



USAID
FROM THE AMERICAN PEOPLE

THE LABOR SECTOR AND U.S. FOREIGN ASSISTANCE GOALS

TECHNICAL PAPER



JULY 2010

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THE ROLE OF THE LABOR SECTOR IN PROMOTING U.S. FOREIGN ASSISTANCE GOALS

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DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



Three ways that we can build a just and lasting peace... First, if we want a lasting peace, then the words of the international community must mean something. ... Second, only a just peace based upon the inherent rights and dignity of every individual can truly be lasting. ... Third, a just peace includes not only civil and political rights — it must encompass economic security and opportunity. For true peace is not just freedom from fear, but freedom from want. ...

Agreements among nations. Strong institutions. Support for human rights. Investments in development. ...

We can acknowledge that oppression will always be with us, and still strive for justice. We can admit the intractability of depravation, and still strive for dignity. We can understand that there will be war, and still strive for peace.

President Barack Obama, Nobel Peace Prize Lecture, Oslo, Norway, December 10, 2009



If improving living standards is the objective of economics, then improving the welfare of workers becomes an end in itself. ... Development is more than just the accumulation of capital and the enhanced efficiency of resource allocation; it is transformation of society. Equitable, sustainable and democratic development requires basic labour rights.

Dr. Joseph E. Stiglitz (2002), Nobel Economics Prize Lauriat (2002)



These three essential elements of a free nation -- representative government, a well-functioning market, and civil society -- work like three legs of a stool. They lift and support nations as they reach for higher standards of progress and prosperity.

Secretary Clinton, "Civil Society: Supporting Democracy in the 21st Century," at the Community of Democracies, July 3, 2010



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ACRONYMS

ADB	Asian Development Bank
ACILS	American Center for International Labor Solidarity (now, the Solidarity Center)
ACLD	Advisory Committee on Labor Diplomacy
ADR	Alternative dispute resolution
ATPDEA	Andean Trade Preference and Drug Eradication Act
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
AGOA	Africa Growth and Opportunities Act
ALMP	Active labor market programs
BFC	Better Factories Cambodia project
BTA	Bilateral Textile Agreement
CAFTA-DR	Central American Free Trade Agreement-Dominican Republic
CAO	Civil advocacy organizations
CBA	Collective bargaining agreements
CBERA	Caribbean Basin Recovery Act
CBTA	US-Cambodia Bilateral Textile Agreement
CBTPA	Caribbean Basin Trade Partnership Act
CECC	Congressional-Executive Commission on China
CLS	Core labor standards
COMESA	Common Market of Eastern and Southern Africa
CSO	Civil society organization
CSR	Corporate social responsibility
DCHA	USAID Bureau for Democracy, Conflict, and Humanitarian Assistance
DRL	Bureau of Democracy, Human Rights, and Labor (U.S. Department of State)
EGAT	USAID Bureau for Economic Growth, Agriculture, and Trade
EU	European Union
FAA	Foreign Assistance Act
FAF	Foreign Assistance Framework
FMCS	Federal Mediation and Conciliation Service
FOA	Freedom of association
FTA	Free trade agreement
GNP	Gross National Product
GSP	Generalized System of Preferences
G/TIP	Office to Monitor and Combat Trafficking in Persons (U.S. Department of State)
GUF	Global union federation
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HOPE	Haitian Hemispheric Opportunity through Partnership Encouragement Act
HRDF	Human Rights and Democracy Fund
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
ILAB	International Labor Affairs Bureau (U.S. Department of Labor)
ILCSR	Human Rights and Democracy Fund
ILO	International Labor Organization
ILO C	International Labor Organization Convention
IMF	International Monetary Fund
IOE	International Organization of Employers
ITN	Insecticide-Treated Nets

ITUC	International Trade Union Confederation
JFTA	U.S.-Jordan Free Trade Agreement
LAC	Labor Affairs Council
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
MEPI	Middle East Partnership Initiative
MFN	Most Favored Nation
MILS	Monitoring International Labor Standards, Committee on
NAALC	North American Agreement on Labor Cooperation
NAFTA	North America Free Trade Agreement
NAO	National administrative offices
NED	National Endowment for Democracy
NGO	Non-governmental organization
NLRA	National Labor Relations Act
OECD	Organization for Economic Cooperation and Development
OPIC	Overseas Private Investment Corporation
OCFT	Office of Child Labor, Forced Labor, and Human Trafficking, U.S. Department of Labor
OTLA	Office of Trade and Labor Affairs, U.S. Department of Labor
PESP	Partnership to Eliminate Sweatshop Employment
TAATC	Trade Agreement Administration & Technical Cooperation Division, Office of Trade and Labor Affairs, U.S. Department of Labor
TAICNAR	Technical Assistance Improvement and Compliance Needs Assessment and Remediation program
TCB	Trade capacity building
TIFA	Trade and investment framework agreement
TPA	Trade Promotion Authority
TPP	Trans-Pacific Partnership
TVPRA	Victims of Trafficking and Violence Protection Reauthorization Act
UN	United Nations
UNAIDS	Joint United Nations Program on HIV/AIDS
USAID	U.S. Agency for International Development
USDOL	U.S. Department of Labor
USG	U.S. government
USGAO	U.S. Government Accountability Office
USTR	Office of the U.S. Trade Representative
WAEMU	West African Economic Monetary Union
WB	World Bank
WHA	Bureau of Western Hemisphere Affairs (Department of State)
WHO	World Health Organization
WMD	Weapons of Mass Destruction
WRAP	Worldwide Responsible Accredited Production
WTO	World Trade Organization

EXECUTIVE SUMMARY

This Technical Paper represents the first in a series of publications based on conceptual and analytic work undertaken by USAID’s Democracy, Conflict, and Humanitarian Assistance Bureau and the State Department’s Bureau of Democracy, Human Rights, and Labor from 2007 to 2010. Its goal is to present a conceptual framework for analyzing how addressing issues in the labor sector can help achieve U.S. government (USG) strategic goals in international development and foreign policy.

Section One: Defining the Labor Sector and its Role in USG Development and Diplomacy Programs

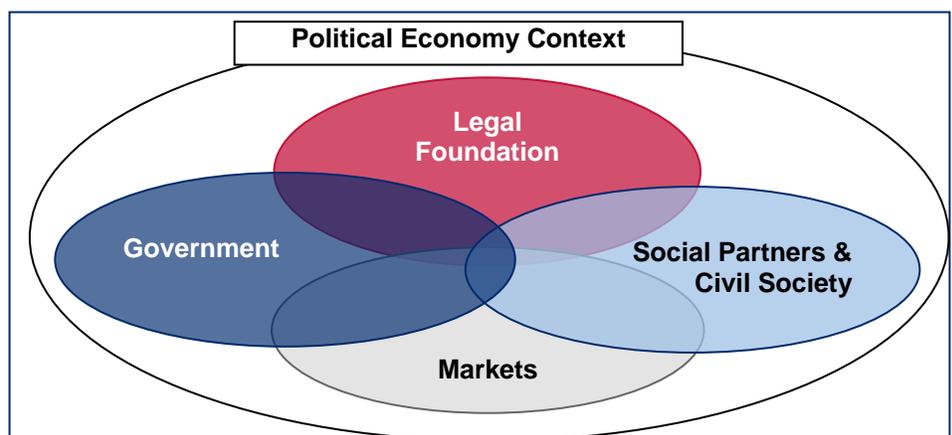
For over fifty years, the U.S. Agency for International Development (USAID) and the Department of State have supported international labor programs designed to contribute to development and diplomacy objectives. Because the thinking and paradigms of the development and diplomacy processes have continued to evolve, it is important to take a fresh look at how labor programs can best contribute to the prevailing objectives of foreign assistance.

The term “labor” means different things to different observers, i.e. people who work, the work itself, organized groups of workers, or industrial relationships. In the world of human rights, labor rights are one component of a broader rights mandate. Thus, depending on one’s vantage, the term may refer to specific industrial relationships between employers and unions or it may be interpreted more broadly to refer to all those who strive to earn a living, whether formally or informally employed, self-employed, unemployed, or out of the workforce. At the broadest level, the term can simply mean all workers.

This paper, and the larger project it introduces, deals with all of these definitions and issues through a focus on the “labor sector” and the role it plays in development. For the purposes of this analytical undertaking, the labor sector is defined as the aggregate of labor rights, regulations, actors, and institutions that shape labor relations and the functioning of labor markets, both formal and informal. *A focus on the labor sector matters because of its impact on people’s abilities to find decent work, realize sustainable livelihoods, and raise themselves and their families out of poverty.*

The central premise of the conceptual framework presented here is that a well-functioning labor sector can contribute to and promote key development objectives, and indeed can even be necessary to the achievement of these goals in some cases. For the purposes of this analysis a well-functioning labor sector requires:

- An established **legal foundation** that promotes the rule of law and respect for human rights, including labor rights;
- Labor sector **organizations**, especially the “social partners”, i.e. the trade unions that bargain collectively on wages and working conditions at the firm or industry level and advocate for workers’ interests in social and political arenas, and employers’ associations that do the same for business and



the private sector. Labor sector organizations also include many types of non-governmental and civil society organizations that provide services and engage in advocacy efforts in the labor sector.

- A competitive and well-regulated **labor market** that allows for the smooth allocation of appropriately educated and skilled labor in response to both private and public sector needs in agriculture, industry, and service sectors of an economy; and
- Support from **government** for a progressively improving set of labor laws and policies, their implementation and continuous improvement, and effective systems of adjudication and dispute avoidance and resolution.
- Understanding of the **political economy context** of the challenges facing the labor sector.

Viewing the labor sector as an integrated system may bring several additional benefits. A systems analysis underscores how a properly functioning labor sector is important to the development of democracy and favorable to market-driven economic growth, consistent with human rights and labor rights. Such an approach may also provide a method for examining the functions performed by the four components of the labor sector to identify strengths and gaps and the connections among them, which in turn may facilitate a more strategic approach to program choice.

Section Two: Components of the Labor Sector

The universe of programmatic possibilities in the labor sector offers a wide array of approaches that directly contribute to development and diplomacy objectives. For the purposes of this paper, the labor sector encompasses four main components: the legal foundation for labor rights and employment, trade unions and other labor sector organizations, government institutions, and labor markets.

Legal Foundation for Labor Rights

A well-functioning labor sector operates within an established legal framework that promotes the rule of law, which requires both respect for substantive human rights, including labor rights, and respect for procedural justice with established rules and procedures that are fairly, transparently, and consistently applied. The term “labor rights” has been defined in international instruments, multilateral agreements, trade law, and domestic law to cover international labor standards. They include the following labor rights:

1. Freedom of association and the right to organize;
2. Effective recognition of the right to collective bargaining;
3. Elimination of all forms of forced and compulsory labor;
4. Effective abolition of child labor and the prohibition of the “worst forms” of child labor;
5. Elimination of employment discrimination; and
6. Promotion of “acceptable conditions of work” with respect to minimum wages, hours of work, and occupational safety and health.

Among these, the first five of are contained in the International Labor Organization’s “fundamental rights” as defined in its 1998 Declaration on Fundamental Principles and Rights at Work, and further defined in eight related ILO conventions on these subjects. The sixth standard is part of the definition of “internationally recognized worker rights” in U.S. trade laws and trade agreements, which includes 1-4, but not standard 5. The use of the term “core labor standards” (CLS) in this technical paper reflects all six of these standards.

Trade Unions and Other Labor Sector Organizations

Labor sector organizations include “social partners,” i.e., workers’ organizations, especially trade unions, and employer organizations, as well as labor rights advocacy organizations. The key difference between

worker organizations and most rights and development advocacy groups is that the former, by definition and ideally in practice, are governed by and for their members. Because workers' organizations are representative organizations, they are accorded special recognition (in international organizations such as the ILO and the OECD, as well as in national labor contexts) as authoritative voices for workers' interests and concerns. This recognition brings with it special responsibilities and duties to union members both in terms of process and outcomes.

The role of labor sector organizations is relevant in achieving goals in three areas:

1. Promoting democratic change as important partners in civil society;
2. Improving labor law, relations, policies and practices and expanding social dialogue to protect labor rights as a foundation for democracy, improve government policy, broadly promote the interest of workers, and encourage sustainable economic growth and employment; and
3. Promoting good governance and combating corruption.

The principle of tripartism is the foundational structure for international labor sector governance on which the ILO and most national-level labor sectors are built. Tripartism represents balanced relations and cooperation among governments, employers' organizations, and workers' organizations. "Social dialogue" among these three parties seeks to promote cooperative and stable economic and political relations. However, the allocation of education, assets, and power among these three may not be equal or static. While collaborative and respectful tripartite relations represent the international ideal for government-worker-employer relations, the gap between realities on the ground and that ideal may remain wide in many countries.

Government Labor Sector Institutions

Labor sector government institutions include labor ministries and departments, labor courts, and administrative tribunals and boards. Labor ministries and departments generally educate on labor law, enforce the law, and regulate, investigate, conciliate and prosecute either directly or through another government body, such as a ministry of justice. Labor ministries and departments also commonly promote labor peace.

Legal systems usually have a role for the judiciary either for hearing labor disputes or reviewing administrative decisions on appeal. A well-functioning legal foundation also requires a judicial process that results in binding decisions. The judiciary may process labor cases through common courts or through specialized industrial or labor courts. Administrative tribunals and boards commonly adjudicate disputes and/or promote the resolution of disputes through alternative dispute resolution (ADR) processes.

Labor Markets

Labor markets allocate the work of men and women according to the forces of supply and demand. Well-functioning labor markets are critical to achieving economic growth, job creation, and poverty reduction. The ideal of a well-functioning labor market approximates the classic definition of a competitive market. Yet other labor market structures may exist in which either the numbers of employers or the number of workers are more limited, access to information is not equitably distributed, transition and transaction costs are high, risks abound, etc. In recognition of the *imperfect* market conditions under which buyers and sellers of labor frequently interact, society has developed institutions and regulations to guide labor markets, manage risks, and defend social goals, including:

- Provision of institutions that allow stakeholders' voices to be heard in the workforce system;
- Regulation of conditions of work according to agreed-upon core and substantive labor standards;
- Establishment of social protections; and
- Respect for dispute resolution and contract enforcement mechanisms by all stakeholders.

Interplay Among Labor Sector Components

In addition to defining the areas that perform key functions in the labor sector, it is also important to consider how the various labor sector components are mutually reinforcing and interdependent. For example, the effective functioning of the legal enabling environment requires strong and transparent government institutions, labor sector organizations need to have enough capacity to feed evidence-based analysis and demands into the system, and markets have to function well enough that most people have work of one sort or another which the legal framework can regulate and adjudicate. ***One of the key findings to emerge from this paper is that advantages are to be gained through the use of a more holistic and systemic way of strategizing interventions in this system.***

Section Three: Overarching Development and Diplomacy Themes and the Labor Sector

Labor sector issues are integral to central themes in both international development and diplomacy, as outlined below. Assessing the components of a well-functioning labor sector in a given country can help inform USG development and diplomacy objectives, and contribute to the prioritization of specific interventions to develop and support well-functioning labor sectors.

Development & Diplomacy Theme	Relation to Labor Sector
Human Rights	A broad international consensus acknowledges that labor rights are fundamental human rights worthy of universal protection and promotion. Governments are not simply obliged to recognize fundamental labor rights as an abstraction; rather, consistent with the rule of law, they are obliged to actively promote and protect them in law and in practice.
Rule of Law	Promoting the rule of law in the labor sector is both a goal in itself and a means of providing broader support for the rule of law. Labor sector organizations play essential roles, unions with regard to labor rights and employers who seek predictable, rules-based environments that adhere to rule of law.
Political Processes	Trade unions and other labor sector organizations often give voice to important segments of society, while employers often push for the implementation of political policy that supports business growth. Labor rights organizations often advocate for policy change that protects the rights of disadvantaged groups and for working people in general.
Civil Society	Natural tension between business and labor form one of the most important and enduring socio-political divisions within many societies; hence the labor sector is important to democratic reform. Trade unions are a special subset of civil society organizations because they are both representative membership organizations and interest groups with a unique set of interests, opportunities, and abilities.
Governance	All labor sector organizations and institutions have important roles to play in improving governance and fighting corruption in matters pertaining both to the labor sector and governance in general. Worker organizations, employer organizations, and NGOs may find common ground in promoting democracy, the rule of law, and good governance.
Economic Growth	Economic growth strategies that are truly broad-based should incorporate labor considerations in order to ensure that workers can access the education and skills, assets, rights, mobility, and livelihood and employment opportunities they need in order to benefit from the new opportunities that economic growth should stimulate. Moreover, promoting core labor standards improves competitiveness.
International Trade	Many trade agreements now include rules-based systems to enforce labor standards. In turn, promotion of international trade affects labor market forces, leading to shifts in demand for workers across skills categories.
Informal Sector	A truly broad-based labor sector strategy should address labor issues in the informal, as well as formal, sector of the economy.

Development & Diplomacy Theme	Relation to Labor Sector
HIV/AIDS	The fight against HIV/AIDS is a common concern for employers, workers, and government, and thus presents an opportunity for promoting and building tripartite cooperation. When competing stakeholders join together to advance a common interest, they build a relationship of trust that makes it possible for them to address more contentious matters.
Vulnerable Populations	Labor sector issues are often of paramount importance to persons in vulnerable populations – women, youth, children, the disabled, war veterans – because obtaining income and evading discrimination may be a matter of survival. Attempts to engage vulnerable populations in sustainable development activities will necessarily involve integrating them more effectively into the labor force.
Migration, Smuggling, Human Trafficking	The concepts related to human migration, trafficking, and smuggling are quite distinct though they all involve the movement of persons within and between countries and, in practice, have some labor sector aspects that overlap.
Conflict and Crises/Post-Crisis Transitions	Labor dimensions of conflict may include 1) industrial conflict, affecting relations between and among specific groups of workers, government, and often business, or 2) broader manifestations of political unrest by workers, as wages and public safety needs are squeezed.

Section Four: Tensions and Synergies in Foreign Assistance Goals

Both perceived and real tensions exist between foreign assistance objectives, particularly competitiveness and the rule of law, and between approaches to the labor sector. There are also considerable synergies. Where synergistic compromise solutions cannot be found, clear identification of the trade-offs may allow local parties to work toward the optimal solution for their society. Four examples illustrate key tensions and synergies.

Advocacy for Core Labor Standards: Promoting Labor Rights and Employer Competitiveness

The “appropriate” degree of labor laws’ regulation and enforcement and effects on employment are a key area of concern. The promotion of sound labor practices rooted in core labor standards can improve the competitiveness of enterprises and economies where properly implemented. However, increased “cash” labor standards, such as minimum wage increases, and strong unions bargaining for wage and benefit gains, can reduce corporate profits where not linked to productivity gains. Increased wages and benefits may have both positive effects, e.g., boosting demand in the local economy, and negative effects, reducing enterprise competitiveness. The optimal strategy might lie in the promotion of both labor rights and employer competitiveness. Doing so requires identifying the differing problems and interests, understanding the context, finding new linkages between issues, and considering a range of approaches and organizations that may be engaged to achieve the goals.

Fragility of Democracies and Development of Labor Unions as Political Interest Groups

Development of the internal capacity of labor unions to organize workers effectively, promote free and democratic leadership, educate workers about their rights, and represent their membership in collective bargaining with employers and policy debates with government is a crucial development goal. In some countries, labor leaders’ outreach may extend into domestic political arenas, participating directly in political activity, law-making, or be identified with political parties. Such participation is, perhaps, the logical outcome of capacity-building efforts that educate workers about how to interact with power structures around them. However, democracies may be rather fragile in some countries. Labor sector programs that seek to strengthen the political voice of labor organizations may inadvertently introduce unknown risks, with nascent democratic institutions barely able to sustain new tensions. While political parties and coalitions may not be strong enough to incorporate a new set of stakeholder interests, building the tools to understand the political process and advocate on behalf of labor sector issues may be an important first step.

Unions and Employment

Just as the USG supports private sector development initiatives by working with business associations and employer organizations, so, too, it supports labor sector development initiatives by helping to strengthen the capacity of labor unions to represent effectively and democratically their membership. Yet the decision to engage with labor unions is not without controversy, owing to concerns regarding campaigns for higher wages, the effect of work stoppages on workplace stability, and their potentially negative effects on competitiveness. Where unions are strong and have been successful in fighting for higher wages, considerable traction can be gained by engaging them in the process of promoting concomitant productivity and quality gains. Where unions are weak and have been restrained or repressed, support to unions serves both human rights goals as well as development objectives. In other situations, supporting union organizing and increased capacity is warranted by the key role they can play in democracy building. In all cases, it is necessary to consider both context and variation in union types and internal organization, when engaging this sector.

Globalization

Encouraging open markets and trade liberalization affects the labor sector in a number of ways. For example, increased integration with global markets may have differential impacts by worker gender, age, region, and education or skill level and dynamic effects that need to be more carefully understood and planned for. Sometimes promotion of export-led growth may be accompanied by relaxing or ignoring national labor laws.

The political economy of labor has undergone dramatic changes over the last twenty years. Vast pools of agrarian labor have fueled rural-urban migration, allowing countries to enter the world marketplace on the basis of cheap labor costs. As many countries' economies have failed, however, to provide adequate domestic demand for labor, international labor migration has grown, taking place largely outside of the formal labor enabling environment established at the national level. In the past state policies buffered workers' welfare and maintained political stability, but insufficient economic integration with global markets led to stagnation. Today, many states have opted instead for fiscal reform, reduced safety net expenditures, and greater integration with world markets in order to improve competitiveness, stimulate economic growth, and thereby expand employment opportunities for workers. But as the pressures of the global marketplace increasingly affect wages and standards of living, the interests of all workers, both formal and informal, will need to be represented and preserved in order to maintain equilibrium and stability within a nation state structure.

Section Five: Contribution of the Labor Sector to U.S. Foreign Assistance Objectives

The U.S. State Department and USAID seek to promote the efficient and effective use of USG resources in five priority foreign assistance areas: peace and security, democracy and governance, human capital investments, economic growth, and humanitarian assistance.

To determine whether the labor sector is relevant to objectives in the five priority program areas, it is useful to pose the following questions when reviewing each of them. Does the program area, element or sub-element set forth an objective that:

- Explicitly promotes a labor right or standard?
- Includes, integrates or incorporates a labor right or standard?
- May be achieved by addressing the labor sector?
- May be achieved by engaging labor sector institutions and organizations?

Achieving Peace and Security

Trafficking in persons is a key issue addressed by diplomacy and development activities under “Achieving Peace and Security.” Labor sector organizations assist in prevention, victim support, and prosecution of traffickers. Another area of intersection between “Achieving Peace and Security” and the labor sector is through activities carried out by worker organizations in the name of peace and security, through unions that may represent police, customs and border agents, prison guards, and other law enforcement officials. Civil unrest is sometimes related to another labor sector issue, namely access to basic goods and services, which is closely linked to the level of compensation for both informal and formal labor.

Governing Justly and Democratically

Labor sector organizations, particularly unions, play an important role in promoting political competition and consensus building. Development activities in the civil society strengthening area also develop and strengthen trade unions and their federations to promote labor rights through organizing and advocacy for workforce development and health initiatives. They also may help to improve their capacities to engage in collective bargaining and tripartite processes, and to act as incubators for democracy. Program priorities in this area also call for promoting a free media, which journalist organizations and unions have done under difficult and often dangerous circumstances. Because it is in their members’ interests to do so, they can serve as excellent watchdogs to ensure that public funding is spent for government purposes rather than stolen or squandered.

Investing in People

Labor sector dimensions in this program area include protecting the rights, including labor rights, of people in vulnerable groups, promoting their employment and ability to earn income, and ensuring that they have safety nets. To reform the laws and policies, tripartite partners could be engaged; to implement them, the capacities of labor ministries/departments and other government offices should be improved.

Promoting Economic Growth and Prosperity

Employers, labor organizations, and labor sector government institutions and their stakeholders all have stakes in promoting economic growth and prosperity. Promotion of economic growth is a crucial first step in beginning to ensure growth in demand for labor. Wages rising in line with productivity also increase domestic demand and contribute to growth. At the firm-level, there are many promising methods of employee involvement, including workforce councils at the enterprise-level and joint committees at a sectoral or national level, for employers and worker organizations to promote their common interests. Labor is already a crucial, if often hidden, dimension in many economic growth programs.

Providing Humanitarian Assistance

With efforts focused on achieving specific results in the short term, engaging labor sector organizations may be instrumental in providing humanitarian assistance regarding income generation, employment opportunities, basic social services, and livelihood support.

