

PART 5**Appendices**

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APPENDIX A

Laws and the struggle for decent, healthy, and fair work



All people deserve to be treated fairly, in a way that protects and promotes their dignity and their physical, mental, and social well-being. These are basic human rights. To achieve them, people who work need a healthy and safe workplace, free of violence and discrimination, where they can form unions and negotiate as a group for fair conditions and a living wage.

The United Nations and the International Labour Organization are two of the largest global organizations that make recommendations on worker rights. Your government, and the other governments of the world that are part of the United Nations and the International Labour Organization, have signed treaties and agreements designed to protect workers.

International and national laws by themselves do not protect workers. Without responsible employers, ways to ensure laws are enforced, and organized workers and communities, laws are only promises on paper and nothing more.

Using the law to support your campaign

Workers gain the power to change their workplace when they know their rights and can organize to win them. Organizing requires ongoing discussion and problem-solving among workers, as well as bargaining with the employer.

Be familiar with your national labor law. Some countries have very specific labor laws created in response to worker organizing, while other countries have hardly any labor law. How your demands relate to the law can determine how, when, and about what you organize. When workers demand more than current labor law allows, it does not mean the demands are impossible to win, but that it will require more unity from the workers to win them.

So first learn about your labor law, and how it can help or harm you. Then talk with your co-workers and hold meetings to discuss everyone's concerns.

Unions are often the only type of worker group recognized in labor law. The law may set requirements on how unions are run (rules for elections, who can be members, and so forth) and may regulate how unions and employers relate with each other. Community and womens' groups are often easier to form and run. They can gain national and international recognition, especially if they are legally established as a non-governmental organization (NGO). Usually only a union can negotiate and enforce a collective bargaining agreement between workers and employers. But this does not prevent workers in a community organization from trying to negotiate with an employer over issues of mutual concern not covered in the workers' contract.

Discussing changes you want to see in the factory and agreeing upon demands require good organizing and fluid communication among workers. Regular meetings, open discussions, and making compromises with your co-workers are important. Two people who work in the same factory may want to address different concerns about working conditions, and both may be equally important. Patience and a commitment to unity are important characteristics for an organizer. See chapter 2: Learning and teaching about health at work.

And again, what the law says may be one thing and the enforcement of the law may be another. Despite the rights you may have on paper, the police or military may be used by the government and factory owners to prevent or break your organizing efforts. A hard lesson that many unions and organizers have learned is that the law is usually on the side of those with the most power.

The ILO can recommend changes to national labor laws, but achieving them is a long process. Organizing workers is the most fundamental condition in changing national labor law. Organizing makes your voices heard and demands that the employer, the brand, and the government protect the rights of workers and enforce good and just working conditions.

National labor laws

Every country has its own national labor law that regulates the relationship between workers, trade unions, employers, the government, and the international companies or “brands.” Worker health and safety might be part of the labor law or it might be part of the laws that regulate health.

To learn what the labor laws are in your country and how you can use them to fight for better conditions, ask a union, a law professor at a university, the labor department of your government, a lawyer at a legal aid organization or clinic, or the staff at a workers’ center. Do research on the Internet, too. Legal documents are often written in a way that is hard to understand, but you will likely find groups that have summarized and translated the law into words that are easier to understand.

Labors laws are sometimes written to protect workers and sometimes to protect business. Well-organized workers’ groups have been successful at influencing their governments to create or change laws to ensure workers are guaranteed safe and healthy work at a fair wage. It is just as likely, however, that what laws are passed and how they are enforced is heavily influenced by business interests. Having good laws on paper does not mean these laws are put into practice. That depends on how well you organize.

Bangladesh Labor Act

In many countries, workers must wait a long time for the government to legally define their rights. In Bangladesh, the first consolidated Labor Act was passed in 2006. While better than nothing, it did not sufficiently address many important issues, including insurance and compensation for injury or death, child labor, emergency exits in factories, and many others. Unions, worker organizations, employers, and legislators began meeting to expand and improve the Labor Act.

The Bangladesh Occupational Safety, Health, and Environment Foundation (OSHE) was one of the groups that lobbied the government and drafted suggestions for improved labor laws. In July 2013, a few months after the Rana Plaza factory collapse, the government came under enough international pressure to finally amend the existing labor law. OSHE printed copies of the law to help distribute it among workers and students. OSHE also produced a poster about health and safety committees required by the new law, and began a 10-part training program for workers. As in other countries, the Bangladesh labor law still requires improvement. It also needs to be better respected by factory owners and better enforced by the Ministry of Labor and Employment. But workers now have a legal way to fight for their rights.

