

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

UNITED FOOD AND COMMERCIAL WORKERS LOCAL
NO. 5, CHARTERED BY THE UNITED FOOD AND
COMMERCIAL WORKERS INTERNATIONAL UNION,
AFL-CIO.CLC (SAFEWAY STORES)

and

Case 32-CB-219981

CHRISTOPHER RATANA-KELLEY, an
Individual

**COUNSEL FOR THE GENERAL COUNSEL'S PARTIAL JOINDER OF CHARGING
PARTY'S MOTION TO STRIKE RESPONDENT'S ANSWER AND AFFIRMATIVE
DEFENSES**

Counsel for the General Counsel hereby joins in Charging Party Christopher Ratana-Kelley's Motion to Strike Respondent's Answer and Affirmative Defenses, only to the extent it moves to strike the 2nd, 12th and 21st affirmative defenses of United Food and Commercial Workers Local No. 5, Chartered by the United Food and Commercial Workers International Union, AFL-CIO.CLC (Respondent)'s Answer. Respondent's 2nd affirmative defense argues: "The Complaint is barred because the Charging Party was unlawfully, illegally, and improperly coerced into filing the charge. The Charging Party did not make a free choice to file the charge." Exhibit A. Respondent's 12th affirmative defense states: "The national right to work legal defense foundation Inc. does not represent Christopher Ratana- Kelley." Id. The 21st defense is a statement about FedEx. Id.

Defenses should be stricken where they are irrelevant to the issues set for hearing. *See, e.g., Harding Glass Co.*, 347 NLRB 1112, 1115 (2006) (granting the General Counsel's motion to strike several of the respondent's affirmative defenses to the backpay specification as they were without merit as a matter of law), *enfd.* 500 F.3d 1 (1st Cir. 2007), cert. denied 128 S. Ct. 935 (2008); *TNT*

Logistics, North America, 346 NLRB 1301 n. 1 (2006) (upholding judge's pretrial order granting the General Counsel's motion in limine to strike seven of the respondent's eight affirmative defenses as that they raised irrelevant matters), *enfd.* 246 Fed. Appx. 220 (4th Cir. 2007); *Tri-county Paving, Inc.*, 342 NLRB 1213, 1216 (2004); *Superior Industries International*, 295 NLRB 320, 322 (1989); *Electrical Workers Local 1316 (Superior Contractors)*, 271 NLRB 338, 340 (1984) (striking, as irrelevant and immaterial, respondent's affirmative defense regarding the charging party's motivation in filing the charge).

Here, whether the Charging Party was coerced into filing the charge and who he is represented by are irrelevant to the issues set for hearing. Indeed, the United States Supreme Court has explicitly held that "[w]hen a Board Complaint issues the only question is the truth of its accusations. . . .Dubious character, evil or unlawful motives, or bad faith of the informer cannot deprive[] the Board of its jurisdiction into the inquiry." " *NLRB v. Indian & Michigan Electric Co.*, 318 U.S. 9, 18 (1943). Accordingly, the only relevant question is whether Respondent violated the Act as alleged by the Complaint. Similarly, FedEx is not a party to these proceedings nor is it involved in any way to this case.

For the above reasons, Respondent's 2nd, 12th and 21st defenses are irrelevant and should be stricken.

DATED AT San Francisco, California this 31th day of May, 2019.

Respectfully Submitted,

/s/ Tracy Clark

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 32

UNITED FOOD COMMERCIAL WORKERS
LOCAL 5 (SAFEWAY STORES),

and

CHRISTOPHER RATANA-KELLEY, an
Individual

Case 32-CB-219981

**FIRST AMENDED ANSWER
TO COMPLAINT**

EXHIBIT A

United Food and Commercial Workers Local 5, which is improperly named in the Complaint and does not exist as named in the Complaint, hereby answers the Complaint and Notice of Hearing as follows:

(1) As to paragraph 1, those allegations are denied on the ground that Christopher Ratana-Kelley did not file the charge on its own but rather was compelled to do it by outside forces.

(2) As to paragraph 2(a), Respondent denies this allegation on the ground that there was no employer known as Safeway or "Store 211." There is an entity known as Safeway, Inc., but Respondent does not have knowledge as to whether Safeway, Inc. is a California corporation or it is organized under the laws of some other state. Respondent specifically denies that there is any entity "Employer Store 211" and furthermore denies that "Employer Store 211, has been operating a chain of retail grocery stores." Safeway, Inc. has been operating a chain of stores which sells more than just groceries for example it sells gas. People do not eat gas.

(3) As to paragraph 2(b), because paragraph 2(a) is unclear as to whether the employer is Safeway, Safeway, Inc. or "Employer Store 211," Respondent denies the allegations of 2(b). Respondent does admit that Safeway, Inc. in conducting all its operations derives gross revenue in excess of \$500,000. Respondent denies that Safeway, Inc. has "derived gross revenues in excess of \$500,000" since the plural is not the correct word.

(4) As to paragraph 2(c), because the above allegation isn't clear as to who the employer is, Respondent denies the allegations of paragraph 2(c). Respondent does admit that Safeway, Inc. has "purchased and received products, goods, and services valued in excess of \$5,000 which originated from points located outside of the State of California" including China.

(5) As to paragraph 3, this allegation is denied on the ground that the current Labor Board is likely to arbitrarily change the definition of employer, engage on commerce, and "within the meaning of Section 2(2)(6) and (7) of the Act." Furthermore, because the allegations of who the employer is is unclear, Respondent cannot respond further. Respondent does admit that Safeway, Inc. does employ employees within the meaning of those Sections of the Act.

(6) As to paragraph 4, that allegation is denied. The caption suggests that the Respondent is “United Food Commercial Workers, Local 5 (Safeway Store).” There is no such labor organization with that name. The first paragraph alleges that there is a labor organization known as “United Food and Commercial Workers, UFCW Local 5.” The proper name is United Food and Commercial Workers Local No. 5, chartered by the United Food and Commercial Workers International Union, AFL-CIO.CLC. As to paragraph 4, Respondent admits that if properly named, it is currently a labor organization within the meaning of the Act. Respondent, however, denies the ultimate conclusion because the current Board is likely to change the definition of labor organization within the meaning of the Act because of the radical changes it has made to the Act.

(7) With respect to the allegations of paragraph 5, these are denied.
With respect to the allegations of Paragraphs 6, 7, 8, 9 and 10, these allegations are denied.

Respondent does not concede that it has the burden of proof on any of these Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

The Complaint is barred by Section 10(b).

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred because the Charging Party was unlawfully, illegally and improperly coerced into filing the charge. The Charging Party did not make a free choice to file the charge.

THIRD AFFIRMATIVE DEFENSE

The Charge is barred by the doctrine of waiver, laches and estoppel.

FOURTH AFFIRMATIVE DEFENSE

The Complaint and the remedy sought are barred by the First Amendment of the United States Constitution.

FIFTH AFFIRMATIVE DEFENSE

The Complaint and the remedy sought are barred by the Thirteenth Amendment of the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

The Complaint and the remedy sought are barred by the Fourteenth Amendment and the Fifth Amendment of the United States Constitution.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint and the remedy sought are barred by the Religious Freedom Restoration Act.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint and the remedy sought are forced and compelled speech which is barred by the First Amendment of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

The Complaint should be barred since the current General Counsel of the National Labor Relations Board should not participate in this matter and should be recusing himself.

TENTH AFFIRMATIVE DEFENSE

The Complaint should be barred since the Regional Director of Region 32 should have recused herself.

ELEVENTH AFFIRMATIVE DEFENSE

The Complaint should be barred because the national right to work legal defense foundation inc., of which Aaron Solem is an attorney, is an employer dominated and assisted labor organization which is sponsored and controlled by employers for the purpose of busting Unions. It is an alter ego, joint employer and agent with the national right to work committee. It is also a racketeering enterprise because its operations violate 29 U.S.C. § 186 which is a predicate offense for a RICO action.

TWELFTH AFFIRMATIVE DEFENSE

The national right to work legal defense foundation inc. does not represent Christopher Ratana- Kelley.