Section Six: Toward a New Synthesis in Labor Sector Foreign Assistance Programming

Labor sector foreign assistance programming has the potential to have a much broader impact than has been identified in past conceptualizations of programming in this area. Four key findings of this paper suggest how a re-conceptualization of labor sector programming could improve the likelihood of such interventions contributing directly to the USG priority areas for foreign assistance.

- First, conceptualizing the labor sector using a *systemic approach* offers new advantages that can render labor sector programming more nuanced and better able to contribute to a broad set of objectives.
- This leads into the second key finding regarding the *multiple utility of programming* in the labor sector. Labor sector programming should be conceived not only as a means to promote labor rights and organizations for their own sake, but the labor sector itself can be used as a platform for programming that can directly help to achieve a more diverse set of priority USG foreign policy objectives.
- Third, the labor sector is of *integral importance* to priority USG foreign policy objectives. That is, incorporating labor elements into strategic plans may be instrumental to achieving the five FAF objectives. And the converse is also suggested, i.e. that failure to take the labor sector into account in broader foreign assistance programming may risk undermining progress that might otherwise be achieved.
- Finally, by broadening the systemic approach to include *political economy considerations*, the paper has underscored the urgent need to balance trends towards competitiveness that threaten to undermine popular access to rights, basic goods, and services with mechanisms that will continue to assure access. Failure to address such growing equity and social protection concerns may mean that greater threats to political stability will continue to emerge.

The challenge is to consider how to work within the labor sector to both effect meaningful gains for all workers in developing countries as well as to contribute to broader foreign policy objectives. As countries become increasingly globally interconnected, getting the labor equation right will also involve addressing challenges in each of the four components of the labor sector. Fruitful dialogue is needed with policy makers about the pace, sequencing, and intersectoral incidence of such liberalization. These and other questions will be examined in upcoming country-level labor assessments and other future, labor sector work to be undertaken by USAID and the U.S. Department of State.

1.0 INTRODUCTION

1.1 WHY LABOR AND THE LABOR SECTOR?

The term “labor” means different things to different observers. It may refer to people who work or the human activity that produces goods and services in an economy. As a grouping of people, the term generally refers to worker organizations that represent workers’ interests collectively and individually and have workers as their members. “Labor” may act to achieve specific short-term goals, such as ending addressing workplace conditions, or large-scale, long-term goals, such as bringing about social and political change. Thus, depending on one’s vantage, the term may refer to specific industrial relationships between employers and unions or it may be interpreted more broadly to refer to all those who strive to earn a living, whether formally or informally employed, self-employed, unemployed, or out of the workforce. At the broadest level, the term can simply mean all workers.

This paper, and the larger project it introduces, deals with all of these definitions and issues through a focus on the “labor sector” and the role it plays in development. The labor sector is the arena in which youth as well as adult men and women prepare for and participate in the world of work. ***A focus on the labor sector matters because of its impact on people’s abilities to find decent work, realize sustainable livelihoods, and raise themselves and their families out of poverty.***

The world of work is understood here in its broadest context, encompassing people engaged in agriculture, industry, and service sectors, whether formally employed, and thus protected under the law, or informally engaged in making a living. People work on- and off-farm, in rural and urban areas, in their own countries or abroad. They may toil in legal or illegal activities. They may be working voluntarily or, in the case of trafficked persons, against their will. Given the uneven access to power, economic resources, and political decision-making that frequently characterizes the position of workers and compromises their ability, individually and collectively, to access their rights, free and democratic labor unions can provide workers with a crucial voice in their places of work, in the industries in which they play a role, and in national decision-making as well.

As addressed in this paper, therefore, the “labor sector” is defined as the aggregate of labor rights, regulations, actors, and institutions that shape labor relations¹ and the functioning of labor markets, both formal and informal.

The U.S. government’s (USG) current and primary foreign affairs goal is to “help build and sustain democratic, well-governed states that respond to the needs of their people, reduce widespread poverty, and conduct themselves responsibly in the international system” (U.S. Department of State 2007).² This project focuses explicitly on labor and the labor sector because full consideration of diplomacy and development issues in the labor sector can be critical to building well-governed, democratic states able to respond to their citizen’s needs. The 2000 Report of the Advisory Committee on Labor Diplomacy to the Secretary of State and the President declared that “[p]romoting core worker rights is central to the basic

¹ Labor relations may be viewed generally as the relationship between workers and employers or more specifically “as a system for striking a balance between the employment relationship goals of efficiency, equity, and voice, and between the rights of labor and management” (Budd 2008, vii).

² The Obama Administration is finalizing its strategic reviews of foreign policy, including development. The results of the Presidential Study Directive on Global Development and the State Department’s Quadrennial Diplomacy and Development Review are expected to be released in September 2010.

purpose of U.S. foreign policy, which is to create a more secure, prosperous and democratic world....” (State 2000).

The sources of authority related to the goals and roles of the labor sector in U.S. development and foreign policy may be found in U.S. framework legislation, such as the Foreign Assistance Act (as amended), targeted U.S. legislation such as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act), unilateral trade preferences and bi- or multilateral trade agreements with labor provisions, and USG policy as determined by the President’s Administration and long-standing USG principles and objectives.³

Just as a focus on the labor sector can help achieve foreign assistance goals, neglecting to address this sector has implications as well. For example, failure to address labor sector issues and correct asymmetrical access to resources may increase a country’s vulnerability to social and political dislocations that can adversely affect democracy, stability, and/or economic growth. A country that cannot offer the prospect of employment to its labor force may leave itself open to the destabilizing pressures that can arise from unemployed and disaffected adults and youth. A country that cannot assure working conditions compliant with international standards or cannot provide stable labor relations may make itself less attractive to foreign investment. And a country that does not provide appropriate knowledge and skills to its workforce through education and training may risk weak productivity and thus threaten its competitiveness on the global market. These factors in turn can also exacerbate a downward economic spiral. In such a scenario, investment may be discouraged, making it harder for local businesses to connect to international management techniques, modern technologies, and new markets. Formal sector growth can be stymied. People may look outside the legitimate sectors of the economy for new livelihood opportunities. The net result of these factors may be an increased reliance of the citizenry on public social entitlement programs, such as social security and health programs. This in turn places huge burdens on the public treasury, straining the government’s ability to provide for the basic needs of its people. At the same time, the downward spiral may affect prospects for democratic growth as well. Labor force participants whose rights are not protected by the country’s laws and institutions and who do not have an effective voice in advocating for legislative action or influencing government policy may lose faith in their governments, which in turn may lead to political and societal conflict.

A focus on the interests of labor, as represented by trade unions and other labor sector organizations, and business, as represented by employer or business associations, by developing country policymakers and the development organizations that work with them is therefore essential to address people’s rights and their needs to earn a decent living in support of themselves and their families. It is also important to the development of accountable political systems that respond to citizens’ concerns and interests, democratic multi-party systems that are interest-based, rather than based on personalities and patronage, and more vibrant civil societies. As people believe that their rights are respected, their voices are heard, and their access to education and livelihoods is improved, their commitment to their communities and nations is strengthened. Addressing these issues also builds human capacity in crucial areas such as negotiation and leadership accountability, which in turn contributes to the peaceful resolution of differences and disputes in labor and industrial relations and can provide critical incentives for more transparent governance.

The USG supports international labor sector programming in pursuit of development and diplomacy objectives, primarily through the U.S. Agency for International Development (USAID), the U.S. Department of State’s Bureau of Democracy, Human Rights, and Labor (DRL), and the U.S. Department of Labor’s (USDOL) International Labor Affairs Bureau (ILAB).⁴ USG programming has aimed at:

³ See also, for example, testimony provided by USG officials to Congress (e.g., Posner 2010, Polaski 2010, Reichle 2010).

⁴ Drawn from mission statements found on websites for the State Department’s Director of U.S. Foreign Assistance and its Office of International Labor and Corporate Social Responsibility and the Department of Labor’s ILAB.

- Affirming, and supporting the enforcement of, international labor rights;
- Combating child labor, forced labor, and human trafficking;
- Strengthening the capacity of institutions, governmental and extra-governmental, to administer effective programs in support of the labor sector;
- Promoting freedom of association, including the role of organized labor, building the capacity of free and independent labor unions around the globe to advocate effectively on behalf of their members for their rights and decent conditions of work;
- Engaging with civil society organizations to advocate regarding issues of concern to labor;
- Working with the private sector to protect human rights, including labor rights;
- Creating an international economic system that shares the benefits of increased economic growth and security with all workers; and
- Promoting economic growth with an enabling environment that encourages job formation, strengthens industrial relations between employers and unions, and addresses the needs of the workforce alongside the needs of employers to improve the competitiveness of firms, industries, and sectors, encourage growth, raise productivity, and stimulate wages and employment.

The USG's use of labor diplomacy has helped ensure more coordinated support between development and foreign policy goals. For example, the USTR has negotiated increasingly detailed labor provisions into trade agreements and, at times, the governments of developing countries respond with requests for technical assistance to better meet these obligations. The U.S. Department of State and the Department of Labor both provide technical assistance and act in the realm of labor diplomacy. Discussions on whether and what kinds of assistance the USG may provide to a country may be concurrent with a review of its compliance with labor rights provisions in trade agreements or beneficiary criteria for unilateral trade preference programs. This extension of assistance often has greater foreign policy implications in post-conflict and politically and economically unstable countries. Labor diplomacy may bring together developed and developing countries, as happened in April 2010 when USDOL hosted the first-ever meeting of labor and employment ministers from the world's 20 largest economies.⁵ The Department of State's Special Representative for International Labor Affairs also plays an important role in labor diplomacy.

1.2 OVERVIEW OF GLOBAL LABOR SECTOR ANALYTIC INITIATIVE

In 2007, the U.S. Agency for International Development's Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA), in cooperation with the U.S. Department of State's Bureau of Democracy, Human Rights, and Labor (DRL), were tasked with establishing how programs in the labor sector can best contribute to foreign assistance objectives. The aims of this paper are: 1) to present an innovative conceptual framework that unites democracy and governance and economic perspectives on the labor sector, 2) to explore how addressing issues in the labor sector (as defined above) can help achieve USG strategic goals in international development and foreign policy, and 3) to explore how addressing labor sector goals helps countries to achieve their overarching development objectives.

Viewing the labor sector as an integrated system brings several additional benefits. A systems analysis underscores how a properly functioning labor sector is important to the development of a liberal democracy

⁵ Described in detail at http://www.dol.gov/ilab/media/events/G20_MinistersMeeting/.

and favorable to market-driven economic growth, consistent with human rights and labor rights. Moreover, it is suggested that using that lens to identify programming options may actually be a *more effective strategy* for achieving those goals than focusing exclusively on a single, stove-piped component. Working with labor unions and business and employers associations, communicating social and political messages through such labor organizations, and strategizing economic growth by focusing on employment levels and conditions may provide valuable traction to achieve long-term development goals. In addition, working with labor unions may allow closer proximity to the poor, broader coverage, and more comprehensive and equitable program outreach.

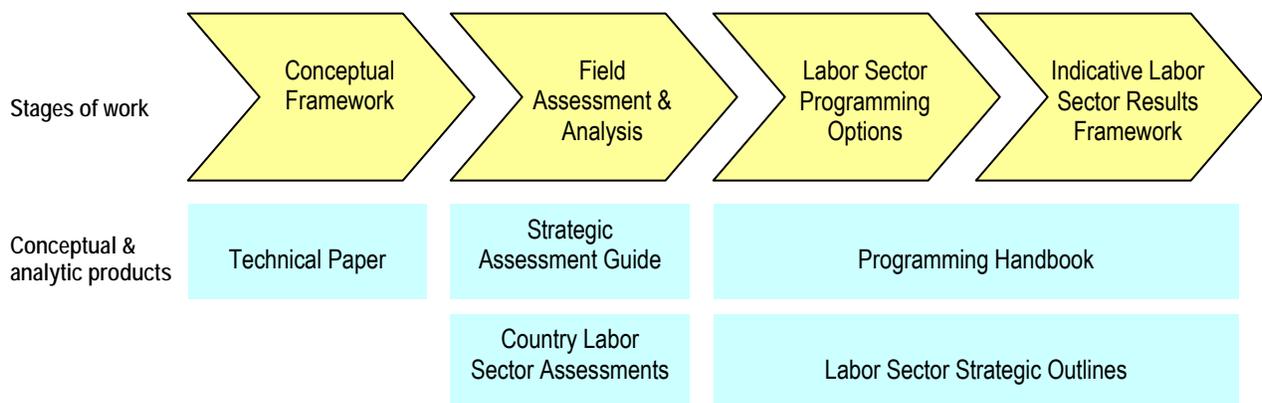
Labor diplomacy and development programs are implemented by USG agencies, international organizations, and implementing partners. Other programs managed by these three sets of actors may also affect the labor sector. To date, USG labor sector programs have generally addressed objectives in four main areas: labor rights, labor markets, and the roles of labor sector government institutions and civil society organizations in promoting foreign assistance goals. The USG has promoted labor rights as a key set of rights on their own and as a means of lending support to the advancement of all human rights.

The Global Labor Sector Analytic Initiative addresses the following questions:

- What is a “labor sector”?
- Who are the key actors in a labor sector, and what are the relationships among them?
- In what various ways are labor sectors structured around the globe and how do they behave?
- What performance standards would one expect to see in a “well-functioning” labor sector?
- How does the labor sector’s performance affect political, economic, and social development?
- How can various kinds of labor sector programs contribute not only to improved labor sector performance, but also broader diplomacy and development goals of the United States government (USG)?
- What results does labor sector programming seek to achieve and what data should we collect to evaluate progress toward such achievement?

The stages of work and corresponding conceptual and analytic products of the Initiative are depicted in the figure below.

FIGURE 1: GLOBAL LABOR SECTOR ANALYTIC INITIATIVE



This **Technical Paper** suggests that:

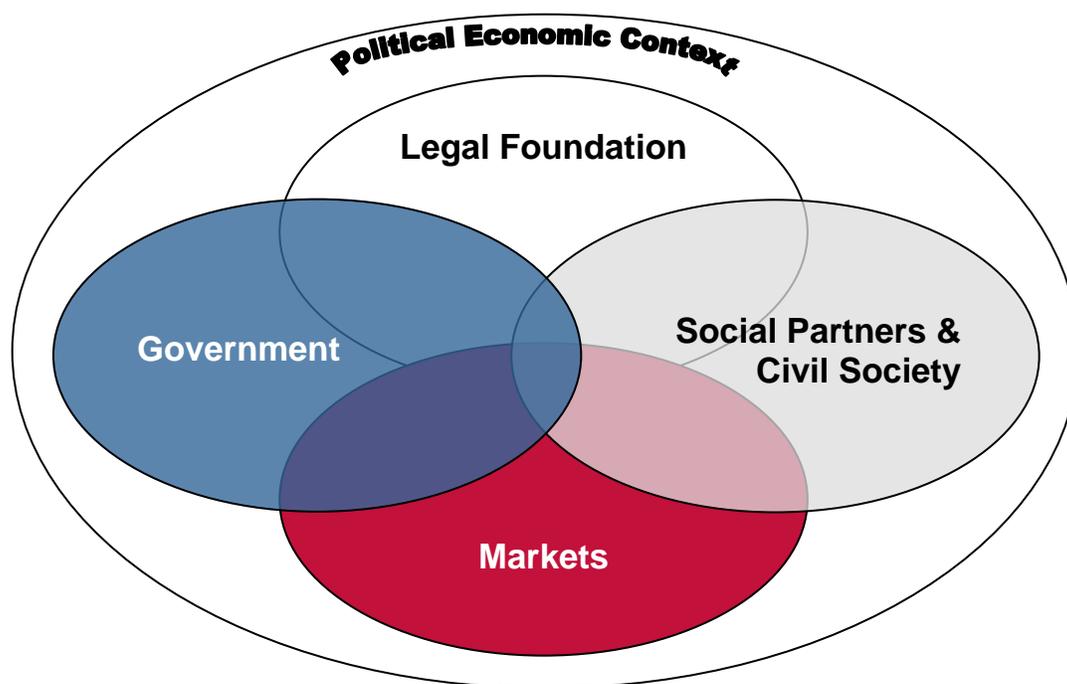
- 1) the labor sector – that is, the legal foundation, government, social partners⁶ and civil society, and labor markets, understood individually, overlapping, and intersecting with each other, as depicted below in Figure 2 – is a *multidimensional system* that requires multiple and integrated interventions to achieve diplomacy and development goals;
- 2) using this systemic approach offers *multiple utility*, as a means both to promote labor rights and trade unions and other labor sector organizations for their own sake and to increase the effectiveness of programs that seek to achieve a diverse set of USG foreign assistance goals;
- 3) labor sector issues are of *integral importance* to achieving progress in major foreign policy objectives, including respect for the rule of law (ROL) and human rights, promotion of democracy, and economic growth and prosperity; and
- 4) broad *political economy considerations* are an essential context for understanding how to address stability, rule of law, participation, livelihood, and social protection concerns.

In addition to this Technical Paper, the suite of labor sector analytic products includes:

- A **strategic assessment guide** detailing how to approach the organization and implementation of continuing labor sector assessments in the field (Salinger and Wheeler 2009b). This how-to manual:
 - provides a checklist of information that the assessment team seeks to collect in the field,
 - outlines how to carry out an integrated labor sector analysis to identify strengths and weaknesses of a country’s current labor sector,
 - ties these considerations to the achievement of broad development goals in the country, and
 - recommends strategic considerations for achieving U.S. foreign assistance objectives for that country.

⁶ The term “social partners” refers to both workers’ organizations and employers’ organizations, both of which cooperate with governments in social dialogues.

FIGURE 2: FOUR COMPONENTS OF A WELL-FUNCTIONING LABOR SECTOR



- A **labor sector programming handbook** with suggestions for labor sector program design or ways to include labor considerations in broader democracy or economic growth programming and a proposed structure for the accompanying results framework used by USAID to monitor programs.
- A pilot **labor sector assessment** testing the conceptual framework, conducted in Cambodia (Lerner, Salinger, and Wheeler 2008).
- **Country labor sector assessments** (CoLSAs), carried out in four of the five regions in which USAID programs are active:
 - Asia and Near East: Bangladesh (Kolben and Penh 2009)
 - Europe and Eurasia: Ukraine (Fick et al. 2009a)
 - Latin America and the Caribbean: Honduras (Cornell et al. 2009)
 - Sub-Saharan Africa: Nigeria (Thomas et al. 2009)
- **Labor sector strategic outlines** (LaSSOs), representing a more rapid and resource-efficient approach to field assessment and preparation of a template for a labor sector Results Framework, have been conducted in the following countries:
 - Georgia (Fick et al. 2009b)
 - Mexico (Bensusan and Burgess 2009)
 - South Africa (Kalula and Sukthankar 2010)

Findings from this body of work have been presented at a series of public Labor Forums for discussion with USG partners, including representatives from the USG's National Endowment for Democracy collaborating institutions, international organizations that support labor sector programs, non-

governmental organizations and research institutions that work in the labor sector, and development consulting firms that implement labor sector programs.

1.3 PURPOSE AND ORGANIZATION OF THE TECHNICAL PAPER

The purpose of this Technical Paper is to synthesize a body of research focused around the role of labor in achieving foreign policy goals. It lays out a conceptual framework of an integrated labor sector and then articulates a strategic framework based around that conceptualization. This framework allows for an assessment of the manner and degree to which labor programs can contribute to specific priorities and development objectives of the USG in particular countries or regions. The framework lends itself both to the assessment of the labor sector in particular country contexts and to the identification of foreign assistance labor sector interventions that can promote USG development goals. These topics are covered in subsequent documents in the technical suite of analytical materials developed under the Global Labor Sector Analytic Initiative.

The Technical Paper is laid out as follows. A conceptual framework is developed, presenting a systemic optic of a labor sector. The four key components of the labor sector are identified and examined both independently of each other and as an integrated whole with interplay among the labor sector components. The manner in which labor sector interventions relate to USG development and diplomacy themes is then considered. Given the interplay between the components of the labor sector, potential tensions and synergies in achieving foreign assistance goals through labor sector interventions are examined. Potential contributions of the labor sector to achieving specific U.S. foreign assistance objectives are explored, and recommendations are presented regarding the use of a systemic optic to increase the impact of USG resources invested in the labor sectors of specific countries.

2.0 COMPONENTS OF THE LABOR SECTOR

This paper focuses on the labor sector, defined in Section One as the aggregate of legal rights, laws and regulations, actors, and institutions that shape labor relations and the functioning of the labor market, both formal and informal. This approach places emphasis on the interactions of four key components as they impact upon the world of employment. In Section Two, labor sector issues are analyzed as related to and involving the legal foundation for labor rights and employment, trade unions and other labor sector organizations, government institutions, and labor markets. In Section Three, these four components are analyzed in relation to overarching development and diplomacy themes.

2.1 LEGAL FOUNDATION FOR LABOR RIGHTS

A well-functioning labor sector operates within an established legal framework that promotes the rule of law, which requires both respect for substantive human rights, including labor rights, and respect for procedural justice with established rules and procedures that are fairly, transparently, and consistently applied (O'Donnell 2004, 32). A state's constitution usually guarantees the protection of enumerated human rights, including some or all fundamental labor rights. Legislation commonly adds depth and breadth to these rights and establishes a range of labor standards addressing both *collective rights* by protecting freedom of association and regulating collective bargaining and *individual rights* by setting minimum standards for wages, overtime, termination notice and pay, leave, health and safety, and retirement benefits, among others. In addition to protecting *rights* in principle, the law must provide meaningful *remedies* for their infringement. The law may draw inspiration from or formally "domesticate" international instruments, such as the International Labor Organization (ILO) Conventions. The law should also provide for the enforceability of contracts and permit only limited court review of collective bargaining agreements (CBAs) with mandatory dispute resolution clauses, such as arbitration clauses, where the CBAs comply with basic requirements.

The term "labor rights" has been defined in international instruments, multilateral agreements, trade law, and domestic law. Although these definitions have historically varied in scope, in the past few decades convergence has largely been achieved. Under U.S. law and policy, they include the following:

1. Freedom of association and the right to organize;
2. Effective recognition of the right to collective bargaining;
3. Elimination of all forms of forced and compulsory labor;
4. Enforcement of a minimum age for the employment of children and the abolition of worst forms of child labor;
5. Elimination of employment discrimination; and
6. Promotion of "acceptable conditions of work" with respect to minimum wages, hours of work, and occupational safety and health.

The first five are addressed in the 1998 ILO Declaration on Fundamental Rights and Principles and are often called the "ILO core labor standards." All six are addressed in ILO Conventions, including the sixth on acceptable conditions, elements of which are addressed in a number of Conventions. The definition of "acceptable conditions of work" may vary across regions and countries. Recent U.S. free trade

agreements have included these rights in their definition of labor rights, explained in more detail in Appendix B. In this paper, all six rights are referred to as “core labor standards” (CLS).

2.2 SOCIAL PARTNERS & CIVIL SOCIETY

In establishing the role of the labor sector in international development and diplomacy, it is necessary to address the functions that labor sector organizations can play in the process. For the purposes of this paper, labor sector organizations include: trade unions and other workers’ organizations, labor rights organizations, and employer organizations (see Table 1).

Some organizations, particularly labor rights organizations, may include both local and international organizations. The key difference between trade unions and most labor rights organizations is that the former, by definition and ideally in practice, are governed by and for their members. Because they are representative organizations, they have special responsibilities and duties to their members both in terms of process and outcomes.

TABLE 1: LABOR SECTOR ORGANIZATIONS

Trade Unions & Other Workers’ Organizations	Labor Rights Organizations	Employer Organizations
<ul style="list-style-type: none"> • Free & independent trade unions <ul style="list-style-type: none"> – Craft – Occupational – Industrial – General – Enterprise – Public Sector • Informal sector associations • Benevolent associations • Ad hoc workers’ groups <p><i>(See Box 1 for definitions)</i></p>	<ul style="list-style-type: none"> • Labor rights groups • Legal advocacy groups • Independent monitoring groups • Women’s rights groups • Children’s rights groups • Faith-based organizations • Anti-sweatshop campaigns • Migrant rights groups • “Multi-stakeholder” groups promoting labor standards in global supply chains 	<ul style="list-style-type: none"> • Employer associations <ul style="list-style-type: none"> – Multinational – Domestic • Employer federations • Corporate social responsibility (CSR) organizations

The role of labor sector organizations is relevant in achieving goals in three areas:

1. Promoting democratic change as important partners in civil society;
2. Improving labor law, relations, policies and practices and expanding social dialogue to protect labor rights as a foundation for democracy, improve government policy, and encourage sustainable economic growth; and
3. Promoting good governance and combating corruption.

