they now exerted over their suppliers.

Walmart, the largest retailer in the world, provides an example of the changes that have been underway in the sector. Walmart maintains ties with approximately 60,000 supplier firms. The company’s “Plus One” initiative requires that each of these suppliers reduce product prices, increase quality or increase speed of delivery year after year. As the preeminent retailer in the market, Walmart is able to push such demands

through its subcontracting chain, thereby progressively narrowing the margins of its suppliers. Supplier firms have responded by outsourcing production activities, automating manufacturing processes, reducing labor costs by hiring contingent workers, and, in some cases, violating employment and labor laws as a means of maintaining competitiveness and profitability. A report by the National Employment Law Project succinctly summarizes the relationship between Walmart and other large retailers and the spread of substandard labor conditions in US firms: “Walmart’s policy of enforcing ever-lower prices implicates wages and working conditions throughout Walmart’s supply chain.... As Walmart and its big-box retail peers have grown, they have achieved a level of dominance that affects—indeed, sometimes dictates—their suppliers’ own pricing, profit margins, and operational decisions.”⁶⁰

The proliferation of subcontracting chains in retail and other sectors presents a challenge to workplace monitoring of labor standards, particularly in highly competitive industries with narrow operating margins, since it is here that incentives to violate workplace protections are greatest. Lead firms may indeed be dictating the pricing and operational decisions of their suppliers, yet they also strive to maintain the appearance of an arm’s-length relationship with these very same suppliers and the decisions they make. Increasingly, however, workers’ rights organizations are bringing pressure to bear on lead firms to use their market power and influence to raise employment standards within supply chains. Arguing that price-setting and other operational decisions within supply chains are driven first and foremost by the demands of lead firms, workers’ rights organizations are seeking to hold lead firms accountable for violations that occur within the production and logistics spheres controlled by these

Thanks to JJ Rosenbaum for supplying information on the C. J.’s Seafood campaign of the National Guestworkers Alliance.

⁶⁰ Cho, Eunice Hyunhye, Anastasia Christman, Maurice Emsellem, Catherine K. Ruckelshaus, and Rebecca Smith (2012) *Chain of Greed: How Wal-Mart’s Domestic Outsourcing Produces Everyday Low Wages and Poor Working Conditions for Warehouse Workers*. New York: National Employment Law Project.

firms. The C. J.'s Seafood campaign of the National Guestworkers Alliance (NGA), a US-based workers' rights organization, is an example of an emergent form of supply-chain organizing that seeks to leverage the influence of lead firms to improve working conditions within supplier facilities.

The C. J.'s Seafood Campaign

C. J.'s Seafood Inc. was a supplier to Walmart's Sam's Club division, providing the discount retailer with crawfish tails that had been cooked, peeled and frozen. C. J.'s Seafood sold approximately 85 percent of its production output to Walmart. Located in Breaux Bridge, Louisiana, a small city that bills itself as the "crayfish capitol of the world," C. J.'s Seafood employed between 50 and 60 workers, many of whom were migrants from northern Mexico. The workers were recruited through the H-2B visa program, a temporary worker program that allows companies in the US to hire foreign nationals to fill non-agricultural jobs. To be eligible for the program, employers must demonstrate that they face a labor shortage and are unable to hire a sufficient number of US workers to fill jobs, and that in hiring guestworkers they will not undercut the wages US workers in similar fields. In fiscal year 2014, the US government authorized the issuance of 66,000 H-2B visas.

C. J.'s Seafood had been meeting its demand for seasonal workers through H-2B program for many years, hiring guestworkers for periods ranging from a month or two to six months or more. Many workers would return year after year. The work was demanding and the pay was low, but at least employment was consistent and bearable, if only short term. Then a change in company management altered conditions on the shop floor. Workers reported being required to work shifts lasting 16 hours to as much as 24 hours straight, with no overtime pay; new surveillance equipment was installed to monitor not only the workplace but workers' residences as well; workers were frequently locked in the production facility; and threats of deportation became commonplace, as were threats of physical violence if workers did not comply with a supervisor's orders to work faster.⁶¹ Faced with untenable working conditions and growing uncertainty



about whether the company would continue to employ them, a group of workers approached management with a list of modest demands: provide workers an adequate lunch break, remove the supervisor who was threatening workers, and turn off some of the surveillance cameras. The owner refused to comply. Following subsequent threats of violence against workers' families in Mexico by company management, eight of the workers went on strike.⁶²

The strike at C. J.'s Seafood was notable for several reasons. First, guestworkers generally are reluctant to report workplace violations out of fear of employer retaliation. Loss of current employment, and with it the ability to legally reside and work in the US, as well as the risk of being blacklisted by future employers and labor recruiters, has a chilling effect on the willingness of guestworkers to come forward to contest labor-standards violations. Yet in this case that is exactly what some workers did, confronting company management directly, and when unsuccessful in effecting changes in the workplace, seeking the support of NGA and government authorities.

To stabilize the leadership committee of workers at C. J.'s Seafood, NGA successfully secured U visas for workers, a nonimmigrant visa for victims of certain

⁶¹ Eidelson, Josh (2013) "Guest Workers as Bellwether," *Dissent*, accessed at: <http://www.dissentmagazine.org/article/guest-workers-as-bellwether>.

⁶² Ibid.

crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. In advocating for the U visa, NGA successfully reframed old-style workplace coercion (threats of retaliation, physical violence, economic hardship) as management's efforts at obstruction of justice through worker intimidation.