THIRTEENTH AFFIRMATIVE DEFENSE

The current National Labor Relations Board is improperly and illegally constituted.

FOURTEENTH AFFIRMATIVE DEFENSE

Any Administrative Law Judge assigned to this matter was improperly appointed.

FIFTEENTH AFFIRMATIVE DEFENSE

Members Ring, Emmanuel and Kaplan should recuse themselves.

SIXTEENTH AFFIRMATIVE DEFENSE

The Complaint is barred by the California Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Complaint and the procedure of the National Labor Relations Board violate the Administrative Procedures Act and due process.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Complaint and the remedy sought violate international labor law rights and treaties with other countries and sovereign nations.

NINETEENTH AFFIRMATIVE DEFENSE

The Complaint and the remedy violate Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the ILO and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and various other International Conventions, International Instruments. A copy of the relevant provisions is attached as Exhibit A.

TWENTIETH AFFIRMATIVE DEFENSE

Charging Party has failed to exhaust all available remedies such as the grievance procedure and the internal union procedure.

EXHIBIT A

I. MULTILATERAL HUMAN RIGHTS INSTRUMENTS

UNITED NATIONS INSTRUMENTS

Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

* * *

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

* * *

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

* * *

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

* * *

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

* * *

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

* * *

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

* * *

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

* * *

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

International Covenant on Civil and Political Rights (1966)

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

* * *

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

* * *

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

* * *

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

* * *

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

* * *

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

* * *

Article 7

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

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

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

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

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

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

* * *

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this

right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

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Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

* * *

Article 10

The States Parties to the present Covenant recognize that:

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

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

should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

* * *

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

* * *

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

* * *

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U.N. Doc. A/RES/45/158 (Dec. 18, 1990).

Adopted by General Assembly resolution 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force 1 July 2003.

* * *

PART I

SCOPE AND DEFINITIONS

* * *

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

* * *

Article 5

For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

Article 6

For the purposes of the present Convention:

- (a) The term "State of origin" means the State of which the person concerned is a national;
- (b) The term "State of employment" means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;
- (c) The term "State of transit," means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

PART II

NON-DISCRIMINATION WITH RESPECT TO RIGHTS

* * *

Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

PART III

HUMAN RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

* * *

Article 20

1. No migrant worker or member of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation.
2. No migrant worker or member of his or her family shall be deprived of his or her authorization of residence or work permit or expelled merely on the ground of failure to fulfil an obligation arising out of a work contract unless fulfilment of that obligation constitutes a condition for such authorization or permit.

* * *

Article 21

It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family.

* * *

Article 22

1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

...

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities. . . .

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her. .

* * *

Article 24

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

* * *

Article 25

1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and:

(a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms;

(b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment.

2. It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article.

3. States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.

* * *

Article 26

1. States Parties recognize the right of migrant workers and members of their families:

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;

(c) To seek the aid and assistance of any trade union and of any such association as aforesaid.

2. No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

* * *

Article 27

1. With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

2. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.

* * *

Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention.

PART IV

OTHER RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION

* * *

Article 36

Migrant workers and members of their families who are documented or in a regular situation in the State of employment shall enjoy the rights set forth in the present part of the Convention in addition to those set forth in part III. . . .

* * *

Article 40

1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

2. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others..

* * *

Article 43

1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to:

(a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and placement services;

(c) Access to vocational training and retraining facilities and institutions;

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents;

(e) Access to social and health services, provided that the requirements for participation in the respective schemes are met;

(f) Access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned;

(g) Access to and participation in cultural life.

2. States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.

3. States of employment shall not prevent an employer of migrant workers from establishing housing or social or cultural facilities for them. Subject to article 70 of the present Convention, a State of employment may make the establishment of such facilities subject to the requirements generally applied in that State concerning their installation.

Article 44

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers.

Article 45

1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to:

(a) Access to educational institutions and services, subject to the admission requirements and other regulations of the institutions and services concerned;

(b) Access to vocational guidance and training institutions and services, provided that requirements for participation are met;

(c) Access to social and health services, provided that requirements for participation in the respective schemes are met;

(d) Access to and participation in cultural life.

2. States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

3. States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

4. States of employment may provide special schemes of education in the mother tongue of children of migrant workers, if necessary in collaboration with the States of origin.

* * *

Article 49

1. Where separate authorizations to reside and to engage in employment are required by national legislation, the States of employment shall issue to migrant workers authorization of residence for at least the same period of time as their authorization to engage in remunerated activity.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.

* * *

Article 51

Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.

* * *

Article 52

1. Migrant workers in the State of employment shall have the right freely to choose their remunerated activity, subject to the following restrictions or conditions.

2. For any migrant worker a State of employment may:

(a) Restrict access to limited categories of employment, functions, services or activities where this is necessary in the interests of this State and provided for by national legislation;

(b) Restrict free choice of remunerated activity in accordance with its legislation concerning recognition of occupational qualifications acquired outside its territory. However, States Parties concerned shall endeavour to provide for recognition of such qualifications.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or to persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years.

4. States of employment shall prescribe the conditions under which a migrant worker who has been admitted to take up employment may be authorized to engage in work on his or her own account. Account shall be taken of the period during which the worker has already been lawfully in the State of employment.

* * *

Article 53

1. Members of a migrant worker's family who have themselves an authorization of residence or admission that is without limit of time or is automatically renewable shall be permitted freely to choose their remunerated activity under the same conditions as are applicable to the said migrant worker in accordance with article 52 of the present Convention.

2. With respect to members of a migrant worker's family who are not permitted freely to choose their remunerated activity, States Parties shall consider favourably granting them priority in obtaining permission to engage in a remunerated activity over other workers who seek admission to the State of employment, subject to applicable bilateral and multilateral agreements.

* * *

Article 54

1. Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of:

(a) Protection against dismissal;

(b) Unemployment benefits;

(c) Access to public work schemes intended to combat unemployment;

(d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

2. If a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment, on terms provided for in article 18, paragraph 1, of the present Convention.

* * *

Article 55

Migrant workers who have been granted permission to engage in a remunerated activity, subject to the conditions attached to such permission, shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity.

* * *

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

* * *

Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

* * *

Article 70

States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.

* * *

Part VIII: General provisions

* * *

Article 79

Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention.

* * *

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)

Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

* * *

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

* * *

UN Convention on the Rights of the Child (1989)

Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

* * *

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal

guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

* * *

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

* * *

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

* * *

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

* * *

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

* * *

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

INTER-AMERICAN HUMAN RIGHTS INSTRUMENTS

American Declaration of the Rights and Duties of Man (1948)

American Declaration of the Rights and Duties of Man, May 2, 1948, OAS Off. Rec. OEA/Ser.L./V/II.23, doc. 21, rev. 6.

* * *

Right to protection for mothers and children.

Article VII. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

* * *

Right to the preservation of health and to well-being.

Article XI. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Article XIV. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family.

Right to leisure time and to the use thereof.

Article XV. Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit.

* * *

Right to social security.

Article XVI. Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

* * *

Right of association.

Article XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

* * *

American Convention on Human Rights (1969)

American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

* * *

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

* * *

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

* * *

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.3. For the purposes of this article, the following do not constitute forced or compulsory labor:

a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or

d. work or service that forms part of normal civic obligations.

* * *

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

* * *

Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

* * *

CHAPTER III - ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

* * *

PART II - MEANS OF PROTECTION

CHAPTER VI - COMPETENT ORGANS

Article 33

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights, referred to as "The Commission;" and
- b. the Inter-American Court of Human Rights, referred to as "The Court."

* * *

Inter-American Democratic Charter (2001)

Inter-American Democratic Charter, Sept. 11, 2001, OAS Doc. OEA/Ser.P/AG/RES.1 (XXVIII-E/01).

* * *

I. Democracy and the Inter-American System

Article 1

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.

Democracy is essential for the social, political, and economic development of the peoples of the Americas.

* * *

II. Democracy and Human Rights

Article 7

Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.