2.2.1 Trade Unions and Other Workers’ Organizations

The ILO defines a “workers’ organization” as one in which workers are members with a view to furthering and defending their interests. This definition encompasses a wide range of types of unions, associations, and groups. The fact that they, by definition, include workers as members has implications for U.S. development policy, which aims to promote sustainable change through local buy-in and local ownership of organizations that effect change. It is also consistent with the USG policy aim of leaving a

small USG footprint, particularly where efforts are undertaken in unstable, post-conflict, and high security risk environments.

The form of a worker organization is influenced by the nature of the legal, governmental, social, and cultural systems; the nature of the work, required skills, and types of industries; the labor market practices and policies; the patterns and practices of relations between employers, governments, and workers; and a host of other factors. Some of the more common types are set forth in Box 1. Trade unions (also referred to as “labor unions”) differ from other worker organizations in that they have formal legal authority to collectively represent and bargain for their members to reach agreement on wages, hours, and terms and conditions of employment. They also have the authority and responsibility to represent individual workers whose legal and contractual rights have been violated.

BOX 1: TYPES OF WORKERS’ ORGANIZATIONS

Free and independent trade unions may be organized in a variety of ways:

- Craft unions represent skilled or semi-skilled workers, such as carpenters, painters, and shoemakers, with a sense of community based on their specific set of skills, use of vocational and apprentice training, and aim of defending their jurisdiction by ensuring that most or all such workers are in their union. They may operate hiring halls through which they supply skilled workers to employers.
- Occupational, professional, and “white collar” unions and associations represent employees grouped by occupation, often highly skilled, such as teachers, health care professionals, police, and accountants. They may lobby to improve policies related to their members’ work, e.g., more funding for schools, better training for customs and park service officials, more resources and better patient support in hospitals and clinics. They may also play a role in helping to establish professional standards and improving their members’ skill levels.
- Industrial unions claim jurisdiction of workers in an entire industry or group of industries, with workers in a wide range of positions, usually working for large employers. In some countries, they are the most militant and politically active and often lead worker rights’ movements.
- General unions organize workers irrespective of their occupation and industrial boundaries and are often active in social and politics causes.
- Enterprise unions represent employees in differing positions and locations within a company. “Enterprise unionism” more specifically refers to systems commonly found in Latin America, where employment is often concentrated in a few large enterprises, and in Japan (Cella 1987, 202).
- Public sector unions may represent employees throughout a ministry or in parastatal organizations or all government employees in a geographical location. Their members tend to have better job security, though pay increases may be less frequent and smaller than in the private sector. However, they may be susceptible to job loss through privatization.

Informal sector associations represent self-employed or home-based workers, and workers whose livelihoods are based outside of the formal economy, such as street vendors or individual transportation providers.

Benevolent associations do not collectively bargain for their members but serve as social welfare organizations, particularly where they are not permitted to unionize. For example, an association for police officers may provide support to families of officers killed or injured in the line of duty. They may serve as the first step to forming full-fledged unions.

Ad hoc workers’ groups may form for a limited time to address a specific grievance or problem, often with loose or little organization and motivated by a strong sense of injustice.

As partly discussed below, worker organizations and particularly trade unions, fill two important functions:

- They provide workers with “voice” through collective consultation, communication, and action, with the aim of helping ensure that workers have meaningful input into decisions that affect their lives. This role is synonymous with empowerment, participation, and democracy.
- They improve workers’ lives by aiming to achieve fair standards and protections against exploitation, promoting prosperity, and promoting safe and stable communities for themselves and their families. In this regard, they may improve business efficiency where they view it as in their interest to do so.

Trade unions are different from other civil society organizations (CSOs) for these reasons:

- Their leaders are answerable to worker-members, who elected them, in contrast to CSOs that are governed by boards alone.
- They have more financial independence because they generally derive all or most of their support from members’ dues.
- Their memberships tend to present greater diversity in terms of race, ethnicity, and other such differences.
- They tend to address a broad range of concerns in the economic, social, and political arenas.

In part because of these characteristics, unions are “the quintessential civil society organization... helping to create and maintain democratic societies.” (Fick 2009, 249, 261).

BOX 2: THE SINGULAR IMPORTANCE OF TRADE UNIONS TO THE LABOR SECTOR

Uneven power relations influence and complicate the functioning of the labor sector in certain, if not most, countries. The regulating of labor relations and the labor market by the state, for example, is often reflective of the greater influence that private owners and public sector managers have over public policy in comparison to workers. Particularly in countries or industries where the supply of labor is large relative to limited opportunities for employment, the relationship between owners and individual workers is almost always skewed in favor of the former. As a result of these imbalances, workers have historically tended to act collectively to pool their interests in negotiating with business and the state. These imbalances often parallel those observed in the political realm as well. It is for these reasons that working to strengthen labor movements and the trade unions within them is a key strategic element of democracy programming, generally, and labor sector programming, more specifically. Addressing these power imbalances via the establishment of mechanisms for the collective representation of worker interests lies at the core when addressing labor sector foreign assistance objectives.

Consistent with international labor standards, domestic laws should provide that workers in the public and private sectors and employers have the right to form their own organizations and engage in collective bargaining. In promoting freedom of association (FOA), the law should provide for some balance between promoting worker choice in forming different unions and worker unity in requiring that they join in coherent unified organizations for the purpose of collective bargaining. FOA does not require that states allow an unlimited profusion of unions with collectively bargained rights. Rather, the law may provide reasonable and fair rules for establishing which union may exclusively represent a group of employees for the purposes of bargaining. Workers have the right to strike, subject to reasonable restrictions, except for a narrow grouping of those engaged in “essential services.” These are defined by

the ILO as those services the interruption of which would endanger the life, personal safety, or health of the whole or part of the population, commonly including police, the military, and emergency personnel.⁷ Unions must adhere to certain practices often established in law, e.g., their leaders must be elected, to be considered “free and independent.”

In many countries, unions and other worker organizations are free and independent organizations serving as a counterbalance to powerful government officials and business leaders. In the formal sector, unions commonly seek to promote the rule of law by requiring “just cause” or “objective reasons” for discipline and discharge and to establish a progressive system of discipline with procedural safeguards. They may negotiate these requirements into collective agreements in order to protect workers from arbitrary and unfair retaliation. Such private procedural safeguards may support rule of law improvements in governmental systems.

Because of their potential for collective action, some governments attempt to impinge on union independence to varying degrees, ranging from mere influence to domination to direct control. They may also do so at varying levels, including the central, provincial, and workplace levels. For example, a government may control or dominate unions at the central level, but have little or no role at the workplace levels, where worker representatives may function with relative independence. In other cases, union leaders at national and even at local levels may face significant harassment and threat of violence, as has been documented in numerous countries.⁸ While a union may not be fully “free and independent,” often similar to other organizations in a state, its status may not necessarily rule out its involvement in development projects. At one extreme, a union’s capacity to oppress workers on behalf of government should never be enhanced. At the other end, there certainly are circumstances in which an imperfect union may be engaged to achieve appropriately focused objectives.

Extending beyond the realm of collective bargaining, unions and other worker organizations are frequently key actors in broader social, political, and human rights movements. They are often rooted in community networks and act in concert with other community organizations. Where the law does not protect the right of workers to form unions, workers often form associations, clubs, or other groups, either independently or as part of other organizations. In a number of states, for example, workers in the public sector are denied the right to form unions and collectively bargain but may have the more limited right to form “associations” that act in their interest, especially in dialogue with governments.

The economic role of labor unions has been viewed in a number of different lights: as monopolists who control the supply of labor, as counterweights to monopsonist employers who control the demand for labor, as collective representatives of an underrepresented and often vulnerable group (especially low-skilled, weakly educated, and poor workers), as agitators who create unstable environments in which to do business, and as collaborators who can help to promote more productive workplaces. Freeman and Medoff call this “the ‘two faces’ debate (1984, 5), referring specifically to “the monopoly face” and “the collective voice/institutional response face.”

In light of such differing perspectives, what do unions do? This question was first famously posed by Freeman and Medoff (1984) in their review of the U.S. workplace, and revisited twenty years later by Bennett and Kaufman (2007). Freeman and Medoff (1984, 6-25) found that unions’ effects are felt in every aspect of the workplace:

⁷ The ILO’s supervisory bodies have taken the position that where the right to strike is subject to restrictions or a prohibition, the workers concerned should be afforded compensatory guarantees, such as conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery perceived to be reliable by the concerned parties.

⁸ Evidence of intimidation, threats, and extreme violence perpetrated on union leaders around the globe is routinely documented by the ITUC in their Annual Surveys of Violations of Trade Union Rights, see www.ituc-csi.org.

- **Compensation.** Unions may raise wages above competitive levels for members,⁹ while recognizing that if wages are pushed too high, total employment will be reduced. This in turn can depress total employment levels. They may also increase overall wage equality among or within different categories of workers. In pushing for deferred, non-wage benefits (e.g., insurances, pensions) unions may alter the composition of compensation packages.
- **Working conditions.** Unions formalize workplace rules, management, and dispute resolution; limit arbitrariness of promotion, layoff, and recall actions; provide incentives to non-union firms to improve their working conditions; and push for pro-labor legislation to promote workers' interests.
- **Job longevity.** As a result of the improved working conditions they gain on behalf of their members, unions may help to reduce job turnover, which in turn reduces hiring and training costs to firms and also should increase firms' willingness to invest in skills development. They also help to protect employment in economic downturns.
- **Productivity.** Unions have mixed effects on workforce productivity; some union work rules may decrease productivity, while improvements in morale and cooperation and reductions in quit rates may help to improve productivity. Increased communication between workers and management can also lead to productivity improvements.
- **Collective voice.** Unions help to promote a democratic platform for exchange with employers of workers' views and recommendations; in particular, they represent the interests of lower-income and vulnerable working populations. However, where insufficient safeguards exist, union monopoly power may result in unresponsive bureaucracies susceptible to corruption and non-democratic practices.

The role of unions can also be understood in terms of the role played by institutions to help manage asymmetries. Buyers and sellers of labor face asymmetries not only of information, but also of bargaining power, in the labor market. This is especially so in developing countries, with their large pools of poorly educated and low-skilled labor, desperate for work, who interact with a limited number of formal, larger scale employers. This asymmetry creates risks on both sides of the labor market. Risks to workers include low rates of pay, lack of benefits, poor working conditions, and insecure tenure, while risks to employers include high employee turnover, workplace instability, uncertain levels of worker effort, and associated costs. Institutions that help to balance the asymmetry, manage risk, and provide pathways to communication and peaceful resolution of conflict are in the interest of both labor and employers.

A more recent review by Freeman (2010) finds that the impacts of labor market institutions, both government regulations and trade unions, on labor outcomes in developing countries are several:

- 1) Unions and collective bargaining are less important in developing countries, while government regulation is as important.
- 2) Minimum wage regulations set an important wage threshold, and spill over into the unregulated sector.
- 3) Employment protection regulations shift output and employment to the informal sector.
- 4) Unions affect both wage and non-wage outcomes.
- 5) Cooperative labor relations produce better economic outcomes.

⁹ Through the threat of strike or restrictions of employment to union members only (e.g., closed shops), unions may be able to bid wages above the level that would otherwise be obtained in market equilibrium.

- 6) The shares of informal sector work have increased significantly, raising the importance of “finding institutions and policies to deliver social benefits to workers in that sector” (2009, 2).

2.2.2 Labor Rights Organizations

In the 1990s, human rights organizations began to incorporate labor rights issues in their mission statements, and trade unions began to include human rights language and approaches in their organizing and training programs. This merging of interests led to the publication of a seminal Human Rights Watch book criticizing the state of labor rights and organizing in the U.S. (Compa 2000). However, this rapprochement between labor rights and human rights has not been without controversy and debate is ongoing (Alston 2008; Compa 2008; Kolben 2009). Though both trade unions and labor rights organizations strive toward similar goals, i.e. respect for workers’ rights, cleavages exist with regard to definitions and methods (legal tools versus worker solidarity, individual versus collective rights, unions and their broad membership in the workplace versus non-governmental organizations and their membership of private subscribers to their causes). The belief that “the replacement of solidarity and unity as the anchor for labor justice with ‘individual human rights’ will mean the end of the union movement as we know it” (Youngdahl 2009, 31) is countered by those who believe that the alliance of labor and human rights movements will help to revive broad support for labor’s causes in the U.S. and abroad (Compa 2009, 43).

Labor rights organizations include non-governmental organizations that, in whole or in part, advance respect for labor rights in developing countries. They include groups addressing labor rights, legal advocacy, independent monitoring, children’s rights, women’s rights, and migrants’ rights, as well as faith-based organizations and anti-sweatshop campaigns (Elliott & Freeman 2003, 143-146). They range from small organizations in developing countries operating on shoe-string budgets to larger, more complex organizations directed from developed countries with substantial budgets. Labor rights organizations in recipient countries may be provided with capacity-building assistance to promote local ownership, act as a “checks and balances,” and provide sustained support.

NGOs that promote labor rights may not be directly covered by FOA rights but are generally protected by broader principles of freedom of association and the rights of civil society in a functioning democracy. While civil society organizations have no legal standing to advocate for workers in the workplace, they may nonetheless be an important voice – in addition to, or (as described above) when unions are under such attack that their effectiveness is greatly circumscribed, instead of – labor unions in the public debate on issues of concern to working people.

2.2.3 Employer Organizations

Under the international labor standards, employers also have freedom of association and collective bargaining rights. No other party is in a better position to speak for employers than employers, who have a unique understanding of employment and the real-world issues of how to operate businesses efficiently and effectively. In addition to promoting their members’ direct interests, many employer organizations have promoted respect for labor rights as well. The International Organization of Employers (IOE), which represents employers before the ILO, notes that by focusing “on the fundamental principles that every member State should promote, the responsibility for creating and maintaining minimum national standards would remain where it should be – at the government level – rather than on individual companies” (IOE 2006, 4). Thus, “[a]s companies are sometimes asked to fill gaps that governments fail to meet, the [ILO] Declaration can be a very useful vehicle through which to reinforce the clear distinction between the role of governments and the role of business by providing an effective basis for governments that have as yet failed to give effect to the fundamental principles” (IOE 2006, 4). Governments, whether autocratic or democratic, are often tempted to exert inappropriate influence over

employers and officials may pressure or solicit them to engage in corrupt transactions with threats to impinge upon their FOA rights if they fail to do so.

2.2.4 Tripartism and Dynamics of Labor Relations

Tripartism is the foundation for international labor sector governance for dialogue within the ILO and most national-level labor sectors. Tripartism supports balanced relations and cooperation among governments, employers' organizations, and workers' organizations. What the ILO calls "social dialogue" among these three parties seeks to promote cooperative and stable economic and political relations. International debate of such issues may also take place through the ILO, engaging global union federations¹⁰ (GUFs) and the IOE.

However, it is important to recognize that the allocation of education, assets, and power among these three parties may not be equal (Solidarity Center 2008). Nor are they static, as power dynamics among tripartite partners can shift over time in response to changing global, national, and local economic and political conditions. In many developing countries, where the size of the workforce often well exceeds the demand for labor in the formal sector, formal employment opportunities are few and job growth has not kept pace with population growth. This in turn limits the opportunities for workers in developing countries to organize, let alone be represented by unions that dialogue or bargain on equal footing with employer counterparts.

While collaborative and respectful tripartite relations represent the international ideal for government-worker-employer relations, the gap between realities on the ground and that ideal may remain wide in many countries. Desperate to earn a living, many men, women, and children living in poverty are forced to seek employment opportunities away from home or abroad. They may work on a part-time basis, or they may work in the shadows of legitimate economic activity, in the so-called gray or black economies. They may be forced or "trafficked" to work against their will. They may accept employment under exploitative or unsafe working conditions. In many countries, those who attempt to organize workers face discrimination, threats, and actual violence.¹¹

Such intimidation may exacerbate conflict. For instance, when power relations among the three parties become seriously imbalanced, one or more parties may feel sufficiently emboldened or desperate to take up more confrontational, rather than collaborative, actions. On the other hand, the opposite may also be true, as unions may choose not to engage in collective action if they know that their chances for success are slim.

Other unintended consequences may emerge. Employers may refuse to bargain in good faith if intimidation of worker representatives precludes open debate about workers' concerns. Countries where violence (or threats of violence) against labor leaders or labor strikes are common represent instances where tripartism has broken down. Where international brands are held accountable by consumers for their sourcing decisions, they may prefer not to do business in countries where intimidation of unions is tolerated. The cumulative effect of frequent job actions, while each may be individually justifiable and helps to resolve specific grievances, also contributes to a negative perception about the ease of doing business in a country, which may in turn discourage investment and job creation. It may also lead to

¹⁰ The International Trade Union Confederation is the global union network, while ten global union federations represent workers' interests in specific industries. These include: Education International; Building and Wood Workers International; International Federation of Chemical, Energy, Mine, and General Workers' Unions; International Federation of Journalists; International Metalworkers' Federation; International Textile, Garment, and Leather Workers' Federation; International Transport Workers' Federation; International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations; Public Services International; and Union Network International.

¹¹ For country-specific examples, see www.ituc-csi.org.

increased international scrutiny of local labor conditions, and possibly discourage international clients from contracting with local manufacturers. Each underscores the importance of aiming for an environment of openness and trust for tripartite consultations.

2.3 GOVERNMENT

Labor sector government institutions include labor ministries and departments, labor courts, and administrative tribunals and boards. Labor ministries and departments educate on labor law, enforce laws that protect labor rights and enforce labor standards, and regulate, investigate, conciliate, and prosecute infringement of labor laws either directly or through another government body, such as a ministry of justice. Labor ministries and departments also commonly promote labor peace by encouraging collective bargaining, support tripartite social dialogue to improve labor relations and labor policy, promote employment, oversee wage policies, and administer programs to support the unemployed.

Legal systems usually have a role for the judiciary either for hearing labor disputes or reviewing administrative decisions on appeal. A well-functioning legal foundation also requires a judicial process that results in binding decisions. The judiciary may process labor cases through common courts or through specialized industrial or labor courts. Administrative tribunals and boards commonly adjudicate disputes and/or promote the resolution of disputes through alternative dispute resolution (ADR) processes.

2.4 LABOR MARKETS

Many of the issues regarding labor – where people work, how they work, what knowledge and skills do they bring to work, for what wages do they work, whether they work in jobs whose terms of employment are formally protected or jobs whose terms of employment fall outside the labor law, and so forth – are resolved through “labor markets.” Labor laws, institutions, and organizations function in the context of, and in turn help to shape, these markets.

Whether in the context of perfectly competitive, regulated, or centrally planned economies, labor markets allocate the work of men, women, and children according to the forces of supply and demand.¹² Just as we understand that in a market for goods (from daily bread to airplanes), supply and demand meet to determine the quantities and prices at which goods are bought and sold, so, too, a market for labor determines the level of employment (the “quantity” of jobs) and wages (the “price” of labor) in the world of work.¹³ The price of labor (i.e. the full cost of wages, benefits, and other labor sector costs) affects the demand for labor: as the price rises – due to supply constraints, skills shortages, or negotiated compensation levels – higher labor costs may create incentives to invest in more capital-intensive, labor-saving techniques of production. On the other hand, in countries where supplies of labor are ample, shifts in demand – for example, due to the creation of a new, labor-intensive manufacturing industry – have less impact on wages and more on overall levels of employment.

Markets for labor exist in all sectors of the economy. Wages and other terms of employment vary among sectors of the economy. On the labor supply side, workers consider alternative opportunities, which in turn affect the sectors in which they seek and find jobs, how they work, where they live, what migration forces may pull or push them, and even what kinds of education and training investments they undertake.

¹² Economists use the term “labor” to refer to one of three “factors of production” along with capital and land. Labor rights activists, on the other hand, underscore the principle found in the ILO’s 1944 Philadelphia Declaration that “labor is not a commodity” and reject that its value can solely be negotiated in the marketplace without direct consideration of rights for all who work.

¹³ In many countries national and/or local minimum wages and/or overtime wages may be set by legislation or negotiated agreements that may or may not take market-determined wage levels into account.

On the demand side, employers may be large or small firms, run by domestic or foreign managers on behalf of domestic or foreign owners. Or employers may run informal or family-based operations, and hire in labor. Employers make decisions about labor requirements by occupation or skills, the wages they are willing to pay, the intensity with which they will use labor versus capital to run their enterprises, and the wide range of practices they may employ to promote higher labor productivity.¹⁴

When labor markets are out of balance, i.e. when the demand for workers does not match existing supply and people are out of work, governments may use a variety of active labor market policies and programs (ALMP) to build new skills and help the unemployed find work. These may include worker training, job search assistance, entrepreneurship assistance, and employment generation schemes. ALMP may be targeted at vulnerable groups of workers, such as youth or the disabled.¹⁵

The 2008 USAID economic growth strategy acknowledges the importance of well-functioning labor markets to achieving broad-based economic growth:

For workers to receive higher wages and contribute to rising productivity, labor markets must continuously create new jobs and help workers move from less productive to more productive employment. Excessive job protections make it risky for firms to hire full-time employees, leaving many poor workers – especially youth – either unemployed or stuck in low-paying jobs in agriculture or the urban informal sector, where they enjoy neither benefits nor legal protections. USAID encourages countries to reduce unnecessary barriers to job creation and labor mobility, helps improve workers’ job skills and productivity, and assists firms in understanding how good labor practices can contribute to productivity and competitiveness. In addition, USAID encourages governments to adopt policies that respect internationally recognized core labor rights, while helping them design and implement flexible and effective labor protections and benefits programs. (USAID 2008, 27)

Well-functioning labor markets are critical to achieving economic growth, job creation, and poverty reduction. Labor markets “function well” when:

- Labor demand and labor supply intersect to establish wages sufficient to provide a decent standard of living,¹⁶ consistent with the level of competitiveness of enterprises and development of countries and compliant with national laws and core labor standards;
- Many buyers and sellers of labor exist in the market;

¹⁴ Such as workplace councils, industrial engineering practices, incentive-based pay, off- or on-the-job training, etc.

¹⁵ Looking at experiences across a sample of 199 ALMP, mostly from European and U.S. programs, a recent meta-analysis found that subsidized public sector employment programs are found to be relatively ineffective at returning people to work, job search assistance and job training programs have been found to be relatively more effective in the shorter and longer runs, respectively (Card et al. 2009).

¹⁶ The definition of “decent” or “fair” wages normally must be set according to local standards, costs of living, and market conditions. Recognizing the difficulties inherent in such a definition the MILS committee recommended that a nation’s working conditions be considered to be in fulfillment of the “acceptable conditions of work” standard “if that nation has a mechanism to establish minimum wages, a regular workweek of 48 hours or less, a specific number of paid holidays each year for covered workers, a provision that all workers receive a full day of rest every 7 days, and a mechanism for setting health and safety standards” (MILS 2004, 244). The definition of a “living wage” in the U.S. is based on the “premise that people who work for a living should not have to raise a family in poverty,” according to Pollin et al. (2008, 111). Pollin draws from Lawrence Glickman’s definition of a living wage to mean “a wage level that offers workers ‘the ability to support families, to maintain self-respect, and to have both the means and the leisure to participate in the civic life of the nation (1997, 66), akin to Amartya Sen’s capabilities concept. Yet as Pollin et al. explain, the calculation of the appropriate wage level is fraught with complication, due to limitations of the poverty line measurement in the U.S.

- Levels of employment and wages are determined by that labor market equilibrium, reflecting skill requirements, labor availability, and individuals' preferences for work versus leisure, without employment access bias by gender, ethnicity, age, or other variables;
- A minimum amount of time is spent without employment for those actively seeking work;
- Employers can hire and fire labor without undue regulatory burden or cost;¹⁷
- Skills standards and certified education and training define employers' job requirements and whether a job candidate is qualified for a specific position;
- Education and training institutions, access to which is unrestricted, send well-prepared workers into the market;
- Information about job openings, job requirements, and compensation is readily available to job seekers;
- Information about job candidates, their educational and prior work backgrounds, their skills and personality assets, and the dedication they will bring to their jobs is readily available to employers;
- Physical mobility within national boundaries is unrestricted, so that job candidates can pursue employment wherever it is available; across national boundaries, physical mobility is regulated according to national migration laws; and
- Labor laws and the institutions that support them are respected.

