



RESPONSIBILITY OUTSOURCED:

***Social Audits, Workplace Certification
and Twenty Years of Failure to Protect
Worker Rights***

AFL-CIO

The AFL-CIO

The American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) works every day to improve the lives of people who work.

We are a democratic, voluntary federation of 57 national and international labor unions that represent 12.2 million working people. We help people who want to join together in unions so they can bargain collectively with their employers for better working conditions and the best way to get a good job done. We work to ensure that all people who work are treated fairly, with decent paychecks and benefits, safe jobs, respect and equal opportunities. To help working people acquire valuable skills and job-readiness for 21st century work, we operate the largest training network outside the U.S. military. And we provide an independent voice in politics and legislation for working women and men and make their voices heard in corporate boardrooms and the financial system.

Our roots are deep in communities and extend to countries across the globe as we partner locally, nationally and worldwide with allies who share the values of working families.

This report is dedicated in memoriam to:

Aminul Islam, president of the Bangladesh Garment and Industrial Workers' Federation (BGIWF)'s local committee in the Savar and Ashulia areas of Dhaka and a senior organizer with a well-known labor rights group, the Bangladesh Center for Worker Solidarity (BCWS), who was tortured and murdered; his body was found on April 5, 2012. To date, nobody has been held responsible for this crime.

Stephen Coats, founder and director of the U.S. Labor Education in the Americas Project (USLEAP), passed away unexpectedly on April 2, 2013. He was a committed workers' rights activist and a pioneer in holding corporations accountable to their commitments to workers' rights.

Acknowledgments:

Brian Finnegan, AFL-CIO Global Worker Rights coordinator, is the principal author of this report.

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Foreword

THE FAILURE OF GOVERNMENTS to protect workers' rights in the global economy has left a yawning gap of regulation and helped spawn an \$80 billion industry in corporate social responsibility (CSR) and social auditing. Yet the experience of the last two decades of "privatized regulation" of global supply chains has eerie parallels with the financial self-regulation that failed so spectacularly in 2007 and plunged the world into deep and lasting recession.

This detailed and extensive report by the AFL-CIO reveals just how bad much of the CSR industry has been for working people. Not only has it helped keep wages low and working conditions poor, it has provided public relations cover for producers whose disregard for health and safety has cost hundreds of lives.

Many of the best-established CSR brands, such as the Fair Labor Association and Social Accountability International, are funded by big corporations and sometimes even by government subsidy. This report shows how the overwhelming influence of the company bottom line has dominated the agendas of the FLA, SAI and similar groups, while the workers who are supposed to benefit from CSR have been marginalized or altogether ignored.

The fact that a garment factory in Pakistan could get SAI certification based on some phone calls and some meetings outside Pakistan, and yet be so dangerous that a September 2012 fire killed nearly 300 workers, should have led to a complete overhaul of the CSR industry. But there is no sign the root and branch reform needed will

actually happen. All the indications are that it is business as usual for CSR.

In many ways, the CSR industry's reliance on subcontracting of inspection and verification replicates the structure of the very global corporations it is supposed to monitor. Accountability is frequently lost in the "CSR supply chain," and where local monitors actually have sided with workers against employer exploitation, they too often have been ignored in order to spare big-name household brands embarrassment.

The AFL-CIO research underscores the central failing of the CSR model, which is based mainly on short and cursory visits to factories and no proper discussion with workers. This, coupled with the big global brands holding on to the "Walmart" model of driving prices to local producers ever lower and demanding ever-faster production, the dominant social auditing model will never achieve decent, secure jobs for the millions of workers at the sharp end of the global economy.

With legislators in the U.S. Congress and European Parliament pushing for reform, and the UN's new "Guiding Principles" setting the bar much higher, there is a chance the façade of industry-driven CSR will begin to fade. But ultimately, it is through freedom of association and organizing unions that workers have the best chance to defend their interests. Steady progress by global union federations in negotiating global framework agreements with multinationals is making a real difference, and the challenge now is for governments to finally fulfill their duty to ensure employers, wherever they operate, comply with the global standards the employers themselves have helped develop at the International Labour Organization.

—SHARAN BURROW

General Secretary
International Trade Union Confederation



Photo: USAS

Executive Summary

SINCE AT LEAST THE 1980s, global supply chains of major brands have spread to countries where governments have demonstrated little will or capacity to regulate the many workplaces that enter into business relationships with these brands. In such places, labor laws often are weak or poorly enforced, workers' rights are not recognized and workers effectively are blocked from organizing unions and engaging in collective bargaining with employers to bring wages above poverty level. Basic safety and health standards and human rights at many of these workplaces routinely are violated. Locating production in these most precarious parts of the global supply chain has become a standard means for international brands to maximize revenues and press for an edge on their competitors by driving production costs ever lower.

The garment industry in Bangladesh recently has become infamous as one such place, regarding both freedom of association and dangerous workplaces. In April 2012, just after Aminul Islam had successfully led efforts to organize workers and negotiate a commitment from a major brand to improve conditions in factories, he was tortured and killed. In the following months, well more than 100 workers in Bangladesh died in factory fires. In Pakistan, nearly 300 more were killed in a single garment factory fire in September 2012. The decision to locate plants in

such places also brings responsibilities to respect human rights in these workplaces. Bangladesh and Pakistan are but two examples of how corporations have not succeeded in meeting these responsibilities, and this report provides others. The factories mentioned above all produced for major international brands—and all of these factories were part of one of several private, voluntary, nonbinding programs that suppliers and brands participate in to regulate these workplaces through inspections, audits and certifications. This report closely examines programs like these, traces their evolution and calls for changes to a broken system.

This report digs underneath the façade of social auditing and certification schemes to reveal a deeply disturbing abdication of responsibilities on the part of both governments to protect human rights at the workplace and of companies to respect these rights by exercising due diligence regarding the impact of their business activities and their business relationships. Notably, workers and their unions rarely play a role in the voluntary systems that corporations have chosen to support in order to ensure compliance with worker rights and workplace standards. As with most Corporate Social Responsibility (CSR) programs, these programs consist entirely too often of unilateral proposals by corporations to regulate their

own activities without meaningful roles for governments or unions. Those who have felt the effects of corporate self-regulation in the aftermath of the 2007 financial and employment crisis should take note of this report and what it has to say about the failures of corporate accountability.

While this globalized business model continues to provide vast profits for companies, it comes at a tremendous cost to working people and to the economies of many of the poorest nations. It also has led to reputational



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problems for companies themselves, as labor unions, nongovernment organizations (NGOs) and others began to put the spotlight on exploitation and abuse, initially in the clothing, footwear, sporting goods and agriculture sectors in the 1990s. Multinational companies, forced to find new ways to protect their business model, turned to nascent CSR initiatives to absorb and deflect public concern without making any fundamental change to their way of organizing production. Once companies were forced to recognize that neither their own auditors, nor externally hired ones, could credibly ensure respect for basic standards or human rights at the workplace, major companies embraced multi-stakeholder initiatives (MSIs) to address compliance in their supply chains. While still not clearly defined or systematically evaluated, MSIs are intended to bring civil society and other shareholders into dialogue with corporations over the negative impacts of business activities. Thus, the perfect conditions for a new global business emerged during the 1990s—one that has grown into a US\$80 billion annual CSR certification and social auditing industry today. These MSIs and company-run CSR programs oversee a system of social audit and quality control firms that ensure brands and consumers basic standards and rights are complied with. However, there is no oversight and no accountability when such compliance has clearly and sometimes fatally failed. Neither workers' unions nor governments play a meaningful role or have full access to the information produced by the MSIs. Thus, for more than 15 years, the major MSI approaches have grown in the number of companies that subscribe to this flexible and voluntary approach, yet the MSIs have not demonstrated results regarding their ability to improve workplace standards, respect for rights like freedom of association or to bring wages above poverty level.

CSR constitutes a broad, diverse and evolving set of practices, and its origins trace back at least as far as the 1970s, when voluntary codes for corporate behavior were developed through tripartite processes. Since the 1990s, the scene has been dominated by unilateral initiatives by business, with CSR supplanting the responsibility of governments to put ILO standards into national law and ensure these are respected through inspection and enforcement. Pressure from unions and labor advocacy groups has succeeded in making ILO standards the formal benchmarks for CSR, at least on paper. However, this report shows that major players in CSR and the related social auditing industry have done little to ensure actual

respect for ILO standards, and virtually nothing for the most important ones that enable the rest: freedom of association and collective bargaining.

Where freedom of association is respected and workers are allowed to organize unions and bargain collectively, workers are able to defend themselves from exploitation and obtain decent incomes and working conditions. Where these rights are denied, the CSR model is unable to fill the gap. In fact, as this report shows, CSR frequently is used as a means of undermining freedom of association and collective bargaining. The report's focus on two of the main industry-backed initiatives, the Fair Labor Association and Social Accountability International, reveals how time and again, such "voluntary initiatives" have delivered for management and corporations, but not for the workers they claim to benefit.

Even worse, the CSR industry has withheld information on unsafe working conditions from workers or governments. This lack of transparency has contributed to the deaths of hundreds of workers who have lost their lives in factories that have gained access to global markets based on certification by well-known CSR brands. Yet when factories were deathtraps, CSR programs refused to report this to workers in those factories and to governments who have the responsibility to protect workers. Sharing this information would have saved hundreds of lives.

In the worst such case, nearly 300 workers died and many more were injured in a fire at an Ali Enterprises garment factory in Karachi, Pakistan. Locked exits and barred windows kept workers from getting out of the building, and many lost their lives jumping from the top of the four-story building. Just three weeks before, the factory had been certified as complying with SAI's SA8000 standards on worker rights and safety. The SAI system approved the Italian company RINA to certify factories. RINA subcontracted the inspection to a local company, RI&CA, and never actually went to Pakistan to approve workplace conditions. Neither SAI, its own technical experts, nor RINA ever had visited the factory, which was not even registered with the government. Yet somehow, Ali Enterprises received global SAI certification and access to contracts with major brands and markets as a socially responsible workplace.

Other examples documented in this report reveal how CSR has been actively used to frustrate workers exercising their

right to freedom of association. In Honduras, management of a Russell Athletic factory with 1,800 employees closed the plant in 2008 after workers organized a union. The union lodged complaints with two groups—the Worker Rights Consortium (WRC), which includes union representation on its board, and the industry-financed Fair Labor Association (FLA), which does not. The WRC established that the factory closure was because the workers joined a union and called for it to be reopened. The FLA contracted one for-profit company, the Cahn Group, to investigate, and a second firm, ALGI, to conduct a social audit. Both Cahn and ALGI found the closure was for normal business reasons and not because the workers unionized. Months of pressure from the WRC and student labor activists in United Students Against Sweatshops finally led the company to reopen the factory and re-employ all the workers—however, the continued refusal of the FLA to recognize the real reason for the closure, and its siding with Russell management at every turn, was a major obstacle to the eventual success of the workers. The report includes direct communication from these workers and their union to the FLA, presenting a critique from those workers directly affected by the FLA actions.

This report contains several other examples of how SAI, the FLA and other corporate-financed CSR groups systematically have supported employers against legitimate claims by workers. The business model these groups use is examined in detail, including the way in which they undermine the responsibility of governments to protect workers and even to ensure the provision of employers to contribute to social insurance and severance pay.

SAI, FLA and similar groups have strengthened the language they use in their standards as pressure from unions and workers' rights advocates has mounted. But this has made no appreciable difference to the real impact of their practices—often, workers are not even consulted during plant “inspections,” and certification of dangerous, exploitative workplaces continues apace.

Against this background, and with the continuing failure of many governments to ensure national compliance with ILO standards through legislation and effective labor inspection, real measures to protect and advance workers' rights in global supply chains are needed. The report proposes long-needed reforms to social auditing, since it is likely to remain at the center of what many brands do about these issues in the short and medium term. These reforms address CSR governance, transparency, proper inspection methodology, independent conciliation and arbitration involving unions and long-term commitments by global brands. The report offers a series of alternatives that are partial solutions while recognizing that it is only through mature and effective industrial relations between unions and employers that the scale of exploitation in global supply chains can be properly addressed. A few of those proposals are:

- Global framework agreements negotiated between global union federations and multinational companies are increasingly a means by which international labor rights are respected throughout supply chains. The scope and application of these agreements have improved over



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time as lessons are learned from experience, but they are not a perfect solution in particular, as some companies fail to implement locally what they have agreed to at the global level. Nevertheless, the fact they are negotiated, instead of unilaterally imposed by companies, coupled with growing awareness of them within unions around the world, means organized labor has been able to use them to deliver international solidarity to workers in supply chains in many countries.

- With the endorsement by the United Nations in 2011 of the “Guiding Principles on Business and Human Rights,” new avenues exist for the negotiation of more comprehensive global frameworks that recognize that respect for human rights, including fundamental workers’ rights, is not a voluntary activity for companies but is central to their required due diligence. A 2011 revision to the OECD Guidelines for Multinational Enterprises that explicitly extended their scope to companies’ “supply chains and business relationships” was an important step forward, and has provided important leverage in countries that have adhered to the Guidelines. Both the new OECD guidelines and the UN Guiding Principles must be used to improve conditions in the supply chains, but if similar past declarations are any measure, this will not be enough. Government regulations and binding agreements between workers and employers still will be needed to make these commitments matter.
- Other useful initiatives include the Dodd-Frank Act in the United States, with its disclosure requirements, the U.S. Sustainability Accounting Standards Board and, most recently, specific reporting requirements for investment in Burma. Internationally, the work of the Global Reporting Initiative promotes sustainability reporting on economic, social, environmental and governance performance and offers another way to hold corporations accountable.

- Innovative proposals based on workplace unions and collective bargaining, such as the 2011 protocol on freedom of association in the Indonesian footwear and apparel industry, the Bangladesh factory fire safety agreement, the Designated Suppliers Program of the Worker Rights Consortium and the precedent of the U.S. garment industry’s “jobbers agreement” also are covered in this report.

- The Better Work program of the ILO also is addressed. While Better Work must be improved before it is expanded further, its tripartite structure means an improved Better Work program can point the way toward a sustainable system to improve conditions in the supply chain.

The term Corporate Social Responsibility covers many different types of initiatives, with varying degrees of impact in protecting workers from exploitation. This report diagnoses successes and failures, and one theme recurs throughout—where workers are represented in the process, especially through their labor unions, the chances of success are real, while corporate-driven initiatives are shown largely to have failed to deliver for working people and their communities over the last 20 years.

Ultimately, governments must fulfill their responsibility to implement labor laws that comply with ILO standards. But in the absence of that, voluntary initiatives will continue to be a part of the global industrial relations scene. The AFL-CIO and its partners around the world will continue to push for such initiatives to have real meaning for working people, and will not hesitate to call to account those who seek to substitute genuine responsibility with public relations-driven corporate spin.

Introduction

1

“We must...decide whether our object in setting up the Guardian class is to make it as happy as we can, or whether happiness is a thing we should look for in the community as whole.”

—Plato, The Republic¹

“Auditing is more about securing orders than improving the welfare of workers. That is why the management only makes cosmetic changes to impress the auditors and not to better the conditions of workers.”

—Worker, Factory A, producing for Walmart and Sears²

ON SEPT. 11, 2012, a fire at the Ali Enterprises garment factory in Karachi, Pakistan, killed nearly 300 workers and injured dozens more. As the fire swept through the plant and workers attempted to escape, they found all but one exit door locked and the windows blocked by metal bars. Those trapped inside either succumbed to smoke inhalation or were burned alive. Others died after jumping from the top floors of the four-story building. This was the worst factory fire in history, twice the number of workers killed as died in the infamous Triangle Shirtwaist Factory fire of 1911.³ Local officials in Pakistan called the factory a death trap, saying its poor condition hindered rescue and firefighting efforts.

Yet only three weeks before the fire, a private and voluntary workplace inspection program had certified the workplace as compliant with a demanding set of standards related to safety and worker rights. Such certification was meant to assure brands and retailers buying from Ali Enterprises, as well as consumers, that workers at this factory were not exposed to unsafe conditions or violations of their rights. That certification, the SA8000, is a 15-year-old system overseen globally by New York-based Social Accountability International (SAI) and is considered by many to be the gold standard of workplace certifications. Ali Enterprises had been certified as compliant with international workplace

safety and workers' rights standards by RINA, a for-profit Italian auditing firm working within SAI's highly regarded SA8000 certification system.

RINA had performed at least 540 factory certifications for SAI, including nearly 100 in Pakistan.⁴ The Ali factory received SAI's SA8000 certification, as have 165 other factories in Pakistan. RINA was SAI's "certifying body" at 95 of those facilities.⁵ However, RINA had subcontracted the actual certification audits to a local company, RI&CA, which audited and certified 118 facilities between 2007 and 2012.⁶ As SAI admits, RINA managed the work being done in Pakistan solely by telephone and meetings outside Pakistan, never going to Pakistan to observe conditions at the factory.⁷ It since has been discovered the Ali factory was not even registered legally with the Pakistani government and that a majority of workers had no formal employment contracts. Less than 20% were registered in the national social security system.⁸ Given the fact that nearly 300 workers died, this basic glaring failure to comply with legal requirements, and the supposed rigor of the SAI system and standards, how is it that Ali Enterprises was SA8000 certified? Even more perversely, how can it be that the defense lawyer of the Bhailas family that owns the factory "is seeking to shelter the Bhailas behind a far greater source of comfort: an apparel industry certification

system that gave their factory, Ali Enterprises, a clean bill of health just three weeks before the horrific blaze.”⁹ Globally, there are more than 3,000 workplaces that hold the SA8000 certification overseen by SAI.¹⁰ The effectiveness of this and other growing private, voluntary efforts to regulate workplaces must be critically examined.

Tragedies like the one at Ali Enterprises and other violations of fundamental rights at work will continue unless governments protect workers through enacting adequate

laws and enforcing them so that corporations respect those laws. Workplace unions are the key to monitoring and enforcing such laws. Sadly, governments neither enact nor enforce such laws with any regularity. Corporations, however, would like consumers to believe they are fulfilling their duty to workers through corporate social responsibility (CSR) programs, and a multibillion-dollar social audit and certification industry has emerged alongside most CSR programs since the 1990s to do just that.

A Brief History

2

HOW DID IT COME ABOUT that verifying and defending workplace standards and labor rights at the Ali Enterprises factory was left in practice to a voluntary, nonbinding system that includes neither governments nor workers?

Just more than 100 years ago, 146 workers died in the infamous Triangle Shirtwaist Factory fire in New York City. During the decades that followed, in the United States and elsewhere, unions worked hard to organize and make such workplaces safer. Governments improved labor laws and their enforcement. Workplace regulation and health and safety conditions improved greatly due to both union and government actions. Many countries made progress regarding freedom of association and other worker rights and human rights during these years. In the industrialized West, at least, corporations played a role, but not a voluntary one. The state set and enforced ground rules and basic regulations. *In the area of worker safety, many countries' trade unions were able to reduce accidents and deaths by organizing workers and training workplace leaders who were onsite monitors all day, every day—unlike CSR auditors who appear about once a year.* In the U.S. garment industry, sweatshop labor, dangerous conditions and poverty wages were greatly reduced from the 1930s through the 1970s mostly by holding major brands accountable for their subcontracting practices through the innovative binding collective bargaining arrangements known as “jobbers agreements” that the U.S. government and both major political parties repeatedly supported.¹¹ Garment-sector unions led these efforts and showed both employers and the government how to improve conditions through workers' organizing and bargaining. Working conditions and respect for rights was not perfect, but

progress was made. Since then, the situation has gotten worse.

Since at least the 1980s, major multinationals have become more globalized, building ever-longer, more flexible and complex globalized supply chains while avoiding whenever possible the limits placed on them by the state and unions. Since the 1990s, this only has accelerated. As manufacturing work has left countries in which there were laws, collective bargaining and other systems in place to reduce workplace dangers, jobs instead have gone to countries with inadequate laws, weak enforcement and precarious employment relationships with limited workers' voices to defend day-to-day worker interests or raise the alarm before disaster strikes. The improvements made in an earlier era in industrialized countries were achieved by unions, collective bargaining and state regulation. Yet workers, the supposed beneficiaries of these current CSR programs, rarely have much of a role in the CSR monitoring and certification system as it currently exists.