International labor laws

The United Nations (UN) is an international institution made up of national governments. The UN is responsible for setting the standards regarding people's basic human rights, as reflected in the Universal Declaration of Human Rights. The UN has also proposed and approved many conventions that describe the rights people have won through organizing and struggle.

Two important UN documents that are particularly helpful when organizing around labor and work health issues are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, see page 11) has also been used by groups supporting migrant women workers and domestic workers.



Two UN covenants to inspire labor organizing

The **UN International Covenant on Economic, Social and Cultural Rights (ICESCR)**, especially articles 6, 7, 8, and 10, focuses on the right to work. People have the right to:

- earn a living from their work and get a fair wage.
- have working conditions that are safe, healthy, and dignified.
- be free from discrimination at work, including the right to equal pay for equal work.
- have paid holidays.
- organize and bargain collectively.

The **UN International Covenant on Civil and Political Rights (ICCPR)** makes the case that worker rights are human rights. The articles most relevant to workers affirm:

- the right to equality between men and women in the workplace.
- freedom from inhumane or degrading treatment or punishment.
- freedom of association.
- the right to peaceful assembly.

The UN's International Labour Organization

The International Labour Organization (ILO) is the part of the UN dedicated to workers' rights. It is an organization representing workers, employers, and governments that sets guidelines that every workplace, company, and country should implement and enforce to protect workers. ILO labor standards, conventions, and recommendations must be ratified and signed by each participating country. Not all countries ratify all conventions, and a country can choose which parts of each convention it will accept and which it rejects. See the Ratification by Country page on the ILO website (ilo.org) to learn which conventions your country has signed, and what "adaptations" they have made to the conventions. Once a country has signed a convention, its government is expected to make its labor law match or exceed the standards set by the ILO.

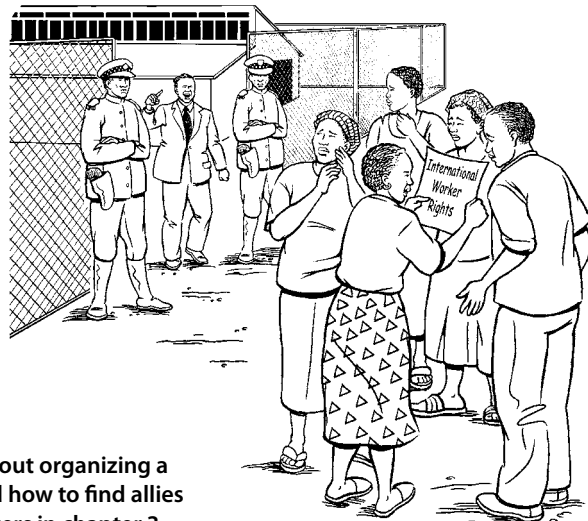
Unfortunately, the ILO has no means to enforce these labor standards. The only way to ensure that labor rights are enforced is for workers to organize and pressure their governments, the brands, and the employers to accept their responsibility to improve and enforce labor standards.

The "workers' rights" boxes included throughout this book highlight basic workers' rights as recognized by the ILO and UN. (They are listed by topic on page xi and by name on pages 457 to 458.) Use them to compare your current working conditions with international labor law. The ILO and UN conventions can be motivational tools for organizing and demanding changes in your workplace that international agreements and your government say you should have.



Some ways to use international labor law

- Educate workers about how their desires and demands for a healthy, safe, and fair workplace are supported by international law. People often feel more justified in organizing when they know this is true.
- Push local officials to enforce already existing labor law. If national laws are backed by international law, then workers have twice as much right to demand enforcement.
- Compare your national labor laws to international standards to show how they do not meet them and why it would be good if they did. Governments do not like to be embarrassed, especially in front of other governments.
- If your government has not signed international conventions on labor rights, organize with other labor and community groups to influence the government to do so. They might agree to sign a convention because it would make them look good. But you will probably have to organize further to get them to create systems to enforce these conventions.
- Convince your employer that complying with labor laws will make workers healthier, happier, and more productive. The international companies the factory sells to will value the good reputation they earn by following the laws, and their ability to meet production schedules because their workers are happier, more efficient, and less likely to strike or stop production.
- Let the international companies (“brands”) who purchase from your factory know when and in what ways their suppliers are breaking international laws. Brands often worry a lot about their image and reputation and do not want to jeopardize that. Also, they may be breaking laws in their home country if they ignore labor rights where their goods are made.



See more about organizing a campaign and how to find allies and supporters in chapter 3.