The conditions outlined above for best labor market function approximate the classic definition of a *competitive* market. Yet other labor market structures may exist in which either the numbers of employers or the number of workers are more limited, access to information is not equitably distributed, transition and transaction costs are high, risks abound, etc. In recognition of the *imperfect* market conditions under which buyers and sellers of labor frequently interact, society has developed institutions and regulations to guide labor markets, manage risks, and defend social goals, that may include:

- Provision of institutions that allow stakeholders' voices (workers, employers, government, and education and training institutions) to be heard in the workforce system (see below);
- Regulation of conditions of work according to agreed-upon core and substantive labor standards, as reflected in the ILO conventions, and allowance for actors to inspect workplaces and monitor compliance with those standards;
- Establishment of social protections to provide basic livelihood security for workers who face unusual risks (e.g., unemployment, health problems, loss of a key breadwinner, political crisis, natural disaster, etc.); and
- Respect for dispute resolution and contract enforcement mechanisms by all stakeholders.

As mentioned earlier, the aspects of the political economy that could threaten systemic equilibrium are the integration of significant parts of a country's economy into the world market, and the presence of large pools of informal labor that are not protected by the same types of governance mechanisms described above. Neither of these features of the global political economy is adequately addressed in the labor sector organizations and institutions that have been established within countries to allow for the labor markets to function smoothly and minimize potential for conflict and civil unrest. Most of these governance mechanisms have been established to function at the national level, but globalization has also introduced new power dynamics into negotiations between capital and labor. For instance, as long as the

¹⁷ Labor market rigidities may result in higher rates of unemployment; see Siebert (1997) for a European presentation of this perspective. The concept of labor market "flexibilization" refers to de-regulation of labor markets to facilitate hiring and firing of workers. It may result in increased use of temporary workers who may not benefit from the same levels of wages or non-wage benefits as permanent workers. Flexibilization may also be associated with reductions in, or removal of, labor protections (Solidarity Center 2008). In Europe, the concept of "flexicurity" seeks to combine both flexible approaches to employment with employment or income security. See <http://ec.europa.eu/social/main.jsp?catId=116&langId=en>.

labor enabling environment is not harmonized across countries, transnational capital can seek out investment opportunities in countries that are less regulated and therefore offer cheaper sources of labor, undermining the competitiveness of countries that follow the industrial relations and safety net mechanisms.

2.5 EXTERNAL LABOR SECTOR ACTORS

In some countries, external actors also play key roles in the labor sector in a developing country. Some multinational companies – especially those that sell branded consumer products and find themselves under pressure from human rights and consumer groups – have defined codes of conduct with regard to labor (and sometimes environmental or other) standards to which their suppliers are expected to adhere. To oversee compliance with these codes of conduct these firms also have invested in either in-house or externally contracted audit systems to monitor workplace conditions. In order to coordinate codes of conduct and streamline auditing procedures, industry-wide certification systems have been introduced, such as the Worldwide Responsible Accredited Production (WRAP) program, and standards established by groups such as Social Accountability International, the Fair Labor Association, the Worker Rights Consortium, and others. Based on the ILO’s concepts of “decent work” (see below) and core labor standards, a collaborative effort of the ILO and the International Finance Corporation (IFC) known as the Better Work program also offers factory-level monitoring and remediation services, the genesis of which is described below in Box 2. These initiatives may be privately funded, supported by international development donors, nationally supported, or some combination of all three.

The introduction of external monitoring systems is viewed by some as in direct competition with state-run workplace inspection systems, while others view government and private systems as complementary or resource-expanding initiatives (Hancock et al. 2003, O’Rourke 2006, Amengual 2009).

2.6 INTERPLAY AMONG LABOR SECTOR COMPONENTS

The preceding overview of labor sector legal foundation, trade unions and other labor sector organizations, government institutions, and markets provides a sense of the multiple issues and arenas for intervention that exist under the rubric of labor programming in foreign assistance. In addition to defining the areas that perform key functions in the labor system, it is also important to consider how the various labor sector components are mutually reinforcing and interdependent. For example, the effective functioning of the legal enabling environment requires strong and transparent government institutions, labor sector organizations need to have enough capacity to feed evidence-based analysis and demands into the system, and markets have to function well enough that most people have work of one sort or another which the legal framework can regulate and adjudicate. ***One of the key findings to emerge from this paper is that advantages are to be gained through the use of a more holistic and systemic way of strategizing interventions in this system.***

Having reviewed the four labor sector components, the next section focuses on how labor assistance relates to current priorities in development and diplomacy.

3.0 OVERARCHING DEVELOPMENT AND DIPLOMACY THEMES AND THE LABOR SECTOR

Labor sectors are integral to central themes in both international development and diplomacy. As discussed above, labor sector issues pertain to and involve rights, organizations, institutions, and markets. The protection of human rights, the promotion of democracy and governance, improving the environment for economic growth, and the encouragement of international trade are all objectives that can be furthered to one degree or another through interventions in the labor sector. Assessing the components of a well-functioning labor sector, determining the gaps therein and engaging in strategic interventions to address/mediate those gaps, can help inform and promote USG development and diplomacy objectives in a given country and contribute to the prioritization of specific interventions to develop and support well-functioning labor sectors. This section examines the ways in which labor sectors relate to key development and diplomacy themes.

3.1 HUMAN RIGHTS

Human rights are moral rights that are inherently possessed by all people. Thus they “cannot be granted nor taken away by legislation. They are rights that all individuals, nations, institutions, and actors have a moral obligation to respect and promote” (Adams 1998). They are also rooted in rational utility because their application may provide protection from arbitrary action “that is based upon personality rather than merit, and is not predictable on any reasoned basis” (H. Wheeler, Klass, and Mahoney 2004, 1).

From this rights-based perspective, because labor rights are fundamental human rights, they take precedence over interests such as efficiency and profitability (Werhane 1985). Thus, as the ILO's Declaration of Philadelphia of 1944 declared in its principle that “labor is not a commodity,” economic development is not undertaken for its own sake but to improve the lives of human beings.¹⁸

Governments are not simply obliged to recognize fundamental labor rights as an abstraction; rather, consistent with the rule of law, they are obliged to actively promote and protect them in law and in practice with appropriate remedies and penalties for their infringement. As further noted below, the promotion of labor rights may serve a functional role in promoting other goals related to democracy building, good governance, and social and economic development, among others. It also plays an integral role in supporting a well-functioning labor sector with its legal foundation rooted in the rule of law and supported by labor sector organizations and institutions and appropriate labor market policies.

¹⁸ See http://www.ilo.org/global/What_we_do/InternationalLabourStandards/Introduction/benefits/lang--en/index.htm for further elaboration.

In the past century, a broad consensus in the international arena has developed acknowledging that labor rights are fundamental human rights worthy of universal protection and promotion. This principle has most often been affirmed after labor rights have been most egregiously violated, as happened after both World Wars when the USG and other nations formally recognized that labor abuses fed the intense suffering and poverty that rocked the foundation of democratic societies and gave greater common appeal to extreme views and totalitarian movements. In creating the ILO in 1919, the signatory nations to the Treaty of Versailles declared that “conditions of labor exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled.”¹⁹

Similarly, the 1948 Universal Declaration of Human Rights (UDHR) declares that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world,” and that these rights include the right to form and join trade unions, receive “just and favorable” remuneration under just and favorable conditions of work, and receive equal pay for equal work (Art. 23). The UDHR declares that these rights must be protected by the rule of law. The 1976 International Covenant on Civil and Political Rights (ICCPR), adopted by the U.S. in 1992, proclaims that no one shall be required to perform forced or compulsory labor and that everyone shall have the right to freedom of association, including the right to form and join trade unions (Art. 22) and that governments have the duty to provide “effective remedies” for rights violations (Art. 2).²⁰

In 1998, the ILO and its member nations adopted the ILO Declaration on Fundamental Principles and Rights at Work, which commits them to protecting and promoting the core labor standards (CLS). The impetus for the Declaration was the growing recognition that: 1) the destabilizing as well as positive affects of globalization created both great wealth and great disparities of wealth; 2) labor rights were becoming more important in trade negotiations; and 3) the large number of technical ILO Conventions had distracted attention away from the fundamental rights. Because of their fundamental nature, the Declaration affirmed each member nation’s commitment to CLS, whether or not they have ratified the core Conventions.²¹ The principle that labor rights must be protected for ethical reasons and as a means to achieving other objectives is also well established in U.S. domestic law, which protects individual and collective labor rights and promotes processes for peacefully resolving conflicts, including collective bargaining.²²

¹⁹ To tackle this problem, the signatory nations directed the ILO to establish a system of international labor standards to prevent competition based on diminishing labor conditions and provide a forum in which worker organizations, employers, and governments could develop mutually beneficial solutions to their problems (Erickson and Mitchell 1998, 148-150).

²⁰ Likewise, the 1966 Covenant on Economic, Social and Cultural Rights (ICESCR), signed by the U.S. in 1977, obliges governments to protect the right to form and join trade unions and recognizes the right of trade unions to function freely, the right to strike and the right of workers to decent and safe working conditions and remuneration that allows them to make a decent living (Arts. 7 and 8).

²¹ Regarding the eight core Conventions, the U.S. has ratified only the Abolition of Forced Labor Convention (C. 105) in 1991 and the Worst Forms of Child Labor Convention (C. 182) in 1999. It has also ratified the Labor Administration Convention (C. 150) which ensures the effective operation of an administrative system protecting labor rights.

²² For example Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination both because it is ethically wrong and because doing so harms the national interest by preventing individuals with these characteristics from being fully productive members in our society and economy. Similarly, the impetus for the original National Labor Relations Act, the “Wagner Act,” (NLRA, 1935, amended 1947), was the common concern that the Depression’s poverty and suffering, exacerbated by growing labor-management conflict, fueled interest in extreme views from the right and left. Senator Wagner asserted that a “free and self-disciplined labor movement ... is essential to this democratic purpose of maintaining our system of free enterprise,” in part because it would help ensure that the workforce played an active and constructive role in supporting the U.S. democratic and economic system. (Silverberg 1945, 2-3).

After several years of intense debate, development programs sponsored by the multilateral financial institutions now integrate human rights considerations. The World Bank accepts that labor rights are relevant to achieving its development objectives and focuses on the instrumental utility of labor standards. A staff toolkit provides guidelines for the use of core labor standards in the preparation of country assistance strategies (World Bank 2001). The economic effects of unions and collective bargaining and their importance to achieving social and economic goals have been identified (Aidt and Tzannatos 2002). Social and environmental performance standards have been adopted by the IFC that *inter alia* require IFC clients to protect the “basic rights of workers” (IFC 2006). Also in 2006, the IFC teamed up with the ILO to develop the global Better Work program to promote decent work in global supply chains. Decent work is defined by the ILO in the following way:

Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.²³

After adopting a Social Protection Strategy in 2001 that commits the Asian Development Bank (ADB) to promoting compliance with CLS, the ADB incorporated consideration of CLS into its project design, implementation, and evaluation work. The principle has also been formally adopted in a number of regional multinational bodies. For example, in 2003 the Southern Africa Development Community adopted its Charter of Fundamental Social Rights establishing its member states’ individual and collective commitments to promoting labor rights, including freedom of association and collective bargaining.

Foreign assistance that relates to labor rights has largely been channeled through various types of support to trade unions and other labor sector organizations. In regards to *trade unions*, freedom of association serves as a foundation for all other labor rights because it means that workers have the right and the authority to join together to decide for themselves what their interests are and how to defend them. Employers may address labor rights on their own and with employer-oriented organizations. Some key *employer organizations*, including the International Organization of Employers (IOE), have formally accepted the ILO’s Declaration and CLS, including those protecting freedom of association for their employees, as a means of supporting sustainable economic and social development. A number of multinational corporations have developed codes of conduct for themselves and their suppliers that support labor rights, rooted in the principles of corporate social responsibility (CSR). CSR is defined as the integration of business goals and operations with the interests of a wide range of stakeholders, including investors, customers, employees, the community, and the environment.

Labor rights organizations often have specialized knowledge and skills that best enable them to implement activities and find solutions for promoting labor rights. For example, they provide legal services, address the concerns of women or have specialized skills for monitoring and inspections. At times, they can implement activities and show results more quickly and easily than other labor sector organizations. Labor rights organizations may be better able to address the issues when other labor sector organizations are focused on other matters, are not interested, or are weak or co-opted. They may also provide linkages with local groups and draw support from sources and organizations outside of the recipient country. In some countries, they may be better insulated from political pressures and interference, while in others they may be more susceptible to being influenced by them, particularly where they are dependent on the support of elites and their funding.

²³ Source: ILO website: <http://www.ilo.org/global/Themes/Decentwork/lang--en/index.htm>

The systemic approach toward labor advocated in this paper suggests that the promotion of human and labor rights is potentially best achieved when legal foundations and labor sector organizations and institutions are mutually engaged. In determining priority strategic interventions in the sector, a broad and systemic approach to the sector can hence yield dividends, as demonstrated in the following sub-sections.

3.2 THE RULE OF LAW

Promoting the rule of law in the labor sector is both a goal in itself and a means of providing broader support for the rule of law. An important distinction exists in the law between individual and collective rights (Keller 1997). In some countries, such as the U.S., “labor laws” address collective rights, such as freedom of association and collective bargaining and “employment laws” address individual rights, such as the prohibition of forced labor, child labor, and employment discrimination. Laws governing individual rights may address a panoply of other issues by setting minimum standards for wages, overtime, termination notice and pay, vacation, family and sick leave, health and safety, workers compensation, and retirement benefits. These individual rights may also involve public rights and interests as well. For example, a discrimination case on behalf of a racial minority, a woman, or a child may set an important precedent for others in that class or segment of society. Similarly, where an employer is violating a minimum wage standard regarding one employee, it may have a long-standing practice of violating it regarding many others.

The nature of the legal system also gives shape to the rule of law and the application of labor rights and principles. For example, in common law systems, courts have greater power because they issue decisions that fill the “gaps” in civil statutes (not criminal ones) and establish precedents that are binding and decisive on legal issues in subsequent decisions (*stare decisis*). In civil or code law systems, court decisions generally do not have such precedent-setting authority, which is reserved for legislative codes and principles elucidated in old treatises. In common law systems, the primary legal question is, what is the *right*? In contrast, in civil law countries, the primary question has traditionally been, what is the *remedy*? Both questions are essential to determining whether laws and their application adhere to the rule of law principle.

Labor sector organizations play essential roles regarding labor rights. Unions focus on educating workers, employers, and labor sector government institutions; advocating for changes in laws and practices consistent with the fundamental principles of labor rights; representing their members’ interests in bargaining; and promoting improvements in democracy, governance, and economy policy that serve the interests of their members, all workers, and, in many cases, the public. They may also play key roles in representing or assisting workers in defending their “individual” rights. In many cases, workers have neither the resources nor the knowledge of the legal processes and their rights to protect themselves individually. Thus, unions may “collectively” address “individual” rights by assisting in processing claims, litigating cases, advocating for change in the law, and negotiating appropriate provisions into collective agreements.

Employers seek a predictable, rules-based environment that adheres to rule of law principles in order to effectively manage their operations and risks. For employers, economic security in market-based activity is predicated on their ability to enter into binding contracts, including labor contracts. Thus, employers generally support the rule of law to help ensure a balance of political power that blocks arbitrary governance that can undermine economic security (Palley 2005). Labor rights organizations and other NGOs also play key roles in advocating for change.

However, there are additional means by which to promote labor rights and the rule of law that can be drawn from rule of law approaches. Under the rule of law, the law itself reigns supreme: regulations must be authorized by and consistent with legislation, which must be consistent with and derive its authority from a constitution or set of fundamental principles according to which a state is governed. Governmental

policies are generally administrative plans for implementing laws and regulations; or, at the very least they may not be contrary to the laws and constitution. Lack of understanding of the rule of law can lead to a common development assistance mistake to promote changes in policies without promoting accommodating changes in laws and regulations. These policies frequently encourage (with limited incentives), but do not mandate, changes in a certain behavior. There is a substantial difference between simply dissuading violations of fundamental rights and prohibiting them by law. For instance, an individual employer may be *persuaded* that it should follow a policy against exploitation of child labor, but may be economically pressured to do so nonetheless in the face of less scrupulous competitors who cut costs by violating rights, unless dissuaded therefrom by the law and the reasonably high probability of ensuing sanctions for its infringement.

Thus, to determine whether a state system adheres to the principles of the law, both generally and regarding the labor sector, the questions that need to be asked relate to the systemic functioning of the sector. Examining rights and remedies involves looking at the labor legal framework as well as the effectiveness of government institutions to make and enforce policies that are consonant with labor rights.

3.3 POLITICAL PROCESSES

Trade unions and other labor sector organizations often play instrumental roles in giving voice to important segments of society. Employers often push for the implementation of political policy that supports business growth. Labor rights organizations often advocate for policy change that protects the rights of disadvantaged groups and for working people in general. Because unions often have a substantial number of members, they are better able to mobilize for action than many other civil advocacy organizations (CAOs). For these reasons, trade unions are discussed in more detail below.

Trade unions are among the most effective CAOs in providing voice, organization, and leadership for the working and middle classes. They are generally better organized for mass action than other CAOs; indeed, “labor unions are the strongest mass movement organizers that can establish a position against state coercions, and they are the framing centers for alternative viewpoints of the world” (Lee 2007, 587-588). Moreover, trade unions are the only ones that consciously and directly represent the economic interests of the middle class and working poor. Their efforts to promote distributional justice in the economic realm often link well with efforts to promote political justice in the electoral realm. They also have substantial knowledge and power where they act in both economic and political realms in both the public and private sectors. In the process of organizing for collective bargaining, trade unions must bring together, forge consensus, and mobilize action among individuals and groups that may differ by race, religion, ethnicity, national origin, and other characteristics. The strong and autonomous organization of subordinated interests is the most important counterbalancing factor against the cultural, political and economic hegemony of elites. Thus, the labor movement is “the most consistently pro-democratic force” (Rueschemeyer, Stephens, and Stephens 1992, 8). The labor movement’s forging of alliances with community and other social groups and provision of linkages between the middle and working classes can be critical to creating and maintaining a “watchdog” function over political officials (Lee 2007, 590).

Yet, labor movements do not always support expanded political competition. They often engage political actors, parties, and processes with a utilitarian approach to advance their institutional interests that usually, but not always, support expanding democracy. For example, it has been argued that Latin American labor movements have been “contingent democrats” because they have “fought for democracy when no better alternative existed or when their leaders believed that democracy would further their material and organizational interests” (Levitsky & Mainwaring 2006, 21). Some labor unions lack the capacity, independence, or membership base to effectively influence the political process. Many workers’ organizations choose not to be politically active at all. For those worker organizations that decide to become active in party politics, there are generally three ways in which they do so:

Join one political party to the exclusion of others. A union may join a political party for instrumental and ideological or philosophical reasons. It may support a party because it holds power. Its leadership may calculate that, while the ruling party does not fully support its agenda, it is in a better position to implement part of its agenda than an out-of-power party that may more fully support its agenda. The union's motivation under this scenario is thus to seek to exert influence from the inside.

Define an agenda and support the party that best advances it. A union may be most effective in a multiparty democracy when it defines an agenda and asks the parties whether they support it. A common result is that a party announces its support of the agenda, wins election with labor's support, and fails to implement all, part, or any of the agenda, with the hope that labor will forget the promises by the time of the next election or the power relationship will substantially shift in favor of the elected officials and their party. The challenge for the union is to measure performance and maintain accountability while accepting the need for appropriate compromises in government policies.

Choose not to support any party. Unions may choose this option either because no party supports its agenda or because multiple parties could support all or part of its agenda. In many countries, unions of skilled professionals and government bureaucrats choose not to support any political party because they view their profession as their community's primary glue and their interests as above and beyond political party competition. Public sector unions may not support, or may be prohibited from supporting, political parties in order to insulate their membership from terminations that may result from a change in ruling political parties and to maintain continuity in the performance of the civil service work beyond any short-term electoral changes.

3.4 CIVIL SOCIETY

Labor sector organizations are key actors in civil society. Employer organizations are key actors in civil society because they collectively represent the economic interests of employers in policy formation, while labor rights organizations often provide specific skills to advance workers' interests. The labor sector is hence important to democratic reform because the natural tensions between business and labor form one of the most important and enduring socio-political divisions within many societies. The labor sector is thus a key arena in which to build the dialogue processes and culture of compromise that are key to the functioning of democratic institutions, the formation of interest-based party systems, the sustainable and demand-driven development of an accountable justice system, and a strong and sustainable civil society. Trade unions are a special subset of civil society organizations because they are both representative membership organizations and interest groups with a unique set of interests, opportunities, and abilities. When properly understood, appropriate trade unions can be engaged in appropriate ways to promote democracy-building, good governance, and economic growth as well as labor rights and other labor sector issues.

A free and independent trade union is one that operates without a government or employer controlling it or exercising undue influence over it. A union may be free and independent from the influence of outside parties, yet vary considerably regarding whether it is internally democratic. The ILO strongly encourages, and national laws frequently require, unions to meet certain internal democracy requirements in order to be certified as the workers' representatives or bargaining agents, which must be set forth in constitutions and bylaws. The hallmarks of these requirements are that the unions regularly hold free and fair elections, members may run for office and vote, and, usually, members may vote whether to accept or reject negotiated collective agreements and whether to go on strike. In terms of process, union leaders provide information to the membership, consult with them, facilitate debates among members, help forge consensus when needed and give them a collective voice. They may consult with members directly or through committees. Of course, in practice, unions vary considerably regarding the nature and extent of their internal democratic practices.

Unions at their best are highly democratic because they have many decision-makers which, ironically, may make them more difficult and time-consuming to work with in foreign assistance programs. Yet, they can be excellent development partners. Engaging workers can lead to *better decisions* because of the numbers of persons consulted and their specialized knowledge and experience gained through their work and communities. Similarly, worker organizations are “interest groups” because they represent the interests of their members. While this may seem obvious, in practice, donors and other civil society actors may seek to engage unions in areas that the membership may view as outside their interests. Members may conceive of their interests as narrow, i.e., limited to their own wages, hours, terms and conditions of employment, as broad, i.e., involving the rights of all workers whether in the formal sector or unionized or not, or as very broad, involving democratic transformation of governance and society. Of course, they may very well consider it useful to pursue broader transformation in order to advance their narrow interests as well.

In general, the more centralized the power is in a trade union, the more effective but less precise it will be in giving voice to the full range of worker views and desires. Conversely, the more decentralized the power is, the more the leadership will be able to express and act on differing views, but the weaker and less effective will be its voice. At the same time, centralized unions may very well be democratic and have efficient and effective consultative processes. Where they have these characteristics, they can be more effective in ensuring broad-based worker buy-in regarding agreements made with governments and employers.

Labor laws often regulate the structures, sizes, and goals of worker organizations and thus influence the ways in which unions organize, mobilize, and link with each other. Their choice of action generally depends on the availability of resources, the instrumentality of an action, and the channels permitted by the state (H. Wheeler 1985, 27-28).²⁴

Under the principle of freedom of association, trade unions have the right to join together in federations, which may represent their collective interests at the national level and wield political and economic power, and the international level, including within the ILO, where they may promote the protection of labor rights. National federations and individual unions have the right to join regional and international federations covering all types of unions or grouped by industry or occupation. International federations, such as the International Trade Union Confederation (ITUC) and GUFs organized by sector, seek to advance universal human and labor rights and promote cooperation and solidarity among unions.

3.5 GOVERNANCE

All labor sector organizations and institutions have important roles to play in improving governance and fighting corruption in matters pertaining both to labor sectors and governance in general. The role they may play is best understood in the context of their specific labor relations systems and cultures. Moreover, positive approaches to collective bargaining may provide support for improvements in governance.²⁵

²⁴ Resource mobilization theory holds that “what increases, and gives rise to insurgency, is the amount of social resources available to unorganized groups, making it possible to launch an organized demand for change,” but that collective action may not be a viable action “because of a lack of resources and the threat of repression” (Jenkins & Perrow 1977, 250-251).

²⁵ The industrial relations theory established by John R. Commons stresses the importance of the institutional structures in which labor-management interactions occur. This view argues that, to explain labor-related processes and outcomes, it is insufficient to simply consider the pressures of economic and environmental forces; rather, one must also understand the patterns, laws, customs, and structures that build up over time to establish institutional features of the relationships, which exert an independent effect of their own (Kochan, Katz, and McKersie 1986, 15).

As described earlier, government labor sector institutions include labor ministries and departments, labor courts, and administrative tribunals and boards. These institutions play crucial education, enforcement, and dispute resolution roles, as detailed above. Yet labor administration is often the weakest link in ensuring compliance with labor standards. Governments often face a substantial capacity gap between coverage of labor laws and polices and their weak ability to enforce them. Labor ministries are commonly under-funded in comparison to other ministries and capacity problems may be rooted in dysfunctional government-wide civil service systems.