Article 8

Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures.

Member states reaffirm their intention to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere.

Article 9

The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation.

Article 10

The promotion and strengthening of democracy requires the full and effective exercise of workers' rights and the application of core labor standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO conventions. Democracy is strengthened by improving standards in the workplace and enhancing the quality of life for workers in the Hemisphere.

* * *

III. Democracy, Integral Development, and Combating Poverty

Article 11

Democracy and social and economic development are interdependent and are mutually reinforcing.

Article 12

Poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy. The OAS member states are committed to adopting and implementing all those actions required to generate productive employment, reduce poverty, and eradicate extreme poverty, taking into account the different economic realities and conditions of the countries of the Hemisphere. This shared commitment regarding the problems associated with development and poverty also underscores the importance of maintaining macroeconomic equilibria and the obligation to strengthen social cohesion and democracy.

Article 13

The promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere.

Article 14

Member states agree to review periodically the actions adopted and carried out by the Organization to promote dialogue, cooperation for integral development, and the fight against poverty in the Hemisphere, and to take the appropriate measures to further these objectives.

* * *

EUROPEAN HUMAN RIGHTS INSTRUMENTS

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

* * *

Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations

* * *

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

* * *

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

* * *

Article 19

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up

1. A European Commission of Human Rights hereinafter referred to as 'the Commission';

2. A European Court of Human Rights, hereinafter referred to as 'the Court'.

Charter of Fundamental Rights of the European Union (2000)

Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1.

Chapter I. Dignity

* * *

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

* * *

Chapter II. Freedoms

* * *

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

* * *

Article 15

Freedom to choose an occupation and right to engage in work.

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Chapter III. Equality

* * *

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

* * *

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

* * *

Article 24

The rights of the child

Children shall have the right to such protection and care as is necessary for their well-being.

* * *

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Chapter IV. Solidarity

* * *

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

* * *

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

* * *

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

* * *

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

* * *

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

* * *

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

* * *

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

* * *

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

* * *

ILO CORE LABOR STANDARDS DECLARATION

ILO Declaration on Fundamental Principles and Rights at Work (1998)

The International Labour Conference:

1. Recalls:

(a) that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. Recognizes the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including, by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

- (a) by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;
- (b) by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions; and
- (c) by helping the Members in their efforts to create a climate for economic and social development.

4. Decides that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

5. Stresses that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

ILO CORE CONVENTIONS

ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948)

* * *

Article 2

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.

* * *

Article 8

The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

* * *

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

* * *

ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

* * *

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

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 Convention No. 29 on Forced Labor (1930)

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Article 2

1. 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.

2. Nevertheless, for the purposes of this Convention, the term *forced or compulsory labour* shall not include—

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community.

* * *

ILO Convention No. 105 on Forced Labor (1957)

Article 1

Each Member of the International Labour Organisation 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.

Article 2

Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.

* * *

ILO Convention No. 138 on Child Labor (1973)

Article 1

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.

Article 2

* * *

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

* * *

3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

* * *

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is—

(a) not likely to be harmful to their health or development; and

(b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

* * *

ILO Convention No. 182 on Worst Forms of Child Labor (1999)

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.

Article 2

For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.

Article 3

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 Convention No. 100 on Equal Pay (1958)

Article 1

For the purpose of this Convention—

(a) the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

(b) the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

Article 2

1. 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.

2. This principle may be applied by means of—

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

ILO Convention No. 111 on Discrimination (Employment and Occupation) (1958)

Article 1

1. For the purpose of this Convention the term *discrimination* includes—

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

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.

* * *

SELECTED ILO CONVENTIONS

ILO Convention No. 97 concerning Migration for Employment (Revised 1949)

* * *

Article 2

Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

* * *

Article 3

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.
2. For this purpose, it will where appropriate act in co-operation with other Members concerned.

* * *

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities--

(i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

(ii) membership of trade unions and enjoyment of the benefits of collective bargaining;

(iii) accommodation;

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme) . . .

* * *

Article 8

1. A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorised to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury

sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.

2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

* * *

Article 9

Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire.

* * *

ANNEX I

Recruitment, placing and conditions of labour of migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer.

* * *

Article 1

This Annex applies to migrants for employment who are recruited otherwise than under Government-sponsored arrangements for group transfer.

* * *

Article 2

For the purpose of this Annex :

(a) the term recruitment means :

(i) the engagement of a person in one territory on behalf of an employer in another territory, or

(ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(b) the term introduction means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and

(c) the term placing means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b) of this Article.

* * *

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to :

(a) public employment offices or other public bodies of the territory in which the operations take place;

(b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;

(c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by :

(a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;

(b) a private agency, if given prior authorisation so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by :

(i) the laws and regulations of that territory, or

(ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

4. The competent authority of the territory where the operations take place shall supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of paragraph 3 (b), other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

5. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration. . . .

* * *

Article 5

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require :

(a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;

(b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;

(c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

* * *

Article 8

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

* * *

ANNEX II

* * *

Article 1

This Annex applies to migrants for employment who are recruited under Government-sponsored arrangements for group transfer.

* * *

Article 2

For the purpose of this Annex :

(a) the term recruitment means :

- (i) the engagement of a person in one territory on behalf of an employer in another territory under a Government-sponsored arrangement for group transfer, or
- (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory under a Government-sponsored arrangement for group transfer, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(b) the term introduction means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited under a Government-sponsored arrangement for group transfer within the meaning of subparagraph (a) of this paragraph; and

(c) the term placing means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced under a Government-sponsored arrangement for group transfer within the meaning of subparagraph (b) of this paragraph.

* * *

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to :

(a) public employment offices or other public bodies of the territory in which the operations take place;

(b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;

(c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, and subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority, the operations of recruitment, introduction and placing may be undertaken by :

(a) the prospective employer or a person in his service acting on his behalf;

(b) private agencies.

4. The right to engage in the operations of recruitment, introduction and placing shall be subject to the prior authorisation of the competent authority of the territory where the said operations are to take place in such cases and under such conditions as may be prescribed by :

(a) the laws and regulations of that territory, or

(b) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

5. The competent authority of the territory where the operations take place shall, in accordance with any agreements made between the competent authorities concerned, supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of the preceding paragraph, other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

6. Before authorising the introduction of migrants for employment the competent authority of the territory of immigration shall ascertain whether there is not a sufficient number of persons already available capable of doing the work in question.

7. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

* * *

Article 6

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require :

(a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;

(b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;

(c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

* * *

Article 9

If a migrant for employment introduced into the territory of a Member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the cost of his return and that of the members of his family who have been

authorised to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant.

* * *

Article 10

If the competent authority of the territory of immigration considers that the employment for which a migrant for employment was recruited under Article 3 of this Annex has been found to be unsuitable, it shall take appropriate measures to assist him in finding suitable employment which does not prejudice national workers and shall take such steps as will ensure his maintenance pending placing in such employment, or his return to the area of recruitment if the migrant is willing or agreed to such return at the time of his recruitment, or his resettlement elsewhere.

* * *

Article 11

If a migrant for employment who is a refugee or a displaced person and who has entered a territory of immigration in accordance with Article 3 of this Annex becomes redundant in any employment in that territory, the competent authority of that territory shall use its best endeavours to enable him to obtain suitable employment which does not prejudice national workers, and shall take such steps as will ensure his maintenance pending placing in suitable employment or his resettlement elsewhere. . . .

* * *

Article 13

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

* * *

ILO Convention #143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975)

* * *

Part I. Migrations in Abusive Conditions

* * *

Article 1

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.

* * *

Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations. . . .

* * *

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members:

- a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

* * *

Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

* * *

Article 6

1. Provisions shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

* * *

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

* * *

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

* * *

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

3. In case of expulsion of the worker or his family, the cost shall not be borne by them.

4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

Part II. Equality of Opportunity and Treatment

* * *

Article 10

Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

Article 11

1. For the purpose of this Part of this Convention, the term migrant worker means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker. . . .