Making matters worse, nearly all corporations now follow what has become known as the Walmart model: squeezing profit from lower parts of the supply chain up to the top, for its shareholders and its managers. This model leaves little further down the supply chain to pay living wages, the cost of workplace safety improvements or local taxes to improve labor regulation by often underfunded governments. Serious proposals to improve working conditions and respect for workers' rights in global supply chains will have to challenge this model rather than accept it as inevitable or somehow natural.

The Development of Codes and Voluntary Initiatives and Necessary Progress Toward Enforceability

CSR CONSTITUTES A BROAD, diverse and evolving set of practices. Corporate codes of conduct, workplace monitoring, audits and certification are one major area of CSR activity. Particularly after the June 2011 clarification of government and corporate responsibilities contained in the UN Guiding Principles for Business and Human Rights (GPs), this area of CSR activity must be evaluated and reformed. Any serious commitment to the GPs requires reforms to workplace audits for business enterprises to exercise the due diligence they require.¹²

It is important to note the effort to establish voluntary codes for corporate behavior goes back at least to the 1970s, when the International Labour Organization (ILO), UN and Organization for Economic Co-operation and Development (OECD) were convinced the growing power

of multinational corporations represented a threat to national sovereignty. While these efforts were driven mostly by tripartite processes involving governments, employers and workers, the corporate codes that began to proliferate in the 1990s were unilateral responses by corporations to union and sweatshop activists' campaigns that highlighted the failure of national governments or international institutions to defend worker rights.¹³ While codes have varied over the past 20 years, often not expressly including the ILO conventions in the earlier years, unions have been active and largely successful in creating a consensus that since codes are meant to apply globally, they should be based on established core ILO standards.¹⁴ Just as unions were partners in the development of all the ILO conventions, they brought that experience to gradually improving the language of the corporate codes and other initiatives and standards that have evolved since. Unions made similar but less consolidated progress regarding the inclusion of workers not directly employed by a multinational but throughout subcontracting relationships in its supply chain. However, the OECD guidelines revised in May 2011 explicitly and repeatedly define business responsibility as including "supply chains and business relationships."¹⁵ As with commitments made in the UN Guiding Principles on Business and Human Rights, these improvements to the OECD guidelines must be used and tested. Such progress has been hard won. Then, as now, corporations have preferred to define and limit responsibility unilaterally and to deal with nongovernmental organizations (NGOs) rather than unions.

Apart from the already difficult process of seeking uniformity in the terms or language of corporate codes, unions and their allies faced a much more contentious and arduous struggle in seeking their application or implementation. As described later in these pages, corporations transitioned from internal monitoring to



Photo: WRC

external auditors to the current trend toward multi-stakeholder initiative (MSI) to monitor for “social compliance.” Despite considerable progress in developing better language and terms in most of these codes and standards, and some isolated successes in implementation, after more than 20 years of corporate codes and diverse initiatives to monitor and certify for compliance at workplaces, workers now face sweatshop conditions and receive poverty wages as bad as or worse than they did before in many industries and many countries.

In short, voluntary initiatives have failed. According to “Without Rules: A Failed Approach to Corporate Accountability” in the Human Rights Watch World Report 2013, “Voluntary initiatives all face the same crucial limitations: they are only as strong as their corporate members choose to make them, and they don’t apply to companies that don’t want to join. They often do a good job of helping to define good company human rights practice, but enforceable rules are the only way of ensuring real systematic change. The world’s dearth of binding human rights rules for companies has consequences.”¹⁶ In defending the binding regulations of the recent U.S. Dodd-Frank law on transparency so resisted by many in the business community, Human Rights Watch argues that “most of what has been achieved through the hodgepodge of voluntary initiatives that dominate the global business and human rights landscape could be done more effectively and even-handedly via binding laws and regulations.”¹⁷ Though most unions have never veered from

the position that voluntary initiatives are always inferior to state regulation and legally binding negotiated agreements between workers and employers, they have been willing to engage with these initiatives, especially in the many places and industries where workers do not have union representation. Unions have considered codes at best an unenforceable minimum voluntary commitment from which the labor movement can negotiate to include more workers in a broader but enforceable agreement for better conditions.

Thus, over time the international trade union movement, through its global union federations (GUFs), gradually has negotiated with many companies that had unilateral codes based only sometimes on core ILO standards. GUFs are international federations of national and regional trade unions organized by industry sectors. To date, GUFs have negotiated slightly more than 100 Global Framework Agreements (GFAs) that will be discussed in Chapter 9. Most important, GFAs, codes and other initiatives all gradually included some level of explicit commitment to the enabling right of freedom of association that so clearly underlies and allows workers and citizens to claim other rights. The 2011 Guiding Principles on Business and Human Rights not only clearly establishes both the ILO core standards as the workers’ rights benchmark and defines responsibility as inclusive of supply chains, they begin to address the constant failure of codes and voluntary initiatives and even many GFAs to implement change on the ground.

Workers' Rights MSIs Without Workers

THE CSR PROGRAMS DISCUSSED IN THIS REPORT claim that participating workplaces meet basic labor standards and respect core labor rights like freedom of association (FoA). In reality, this is rarely the case. Time after time, workers in factories certified as in compliance with labor standards are exposed to abuses of their rights, and some have lost their health or their lives. [The CSR industry simply cannot do what it promises as currently structured.](#) CSR monitoring and certification schemes must undergo major changes. The industries that have outsourced their responsibilities to these CSR schemes must take on their responsibilities and ensure the rights of workers are respected throughout their supply chains.

This report will focus on those CSR programs that claim to provide an independent system to ensure compliance with workplace standards and labor rights through voluntary, nonbinding social certification and audits coordinated by multi-stakeholder initiatives (MSIs). In particular, the report examines specific cases involving the two MSIs by Social Accountability International (SAI) and the Fair Labor Association (FLA). To a lesser extent, the report also looks at wholly industry-run initiatives like Worldwide Responsible

Accredited Production (WRAP) and the more recent Global Social Compliance Programme (GSCP). These initiatives have evolved since the mid-1990s, yet their failure to hold corporations accountable is consistent. While both FLA and SAI have sought participation by unions and workers' rights groups, both have had difficulty convincing organized labor these MSIs advocate for workers enough to join their governance structures or remain on them. FLA has never had unions on its board of directors; two large global unions that did participate in SAI left after repeated disappointment with its practices.¹⁸

At the same time, other labor rights monitoring endeavors, such as the Worker Rights Consortium (WRC) and Ethical Trading Initiative (ETI), are conceived differently, since they at least make workers and their unions more central to their initiatives. Large, representative trade union organizations are on the board of directors of ETI. While considerable worker and union engagement is a necessary condition for any programmatic effort to monitor and effectively advocate respect for workers' rights, that participation does not guarantee success. The WRC does not allow the corporations that are being monitored to participate in its

governance structures or financing. Nor does it maintain any kind of positive certification system. Instead, it provides a worker-driven process for complaints about noncompliance that includes research and workplace assessments and remediation plans. As long as CSR initiatives depend on the goodwill of the companies being monitored, and as long as they fail to place workers' empowerment at the center of these efforts, these initiatives will continue to fail to bring meaningful changes that benefit workers in the supply chain.

Some unions that have recently interacted with both FLA and SAI have voiced their belief that these MSI do not serve worker interests. As stated by one Honduran union that unsuccessfully tried to engage the FLA to defend workers' freedom of association, "based



Photo: WRC

on our experience with the FLA on this case over the past two years, we have been forced to conclude that the FLA's investigative process is not neutral or fair and that this process does not honor the experiences and testimony of the workers. ...We are very sorry to have to say that in our experience as workers, the FLA has not acted as a neutral investigator, but as defender of its member company." That union went on to state that an FLA-approved investigator "spent most of her interviews with workers arguing with them about our collective bargaining proposals, saying we had asked the company for too much...and called the union's proposals 'crazy.'"¹⁹

In another recent experience, a Central American federation of agricultural workers complained that the agreed-upon workers' rights contents were removed from training sessions in SAI's CULTIVAR program. The federation and member unions complained in letters that the SAI program continued to assert that unions were participating even after they had formally withdrawn because worker rights were not included in the curriculum. These unions also thought the SAI program was usurping the unions' role by claiming the SAI program, rather than

the union, had developed and maintained productive and mature industrial relations between workers and the employers. The union forbade the SAI program from using the union's name in connection with the trainings while acknowledging the company could oblige workers to participate.²⁰ SAI's final report on the CULTIVAR program reflects none of this criticism from unions.²¹

The empowerment of workers and an active role for their unions must be central to any successful effort to address the root causes of violations of workers' rights and workplace standards. Indeed, the World Bank reached this same conclusion 10 years ago, pointing out that real and sustained improvement in CSR initiatives to improve working conditions and labor rights in global supply chains requires worker empowerment. Yet, programs lack "comprehensive and accountable means of engaging workers as well as their unions."²² In 10 years, little has changed. It actually may have gotten worse. Unions like those cited have tried to engage both FLA and SAI programs and found these initiatives to be supportive of companies and unaccountable to workers.

Honduran Unions Write to SAI

"We write to inform you that the Banana and Agro-Industrial Union Coordinating Body of Honduras (COSIBAH) cannot continue participating in the CULTIVAR project because of a change in the topics to be included in the trainings....COSIBAH declines to participate in this educational process that never honored the commitment to begin training workers on the subject of their labor rights...."

—Letter from COSIBAH, June 2010

A subsequent letter from a COSIBAH member union in March 2011, after SAI's CULTIVAR project repeatedly insisted in international training seminars that COSIBAH and its member unions were participating in CULTIVAR:

"CULTIVAR is claiming and ensuring participants that our union supports the CULTIVAR project and that CULTIVAR is responsible for the positive relationship between the union and the employer, a claim that is fundamentally untrue....These relationships are the result of constant support and advice of COSIBAH and of permanent and mutual dialogue and respect in relations with the employer.

"Gentlemen of CULTIVAR-SAI, given what we say above, we prohibit your continued use of the name of our union in your different activities to highlight your program."

Executive Summary of the ITUC/UNI/INDUSTRIALL/CCC statement on UN Guiding Principles for Business and Human Rights, December 2012

- ***The right to join or form a trade union and the right to bargain collectively are established human rights falling within the scope of almost every business enterprise in almost every situation or context.***
- ***What is entailed in the exercise of these human rights is well understood and established in legitimate and authoritative processes.***
- ***Business responsibility with respect to these human rights must be informed by four considerations: 1) the distinction between the state duty and the responsibility of business enterprises; 2) the ability of business enterprises to avoid the legal obligations of the employer; 3) the special role of fear in denying or “chilling” the exercise of these rights; and 4) the duty imposed on business enterprises by the right of workers to bargain collectively.***
- ***For the most part CSR initiatives address these issues by redefining freedom of association and do not focus on the responsibility of business enterprises for their adverse impacts on these human rights.***
- ***A business enterprise respects the rights of workers to form or join a trade union by not doing anything that would have the effect of discouraging workers from exercising this right.***
- ***A business enterprise respects the right of workers to collective bargaining by not refusing any genuine opportunity to bargain collectively.***
- ***Due diligence for the right to form or join a trade union will involve identifying and preventing anti-union policies and practices as well as mitigating the adverse impacts on the exercise of this right by other business activities and decisions, such as changes in operations.***
- ***Due diligence for the right to bargain collectively recognizes that business enterprises must be prepared to bargain under a wider range of structures in countries where the law and practice does not provide a well-defined framework for bargaining.***
- ***Industrial relations, a system which requires both trade unions and collective bargaining, can play important roles in both due diligence and in the remediation of adverse human rights impacts.***

At worst, CSR supplants the role of government inspection and enforcement in ensuring basic standards and rights have been respected by replacing state regulatory action with private corporate initiatives. As the “protect, respect, remedy” formula of the 2011 UN Guiding Principles on Business and Human Rights makes clear, the state must play the first and vital role to protect rights, and corporations must respect these rights and take responsibility for the impact of their business activities in the countries where they have chosen to do business. Both the state and corporations must play a role in providing remedy. CSR initiatives also clearly have failed to provide meaningful remedy when rights are violated. As a Chinese labor activist noted in December 2012, “to remedy a tough situation consists of more than just giving restitution to the victims following a tragedy. Additionally, there must be measures in place to prevent the repetition of the tragedy and ensure worker access to justice. But without strong pressure from consumers, profit-driven companies will not have the incentive to protect workers or deliver the necessary improvements.”²³

These CSR programs often exclude workers’ voices while certifying working conditions and employer practices that workers and unions know intimately. In the best cases, CSR schemes have created reporting and monitoring practices that might hold promise only if made more transparent and empowering for workers and their chosen representatives as realistic structures for protecting and respecting rights and seeking remedy. The UN Guiding Principles, if actually implemented by corporations and CSR initiatives in auditing and certification programs, would require companies to take action to defend workers’ freedom of association and other human rights commitments that until now have been unfulfilled responsibilities for the

impact of their business activities. In December 2012, major global labor organizations spelled out what they see as the business responsibilities in due diligence required by the Guiding Principles (see box, page 15). Such thorough due diligence would create an enabling environment for workers to join or create unions and empower them to subsequently claim other rights and maintain workplace standards regarding which CSR programs have failed.

Various CSR approaches have tinkered with these issues for more than 15 years. However, the recent deaths of more than 1,300 garment workers in fires in factories in Pakistan and Bangladesh that often were certified as compliant with labor standards are only the latest addition to the already substantial body of evidence that the certification and monitoring systems used by these initiatives cannot be relied on to deliver on even the most basic of goals: stopping entirely preventable deaths caused by factory owners’ negligence or outright refusal to observe the most basic of safety requirements. As critics have noted, companies are under no obligation to report hazards discovered during factory inspections and CSR auditing programs routinely promise that audit results will be kept confidential. Even if a company ceases or suspends production at a factory because of safety or health concerns, neither workers nor government officials are informed of the findings.²⁴ The failure of CSR programs to make progress in such areas as freedom of association and the payment of fair or living wages along supply chains is even greater, and makes clear CSR’s inability or unwillingness to address the widely known root causes of these persistent problems. Moving beyond codes and CSR schemes to truly implement the Guiding Principles on Business and Human Rights would be one way to address these widespread failures in global supply chains.

CSR and New Forms of Privatized Regulation

IN THE EARLY 1990s, corporations and brands reacted to union and activist campaigns against sweatshop conditions and human rights violations in their global supply chains by establishing codes of conduct to exercise a level of control over minimum workplace standards and core labor rights. Such codes often were very weak regarding well-established ILO core labor rights. In 1998, the ILO provided a summary of core labor rights by adopting the Declaration on Fundamental Principles and Rights at Work as an expression of commitment by governments, employers' and workers' organizations to uphold basic human values—values vital to our social and economic lives. To implement these codes, firms deployed such internal and external compliance auditors as PricewaterhouseCoopers (PwC) to monitor labor and environmental practices. By 1999, PwC was performing more than 6,000 factory audits a year for major shoe, garment and toy brands.²⁵ Workers often had no knowledge of such codes of conduct. Among other reasons, it was common practice to post codes in languages workers did not understand. According to one 1999 survey of more than 500 workers in six countries, “only one worker thought that perhaps there was a code operating in her factory.”²⁶

The company codes of conduct and internal audits by accounting firms lacked credibility with labor and consumer activists. Thus, CSR programs purportedly independent of the industry emerged to monitor workplace standards and rights. We will examine below the origins, financing and structure of three such programs: WRAP, FLA and SAI.

Seeking greater legitimacy, CSR monitoring took the form of multi-stakeholder initiatives (MSIs). While the term MSI never has been defined clearly, these initiatives have grown in numerous areas where governments have failed. All too often, they have been embraced as a solution without sufficient critical evaluation. A recent guide produced by the Dutch think tank SOMO for civil society engagement with MSIs offers a loose and rather circular definition: “*interactive* processes in which business, civil society organizations and possibly other stakeholder groups *interact* to make business processes more socially and environmentally sustainable” (emphasis added). More bluntly, SOMO considers them “a form of civil regulation in the absence of government regulation.” This civil society guide offers a few perspectives on what NGOs and unions can hope to accomplish by engaging with an MSI: set a

minimum responsibility standard, generate sectoral change where effective formal regulation does not exist, provide many tools and tactics to pressure for enforcing standards and defending rights, and offer a last resort when instruments of enforceable regulation “have failed or are expected to fail.”²⁷

Unions sometimes have participated in these MSIs, at least for long enough to see whether they offer solutions. Between 1996 and 1999, U.S.-based companies and some of their critics in the labor and NGO communities discussed options to improve on the clearly flawed and uneven corporate

The Declaration on Fundamental Principles and Rights at Work

The declaration covers four fundamental principles and rights:

- 1 Freedom of association and the effective recognition of the right to collective bargaining.**
- 2 Elimination of all forms of forced or compulsory labor.**
- 3 Effective abolition of child labor.**
- 4 Elimination of discrimination in respect of employment and occupation.**

codes of conduct. In the United States, Social Accountability International (SAI) and the Fair Labor Association (FLA), two major MSIs, came out of such discussions. While union and other worker advocates participated in these early MSI discussions, workers' representatives do not play any considerable role in the way the organizations work today.²⁸ Trade union and labor NGO participation in the FLA and SAI has decreased considerably and steadily over time, since actual workers and their chosen representatives consistently have seen these MSIs either exclude workers entirely or reflexively side with employers. FLA has never had any labor union participation, for reasons that are explained below. UNI, the last global union that participated on the SAI Advisory Board, ended its participation after the Ali Enterprises fire, expressing "concerns at the recent conduct of SAI in dealing with the tragedy in Pakistan... [and] the manner in which SAI has chosen to respond has been a great disappointment to UNI."²⁹ *The lack of any labor participation in such MSIs 15 years into their existence reflects a consensus among unions and their most steadfast civil society allies that there was no real negotiation in the process that created the MSIs and that they have served the interests of participating corporations rather than workers.*

Given their origins, it is not surprising these MSIs fall well short of those that would empower workers and lead to sustainable systematic solutions. Unions could have accepted these MSIs to support workers' rights as a temporary, transitional structure to address the lack of freedom of association in many parts of mobile and flexible global supply chains. However, more than 15 years later, it is clear these particular corporate-dominated MSIs do not see themselves as a temporary solution on the road toward

worker empowerment to claim labor rights and enforce standards. Instead, both the MSIs and the for-profit social auditing industry as a whole are growing and becoming more entrenched. The FLA's president and CEO frankly states his grandiose vision of the FLA's role filling the void as states are not defending human rights: "I've seen the ability, the will, the commitment of governments to do this decline. And I don't see them making a comeback right now. So, we started out thinking this was a stopgap measure. We are now thinking that in fact this is probably the start of a new way of regulating and addressing international challenges. Call it networked governance, call it what you will. The private actors—companies and NGOs—are going to have to get together to face the major challenges."³⁰

Aside from giving up on any state responsibility, this vision apparently sees neither workers nor unions as relevant "private actors." Moreover, particularly after the 2011 Guiding Principles on Business and Human Rights clarified the responsibility of states to protect rights, the idea that corporations and MSIs can affirm that rights like freedom of association are being respected in countries where their exercise is prohibited by the state is at best naïve, and at worst a cynical redefinition and truncation of these broad enabling rights. The belief that an MSI can certify that freedom of association is being respected at a given workplace or employer—regardless of severe limits on that right beyond the workplace—is based on an impoverished understanding of what freedom of association means.

These MSIs promote their versions of private voluntary "civil regulation" as the best possible alternative to actual regulation and offer companies consulting and certification

UNI General Secretary Philip Jennings issued the following comment about the global union's involvement in SAI:

"When SAI was founded, they invited UNI to participate in order to build on our experience and our relationships with the leading multinational retailers and with the goal to build more robust systems. The intention was to ensure that retailers took responsibility to ensure an ethical supply chain. But with passing of time we have realized that new and tougher frameworks are required.