Some countries have labor relations systems more focused on an “adversarial” approach, like the U.S. (“adversarial” in its technical industrial relations meaning, implying arms-length bargaining between a strong workers’ representative and a strong management representative, each recognizing their different interests and seeking a negotiated result) , but many others are more focused on a “social partnership” approach (Bamber and Lansbury, 1998, 6-9). Most systems have a range of processes, relationships, and laws that mix these approaches, in differing degrees. Development strategies originating in the U.S. may wrongly assume that employers and workers naturally take an antagonistic approach to each other, when in fact managers and employees may share a sense of solidarity based on cultural, tribal, and national affiliations; they may even share a sense of solidarity against a state’s incursions against their collective rights. Such patterns are particularly symptomatic of societies that have a strong underlay of informal patron/client relationships. Such patronage relationships tend to permeate social institutions like labor unions and employers’ associations as well as government institutions in many developing countries. Such informal networks of influence can affect prospects for democratic reform, including the role of labor organizations in governance.

Employers may address labor rights on their own, with employer-oriented organizations, in cooperation with labor rights organizations, or in conjunction with multilateral institutions. Some key employer organizations have formally accepted the ILO’s Declaration and CLS, including those protecting freedom of association for their employees, as a means of supporting sustainable economic and social development. A number of multinationals have developed codes of conduct for themselves and their suppliers that include labor rights, often rooted in the principles of corporate social responsibility (CSR). Democratic practices and processes can be advanced through “social dialogue,” which includes all types of negotiation, consultation, or simply exchanges of information between, or among, representatives of governments, employers, and workers on issues of common interest relating to economic and social policy. The main goal of social dialogue is to promote consensus building and democratic involvement among the main stakeholders in the world of work.

Modern approaches to collective bargaining can set positive examples and patterns not simply for governance in labor matters, but also coalition-building among civil society organizations and competing political, ethnic, and religious factions. For example, in “interest-based bargaining,” the parties frame negotiation as joint problem-solving to resolve each side’s underlying issues, needs, and concerns. The process works by encouraging the parties to focus on interests, not positions, and to use communication and innovative thinking to identify win-win solutions. It usually produces better outcomes than “positional bargaining,” which is based on presenting fixed and opposing viewpoints (positions) that tend to result in no agreement at all or compromises that do not meet the needs of either party. The parties widely share relevant information to ensure that they develop effective solutions.²⁶ Options are developed to satisfy those interests should be evaluated by objective criteria, rather than power or leverage. ADR in employment can also be an effective means for promoting consensus-building and problem-solving approaches, which may serve as a foundation for democracy-building.

²⁶ The U.S. Federal Mediation & Conciliation Service (FMCS) observes that the following approaches are also central to interest-based bargaining: focus on issues, not personalities; focus on the present and future, not the past; focus on the interests underlying the issues; and focus on mutual interests and helping to satisfy the other party’s interests as well as your own. See www.fmcs.gov.

Trade unions, employer organizations, and NGOs may find common ground in promoting democracy, the rule of law, and good governance. They often have acted on their common interests in promoting predictable rights- and rules-based systems. For example, in Chad, both trade unions and the Chad Chamber of Commerce denounced and opposed government corruption, forcing key changes (U.S. Department of State 2004).

There is also a role for labor to play in anti-corruption efforts. Workers in the public sector are often losers in corruption; public funding may be diverted from teacher salaries and school books to a minister's offshore account, from support for law enforcement training to a kickback, or from a fund to hire more nurses at an understaffed clinic to money launderers in a drug cartel. To exit the cycle in which "[i]ndividuals struggle to belong to the privileged group rather than to change the rules of the game ... is to organize the losers in this system against the status groups and the predatory elites" including "not only idealists from civil society, but groups who stand to lose the most by corruption. If churches and unions join NGOs and independent media, an effective alliance can be formed" (Mungiu-Pippidi, 86-88, 97). In short, public sector unions have strong institutional reasons for fighting corruption and should be enlisted in the fight.

3.6 ECONOMIC GROWTH

The U.S. government's foreign affairs goal of broad-based economic growth seeks to provide benefits for all citizens. Such growth requires that economies transform themselves structurally, reallocating economic resources to their most competitive uses. The process of economic growth therefore brings pressure on labor markets across the economy, for men and women in rural and urban environments and in informal and formal sectors. Economic growth strategies that are truly broad-based must therefore directly incorporate labor considerations in order to ensure that workers can access the education and skills, assets, rights, mobility, and livelihood and employment opportunities they need in order to benefit from the new opportunities that economic growth should stimulate.

Labor, in particular the duality of rural and non-rural labor markets, has occupied development economists for decades.²⁷ The early "surplus labor" models of the 1950s and 1960s (Lewis 1954; Ranis and Fei 1961) held that rural sectors of a developing country economy can provide bountiful supplies of labor to the urban sector without any noticeable drop in rural production. Migration models of the 1960s and 1970s (Harris and Todaro 1970) explained that higher wage and non-wage benefits in urban areas draw in supplies of labor from rural areas, even in the face of urban unemployment. Within rural and urban labor markets, further distinctions have been made. Even rural households may be net buyers or net sellers of labor, depending on the size of their land holdings. Labor obligations may also be linked through various forms of contractual relationships to land and/or credit markets (Binswanger and Rosenzweig 1984). Urban labor markets are also seen as dualistic, comprised of those who work in the "informal" sector, i.e. typically family-owned businesses that are unregistered and pay no taxes, or "formal" sector, i.e. for registered enterprises or public sector employers (Fields 1975).

From the perspective of international trade, economists have long considered how a country's set of resource endowments affects its comparative advantage. The classic general-equilibrium model of trade explains that countries specialize in production of goods for export according to their local factor endowments (Ohlin 1933). Countries with abundant capital are expected to export mostly capital-intensive goods, while countries that enjoy abundant ("surplus," per above) labor will have a comparative advantage, and thus specialize for export, in more labor-intensive goods, according to the Heckscher-Ohlin theorem.

²⁷ This section draws heavily from Rosenzweig (1988).

By the 1970s and 1980s, some economists began to question how to adapt neoclassical economic models – based on assumptions of perfectly competitive markets that always clear, the existence of many buyers and sellers, and equal access to information – if the fundamental assumptions underlying them do not hold. Developing countries offer numerous examples of labor markets where there are few buyers, markets are not competitive, and information about work opportunities is opaque and comes only at a cost. Information problems abound in labor markets: workers do not know how many employees are to be hired, employers do not know how hard an employee will work, rural workers do not know how to find a job in the city, they migrate to the city nevertheless not knowing their chances of finding work, and so on. The “new development economics” recognized that the norm in developing countries consisted of “rational actors in environments in which information is imperfect and costly” (Stiglitz 1986, 263).

Economic actors are not always perfectly “rational,” or at least not as defined by neoclassical economics, where utility-maximization – profit being nearly synonymous with utility – is seen as the primary motivator of economic behavior. This recognition helps us to frame a number of labor market-related questions: What motivates employers and workers besides profit maximization? How do information problems explain apparent failures of labor markets to clear? What mental models or personal biases may explain why unions and employers sometimes have such a hard time finding opportunities for win-win collaborations? How can attention to non-market issues, such as labor rights and organizations, help to promote desired economic growth outcomes?

Such issues are particularly vital as the political economy of labor has been impacted by globalization. The cost of labor in many developing country economies in the 1970s and 1980s was subsidized by publicly financed social welfare systems that provided subsidized access to food and energy. After the structural adjustment era of the 1980s and 1990s, many of these countries have shed some or all of the provision of public goods that used to provide a safety net. In its place has grown a vast informal economy and social networks that are not very functional in terms of providing meaningful social protection.

The effects of globalization and the international political economy thus pose acute questions for how the interests of workers can be represented to best help equilibrate the labor market. The representation of worker interests by trade unions or other worker organizations is the exception, not the norm, in most developing countries.²⁸ “Formal employment,” with formal contracts that stipulate wages, benefits, and rights and standards, is itself a rarity for developing country workers. Instead, self- or informal employment is the norm. In addition to trade unions, which are increasingly addressing the interests of non-organized workers, their rights may also be defended by other emerging forms of labor market institutions, such as non-membership organizations or non-union membership organizations (Freeman, Hersch, and Mishel 2005). An example of the former is international non-governmental organizations, such as Oxfam or the U.S. National Labor Committee, that lobby for pro-poor policy change on behalf of developing country workers. An example of the latter is national farmer organizations that lobby for better prices or working conditions on behalf of their membership.

As globalization brings buyers and sellers ever closer together, new actors may also begin to play a role to mediate against extreme labor market abuses. For instance, increasing numbers of consumers prefer not to purchase goods produced under substandard labor conditions. Under threat of consumer boycott, particularly against recognized brand label producers or retailers, new market arrangements, such as fair trade, factory compliance monitoring, and other forms of social responsibility put pressure on employers or contractors in developing countries to employ labor under compliant conditions (Polaski 2006).

²⁸ Union membership has also declined in developed countries. Though recent comparative data is scarce, Borjas (2000) cites declining trends in the U.S. (31% in 1970, 17% in 1987; the Bureau of Labor Statistics reports that just 12% of employed wage and salary workers were union members in the U.S. in 2006. Union membership in the U.S. is significantly higher among public sector workers than their private sector counterparts.

Launched in 2003 the World Bank monitors a set of “doing business” indicators across countries to gauge countries’ business environments. An indicator measuring the ease with which employers can hire and fire workers according to national labor laws has figured among these (Botero et al. 2004). In April 2009 the World Bank acknowledged that this indicator is narrowly defined, as it excludes consideration of core labor standards and social protection provisions, and will no longer be considered as a guidepost for lending. The definition of the Employing Workers Indicator is being reviewed with an external working group comprised of the ILO, labor and employer representatives, academics, and legal experts.²⁹

Promoting CLS serves as a means of improving competitiveness both in individual enterprises and national economies. A “high road” approach to development seeks to treat employees better and expect more, in contrast to the low-road approach, which seeks gains by pushing costs lower in part by violating basic rights, for example by using forced or child labor or preventing unionization. Unfortunately, the developing world remains rife with examples of how downward pressure on compensation is exerted by a number of factors, such as the lack of contract enforcement mechanisms and pay calculations that minimize compensation for actual hours worked.

In contrast, using the high-road approach, many enterprises can actually achieve greater profitability by respecting the rights and roles of workers. For example, they use the processes of “employee involvement,” in which employees “have the opportunity to identify and help solve real problems where they work” using their skills, intelligence, and ideas to increase job satisfaction, employee morale, and commitment to the organization, as well as to increase productivity, reduce turnover and absenteeism, and enhance the quality of products and services produced (Bluestone, 1992, 145). High involvement workplaces are believed to be more effective than traditional “top-down” management regimes because workers work harder in them and they lead to operational changes that improve efficiency (Lawler 2001; Price 2007). Such efforts are more successful where workers perceive the results as benefiting them personally, e.g., they share in the gains and they are collectively engaged through their unions.³⁰ Development economists have also long acknowledged the “efficiency wage hypothesis,” whereby employers have an incentive to pay a wage that is higher than the market alone would suggest in order to provide incentives for higher efficiency or productivity, or reduced turnover (Stiglitz 1976). Choosing “high road” labor policies has the concomitant effect of encouraging management to develop improved work organization, materials flow, use of technology, research and development, marketing, in-house training, recruiting and retention etc. – in short, better management, instead of labor exploitation.

The promotion of labor rights also has a functional utility for economic development. In fact, a number of studies have shown a correlation between economic growth and respect for CLS. For example, an OECD study found a positive correlation between exports and employment growth on the one hand, and respect of CLS on the other (OECD 1996). An ILO study found a positive, though weak, correlation between association and bargaining rights and foreign direct investment inflows (Kucera 2001). A survey of literature found a strong connection between economic growth and improvement of labor standards, postulating that CLS may stimulate economic transformations by acting as “enabling regulations” (OECD 1996; Kucera 2001; Dølvik and Tørres 2002).

²⁹ The first meeting of the Doing Business Employing Workers Indicator Consultative Group took place in October 2009 to explore ways to redefine the indicator and to develop a new Worker Protection Indicator; the Group is expected to report in the summer of 2010. See World Bank, “Revisions to the EWI Indicator,” April 27, 2009; ITUC, “ITUC welcomes World Bank’s suspension of ‘Doing Business’ labour indicator,” April 29, 2009; Solidarity Center, “No More ‘Doing Business’ as Usual for World Bank,” www.solidaritycenter.org; IFC press release, October 15, 2009, and <http://www.doingbusiness.org/MethodologySurveys/EWIConsultativeGroup.aspx>.

³⁰ In some studies, managers have reported that they believe consultation with employees and their unions is best for their companies because: 1) the quality of the decisions is better; 2) the results are better accepted and implemented by the employees; and 3) the employees must share responsibility when the decision turns out to be the wrong one (J. Wheeler, 2002).

Similarly, some developing countries (e.g., South Korea, Singapore, and Japan after World War II) have successfully promoted CLS and trade union rights as part of a market-based globalizing strategy. Their promotion of decent wages helped to distribute the gains from trade, expand domestic demand, increase domestic savings and investment, and reduce poverty (Polaski 2003). Some studies have shown that more equal income distribution is, in and of itself, strongly correlated with improved economic performance (Alesina and Rodrik 1994) and that adoption of CLS is associated with a significantly more equal distribution of income, which can also promote political and economic stability (Palley 1999).

3.7 INTERNATIONAL TRADE

Labor rights issues have increasingly been a critical consideration in trade liberalization. To gain increased access to markets, technology, and capital, both developed and developing countries have entered into a wide range of trade agreements that establish rules-based trading systems. To take advantage of the opportunities presented by these agreements, developing countries must promote their own rules-based systems grounded in the rule of law to ensure, among other things, the rational and predictable enforcement of contracts.

Many of these trade agreements establish rules-based systems for labor standards as well as commercial standards. Since the 1980s, the USG has expanded the promotion of labor rights through its unilateral and bilateral preference arrangements, free trade agreements (FTAs), and other agreements such as sector-specific trade agreements (see Box 3 below regarding the U.S.-Cambodia Bilateral Textile Agreement). These instruments have increased: 1) the scope of labor rights to cover all fundamental labor standards; 2) the range of potential remedies and sanctions for labor rights violations to (nearly) equal those of commercial-related violations; and 3) the range of instruments in which labor rights are addressed. The USG has promoted labor standards both to help ensure that American workers and businesses are not forced to compete with countries that allow labor abuses and to promote high-road development strategies in developing countries in which labor rights serve as a foundation for “enabling” broad-based growth.³¹

In 1976, Congress established unilateral trade preferences through the U.S. Generalized System of Preferences (GSP), which waives import duties on eligible products for beneficiary developing countries that meet certain conditions. In its 1984 amendments of the Trade and Tariff Act, Congress added that, when considering whether a country is eligible for GSP benefits, the U.S. Administration must consider whether it has taken steps to afford workers in that country “internationally recognized” workers’ rights.³² A beneficiary’s adherence to the labor criteria can be evaluated under the U.S. Trade Representative’s (USTR) annual review process. Third parties may submit complaint Country Practice petitions and the USTR may invoke GSP review, particularly where a beneficiary has repeatedly ignored GSP petitions.³³ Protection of labor rights is also included in regional trade preference programs in Africa, the Andean region, and the Caribbean.

BOX 3: CAMBODIA’S GARMENT SECTOR LABOR PROGRAM

³¹ At the same time, a debate in the international trade arena in the past few decades has raged over whether the promotion of labor rights helps or hurts economic development. The World Trade Organization (WTO) has not adopted labor rights provisions in their trading requirements; rather, it has recognized the ILO as the authority on international labor standards. This position can be viewed either as a positive one because it acknowledges the ILO’s role, or as a negative one because the WTO will not invoke for labor rights its mandatory enforcement mechanism, which the ILO lacks.

³² Similarly, in January 2002, the European Union (EU) adopted a new Generalized Scheme of Preferences that doubles tariff reductions available to developing countries on a wide range of products where the EU determines that applicant countries effectively protect basic labor rights.

³³ Following the 2008 Annual GSP Review, labor rights GSP reviews are continuing in Bangladesh, Niger, the Philippines and Uzbekistan.

The most far-reaching labor provisions between the USG and a trade partner were found in the U.S.-Cambodia Bilateral Textile Agreement (CBTA), effective from 1999 to 2004, expiring with the conclusion of textile quotas under the WTO Agreement on Textiles and Clothing. As a result of challenges to Cambodia's GSP trade status for extensive labor rights abuses submitted to the U.S. Trade Representative's Office by the AFL-CIO and the International Labor Rights Fund, the CBTA linked annual increases in quota limits for garment exports into the U.S. with the substantial compliance of Cambodia's garment industry with its own national labor laws. These had been revised in 1997 with help from the ILO and the Solidarity Center (the international labor affairs organization affiliated with the AFL-CIO).

To monitor compliance of Cambodia's garment industry with the provisions of the US-Cambodia BTA, the USG supported a formal, independent factory monitoring program implemented by the ILO (Ludwig and Timberman 2006; Lerner, Salinger, and Wheeler 2008). A tripartite Project Advisory Committee guided the process. The Cambodian government required companies to participate in the monitoring process in order to receive quota allotments for the U.S. market and the ILO made the process transparent by reporting on the results and naming specific factories that, after re-inspection, had not remedied previously found violations. Thus, a process of "continuous improvement" was born. The monitoring program was initiated by the ILO and is now managed by the Better Factories Cambodia (BFC) project, with funding provided by the Royal Government, the garment industry, international buyers, and a consortium of donors, including USAID.

Garment companies benefited because quotas were significantly increased each year and the monitoring system provided a form of reputation risk insurance. Workers benefited because labor standards and the quality of working life improved and incomes significantly increased. The Cambodian government benefited from the monitoring plan because labor standards improved and trade expanded. The key drawback of the efforts, however, was that in the short term the Cambodian government's capacity to conduct labor inspections was not properly improved to internalize the process, but rather was accepted as a medium-term goal (Polaski 2006).

Lessons learned from the Cambodia Better Factories program regarding monitoring and cross-stakeholder collaboration have been formalized into a global Better Work program, a partnership of the ILO and the IFC, in Cambodia, Jordan, Vietnam, Lesotho, and Haiti, and has prioritized Indonesia, China, Bangladesh, Pakistan, India, Nicaragua, and Morocco for future work (Better Work 2009). USDOL has funded Better Work programs in Lesotho and Haiti and in 2010 is exploring the possibility of funding similar programs in Nicaragua and elsewhere.

In addition to the Better Factories Program, the USG's labor program in Cambodia, implemented by the Solidarity Center, has supported capacity-building of labor unions in the garment, tourism, and informal sectors. For more on labor sector programs in Cambodia, see Lerner, Salinger, and Wheeler (2008).

Congress and the U.S. Administration have also gradually expanded the scope and improved the treatment of labor rights in bilateral preference programs, FTAs, and other agreements. For example, the 1993 North American Agreement on Labor Cooperation (NAALC), known as the "NAFTA labor side accord," provides that the parties shall enforce their own labor laws, which should reflect "high labor standards." The NAALC contemplates fines and trade sanctions as "teeth" making it enforceable, but in practice such sanctions have never been applied, leading many to conclude that it lacks any enforceable binding obligations on labor rights (Erickson and Mitchell 1998). The U.S.-Cambodia Bilateral Textile Agreement (1999) contained labor provisions that led to the implementation of a novel and largely successful enforcement mechanism overseen by the ILO (see Box 2). The 2000 U.S.-Jordan Free Trade Agreement (JFTA) was the first bilateral FTA that included labor criteria directly in the main text and, in stronger language, affirmed the parties' commitment to promoting internationally recognized labor standards.

Congress further established the importance of labor standards in the 2002 Bipartisan Trade Promotion Authority Act (19 U.S.C. 24 §3802), which provides that the USG’s overall trade negotiating objectives include:

- Promoting respect for worker rights consistent with ILO core labor standards and an understanding of the relationship between trade and worker rights;
- Seeking provisions in trade agreements that help ensure that the parties do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade; and
- Promoting universal ratification and full compliance with ILO C. 182 on the worst forms of child labor.

Although Trade Promotion Authority expired in July 2007, it served as the foundation for numerous agreements with detailed labor provisions and for model language developed by the USTR. For example, the 2004 Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) adds more detail to the parties’ commitment to improving application of labor rights and includes the goal of eliminating the worst forms of child labor. Nearly identical language on labor can be found in FTAs negotiated with Peru, Colombia, Panama, and Korea. Going further than the JFTA’s requirement that the parties “strive to” protect labor rights, new language requires the countries to “adopt and maintain [labor standards] in its statutes and regulations, and practices” and enforce the ILO Declaration’s core labor standards, expressly including the prohibition of employment discrimination. Also, for the first time in FTAs, the dispute settlement procedures and remedies for labor and commercial rights are the same.

Nevertheless, a 2009 USG review found that progress in implementing labor-related commitments under the FTAs is “uneven and U.S. engagement minimal” (USGAO 2009, 5), as remedial programs have not been put into place after FTA signing to address identified deficiencies. The review found this has been due in large part to virtual elimination of budgets for technical cooperation on international labor affairs. Moreover, “minimal U.S. oversight and dialogue on labor issues may have resulted in missed problems and opportunities” (USGAO 2009, 45). Opportunities for public comment to USDOL’s ILAB on FTA partners’ labor commitments are available for FTAs enacted under Trade Promotion Authority (i.e., since the Jordan FTA).³⁴

The USG has also entered into more than thirty bilateral Trade and Investment Framework Agreements (TIFAs), pacts that establish frameworks for expanding trade and resolving outstanding disputes with other countries and common markets and that may serve as foundations for FTAs. Generally, each TIFA is a short agreement with a brief clause in varying formulations (depending on the other party’s capacity and commitment) stating that one purpose is to promote labor rights.³⁵ The USTR reports that, as trade agreements have increasingly included strong labor rights provisions with detailed requirements for efforts to protect labor rights, trading partners have increasingly requested capacity building assistance.

Promotion of international trade also affects labor markets, as labor demand shifts with new production opportunities that arise from easier access to global markets for goods and services. This in turn requires that the workforce development system provide appropriate education and training to respond to changing workforce requirements.

³⁴ The AFL-CIO and Guatemalan labor unions filed a complaint with ILAB in April 2008. In January 2009 a USDOL/ILAB report confirmed the rights violations and is working with the Guatemalan government to see that progress in addressing these is made.

³⁵ Labor rights are also addressed in a wide range of other laws and initiatives. For example, the Congressional-Executive Commission on China (CECC) reviews China’s treatment of labor rights for reasons related to their trading status, and has recommended that Congress establish a corporate code of conduct for U.S. businesses operating in China (Lum 2003, 1).

In addition to labor rights issues, employment and wages are affected through trade reforms that open the local economy to cross-border flows of goods, services, capital, and labor. When developing countries open their borders to foreign trade and investment, demand often rises for the larger supplies of unskilled (and thus lower cost) labor that typically comprise the bulk of their workforce.³⁶ The impact is felt on employment, not wages, because of the large supply of low-skilled labor that usually exists. However, liberalization also exposes local economies to skills biases inherent in many export-oriented sectors. For instance, as foreign investors establish new manufacturing activities, local labor supply more readily satisfies needs for low-skill, assembly labor. However, managers and technical personnel typically have to be imported from abroad, as low-income developing countries' workforces often lack the human capital base from which to supply such skills. Thus demand also increases for skilled labor, the supply of which is usually much more limited in developing countries. This puts upward pressure on the wages of skilled workers and increases domestic wage inequality as a result. Though increasing income inequality is considered by many to be an adverse consequence of economic growth,³⁷ one positive aspect of increasing wage inequality is the incentive created for individuals to invest in education and training to improve their skills and thus their earnings potential.

Trade liberalization brings mixed effects to gender dimensions of labor markets. As outlined in Gammage et al. (2002), women's participation in labor markets is conditioned by asymmetric rights and responsibilities for household work, reproduction and childcare responsibilities, gendered norms with respect to work and wealth, labor market segregation, consumption patterns within the household, and time poverty. While trade brings definite benefits – employment often rises as female workers may be preferred over their male counterparts for their “acquiescent” attitudes, constrained as they usually are by the lack of formal sector employment alternatives – to women, their vulnerability to exploitative conditions is also thereby exacerbated (Kabeer 2004).

Appendix C further elaborates on labor and international trade.

3.8 THE INFORMAL SECTOR

In the developing world, 60 percent or more of the labor force works in the informal economy. The informal economy is a sector in which certain types of income and the means of their generation are “unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated” (Castells and Portes 1989, 12). Governments neither tax nor monitor economic activity in the informal sector, often due to their weak capacity to enforce existing laws. Governments may not have actual survey data with which to measure the contribution of informal sector activity to national income, but instead estimate informal sector contributions. Application of labor law protections to workers in the informal sector is often missing. This lack of oversight, direct knowledge, and legal coverage leaves informal sector workers most vulnerable to rights abuses, risk, and exploitation. A truly broad-based labor strategy must address labor issues in the informal, as well as formal, sector of the economy.