ILO Core Labor Standards

If your country does not have a labor law or the national labor law does not address your concerns, you can propose that the government use the ILO's Codes of Conduct as guidelines to create new labor law. The Codes of Conduct are based on the 4 Core Labor Standards (CLS):

1. The right to free association and collective bargaining
2. The elimination of forced labor
3. The abolition of child labor
4. The elimination of discrimination in the workplace

By themselves, the Core Labor Standards are not sufficient to protect workers. Other ILO Conventions (see pages 457 to 458) cover hours and wages, health and safety, working conditions, and dozens of other work-related situations.

The commitment to equal rights for men and women in economic, social, and political matters is also clearly stated in many ILO, UN, and other agreements. Governments are obligated to make sure women have the right to work in any profession and have the same rights at work as men. These rights include the right to receive equal pay for similar work, equal training and promotions, and freedom from discrimination as women or mothers.

How to influence the ILO

Each year, the ILO holds an International Labour Conference (ILC) where delegates from each member-country, as well as representatives from employer and worker groups, meet to discuss complaints, draft new conventions, and change existing conventions. If there is a convention you would like to add or change, you can submit a proposal to the ILC or the representative of the workers' group from your country for review. But be prepared: it can take many years, many lawyers, and a lot of financial resources for a proposal to become a Resolution or Convention. Because it is so expensive, difficult, and time-consuming, for the most part only global union federations take this on.

But change does happen. In 2011, the ILO adopted a new Domestic Workers Convention (No. 189) setting the first global standards for domestic work. This convention is providing workers support and leverage to push their national governments to adopt similar changes to national labor law in many countries, including the United States, the countries of the European Union, the Philippines, Haiti and elsewhere.

Filing a complaint

If your country has signed an ILO convention but does not make or enforce changes in national labor law, filing a complaint is one way to pressure the national government, the brand, and your employer to improve labor conditions. A workers' group can submit a complaint directly to the International Labor Conference to be reviewed by the ILO, or can reach out to delegates from the organizations of your country that attend the Conference and ask them to ensure your complaint is reviewed there.

The ILO's governing body will then decide whether to review your complaint. If it does, a Commission of Inquiry will be appointed to investigate the complaint in your country, review your labor law and its implementation, and inspect factory conditions. After the investigation, the ILO will write a report encouraging the national government to accept the ILO's recommendations, improve the law, and to enforce it.

Filing a complaint and receiving international support to enforce national labor law is useful, but the process of investigation and writing a report usually takes five to seven years. You may want to consider other ways of using international labor law to apply pressure for change that are more effective and time efficient. And if you do decide to file a complaint with the ILO, or another international governing body, such as the Inter-American Court of Human Rights, you will want to continue to push for enforcement of labor law and negotiate for better working conditions and rights by approaching your employer directly, appealing to the brand, and confronting your government.



ILO Better Work program

What would happen if a factory was run according to the ILO core labor standards? The ILO created the Better Work (BW) program to find out. Based on its pilot project, Better Factories Cambodia, BW inspects and monitors member factories in 8 countries to see if they follow basic ILO conventions that protect workers, and reports the results. BW also trains workers, union leaders, and factory managers on workers' rights, health, and safety, and coordinates with the government, manufacturers' association, and the brands.

The factories in the BW programs tend to be safer than before, and safer than other local factories. However, many challenges remain:

- Worker participation and empowerment is downplayed, and workers are discouraged from taking action to improve health and safety in the factory.
- Factory inspections are often known ahead of time, and workers fear losing their jobs if they speak with inspectors.
- Violations are not made public.
- BW and its inspectors have no power to enforce suggested changes.
- BW does not target brands that contract factories to make their clothes but ignore their responsibility for working conditions.
- BW does not report on wages (many factories do not pay a living wage), too many hours, violations of labor and union rights, or mass faintings (a big problem in Cambodia).



To achieve its goals of achieving a healthier, sustainable workplace, the ILO Better Work program must change to:

- Encourage worker participation and empowerment.
- Support the formation of factory-level health and safety committees with elected worker representatives.
- Give health and safety committees power to make improvements and stop dangerous work.
- Address labor rights issues such as respecting unions, negotiating contracts, and paying a living wage.

International conventions on workers' rights

There are many international workers' rights conventions and agreements. We have chosen to include in this book some of the most important and relevant to the topics we cover. You can find all the UN Conventions by going to this website: treaties.un.org. You can find all of the ILO Conventions here: ilo.org/global/standards. It might be helpful to do more research on the convention you want, to see how it is implemented, how it can be useful for your campaign, and if your country has ratified it.