Article 12

Each Member shall, by methods appropriate to national conditions and practice:

- (a) seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in Article 10 of this Convention;
- (b) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- (c) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection;
- (d) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (e) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment;
- (f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue;
- (g) guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment. . . .

* * *

Article 14

Any Member may:

- a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not

exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;

c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

ILO Convention No. 171, Night Work, 1990

* * *

Article 3

1. Specific measures required by the nature of night work, which shall include, as a minimum, those referred to in Articles 4 to 10, shall be taken for night workers in order to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately. Such measures shall also be taken in the fields of safety and maternity protection for all workers performing night work.

* * *

Article 7

1. Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

(a) before and after childbirth, for a period of at least sixteen weeks of which at least eight weeks shall be before the expected date of childbirth;

(b) for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:

(i) during pregnancy;

(ii) during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a) above, the length of which shall be determined by the competent authority after consulting the most representative organisations of employers and workers.

2. The measures referred to in paragraph 1 of this Article may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave.

4. The provisions of this Article shall not have the effect of reducing the protection and benefits connected with maternity leave.

* * *

Article 8

Compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work.

* * *

OECD Guidelines for Multinational Enterprises (2000)

IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions;
 - b) Contribute to the effective abolition of child labour;
 - c) Contribute to the elimination of all forms of forced or compulsory labour;
 - d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.
2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
 - b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;
 - c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.
3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;

b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective layoffs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises' component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

THE WORLD BANK IFC LABOR STANDARDS CLAUSE

International Finance Corporation: Performance Standards on Social & Environmental Sustainability, April 30, 2006

Policy on Social and Environmental Sustainability

1. International Finance Corporation (IFC) strives for positive development outcomes in the private sector projects it finances in emerging markets. An important component of positive development outcomes is the social and environmental sustainability of projects, which IFC expects to achieve by applying a comprehensive set of social and environmental performance standards.

* * *

5. . . . IFC's social and environmental review of a proposed project is an important factor in its decision to finance the project or not, and will determine the scope of the social and environmental conditions of IFC financing. . . .

* * *

8. . . . IFC also recognizes that the roles and responsibilities of the private sector in respecting human rights are emerging as an important aspect of corporate social responsibility. . . .

* * *

11. IFC's role is to review the client's assessment; to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts consistent with the Performance Standards; . . . and to monitor the client's social and environmental performance throughout the life of IFC's investment.

* * *

13. When a project is proposed for financing, IFC conducts a social and environmental review of the project as part of its overall due diligence. . . .

* * *

16. IFC's social and environmental review is integrated into IFC's overall assessment of the project, including the assessment of financial and reputational risks. . . .

* * *

17. IFC does not finance new business activity that cannot be expected to meet the Performance Standards over a reasonable period of time.

* * *

Performance Standards on Social and Environmental Sustainability

1. International Finance Corporation (IFC) applies the Performance Standards to manage social and environmental risks and impacts and to enhance development opportunities in its private sector financing in its member countries eligible for financing. The Performance Standards may also be applied by other financial institutions electing to apply them to projects in emerging markets. Together, the eight Performance Standards establish standards that the client is to meet throughout the life of an investment by IFC or other relevant financial institution:

Performance Standard 1: Social and Environmental Assessment and Management System
Performance Standard 2: Labor and Working Conditions
Performance Standard 3: Pollution Prevention and Abatement
Performance Standard 4: Community Health, Safety and Security
Performance Standard 5: Land Acquisition and Involuntary Resettlement
Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management
Performance Standard 7: Indigenous Peoples
Performance Standard 8: Cultural Heritage

* * *

Performance Standard 2: Labor and Working Conditions

Introduction

1. Performance Standard 2 recognizes that the pursuit of economic growth through employment creation and income generation should be balanced with protection for basic rights of workers. . . . [T]hrough a constructive worker-management relationship, and by treating the workers fairly and providing them with safe and healthy working conditions, clients may create tangible benefits, such as enhancement of the efficiency and productivity of their operations.

2. The requirements set out in this Performance Standard have been in part guided by a number of international conventions negotiated through the International Labour Organization (ILO) and the United Nations (UN) .

These conventions are:

ILO Convention 87 on Freedom of Association and Protection of the Right to Organize
ILO Convention 98 on the Right to Organize and Collective Bargaining
ILO Convention 29 on Forced Labor
ILO Convention 105 on the Abolition of Forced Labor
ILO Convention 138 on Minimum Age (of Employment)
ILO Convention 182 on the Worst Forms of Child Labor
ILO Convention 100 on Equal Remuneration
ILO Convention 111 on Discrimination (Employment and Occupation)
United Nations Convention on the Rights of the Child, Article 32.1

Objectives

§ To establish, maintain and improve the worker-management relationship

§ To promote the fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labor and employment laws

§ To protect the workforce by addressing child labor and forced labor

§ To promote safe and healthy working conditions, and to protect and promote the health of workers

Scope of Application

3. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.

* * *

Requirements

6. The client will adopt a human resources policy appropriate to its size and workforce that sets out its approach to managing employees consistent with the requirements of this Performance Standard. Under the policy, the client will provide employees with information regarding their rights under national labor and employment law, including their rights related to wages and benefits. . . .

7. The client will document and communicate to all employees and workers directly contracted by the client their working conditions and terms of employment, including their entitlement to wages and any benefits.

8. Where the client is a party to a collective bargaining agreement with a workers' organization, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment (such as wages and benefits, hours of work, overtime arrangements and overtime compensation, and leave for illness, maternity, vacation or holiday) the client will provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.

9. In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the client will comply with national law. Where national law substantially restricts workers' organizations, the client will enable alternative means for workers to express their grievances and protect their rights regarding working conditions and terms of employment.

10. In either case described in paragraph 9, and where national law is silent, the client will not discourage workers from forming or joining workers' organizations of their choosing or from bargaining collectively, and will not discriminate or retaliate against workers who participate, or seek to participate, in such organizations and bargain collectively. Clients will engage with such worker representatives. Worker organizations are expected to fairly represent the workers in the workforce.

11. The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship . . .

12. The client will develop a plan to mitigate the adverse impacts of retrenchment on employees, if it anticipates the elimination of a significant number of jobs or a layoff of a significant number of employees. . . .

13. The client will provide a grievance mechanism for workers (and their organizations, where they exist) to raise reasonable workplace concerns. . . .

14. The client will not employ children in a manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where national laws have provisions for the employment of minors, the client will follow those laws applicable to the client. Children below the age of 18 years will not be employed in dangerous work.

15. The client will not employ forced labor, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

16. The client will provide the workers with a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the client's work areas, including physical, chemical, biological, and radiological hazards. The client will take steps to prevent accidents, injury, and disease arising from, associated with, or occurring in the course of work by minimizing, so far as reasonably practicable, the causes of hazards. . . .

* * *

18. The adverse impacts associated with supply chains will be considered where low labor cost is a factor in the competitiveness of the item supplied. The client will inquire about and address child labor and forced labor in its supply chain, consistent with paragraphs 14 and 15 above.

* * *

II. REGIONAL LABOR RIGHTS INSTRUMENTS

North American Agreement on Labor Cooperation (NAALC) (1993)

North American Agreement on Labor Cooperation, U.S.-Can.-Mex., Sept. 8-14, 1993, 32 I.L.M. 1499 (1993).

PREAMBLE

The Government of the United States of America, the Government of Canada and the Government of the United Mexican States:

RECALLING their resolve in the North American Free Trade Agreement (NAFTA) to: *create* an expanded and secure market for the goods and services produced in their territories,

* * *

SEEKING to complement the economic opportunities created by the NAFTA with the human resource development, labor-management cooperation and continuous learning that characterize high-productivity economies;

ACKNOWLEDGING that protecting basic workers' rights will encourage firms to adopt high-productivity competitive strategies;

* * *

BUILDING on existing institutions and mechanisms in Canada, Mexico and the United States to achieve the preceding economic and social goals; and

CONVINCED of the benefits to be gained from further cooperation between them on labor matters;

HAVE AGREED as follows:

PART ONE: OBJECTIVES

* * *

Article 1: Objectives

The objectives of this Agreement are to:

improve working conditions and living standards in each Party's territory;

promote, to the maximum extent possible, the labor principles set out in Annex 1;

encourage cooperation to promote innovation and rising levels of productivity and quality;

encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory;

pursue cooperative labor-related activities on the basis of mutual benefit;

promote compliance with, and effective enforcement by each Party of, its labor law; and

foster transparency in the administration of labor law.