"The fact that the Ali Enterprises factory was awarded the SA8000 certification only three weeks before nearly 300 workers lost their lives in a fire demonstrates the failure of systems of certification such as that of SAI."



services in lieu of the known solutions of regulation, freedom of association and collective bargaining. As with the thriving “union avoidance” industry for lawyers and consultants, these U.S.-led CSR models all too often are exported around the world, both to countries that have mature industrial relations systems that offer proven solutions, and to developing countries lacking a strong state or labor movement. For example, the Business Social Compliance Initiative (BSCI) offers European brands and retailers a business-friendly social compliance system with links to the New York-based SAI. In this alliance with BSCI, SAI also extended its reach as an even more widely used way to resolve workers’ rights problems—one with little worker agency.

The aforementioned Global Social Compliance Programme (GSCP) appears to be more of the same model. In late 2006, major corporations across many industries created the GSCP to harmonize diverse voluntary codes and auditing systems, creating yet another layer of private business-dominated programs regulating workplace standards and labor rights. This initiative by corporations would further consolidate the social auditing and monitoring industry as the preferred means for seeking compliance with workplace standards and labor rights. FLA, SAI and WRAP have all been invited to participate as “partner organizations.” While unions have been invited to consult and recommend in an advisory board, the GSCP executive board where all decisions are made is composed entirely of corporations and includes no civil society or trade union representation.³¹

The FLA and SAI have attempted to convince major unions and worker rights NGOs to remain in their governance structures and have claimed to be advocates for worker rights in a way that WRAP and GSCP do not. [As the case studies discussed later will show, however, FLA and SAI have proven more effective in protecting the reputations of corporations than in improving working conditions and compliance with labor rights and standards.](#)

A Closer Look Worldwide Responsible Accredited Production (WRAP)

Origins

Worldwide Responsible Accredited Production (WRAP) is an industry-created factory certification initiative that describes itself on its website as an “independent, objective, non-profit team of global social compliance experts dedicated to promoting safe, lawful, humane, and ethical manufacturing around the world.”³² Formed in 2000, it was initially funded with US\$1.3 million from the U.S. industry group the American Apparel and Footwear Association (AAFA) and called itself Worldwide Responsible Apparel Production, but it since has changed its name to reflect its expansion into other industries.³³ WRAP sets standards, provides training and oversees auditors providing certification to individual production facilities rather than performing most audits directly. WRAP says it currently is promoted and endorsed by 25 international trade associations that represent more than 150,000 individual companies and is “the world’s largest labor and environmental certification program for labor-intensive consumer products manufacturing and processing.”³⁴

Governance

WRAP represents an industry-launched effort to monitor workplace conditions and exercise some quality control over the widely criticized for-profit firms that do most actual workplace inspections. Although several apparel industry executives serve on its board of directors, the WRAP charter requires that the majority of its directors be individuals from “other walks of life,” a fact it cites as evidence of its independence from the industries for which it offers certification programs. The five current directors from “other walks of life” include two law professors, a retired federal government law enforcement officer and a former diplomat.³⁵ There are no representatives of workers or worker advocacy organizations. Limited information is available on the WRAP website regarding the names or locations of WRAP-certified facilities. According to its website, “WRAP is a voluntary certification program. We keep all information supplied by participating factories confidential unless instructed otherwise. Therefore, any list generated here will contain only those factories that have provided express authorization to be mentioned. As such, not all WRAP-certified factories may be included.”³⁶ WRAP also makes clear that certification does not mean WRAP is accountable for facilities’ failure to maintain standards

over time: “please note that WRAP’s certification of any factory is based on audit reports generated shortly before a certificate is issued. While WRAP conducts unannounced audits on certified factories to inspect for ongoing compliance, it is the factory’s responsibility to ensure that it maintains full compliance throughout the period of certification.”³⁷ WRAP’s authorized monitors are named on the site and are almost entirely the same for-profit firms used by SAI: SGS, Bureau Veritas, Intertek and TUV. WRAP certifies specific facilities only, with the facility itself paying all certification costs.

Finance

In 2007 WRAP revenues from overseeing this certification system were \$1,513,525. As the social audit phenomenon has exploded, WRAP revenues from initial certification fees and renewals, training and accreditation of its auditors have increased each of the last four years for which there are public records. According to its 2010 IRS nonprofit filing, WRAP received more than \$2.3 million in such revenue.³⁸ It receives no government or foundation support. Statements of independence from industry notwithstanding, WRAP’s financial relationship with the suppliers who are part of the industry supply chain is clear from its own statement on the website. “WRAP is not a membership association to which companies or licensors, such as universities, pay (often substantial) dues. Factories pay WRAP an application fee. Monitors pay WRAP an annual registration fee for each country in which they seek WRAP accreditation. Each factory then negotiates an inspection fee with the accredited monitor of its choice—WRAP does not set these fees nor benefit from them.”³⁹ In this way, WRAP controls access to the largest social certification system by both suppliers and auditors looking for contracts. Having expanded beyond its original apparel area, it plays a major and growing role as the social certification layer between brands and retailers, the for-profit auditing industry, buyers and suppliers, and production facilities and the actual workers.

WRAP sets standards, provides training and oversees monitoring, working with most of the same for-profit auditing firms that often provide these services to FLA and SAI. WRAP offers three levels of certification. The least demanding of all, “a silver certificate,” is a six-month certification based not on complete compliance, but on “substantial compliance.”

The highest level of certification is the “platinum certificate,” which a facility can earn after three years of compliance. This allows the facility to hold certification for two full years, with the understanding that the facility will be visited for an unannounced audit during that period.⁴⁰ [In the WRAP system, auditing results are entirely confidential, do not necessarily involve local workers’ organizations where facilities are located and do not include a complaint procedure.](#) WRAP does develop plans for facilities to correct violations, but workers and unions are not included in such an effort as a matter of practice. As a case below explains, some employers simply decide to walk away from the WRAP program if they are not interested in the proposed plan to correct violations. At worst then, facilities simply lose their WRAP certification, often only temporarily.⁴¹ An important difference between WRAP and both the FLA and SAI is that WRAP limits its certification requirements to local laws and bases its code or “Twelve Principles” on local or national law rather than ILO conventions. It expressly rejects any advocacy role regarding freedom of association: “As stated above, WRAP focuses on compliance with local law. It is an apolitical organization and does not lobby nor advocate for issues such as freedom of association outside of local law, nor the concept of a living wage, which has not been defined. WRAP understands and respects the unique culture of each country. Therefore it is the policy that WRAP has not and will not get involved in any political issue with any country.”⁴² In explicitly limiting its applicability to local and national law and not referencing the ILO core conventions, WRAP clearly sets the bar lower than the other monitoring and certification programs as well as the OECD Guidelines and UN Guiding Principles and many unilaterally defined corporate codes.

Photo: istockphoto.com, Chung Sung-Jun



Given WRAP's refusal to refer to ILO conventions and its close ties to the industry it serves, unions and other worker rights advocates consistently have dismissed WRAP as an ineffective entity to improve workplace conditions. At around the same time WRAP was created, CSR monitoring began to take the more sophisticated form of multi-stakeholder initiatives (MSIs), such as FLA and SAI in the United States, which have tried to make a more credible claim of separation if not independence from the companies that auditing was intended to control. In Europe, the Business Social Compliance Initiative (BSCI, founded in 2003) concedes it is a "business driven initiative" of Europe's Foreign Trade Association, yet has some features found in MSIs, such as NGO and union participation on its stakeholder council, which has a limited role.⁴³ Unfortunately, by repeatedly demonstrating their tendency to put business interests before worker interests, SAI and FLA have shown they have not achieved such independence. BSCI also has links to SAI, such as its use of the SAI auditor accreditation system (SAAS) and presence of an SAI executive on its stakeholder council since 2006.⁴⁴ Along with FLA and SAI, WRAP also has been invited to be a "partner organization" in the business-led GSCP. Details like these show how interconnected the MSI structures are. Given the increasing power and responsibility wielded by MSIs, they should be held accountable.

The Fair Labor Association Origins

The FLA has its origins in the No Sweat Initiative supported by the U.S. Department of Labor in 1993 and later convened by President Bill Clinton as the Apparel Industry Partnership (AIP) to take action against sweatshops in the garment sector. Brands stated an interest in raising the credibility and transparency of codes of conduct and their auditing and certification. Unions, religious groups and NGO allies sought actual commitments to improving wages and conditions. As companies refused to include these firmer commitments, trade union and most NGO participation in the AIP ended before the FLA was formally launched.⁴⁵

U.S. union and NGO allies had raised concerns that any true multi-stakeholder initiative would have to "include a living wage, transparency of factory locations, a strict cap on working hours and monitoring and MSI governance that was more independent of corporate domination."⁴⁶ Corporations in the negotiations argued the initiative never would grow to include many companies—not those

present, but other less socially responsible ones—if the commitments were too demanding and inflexible.⁴⁷ The April 1997 agreement reached by companies and the most moderate NGOs included none of the labor or religious organization's proposals above. The final document also left out proposals to critically engage with governments that failed to respect core labor rights—especially freedom of association—if the MSIs' own mechanisms and measures had failed to make progress.⁴⁸ This last proposal by organized labor and the Interfaith Center on Corporate Responsibility proved the most controversial, not only because doing business in China or other countries whose laws and policies prevented workers from exercising their rights would be made more complicated, but also because "if they were going to take the code seriously, the companies had to become a force for change and for enforcement of workers' rights... This was an idea almost impossible for the corporations to comprehend."⁴⁹

[Fifteen years later, this reluctance to advocate for workers' rights remains at the core of the FLA's identity and offers one explanation of its repeated failure to pursue binding remedies for corporate violations of workers' rights.](#)

Currently, the two countries where FLA programs involve the highest number of workers are China and Vietnam, countries that severely limit the freedom of association. These two countries are home to more than half the workforce of the FLA's participating suppliers.⁵⁰

Governance

Fifteen years after its founding, the FLA now includes at least 57 brands and suppliers and thousands of licensees. It claims its programs affect 5.5 million workers at 4,787 factories, yet its board of directors includes no actual worker representation or union and only one small labor rights organization.⁵¹ Of 18 board members listed on the FLA website—six each from the corporate, university and NGO sectors—only the Maquila Solidarity Network (MSN) can be credibly called a group focused primarily on workers' rights. The current governance structure does not ensure that NGO members of the board are accountable to the trade union or labor rights movement. The FLA calls its structure tripartite: "Colleges and universities joined the coalition, and the FLA began its journey to improve working conditions and workers' lives worldwide through tripartite collaboration."⁵² However, as far as the widely understood meaning of the term at the ILO (that is, including representatives of workers, employers and government) the FLA has no such structure. Neither governments nor workers participate in its governance.

In fact, both the corporate and university board members have commercial concerns at stake, while the labor/NGO counterweight to those interests has had only one authentic advocate for worker rights of the six NGOs listed.

Furthermore, most important changes to policy, practices or the FLA charter require at least a two-thirds vote of each of FLA's sectors represented on the board, making it difficult to reform the MSI into something less corporate-dominated than the structure that emerged from the failed negotiation from which FLA began.⁵³ While corporate and university members represent major brands and institutions, all but one NGO member represent small organizations. Two of the six individuals listed as NGO representatives are based at universities. One law professor has no organizational affiliation and another professor has strong links to and awards from the garment industry and lists an affiliation to an organization that has no structure or recent activities.⁵⁴ The FLA governance structure is clearly not representative of workers in any meaningful way. After four years of attempting to work within the limits of the FLA as the only worker rights group on the board, MSN resigned in February 2013. If inclusion and democratic participation of all stakeholders in governance structures must be part of any credible MSI, the FLA falls far short.⁵⁵

Finance

According to a recent study of FLA's 2010 finances, more than two-thirds of FLA's membership dues—its largest revenue stream—comes from the corporations that are its members, and that corporate membership share is increasing.⁵⁶ The FLA membership fee structure, precise details of which are not posted on its website, is based on scale and revenue of the member company. FLA received an immediate and large infusion of corporate cash when Apple became a member. However, a former board member indicated that in the case of very large member companies like Apple and Nestle, accommodations and adjustments are made to lower the amount paid. One explanation for such adjustments is that very large corporate payments draw too much attention, undermining the FLA's claim to be independent from corporate interests in spite of its predominant corporate backing. Over the years, FLA also has received numerous U.S. government grants to improve workers' rights in Central America and the Caribbean.⁵⁷

While FLA asserts its independence and that of its approved auditors, both the organization and its auditors depend financially on the very brands and suppliers that buy into their MSI scheme, and paid monitoring and training services.

Social Accountability International (SAI) Origins

SAI emerged at almost exactly the same time as FLA. Having noted the lack of uniformity among corporate codes of conduct and inconsistent certification practices, consumer corporate transparency advocates at the Council on Economic Priorities (CEP) convened a 1996 multi-stakeholder advisory board to develop a comprehensive global standard based on ISO standards and ILO core labor rights. The result was the SA8000 standard.⁵⁸ The SAI board of directors includes no unions or labor advocacy groups, except for a former union officer. Its initial advisory board included the aforementioned UNI commercial workers and International Textile, Garment and Leather Workers' Federation (ITGLWF) workers' representatives, who brought exhaustive knowledge of the ILO standards to the process.⁵⁹ Though SAI emphasizes on its website labor participation on the founding advisory board, there is currently only one commercial and service workers' union organization participating. In October 1997, SAI launched Social Accountability 8000 (SA8000) as a global, multisectoral standard for monitoring and certifying labor standards. SA8000 is a voluntary workplace standard that claims to incorporate ILO and UN conventions.

More than 10 years later, a Harvard Business School study found "very little empirical evidence is available to indicate whether those companies that have adopted such codes offer significantly better working environments in terms of safety, health, freedom of association, and fair pay practices. Almost no systematic evidence exists to indicate whether independent organizations, such as SAI, have been able to establish effective monitoring programs that ensure compliance with their codes, or whether they are simply being used as political cover for businesses hoping to avoid further scrutiny from activists and negative publicity."⁶⁰ As of early 2013, there is still no systematic evaluation demonstrating the impact of SA8000 on workers' rights and workplace standard. A 2011 Harvard study did find that if consumers are told workers' rights are being respected at SA8000-certified factories, they prefer products from those factories. However, the study analyzed only consumer behavior and did not examine conditions and rights at a single workplace. Such a study only shows that SAI may work as a brand among some consumers and says nothing about workers' rights.⁶¹ The researchers stress that "we have not attempted to evaluate the benefits provided to workers through SA8000 certification of facilities, and to compare

these benefits with the additional costs paid by shoppers in terms of higher prices. A full cost-benefit evaluation of the SA8000 model would involve a long-term evaluation of the effects of the program on workers and comparisons with alternative mechanisms....⁶² Meanwhile, the use of SA8000 certification has expanded considerably.

At the time of the 2008 Harvard study, 1,874 production facilities had SA8000 certifications. According to the most recent date from the SAI-related accreditation agency, 3,083 facilities held SA8000 certifications as of June 2012.⁶³ Until the effectiveness of SA8000 is more clearly demonstrated, the facts that consumers want workers to have rights and that more facilities are using the standard should not be viewed as actual progress for workers, especially while there are numerous documented cases of SA8000 system failures as related in these pages.

Governance

The SAI board of directors, where all decisions are made, has not included any labor organization since 2008, and increasingly has aligned with business interests, through partnerships with the Business Social Compliance Initiative (BSCI) and the business-driven Geneva Centre for Security Policy (GCSP). SAI's advisory board represents predominantly corporate interests.⁶⁴ While NGOs are eligible to become auditors, currently there are only commercial auditing firms performing SA8000 audits.⁶⁵ This auditing arrangement, which will be further described in these pages, is barely different from the previous efforts of corporations to monitor for compliance with their own codes by paying established financial auditing firms to perform social audits. [One study makes the matter-of-fact observation that "these audit companies are directly paid by the factories being audited, \[which\] raises questions of independence."](#)⁶⁶ As a result, another observer notes there is a "perceived corporate bias" and questions whether the audits effectively meet the goal of ensuring workers' rights globally.⁶⁷

Though both global labor union federations (UNI and ITGLWF) that were once on the SAI board of directors or advisory board have left, SAI continues to assert it includes a labor union perspective. Though its function is not explained, the SAI website lists members of a Founders Committee, including ITGLWF Secretary General Neil Kearney, who left the board in 2006 due to concerns about SAI expanding the use of SA8000 without first improving deeply flawed audit practices. A former member of SAI's

advisory board indicates some members of the board voiced concern about SAI's failure to address proven endemic flaws in the social audits at the core of SA8000 and exertions to expand its reach through an alliance with the business-led BSCI, despite the fact that the BSCI code of conduct was inferior to the SA8000 Standard. After 2006, the SAI board had no participation by any union or labor advocacy ally linked to production workers. Presently, only a retired unionist who no longer represents a labor organization participates on the board of directors. The last representative of a global labor union to participate on the advisory board was from UNI Commerce and did so during 2009–10. She pointed out this, too, was problematic, as there was no organization on the board representing manufacturing workers in an initiative directed largely at those sectors that concentrate on factory-based employment.⁶⁸

Finance

As The New York Times has stated, SAI is "heavily financed by industry."⁶⁹ Currently, SAI has more than 20 major corporate members. According to its 2010 annual report, SAI received two-thirds of its funding as "earned income" from companies.⁷⁰ This earned income included fees it receives for trainings and other services performed for member companies as well as accreditation fees paid by for-profit auditing firms, which the report shows accounted for 26% of its revenues.⁷¹ In 2011, earned income provided nearly half of SAI's funding, but accreditation fees were no longer reported as a category.⁷²

Like other such initiatives, the continued growth of SAI depends on the expected failure of state regulation and collective bargaining, even though these historically have been the effective solutions to problems related to workplace standards. The growing practice of suppliers securing SA8000 certification and buyers sourcing from certified facilities financially supports this alternative to actual regulatory compliance or mature industrial relations with a labor union. Using the SA8000 certification, companies along the supply chain may claim they have met a rigorous standard and fulfilled their responsibilities and respected labor rights. If such certification schemes are to continue and be part of implementing the Guiding Principles on Business and Human Rights that the UN Human Rights Council endorsed in June 2011, such claims will have to be critically evaluated. Choosing this model of private regulation no doubt has an impact on business

enterprises' willingness to dedicate resources to the state regulators that have the primary responsibility to protect rights.

Notably, one-third of SAI's funds in 2010 also came from grants from sources such as the U.S. Department of Labor (USDOL), the U.S. Agency for International Development (USAID) and other international donors. In 2009, grants accounted for 36% of revenue.⁷³ For decades, both the USDOL and USAID have funded training and capacity building for workers and unions as well as for labor ministries to support worker capacity to monitor for minimum standards and rights as well as obligatory workplace inspection and other forms of regulation by the state. In the current scenario, SAI and related CSR organizations receive these increasingly limited funds, often with the promise of leveraging additional private corporate funds. SAI describes such public/private partnerships in

the recent statement on their funding.⁷⁴ Perhaps most glaringly, the U.S. State Department has awarded SAI a major grant to lead training on how to implement the UN Guiding Principles on Business and Human Rights in three countries.⁷⁵ Given the failure of the SA8000 system in the case of Ali Enterprises, the lack of labor participation in SAI governance structures and other instances of SAI failure to integrate workers' perspectives that are described in these pages, SAI receiving that grant is of great concern. These grants to corporate-dominated voluntary programs transfer scarce government funding to increasingly privatized and voluntary workplace regulation efforts and reduce support to vitally needed worker-empowerment programs and programs to increase the formal labor inspection capacity of governments. Because these MSIs are an already central and still growing force in monitoring supply chains, their methodology—especially the social audit still central to it—must be examined.