Second, the campaign exposed flagrant violations of workplace laws within the Walmart supply chain. The National Guestworker Alliance filed complaints against C. J.'s Seafood with the US Department of Labor and the Equal Employment Opportunity Commission. The Alliance also notified Walmart of the charges, in part because Walmart's own contracting standards prohibit suppliers from using forced labor or requiring employees to work more than sixty hours in a week. Furthermore, an audit by NGA of US Walmart suppliers that employ guestworkers found that 12 of 18 had been cited by the US Department of Labor for violations related to workplace safety and health conditions or wage and hour practices, had been accused of discrimination and violations of the right to organize, or both.⁶³

Through NGA, the workers at C. J.'s Seafood launched a broad-based campaign built around worker organizing. In so doing, its activities reached far beyond this particular employer, targeting consumers and forcing Walmart to uphold its stated principles pertaining to corporate social responsibility. The campaign centered on Walmart and its position atop of a vast supplier network. Arguing (a) that the company wielded enough influence and authority to ensure labor-standards compliance among its suppliers and (b) that Walmart was profiting by awarding supply contracts stipulating operating margins so narrow that they essentially compelled suppliers to evade workplace protections as they strove to meet exacting price and delivery conditions, NGA sought to "move up the value chain" to

the business entity that was responsible for structuring competitive conditions for its suppliers. The strike by workers at C. J.'s Seafood, and a subsequent fast, was designed to raise public awareness of this problem. An online petition urging Wal-Mart to terminate its relations with the seafood supplier was launched, receiving 149,750 signatures. The National Guestworkers Alliance also enlisted the Worker Rights Consortium, a university-based monitoring group, to investigate allegations of workplace violations at C. J.'s Seafood.⁶⁴ Scott Nova, executive director of the Worker Rights Consortium summarized the findings of the investigation: "It's one of the worst workplaces we ever encountered anywhere. ... The extreme lengths of the shifts people were required to work, the employer's brazenness in violating wage laws, the extent of the psychological abuse the workers faced and the threats of violence against their families—that combination made it one of the most egregious workplaces we've examined, whether here or overseas."⁶⁵ Finding that the supplier had in fact violated a number of Walmart's own supplier standards, including wage requirements, the retailer suspended its contract with C. J.'s Seafood.⁶⁶

The US Department of Labor Department concluded its own investigation and ordered C. J.'s Seafood to pay \$214,000 for wage and hour violations, and it levied a \$34,000 fine for safety violations. The department also found that the company had violated laws on the use of temporary foreign workers under the H-2B program by misrepresenting its need for such workers, including the number needed, and by not paying them the required wage. Labor Department officials determined that the company owed \$76,608 in back pay to 73 workers

⁶³ National Guestworkers Alliance (n.d.) *Summary of Preliminary Audit of U.S. Walmart Suppliers that Employ Guestworkers*. New Orleans: National Guestworkers Alliance.

⁶⁴ Worker Rights Consortium (2012) Worker Rights Consortium Assessment C.J.'S Seafood/Wal-Mart Stores, Inc. (Breaux Bridge, LA) Findings and Recommendations. Washington, DC: Worker Rights Consortium.

⁶⁵ Quoted in Greenhouse, Steven (2012) "Wal-Mart suspends supplier of seafood," *New York Times*, June 29, accessed at: http://www.nytimes.com/2012/06/30/business/wal-mart-suspends-seafood-supplier-over-work-conditions.html?_r=0.

⁶⁶ Plume, Karl (2012) "Wal-Mart suspends Louisiana seafood supplier," *Chicago Tribune*, June 30, accessed at: http://articles.chicagotribune.com/2012-06-30/business/sns-rt-us-walmart-supplier-suspensionbre860004-20120630_1_wal-mart-stores-wal-mart-works-supplier-standards.



for paying less than the minimum wage, not paying overtime for working more than 40 hours a week, and illegally deducting wages for items required to do the job, including gloves, hairnets and aprons. The Labor Department also ordered that C. J.'s Seafood was liable for an additional \$70,014 in liquidated damages, \$32,120 in civil damages for overtime violations and \$35,000 for knowingly violating H-2B visa rules.⁶⁷

But the campaign did not end there. A fundamental imbalance of power remained between Walmart and the workers employed by the tens of thousands of suppliers that produce the goods sold by the retailer. Through NGA, workers at C. J.'s Seafood proposed that a forum be created so that workers could bargain directly with Walmart over the contractual terms governing suppliers. They also sought to join other workers in the Walmart supply chain to form a workers' committee that would monitor supplier practices and the contracting process under which they all were employed.

In addition to these proposals, the National Guestworkers Alliance sought to undermine a key source of employer

intimidation and retaliation through the adoption of an anti-forced labor accord. Arguing that workers employed at workplaces that violate employment standards in itself constitutes a prima facie case of forced labor, in large part because if the extent of worker coercion is so great that employees cannot bring those workplace practices to light (whether because of threats of deportation or other forms of extra-economic coercion, such as the use of law enforcement or immigration authorities to intimidate workers), workers' rights under the 13th Amendment of the US Constitution had been violated. Similar to a code of conduct, the anti-forced labor accord was modeled on the highly regarded Accord on Fire and Building Safety in Bangladesh that stipulates that wherever safety issues are identified, retailers will ensure that repairs are undertaken, that sufficient monies will be made available for the repairs, and that workers at affected factories will continue to be paid a salary during the time that repairs are being made. The anti-forced labor accord instructs suppliers to become signatories; it challenges temporary re-hire provisions (which are often used as a form of retaliation and workplace discipline); it contains anti-blacklisting provisions, including calling for the presumptive rehiring of workers for seasonal jobs through a private contract between retailers and NGA; and it puts in place dispute-resolution procedures through a board comprised of US worker and employer advocates.

⁶⁷ Greenhouse, Steven (2012) "C.J.'s Seafood fined for labor abuses," *New York Times*, July 24, accessed at: <http://www.nytimes.com/2012/07/25/business/cjs-seafood-fined-for-labor-abuses.html>.