PART TWO: OBLIGATIONS

* * *

Article 2: Levels of Protection

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

* * *

Article 3: Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as:

appointing and training inspectors;

monitoring compliance and investigating suspected violations, including through on-site inspections;

seeking assurances of voluntary compliance;

requiring record keeping and reporting;

encouraging the establishment of worker-management committees to address labor regulation of the workplace;

providing or encouraging mediation, conciliation and arbitration services; or

initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law.

* * *

Article 4: Private Action

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law.

2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

its labor law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, and

collective agreements, can be enforced.

* * *

Article 5: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

such proceedings comply with due process of law;

any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and

such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

in writing and preferably state the reasons on which the decisions are based;

made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

6. Each Party may, as appropriate, adopt or maintain labor defense offices to represent or advise workers or their organizations.

7. Nothing in this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its labor law distinct from its system for the enforcement of laws in general.

8. For greater certainty, decisions by each Party's administrative, quasi-judicial, judicial or labor tribunals, or pending decisions, as well as related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

Article 6: Publication

* * *

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. When so established by its law, each Party shall:

publish in advance any such measure that it proposes to adopt; and

provide interested persons a reasonable opportunity to comment on such proposed measures.

* * *

Article 7: Public Information and Awareness

Each Party shall promote public awareness of its labor law, including by: ensuring that public information is available related to its labor law and enforcement and compliance procedures; and

promoting public education regarding its labor law.

PART THREE: COMMISSION FOR LABOR COOPERATION

* * *

Article 8: The Commission

1. The Parties hereby establish the Commission for Labor Cooperation.
2. The Commission shall comprise a ministerial Council and a Secretariat. The Commission shall be assisted by the National Administrative Office of each Party.

Section A: The Council

* * *

Article 9: Council Structure and Procedures

1. The Council shall comprise labor ministers of the Parties or their designees, provided in this Agreement.

* * *

Article 10: Council Functions

1. The Council shall be the governing body of the Commission and shall: oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;

direct the work and activities of the Secretariat and of any committees or working groups convened by the Council;

establish priorities for cooperative action and, as appropriate, develop technical assistance programs on the matters set out in Article 11;

approve the annual plan of activities and budget of the Commission;

approve for publication, subject to such terms or conditions as it may impose, reports and studies prepared by the Secretariat, independent experts or working groups;

* * *

Article 11: Cooperative Activities

1. The Council shall promote cooperative activities between the Parties . . .

2. In carrying out the activities referred to in paragraph 1, the Parties may, commensurate with the availability of resources in each Party, cooperate through:

seminars, training sessions, working groups and conferences;

joint research projects, including sectoral studies;

technical assistance; and

such other means as the Parties may agree.

3. The Parties shall carry out the cooperative activities referred to in paragraph 1 with due regard for the economic, social, cultural and legislative differences between them.

Section B: The Secretariat

* * *

Article 12: Secretariat Structure and Procedures

1. The Secretariat shall be headed by an Executive Director, who shall be chosen by the Council for a three-year term, which may be renewed by the Council for one additional three-year term. The position of Executive Director shall rotate consecutively between nationals of each Party. The Council may remove the Executive Director solely for cause.

2. The Executive Director shall appoint and supervise the staff of the Secretariat, regulate their powers and duties and fix their remuneration in accordance with general standards to be established by the Council. . . .

* * *

Article 13: Secretariat Functions

1. The Secretariat shall assist the Council in exercising its functions and shall provide such other support as the Council may direct.
2. The Executive Director shall submit for the approval of the Council the annual plan of activities and budget for the Commission, including provision for contingencies and proposed cooperative activities.
3. The Secretariat shall report to the Council annually on its activities and expenditures.
4. The Secretariat shall periodically publish a list of matters resolved under Part Four or referred to Evaluation Committees of Experts.

* * *

Article 14: Secretariat Reports and Studies

1. The Secretariat shall periodically prepare background reports setting out publicly available information supplied by each Party on:

labor law and administrative procedures;

trends and administrative strategies related to the implementation and enforcement of labor law;

labor market conditions such as employment rates, average wages and labor productivity;

and

human resource development issues such as training and adjustment programs.

2. The Secretariat shall prepare a study on any matter as the Council may request. The Secretariat shall prepare any such study in accordance with terms of reference established by the Council . . .

Section C: National Administrative Offices

* * *

Article 15: National Administrative Office Structure

1. Each Party shall establish a National Administrative Office (NAO) at the federal government level and notify the Secretariat and the other Parties of its location.

2. Each Party shall designate a Secretary for its NAO, who shall be responsible for its administration and management.

3. Each Party shall be responsible for the operation and costs of its NAO.

* * *

Article 16: NAO Functions

1. Each NAO shall serve as a point of contact with:

governmental agencies of that Party;

NAOs of the other Parties; and

the Secretariat.

2. Each NAO shall promptly provide publicly available information requested by:

the Secretariat for reports under Article 14(1);

the Secretariat for studies under Article 14(2);

a NAO of another Party; and

an ECE.

3. Each NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures. [Note – this is the clause making complaints possible under the agreement – eds.]

Section D: National Committees

* * *

Article 17: National Advisory Committee

Each Party may convene a national advisory committee, comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation and further elaboration of this Agreement.

* * *

PART FOUR

COOPERATIVE CONSULTATIONS AND EVALUATIONS

* * *

Article 20: Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation.

Section A: Cooperative Consultations

* * *

Article 21: Consultations between NAOs

1. A NAO may request consultations, to be conducted in accordance with the procedures set out in paragraph 2, with another NAO in relation to the other Party's labor law, its administration, or labor market conditions in its territory. The requesting NAO shall notify the NAOs of the other Parties and the Secretariat of its request.

2. In such consultations, the requested NAO shall promptly provide such publicly available data or information, including:

descriptions of its laws, regulations, procedures, policies or practices,

proposed changes to such procedures, policies or practices, and

such clarifications and explanations related to such matters, as may assist the consulting NAOs to better understand and respond to the issues raised.

3. Any other NAO shall be entitled to participate in the consultations on notice to the other NAOs and the Secretariat.

* * *

Article 22: Ministerial Consultations

1. Any Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of this Agreement. The requesting Party shall provide specific and sufficient information to allow the requested Party to respond.

2. The requesting Party shall promptly notify the other Parties of the request. A third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on notice to the other Parties.

3. The consulting Parties shall make every attempt to resolve the matter through consultations under this Article, including through the exchange of sufficient publicly available information to enable a full examination of the matter.

Section B: Evaluations

* * *

Article 23: Evaluation Committee of Experts

1. If a matter has not been resolved after ministerial consultations pursuant to Article 22, any consulting Party may request in writing the establishment of an Evaluation Committee of Experts (ECE). The requesting Party shall deliver the request to the other Parties and to the Secretariat. Subject to paragraphs 3 and 4, the Council shall establish an ECE on delivery of the request.

2. The ECE shall analyze, in the light of the objectives of this Agreement and in a non-adversarial manner, patterns of practice by each Party in the enforcement of its occupational safety and health or other technical labor standards as they apply to the particular matter considered by the Parties under Article 22. **[Note – see the definition of “technical labor standards” below in the definitions section; this clause and the definition remove labor principles 1, 2 and 3 (the “industrial relations” principles as distinct from “technical labor standards”) from possible ECE treatment – eds.]**

3. No ECE may be convened if a Party obtains a ruling under Annex 23 that the matter: is not trade-related; or

is not covered by mutually recognized labor laws.