International agreements in this book



UN conventions	see pages
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	11, 309, 365, 380
Convention on the Protection of the Rights of Migrant Workers and their Families	344
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Equal Remuneration Convention (No. 100).....	309
Forced Labor Rights Convention (No. 29)	283

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International agreements in this book

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Freedom of Association and Protection of the Right to Organise Convention (No. 87)	51
HIV and AIDS Recommendation (No. 200)	426
Holidays with Pay Convention (No. 132)	281
Home Work Convention (No. 177)	302
Labor Inspection Convention (No. 81)	30
List of Occupational Diseases Recommendation (No. 194)	363
Maternity Protection Convention (No. 183)	365, 380
Medical Care and Sickness Benefits (No. 130)	365
Medical Examination of Young Persons Convention (No. 77)	355
Migrant Workers Convention (No. 143)	344
Migration for Employment Convention (No. 97)	344
Minimum Age Convention (No. 138)	355
Minimum Wage Fixing Convention (No. 131)	289
Night Work Convention (No. 171)	281
Occupational Cancer Convention (No. 139)	183
Occupational Safety and Health Convention (No. 155)	276, 426
Protection of Workers' Health Recommendation (No. 97)	255
Right to Organise and Collective Bargaining Convention (No. 98)	51
Social Security Convention (No. 102)	365, 426
Weekly Rest Convention (No. 14)	281
Working Environment (Air Pollution, Noise, and Vibration) Convention (No. 148)	255, 276
Worst Forms of Child Labor Convention (No. 182)	355
Other international agreements	
EU Restriction of Hazardous Substances Directive (RoHS)	74

Trade agreements and international law

Trade agreements create the rules by which companies and governments do business across borders. Most trade agreements limit the restrictions governments can place on companies. Laws that protect people and the environment are seen as obstacles to trade, so many companies and governments negotiate agreements that lower labor standards rather than improve them.

Some trade agreements and membership requirements of trade organizations stop governments from making and enforcing policies that protect the environment and public health. The World Trade Organization (WTO) sets the standards for global trading practices and regulates national trade policies. If a country is a member of the WTO, its national laws must follow WTO trade rules.

Workers are not fairly represented in the WTO. International trade unions have requested that the WTO adopt ILO labor standards and promote labor rights by including a worker rights clause within the global trade system. The WTO has so far refused to do this.

Some trade agreements address labor rights. For example, in 1992 the North American Free Trade Agreement (NAFTA) became the first trade agreement to include an agreement on labor, the North America Agreement on Labor Cooperation (NAALC). Unfortunately, it has not been effective. The NAALC did not establish an international court or monitoring system to ensure the implementation of labor standards. It did not require each participating country to improve its labor law. And it has not promoted or protected workers' rights.

Trade agreements do occasionally improve occupational health in countries where labor and occupational health laws are lacking. In Peru, for example, a trade agreement with the USA promoted a law requiring workplaces to form joint health and safety committees. But the agreement did not include recognition of the most basic labor right — that workers could organize and bargain collectively.

The UN's Principles on Business and Human Rights were developed to protect workers from the business rules in international trade that put "profits over people." These principles put pressure on companies to respect international human rights and follow the labor laws of the country where the factory is located as well as the labor standards of the international brand's home country. However, it has been impossible to implement these principles because the Principles on Business and Human Rights have no enforcement mechanism.

Using trade agreements to protect labor rights

After the Dominican Republic–Central America–United States Free Trade Agreement, known as CAFTA-DR, was signed by Guatemala in 2006, the short period of employer good behavior while the treaty was being negotiated came to an abrupt end. Returning to practices of previous decades, workers who tried to assert their rights were harassed, fired, and even murdered. In the years since the signing of the agreement, 68 union members were killed, with little government response and no arrests until 2014.

In 2008, 6 Guatemalan unions and the AFL-CIO, the federation of US unions, filed a complaint with the US Office of Trade against Guatemala's violation of its own labor laws and international labor standards. In 2009, the US government found that Guatemala was violating its laws by not letting workers organize unions, not paying lawful wages, and not paying workers' health insurance even though money was deducted from their wages, among other legal violations.

Unions and other organizations launched an international campaign to get the USA to pressure Guatemala to respect workers' rights. It took 5 years of campaigning in the USA and Guatemala before the governments agreed to sign an enforcement plan which required both governments to respect labor law in their countries. But even after the agreement was signed, employers continued to deny workers their rights.

Conditions worsened in Guatemala. Violence and lack of work forced more men, women, and children to migrate to the USA. Finally, for the first time ever, the US Trade Representative moved for arbitration in September 2014. This increases the pressure on Guatemala (and the USA) to live up to its agreements. While this may not improve workers lives immediately, it is important for workers because it shows that labor rights can have an effect on trade agreements. The lesson of CAFTA-DR is that while these trade agreements are overall bad for workers, their labor provisions can be used to draw international attention to and exert pressure on bad employers and the governments that allow companies to violate labor rights.