The informal sector was once viewed as a segment of economic activity in developing countries to be absorbed by the formal economy as the latter grew. However, the continued expansion of informal employment around the world has led to the emergence of another view of informal labor as the residual of economic activity that remains after the formal economy has shed itself of permanent workers.³⁸ Chen, Sebstad, and O'Connell (1999, 604) offer four possible explanations for the persistence of informal

³⁶ Summarized in Salinger, Bolnick, Reisman, and Endean (2006).

³⁷ Particularly if the gains of economic growth are not shared in some other way, as in increased delivery or quality of public services.

³⁸ See, for instance, Beneria and Floro (2004), p. 3 and Heintz and Pollin (2003).

employment in developing countries: lack of economic growth, jobless economic growth, “growth from below” (i.e. faster growth of small-scale enterprises compared with formal firms), and temporary employment shedding due to a period of economic adjustment. A fifth possibility, that some workers may actually prefer the informal sector, for its flexibility, sociability, and easier working conditions, is suggested by Maloney (2004). Although some have posited that union success in raising formal sector wages may lead to higher informal sector employment as employers cut back on their wage bills, Galli and Kucera (2004) find that Latin American countries with higher labor standards, particularly with respect to FOA, tend to have higher shares of formal sector employment. Freeman (2010) suggests, in turn, that employment protection legislation does not greatly affect total employment and has mixed intersectoral impacts across countries. For instance, he notes that weakened protections in Colombia led to greater job “churning” and modest declines in the duration of unemployment.

The ILO has found that in the informal sector “working conditions are oppressive and unsafe; incomes are usually at or below the poverty line; access to state-provided social protection, services, and training are severely restricted; and exploitation and infringement of workers’ rights are common” (Naidoo & Frye 2006, 195). Some of the livelihood options pursued are dangerous and some may be exploitative or illegal. Some jobs may involve the use of toxic materials. Children may be obliged (or forced) to work to support their families.

While labor laws protect worker rights and uphold labor standards in many countries, these protections often apply only to workers in the formal sector. Thus, a very important question is: how can these rights and standards be extended to help improve the lot of the poor in the informal sector? Strategies may include: developing laws and enforcement regimes that extend labor rights and standards to a broader segment of the population; creating social protection schemes that provide at least a minimum of safety net to all workers; organizing informal workers to represent their own interests and improve their access to information which, in turn, increases their bargaining power vis-à-vis contractors and policy makers; and extending microfinance and business services to informal workers to expand their livelihood opportunities. The Self-Employed Women’s Association (SEWA) in India is an example of informal workers’ self-organization, and the Grameen Bank, which began in Pakistan but not has world-wide reach, is an example of a microfinance institution serving informal workers.

3.9 HIV/AIDS

UNAIDS and WHO have estimated that in 2007 about 33 million people were HIV-positive.³⁹ In countries where it is prevalent, HIV/AIDS has a devastating impact on employers, workers, and national economies. It causes intense suffering and can cripple businesses through high employee absenteeism and turnover, and decreasing productivity. Workers lose income, suffer from discrimination, endure physical pain and the loss of friends and family, and often lose their lives. Workplace efforts to address HIV/AIDS generally educate, prohibit discrimination, and advance confidential testing, treatment, and counseling. In some cases, employers have a duty to provide reasonable accommodation to employees with AIDS-related illnesses.

Because the fight against HIV/AIDS is a common concern for employers, workers, and government, it presents an opportunity for promoting and building tripartite cooperation. Labor sector organizations address health issues, particularly HIV/AIDS, where transmission/ infections may occur at work, for example in hospitals and clinics, and in occupations where workers face a greater risk given the nature of their work, such as truck driving. For example, tripartite efforts in South Africa have led to extensive education and treatment campaigns with transport workers who travel throughout the region. Unions have been successful in peer education campaigns because their educators speak peer-to-peer to fellow

³⁹ 2008 Report on the global AIDS epidemic, www.unaids.org.

transport workers. At the same time, employers have used their organizational skills to help manage the processes of education and treatment. Labor ministries can also play an important role in educating and discouraging discrimination on the basis of HIV/AIDS. When competing stakeholders join together to advance a common interest, they build a relationship of trust that makes it possible for them to address more contentious zero-sum matters, such as collective bargaining over wages or negotiations to establish minimum wage rates.

3.10 VULNERABLE POPULATIONS

Labor sector issues are often of paramount importance to persons in vulnerable populations because obtaining income and evading discrimination may be a matter of survival. “Vulnerable populations” include persons in profoundly unstable social and economic circumstances, including war and famine. They may also include persons in more stable societies, such as women, children, and minority groups of various types. Labor sector organizations may or not exist in unstable circumstances. Where they do, they may provide the foundation for promoting cooperation, development and survival. Unions often play a key role in protecting and advancing the rights of women and minorities, because their power is predicated on organization, numbers and solidarity. At times, they may reflect the same prejudices and biases of majority populations and governments. In such cases, labor rights groups may play a central role in providing assistance. Employers, who are generally concerned with improving quality and production, may also play a constructive role in integrating vulnerable populations into the workforce. Attempts to engage vulnerable populations in sustainable development activities will necessarily involve integrating them more effectively into the labor force.

The USG has also funded efforts aimed at the elimination of child labor, including the worst forms of child labor, consistent with ILO Conventions 138 and 182 and the ILO Declaration (1998). Since 2001, USDOL has provided funding of over \$17.5 million for technical cooperative projects in 80 countries to withdraw or prevent children from engaging in exploitative labor through the provision of direct education services, strengthening the capacity of national institutions to combat child labor, raising awareness of the importance of education for all, and supporting research on child labor. These projects have helped reduce child labor in subsistence and commercial agriculture, salt production, fish processing, brick-making, domestic service, and construction.⁴⁰

The relationship of women to the world of work is a timely and important topic. Women have long faced discrimination in the workplace, in part owing to workplace conflicts caused by their reproductive and family responsibilities. Though laws may ban discrimination, institutions that educate and provide child care, along with flexibility in the workplace, must exist if women are to be able to manage “work/life balance.” Due to unequal relationships of power and class, women may be especially vulnerable to labor trafficking or sexual exploitation in the workplace. While around the globe gender-defined job roles have changed substantially in one generation, gender-based wage differences persist and gender equality of access to markets and resources has not been achieved around the world. Women tend to be heavily represented in formal employment in export processing activities, as well as in informal employment. Milkman (2007) describes the various ways in which women have benefited from the organized labor movement, in terms of higher wages and improved conditions of work.

⁴⁰ For more information on USDOL activities in this area, see the USDOL/ILAB’s Office of Child Labor, Forced Labor, and Human Trafficking’s publications page (<http://www.dol.gov/ilab/media/reports/iclp/main.htm>) and USDOL (2009).

3.11 LABOR MIGRATION, SMUGGLING, AND HUMAN TRAFFICKING

The concepts related to human migration, trafficking, and smuggling are quite distinct though they all involve the movement of persons within and between countries and, in practice, have some aspects that overlap. Migrants, most of whom are neither smuggled nor trafficked, are compelled by economic and social circumstances to move within their own country or to another country for work. In the expanding global economy, both push and pull factors have contributed to increasing numbers of migrant workers, who are “pushed” to move because in their home countries they face few or no jobs, low pay, and bad working conditions and are “pulled” because of real or perceived improvements in job opportunities and pay in other countries (Misra, no date). Employers’ demand for cheap labor as a relatively easy way of reducing costs has intensified labor migration, with migrant workers often filling positions that workers in the domestic workforce refuse to fill because of low wages and harsh working and living conditions. Migrant workers are often not protected by a state’s own labor laws, either because they are excluded by law or because more powerful employers find ways to escape legal compliance and exploit them. For example, migrant workers may not be able to join unions and may be required to work under dangerous conditions lacking basic safety and health protections. International and national trade unions have engaged in efforts to reduce human trafficking and promote the rights of migrant workers both for philosophical reasons of solidarity and practical reasons, as unionized workers are disadvantaged when forced to compete against exploited workers and unions are stronger where their ranks are united and their numbers larger.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the Organized Crime Convention (U.S. ratified both in 2005), defines “trafficking in persons” as an act of “recruitment, transportation, transfer, harboring or receipt of persons” by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, or the abuse of power. Trafficking in persons may also result from a position of vulnerability, involving the giving or receiving of payments or benefits for the purpose of exploitation through what would seem to be non-coercive methods, where the victim consents to their ill-treatment.⁴¹ Human trafficking should be distinguished from “smuggling,” which is defined as the procurement to obtain, directly or indirectly, a financial or other material benefit of the illegal entry of a person into a state of which the person is not a national or permanent resident.⁴² Thus, by definition, smuggling necessarily involves the crossing of a state border, while trafficking does not; trafficking necessarily involves exploitation, while smuggling does not.

The ILO estimates there are 12.3 million people in forced labor, bonded labor, forced child labor, and sexual servitude at any given time; other estimates range from 4 million to 27 million. The U.S. State Department’s 2008 *Trafficking in Persons Report* reports that approximately 800,000 people are trafficked across international borders each year. Approximately 80 percent of these are women and girls and up to 50 percent are minors. Many millions more are trafficked within their own national borders (U.S. Department of State 2008, 7). Trafficking and other criminal or exploitative activities are most likely to occur when people are desperate for work and willing to undertake great risk and pay sums of money to find it. Human trafficking often involves the violation of one or more labor rights because the purpose may be for forced and compulsory labor and/or one of the worst forms of child labor.

The Victims of Trafficking and Violence Protection Reauthorization Act (TVPRA), which was reauthorized in 2008, aims to combat trafficking in persons, especially in the sex trade, slavery and

⁴¹ The Protocol has three basic purposes: combating and preventing human trafficking; protecting and supporting trafficking victims; and promoting cooperation within and between state parties. Countries that ratify the Protocol are obliged to enact domestic laws making these activities criminal offences if they are not already in place (J. Wheeler 2005).

⁴² From the Protocol against the Smuggling of Migrants by Land, Sea and Air, which also supplements the Organized Crime Convention.

involuntary servitude. It directs the U.S. State Department, through its Office to Monitor and Combat Trafficking in Persons (G/TIP), to produce annual reports on trafficking that rates countries in three tiers according to whether they meet “minimum standards” regarding their anti-trafficking commitments. Tier 3 countries, which are those not making significant efforts to comply with the standards, face potential negative consequences (termination of non-humanitarian aid, loss of U.S. support for IMF and World Bank loans, etc.) The USG has committed substantial resources to combat trafficking, including \$76 million in FY 2008 to foreign governments and NGOs and over \$20 million to domestic anti-TIP projects.

3.12 CONFLICT AND CRISES/POST-CRISIS TRANSITIONS

Labor sector issues directly affect the potential for conflict in two principal ways. First, labor unrest can occur and can either affect relations between specific groups of workers, government, and often business. Secondly, as states gradually shift parts of the onus for the provision of public goods to the labor market at the same time that the need for international competitiveness has a downward push on compensation, there is a greater likelihood that workers will contribute to broader manifestations of political unrest as citizens are challenged to take care of their basic needs.

Attempts to mitigate the potential for conflict in fragile states often will require attempts to address the degree to which the public entitlement to basic goods and services is available through market mechanisms as opposed to national public programs. In the past, benevolent (and often centralist) state policies helped buffer workers against volatility in wage markets, both formal and informal. Currently, however, it will increasingly fall on business and labor organizations to seek to reach better accommodation regarding reconciling the need for competitiveness with the requisite of an adequate degree of political stability. This theme is elaborated in greater detail in the next section.

In the wake of conflicts, crises, disasters, and other unexpected upheavals, peoples’ livelihoods are disrupted. Beyond the security, health, housing, and nutrition dimensions of post-crisis transitions, it is essential that labor markets continue to function and people find work.

Formal and informal sector activity may be at a standstill or severely disrupted, as productive assets (everything from cattle to factories) are damaged, rendered inaccessible, or destroyed. Markets to bring in inputs or food or send out products may no longer function, as transport and telecommunications circuits are disrupted or broken down. Banking systems may no longer operate, currencies may have sharply shifted in value, and purchasing power may be weakened or destroyed. Chronic insecurity or violence may further threaten the renewal of livelihoods activities.

In the face of such instability, people need to resume earning a living either at home or in a new place of residence, or they will either starve or remain dependent on humanitarian assistance. The humanitarian assistance community can better strategize for post-crisis transitions by incorporating labor considerations into their work.⁴³ What coping strategies are people already using to re-generate their livelihood or shift into a new line of work? What assets (physical, social, motivational) do various categories of displaced persons (by age, gender, ethnicity, etc.) possess that will enable them to find work? What strategic inputs would best launch people back into work (e.g., seeds, tools, credit, etc)? Can/should work be “created” through food distribution or development reconstruction projects? How do displaced persons find new work in a new environment, or how can they be encouraged to resume their former livelihoods back in their traditional areas of residence?

⁴³ See Lautze (1997) and Lautze and Raven-Roberts (2006) for expanded discussions of these issues.

3.13 MULTIPLE APPLICATIONS OF LABOR SECTOR PROGRAMMING

Section Two established a framework conceived around the labor sector from a systems approach and explicitly identified its main four components. Such a framework allows for a gaps analysis to help identify principal points of intervention for foreign assistance. Section Three then takes up the question of why the labor sector is important (in some cases critical) to key development goals, and in doing so elaborates on the diversity and range of thematic strategic objectives that can be pursued under the rubric of the labor sector. The preceding discussion has shown that there are labor dimensions to many of the key objectives integral to the promotion of development. Similarly, labor considerations are vital to some of the principal diplomatic undertakings, such as international trade and migration and trafficking. A separate programming handbook provides a more detailed inventory of labor sector programming to date, and suggests strategic opportunities to introduce labor sector issues in U.S. diplomacy and development programs (Salinger and Saussier 2010).

Having laid out the full range of the labor sector's potential in foreign assistance, Section Four addresses how to balance and prioritize different types of assistance interventions.

4.0 TENSIONS AND SYNERGIES IN FOREIGN ASSISTANCE GOALS

The preceding section articulated the many ways that labor sector assistance can contribute to development and diplomacy objectives. However, the selection of foreign assistance interventions must also maximize accountability by taking into consideration the degree of impact that is likely to result from specific interventions. Furthermore, assessing the tensions and synergies that sometimes exist in the context of multiple development goals can help identify real world opportunities for integrated labor sector programming.

Tensions sometimes crop up between or among various objectives of a foreign assistance strategy. A push to open borders to facilitate trade, for example, may inadvertently create new health problems as diseases establish themselves more readily across an open border with freer movement of goods and people. Freedom of association for workers and employers may protect fundamental rights and promote democracy but, without appropriate systems for dispute resolution and processes for bargaining, may lead to more workplace disputes that could impair competitiveness. Other examples of such tensions can surely be found in development experiences around the world.

Development professionals should acknowledge these tensions openly. Sometimes, synergistic win-win situations can be identified to move forward on key development issues. For instance, freer movement of workers across borders may also create new opportunities for regional health organizations to improve advocacy, education, and patient outreach. Unions may both advance the material interests of workers *and* support increased productivity and competitiveness, while employers may seek both to increase firm profitability *and* respect their employees' rights. Unions should have the right to withhold their labor, i.e., strike, *and* reasonable restrictions may limit the circumstances in which that right may be exercised, for example when a collective agreement has a no-strike clause. Other synergies can surely be found as well. However, where compromise solutions cannot be found, clear identification of the trade-offs involved may allow local parties to work toward identifying the optimal solution for their society, as explored in several examples below.

4.1 ADVOCACY FOR CORE LABOR STANDARDS: PROMOTING LABOR RIGHTS AND EMPLOYER COMPETITIVENESS

The *“appropriate” degree of labor laws’ regulation and enforcement* and effects on employment are a key area of concern. The promotion of sound labor practices rooted in core labor rights can improve the competitiveness of enterprises and economies where properly implemented. However, increased “cash” labor standards, such as minimum wage increases, and strong unions bargaining for wage and benefit gains, can reduce corporate profits where not linked to productivity gains. The optimal strategy is to promote, as far as possible, both labor rights and employer competitiveness. Doing so requires identifying the differing problems and interests, understanding the context, finding new linkages between issues, and considering a range of approaches and organizations that may be engaged to achieve the goals.

An example of intransigent debate regarding labor law reform illustrates the point; the country is hypothetical but the debate is a common one:

- **Labor rights problem.** In a country where employers may be violating labor rights with impunity, workers may oppose all labor law reform and view all proposals with distrust, as they may believe that employers and the government are attempting to control or destroy their unions.
- **Employer competitiveness problem.** The existing labor laws may result in a complex regulatory environment that may not be fairly or properly enforced and may impose high non-wage costs. As a result, employers may seek to evade application of all labor laws and/or may seek the repeal of some or all labor regulations.
- **Potential solution.** Rather than do away with all labor laws or reduce coverage of the law on employers or impose harsher laws on employers, the solution might lie in expanding real protection of core labor rights in law and practice *and* repealing the provisions and end practices that impose unrealistic burdens on employers. However, the parties are highly unlikely to agree to this rational approach where the existence of unions is under threat or when parties do not have recourse to an effective legal and dialogue process.

Another example of working synergistically in the area of core labor standards is drawn from corporate social responsibility examples. In some countries, it is the myriad of regulations and institutions associated with CSR implementation, rather than the CLS per se, that may frustrate enterprise management and impede growth. For instance, the monitoring of compliance with CLS has evolved into an elaborate global service industry that can be disruptive of business operations. With internal CSR teams, external for- and not-for-profit (the latter are sometimes referred to as “independent” monitors) contractors, and international organizations, monitoring service providers may conduct inspections of suppliers’ manufacturing facilities both before initiating a supplier relationship and on an ongoing basis once that relationship is established. Visits may be scheduled or unannounced and companies may be faced with repeated and uncoordinated inspections conducted by a multiplicity of auditing teams. Various arrangements exist with regard to transmission and public availability of the monitoring compliance data collected. While the social goals of such monitoring activities are laudable, their implementation can impose burdens for manufacturers. Proponents of monitoring argue that these relatively new institutions are necessary to compensate for weak capacity of local governments to inspect and monitor labor conditions themselves. A synergistic approach to this apparent dilemma may be captured as follows:

- **Employer competitiveness problem.** The monitoring scheme, whether implemented by an international company or organization or domestic ministry, may interfere with production.
- **Labor rights problem.** Even though the present monitoring scheme may not be very effective, workers and unions may fear that even the present scheme will soon be ended.
- **Potential solution.** Efforts should focus both on reducing interference and redundancies by the monitoring teams with the employer’s production and promoting an effective system. The parties should be flexible in consideration of the optimal approach, which may include: monitoring through the local union (if there is one), a joint labor-management committee, an independent monitoring organization or government agency, or coordination between/among any of them. The process should be transparent and fair, and incorporate both elements of education and enforcement.

4.2 FRAGILITY OF DEMOCRACIES AND DEVELOPMENT OF LABOR UNIONS AS A POLITICAL INTEREST GROUP

Development of the internal capacity of labor unions to organize workers effectively, promote free and democratic leadership, educate workers about their rights, and represent their membership in collective bargaining with employers and policy debates with government is a crucial development goal. As union leaders acquire increasing leadership skills, they may also interact with union colleagues in regional and international trade union fora. In some countries labor leaders’ outreach may extend into domestic

political arenas. Labor leaders may be identified with particular political parties, in power or in opposition to the party in power. In other countries, labor leaders may participate directly in political activity, standing as candidates for election and participating in law-making or direct leadership positions. Such participation is, perhaps, the logical outcome of capacity-building efforts that educate workers about how to interact with power structures around them. However, democracies may be rather fragile in some countries. Where overall political leadership in a country may be weak or corrupt, labor unions themselves may be susceptible to similar forces, or they may become captured by political interests. In some cases, union leaders' solidarity with members' interests may be de-prioritized in favor of pursuit of personal or political gains. In such situations, donors and external supporters of labor, including international union and solidarity representatives, may prefer to work through alternative organizations, seeking to build up free and democratic workplace representation, to help advance the rights and interests of local working men and women.

Labor sector programs that seek to strengthen the political voice of labor organizations thus may inadvertently introduce unknown risks, with nascent democratic institutions barely able to sustain new tensions.

- ***Labor rights problem.*** It may be in workers' interests for their organizations to become more politically engaged and to learn how to lobby effectively on behalf of increased labor rights protections and resources to implement and enforce them.
- ***Political problem.*** Political parties and coalitions may not be strong enough to incorporate a new set of stakeholder interests. Or they may be so strong that they dictate to unions, rather than allowing unions' voices to contribute to political strategy and decision making.
- ***Potential solution.*** Strengthen the internal capacity of labor organizations to reflect members' priorities in their political outreach as well as their external capacity to understand and work constructively within the political process to advocate on behalf of labor sector issues.

4.3 UNIONS AND EMPLOYMENT

Just as the USG supports private sector development initiatives by working with business associations and employer organizations, so, too, it supports labor sector development initiatives by helping to strengthen the capacity of labor unions to represent effectively and democratically their membership. Yet the decision to engage with labor unions is not without controversy, owing to concerns regarding campaigns for higher wages, the effect of work stoppages on workplace stability, and their potentially negative effects on productivity and competitiveness.

Nuanced understanding of context is essential to develop appropriate strategies for engaging with unions. Where unions are strong and have been successful in fighting for higher wages, considerable traction can be gained by engaging them in the process of promoting productivity and quality gains. Where unions are weak and have been restrained or repressed, support to unions serves both human rights goals as well as development objectives. In other situations, supporting union organizing and increased capacity is warranted by the key role they can play in democracy building. In all cases, it is necessary to consider both context and variation in union types and internal organization when engaging this sector.

To promote sustainable economic interests, an optimal strategy would seek to balance employers' need for their enterprises to be competitive and workers' interest in being fairly paid and treated, with government playing an effective supportive role. The following example illustrates this point:

- ***Employer competitiveness problem.*** The workers' union may have grown strong, but performance may not have improved, placing the employer at a competitive disadvantage in international markets and threatening the company's survival.

- **Workers' concerns.** The employer may pressure his/her workforce to work harder for less pay, but if workers become more productive, they may fear that they will become redundant and be laid off. They may believe that employers will not share profit gains with them.
- **Government's problem.** The economy may not be growing and tax revenue may be shrinking. In this case, there may be less money available for education and services to assist employers and workers.
- **Potential solutions.** This set of problems is often among the most challenging to address. Solutions may include:
 - Educating workers about business issues so they understand the competitive pressures on employers;
 - Helping employers implement incentive schemes in which workers can receive additional benefits and/or bonuses for improving production and quality;
 - Training and implementing “employee involvement” techniques, for example, by involving workers in the process of finding ways of improving production and quality (e.g., suggestion boxes) and giving them recognition and rewards for recommended changes that are implemented;
 - Promoting skills training that will enable better paid workers to be more productive;
 - Devising processes by which laid-off workers receive assistance to find new work and gain skills sought in the labor market, which may be directed by government, employers, unions, or all of them, depending on their institutional abilities and circumstances in the country.

Another area of tension in the employment area frequently arises with respect to **definition of non-wage benefits**, such as health care, disability coverage, termination, and retirement pensions. While the majority of workers in developing countries do not enjoy the protections against risks of ill health, disability, unemployment, and old age enjoyed by workers in industrial countries, anticipated costs are onerous to governments and resisted by employers who fear the negative consequences of higher payroll costs (and who may cut back on wages or wage increases to cover anticipated increases in non-wage costs). The following scenario, encountered in Zambia, illustrates this point:

- **The employers' problem.** Employers may be responsible for making high payroll contributions to both government and private schemes and may be saddled as well with very high statutory termination allowances. Thus, they may contemplate closing shop and leaving the country.
- **Workers' concerns.** The government-sponsored pension system may pay very low benefits. Thus, the unions may seek to negotiate for additional employer-paid pension benefits and may oppose the reduction of termination allowances.
- **The government's problem.** The law may require public managers to maintain holdings in assets that stagnate or depreciate in value, leading to low fund growth. At the same time, public fund management skills may be low and enforceable fiduciary responsibilities may be weak. As a result, government may seek to shift the burden of social protection to employers.
- **Potential solutions.** In a tripartite process, the parties would identify their underlying interests and an independent expert would provide them with advice on whether to improve either the public or private scheme and address the issue in conjunction with termination allowances. An optimal solution might be to make changes that gradually increase pension payments and, at the same time, reduce terminal allowance payments. For example, if the public scheme was preferred, the law could be amended to strengthen fiduciary responsibilities and authorize managers to diversify the portfolio for greater returns. An alternative could be to end the public scheme and develop laws encouraging and regulating private ones. Solutions may be found by jointly addressing the parties' legitimate concerns that have been not susceptible to resolution when addressed separately.