4. No ECE may be convened regarding any matter that was previously the subject of an ECE report in the absence of such new information as would warrant a further report.

* * *

Article 24: Rules of Procedure

1. The Council shall establish rules of procedure for ECEs, which shall apply unless the Council otherwise decides. The rules of procedure shall provide that: an ECE shall normally comprise three members; . . .

an ECE may invite written submissions from the Parties and the public;

an ECE may consider, in preparing its report, any information provided by
the Secretariat,

the NAO of each Party,

organizations, institutions and persons with relevant expertise, and
the public; and

each Party shall have a reasonable opportunity to review and comment on information
that the ECE receives and to make written submissions to the ECE.

* * *

Article 25: Draft Evaluation Reports

1. Within 120 days after it is established, or such other period as the Council may decide,
the ECE shall present a draft report for consideration by the Council, which shall contain:

a comparative assessment of the matter under consideration;

its conclusions; and

where appropriate, practical recommendations that may assist the Parties in respect of the
matter.

2. Each Party may submit written views to the ECE on its draft report. The ECE shall
take such views into account in preparing its final report.

* * *

Article 26: Final Evaluation Reports

1. The ECE shall present a final report to the Council within 60 days after presentation of
the draft report, unless the Council otherwise decides.

2. The final report shall be published within 30 days after its presentation to the Council,
unless the Council otherwise decides.

3. The Parties shall provide to each other and the Secretariat written responses to the
recommendations contained in the ECE report within 90 days of its publication.

4. The final report and such written responses shall be tabled for consideration at the next
regular session of the Council. The Council may keep the matter under review.

PART FIVE: RESOLUTION OF DISPUTES

* * *

Article 27: Consultations

1. Following presentation to the Council under Article 26(1) of an ECE final report that addresses the enforcement of a Party's occupational safety and health, child labor or minimum wage technical labor standards [Note – **this is the clause limiting dispute resolution to only three of the eight “technical labor standards” as defined below – eds.**], any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce such standards in respect of the general subject matter addressed in the report. . . .

4. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

* * *

Article 28: Initiation of Procedures

1. If the consulting Parties fail to resolve the matter pursuant to Article 27 within 60 days of delivery of a request for consultations, or such other period as the consulting Parties may agree, any such Party may request in writing a special session of the Council. . . .

* * *

Article 29: Request for an Arbitral Panel

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 28, the Council shall, on the written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards is:

trade-related; and

covered by mutually recognized labor laws. . . .

3. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

Unless the disputing Parties otherwise agree within 20 days after the Council votes to convene the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of the Agreement, including those contained in Part Five, whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, and to make findings, determinations and recommendations in accordance with Article 36(2)."

* * *

Article 36: Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the disputing Parties and on any information before it pursuant to Article 35.
2. Unless the disputing Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the disputing Parties an initial report containing:

findings of fact;

its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards in a matter that is trade-related and covered by mutually recognized labor laws, or any other determination requested in the terms of reference; and

in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement. . . .

* * *

Article 37: Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the disputing Parties otherwise agree. . . .The final report of the panel shall be published five days after it is transmitted to the Council.

* * *

Article 38: Implementation of Final Report

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, the disputing Parties may agree

on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel. . . .

* * *

Article 39: Review of Implementation

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, and . . .

the disputing Parties cannot agree on whether the Party complained against is fully implementing an action plan . . . The Council shall reconvene the panel . . .

4. Where a panel has been reconvened . . . it . . . may, where warranted, impose a monetary enforcement assessment in accordance with Annex 39, . . .

* * *

Article 41: Suspension of Benefits

1. Subject to Annex 41A, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel . . . any complaining Party or Parties may suspend, in accordance with Annex 41B, the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment. [Note – this is the trade sanction clause of the agreement – eds.]

* * *

PART SIX

GENERAL PROVISIONS

* * *

Article 42: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

* * *

Article 43: Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that another Party has acted in a manner inconsistent with this Agreement.

* * *

Article 45: Cooperation with the ILO

The Parties shall seek to establish cooperative arrangements with the ILO to enable the Council and Parties to draw on the expertise and experience of the ILO for purposes of implementing Article 24(1).

* * *

Article 49: Definitions

1. For purposes of this Agreement:

A Party has not failed to "effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards" or comply with Article 3(1) in a particular case where the action or inaction by agencies or officials of that Party:

reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory or compliance matters; or

results from *bona fide* decisions to allocate resources to enforcement in respect of other labor matters determined to have higher priorities;

"labor law" means laws and regulations, or provisions thereof, that are directly related to [the eleven labor principles – see Annex 1 – eds.]

"mutually recognized labor laws" means laws of both a requesting Party and the Party whose laws were the subject of ministerial consultations under Article 22 that address the same general subject matter in a manner that provides enforceable rights, protections or standards;

"pattern of practice" means a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case;

"persistent pattern" means a sustained or recurring pattern of practice; . . .

"technical labor standards" means laws and regulations, or specific provisions thereof, that are directly related to subparagraphs (d) through (k) of the definition of **labor law**. [Note that (d) through (k) correspond to Labor Principles 4-11 in Annex 1 below – eds.] For greater certainty and consistent with the provisions of this Agreement, the setting of all standards and levels in respect of minimum wages and labor protections for children and young persons by each Party shall not be subject to obligations under this Agreement. Each Party's obligations under this Agreement pertain to enforcing the level of the general minimum wage and child labor age limits established by that Party; . . .

"trade-related" means related to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

traded between the territories of the Parties; or

that compete, in the territory of the Party whose labor law was the subject of ministerial consultations under Article 22, with goods or services produced or provided by persons of another Party.

* * *

ANNEX 1

LABOR PRINCIPLES

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

4. Prohibition of forced labor

The prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes and work exacted in cases of emergency.

5. Labor protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, *bona fide* occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

9. Prevention of occupational injuries and illnesses

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

10. Compensation in cases of occupational injuries and illnesses

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

11. Protection of migrant workers

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

* * *

ANNEX 39

MONETARY ENFORCEMENT ASSESSMENTS

1. For the first year after the date of entry into force of this Agreement, any monetary enforcement assessment shall be no greater than 20 million dollars (U.S.) or its equivalent in the currency of the Party complained against. Thereafter, any monetary enforcement assessment shall be no greater than .007 percent of total trade in goods between the Parties during the most recent year for which data are available.

2. In determining the amount of the assessment, the panel shall take into account: the pervasiveness and duration of the Party's persistent pattern of failure to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards;

the level of enforcement that could reasonably be expected of a Party given its resource constraints;

the reasons, if any, provided by the Party for not fully implementing an action plan; efforts made by the Party to begin remedying the pattern of non-enforcement after the final report of the panel; and

any other relevant factors.

* * *

ANNEX 41B

SUSPENSION OF BENEFITS

1. Where a complaining Party suspends NAFTA tariff benefits in accordance with this Agreement, the Party may increase the rates of duty on originating goods of the Party complained against to levels not to exceed the lesser of:

the rate that was applicable to those goods immediately prior to the date of entry into force of the NAFTA, and

the Most-Favored-Nation rate applicable to those goods on the date the Party suspends such benefits,

and such increase may be applied only for such time as is necessary to collect, through such increase, the monetary enforcement assessment.

2. In considering what tariff or other benefits to suspend pursuant to Article 41(1) or (2): a complaining Party shall first seek to suspend benefits in the same sector or sectors as that in respect of which there has been a persistent pattern of failure by the Party

complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards; **[Note – this is the clause permitting trade sanctions to be targeted against the industries where violations occurred – eds.]** and

a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

III. U.S. LABOR RIGHTS INSTRUMENTS
[in trade statutes and as required by statute in free trade agreements]

GSP Labor Rights Clause

U.S. CODE TITLE 19--CUSTOMS DUTIES
CHAPTER 12--TRADE ACT OF 1974
SUBCHAPTER V--GENERALIZED SYSTEM OF PREFERENCES

Sec. 2461. Authority to extend preferences

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for--

- (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
- (3) the anticipated impact of such action on United States producers of like or directly competitive products; and
- (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Sec. 2462. Designation of beneficiary developing countries

(a) Authority to designate countries

(1) Beneficiary developing countries

The President is authorized to designate countries as beneficiary developing countries for purposes of this subchapter.