The Flaws, Secrets and Outright Lies of Workplace Audits

6

“Corporate social auditors are a wart on the face of the CSR industry and need to be regulated and trained during the transition to permanent monitoring through mature systems of industrial relations in workplaces.”

—Neil Kearney, ITGLWF secretary general, to the Ethical Trading Initiative, Nov. 23, 2006.⁷⁶

TEN YEARS BEFORE NEIL KEARNEY made the statement above, he had participated on the SAI's founding advisory board. In the spirit of social dialogue and interest in developing mature systems of industrial relations, he and other labor leaders attempted to include worker perspective and participation in CSR programs. For at least two years, ITGLWF's Kearney and others tried to get SAI to act to reform the social audit process, which had been thoroughly criticized in a 2005 report and others.⁷⁷ However, after those efforts proved unsuccessful, and SAI partnered with the BSCI, ITGLWF and another labor support organization resigned from the SAI Advisory Board.⁷⁸ At the time, SAI chose to expand its widely criticized audit-based model in a partnership with the business-led BSCI rather than attempt any serious reform.

The rise of CSR has been accompanied by a wide array of initiatives to explicitly include and evaluate respect for workers' rights in evaluating business practices. On its face, this is a welcome development. [Acknowledging that businesses have responsibilities in the area of human rights is a first step. Thus far, CSR schemes have not been willing or able to develop binding rules that require companies to meet these acknowledged responsibilities.](#) Instead, nearly all major companies have embraced a modified version of a long-established business practice: the audit. The “social” audit has become nearly universal as CSR's central and often its sole approach to verify that companies meet workplace standards and respect workers' rights. Through the social audit, outside firms and/or other monitors attempt to periodically document a company's performance based on a checklist of working conditions

and workers' rights requirements. Since 1996, FLA, SAI and others have developed and revised these audit protocols that the workplace auditing, monitoring and certification industry uses. Unfortunately, the primary motive for companies to use social auditing and the methodology pursued is not about worker advocacy, but risk avoidance, theoretically providing suppliers, buyers and brands with documentation that the factory was cleared by experts as respecting workers and their rights.

Since at least 1997, research on social audit methods and actual practices has made clear the accounting model is extremely ineffective in the worker rights context. Initially, researchers showed that traditional accounting firms hired by major brands were neither sufficiently knowledgeable nor independent enough to accurately evaluate or report on compliance with labor standards. Furthermore, these auditors spent little time in production facilities, with management always informed prior to an inspection.⁷⁹ Over time, as other auditing failures at the base of the Enron and WorldCom bankruptcies (2001 and 2002) raised serious doubt about the financial auditing profession and its major firms, it became increasingly clear that PricewaterhouseCoopers, Ernst & Young and others could not credibly provide an independent review or protection from risk. Traditional accounting firms no longer are major actors in the social audit industry, yet corporate clients still consult them on CSR.

The social auditing industry is now dominated by for-profit quality control firms such as SGS, Intertek, Bureau Veritas, ALGI, CSCC, DNV, RINA, STR (Now UL), TUV and others. U.S.-

based Verité is a nonprofit, but operates in much the same way as for-profit firms in social auditing. As a 2005 report from the Clean Clothes Campaign put it: "Social audits have become a burgeoning practice....Tens of thousands of social audits are commissioned annually by hundreds of brand-name companies or retailers. A whole industry of commercial social auditors, self-assigned experts, and quasi-independent ethical enterprises has jumped on the social audit bandwagon."⁸⁰ Rather than working with trade union leaders and staff that have a century or more of history in monitoring workplaces, the social audit industry depends on a new profession, for which few people are comprehensively trained. The social audit industry has grown to an estimated US\$80 billion-a-year activity, with its interests linked much more to its corporate clients than to workers.⁸¹

As its critics have repeatedly pointed out, the social audit most often is a scheduled event to get a good snapshot of labor conditions. Companies typically prepare for it, setting the stage to present themselves in a favorable light during that brief audit, which may take as little as four hours and almost never more than three days. More than simply having their key human resources personnel and documentation ready for review, researchers have documented that many factory managers present fake wage, hour and worker identity records, temporarily open exit doors that normally are kept locked and upgrade other safety measures. [Managers have fraudulently presented](#)

[a skewed vision of the workplace by these practices of temporarily improving safety measures, as well as arranging for only selected workers to be interviewed and pressuring them to respond as management directs.](#)

In many cases, interviews only are conducted at the workplace where workers have little reason to feel their comments will remain confidential. In some cases, managers participate in or translate during workers interviews, creating fear that management could retaliate for negative remarks by workers.⁸² Given the extreme concern and respect for confidentiality agreements with the firms being audited and the buyers and brands that source from these factories, this disregard for the confidentiality of workers is especially unjust. At bottom, these practices and their tolerance by social auditors and CSR schemes reflect the extreme deference shown to business and managerial interests throughout the process. After all, many auditors do not want to risk their future relationship with factories that are their clients. If a facility passes an audit, it nearly always means more business for the auditor, likely to return for future audits six months or a year later.

With fraud so well documented in the social audit experience, it is surprising that CSR schemes and their backers suggest that these social audit-based schemes are somehow unaffected by challenges to implementation like corruption that hinder state regulation. Particularly after recent high-profile revelations that Walmart regularly



Photo: WRC

bribed officials in Mexico, it is not surprising to read of managers from supplier factories in China asserting that “staff from Walmart’s purchasing department both sought and accepted bribes.”⁸³ In Kenya, workers made similar claims about past auditors used by Walmart: “In Kenya, in Factory E, also producing mainly for Walmart, workers claimed that auditors were not only offered cash bribes, but were ‘given women from the factory.’”⁸⁴ [On a grander scale, some suppliers simply misrepresent which factory is producing for a brand or retailer, maintaining model facilities to secure certification while sending work to entirely unknown factories.](#)⁸⁵ In the September 2012 Ali fire, SAI cited confidentiality concerns as its reason for refusing to release information about the audit that had taken place at the factory. The information that gradually came out showed that such scenarios are still in place seven years after an exhaustive study identified the problems and that social auditing and CSR simply cannot overcome fraud along the supply chain. What it can provide, it provides to brands and retailers: a veil of credible deniability regarding responsibility for the horrendous conditions and abuse faced by many workers every day.

While acknowledging that the more conscientious social auditing had had some impact regarding issues like forced labor, child labor and health and safety, the 2005 report by the Amsterdam-based Clean Clothes Campaign (CCC) concluded social audits have had limited or no impact regarding the following: freedom of association, discrimination, wages, working hours, stable and direct employment, and abuse. Perhaps most importantly, the CCC concluded that, particularly in China, it would not make technical proposals to improve social auditing but—once again—insist that improvement depends on workers’ capacity to organize themselves as permanent workplace monitors operating within a legal framework.⁸⁶ Short of that, social auditing in CSR schemes most often simply will redefine enabling rights like freedom of association as having been respected when they cannot be freely exercised.

Clearly, not all audits are the same in their level of quality. Some may last a few hours; others a few days. One experienced ethical trading professional estimated that the average amount of time spent is about five hours for a factory of about 600 workers.⁸⁷ According to MIT professor and research team leader Richard Locke, one of the

most conscientious brand’s “auditors typically spend one working day on a factory visit; more than half of this time is consumed by reviewing documents, while the physical inspection of the factory may take a few hours. The worker interviews may consume less than an hour. Thus, the audit is primarily based on factory records, which the auditors themselves claim to be unreliable and often inaccurate.”⁸⁸ Without a doubt, some brands and auditors more strictly follow demanding protocols regarding details like how and where to interview workers, while others look for the least-demanding code or standard and audit for that. But even in its improved and most current versions, audit-based CSR does not provide remedies after the violations have been uncovered.

Both academic researchers and CSR participants from the labor movement interviewed for this report point out one reason audits and CSR programs produce little in the way of remediation is that company representatives in CSR who may agree to corrective actions or to using audit results to influence decisions on which supplier to buy from often have no decision making power in these areas of company operations. As a 2011 article focused on the garment sector explains: “While buyers are ready to intervene in matters of quality, delivery period and price—usually with some form of financial penalty—interventions in the area of social compliance appear to be more problematic, particularly in regard to wages, hours and job security.”⁸⁹ As the head of UNI Commerce put it regarding a well-meaning group of corporate participants in a CSR program, “there are good, competent people on the board with good ideas and good will, but they do not have authority in their firms to deliver on commitments.”⁹⁰

As Locke concludes, even well-funded and well-intentioned programs will not necessarily deliver improved conditions. Beyond the problems caused by fraud, the social audit-based compliance model is flawed, since “the information on which this entire system rests is by its very nature incomplete, biased and often inaccurate and thus cannot serve as the basis for well-informed and reasoned decisions and strategies aimed at remediating poor working conditions in the suppliers’ factories.”⁹¹ Locke, too, notes that audit results are largely ignored in setting purchasing policies and decisions. Regarding the sincere, committed and hard-working human rights team of a major brand, Locke notes that:

"In Bangladesh, out of a total of 50 active suppliers at the time of this research, not one single factory had been approved by the compliance team....While sourcing departments continue to squeeze factories on price, compress lead times, and demand high-quality standards, compliance officers visit the factories and document the problems but do little to change the root causes underlying poor working conditions....Conversely, 'good' factories are seldom rewarded by a sourcing strategy that is designed to seek out the cheapest sources of production rather than factories with the best working conditions. An executive at [one brand's] headquarters made clear to us that in her division, pulling out of a factory or an entire region can be a matter of 20 cents per garment, because the average price amounts to \$6.75. To the great dismay of one of [its] compliance officers, the company dropped a Honduran factory that had worked very hard to come into compliance with the code of conduct, citing business-related reasons."⁹²

In short, audits spot some very particular and relatively easy to identify problems, but even then there usually are no consequences for noncompliance or rewards for improvements. Harder-to-spot problems related to gender discrimination or freedom of association remain invisible, as few auditors come from backgrounds sensitive to these issues and often do not understand what freedom of association means.

The near universal opinion of researchers and practitioners looking at social auditing has been that the practice has made some progress but is severely limited. As a practitioner with Oxfam and the Ethical Trading Initiative put it: "Ethical (or social) audits have helped companies map their supply chains, signaled zero tolerance of child and forced labor, and delivered improvements in health and safety—typically 80% of 'corrective actions' relate to this. But they have a serious flaw as a tool for assuring labor standards: they drive hard-to-solve problems underground where auditors can't find them and give a false positive. Workers may experience forced overtime, harsh treatment, poverty wages and denial of freedom of association."⁹³

Audits may identify superficial, albeit important, physical violations such as sufficient exits and lighting and fire alarms, but there is no conclusive proof that audits actually have improved results on the ground even in these areas. Nor does the "signal" of zero tolerance of child and forced

labor mean these have been eliminated. Nonetheless, these are the areas in which some progress can be claimed. Meanwhile, there is a growing consensus and research showing that audits almost entirely fail to address decent living wages or the enabling right of freedom of association that would allow workers to attend to all the workplace issues that audits can catch and also those related to "root causes" that audits have proven powerless to impact.⁹⁴

While FLA (like SAI) clearly states its commitment to freedom of association, the results of its audits over time show FLA's lack of capacity or sensitivity to the actual practice of freedom of association. Of all violations detected in 14,401 audits between 2002 and 2010 by the FLA and its approved auditors, only 5% concerned freedom of association.⁹⁵ The FLA benchmarks are not the problem, as its language on freedom of association is "fairly complete and in fact is longer than the list of benchmarks for many other areas."⁹⁶ These benchmarks simply are not much used. In 2004, for example, "FLA auditors did not detect a single violation of the union blacklisting benchmark in all the factories that they audited in the world. In that same year, the U.S. State Department found a strong evidence of union blacklisting in apparel export zones in regions such as Central America."⁹⁷ FLA's failure here is consistent with the practices of social auditors generally, as noted in the CCC research: "Auditors at the ILO technical meeting said, for instance, they only tend to ask managers, and not workers, about freedom of association. In none of the seven countries researched by CCC did any workers report being asked by auditors about freedom of association."⁹⁸

Since 2005, nearly all of those working on improving conditions in supply chains—in the more engaged companies, in MSIs and NGOs and obviously trade unions—repeatedly have stated that programs must move beyond social audits to address more than superficial symptoms. Nike, GAP and major social audit firm DNV (accredited by SAI) all have been on record since 2005 or earlier admitting that social auditing is largely a failure.⁹⁹ Nonetheless, the major CSR initiatives like SAI and FLA continue to resist real change. All of the cases described below took place after 2005. Both SAI and the FLA made minor adjustments to their codes, standards and processes between 2008 and 2011 in recognition of the failure of the audit-based CSR compliance model. In revising its benchmarks and some procedures in 2011, the FLA, too, has recognized that audits alone are not sufficient. However, the recent reforms

described below continue to defer to corporations and keep workers at arms' length. [As long as CSR initiatives and companies avoid systematic contact with workers and their unions, improvement neither will be brought to significant scale nor be sustainable.](#) FLA's Sustainable Compliance Methodology (SCI)¹⁰⁰ and SAI's Social Fingerprint initiative both are essentially a "new and improved" line of products and services that acknowledge past failures of social auditing. However, SCI and Social Fingerprint merely emphasize more "worker-friendly" management and greater participation of workers, but still do not clearly and proactively encourage freedom of association.¹⁰¹ This is not surprising, since SAI and FLA still depend on the corporations and auditors for their finances and, as the cases below illustrate, still put the interests of their clients before the interest of workers in the factories they certify.

As MIT's Richard Locke concluded regarding the limits of audit-based compliance programs, "We are not arguing that these compliance programs have never generated positive outcomes. They have. But these improvements have often been limited in their scope and not always sustained."¹⁰² Even the best auditing—which research shows is very rare—supplemented by well-intentioned and well-executed CSR initiatives does not provide a sustainable solution to the widespread serious problems workers face at hundreds of thousands of workplaces. Even leaving questions of their dubious results aside for a moment, MSIs simply cannot cover the majority of workplaces over time in a manufacturing system with thousands of flexible and dispersed global supply chains.

Between them, SAI and FLA systems claim to "cover" 7,870 workplaces, providing a level of protection to about 7.34 million workers.¹⁰⁴ In terms of comparative coverage of workplaces and workers, the largest global union federation in the industrial and manufacturing sectors, IndustriALL (created in 2012, by the merger of ITGLWF and IMF, metalworkers with ICEM, chemical, energy and mining workers), represents 50 million workers. The notion of audit-based CSR programs covering a good percentage of workplaces is highly problematic, as many suppliers, brands and retailers already complain of audit fatigue and the expense of audits. Walmart alone has more than 100,000 suppliers, according to its own website.¹⁰⁵ As the many studies of the way social auditing actually is practiced make clear, the SAI and FLA audit-based systems simply cannot provide what they promise for workers, to brands trying to improve conditions or reduce risk or to conscientious consumers. In addition to the predominance of low-quality audits, these programs simply cannot cover a significant number of workplaces. The Global Social Compliance Program (GSCP) is an attempt to bring these and other CSR schemes up to scale, but focuses much more on reducing the considerable cost of auditing to companies than on defending workers from danger or abuse of their rights.

Unfortunately, years after recognizing that audits and checklists never will deliver real improvements, neither companies nor MSIs engaged in CSR have rethought these programs enough to address root causes. One of the leading alternatives to social auditing proposed by trade unions and academics who study labor is "mature

systems of industrial relations" (MSIR), in which unions represent workers' interests in stable relations and bargaining with an employer within a legal framework. However, in addition to the workplace organizing challenges to this alternative that workers and unions face under corporate globalization and flexible supply chains, the growing social auditing industry itself has little reason to hope for MSIR to advance.



Photo: USAS

As long as collective bargaining and state regulation remain tenuous—as long as formal binding systems used in the past are expected to fail—audit-based compliance through MSIs offers companies a way of claiming to respect workers’ rights and the most basic protection in places where binding worker rights systems are rare. The growth model of firms that audit for SAI and FLA also counts on production under such precarious conditions. “Auditing is an industry with a vested interest. Although brands, retailers and MSIs are overhauling the use of their audits

to place more emphasis on root cause analysis, rather than highlight areas of non-compliance, workplace inspections remain the primary tool by which a company can obtain a snapshot of industrial relations at any given time. One observer estimates the global ethical auditing industry to be worth \$80 billion a year.”¹⁰⁶ Both SAI and FLA are growing in terms of the number of companies participating. However, measuring growth in terms of the number of companies or production facilities that participate guarantees more work for the social audit industry and guarantees little in terms of workers’ rights.

MSIs: Just Another Brand?

7

TO UNDERSTAND THE WORLD OF PRIVATIZED REGULATION that CSR audit-based compliance programs produce through the social audit industry, it's necessary to grasp the several levels of services involved. Just as neither Apple nor the GAP manufactures their products, neither FLA nor SAI directly audit many factories or directly certify brands. Companies like Apple and GAP, and the MSIs that claim to provide consumers and retailers with the ability to know products are produced in a socially responsible way, mainly are designers and owners of a brand. SAI and FLA design and market a system. They then outsource the actual work of inspection, verification and certification to the social audit industry—mostly for-profit quality control and consulting firms. In the case of FLA, there are some nonprofit auditors. The brands buy this system. These MSIs primarily service the corporations that pay membership dues, training and consulting fees and the auditing firms that perform audits and certifications. They oversee a supply chain of monitoring services alongside the supply chain that produces goods. Of course, a system that empowered workers to defend themselves would be much more effective, but that level of respect for freedom of association would alter the dynamics of power and control.

As FLA states in its 2011 annual report, “We don’t certify brands.”¹⁰⁷ FLA elaborates a code and approves selected

“independent” auditors (Independent External Monitors or IEMs) down the line to actually perform most audits. [All of these auditors are paid by the manufacturer being audited.](#) FLA no longer allows the brand or retailer to choose which IEM will audit their supplier. FLA’s accredited monitoring organizations are a mix of for-profit firms and nonprofits. FLA has committed to increase its use of nonprofits grounded in local labor and NGO communities. Thus far, eight of the FLA’s accredited monitoring organizations are nonprofits, though that status says nothing regarding their interest in or capacity to collaborate with workers or unions. Only three of 19 accredited monitors currently are nonprofits that have collaborated with local and international labor organizations.¹⁰⁸ The vast majority of audits are done by the for-profits. More important is the flow of money from brands and retailers to FLA to pay for auditing—the cost of auditing is borne by the brand/retailer, but they pay the FLA and the FLA pays the auditor.

SAI’s layering scheme is more complex. Creating the SA8000 standard was only the first step. From its beginning in 1997, SAI created a department (SAAS) that was tasked with accrediting those certifying bodies that would in turn perform the actual audits leading to a production facility being SAI-certified. In 2007, SAI decided to formally externalize accreditation and SAAS became incorporated as

a “related body” to SAI that is a legally independent nonprofit organization. However, the majority of the SAAS board members are also on the SAI board, including SAI’s president. SAI and SAAS share an office, the same chief financial officer and have the same phone number. The separation may place a legal firewall between SAI and SAAS, but their coordination remains clear. As one study states, “There is a lack of transparency surrounding the relationship between SAI and SAAS. Details are not provided on either website that address this,



Photo: USAS

which could possibly lead an interested party to believe that SAAS is not truly an independent and unbiased organization. This sheds doubt on the credibility of SAAS to accredit certifying bodies to audit against the SA8000. I suggest that SAI and SAAS expand upon their ongoing relationship with each other, and provide further details regarding SAAS's split from SAI. The provision of a contact for further questions would also help add transparency."¹⁰⁹ For example, current information regarding the SAAS board of directors is not made readily available on its website, and only can be found by accessing the nonprofit tax filings.