4.4 GLOBALIZATION

While support for labor organizations can sometimes appear to be in conflict with economic growth goals, as per above, economic growth goals can also sometimes appear to be in conflict with labor sector objectives.

Encouraging open markets and trade liberalization affects labor in a number of ways. For example, increased *integration with global markets may have differential impacts by worker gender, age, region, and education or skill level and dynamic effects* that need to be more carefully understood and planned for (Gammage et al. 2002, Salinger et al. 2006). In response to exogenous shocks such as sudden trade liberalization, equilibrium in labor markets may not occur instantaneously. Challenged by trade liberalization, labor markets may send signals of demand for new skills that local labor markets may not be able to meet right away. As wage inequality grows between skilled and unskilled workers, incentives increase for education and training institutions to develop curricula that meet employers' needs and for youth and students to stay in school longer to acquire greater knowledge and skills. As women's societal roles evolve, sometimes under pressure from labor demands stimulated by globalization, labor markets must also adjust to the increased supply of female workers into job categories they did not previously occupy. The potential dislocation effects on family responsibilities, livelihoods, and employment, in addition to the potential gain through increased competitiveness and resource allocation efficiency, should be considered and may be of overriding importance to policymakers in partner countries.

Sometimes *promotion of export-led growth may be accompanied by relaxing or ignoring of national labor laws*. Countries are understandably eager to attract foreign investment to their shores to stimulate growth and employment, yet need to be mindful of the implications of foreign capital inflows for local labor markets, labor rights, and labor organizations. Suspension of enforcement of national laws in export processing zones and other special cases may represent a significant back-pedaling of existing labor rights.⁴⁴

Globalization debates have largely focused on liberalization of cross-border flows of goods and, more recently, capital. Policies and programs regarding *cross-border labor flows* have attracted some U.S. foreign assistance attention with respect to trafficking in persons. Far less attention has been paid to finding solutions to domestic labor markets that are closed to voluntary migrants who seek employment overseas (Pritchett 2006). Regulation of cross-border labor flows may also restrict some movements *into* a country, for example, in the case of restrictions on the issuance of work permits for skilled managers to protect domestic labor markets.

Other examples of tensions between trade liberalization and human rights are elaborated in Aaronson and Zimmerman (2008). Legislation enacted in 1997 by the South African Parliament to provide affordable HIV/AIDS medications to South Africa's poor was challenged by pharmaceutical companies, requiring WTO clarification on intellectual property rules in public health emergencies. In the U.S. concerns about child labor associated with the international cocoa trade led in 2001 to the signing of the Harkin-Engel Protocol. This agreement has introduced public-private initiatives, including producer certification, to reduce, if not eliminate, the worst forms of child labor in Côte d'Ivoire and Ghana. These initiatives are being tracked with U.S. Department of Labor support by Tulane University (Tulane 2008). Aaronson and Zimmerman suggest that policymakers should be tasked with linking trade and human rights, and note, "Until trade policymakers receive such a mandate, they will probably not weigh the human rights impact of their trade policies on either their citizens or those of their trade partners" (Aaronson and Zimmerman 2008, 190).

⁴⁴ For more information, read about the Solidarity Center's experience in this area at <http://www.solidaritycenter.org/content.asp?contentid=413>.

The political economy of labor has been undergoing dramatic changes as a result of globalization. Vast pools of agrarian labor once fueled rural-urban migration, allowing countries entry into the world marketplace on the basis of cheap labor costs. As the situation has evolved to the point where rural-urban migration no longer provides a seemingly endless source of inexpensive labor, there has been a growth in international labor migration, again largely outside of the formal labor regulations negotiated at the national level. The effects of national economic growth on social welfare and political stability have in the past been mitigated by state policies that sought to buffer the need for competitiveness. But as the pressures of the global marketplace increasingly affect standards of living, the interests of workers will need to be represented and preserved in order to maintain equilibrium and stability within a nation state structure.

4.5 TENSIONS THAT ARISE FROM INSULARITY AMONG GOALS

In some cases the “tension” that arises is due not to a perceived conflict between/among two or more foreign assistance objectives, but rather to the insularity that exists between/among existing programs. For example, “labor programs” are often viewed as completely distinct from “civil society programs,” though arguably labor unions are a category of civil society organizations. The result can be inadvertent exclusion of labor unions from civil society programs that would be in workers’ interests. Examples of inadvertent exclusion are anti-trafficking programs that do not integrate unions as local partners for education campaigns and workforce training programs that may employ women’s organizations as a link to active labor market program clients, but not labor unions. Another example is competitiveness and value-chain programs that look to private sector associations and cluster groups as logical stakeholder/partners, but rarely attempt to reach out to worker groups.

A solution for these inadvertent exclusions might be for USAID technical officers and their program implementers to become more creative in their approach to stakeholder outreach to ensure that all civil society organizations and market actors who intersect with a particular issue are considered for possible inclusion.

5.0 CONTRIBUTION OF THE LABOR SECTOR TO U.S. FOREIGN ASSISTANCE OBJECTIVES

The USG seeks to promote the efficient and effective use of resources in five priority foreign assistance areas: peace and security, democracy and governance, investing in people, economic growth, and humanitarian assistance.⁴⁵ Developing and transitional countries are categorized into five groupings:

- **Rebuilding Countries** are those in, emerging from, or rebuilding after, internal or external conflict.
- **Developing Countries** are low- or lower-middle income countries that do not yet meet Millennium Challenge Corporation (MCC) performance criteria and/or the criteria related to political rights.
- **Transforming Countries** are low- or lower-middle income countries that have met MCC performance and political rights criteria.
- **Sustaining Partnership Countries** are upper-middle or high income countries for which U.S. support is provided to sustain partnerships, progress, and peace.
- **Restrictive Countries** are those in which significant governance issues and, in some cases, legislative restrictions on direct U.S. funding are in effect.⁴⁶

Labor-focused foreign assistance strategies should change as conditions in countries devolve or improve. For example, with reference to the country categorization above, aid in a *restrictive country* may be limited to support for labor sector organizations working for democratic reform. If it becomes a *rebuilding country*, then aid may be directed to the new government to create high employment on public works projects to employ demobilized soldiers and internally displaced persons and build basic infrastructure. As a *developing country*, aid may begin to promote relatively low-skill employment in the private sector with a basic labor code. As a *transforming country*, development partners may seek to diversify industries and create a more complex regulatory environment for health, retirement, and welfare benefits. As countries are categorized according to their contexts, the FAF provides guidance as to how to approach the relative mix of the five priority program areas.

Certain factors may cut across these categories and have an impact on strategic labor sector choices. To determine whether the labor sector is relevant to objectives in the five priority program areas, it is useful

⁴⁵ In 2007, the Foreign Assistance Framework (FAF) was developed by the State Department and USAID to categorize foreign assistance programming and organize resource allocation across these five areas. As mentioned in an early footnote to this paper, strategic foreign policy reviews by the Obama Administration are currently ongoing.

⁴⁶ Definitions from USAID, Economic Growth & Trade, "A Strategy for Economic Growth," http://www.usaid.gov/our_work/economic_growth_and_trade/eg/eg_strategy/9_framework_for_assistance.html (accessed May 14, 2009).

to pose the following questions when reviewing each of them. Does the program set forth an objective that:

- Explicitly promotes a labor right or standard?
- Includes, integrates or incorporates a labor right or standard?
- May be achieved by addressing the labor sector?
- May be achieved by engaging labor sector institutions and organizations?

For example, as noted below, reducing trafficked forced labor is an explicit goal and promoting labor rights is an integral component of promoting human rights. And as noted above, the goal of promoting labor rights is incorporated into the goal of promoting compliance with trade agreements that have labor sector provisions. In other cases, labor sector institutions and organizations may simply be in a good position to help a project achieve other objectives, such as fighting HIV/AIDS, promoting the rights of women and minorities, advocating for democratic change, implementing training, or fighting corruption. A summary of how the labor sector may be incorporated into each of the five priority program areas is presented below.

5.1 ACHIEVING PEACE AND SECURITY

Trafficking in persons is a key issue addressed by diplomacy and development activities. Trade unions and other labor sector organizations assist in prevention, victim support, and prosecution of traffickers. Most commonly, tripartite bodies of labor ministries/departments, other government offices, and worker and employer organizations cooperate to create laws, regulations, and policies to combat trafficking. Labor rights organizations commonly provide victim support, and government offices and worker organizations police for violations.

Another area of intersection between “Achieving Peace and Security” and the labor sector is through activities carried out by worker organizations in the name of peace and security. For example, trade unions may represent police, customs and border agents, prison guards, and other law enforcement officials. Such unions can provide constructive pressure on government executives, legislatures, and the public to ensure that law enforcement receives proper support in the forms of funding, training, and supplies. They may also be engaged in training and educating about terrorism, organized crime, money laundering, and other areas related to peace and security. Unions representing workers in hazardous materials industries may engage in training in security, material handling, and safety, particularly where the materials could be used in weapons of mass destruction.

Civil unrest is sometimes related to another labor sector issue, namely access to basic goods and services, which is closely linked to the level of compensation for both informal and formal labor. As states have moved away from a centrist social profile, the labor market and/or private actors need to be able to more effectively fill the gap while still remaining competitive on global markets. Inadequate democratic processes to ensure the balancing of economic growth objectives with the need to protect human rights and political interests of formal and informal sector workers, who represent a broad swath of civil society, can lead to declining legitimacy and contribute to civil unrest.

5.2 GOVERNING JUSTLY AND DEMOCRATICALLY

“Governing Justly and Democratically” expressly involves promoting labor rights in constitutions, laws, policies, and practice. It also provides for building capacity in human rights organizations, which include labor rights organizations, to promote these rights and the rule of law.

This area also provides for good governance throughout the public sector at the national, executive, and local levels by incorporating democratic principles and supporting “voice, negotiation/problem solving, and consensus building” in the workings of government. It further provides for reducing corruption

through reform, oversight, and enforcement. When properly engaged, public sector unions can help ensure that governments become more efficient and effective. Because it is in their members' interests to do so, they can serve as excellent watchdogs to ensure that public funding is spent for government purposes rather than stolen or squandered.

Labor sector organizations, particularly trade unions, have played and can continue to play an important role in promoting political competition and consensus building. Development activities in the civil society strengthening area also develop and strengthen trade unions and their federations to promote labor rights through organizing and advocacy for workforce development and health initiatives. They also may help to improve their capacities to engage in collective bargaining and tripartite processes, and to act as incubators for democracy. Program priorities in this area also call for promoting a free media, which journalist organizations and unions have done under difficult and often dangerous circumstances.

5.3 INVESTING IN PEOPLE

Activities undertaken in the “Investing in People” program area include engaging institutions and organizations to address health (including HIV/AIDS), education, and social services and protections. Labor sector dimensions in this program area include protecting the rights, including labor rights, of people in vulnerable groups, promoting their employment and ability to earn income, and ensuring that they have safety nets. To reform the laws and policies, tripartite partners could be engaged; to implement them, the capacities of labor ministries/departments and other government offices should be improved. For example, the tripartite partners could advance anti-discrimination laws, labor ministries/departments could support appropriate training and assist in job placement in coordination with employers, labor rights organizations could provide services, and unions could provide education and assist in preventing discrimination. As described above, one aspect of programs to prevent the worst forms of child labor, such as those supported by USDOL, is to raise the awareness of the importance of education for children in order to improve families' desires to keep their children out of the workforce.

5.4 PROMOTING ECONOMIC GROWTH AND PROSPERITY

Employers, labor organizations, and labor sector government institutions and their stakeholders all have stakes in promoting economic growth and prosperity. Promotion of economic growth is a crucial first step in beginning to ensure growth in demand for labor, i.e. generation of employment. Assuring that macro, meso, and micro policies and incentives structures provide balanced incentives to hire labor; international borders do not unduly inhibit flows of goods and services; financial, human, physical, and environmental policies and infrastructure are capable of supporting growth; sectors are globally competitive; and economic opportunities are available to all are crucial to accomplishing that goal.

Labor is already a crucial, if often hidden, dimension in many economic growth programs. At the firm-level, there are many promising methods of employee involvement, including workforce councils at the enterprise-level and joint committees at a sectoral or national level, for employers and worker organizations to promote their common interests. Labor sector organizations should receive skills training to be able to properly evaluate business and employment-related information and to understand and comply with the law, consistent with CLS. They should also be engaged in bi- and tripartite processes to promote cooperation on matters of common concern and develop efficient and effective processes for peacefully resolving their disputes.

5.5 PROVIDING HUMANITARIAN ASSISTANCE

With efforts focused on achieving specific results in the short term, engaging labor sector organizations may be instrumental in providing humanitarian assistance regarding income generation, employment

opportunities, basic social services, and livelihood support. They may also help by creating a stable labor environment to serve as a foundation for achieving objectives under other FAF areas including, for example, mitigating conflict, reconciling groups, preventing vulnerable people from becoming trafficking victims, and providing a stable foundation for good governance and economic growth.

6.0 CONCLUSION: TOWARD A NEW SYNTHESIS IN LABOR SECTOR FOREIGN ASSISTANCE PROGRAMMING

This Technical Paper suggests that labor sector programming has the potential to have a broad impact on foreign assistance goals. In particular, four key findings of this paper suggest how a re-conceptualization of labor sector programming could improve the likelihood of such interventions contributing directly to the USG priority areas for foreign assistance.

- First, conceptualizing the labor sector using a *systemic approach* offers new advantages that can render labor sector programming more nuanced and better able to contribute to a broad set of objectives than has been the case in the past. Such an approach helps avoid potential stove-piping by integrating diverse disciplinary perspectives into a coherent whole. Analyzing the labor sector from a systemic perspective sheds light not only on the roles played by the essential components, but also on how they come together to shape the world of work.
- This leads into the second key finding regarding the *multiple utility of programming* in the labor sector. Labor sector programming should be conceived not only as a means to promote labor rights and organizations for their own sake, but the labor sector itself can be used as a platform for programming that can directly help to achieve a more diverse set of priority USG foreign policy objectives.
- Third, the labor sector is of *integral importance* to priority USG foreign policy objectives. That is, incorporating labor sector elements into strategic plans may be instrumental to achieving the five FAF objectives. And the converse is also suggested, i.e. that failure to take the labor sector into account in broader foreign assistance programming may risk undermining progress that might otherwise be achieved.
- Finally, by broadening the systemic approach to include *political economy considerations*, the paper has underscored the urgent need to balance trends towards competitiveness that threaten to undermine popular access to rights, basic goods, and services with mechanisms that will continue to assure access. Failure to address such growing equity and social protection concerns may mean that greater threats to political stability will continue to emerge. Poverty and human development implications are heightened as vulnerable and low-wage workers could see their rights and their means to earn a decent livelihood put into jeopardy.

As we have seen, consideration of the labor sector, defined within a four-pronged (rights-institutions-organizations-markets) approach, enters into all five of the USG's priority areas for foreign assistance. The broad scope of the multi-faceted labor sector approach presented in this report provides a comprehensive lens through which to consider foreign assistance objectives in the thematic areas of

democracy and governance, investing in people, economic growth and prosperity and, in some respects, peace and security and humanitarian affairs. Thus, the scope encompasses a wide range of labor sector issues, certainly including but not limited to those involving unions, formal sector employment, and labor market flexibility, all considered in the context of these core foreign assistance goals.

As one probes more deeply into each of these areas, tensions among disciplines and program approaches inevitably arise. Some may not be resolvable, but rather may have to be addressed by local parties who are made aware of the trade-offs involved. Yet the potential for synergistic and broad-based outcomes, rooted in a labor perspective but implemented creatively across the foreign assistance objective areas, may yield fruitful results in unexpected areas, such as counter-terrorism, security, and transnational crime; dealing with HIV/AIDS, tuberculosis, malaria, and other diseases through the workplace; and livelihood support in crises and post-crisis transitions. It is no surprise that most of these issues and foreign policy objective areas are now considered to have global dimensions. It is therefore imperative that new conceptual frameworks regarding labor sector programming be formulated to address how imbalances caused by the accumulation and movement of transnational capital can best be addressed in the absence of effective transnational political regimes. How the concentration and movement of global capital affects labor markets in both the formal and informal economies will help to determine the prospects for maintaining the stability necessary for sufficient levels of economic growth.

The challenge is to consider how to work within the labor sector to both effect meaningful gains for all workers in developing countries as well as to contribute to broader foreign policy objectives. As countries become increasingly globally interconnected, getting the labor equation right will also involve addressing challenges in each of the four pillars of the labor sector. Fruitful dialogue is needed with policy makers about the pace, sequencing, and intersectoral incidence of such liberalization. These and other questions will be examined in upcoming country-level labor assessments and other future work to be undertaken by USAID and the U.S. Department of State.

APPENDIX A: USG LABOR SECTOR PROGRAMS

1. USAID

USAID is the primary U.S. federal government agency working to promote development and raise living standards in other nations. Its Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA) oversees programs in support of labor rights, labor organizations, and democracy and governance in the labor sector. Its Bureau for Economic Growth, Agriculture, and Trade (EGAT) addresses labor markets and workforce development under the private sector competitiveness program area. Labor sector programming is implemented globally, regionally, and at the country level.

USAID has provided over \$300 million in funding to the Solidarity Center (formally known as the American Center for International Labor Solidarity, or ACILS) and its direct predecessors to promote democracy through support for free and independent trade unions, dating from the decades following WWII to the present. In 1997 USAID began a core-funded, broad-based labor program designed to address ten objectives ranging from the promotion and protection of fundamental labor standards, to building the capacity of democratic and independent labor unions and NGOs, supporting economic literacy training, human capacity development, and workplace health programs. In 2001, the grant supporting this program was for the first time awarded on a competitive basis; the Solidarity Center was awarded the cooperative agreement in 2002. In addition to the core grant to the Solidarity Center, USAID has also funded a number of labor sector projects at the level of individual missions overseas, ranging from labor law and pension reform to workforce development.

2. Department of State

The Department of State addresses a range of labor sector issues through the Bureau of Democracy, Human Rights and Labor (DRL), its Office of International Labor and Corporate Social Responsibility (ILCSR), and the Office to Monitor and Combat Trafficking in Persons (G/TIP). Funds have also been made available through the Bureau of Western Hemisphere Affairs (WHA) for CAFTA-DR trade capacity-building projects regarding labor rights.

DRL has overseen labor projects through two major programs in recent years – the Partnership to Eliminate Sweatshop Employment (PESP) and the Human Rights and Democracy Fund (HRDF). PESP aims at promoting corporate social responsibility, strengthening worker organizations, improving industrial relations, and sharing best practices regarding factory monitoring and codes of conduct. Major programs have operated in China, Mexico, Central America, South Africa, India, and other nations. In the period of 2000-2005, funding levels ranged from a little under \$4 million to just under \$2 million per fiscal year. The HRDF programs include labor activities to build democratic free trade unions and promote rule of law in labor, with most projects in China and some in the Middle East, Central America, and Pakistan.

The vast majority of G/TIP's technical assistance projects address trafficking for commercial sexual exploitation. A small but growing share, however, focus on so-called labor forms of trafficking, which can include trafficking into forced labor in sweatshops, bonded labor, domestic service, and other activities. In Fiscal Years 2007 and 2008, G/TIP administered \$75-80 million in funds to combat trafficking internationally and an additional \$23 million for domestic anti-trafficking efforts.

3. Department of Labor

The Department of Labor's Bureau of International Labor Affairs (ILAB) supports technical assistance and cooperation and conducts diplomacy on labor and employment matters in trade and foreign policy arenas. For example, in April 2010, USDOL hosted the first-ever meeting of labor and employment ministers from the world's 20 largest economies focused, in part, on promoting a sustained recovery, economic growth, inclusive and active labor market policies, and the creation of quality jobs. ILAB also monitors compliance with international labor standards, often in the context of trade-related agreements and unilateral trade preferences. Executive Branch initiatives provide ILAB with its mandates, as delegated by the Secretary of Labor. ILAB also receives mandates through U.S. legislation. ILAB is currently pursuing a two-track strategy of 1) more robust and monitoring and enforcement and 2) offering deeper engagement and more assistance in countries demonstrating the political will to protect their workers' rights and improve their living standards (Polaski 2010).

ILAB supports technical assistance and cooperation through its Office of Trade and Labor Affairs (OTLA) and its Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), with labor dialogue assistance from its Office of International Relations. Since 2000, OTLA's Trade Agreement Administration & Technical Cooperation Division (TAATC) has assisted 72 countries with \$173 million in project funding. TAATC taps into the expertise of other USDOL agencies to help implement projects related to labor law compliance, occupational safety and health, mine safety, workforce development, and labor-management relations. It has funded projects on labor administration, labor law compliance, labor-management cooperation, mediation and arbitration systems, women's employment, HIV/AIDS in the workplace, labor market restructuring, employment services and vocational training, social insurance, employment disability, and veterans' employment, among others. It has supported efforts in Africa, Asia, Latin America, the Caribbean, the Middle East, and Eastern Europe, including Haiti, Iraq, Afghanistan and Bangladesh, among others. In recent years, ILAB has funded an expansion of the ILO/IFC Better Work Program for the garment sectors in Haiti and Lesotho and is exploring implementation in Nicaragua, with other donors supporting efforts in Jordan and Vietnam.

OCFT funds technical assistance to eliminate exploitative child labor and trafficking in many countries and assists in the development and implementation of U.S. government policy on child labor, forced labor, and human trafficking and conducts research in these areas. From Fiscal Years 1995 to 2009, OCFT managed over \$687 million in technical assistance to combat child labor around the world and over \$274 million to support programs assisting victims of trafficking around the world. OCFT has funded projects focusing on education initiatives, agricultural work (fishing, cotton, cocoa, etc.), parents' livelihoods (micro-enterprise loans, training and support), street children, commercial sexual exploitation, domestic work, and other related areas.⁴⁷

4. Millennium Challenge Corporation⁴⁸

Millennium Challenge Corporation (MCC) was created in 2004 to provide financial support to countries that meet U.S. goals of good governance, economic freedom, and investments in their people. MCC programs support participatory, country-led strategies for poverty reduction and economic growth.

Annual tracking of seventeen policy indicators, including several that relate to core labor standards, determines country eligibility for significant multi-year assistance. The indicators consider civil liberties

⁴⁷ See <http://www.dol.gov/opa/media/press/ilab/ILAB20091204.htm>.

⁴⁸ Adapted from Kimball (2008).

(including freedom of collective bargaining), voice and accountability (including freedom of association), government effectiveness (including the degree to which civil society, including trade unions, participate in policymaking), rule of law (including respect for core labor standards), and economic freedom (including governments' respect for workers' rights).

Based on the outcome of annual country evaluations, countries may be eligible to participate in either Threshold Programs (for countries that do not yet meet the eligibility criteria) or Compact Programs (countries that meet or exceed the criteria).

5. The National Endowment for Democracy

The National Endowment for Democracy (NED) is a private, nonprofit organization created in 1983 to strengthen democratic institutions around the world through non-governmental efforts. NED, funded largely through congressional appropriation via the State Department, is governed by an independent, nonpartisan board of directors. It makes hundreds of grants each year to support pro-democracy groups in Africa, Asia, Central and Eastern Europe, Latin America, the Middle East, and the former Soviet Union. The Solidarity Center, which is one of the four core institutes of NED (the others are the Center for International Private Enterprise, the International Republican Institute, and the National Democratic Institute for International Affairs), receives core funding from the Endowment and the majority of all labor-related NED funding.

6. The Federal Mediation and Conciliation Service

Through its international programs, FMCS offers training in the prevention and resolution of collective and individual labor disputes, consultation in the design, creation and development of governmental institutions for mediation, and the facilitation of meetings in international forums. These programs address process and institutional reforms that impact peace and democracy efforts. In the past three years, FMCS has provided assistance in Argentina, Bulgaria, Canada, Colombia, China, Cambodia, Croatia, Hungary, Indonesia, Latvia, Mozambique, Peru, Serbia, Thailand, Viet Nam and Uganda. Congress has authorized the FMCS to do this work, however, because specific appropriations have not been granted the agency must seek reimbursement for its efforts. Among others, DOL, the ILO, numerous countries, NGOs, and others have engaged the FMCS for conflict resolution expertise.