* * *

(2) Other bases for ineligibility

The President shall not designate any country a beneficiary developing country under this subchapter if any of the following applies:

* * *

PART B

Conventions related to the environment and governance principles

17. Montreal Protocol on Substances that Deplete the Ozone Layer
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
19. Stockholm Convention on Persistent Organic Pollutants
20. Convention on International Trade in Endangered Species of Wild Fauna and Flora
21. Convention on Biological Diversity
22. Cartagena Protocol on Biosafety
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change
24. United Nations Single Convention on Narcotic Drugs (1961)
25. United Nations Convention on Psychotropic Substances (1971)
26. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27. United Nations Convention against Corruption (Mexico).

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

* * *

Sec. 2467. Definitions

For purposes of this subchapter:

(1) Beneficiary developing country

The term "beneficiary developing country" means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this subchapter.

* * *

(4) Internationally recognized worker rights

The term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(5) Least-developed beneficiary developing country

The term "least-developed beneficiary developing country" means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 2462(a)(2) of this title.

(6) Worst forms of child labor

The term "worst forms of child labor" means--

(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(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.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.

U.S.-Jordan Free Trade Agreement

Agreement on the Establishment of a Free Trade Area, U.S.-Jordan, Oct. 24, 2000, 41 I.L.M. 63 (2002).

Article 6: Labor

1. The Parties reaffirm their obligations as members of the International Labor Organization (“ILO”) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in paragraph 6 are recognized and protected by domestic law.

2. The Parties recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party.

3. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in paragraph 6 and shall strive to improve those standards in that light.

4. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.

5. The Parties recognize that cooperation between them provides enhanced opportunities to improve labor standards. The Joint Committee established under Article 15 shall, during its regular sessions, consider any such opportunity identified by a Party.

6. For purposes of this Article, "labor laws" means statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

(a) the right of association;

(b) the right to organize and bargain collectively;

(c) a prohibition on the use of any form of forced or compulsory labor;

(d) a minimum age for the employment of children; and

(e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Article 17: Dispute Settlement

[Note that Article 17 covers claims of violations of Article 16 on labor, as well as claims of commercial violations – eds.]

* * *

1. (a) The Parties shall make every attempt to arrive at a mutually agreeable resolution through consultations under Article 17, whenever

(i) a dispute arises concerning the interpretation of this Agreement;

(ii) a Party considers that the other Party has failed to carry out its obligations under this Agreement;

* * *

[Omitting intermediary consultation steps leading to panel formation – eds.]

* * *

(d) . . . Where the panel finds that a Party has failed to carry out its obligations under this Agreement, it may, at the request of the Parties, make recommendations for resolution of the dispute. The report of the panel shall be non-binding.

* * *

2. (a) After a dispute has been referred to a dispute settlement panel under this Agreement and the panel has presented its report, the Joint Committee shall endeavor to resolve the dispute, taking the report into account, as appropriate.

(b) If the Joint Committee does not resolve the dispute within a period of 30 days after the presentation of the panel report, the affected Party shall be entitled to take any appropriate and commensurate measure. [This is the enforcement clause providing for trade sanctions – “appropriate and commensurate measures” – in case of violations – eds.]

* * *

Article 18: Miscellaneous Provisions

1. Neither Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

* * *

U.S.-CAFTA Free Trade Agreement (CAFTA-DR)

Central America-Dominican Republic-United States Free Trade Agreement, Aug. 5, 2004, available at <http://www.ustr.gov>

Chapter Sixteen: Labor

Article 16.1: Statement of Shared Commitment

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration).¹ Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law.

2. The Parties affirm their full respect for their Constitutions. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.8 and shall strive to improve those standards in that light.

* * *

Article 16.2: Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

* * *

Article 16.3: Procedural Guarantees and Public Awareness

[Same as equivalent NAALC provision – eds.]

* * *

Article 16.4: Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees.

3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Parties, and with the public . . . Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter. . . .

* * *

Article 16.8: Definitions

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

* * *

[Here is the CAFTA-DR labor enforcement clause – eds]:

Article 16.6: Cooperative Labor Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Chapter . . .
2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.
3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.
4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other Parties.
5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 16.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may . . . have recourse to [Chapter Twenty Dispute Settlement – eds. (see below)].

7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 16.2.1(a).

* * *

Article 20.17: Non-Implementation In Certain Disputes

1. If, in its final report, a panel determines that a Party has not conformed with its obligations under Article 16.2.1(a) (Enforcement of Labor Laws) . . . and the disputing Parties . . . are unable to reach agreement on a resolution [or] have agreed on a resolution and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement, any such complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the Party complained against.

2. The panel shall determine the amount of the monetary assessment in U.S. dollars within 90 days after it reconvenes under paragraph 1. In determining the amount of the assessment, the panel shall take into account:

(a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;

(b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;

(c) the reasons for the Party's failure to effectively enforce the relevant law, including, where relevant, its failure to observe the terms of an action plan;

(d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;

(e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel, including through the implementation of any mutually agreed action plan; and

f) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, adjusted for inflation as specified in Annex 20.17.

* * *

4. Assessments shall be paid into a fund established by the Commission and shall be expended at the direction of the Commission for appropriate labor initiatives, including efforts to improve or enhance labor law enforcement in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Commission shall consider the views of interested persons in the disputing Parties' territories.

5. If the Party complained against fails to pay a monetary assessment, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

* * *

U.S.-Peru Free Trade Agreement

[Reflecting the new 2007 labor "template" – eds.]

Chapter Seventeen: Labor

Article 17.1: Statement of Shared Commitments

The Parties reaffirm their obligations as members of the International Labor Organization (ILO).

Article 17.2: Fundamental Labor Rights (*Footnote 1*):

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration): (*Footnote 2*)

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of compulsory or forced labor;
- (d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and
- (e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.

Footnote 1: To establish a violation of an obligation under Article 17.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

Footnote 2: The obligations set out in Article 17.2, as they relate to the ILO, refer only to the ILO Declaration.

Article 17.3: Enforcement of Labor Laws

1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

(b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to *bona fide* decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 17.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter. (*Footnote 3*)

2. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party. . . .

Footnote 3: For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions regarding the allocation of enforcement resources with respect to labor laws other than those relating to fundamental rights enumerated in Article 17.2.1.

* * *

Article 17.5: Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Council (Council) comprising cabinet-level or equivalent representatives of the Parties, who may be represented on the Council by their deputies or high-level designees.

2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary. The Council shall:

(a) oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 17.6;

(b) develop general guidelines for consideration of communications referred to in paragraph 5(c);

(c) prepare reports, as appropriate, on matters related to the implementation of this Chapter and make such reports available to the public;

(d) endeavor to resolve matters referred to it under Article 17.7.4; and

(e) perform any other functions as the Parties may agree. 17-4

3. All decisions of the Council shall be taken by consensus, and shall be made public unless the Council otherwise decides.

4. Unless the Council otherwise decides, each of its meetings shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

5. Each Party shall designate an office within its labor ministry or equivalent entity that shall serve as a contact point with the other Parties and with the public. The contact points of each Party shall meet as often as they consider necessary or at the request of the Council. Each Party's contact point shall:

(a) assist the Council in carrying out its work, including coordination of the Labor Cooperation and Capacity Building Mechanism;

(b) cooperate with the other Parties' contact points and with relevant government organizations and agencies to:

(i) establish priorities, with a particular emphasis on the issues identified in paragraph 2 of Annex 17.6, regarding cooperative activities on labor matters,

(ii) develop specific cooperative and capacity-building activities according to such priorities,

(iii) exchange information on the labor laws and practices of each Party, including best practices and ways to improve them, and

(iv) seek support, as appropriate, from international organizations such as the ILO, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters;

(c) provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to this Chapter and make such communications available to the other Party and, as appropriate, to the public [Note – this is the complaint mechanism available to private actors – eds.]; and

(d) provide for the receipt of cooperative consultation requests referred to in Article 17.7.1 and 17.7.4. 17-5

6. Each Party shall review communications received under paragraph 5(c) in accordance with domestic procedures.

7. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee comprising representatives of its labor and business organizations and other members of its public to provide views on any issues related to this Chapter.