SAI oversees the SA8000 standard and the associated auditing activities as a system—developed, maintained and promoted by SAI. SAI and SAAS oversee the chain of services from standard-setting, promotion and training to auditor accreditation by SAAS to actual social auditing

of facilities by 21 approved firms. SAI and SAAS receive fees for services related to its product (SA8000) and the auditing system, from accrediting the auditors to training and royalties to potentially disciplining bad auditors. As the Ali Enterprises case and subsequent communications show, SA8000 certification audits are overseen by SAI and SAAS, but are not performed by SAI and SAAS. The factory chooses and pays the auditor. However, to the extent that SAI claims that the system has integrity, that claim of integrity depends entirely on the role of SAI and SAAS. While SAI and SAAS annual revenues in 2010 were \$4.2 million, the revenues received by 21 for-profit firms performing initial certification and recertification audits at 3,083 facilities would be considerably more.¹¹⁰

The SAI system "Supply Chain" as it operated in the case of Ali Enterprises:



Within this supply chain of services, as of June 20, 2012, SAI-SAAS had 3,083 facilities certified in 65 countries at which slightly less than 2 million workers were employed.¹¹¹ As the publisher and owner of the SA8000 standard, SAI oversees this chain of services, promotes it as the gold standard of social auditing and sells training and publications. SAI is neither accountable nor financially at risk when an SA8000 certification is held by a facility at which “noncompliance” leads to serious worker injuries, deaths or egregious violations of worker rights. SAI’s risk exposure is much like the brand or retailer whose image is tarnished by these failures.

While the content of the standard is unimpeachable—repeating as it does ILO conventions and UN Declarations—the SAI process and practices used for certifying immediately reveals shortcomings. As long ago as 2001, Jem Bendell, a business school professor and researcher sympathetic to CSR and SA8000, found that for an auditor following SAI’s exhaustive protocol for SA8000, “a thorough investigation of a production site cannot be done in a two- to three-day audit.” He further concluded that: “People who argue that it is possible either don’t know the complexity of the issues, have a very different understanding of the word ‘thorough,’ or have a commercial interest in saying so.”¹¹² Other research since 2001 repeatedly has found audits often receive considerably less time than that. In effect, this means the standards and language may be very strong as a document, but the system has little chance of real-world application if suppliers must pay for auditors to thoroughly follow its protocols.

Aside from the extended chain of services and lack of accountability for audit quality, the SAI system’s performance regarding actual compliance of certified facilities on rights like freedom of association and wage standards illustrate how ineffective and detached the system is from the reality faced by workers. Commitments in the code language and on-the-ground performance regarding wages are a particularly clear example. SA8000 requires that certified facilities “respect the right of personnel to a living wage.”¹¹³ Requirement 8 in the SA8000 standard offers a particularly glaring case of the complete disconnection between the system being offered by SAI and conditions on the ground: “The company shall respect the right of personnel to a living wage and ensure that wages paid for a normal work week shall always meet at least legal or industry minimum standards and shall be sufficient to meet the basic needs of personnel and to

provide some discretionary income.”¹¹⁴ Especially in sectors like the garment industry or agriculture that use SA8000, almost no employer would claim that workers are paid what is understood as a living wage. Research into wages paid by more than 50 apparel brands shows almost none guarantee payment of a wage above the legal minimum. Those that do not guarantee to pay above the minimum include at least five brands that are SAI members or supporters: Disney, Eileen Fisher, GAP, H&M and Timberland. The “right” to a living wage is solely in that language of the code, not actual business practices.

FLA brands and supporters fare no better, with at least nine researched brands that are “participating companies” (the highest level of FLA affiliation) that fail to commit to a wage better than the legal minimum.¹¹⁵ Since 2011, the FLA code has included the living wage “requirement,” but only as an aspiration. The disconnection between the standard and practices are not surprising, especially in the garment industry, so well-known for paying poverty wages. [The FLA’s approach to poverty wages and issues like suppliers not paying social security and severance—amounting to wage theft—has been to hold forums like those on “Wages Along the Supply Chain” from 2009 to 2011 that study and lament low wages but have no capacity for or interest in proposing change.](#) MSIs that claim to be workers’ advocates either must address the wage issue and be part of reaching a binding agreement, or they must cease calling themselves workers’ advocates and defenders. While the contents of codes and standards remain the subject of debate for MSIs, any effort to improve actual conditions faced by workers will have to question the way in which standards like SA8000 and “requirements” like the one concerning a living wage are conceived at a more fundamental level, and the way in which workplaces actually are audited in the field for compliance to this measure.

While it would be possible for MSIs to do so, neither SAI nor FLA has produced binding agreements or enforceable complaint mechanisms. At best, when these programs encounter noncompliance, serious violations and failure, they produce remediation plans that are voluntary. Nor do these MSIs possess a governance structure that would provide workers or unions with enough reason to think these MSIs effectively would improve conditions and respect for labor rights in the workplace. As we will discuss below, SAI and FLA have responded to the widespread failure of their systems by offering more conferences, levels of consulting services and reworded commitments. Other

labor rights monitoring endeavors, such as those of the Worker Rights Consortium (WRC), which is independent of the apparel industry in finance and governance, and in which unions and workers play a central role, do seek such binding agreements that will be described in these pages. However, SAI and FLA respond to the needs of the companies being audited or certified much more than workers. Both SAI and FLA refer to the need to sign and respect binding agreements with suppliers and auditing firms. They express no such concern for binding agreements regarding workers.

This is not surprising, as MSIs are entirely voluntary and must encourage the entirely voluntary and elective participation of companies in the social audit industry. To do so, they use only positive incentives and dialogue to resolve complaints rather than penalties or anything approaching arbitration or judicial systems familiar to trade unions seeking remedy for workers in a complaint. After all, SAI and FLA offer competing standards and services. [As one recent study of these initiatives has noted, “these CSR programs depend financially on their dues-paying corporate members. And just like there is an emerging market for ethically produced goods, so too is there a market for CSR programs. Corporations are able to quit CSR programs that are too rigorous and go elsewhere.”](#)¹¹⁶ The same market pressures exist at the level of the firms actually doing the auditing. [As reported in *The New York Times*, “Industry experts say that in the battle for market share, profit-making inspection firms are often tempted to be less rigorous because that makes them more attractive to apparel manufacturers eager for certification.”](#)¹¹⁷ In the end, the choice of an alternative CSR regime is not so different from the choice of a foreign country or domestic location with comparatively lower levels of labor regulation, unionization, wages and other standards.

It is important to understand that both FLA and SAI are at the top of the supply chain of these CSR services; SAI alone uses more than 20 for-profit auditing firms that are its “certifying bodies.” Therefore, the scale of the CSR monitoring activities overseen by these MSIs is considerably larger

than the revenues of the few leading organizations. Based on 2010 tax filings by only five U.S.-based MSIs in the top tier of this nonprofit social auditing sector, total revenues for only the MSIs managing the many not-for-profit social certification activities were greater than US\$15 million. Beyond that veil, the for-profit auditors continue and grow. FLA has grown each year, particularly in those countries like China, Vietnam and Bangladesh where freedom of association either is flatly illegal or practically nonexistent.¹¹⁸ SAI facility certification has grown at an annual average of 46% since 2000, with China leading that growth.¹¹⁹

The financial foundations of these MSIs are borne out in the governance structures, limited remediation and grievance procedures and results on the ground for workers. In the years since these “independent” monitoring and certification efforts began, it has become clear workers laboring in factories that were part of these certified supply chains still have little or no voice, as the multi-stakeholder initiatives were not designed for workers’ participation and worker empowerment was not central to the design and implementation of such codes.

A recent analysis of FLA shows how its audits detect many more violations of workplace standards that can be remedied by direct managerial action than they identify and remedy violations of the right of freedom of association, which would empower workers. FLA’s self-evaluation of its success at remedying the few freedom of association violations it identifies are likewise lower than its success in simpler areas.¹²⁰ The explanation is not complicated. Recognizing, respecting and promoting freedom of association would change power relations in a lot of workplaces, and loosening managerial control is not on the agenda either of most corporations or the MSIs overseeing CSR. These corporate-dominated systems that remain focused on social audits and annual inspections will continue to under-report the more complex violations related to freedom of association and power relations in the workplace. As cases in the next section demonstrate, these systems also fail consistently to remedy freedom of association violations that are reported.

Case Studies

THE CASES BELOW reflect how more than 20 years of audit-based CSR initiatives often have resulted in a failure to improve workers' rights, working conditions and wages. In two of the cases below, the CSR initiative was used by the supplier as part of a strategy to prevent workers from exercising their right to freedom of association. In other cases, CSR initiatives refused to assist workers in obtaining payment of wages due and severance when factories in a "socially responsible" brand's supply chain closed. While helping corporations exercise managerial control across global supply chains, audit-based CSR schemes all too frequently also function to suggest that firms have met their responsibilities even though it is understood those responsibilities actually are defined by laws and collective bargaining agreements where they exist. [When they choose CSR certification schemes, employers comply with a voluntary and nonbinding confidential process of audits that ultimately protects them much more than it protects workers.](#) We present here only a small sample of such cases.

Avandia in Guatemala—WRAP

In 2005, WRAP certified the Avandia factory in Guatemala, which produced for the Jones Apparel brand and others. The factory retained that certification until Jan. 29, 2011. Over the course of these years, local and international unions had identified Avandia as having a particularly bad record of respect for workers' rights. In fact, Avandia's violations and the government's failure to sanction Avandia for those violations were included as emblematic examples of failure to respect labor rights under the CAFTA trade agreement in a complaint filed by the AFL-CIO in April 2008. To grant certification from 2005 until early 2011 as it did, WRAP and its auditors would have had to have inspected Avandia at least five times. In addition to testimony from workers and others that could have informed WRAP of numerous violations during interviews, public records and documents testified to serious problems at this "socially responsible" factory. Only after several death threats against workers and intervention by the international labor movement did WRAP decide to decertify Avandia.

As part of a workplace social compliance program unrelated to WRAP, Avandia had agreed to participate in a program to identify and reduce labor rights violations over several months. In January 2006, the Guatemala office of the AFL-CIO's Solidarity Center agreed to facilitate the participation of Avandia workers in the program. However, not only did CSR not improve compliance, the program generated new violations of workers' rights. After a series of joint training sessions, workers and management identified problems and were supposed to discuss ways of remediating ongoing labor violations at Avandia. Meanwhile, workers participating in the trainings and learning about their rights also had begun to internally discuss forming a union. Over the next months, Avandia management refused three times to participate with good faith in joint sessions to resolve the disputes.

At that point workers met with each other and began discussing organizing a union to address grievances. When management found out about these efforts, they dismissed nearly all workers involved within three days. Subsequently, Avandia dismissed all workers involved in the filing of documents to create a union. Although a labor court did order Avandia management to reinstate these workers, Avandia appealed, delayed and made death threats against workers, reminding them that workers in Guatemala who "tried to exercise their rights at work have been known to be killed or just disappear. In addition, Avandia management detained workers for 10 hours with no access to food, water, bathroom or communication. This information was also presented to the Public Prosecutor."¹²¹ Under duress, all but two of the workers involved resigned to receive some severance payment. These workers did not find work for at least the next year and a half, as they had been blacklisted. The two workers who resisted won additional reinstatement and back pay decisions from local courts, but these were never honored by Avandia. A subsequent group of workers tried to file papers and organize a union but experienced nearly the same retaliation—firing and threats—as the first group.¹²²

These events and complaints were documented at the Ministry of Labor and Office of the Special Prosecutor. If WRAP had any sustained contact with workers or local labor organizations or allies, all of these actions by Avandia would have entered into any certification or renewal audit process. Nonetheless, Avandia certification was awarded and renewed by WRAP numerous times. Some months after the CAFTA complaint was filed, the government of Guatemala secured reinstatement for some of these workers under pressure from the U.S. government. Avandia rehired these workers but then re-fired them when management noted they still were engaged in organizing efforts. Over the course of two years, the U.S. government documented the violations by Avandia. According to the public report filed by the U.S. Department of Labor on Jan. 16, 2009, "The employer illegally fired these workers, twice, and has yet to be penalized for this apparent violation of Guatemalan labor law. To address these illegal firings, the courts have ordered the workers reinstated, but these apparently have also been ignored.... These workers were reinstated, only to be fired again days later. It does not appear that any criminal action against the employers has been taken." According to the U.S. Department of Labor's Office of Trade and Labor Affairs (OTLA) review of the Avandia case, there were "four separate court-ordered sanctions for the firing of protected workers, declining in severity and issued over many months.... Avandia continues to operate and export its products."¹²³

All of the events above occurred over a three-year period while the Avandia facility was certified by WRAP and were documented in the CAFTA complaint and subsequent

U.S. government reporting. In October 2010, 22 months after the U.S. government had documented the violations presented by local unions and the AFL-CIO, WRAP performed another workplace audit for a renewal of the certification.

Worker interviews were included in the audit. Contrary to well-established best practices, the WRAP auditor insisted on conducting these interviews at the factory. In a country like Guatemala, the second most dangerous place in the world for trade unionists,¹²⁴ and even more so in a company like Avandia, with a well-documented recent history of threats and intimidation of workers attempting to exercise their rights, a competent auditor would have performed the interviews off-site to reduce the intimidation workers might experience. *In spite of this climate of fear and intimidation, one woman worker and organizing committee member spoke to the WRAP auditor and described past and ongoing rights violations, firings and threats. Within a week, this worker received a written death threat*, which stated: "You pointed us out to the auditors. Quit your job voluntarily because with everyone leaving the company early we are going to lynch you and you are going to die. Attentively, Avandia. 3 days."¹²⁵

The Solidarity Center of the AFL-CIO intervened immediately, sending a letter to the WRAP headquarters in Arlington, Va., calling on the company to ensure the worker's protection and safety and indicate to Avandia that such behavior as well as the ongoing failure to respect labor rights was not acceptable. Weeks later, the AFL-CIO and Solidarity Center staff and Solidarity Center Guatemala

representative met with WRAP at their Virginia headquarters to discuss the death threat, explain other violations faced by Avandia workers over the years and press for action by WRAP.

After the AFL-CIO met with WRAP at their headquarters in November 2010, WRAP sent a representative to Guatemala to investigate. Rather than revoke Avandia's certification, WRAP proposed a remediation plan. Avandia rejected the remediation plan, yet apparently held a valid certification for another three months. In an e-mail to the Solidarity Center in Guatemala,



Photo: National Labor Committee

WRAP claimed to have decertified Avandia in November 2010. However, in January 2013, WRAP's Virginia office stated the certification expired on Jan. 29, 2011, three months after the death threats.¹²⁶ In July 2011, Avandia changed its name to Hwi Mock, but was under the same management, producing for most of the same brands as previously.¹²⁷ After the name change, management illegally fired 17 workers and members of the union, including all of its elected leaders.¹²⁸ In short, Avandia systematically violated labor rights and held a WRAP certification for more than five years that assisted its ability to access export markets.

In the context of Guatemala's poor labor rights record and lack of transparency of business registration, the expectation that an isolated annual or biannual social audit will sufficiently monitor workplace conditions is naïve at best. In this case, the manner in which it conducted its audit and the failure of the audit to uncover gross violations of worker rights publicly documented by local and international unions that have an ongoing relationship with workers compounded the problem. If Avandia workers did not have alliances with national and international unions, it appears that WRAP likely would have continued the certification of Avandia.

Ali Enterprises in Pakistan—SAI

As related at the start of this report, nearly 300 workers died on Sept. 11, 2012, in the Ali garment factory in Pakistan that held a newly awarded SA8000 certificate. The fire itself was tragedy enough, but developments since the fire drive home the point that one of the most widely used methods to seek corporate accountability for lengthy supply chains is broken. Virtually nothing was done by SAI to hold any corporation or employer accountable or to support the workers and families who suffered the devastating impact of safety violations. Their voices were not heard in the certification process before the fire, and remain outside the focus of the certification industry and its interventions after the disaster. SAI has "circled the wagons" to defend its certification system and the major brands and retailers that hire its approved certifying bodies (CBs), such as RINA.¹²⁹

In the face of numerous calls from many local and international labor organizations for SAI to explain how and why its auditors failed to identify or correct egregious safety hazards—including the locked exits that prevented workers' escape—SAI has denied any responsibility for this

tragedy.¹³⁰ SAI partner RINA not only subcontracted this and other audits in Pakistan, it is also the organization chosen to train managers in the region on compliance with SA8000. Given the specialized knowledge and understanding needed to appreciate and identify problems involving freedom of association—and the fact that all evaluations of the social audit process fail especially badly in this area—it is particularly problematic that the RINA course description for an August 2012 training in India on SA8000 covers all the basic contents of the standard, but does not mention freedom of association at all.¹³¹ It is worth noting that this glaring omission is taking place more than seven years after countless practitioners and researchers have pointed out the consistent failure of auditors to understand or identify freedom of association violations.

RINA has failed to offer any substantive information from its inspection and repeatedly has refused to release a copy of its audit findings. SAI reported to labor groups that RINA and SAAS are conducting investigations into what took place but has refused to share any of this information with local worker representatives.¹³² SAI states RINA has suspended the Ali certification and it will not issue any new certifications while investigations are ongoing. SAI asserts that an internal investigation moves forward, but it cannot release any additional information due to respect for confidentiality agreements. SAI has stated it is "considering" a ban on subcontracting of the auditing task in certain high-risk countries and "may require more control by the head office over regional and local offices."¹³³

[Far from enabling major multinationals to ensure safe conditions and respect for workers' rights, SAI appears to have problems with its own supply chain in delivering credible corporate accountability services.](#) Having first failed to make Ali Enterprises correct safety violations and prevent the fire, SAI and its partners also then failed to take a proactive policy stand to assist the victims. Rather than protect workers, the arrangement in this case protects the entire chain of employers, from supplier to final buyer. In the Ali Enterprises case and others, any information about noncompliance and violations is the confidential property of the auditors and their clients. No information was shared with workers or government regulators, either before the tragedy or after. In the days and weeks following the fire, victims' families needed to identify buyers so they could seek urgent support and compensation for the loss of a loved one and income

earner. Though Ali Enterprises employed more than 1,200 workers producing jeans, undergarments and other apparel for export, initially the Worker Rights Consortium and Clean Clothes Campaign were only able to identify one buyer—Germany’s largest discount clothing retailer, KIK. Since the factory produced for export, numerous labor groups asked SAI for information about other Ali Enterprise customers. SAI refused, citing confidentiality requirements. SAI’s explanation, too, is that the agreements between the auditors and facilities are legally binding. Moreover, as much as the factory owner, the certifier’s behavior follows a pattern of negligence occurring not only in Pakistan but throughout the corporate monitoring system. In the CSR certification scheme, the concept that legally binding agreements are needed to protect the parties involved seems to apply very clearly and strongly—for everyone except the workers.

Unfortunately, governments have embraced the very system that failed in the Ali fire as a model. The government of Pakistan offered an economic incentive for factories to seek this certification, offering to pay for the auditing if the facility received the certification. Rather than investing scarce resources in inspection and regulation, the government thus encouraged use of this private system. SAAS noted the obvious conflict of interest this likely would represent, but deferred to its certifying bodies (CBs) to exercise judgment. As noted above, the CB involved at Ali already had judged it reasonable to outsource the auditing to a local firm that issued a disproportionately large number of certifications. Other important actors like the U.S. State Department also are supporting this model. Only eight days after the Ali Enterprises fire, the U.S. State Department announced a major grant for SAI and allied CSR organizations to provide training on the application of the UN Guiding Principles on Business and Human Rights throughout corporate supply chains.¹³⁴ This award is especially troubling since the Guiding Principles commit to levels of due diligence regarding rights like freedom of association that SAI-certified facilities have violated and SAI training programs have undermined, as related in these pages.