7. Trade-Related Capacity Building Assistance

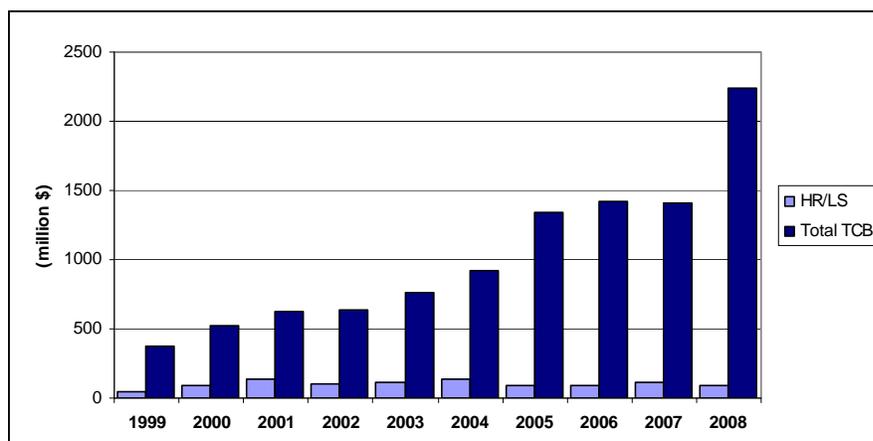
Trade-related investments in human resources and labor standards areas have represented a declining share of total trade capacity building (TCB) funds in recent years. Since 2002, two-thirds of the funding in this category has been allocated to child labor activities, another twenty percent to labor standards, rights, and worker safety areas, and the remaining 14.5% has been spent on institutional development, workforce development, economic growth, and other areas (see Table 2 and the accompanying figure).⁴⁹

⁴⁹ Author's calculations from USAID TCB data by specific activity and country, available for 2002-2006 only.

TABLE 2: TRADE CAPACITY BUILDING FUNDING FOR HUMAN RESOURCES AND LABOR STANDARDS ACTIVITIES

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Human Resources & Labor Standards	42.3	85.4	133.4	99.7	115.3	138.4	87.7	95.4	112.3	87.9
TOTAL	380.4	524.3	624.1	637.8	760.1	921.2	1345.3	1417.4	1408.9	2243.6
%	11%	16%	21%	16%	15%	15%	7%	7%	8%	4%

FIGURE 3: TRADE CAPACITY BUILDING FUNDING FOR HUMAN RESOURCES AND LABOR STANDARDS ACTIVITIES



Source: USAID Trade Capacity Building Database (<http://qesdb.usaid.gov/tcb/index.html>)

APPENDIX B: LABOR RIGHTS

The term “labor rights” has been defined in international instruments, multilateral agreements, trade law, and domestic law (Atleson et al. 2008). Although these definitions have historically varied in scope, in the past few decades convergence has largely been achieved. The following definition covers rights collectively under all of them:

1. Freedom of association and the right to organize;
2. Effective recognition of the right to collective bargaining;
3. Elimination of all forms of forced and compulsory labor;
4. Effective abolition of child labor and the prohibition of the “worst forms” of child labor;
5. Elimination of employment discrimination; and
6. Promotion of “acceptable conditions of work” with respect to minimum wages, hours of work, and occupational safety and health.

As seen in Table 3 below, eight ILO Conventions cover the first five fundamental human rights.

The U.S. Trade Act of 2002, which became PL 107-210 and is incorporated into the U.S. Code, Title 19, guided U.S. trade negotiation objectives from 2002 to July 1, 2007, when Bipartisan Trade Promotion Authority expired. Among the trade negotiation objectives outlined in Title 19 is the objective “to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO” (19 USC §3802 (6)), further defined in Sec. 3813 of the same title.

The label varies, depending on the source legislation consulted. Definitions in Title 19, Chapter 24 of the U.S. Code refer to “core labor standards” while in the GSP legislation one finds reference to “internationally recognized worker rights.” In most of the recent U.S. free trade agreements, the labor chapters refer to internationally recognized (labor or worker) (principles or rights), while in the Peru Trade Promotion Agreement, the labor chapter defines “fundamental labor rights.”

The same five CLS are found in the legislation authorizing the U.S. Generalized System of Preferences (GSP) through December 31, 2010, although the GSP’s child labor definition includes elimination of the worst forms of child labor.⁵⁰ The five rights have been incorporated in six U.S. free trade agreements. A somewhat modified set are included in the Peru Trade Promotion Agreement.

⁵⁰ See 19 USC §2467(4).

TABLE 3: CORE LABOR STANDARDS: ILO CONVENTIONS & U.S. FREE TRADE AGREEMENTS

	Definitions Found In	Freedom of Association & Right to Organize	Right to Organize & Collective Bargaining	Elimination of Forced Labor	Right to Equal Remuner	Elim of Discrim in (Employment & Occupation)	Minimum Age	Elimin of Worst Forms of Child Labor	Acceptable Conditions of Work
ILO Conventions		87	98	29, 105	100	111	138	182	Various
U.S. Code	Tit 19, Chap 24, Sec 3813	√	√	√			√		√
US Generalized System of Preferences	19 USC 2467(4) & 2467(6)	√	√	√			√	√	√
Chile FTA, 2004	Chap 18.8	√	√	√			√	√	√
Australia FTA, 2005	Chap 18.7	√	√	√			√	√	√
Morocco FTA, 2006	Chap 16.7	√	√	√			√	√	√
Bahrain FTA, 2006	Chap 15.7	√	√	√			√	√	√
CAFTA-DR, 2006/07	Chap 16.8	√	√	√			√	√	√
Oman FTA, 2009	Chap 16.7	√	√	√			√	√	√
Peru TPA, 2009	Chap 17.2	√	√	√		√	√	√	

Note: The U.S.-Singapore FTA does not include a chapter on labor.

The U.S. has ratified 14 of 188 ILO Conventions, including two of the ILO’s core labor standards (105 and 182). See USDOL’s ILO page (<http://www.dol.gov/ilab/programs/oir/ilo.htm>).

Source: ILO Database of International Labor Standards, 19 U.S.C. §3813, and U.S. Trade Representative’s Office.

In human rights terms, these rights are “negative rights,” because states are required to *not* violate them and *not* engage in the prohibited conduct. However, if private individuals, businesses and other organizations violate these rights with impunity, then governments are not meeting their international human rights obligations. As a result, labor rights are also “positive rights,” requiring states to act to protect them by providing effective recourse and remedies for violations (Compa 2003, 283). Under the ILO’s tripartite system, worker and employer organizations share responsibility for protecting and promoting these rights. These roles and responsibilities are effectively directed through social dialogue and its processes of democratic consultation.

1. Freedom of Association and the Right to Organize

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. (ILO C. 87, Article 2)

Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. (ILO C. 98, Article 1)

The principles of **freedom of association** (FOA) and **the right to organize** mean workers and employers have the right to form and join their own organizations to represent their interests (ILO 2005, 24). As a general matter, the difference between the two is that FOA concerns relations between governments and worker and employer organizations and, the right to organize concerns relations between worker organizations and employers (Lyle & Compa/ACILS 2004, 3). They include the right to establish and join organizations of their own choosing without prior authorization; to draw up their own constitutions and rules and elect their own representatives; to join in federations and affiliate with international organizations; and to be protected against dissolution or suspension by the government (ILO C. 87). It also includes the right to be protected from discrimination based on union activity (ILO C. 98). A government may, at its discretion, exempt the military and the police.

In international law, these rights have been understood to include the right to strike as one of the essential means available to workers for promoting and protecting their economic and social interests (Leary 1996, 34). This right, however, is qualified because strikes must be peaceful, they may be made subject to certain preconditions, e.g., notice and mediation, and the right to strike may be denied to public servants and workers engaged in “essential services,” defined as those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. It is also linked to the right to engage in collective bargaining.

2. Collective Bargaining

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. (ILO C. 98, Article 4)

Collective bargaining is broadly defined as “the collective assertion of power by employees to influence the employer’s actions regarding employment,” which serves as “a democratic process capable of preserving human dignity, and serving worker rights and interests, while still being compatible with employer needs for efficiency and profitability” (H. Wheeler 2001, 593). Consistent with the ILO Declaration, it means that workers have the right to be represented in negotiating the prevention and settlement of disputes with employers and that governments have the responsibilities to promote mechanisms for voluntary negotiations between workers and employers (ILO C. 98). The term “collective bargaining” is often used to refer more narrowly to negotiations between workers, through their representatives, and their employers to determine wages, benefits, hours, and working conditions. In some countries, bargaining may be wider in scope by including, at one end, decisions that are traditionally in the realm of management, such as closing and moving factories, to the other end, decisions involving local quality of working life issues, such as the provisions of water, canteens and restrooms.

Bargaining can take place in a range of processes, involving various formal and informal structures such as work councils and ad hoc committees as well as traditional contract bargaining relationships. The coverage of bargaining can range from a few workers in one union at one employer’s worksite to thousands of workers in industry-wide multi-employer and multi-union units. In some cases, there may be two levels of agreements – one level with one agreement for all workers in a multi-employer or multi-site unit on a few matters such as standard wage rates; and a second level with a number of agreements in different worksites and/or employers on a wider range of local conditions and standards.

3. Forced and Compulsory Labor

*Each Member of the ILO which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period... For the purposes of this Convention the term **forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. (ILO C. 29, Articles 1 & 2)*

Each Member of the ILO which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour-- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as

a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination. (ILO C. 105, Article 1)

Forced and compulsory labor may be used as a means of political coercion or punishment for expressing political views or participating in a strike; for labor discipline; for racial, social national or religious discrimination; or for economic development. It may also involve human trafficking.

4. Child Labor

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. (ILO C. 138, Article 1)

*Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency... For the purposes of this Convention, the term **the worst forms of child labour** comprises:(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. (ILO C. 182, Articles 1, 3)*

The **prohibition of child labor** gives consideration to the complex reality in which efforts to reduce child labor often must be coordinated with efforts to expand educational opportunities for children and permit work on family farms where it is not exploitative and does not interfere with the children's health, safety, morals, or educational opportunities (ILO C. 138). It sets the general minimum age for employment and work at 15 years (13 years for "light" work) and the minimum age for "hazardous" work at 18 (16 under limited conditions). It provides for the possibility of initially setting the minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed. A key is that no child should be employed in work that is likely to jeopardize his or her health or interfere with school attendance. States should progressively improve their support and protection of children. The **worst forms of child labor** are defined above (ILO C. 182). National child labor steering committees and local child labor monitoring groups are key players in implementation.

5. Elimination of Discrimination

Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. (ILO C. 100, Article 2, 1)

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. (ILO C. 111, Article 2)

Prohibited discrimination includes discrimination based on any distinction, exclusion or preference made on the basis of race, color, sex, religion political opinion, national extraction or social origin in relation to hiring, firing, promotion, terms and conditions of employment, and access to training (ILO C. 111). Discrimination on the basis of gender generally includes sexual harassment and discrimination on the basis of pregnancy. Governments, in consultation with worker and employer organizations, may identify other types of discrimination that should be prohibited (ILO C. 111 Art. 1 §1(b)), which commonly include discrimination on the basis of handicap, age, and HIV/AIDS status. Employers may be required to make reasonable efforts to accommodate workers with physical limitations in what are often referred to as “reasonable accommodation” requirements. The prohibition of discrimination in employment is often linked to the right to equality in employment and occupation, which includes requiring equal pay for men and women for work of equally value (ILO C. 100).

6. Acceptable Conditions of Work

As noted above, “acceptable conditions of work” refers to minimum wages, hours of work, and occupational safety and health. In contrast to core labor standards, these conditions of work are called “cash standards,” because they mandate particular outcomes that directly affect labor costs (Elliott & Freeman 2003, 13). The level of cash standards varies depending on the level of development in a country. In practice, the distinction between the standards is not always clear; for example, some improvements in health and safety may save an employer money and some health and safety violations may be so egregious as to violate fundamental rights.

APPENDIX C: LABOR AND INTERNATIONAL TRADE

The USG has promoted labor rights through unilateral preferences, bilateral preferences, and free trade agreements (FTAs) and related side agreements. Since the 1980s, these instruments have expanded the scope of covered labor rights and the range of consultative methods and potential remedies and sanctions. As trade agreements have increasingly included strong labor rights provisions with detailed requirements for efforts to protect labor rights, trading partners have increasingly requested capacity building assistance.

1. Unilateral Preferences

Through unilateral trade preferences, the USG has allowed beneficiary countries to export certain goods duty-free or below “most favored nation” (MFN) rates⁵¹ into the U.S. Eligible countries must apply for the preferences and meet certain qualifications. For example, in the first preference agreement to include labor criteria, the Caribbean Basin Recovery Act of 1983 (CBERA) provided a general standard requiring the President to take into account the degree to which workers in that country are “afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively.” Twenty-four countries were eventually deemed eligible for the CBERA preference. The drawbacks of the CBERA were that the labor criteria were vague and once countries were conferred beneficiary status, there was little subsequent pressure or support to improve labor standards through the CBERA.

The Generalized System of Preferences (GSP) was first implemented in 1976 to promote economic development through the expansion of exports. A 1984 amendment requires the President to consider whether a beneficiary “has taken or is taking steps” to give workers “internationally recognized worker rights,” including: 1) the right of association; 2) the right to organize and bargain collectively; 3) a prohibition of forced and compulsory labor; 4) a minimum age for employment of children; and 5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. A subsequent amendment requires a GSP beneficiary to implement any commitments it makes to eliminate the worst forms of child labor. As of June 2009, the GSP covered nearly 5,000 products from 131 countries and territories, including 44 “least-developed” beneficiary countries (USTR 2009). Among the notable product exclusions from the U.S. GSP program are textiles and footwear products. A beneficiary’s adherence to the labor criteria can be evaluated under its annual review process. Third parties can submit petitions and the USTR may invoke GSP review, particularly where a beneficiary has repeatedly ignored GSP petitions. The USTR chairs an interagency group, including USDOL and the Department of State among others, that reviews GSP petitions alleging labor rights violations and determines whether they should be accepted and when they should be closed. In 2008 the USTR considered six Country Practice petitions regarding worker rights (petitioners are indicated in parentheses) (USTR 2009), including Bangladesh (AFL-CIO), Iraq (AFL-CIO), Niger (International Labor Rights Fund), Philippines (International Labor Rights Fund), Sri Lanka (AFL-CIO), and Uzbekistan (International Labor Rights Fund).

⁵¹ The MFN requirement obligates WTO member countries to treat the imports of all other WTO member countries no worse than they treat the imports of their “most favored” trading partner. In essence, MFN requires WTO member countries to treat imports coming from all other WTO member countries equally, that is, by imposing equal tariffs on them.

In 1990, a CBERA amendment made the preference program permanent and incorporated the GSP worker rights list. In 2000, these preference were expanded through the Caribbean Basin Trade Partnership Act (CBTPA) and the labor rights provisions were strengthened to require the USG to evaluate “the extent to which” the country protects worker rights. Similar provisions were negotiated into other similar laws, including the Andean Trade Preference and Drug Eradication Act (ATPDEA) (1991, amended 2002) whose beneficiaries include Bolivia, Columbia, Ecuador and Peru, and the Africa Growth and Opportunities Act (AGOA) (passed in 2000, extended until 2015), whose beneficiaries include 40 Sub-Saharan African countries. AGOA’s language was strengthened to provide that a country is eligible if it “has established, or is making continual progress toward establishing” worker rights.

In October 2008 the USG extended trade preferences to Haiti under the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act). The HOPE II Act links continued eligibility for textile duty advantages into the U.S. to a requirement that manufacturers participate in a Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) Program. TAICNAR will assess producers’ compliance with CLS, acceptable conditions of work (defined as including respect for the minimum wage, hours of work, and occupational health and safety), and Haiti’s labor laws. HOPE II also stipulates the establishment of a Labor Ombudsman’s Office that reports directly to the President of Haiti and coordinates with TAICNAR.

2. The North American Agreement on Labor Cooperation

In 1993, the North American Agreement on Labor Cooperation (NAALC) was adopted as a side agreement after proponents were unable to include labor rights provisions in NAFTA. NAALC provides that the parties shall enforce their own labor laws, which should reflect “high labor standards,” and created National Administrative Offices (NAOs) in each country to receive submissions on labor rights issues and a tri-national secretariat to conduct research and produce studies. NAALC covers “labor principles” that include the ILO’s core labor standards, including the right to strike, and minimum employment standards, prevention of and compensation for occupational injuries and illnesses, and the protection of migrant workers. Its use of research, public hearings and consultants has served as a useful example for country assessment systems (Compa 2003, 291). Experience with submissions, which have generally been cited as not being satisfactorily resolved (Chew & Posthuma 2002), has served as an impetus for strengthening labor provisions in subsequent trade laws and agreements.

3. Post-NAFTA Bilateral Trade Agreements & Trade Promotion Authority

Agreements with Cambodia and Jordan also marked improvements in the treatment of labor rights. The US-Cambodia Bilateral Textile Agreement (1999) (CBTA) contains labor provisions that led to the implementation of a novel and promising enforcement mechanism overseen by the ILO. The Agreement established quota limits but allowed quota increases on an annual basis provided that Cambodia “substantially comply” with its own national labor laws (which had been revised in 1997 with ILO help) and “support” labor standards. The US-Jordan Free Trade Agreement (2000) (JFTA) was the first trade agreement that included labor criteria directly in the main text. Its provisions are stronger than those in prior agreements because it reaffirms the parties’ commitment to the ILO Declaration and required each of them to “strive to ensure that its laws provide for labor standards consistent with internationally recognized labor rights...and shall strive to improve those standards,” though, in effect, it lacks any enforceable binding obligations on labor rights (Erickson and Mitchell 1998).

The Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 24) provided the President with authority to negotiate trade agreements with expedited procedures for Congressional consideration under what has become commonly known as Trade Promotion Authority (TPA) (formerly known as “fast track”). This authority, which expired on July 1, 2007, must be renewed by Congress every several years. The overall trade negotiating objectives included ensuring that trade agreements do not weaken or reduce

labor law protections to encourage trade, they promote respect for CLS, and they prohibit the worst forms of child labor consistent with ILO C. 182 (19 U.S.C. §3802(a)(6) and (9)).⁵² The TPA principal negotiating objectives include: ensuring that a party does not fail to enforce its own labor laws “through a sustained or recurring course of action or inaction, in a manner affecting trade” and strengthening the capacity of US trading partners to promote respect for the core labor standards, consistent with the GSP definition (§§ 3802(b)(11)(A) and (C)). The TPA included an innovative provision that makes all principle negotiating objectives subject to the same dispute settlement procedures and equivalent remedies, thus avoiding one of the fundamental limitations of NAALC (§3802(b)12(G)). Nine FTAs were negotiated and adopted under this authority.

Like the JFTA, the Central America-Dominican Republic Free Trade Agreement (2004) (CAFTA-DR) also reaffirms the parties’ commitment to the ILO Declaration and requires them to strive to ensure that their laws are consistent with internationally recognized labor rights and strive to improve them, and adds the elimination of the worst forms of child labor as a goal. However, in recognition of lessons learned, it contains far more detailed rule of law provisions requiring each party to afford full procedural guarantees, promote public awareness of labor rights, establish a Labor Affairs Council (LAC) to address the agreement’s labor objectives, and create a capacity building mechanism to promote labor cooperation. In an annex, it details the LAC’s organization and functions and sets priorities for cooperative and capacity building efforts.⁵³ Congress set aside substantial funding for capacity-building related to labor rights in CAFTA-DR countries.

4. Trade and Investment Framework Agreements (TIFAs)

The USG has entered into more than 30 TIFAs, which are pacts establishing frameworks for expanding trade and resolving outstanding disputes with other countries and common markets. They are often important steps toward negotiating FTAs. The USTR reports that, in the negotiating process, potential TIFA partners often request capacity building assistance to promote labor rights. The TIFAs are set forth in short documents of about 4 pages and generally include a brief clause stating that one purpose is to promote labor rights in varying formulations depending on the capacity and commitment of the concerned countries.⁵⁴

⁵² The other negotiation objectives concern market access, trade barriers, international trading disciplines including dispute settlement, economic growth and employment, environmental management, and access to international markets by small businesses (§3802). Consistent with the TPA, the President has delegated the responsibility to the Department of Labor to prepare a US Employment Impact Review, Labor Rights Report, and Laws Governing Exploitative Child Labor Report related to new free trade agreements.

⁵³ In February 2006, USAID published the Labor Justice Assessment of the CAFTA-DR Countries, which recommended increasing the use of private dispute resolution, improving training and education in labor law, improving labor court conciliation, improving labor court case management systems, increasing the use of oral proceeding in court, and professionalizing the labor inspectors’ work.

⁵⁴ For example, the 2001 TIFAs with the Common Market of Eastern and Southern Africa (COMESA) and the West African Economic Monetary Union (WAEMU) recognize the importance of “embarking on a path of compliance with, and promotion of, fundamental, internationally recognized labor standards.” In stronger language, the TIFA with South Africa (1999) provides that the parties are “reaffirming their commitment to respect and promote the fundamental rights of workers” based on the ILO core conventions. In weaker language, the TIFAs with Central Asia (2007) and Viet Nam (2007) recognize the importance of “providing adequate and effective protection and enforcement of worker rights in accordance with each Party’s own labor laws and of improving the observance of internationally recognized core labor standards.” In substantially weaker language the TIFA with Indonesia (1996) simply notes that the “common objective of both countries [is] to improve workers’ welfare and provide for better terms and conditions of employment.”

5. New & Pending Free Trade Agreements

In more recent years, the USTR has negotiated stronger labor provisions into FTA's with Peru, Colombia, Panama, and South Korea. The most recent FTA – the U.S. Peru Trade Promotion Agreement (PTPA), which entered into force in 2009, reflects this approach. Congress has not approved the other three TPAs. Going further than the JFTA's requirement that the parties “strive to” protect CLS, it requires the countries to “adopt and maintain in its statutes and regulations, and practices” the ILO Declaration's CLS, expressly including the prohibition of employment discrimination, and enforce them. Also, for the first time in an FTA, the same dispute settlement procedures and remedies for violation of the labor rights provisions are provided as for the commercial provisions. On January 28, 2010, the U.S. Department of Labor (ILAB) and USTR held the first meeting of the Labor Affairs Council in Lima. At the meeting, the parties reaffirmed their commitment to adopt and maintain the ILO Declaration's CLS and agreed to a process of continued dialogue on substantive matters. Subsequently, Peru's Ministry of Labor and Employment sent a letter to USDOL identifying their capacity building needs.

In consultation with the Department of State and USDOL, the USTR is developing standard language for the Bilateral Investment Treaty template that will require the parties to respect and promote labor rights. Recently, negotiations have also been underway for a Trans-Pacific Partnership (TPP) Agreement, with invitations extended to Australia, Peru, and Vietnam to join in the discussions with the U.S. and the original four TPP countries of Brunei Darrusalam, Chile, New Zealand, and Singapore. The U.S. has communicated to the other negotiating partners that the U.S. will seek the highest standards for worker rights.

6. Labor Rights in Other Foreign Policy Laws

A wide range of other foreign policy laws and diplomatic initiatives support labor rights. For example, the Victims of Trafficking and Violence Protection Reauthorization Act (2000, reauthorized 2003, 2005, and 2008) (TVPRA) aims to combat trafficking in persons, especially in the sex trade, slavery, and involuntary servitude, thus protecting key labor rights involving forced labor and the worst forms of child labor. The TVPRA has strong international policy components aims at prevention, victim support, and prosecution of traffickers. It directs the State Department, through the Office to Monitor and Combat Trafficking in Persons (G/TIP), to produce annual reports on trafficking that rate countries in three tiers according to whether they meet “minimum standards” regarding their anti-trafficking commitments, with potential negative consequences (termination of non-humanitarian aid, loss of US support for IMF and World Bank loans, etc.) for those Tier 3 countries not making significant efforts to comply with the standards. The USG has committed substantial resources to foreign governments and NGOs to combat trafficking. The USG commitment to combating trafficking was strengthened with the signing of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons in 2005 (Miko 2006, 8-15).

The law and practice regarding the Overseas Private Investment Corporation (OPIC) has also evolved to provide a greater focus on labor rights. Consistent with the Foreign Assistance Act (FAA), in providing loans to eligible investment projects in developing countries, OPIC does not provide assistance for any program, project, or activity that contributes to the violation of “internationally recognized workers rights,” as defined in the 1984 GSP Act. Every OPIC project contract must include a provision that requires the investor to respect these rights and every contract is reviewed for compliance. Labor rights are also addressed in a wide range of other laws and initiatives. For example, the Congressional-Executive Commission on China (CECC) reviews China's treatment of labor rights for reasons related to their trading status, and has recommended that Congress establish a corporate code of conduct for U.S. businesses operating in China (Lum 2003, 1).

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