Article 17.6: Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues plays an important role in advancing development in the territory of the Parties and in enhancing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)*, the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 17.6. This Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. The Parties shall strive to ensure that the activities undertaken through that Mechanism:

a) are consistent with each Party's national programs, development strategies, and priorities;

(b) provide opportunities for public participation in the development and implementation of such activities; and

(c) take into account each Party's economy, culture, and legal system.

Article 17.7: Cooperative Labor Consultations

1. A Party may request cooperative labor consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.5.5.

[Paras. 2-5 describe consultation procedures prior to invoking dispute resolution – eds.]

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

Article 17.8: Definitions

For purposes of this Chapter: labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of forced or compulsory labor;
- (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- (e) the elimination of discrimination in respect of employment and occupation; and
- (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

* * *

Trade Promotion Authority Labor Rights Clause

United States Code

CHAPTER 24. BIPARTISAN TRADE PROMOTION AUTHORITY

Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. § 3802 (Supp. IV 2004).

Overall trade negotiating objectives. The overall trade negotiating objectives of the United States for [trade] agreements are:

* * *

(6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO and an understanding of the relationship between trade and worker rights;

* * *

(7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;

* * *

(9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

(b) Principal trade negotiating objectives.

* * *

(11) Labor and the environment. The principal negotiating objectives of the United States with respect to labor and the environment are--

(A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries;

(B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources, and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;

(C) to strengthen the capacity of United States trading partners to promote respect for core labor standards

* * *

(17) Worst forms of child labor. The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor.

(c) Promotion of certain priorities. In order to address and maintain United States competitiveness in the global economy, the President shall--

(1) seek greater cooperation between the WTO and the ILO;

(2) seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards . . .

* * *

(7) direct the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance to that country if needed;

(8) in connection with any trade negotiations entered into under this title, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating . . .

(9) with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor;

* * *

§ 3813. Definitions

* * *

(6) Core labor standards. The term "core labor standards" means

[Note that the following definition is not the same as the core labor standards of the ILO – it is the U.S. statutory formulation first enacted in the GSP labor rights clause, notably without an anti-discrimination provision, and containing a provision on wages, hours, and occupational safety and health – eds.]

(A) the right of association;

(B) the right to organize and bargain collectively;

- (C) a prohibition on the use of any form of forced or compulsory labor;
- (D) a minimum age for the employment of children; and
- (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Trafficking Victims Protection Act, 22 USCS § 7101-7112

§ 7101. Purposes and findings

(a) **Purposes.** The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

(b) **Findings.** Congress finds that:

(1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

(2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

(3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

(5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

(6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.

(7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.

(8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.

(9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.

(10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.

(11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.

(12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.

(13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In *United States v. Kozminski*, 487 U.S. 931 (1988), the Supreme Court found that section 1584 of title 18, United States Code, should be narrowly interpreted, absent a definition of involuntary servitude by

Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

(14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.

(15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

(16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.

(17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.

(18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.

* * *

§ 7102. Definitions

* * *

(2) Coercion. The term "coercion" means--

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.

(3) Commercial sex act. The term "commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

(4) Debt bondage. The term "debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(5) Involuntary servitude. The term "involuntary servitude" includes a condition of servitude induced by means of--

(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.

* * *

(8) Severe forms of trafficking in persons. The term "severe forms of trafficking in persons" means--

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) Sex trafficking. The term "sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

* * *

§ 7104. Prevention of trafficking

(a) Economic alternatives to prevent and deter trafficking. The President shall establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking. Such initiatives may include--

(1) microcredit lending programs, training in business development, skills training, and job counseling;

(2) programs to promote women's participation in economic decisionmaking;

(3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;

(4) development of educational curricula regarding the dangers of trafficking; and

(5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

* * *

§ 7106. Minimum standards for the elimination of trafficking [Caution: See prospective amendment note below.]

(a) Minimum standards. For purposes of this division, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking. . . .

(b) Criteria. In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country. . . .

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

* * *

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant. . . .

(10) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

§ 7107. Actions against governments failing to meet minimum standards

(a) Statement of policy. It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that--

(1) does not comply with minimum standards for the elimination of trafficking; and

(2) is not making significant efforts to bring itself into compliance with such standards.

(b) Reports to Congress.

(1) Annual report. Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report with respect to the status of severe forms of trafficking in persons that shall include--

(A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;

(B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance;

(C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance; . . .

* * *

(3) Special watch list.

(A) Submission of list. Not later than the date on which the determinations described in subsections (c) and (d) are submitted to the appropriate congressional committees in accordance with such subsections, the Secretary of State shall submit to the appropriate congressional committees a list of countries that the Secretary determines requires special scrutiny during the following year.

* * *

(c) Notification. Not less than 45 days or more than 90 days after the submission, on or after January 1, 2003, of an annual report under subsection (b)(1), or an interim report under subsection (b)(2), the President shall submit to the appropriate congressional committees a notification of one of the determinations listed in subsection (d) with respect to each foreign country whose government, according to such report--

(A) does not comply with the minimum standards for the elimination of trafficking; and

(B) is not making significant efforts to bring itself into compliance, as described in subsection (b)(1)(C).

(d) Presidential determinations. The determinations referred to in subsection (c) are the following:

(1) Withholding of nonhumanitarian, nontrade-related assistance. The President has determined that--

(A) (i) the United States will not provide nonhumanitarian, nontrade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

* * *

(5) Exercise of waiver authority.

(A) In general. The President may exercise the authority under paragraph (4) with respect to--

(i) all nonhumanitarian, nontrade-related foreign assistance or funding for participation in educational and cultural exchange programs to a country;

(ii) all multilateral assistance described in paragraph (1)(B) to a country; or

(iii) one or more programs, projects, or activities of such assistance.

(B) Avoidance of significant adverse effects. The President shall exercise the authority under paragraph (4) when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

* * *

§ 7108. Actions against significant traffickers in persons

(a) Authority to sanction significant traffickers in persons.

(1) In general. The President may exercise the authorities set forth in section 203 of the International Emergency Economic Powers Act . . . in the case of any of the following persons:

(A) Any foreign person that plays a significant role in a severe form of trafficking in persons, directly or indirectly in the United States.

(B) Foreign persons that materially assist in, or provide financial or technological support for or to, or provide goods or services in support of, activities of a significant foreign trafficker in persons identified pursuant to subparagraph (A).

(C) Foreign persons that are owned, controlled, or directed by, or acting for or on behalf of, a significant foreign trafficker identified pursuant to subparagraph (A). . . .

(b) Report to Congress on identification and sanctioning of significant traffickers in persons.

(1) In general. Upon exercising the authority of subsection (a), the President shall report to the appropriate congressional committees--

(A) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this section and the basis for such determination; and

(B) detailing publicly the sanctions imposed pursuant to this section.

* * *

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On April 29, 2019, I served the following documents in the manner described below:

FIRST AMENDED ANSWER TO COMPLAINT

- (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld’s electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Aaron B. Solem
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- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

On the following part(ies) in this action:

Christopher Ratana-Kelley
1601 Colchester Street
Danville, CA 94506

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2019, at Alameda, California.

/s/ Karen Kempler
Karen Kempler

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL NO. 5, CHARTERED BY THE UNITED
FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO.CLC
(SAFEWAY STORES)**

Case 32-CB-219981

Date: May 31, 2019

and

Christopher Ratana-Kelley, an Individual

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S
PARTIAL JOINDER OF CHARGING PARTY'S MOTION TO STRIKE
RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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May 31, 2019

Tracy Clark, Designated Agent of NLRB
Name

/s/ Tracy Clark

Signature