Dole Foods in the Philippines—SAI

Just as the chain of auditing, monitoring and accrediting services overseen by SAI-SAAS failed to protect workers before the Ali Enterprises fire or hold any employer accountable or assist victims after the fire, the complex chain of SAI, SAAS and the system of auditors, certifiers and

accreditation services that the Dole Foods facility in the Philippines and Dole Foods Inc. headquarters participated in did nothing to improve respect for workers’ freedom of association. In fact, failures in SAI’s nonbinding complaint and remediation processes allowed Dole’s Philippines subsidiary (Dolefil) to remove the workers’ chosen union while occupying a seat on the SAI board and holding SA8000 certification for its Philippines operations. Dole Foods Inc. had been active in SAI’s program and board beginning in 1998.¹³⁵ Only after the SAI internal complaints process had dismissed the complaint against Dolefil did the company resign from the SAI Advisory Board in 2011 and relinquish the SA8000 certification.¹³⁶ Subsequently, Dolefil moved on to another CSR program and was certified by WRAP as a “gold status” facility in 2011.¹³⁷ Finally, Dole Foods Inc. sold this operation in September 2012, but the impacts of its violation of freedom of association remain intact.¹³⁸

Dole’s Philippine plantation and processing plant employed approximately 5,000 direct full-time and more than 10,000 casual workers. While its casual workforce is prohibited from forming a union, its full-time workers were represented by a union, Amado Kadena-National Federation of Labor Unions-Kilusang Mayo Uno (AK-NAFLU-KMU), which had been elected to represent Dole’s workers in 2001. After making innovative bargaining and organizing gains, that leadership was re-elected in 2006 with more than 80% of the workers’ support in an election with 94% participation. As the union began a new round of bargaining, management at the plantation and processing facility and local government sought to remove the leaders of AK-NAFLU-KMU, which management and the military considered to be too radical.¹³⁹

Dolefil allegedly began implementing anti-union policy changes to nurture the nascent leadership of Labor Employees Association of Dole Philippines (LEAD-PH), a group of workers associated with the armed forces of the Philippines. The union that workers overwhelmingly elected alleged that a company-endorsed worker organization subsequently launched a campaign using unsubstantiated accusations of corruption against union leaders and allegations by the military that AK-NAFLU-KMU was a terrorist organization supporting insurgents. An OECD complaint on behalf of the elected union alleges that management escalated its campaign against the union by committing unfair labor practices, retaliating against union supporters and falsely charging one union leader with criminal libel.¹⁴⁰

From 2006 until 2011, Dolefil closely cooperated with the Philippine military to violate both the collective bargaining agreement and workers' right to freedom of association by seeking to replace the union that workers had elected with overwhelming support with one the employer and government preferred. During this period, local Dole management sought to weaken workers' loyalty to AK-NAFLU-KMU and supported the participation of workers in military anti-terrorism seminars. Workers often were invited by supervisors to attend these trainings by the military.¹⁴¹ Workers allege that Dolefil administrative employees in the trainings registered attendees, creating a record of who did and did not attend the programs. Dolefil management, unlike other employers participating in this anti-terrorism program, also excused workers from their duties and provided paid leave to attend the seminars.¹⁴² Dolefil management allegedly made clear to workers their support for the military and the LEAD-PH, and workers felt compelled to attend these programs and support petition drives, believing they risked retaliation if they didn't.¹⁴³

In 2008, the union sought the assistance of mediators from the Philippine Department of Labor's National Conciliation and Mediation Board (NCMB), hoping to bring an end to Dolefil management's overt support for an illegal campaign against its leadership. However, Dole management refused to participate in the mediation. The local mediators withdrew with the following statement: "Dolefil refused to follow the agreed procedure on the grievance under the collective bargaining agreement....[T]he Company are using the military...to harass the union."¹⁴⁴ In February 2010, Dolefil management illegally removed the democratically elected AK-NAFLU-KMU leadership one year before scheduled elections, replacing it with the disgruntled workers whose five-year, military-backed campaign effectively had polarized the workforce. Though the Philippine Department of Labor twice ordered Dolefil to reverse its illegal decision and return recognition to AK-NAFLU-KMU, Dolefil refused, knowing that Philippine labor courts were too slow to intervene before scheduled union elections.¹⁴⁵

In response to Dolefil's actions and the failed mediation, the union looked to the SAI mechanisms and cautiously filed complaints. The workers hoped to appeal to the U.S.-based parent company, Dole Foods Inc., an SAI Advisory Board member and a partner for more than 10 years. Workers had not wanted to endanger the company's SA8000 certification. The union submitted an "informal" complaint to make clear it was seeking amicable resolution

of labor violations through SAI's Complaints Management System (CMS), a dispute resolution mechanism available for people with complaints of labor violations anywhere in its operations. The union also lodged a complaint with the Philippine-based SA8000-accredited certifier, Societe Generale de Surveillance (SGS), citing continuing violations at Dolefil and seeking another audit and the joint development of a corrective action plan. Finally, citing clear breaches of protocol by the Philippine-based auditors that allowed the violations to continue through several years of audits, the union lodged a complaint against SGS with its accreditor, Social Accountability Accreditation Services (SAAS), to ensure that SGS conducted future audits in compliance with SA8000 protocols.¹⁴⁶

In response to the internal SAI-CMS complaint against Dole and the SAAS complaint against the auditor, SAI recognized and promised the union details of the investigation and secured voluntary agreement from Dole to make publicly available to the parties a scaled-down version of the report. At this time, SGS concluded that Dolefil management had violated workers' associational rights. [The SGS audit report also included recommendations for corrective action, to which Dole Philippines management had 90 days to reply or face revocation of its SA8000 status.](#)¹⁴⁷ [Instead of correcting the violations, Dole's response was to file a complaint against the auditors.](#) With the union locked out of the SGS appeals process, it continued to pursue resolution of the CMS complaint against Dole and requested that SAI proceed to require Dole to implement changes recommended by an independent monitor selected by the parties who were tasked with conducting an independent assessment for SAI. The independent assessment also concluded Dole was in violation of its commitment to SAI. Rather than proceed with the complaint, however, SAI's Advisory Board, in a meeting closed to the complainant union, dismissed the case on the grounds that the proper venue for the union's complaint was with SGS. After more than two years of investigation, SAI let the Dolefil certification by SGS stand, effectively dismissing the union's complaint even though its own auditor, SGS, had revised its findings and agreed with the workers.¹⁴⁸

In spite of Dolefil's SA8000 certification and the regular audits conducted by SAI's accredited auditors after five years of threats and harassment, Dolefil and the Philippine government had succeeded in illegally removing the union workers had voted for by an overwhelming majority in 2006. The subsequent collective bargaining agreement had considerably lower wage increases and no longer limited

short-term, low-paid positions to a maximum 20% of the workforce.¹⁴⁹ Such intervention in the workers' choice of union representation is unfortunately all too common. However, in this case, the employer explicitly claims to respect just this right, and had been repeatedly certified by SAI as doing so since 2001, and it had maintained its SA8000 certification throughout the conflict. When faced with a well-organized and representative workplace-based union, Dolefil launched a concerted effort to dismantle the democratically elected independent union. Rather than providing workers a way to raise concerns and negotiate or seek arbitration for timely remedies, SAI's grievance mechanisms assisted Dole in delaying and displacing local legal processes and violating freedom of association while claiming to do business as a socially responsible company. After securing these favorable results, Dole left the SAI Advisory Board.

In the end, the workers' complaints were dismissed without a clear resolution and the workers were without any further recourse or appeal of the decision. Workers made exhaustive efforts to engage the SAI system, but in the end neither they nor their advocates were allowed to participate in a closed SAI meeting in which the final decision was made. It is worth noting that all of these outcomes took place well after the 2008 revisions to SA8000 and SAI's process-oriented improvements of the Social Footprint system. These revisions did not move SAI toward actual worker-centered processes or proactive support for freedom of association.

Fibres & Fabrics International in India—SAI

In India, SAI granted new SA8000 certifications to companies in the midst of widely known labor rights conflicts in which workers, unions and their allies lodged public complaints alleging serious labor violations. This case again makes clear that workers are not represented in the SAI process and that companies who can and do take extraordinary measures to silence workers still are awarded SA8000 certification.

In 2005, the Garment and Textile Workers Union (GATWU) and the New Trade Union Initiative (NTUI) in India alleged abuses such as forced and unpaid overtime, unreasonably high quotas, physical and emotional harassment, and failure to provide employment documents alleged to have occurred at the Fibres & Fabrics International factory (FFI)

in Bangalore, India, a supplier for major brands including GAP, Armani and the Dutch brand G-Star. They were joined by NGO allies Munnade and Cividep.¹⁵⁰ Later in 2005, the Clean Clothes Campaign (CCC) and the India Committee of the Netherlands (ICN) responded to requests for help by these Indian garment workers' unions and began publicly reporting on these labor law violations. In early 2006, after these complaints had been publicized, [FFI applied for SA8000 certification. Subsequently, CCC directly informed SAI of the labor rights complaints that local unions had initiated. During this labor dispute, after being informed of the complaints, SAI issued SA8000 certifications to five FFI production facilities.](#) Only after repeated interventions over 18 months by CCC did SAI finally revoke the certification. As of the time of this report, FFI's website still asserts they have "CSR Policies based on the SA8000: 2001 Standards."¹⁵¹

In July 2006, while applying for SA8000 certification (and a year after CCC began reporting on the alleged violations), FFI convinced an Indian court to issue a gag order making it illegal for local unions to speak publicly about the alleged violations. This effectively prevented local unions from carrying out their role on behalf of the workforce. CCC continued its efforts to expose violations at FFI and publicly condemned the Indian court's decision. As a result, in February 2007, FFI filed a court case against CCC, its allies and the internet provider CCC and others used to raise international awareness about the violations. FFI alleged these organizations had engaged in cybercrime, defamation, racism and xenophobia.¹⁵² Nonetheless, CCC continued its efforts to improve conditions at the factory and get the gag order revoked. It filed a complaint with the Dutch government's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises and posted regular public updates on its website.¹⁵³ In September 2007, a court issued an arrest warrant for seven individuals from CCC and allies; international arrest warrants were issued three months later, followed by an Interpol alert. Amnesty International expressed public concern about "the filing of apparently false criminal charges against them, aimed at curbing their freedom of expression."¹⁵⁴

In early 2006, FFI had requested SA8000 certification. In spite of the fact that local unions had informed SAI through the CCC first about the ongoing labor rights violations at FFI, and later the court-issued restraining orders, all five of the company's production units were approved. Local unions' perspectives were not part of the certification process. On Nov. 29, 2006, CCC filed a formal complaint

with SAI noting the gag order prevented the auditors from speaking with local worker representative bodies, supposedly a core requirement of the SA8000 auditing methodology. However, the audit did include consultation with at least one “stakeholder” who claimed to represent an unidentified women’s group. This individual also served as FFI’s legal adviser and the director of the law firm that wrote the complaint that generated the gag order against the local unions. This same law firm was acting on behalf of FFI in the defamation case filed against CCC. In response to the CCC complaint, SAI hired a consultant to review the audit and the accompanying stakeholder interviews. The consultant, in meetings with FFI management, urged the company to withdraw its allegations against the local labor groups and initiate a constructive dialogue to resolve the problems in the factory. On April 30, 2007, SAI stated publicly, via its website, that taking legal action against local stakeholders should result in a suspension of certification. Subsequently, the certification for all five factories was suspended.

Despite repeated requests, SAI refused to publish or even share on a restricted basis the report by the consultant. This report, it was understood, confirmed the violations of labor standards alleged by local unions and could have played an important role in exonerating CCC and its allies as part of the evidence presented in court and to the NCP and others involved. SAI claimed this would open them up to similar legal action by FFI as taken toward CCC and its allies. The company was allowed three to six months for remediation before full revocation. In August and November 2007, the certifications for the four sites were revoked and the suspension for the fifth site continued.

The suspensions were welcome, but took place well over a year after local unions and the CCC had alerted SAI of the serious labor violations. Although an agreement between CCC and FFI ultimately was reached in January 2008 that resulted in the withdrawal of the court cases against the labor organizations, it is clear SAI ignored compelling evidence that should have prevented FFI’s certification in the first place. It was not until CCC formally complained that SAI, under pressure, ultimately took the step of evaluating, suspending and revoking SA8000 certification. Clearly, if these Indian workers had not had a network of international solidarity both vigilant for violations and versed in how to pressure SAI, the SA8000 certification system could have proceeded. Despite its website banner proclamation that

“SAI’s mission is to advance the human rights of workers around the world,” its actions in the FFI case made clear yet again that the SAI mission and that of its auditors is to defer to companies and only reluctantly accept input from workers and their allies.¹⁵⁵

Russell Athletic in Honduras—FLA

On Oct. 8, 2008, Russell Athletic, owned by Warren Buffett’s Berkshire Hathaway, announced its second plant closure in Honduras that year. In April, Russell closed the Jerzees Choloma plant at which workers were organizing, but had agreed to transfer workers to its nearby Jerzees de Honduras plant. The October plant closing took place after workers had successfully organized a union to represent 1,800 workers and began legally required bargaining.¹⁵⁶

The union representing workers was affiliated to the Central General de Trabajadores (CGT) labor confederation and had expressed its desire to avoid conflict and work with management. After the closure announcement, the local union and national CGT labor federation filed complaints with both the Fair Labor Association (FLA) and Worker Rights Consortium (WRC), alleging the closure was an attempt by Russell to retaliate against workers for their decision to form a union. Based on worker and local union testimony, the WRC investigation identified more than 100 instances in which Russell managers threatened closure as a means of punishing workers for exercising their associational rights.¹⁵⁷ The WRC assessment concluded that the closure of Jerzees de Honduras was motivated in substantial part by workers’ decision to exercise their associational rights and therefore violated Honduran law and the codes of conduct of Russell’s numerous university business partners. The WRC recommended the company immediately reopen the factory and reinstate the now-unemployed workforce.¹⁵⁸ Russell refused to act on the local union’s testimony and WRC’s recommendations.



Meanwhile, the FLA began its own investigation into the motivations for the closure, conducted by the Cahn Group, and subsequently ALGI.¹⁵⁹ The Cahn group, a for-profit CSR consulting firm, was headed by Doug Cahn, who had spent 15 years as the head of Reebok's CSR program. He also was a founding board member of the FLA, is on the board of Verité and is an "authorized representative" of SAI. The Cahn group reviewed Russell's internal financial and personnel records and backed Russell's claim that the closure was simply a business decision. The second entity hired by the FLA to investigate the closure was ALGI, a private auditing firm accredited by the FLA (and SAI) to conduct audits in Honduras. ALGI concluded there was no evidence that workers' freedom of association had been violated in the closure process.

Following ALGI's investigation, the FLA was criticized by NGOs and worker representatives alleging that ALGI's investigative methodology violated basic audit protocols by failing to properly interview workers, failing to maintain witness confidentiality and ignoring key evidence. The CGT filed a formal complaint with the FLA, describing in detail the ways in which ALGI had failed to follow basic principles of labor rights investigation. In the face of this criticism, the FLA initiated an investigation by a third entity, an ILO expert with a significant background in labor law and freedom of association.¹⁶⁰ Adrian Goldin, the ILO expert, confirmed the WRC's findings, stating that "the closure of the factory has been determined, at least to a significant extent, by the existence and activity of the union."¹⁶¹ Still, the FLA ignored Goldin's findings, concluding in its final report of

January 2009 that "the FLA found the economic factors to be persuasive and accepts that the decision to close JDH [Jerzees de Honduras] was principally a business matter" and was not a response to workers' decision to unionize—the opposite of Goldin's conclusions.¹⁶²

[Based on the WRC's findings, chapters of United Students Against Sweatshops \(USAS\) on numerous university campuses began urging their universities to terminate Russell's license to manufacture university logo apparel, in order to pressure the company to remedy the labor rights violations.](#) As the debate unfolded across the country, Russell repeatedly cited the FLA's position to defend its refusal to reverse the factory closure. USAS coordinated speaking tours of fired workers, as well as protests at Russell's headquarters, Warren Buffett's residence and retail outlets selling Russell goods. USAS also protested at the National Basketball Association playoffs over the league's agreements with Russell and secured a letter to Russell's CEO from 65 members of the U.S. Congress expressing concern about the company's labor rights violations in Honduras.

Ignoring the FLA's defense of Russell's closure decision, numerous universities ultimately chose to strip Russell of its licensing rights; eventually, more than 100 universities took this action. The pressure brought Russell to the negotiating table with the CGT in October 2009. The local union and national CGT signed a groundbreaking labor rights agreement with the employer. Russell agreed to reopen the factory under a new name, rehire all of the



Photo: WRC

workers, pay \$2.5 million in compensation to the workers and commence good faith collective bargaining. Russell also committed, in its agreement with the CGT and in a separate remediation plan negotiated with the WRC, to take unprecedented measures to ensure respect for the right to organize, including union neutrality, at all of its facilities in Honduras, where Russell is the largest private employer.

Because the FLA's defense of the factory closure was a major hindrance to its efforts to convince universities to act, USAS, with the help of the labor movement and its allies, also worked to pressure the FLA to reconsider its position. These tactics included op-eds denouncing the FLA, pressure by students on universities to convince the FLA to change its position, and joint letters from NGOs and academic experts criticizing the FLA's stance and urging it to require more action on Russell's part.¹⁶³ Six months into the students' campaign, the FLA finally announced it would place Russell's FLA membership under a three-month "special review." Notably, the official basis cited by the FLA for this action was not the illegal factory closure, but lesser infractions identified by the FLA that Russell had failed to remedy adequately. Even at this juncture, the FLA did not acknowledge that the closure was illegitimate and never called for the reopening of the factory or the reinstatement of the workers.

FLA's actions in the Russell case likely delayed the reopening of the factory for months and easily could have prevented it had it not been for the resolve of the Honduran unions and the strength of the student campaign. Certainly, had workers and the union not had the benefit of the WRC's independent investigation and the students' national campaign and instead had been forced to rely on the labor rights protections ostensibly afforded workers by the FLA, the factory would have remained closed and the labor rights breakthrough of October 2009 never would have been achieved. The FLA had legitimized Russell's closure and layoffs as well as previous anti-union practices at both plants, causing unnecessary harm to the workers and the union. Indeed, a letter from the local CGT union president of Jerzees de Honduras explains that at the time of the closure, FLA's position caused great damage to the union. The letter explains the FLA took the side of Russell management immediately and at every point and that the FLA and its auditors violated promises to workers, humiliated the local union's leader and rejected their proposals throughout the process.¹⁶⁴

On the other hand, the role played by unions, the WRC, USAS and countless transnational activists helped empower the workers to claim their rights to freedom of association and collective bargaining. After the Jerzees de Honduras (JDH) plant reopened, workers negotiated a 27% wage increase and a number of benefit enhancements. In a second Russell plant, collective bargaining began in 2012. A third plant currently is being organized. If workers and their allies had not fought back against not only Russell but also the FLA, the outcome would have been very different.

PT Kizone in Indonesia, adidas—FLA

Beginning Sept. 3, 2010, PT Kizone refused to pay legally required severance to workers at its Indonesian production facility in violation of national law. PT Kizone had produced over a number of years for FLA member companies Nike, adidas group and Dallas Cowboys Merchandising, which later joined the FLA. In January 2011, the owner of PT Kizone in Indonesia fled, resulting in the closure of the factory in April. This left 2,800 workers unemployed and without the severance pay they had earned—a total of US\$3.4 million, approximately a year of base salary for each worker.

One former Kizone worker explained, "This summer [2012 European Football Cup], adidas is paying hundreds of millions of euros, trillions of rupiah, to sponsor athletic events; meanwhile, without the severance payments to support us while we search for new jobs, many of us cannot pay rent. We cannot afford to eat three meals a day. We cannot keep up with school fees. We owe debt to relatives, neighbors and money lenders. We are calling on adidas to respect our rights and pay us the money we are owed." Adidas was the biggest sponsor of the two major sporting events of summer 2012. They paid a reported £100 million to sponsor the London Olympics and an undisclosed amount to be the major sponsor of the Union of European Football Associations (UEFA), including the rights to the Euro2012 tournament. Their sponsorship of the Spanish football team alone is worth an estimated 25 million euro per year, and their sponsorship of the German team amounts to 38 million euro per year.¹⁶⁵ Though all three companies named above are FLA members, each took a different position regarding the responsibility of brands when workers are not paid by their suppliers. Nike proactively notified the Worker Rights Consortium

that PT Kizone's owner had fled the country and had not provided any funds to pay severance, urged their buying agent Green Textile to pay approximately US\$1 million toward worker severance and adding another US\$521,000 directly from Nike. Dallas Cowboys Merchandising directly contributed US\$55,000 to workers' severance payments. According to the WRC report, adidas "did not disclose the violations, denied responsibility, and refuse[d] to pay anything."¹⁶⁶ Nike originally argued the \$1 million should be considered payment in full on the grounds that the compromised factory-level union had accepted this. After the WRC exposed the illegitimacy of the union-company agreement—which was opposed by the district-level union that now represents the workers—Nike agreed to pay the additional \$521,000. The Cowboys also initially refused to pay anything and, under pressure, decided to pay some money. The divergent actions by these firms makes clear how slippery the meaning of "socially responsible" is when compliance programs are in the hands of CSR groups like the FLA and auditors are financially dependent on and deferential to the companies that are their constituents and clients instead of real worker advocates and unions. The always-fraught social audit system is further compromised by the fact that mechanisms to provide remedy are voluntary and nonbinding.

Since the April 2012 plant closing, the FLA maintained the brands and buyers have no responsibility to step in to provide this unpaid compensation, and that it is not the role of the FLA to compel them to do so. In response to a letter from the president of Cornell University asking the FLA to pressure companies to pay workers' severance,

its president and CEO, Aurret Van Heerden, replied that workers have the right to receive severance and defended the FLA's Code of Conduct and Compliance Benchmarks on the issue, which "include many provisions to protect workers facing termination."¹⁶⁷ Van Heerden also pointed out that although the FLA already *requires* factories to have severance funding in place and that the FLA's affiliates are *encouraged* to also help workers to become 'reincorporated' in the job market, "we cannot mandate these for companies any more than a university could be required to compensate displaced workers if any of its licensees went out of business."¹⁶⁸ *In short, the code and benchmark language the FLA produced and promotes is correct; compliance is another matter and beyond its competence to mandate.*

Regarding the widespread problem of stolen severance payment in global supply chains, FLA has responded by hosting the first Global Forum for Sustainable Supply Chains. At the request of the adidas Group, the FLA held a forum in October 2012 to discuss solutions for workers who are victims of this particular version of stolen wages. Labor rights advocates criticized this forum as a gambit by adidas to deflect the pressure it is facing to pay the Kizone workers. The FLA's willingness to host the forum, at adidas' behest, once again makes clear why an MSI funded largely by those being monitored is problematic. Notably, the only concrete proposal is yet another layer of private regulation in an area where laws and collective bargaining in many countries already address the problems. The FLA convened a multi-stakeholder meeting of companies, international institutions, insurance experts and civil society to discuss the possible creation of a private fund or insurance product



Photo: WRC

that would provide additional coverage to workers affected by factory closures and nonpayment of wages and benefits. Once again, the MSI acts on the presumption of failure of the existing responsibility of the state to protect. For example, Brazil established the Fund to Guarantee Time of Service (FGTS) in 1966 to ensure workers would receive severance and have savings for unforeseen problems. The FGTS has run for decades and carries a surplus enabling the government to invest in social development. Since employers pay a payroll tax of approximately 8.5% of a worker's salary into this social insurance fund, it is not surprising companies and CSR programs would prefer a voluntary private arrangement.

The global forum on unpaid severance concluded a few months ago and PT Kizone workers still are owed about half their stolen wages. Meanwhile, adidas Group has plowed considerable funding into public relations to protect its image and a food voucher program that workers rejected numerous times. For more than a year and a half, workers have been seeking their earned wages, not corporate charity. If CSR schemes like that coordinated by FLA do not ensure suppliers put aside severance payments, and will not advocate for buyers to step in and resolve such failures, what does it mean for FLA's president and CEO to say the FLA "requires that factories have severance funding in place?"

Workers in adidas Group's supply chain have been robbed of severance payments before, and the FLA has taken similar positions. In Indonesia and elsewhere, there have been numerous cases involving tens of thousands of workers, and there is no record of FLA ever taking the position that adidas (or any FLA member company involved in such failures to pay severance) had a responsibility to pay the workers. Workers at the Hermosa factory in El Salvador were owed US\$825,000 when the factory closed in May 2005 after workers attempted to unionize. Reluctant to call on member companies to accept any financial responsibility, FLA coordinated an "emergency fund" that distributed contributions from FLA and non-FLA brands and companies that generated a total of US\$36,000 that was distributed to some of these workers just before Christmas 2007, more than 18 months after the plant closed.¹⁶⁹

While unions and NGO supporters of the Hermosa workers stated that any desperately needed financial compensation to workers was positive, neither FLA nor its member companies should consider payment of approximately

4.3% of wages due as sufficient. The FLA also "encouraged" its member companies to assist the ex-Hermosa workers in numerous ways—training, job fairs, hiring in other facilities since those workers who had supported the union reported being blacklisted—but never suggested that any FLA member company has a responsibility to pay the stolen wages even though they had produced for years at Hermosa and failed to uncover the nonpayment of social security and severance or make their supplier comply. By FLA's own optimistic reckoning, three years after the closing 25% of the Hermosa workers still were unemployed.¹⁷⁰ *In the end, the workers received less than 5% of the wages due to them and FLA cannot demonstrate that its program was responsible for these workers eventually getting jobs elsewhere.*

The FLA strengthened its code and benchmark language on severance and social security payments for auditors as a result of this case. However, two and a half years later, that revision had no effect on social audit performance monitoring at another facility where three FLA members produced for years. PT Kizone had not made payments. At both Hermosa and PT Kizone, workers who have been denied wages are in line behind other creditors who usually have more effective and binding measure to get paid. Unlike investors seeking restoration of lost funds at the World Bank's International Centre for Settlement of Investment Disputes, workers currently have no forum to seek their stolen wages.

Apple/Foxconn in China—FLA

Foxconn factories producing for Apple provide a very current illustration of the doubts about improving respect for labor rights and workplace standards via CSR and an MSI. Despite having its own code of conduct for its suppliers, when its brand's reputation was endangered by worker suicides, deadly accidents and unrest at factories, it decided to use the FLA.¹⁷¹ After a \$250,000 membership fee, FLA inspected the Foxconn factories, initially praising Foxconn in the press before even completing the inspections, then issuing a moderately critical report, then insisting a few months later Foxconn was well on its way to solving its labor rights problems. The results for workers were not so clear. Foxconn still owes stolen wages to many workers, overtime well in excess of China's legal limits remains the norm, and other commitments remain unfulfilled.¹⁷²

An analysis based on independent assessments of working conditions at Foxconn, as well as media reports on developments since the issuance of the FLA findings, concluded that improvements made actually had been modest and of limited significance and did “not come close to establishing labor conditions that are consistent with applicable law and international labor rights norms.”¹⁷³ Shortly after FLA’s report was released, Chinese labor activists released reports highlighting ongoing working hours violations and abuses, as well as problems with the FLA reporting on wage issues.¹⁷⁴ Then, on Jan. 10, 2013, more than 1,000 workers at a Foxconn plant producing for Apple in Fengcheng, Jiangxi Province in China took to the street in a strike to demand a living wage, democratic elections of their own leaders and improvements in working and living conditions. [Observers reported that riot police, water cannons and physical violence were used to suppress the strikers.](#)¹⁷⁵ [Apparently, these workers were not impressed by FLA’s assurances that progress on all these matters is moving quickly.](#)

On Feb. 3, 2013, Foxconn announced it would conduct elections for a representative union at its Chinese facilities. The *Financial Times* noted the move is consistent with Foxconn’s need to protect itself from risk and image problems as well as comply with wishes of the Chinese government: “The move is part of Foxconn’s attempts to tweak its manufacturing machine...in response to frequent worker protests, riots, strikes and soaring labour costs. Beijing is also encouraging collective bargaining as a way to help contain the growing unrest.”¹⁷⁶ In addition, as the Taiwanese press suggested, pressure by labor groups undeniably played a role in possible progress at Foxconn, which “more than doubled wages after protests from rights groups, including China Labor Watch and Students & Scholars Against Corporate Misbehavior.”¹⁷⁷

As noted by many observers, it is much too soon to know whether Foxconn’s promise actually will amount to change for workers. IndustriALL, the global labor organization representing manufacturing workers, expressed hope in change but also concern that this promise, too, could fade as others have: “It is unclear as to how this commitment will be implemented, how transparent the process will be and what percentage of union leaders will be workers democratically elected by their co-workers. More

importantly, effectiveness of the representative union also depends on legal protections to elected representatives at all levels.” As noted by a Hong Kong-based observer, “any union must be a member of the All-China Federation of Trade Unions (ACFTU), which may choose to conduct collective bargaining instead of allowing Foxconn workers’ representatives to deal with management.”¹⁷⁸ Voluntary participation and training in CSR programs like those of FLA may be a part of progress, but that progress is not sustainable without the participation of freely elected representative workplace unions having the ability to bargain collectively.

When FLA and Foxconn first spoke in March 2012 of the intention to improve worker representation in Foxconn’s long-established unions, the ITUC and IndustriALL, along with Chinese labor activists and other allies, issued a statement that explained once again why MSIs like the FLA at best can be a temporary and transitional structure on the way toward workers freely choosing a union and bargaining collectively if improved conditions and respect for workers’ rights are the goal: “The question, however, is not whether there are severe labor rights problems in Apple’s supply chain. This has been obvious for years. And the question is not whether Apple will promise, again, to fix these problems. They surely will. The question is whether anything will actually change. Because once the audits are over and FLA has gone home, the workers in the factories will again be left to deal, as best they can, with the brutal labour conditions that are imposed on them. [Any hope that conditions for workers will improve rests not on the work of auditors, but on the ability of workers themselves to monitor whether their labour rights are being respected and to push for remedies when they are not.](#) If Apple is genuinely concerned about improving the labour rights of workers that manufacture its products, it must ensure that they can negotiate with their employer to bring lasting change to the way that work is performed and compensated.”¹⁷⁹ The FLA may play a transitional role in helping convene those experienced people from governments, unions and employers who know how to coordinate free and fair union elections and true collective bargaining on this scale, but at that point, those tripartite actors must play their representative roles, rather than the FLA, which is limited to voluntary, nonbinding arrangements in an initiative that is funded mostly by corporations.

How We Can Do Better: Building Alternative Models to Improve Working Conditions in Global Supply Chains

9

WHAT IS CLEAR IS THAT PRIVATE SOCIAL AUDITING, as described above, has failed to deliver a system that adequately protects the rights of workers. Indeed, in some cases, these systems have worked to further the exploitation of workers they were supposed to protect. Any serious proposals to overcome the problems described in this report must start from the basis that governments have a duty to protect workers' rights and businesses have a duty to respect them. The UN Guiding Principles for Business and Human Rights provide a clear conceptual framework for what this means in practice.¹⁸⁰ In October 2011, the European Union took a step in this direction when it formally changed the definition of CSR from "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" toward a definition stating that CSR means "the responsibility of enterprises for their impacts on society."¹⁸¹ Echoing the UN Guiding Principles, the EU document says that to comply, business enterprises must include a process with the "aim of identifying, preventing and mitigating their possible adverse impacts."¹⁸² Basing corporate responsibility on impacts that business activities have, rather than what corporations voluntarily choose to address, points these efforts in the right direction, but does not arrive any closer to real remedies for workers or communities.

That, of course, will not be easy. Many national governments currently lack the capacity to protect rights, even if they had the will or commitment to do so. Key to any workable system, of course, is the empowerment of workers to be able to assert their rights effectively, through organizations of their own choosing. This section will look at potential alternatives. Of course, none of them alone will bring about universal protection and respect for workers' rights, but they are tools and initiatives that in our view provide greater possibilities than the social auditing initiatives described in this report. Unions, other workers' allies, employers and governments play a part in most of

the ideas presented. We also make recommendations as to how social auditing must be improved, since it continues to be a dominant model.

A New Generation of Global Framework Agreements (GFAs)

GFAs are labor agreements negotiated between global union federations (GUFs) and multinational companies. Because they are not unilateral, but are negotiated by workers, they represent progress over corporate codes. These agreements typically contain binding commitments by companies to respect international labor rights and national laws throughout their operations. They also provide a space for dialogue to address implementation of the agreement and to address violations. Until recently, GFAs almost exclusively had been negotiated between GUFs and European companies. In 2011 and 2012, Brazilian companies Banco do Brasil and Petrobras and U.S. auto giant Ford became the first companies based in the Americas to sign a GFA.¹⁸³ Early agreements had little reach down the supply chain to effectively address subcontracting and other aspects of the employer relationship. Yet more recent GFAs, like the 2007 agreement between ITGLWF (now IndustriALL) and Inditex have included these employment relationship and supply chain issues. This commitment was strengthened further two years later when commercial and service workers global union UNI signed an agreement covering Inditex commerce and distribution workers.

Many GFAs are far from perfect and have not been regularly respected on a global scale. Indeed, GFAs often have been respected only in those countries where laws and unions already have the capacity to defend workers. However, progress is being made. Global unions and companies can and do regularly renegotiate and strengthen GFAs to address thematic concerns as they arise. Furthermore, the geographic coverage of GFAs also moves forward. The UNI-Carrefour GFA to proactively support freedom of association in Colombia, a country that consistently fails

to protect worker rights (and which remains the most dangerous place in the world for trade unionists) is an important example. The GFA was instrumental in getting support for workers to form a union and negotiate a first contract.¹⁸⁴ *In spite of the many shortcomings of the GFA, it remains workers' main tool for engaging multinational companies.* A recent article concisely describes the flaws and the potential of a new generation of GFA that could be negotiated based on commitments in the UN Guiding Principles on Human Rights and Business.¹⁸⁵

A February 2013 briefing from the Global Labour University offers a concise but balanced statement on the vital role of GFAs and how they mostly have fallen short thus far. "The challenge is in developing a strategy that will serve as a political and organisational answer...to bring the power of unions, as locally or nationally organized entities, to bear on the transnational regulation gap in labour relations... The most important tool unions have devised for this task is the GFA. In contrast to the unilateral and voluntary character of CSR measures, GFAs are bilateral, negotiated and signed as a policy document between transnational corporations (TNCs) and GUFs."¹⁸⁶ Particularly after the 2011 UN endorsement of the Guiding Principles on Business and Human Rights, now is the time to negotiate a new round of GFAs that make clear corporations actively affirming and respecting human rights is not a voluntary activity but central to their required due diligence.

Expand Recent Government Transparency and Reporting Initiatives

Burma Disclosure

Governments can create mandatory rules in particularly problematic nations or supply chains. In 2012, the United States eased longstanding sanctions against Burma in recognition of democratic reforms taking place. The U.S. State Department has agreed to establish reporting requirements for U.S. companies entering Burma to help monitor and prevent their involvement in human and labor rights abuses as the Burmese government and Federation of Trade Unions-Burma establish enforcement mechanisms. The AFL-CIO joined the Conflict Risk Network and 21 institutional investors, asset owners and asset managers, with a combined total of more than \$407 billion in assets under management, in providing the State Department with comprehensive comments on its draft "Reporting Requirements on Responsible Investment in Burma."

The comments made the following key points:

- Federal reporting requirements should provide specific guidance for their practical implementation, including references to international standards most relevant to Burma.
- Information about financial, operational, legal, regulatory and reputational risks contained in company reports should be accessible to institutional investors and the general public.
- Reporting should include subsidiaries and business partners.

The reporting requirements for responsible investment in Burma should be finalized by the summer of 2013.

The Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act contains several specialized disclosure provisions that apply to publicly traded companies relating to responsible corporate behavior and respect for international human and labor rights. The U.S. Securities and Exchange Commission has issued rulemakings to implement some, but not all of these provisions. For example:

- Section 953(b) requires reporting companies to disclose the ratio of CEO to median employee total compensation in their annual proxy statements. This provision will help investors evaluate CEO pay levels relative to their company's entire workforce when voting on "say-on-pay" advisory resolutions as required by the Dodd-Frank Act. High pay disparities inside companies can have a negative impact on employee morale and productivity and lead to increased turnover.
- Section 1502 requires reporting companies to disclose annually whether they utilize conflict minerals originated in the Democratic Republic of the Congo or an adjoining country and, if so, to provide a report describing, among other matters, the measures taken to exercise due diligence on the source and chain of custody of those minerals.
- Section 1503 requires any reporting company that is a mine operator, or has a subsidiary that is an operator, to disclose in each periodic report filed with the Securities and Exchange Commission information related to health and safety violations, including the number of certain

violations, orders and citations received from the Mine Safety and Health Administration (MSHA), among other matters. Companies also must disclose in their Form 8-K reports the receipt from MSHA of any imminent danger orders or notices indicating that a mine has a pattern or potential pattern of violating mandatory health or safety standards.

- Section 1504 requires reporting companies engaged in the commercial development of oil, natural gas or minerals to disclose in an annual report certain payments made to the United States or a foreign government. Disclosure of such payments will help investors evaluate the risks of company exposure to human rights abuses that often are associated with the development of natural resources (such as have occurred in Nigeria or Burma) as well as provide transparency regarding compliance with such anti-corruption laws as the Foreign Corrupt Practices Act.

Reporting Standards

There are also a number of initiatives to encourage the development of reporting standards on issues of corporate responsibility, including compliance with internationally recognized human and labor rights. Internationally, the Global Reporting Initiative promotes sustainability reporting on economic, environmental, social and governance performance. In the United States, the Sustainability Accounting Standards Board seeks to develop industry-specific sustainability accounting standards that can be incorporated into corporate filings with the Securities and Exchange Commission. These standards can provide a template for mandatory reporting by publicly traded companies. All such initiatives must be updated to reflect and implement commitments made in the 2011 revisions to the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights.

Indonesia Protocol on Freedom of Association Endorsed by IndustriALL

On June 6, 2011, a protocol on freedom of association was signed by Indonesian trade unions, Indonesian sportswear employers and multinational sportswear brands, including adidas, Nike, Puma, Pentland, New Balance and Asics. This protocol provides these companies with a practical set of guidelines on how to uphold and respect the rights of workers to join together in trade unions and to collectively bargain decent pay and better working conditions.

The agreement covers such areas of implementation as trade union recognition; nonvictimization of trade union officers and members; a nonintervention pledge on the part of employers into trade union activities; the provision of access for full-time trade union officials from outside the factory; rights to facilities for a workplace trade union; and a duty of employers to engage in collective bargaining with the recognized trade union.

The protocol is binding on all parties at all factories producing goods in the footwear and apparel supply chains of the signatory sportswear brands in Indonesia, and is in the process of being adopted as a benchmark and incorporated into their local compliance policy. Suppliers are obliged to disseminate the content of the protocol and its implementation to their subcontractors. The implementation of the protocol will be subject to periodic review between the sportswear brands, trade unions and supplier companies.

Local unions and employers have negotiated the standard operating procedures for the monitoring aspects of the agreement. In March 2012, members of a national "Supervision and Dispute Settlement Committee" were appointed. Such committees have to be formed at the company level for the agreement to be fully operational.

While the protocol still is being put into practice, it is important to highlight that it ensures unions the freedom to access workplaces and to convey information to union members without prior management permission. While this may seem minor, it has been a common practice for management to prohibit unions to place announcements on a bulletin board or other workplace locations without prior management permission. Such practices are an obvious hindrance to practicing the freedom of association.

The "Jobbers Agreement"

The history of the U.S. apparel industry provides important insight as to how the labor rights problems inherent in a system of contracted production can be addressed. One of the primary means through which the U.S. apparel industry was transformed from a sweatshop business to one defined by safe workplaces, decent wages and a high level of labor law compliance was the negotiation of tripartite agreements between brands and retailers, contract factories and the nation's primary union of apparel workers, the International Ladies' Garment Workers' Union. These pacts, called "jobbers agreements" (the brands and retailers

were known in this context as “jobbers,” because they doled out production “jobs” to the contract factories), had several essential features:

- Each brand or retailer committed to place business only in factories where workers were represented by the union and to maintain business in those factories, essentially on a permanent basis, as long as each factory continued to meet reasonable quality and delivery standards.
- Each brand or retailer committed to only use that number of factories needed to produce all of its orders, meaning that the brand or retailer could not give orders to a new factory until its existing factories were filled to capacity.
- Each contract factory committed to a floor for wages and each brand or retailer committed to pay each factory a price for each product sufficient to enable the factory to pay that wage and to meet all of its labor law and contractual obligations.

These commitments ensured that factories that respected the rights of workers had steady orders at adequate prices, thus aligning the factory’s economic incentives with the goal of achieving and maintaining good working conditions and wages and respecting associational rights. The apparel industry thrived for decades under this regime, providing steady employment at middle-class wages to large numbers of American workers.

Unions, brands and suppliers operating in global supply chains could reach similar agreements. A group of unions and NGOs currently is working to adapt this historical precedent to current production systems.¹⁸⁷

Designated Suppliers Program

The Worker Rights Consortium and United Students Against Sweatshops developed and advocate a comprehensive reform program for the university logo apparel sector. This initiative, known as the Designated Suppliers Program (DSP), differs from existing code of conduct and monitoring regimes in three critical respects:

- The program would require apparel brands to alter their sourcing and pricing practices to remove the corrosive financial pressures and incentives that drive unsafe and abusive practices by factories. Most importantly, the program would require brands to pay prices to their factories sufficient to enable them to produce in a manner consistent with applicable laws

and standards and to maintain long-term relationships with those factories—requirements enforceable by the universities and its agents through the universities’ contracts with the brands.

- The program would use a higher standard for wages than is the case in many labor codes: a living wage. This would mean wage levels in most countries that are several multiples of the prevailing wage. The program also would apply additional obligations to brands in terms of the right to organize and bargain.
- The program would require factories to demonstrate up front, before earning the right to make university-logo apparel, that they are in full compliance with applicable standards—as determined through independent inspections by the WRC, with the results made publicly available. Compliant factories would become designated suppliers for the production of university logo clothing. Under existing code regimes, compliance is assumed until evidence of violations emerges—an ill-conceived approach in an industry where violations are widespread.

By aligning brands’ sourcing practices with their labor rights obligations, the DSP would reverse the economic incentives that drive factories to cut corners on labor rights, ensuring that factories that respect these rights would enjoy long-term orders at fair prices.

In December 2011, the U.S. Department of Justice concluded evaluation of the WRC’s Designated Supplier Program and issued a favorable review; effort are under way to expand participation.

Bangladesh Fire and Building Safety Agreement

In March 2012, unions and labor NGOs proposed a binding agreement on fire safety in Bangladesh. Bangladeshi unions and labor rights groups, along with IndustriALL, Worker Rights Consortium, International Labor Rights Fund, Maquila Solidarity Network and the Clean Clothes Campaign jointly presented the proposal. More than simply citing technical standards and more audits, the agreement rests on the foundation of freedom of association and workers organizing unions to monitor and enforce. Since then, a broad coalition of unions and labor rights organizations is pressing brands and retailers to sign the Bangladesh Fire and Building Safety Agreement. This agreement is a legally enforceable,

not voluntary, factory safety program. The U.S. brand PVH and German retailer Tchibo have signed on and committed funding to the initiative.

As the WRC and International Labor Rights Fund (ILRF) wrote in *The New York Times*, “the agreement contains all of the critical provisions the buyers’ inspection schemes lack: an obligation to raise prices to factories to fund the cost of essential safety renovations and repairs; inspections of all factories by independent fire safety experts with full public disclosure of the results; a mandate that the buyers must cease business with any factory that refuses to operate safely; and protection of workers’ rights to organize and fight for their own safety in the workplace—all legally enforceable through a contract between the apparel companies and worker representatives.”¹⁸⁸

Workers and their unions played a central role in drafting these terms and will participate in negotiating and administering the agreement. It is binding because it proposes actual independent inspections and concrete actions and rules for buyers and suppliers, whereas CSR programs have dithered in the realm of intentions. Each factory must have a health and safety committee to identify risks and educate both managers and workers about safety issues. Trade unions are part of the team conducting safety training. The unions’ role is to teach workers how to proactively protect their safety by organizing, forming legally recognized unions and bargaining collectively with their employers. The agreement also frankly includes the issue of buyers paying prices that allow suppliers enough margin to fulfill these responsibilities. All of these program elements are enforceable through legally binding arbitration.

Better Work

Better Work is a partnership between the International Labor Organization (ILO) and the International Finance Corporation (IFC), the private-sector financing arm of the World Bank. It provides a different model from the corporate-driven social auditing model, examples of which have been described earlier in this report. Better Work currently has programs in garment factories in seven countries.¹⁸⁹ These factories supply the global apparel brands. Better Work’s stated aim is to “improve both compliance with labor standards and competitiveness in global supply chains.”

Better Work developed out of the experience of the Better Factories Cambodia (BFC) program, which began in 2001 as an ILO labor monitoring program of garment factories exporting to the United States under the 1999 U.S.-Cambodia Textile and Apparel Trade Agreement (UCTA). Participation in BFC was a requirement by the Cambodian government for suppliers to gain an export license and obtain access to U.S. markets, with the promise of increased quotas with demonstrated improvements in labor standards compliance. Participation in BFC means that a garment manufacturer would provide access for BFC staff to monitor conditions in the factory and recommend remediation actions to address areas of noncompliance with core labor standards and specific national labor law.

BFC developed a monitoring methodology that sought input from managers, enterprise-level unions and workers, and resulted in factory monitoring reports provided confidentially to the factory management. Reports also were made available by BFC to the international buyers for a fee. Report recommendations form the basis of remediation plans to be undertaken at the factory. This involved setting up a Performance Improvement Consultative Committee (PICC) composed of representatives of labor and management. Plans for improvements and actions taken then are monitored and reported on in the follow-up monitoring period.

BFC also produces six monthly “Synthesis Reports,” published on the BFC website, providing a summary of the data from the factories assessed in that period. The synthesis reports provide an overview of the findings and recommendations and progress achieved. In addition to monitoring activities, BFC staff also provide technical assistance through training, including capacity-building programs for the government, factory management and workers.

The global Better Work program was established in 2009, and is based on a tripartite constituent model that engages national governments and labor ministries, employers and trade unions at the national and sectoral levels, workers/unions and management at the enterprise levels, as well as international brands. A global advisory committee includes representatives from governments, international buyers, global trade unions and employer organizations.

The governance structure of Better Work represents a different model than the corporate-dominated boards of many of the CSR organizations. The Better Work Management Group is composed of two representatives each from the ILO and the IFC. Members of the Better Work Global Advisory Committee include representatives of donor governments, the International Organization of Employers (IOE), the United States Council for International Business, International Trade Union Confederation (ITUC)—the global union federation representing garment workers—IndustriALL¹⁹⁰ and international buyer representatives (of U.S.- and European-based buyers) and independent academics.

The country programs are managed and delivered by Better Work staff. In addition, project advisory committees (PACs), composed of tripartite representatives of government (usually the labor ministry), unions (usually sectoral union federations or industry-level unions) and employer representatives provide inputs into the design of the program, oversee its implementation and comment on the six monthly synthesis reports.¹⁹¹

Unlike other CSR programs, Better Work's finances do not come from corporate dues. Better Work is a technical cooperation program, with the majority of its funding coming from donor governments. It also receives funds from participating buyers and fees from factories for program services. Factories pay an average of US\$2,000 for the bundled assessment and advisory services. In some cases the buyers cover these costs as an incentive for the suppliers in their supply chain to be part of Better Work.¹⁹²

The global Better Work program was built on the original BFC model, which focused on compliance assessment (monitoring and reporting), to now include training and advisory services that aim to build the skills of worker and management representatives.¹⁹³ In contrast to the other initiatives described in this report, Better Work has goals to strengthen social dialogue as a means to address noncompliance issues. It supports "practical improvements through workplace cooperation," bringing together labor and management to agree and work on solutions. Better Work aims to improve industrial relations directly through its programs, at the enterprise (through the PICCs) and at sectoral and national levels (through the PAC).

An ongoing challenge to Better Work is the difficulties faced in the industrial relations environment in the countries, where the reasons for noncompliance are often a very hostile industrial environment or the lack of institutions for resolving industrial disputes. Based on a tripartite model, Better Work has tried to address the underlying issues, including the capacity of the tripartite constituents to represent workers' interests and be able to actively participate in improving compliance in the factory (unions and worker representatives), to understand labor rights and their obligations (managers) and to take action to enforce the laws and regulations (governments).

Better Work has utilized complementary ILO programs for capacity building of labor ministries and labor inspectorates to strengthen labor law governance and administration.

Better Work's assessment of core labor standards covers forced labor, child labor, freedom of association and the right to collective bargaining, discrimination in employment (including sexual harassment); and assessment of national labor law covers contracts, compensation (minimum wages and payment of overtime), hours of work, maternity provisions, and occupational health and safety provisions.

International brands and buyers ought to play a critical part in ensuring remediation. As partners in Better Work, buyers agree not to withdraw their orders from a factory where violations occur, but rather continue placing orders with the factory, and support and invest in the remedies to the situation.¹⁹⁴ Such intentions are important. Ultimately, however, it is workers' participation in negotiating binding collective bargaining agreements that improves the conditions and wages for workers. Whether negotiated at the enterprise level or at a sectoral level, it is through a more mature industrial relations system, where social dialogue is respected, that a difference can be made in the conditions and lives of workers. In order to fulfill the potential of its tripartite structure, Better Work must support the transition toward the goal of unions that workers freely choose negotiating binding collective bargaining agreements.

More than the other MSIs described above, Better Work operates within a structure that includes workers through their unions. It, too, isn't perfect. Repression and violence against trade union leaders is ongoing. Subcontracting to factories that are not inspected is increasing across the industry, and that has led to a deterioration of labor

conditions and has undermined freedom of association and industrial relations. These problems are present in countries where Better Work operates and in countries the Better Work program is considering entering. Before further expansion, improvements must be made in a few key areas. Today, Better Work can be found in Vietnam, Jordan, Haiti, Lesotho, Indonesia and Nicaragua. Here, too, incremental progress can be seen on basic factory conditions, though freedom of association, collective bargaining and decent wages continue to remain elusive.

There are serious questions that concern whether there is genuine worker participation in factory settings in a number of countries in which the program operates, most prominently in Vietnam and Haiti. The same doubts about union participation occur in the national tripartite committees more broadly responsible for Better Work. In addition, there are doubts about whether the program can be brought up to scale to meet the demands of larger-scale industries. A recent study of the Cambodian experience finds more transparency on auditing and reporting is urgently needed, progress on wages must be made and workers and unions must have a viable and enforceable complaint mechanism.¹⁹⁵

As with other MSIs, Better Work is best when it leads or supports a transition toward the exercise of freedom of association and the negotiation of collective bargaining agreements, which are the proven best means to monitor and improve conditions, wages and respect for human rights in the workplace. In spite of these shortcomings, the tripartite structure of Better Work represents a way forward that makes clear that governments and workers must be part of any systematic effort to improve conditions in global supply chains.



Reforming Social Auditing

As described throughout this report, social auditing has proven incapable of ensuring the rights of workers expressed in various codes are respected by the corporations that sign up for these initiatives. There is a real question as to whether these initiatives are likely to be able to perform that function even if reformed. However, at minimum, social auditing initiatives will need to address the following issues if they hope to make a credible claim as a tool for the safeguarding of workers' rights:

- Governance structures of MSIs must include a proportionate number of workers' representatives, who shall be on an equal footing with members with regard to decision making.
- Before being certified or accredited as compliant, social auditing schemes must publicly disclose to local relevant authorities and workers that a facility, brand or retailer is seeking such certification, opening a period for public comment by those regulatory authorities and workers that can result in facilities or brands being blocked from certification until violations and grievances are remedied.
- Inspection methodologies must be dramatically improved, including:
 - a. inspections must be without notice;
 - b. inspectors must talk to workers, off the company premises in interviews arranged by groups workers trust, such as representatives of in-plant unions, other local unions or activists identified by workers and reputable third parties; and
 - c. inspectors should talk to the community to better understand the local context and practices of employers.
- Rather than drafting unilateral and voluntary remediation plans, social auditing schemes must submit to an independent conciliation and arbitration process that includes unions in any workplace where they exist.¹⁹⁶
- Social audits must be released to workers and the relevant authorities.
- MSIs must work with global brands to discuss how their purchasing practices impact the ability of the supplier

factories and subcontractors to respect international standards and domestic law and should seek agreements with such brands to ensure their practices facilitate rather than undermine compliance.

- MSIs must encourage global brands to consolidate their supply chain to reward compliance with greater volume and longer-term relationships and to sever ties with noncompliant factories.

Shareholder Advocacy

Many multinational companies claim they rely on their compliance with existing laws to protect the rights of workers. However, many countries do not have laws protecting fundamental worker rights or they lack adequate enforcement of those rights. To address this discrepancy, union and public employee pension funds have joined with religious and socially responsible investors to urge that companies adhere to international standards for human and labor rights. Through their share of ownership in publicly traded companies, investors have the right to submit resolutions regarding labor and human rights, supply chain codes of conduct and country-specific standards where there are systemic labor and human rights violations. At annual meetings, shareholders vote on such resolutions.

Since 1999, the global labor movement has coordinated such efforts through the Committee on Workers' Capital (CWC), an international labor union network for dialogue and action on the responsible investment of workers' capital.¹⁹⁷ Workers' capital is invested in companies operating in a globalized economy, with increasingly complex supply chains. [By leveraging their retirement savings, workers can influence how companies respect human and labor rights, remain financially sustainable and minimize adverse impacts on the environment.](#) Workers' capital represents a considerable amount of investment: "According to the Watson Wyatt Global Investment Review (2002), workers' retirement savings and pension funds total more than USD 11 trillion globally. It has been estimated that pension fund holdings account for about one-third of the world's total share capital—and significantly more in some countries such as the United Kingdom and the United States."¹⁹⁸

The 2011 endorsement of the UN Guiding Principles and revisions of the OECD guidelines make such shareholder advocacy initiatives even more important. Workers' capital initiatives must understand the commitments to due diligence and corporate responsibility for impacts of business activities throughout the supply chain and use these new tools to their fullest potential.

Conclusion

THESE ALTERNATIVE MODELS call on a variety of actors to play their institutional roles. As stated above, governments have a primary role in ensuring that labor laws and practices are in accord with the ILO and that labor laws are effectively enforced and monitored. Trade unions and corporations have a role in supporting mature industrial relations and the negotiation and implementation of binding collective agreements. NGOs play roles as researchers and campaigners. Investors and consumers, too, have a role in using their power to improve respect for human rights in workplaces throughout supply chains. Each of the proposals in the previous chapter involves some mixture of these actors and some limit to their roles. Below, we summarize those roles for each sector.

Role of Governments

- Bring labor laws and practices in accord with ILO core conventions;
- Ensure labor laws are effectively enforced and monitored;
- Require integrated economic, environmental, social and governance reporting from corporations; and
- Procurement practices must include due diligence regarding human rights at the workplace throughout supply chains.

Role of Trade Unions

- Prioritize organizing in plants known to have sourcing arrangements with companies that are certified by MSIs or say they have responsible sourcing guidelines;
- Include commitments made in UN Guiding Principles and MSI processes in all levels of collective bargaining;
- Prioritize information-gathering campaigns on suppliers that are certified by MSIs; and
- Support the efforts of worker centers and other alternative organizing models and structures to pass and enforce laws and to negotiate binding agreements to defend the rights of workers in precarious sectors and supply chains.

Role of Corporations

- Remedy violations of human rights in the workplace and not to run away from problematic plants;

- Arrange and support truly independent oversight of the failed workplace social audit systems by teams made up of business representatives, local and international unions, workplace activists chosen by their peers and trusted NGO representatives named by workers;
- Reward suppliers with the highest levels of labor rights compliance;
- Advise buyer representatives that plants with a history of anti-union discrimination are not acceptable sourcing partners; and
- Exercise due diligence as described in the UN Guiding Principles to address the impacts of business activities on human rights in the workplace.

Role of NGOs (in research and/or campaigns)

- Coordinate actions with key stakeholders on the ground following the lead of local unions, plant activists and international trade union organizations;
- Gather credible information and share in a timely manner in a useable format with workers and workers' allies, such as workers' centers and unions; and
- Coordinate campaign demands with workers and their unions that focus on producing good jobs for workers, the free exercise of workers' right to organize unions of their choice and collective bargaining.

Role of Consumers

- Insist that brands or products certified or labeled as sustainable or socially responsible actually can demonstrate respect for human rights in the workplace.

Role of Investors

- Insist that companies update their reporting and CSR practices to fully reflect the UN Guiding Principles on Business and Human Rights.

Similar to the layers of contracting that increasingly exist between many workers and the company that is the final buyer of productive labor and known to the public as a brand, the leading MSIs working on CSR have developed a chain of relationships that promises to deliver a reasonable

expectation of compliance with workplace standards and labor rights to brands and consumers. As the cases above demonstrate, this system has continuously failed workers, often amounting to a shell game in which workers and their advocates turn over a shell and find there is no accountability to be found and no binding remedy available, whether to demand basic safety standards or to claim their core labor rights.

None of these measures, if serious, will be done on the cheap. Corporations and some civil society supporters of the MSIs consider it appropriate that companies “pay their way” by financing the MSIs to get the job done. Brands and retailers should pay their way. However, they should pay their way through sustainable supplier prices, wages and local taxes. Thus far, like residents of a gated community with private security and sanitation services, companies have preferred to pay instead into private regulation schemes. In order for these workplace improvements to take place in supply chains, much of the billions of dollars that major brands and retailers spend on CSR and the demonstrably failed auditing industry must go to paying prices to suppliers sufficient to support the whole range of local solutions at the point of production, such as health and safety measures, collective bargaining of living wages and taxes that support the actual state regulators who have the responsibility to protect rights.

As long ago described in A.O. Hirshman’s *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, socially responsible reactions to our disappointment at the failure of states to protect human rights require a balanced use of exit—the preferred course of MSIs and CSR—and voice—the course taken by workers, unions and human rights defenders when they protest from within the workplace or state failing to act. Corporations, CSR and MSIs are not in danger of having their voices ignored. Instead, they have been heading for the exits for more than 30 years. At its core, this debate turns of course on collective voice, or freedom of association. Without that right—whether denied by a state or an employer—violations of standards and all other rights will continue. These problems cannot

be remedied without altering to some degree the always unequal power relations at work. Another worker-friendly management system will never empower workers if the right to freedom of association is denied.

Global supply chains of major brands also had engaged CSR monitoring and social audits of workplace safety and workers’ rights at the Tazreen Fashions and Smart Garment Export factories, where fire killed another 119 workers in Bangladesh between November 2012 and January 2013. Once again, these systems failed to remedy workplace violations before the fire or hold any employer responsible after the fire. Victims and their families, as well as workers at this or another such garment factory, have no protection from extreme danger due to company negligence. No safeguards of standards and rights can truly work if workers do not have the right to organize and speak out—both to employers and those government agencies charged with keeping workplaces safe. In Bangladesh, workers and leaders like Aminul Islam who seek to exercise that right are in danger not only because of fires, but because freedom of association is neither defended by the state nor respected by employers. Aminul had been arrested in 2010 for protesting for that right and for living wages; he continued to organize garment workers and was killed in April 2012. Local unions and worker centers allege he was tortured and killed for seeking justice for the garment workers in Bangladesh. In the case of recurring failure by Bangladesh’s government and the brands and retailers who chose to go there for low costs, workers and their allies have made a proposal that offers a solution, one not so different from those that labor, management and governments negotiated in the last century in the United States. At the time of the Triangle Factory fire and now, business owners, governments and, most of all, workers have known what the dangers are and have known the ways to overcome them. When workers have a voice at work, preferably a union, they can make sure dangerous conditions are improved by making employers and the state do their jobs. Protecting and respecting that right would go a long way toward preventing more such deaths. More voluntary and nonbinding CSR programs will not.

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