UNEQUAL EQUATION

THE LABOR CODE AND WORKER RIGHTS IN HAITI

American Center for International Labor Solidarity/AFL-CIO
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The American Center for International Labor Solidarity (Solidarity Center) is a non-profit organization established to provide assistance to workers who are struggling to build democratic and independent trade unions around the world. It was established in 1997 through the consolidation of four regional AFL-CIO institutes. Working with unions, non-governmental organizations and other community partners, the Solidarity Center supports programs and projects to advance worker rights and promote broad-based, sustainable economic development around the world.
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Recent events highlight the urgent need to protect worker rights in Haiti. In a report produced in May 2002 to coincide with the World Trade Organization’s trade policy review, the International Confederation of Free Trade Unions (ICFTU) condemned “flagrant violations of workers’ trade union rights, including violence against trade union activists,” and uncovered “serious problems with child labor, including bonded child labor.” Violations include conflict between workers and management at the Guacimal orange plantation, where two people were killed, dozens were wounded, and nine people, including six trade unionists, were illegally imprisoned by the government. In addition, medical care was denied to the people in custody, despite their having been wounded in the conflict.

Other examples abound. In December 2001, the report notes that groups linked to the ruling party set the office of the Confédération des Travailleurs Haïtiens (CTH) in Jeremie on fire. Fifteen journalists, including the General Secretary of the Syndicat National des Travailleurs de la Presse (the journalists’ union) have had to flee the country after taking refuge in foreign embassies. Doctors in the main state hospital in Port-au-Prince went on strike for better working conditions and to protest the shortage of materials needed to care for patients. In May, teachers called a one-day strike to try to force officials at the Ministry of Education to pay them more than 13 months’ back pay.

Also of great concern is the recent announcement by the Aristide administration establishing an industrial free trade zone on the border with the Dominican Republic in the Northwest corner of Haiti. While keeping the Haitian Parliament, local authorities and the public in the dark, President Jean-Bertrand Aristide’s government had negotiated a deal with the United States where, rather than repay debt to the U.S. and multilateral lenders, the Haitian and Dominican governments will pay into the “Hispaniola Fund,” which will be used for infrastructure projects and free trade zones on the border between both countries. Critics of the Free Trade Zone (FTZ) in the Northwest point out that, in addition to being undertaken in almost complete secrecy, the scheme will displace farmers from one of the few places in Haiti where farmers can earn a decent living. Workers are unlikely to benefit much from any jobs created: Haitian officials are promising investors a wage rate below the current legal minimum.

In 1999 and 2000, the American Center for International Labor Solidarity (Solidarity Center) conducted research on labor law implementation and reform in Haiti. At the time, we shared the concern of Haitian labor, human rights organizations, peasant associations, and alternative economic policy groups that labor law reform processes begun in 1997 would focus on labor market “flexibilization” and the need to attract foreign investment, rather than on strengthening worker rights and protections. Groups were concerned that the anti-union stance of the government, already evidenced by its failure to implement existing labor protections, not be codified into law. Given the extreme conditions already faced by Haitian workers, such a focus would not only hurt workers, but undermine the longterm viability of Haiti’s economy.

This report describes and analyzes worker-related provisions of the Labor and Rural Codes, documents the view of workers, labor groups and other civil society organizations regarding existing labor legislation, and assesses recent and past attempts to reform the labor code. It also addresses the challenges posed by integration into the global economy, the rules and regulations designed to facilitate that integration, and the impact these have on worker rights and national capacity and willingness to promote those rights. It concludes with recommendations,
drawn from a range of civil society and labor groups, for a labor law reform process that would integrate and serve the needs and priorities of workers in both the formal and informal economies.

The authors gathered information from bibliographical research and interviews with a broad cross-section of key stakeholders and other concerned parties (listed in Appendix 1). The report is written from a perspective that recognizes and promotes worker rights, as well as the social, economic and political rights guaranteed by the United Nations. The issues covered are part of an overall political, social and economic dynamic that continues to challenge the survival of poverty-sticken Haitians and the rights they have fought so long to secure. It is our hope that the report will contribute to an ongoing process of critical reflection and action to consolidate the worker movement and strengthen worker rights in Haiti.
Chapter 1
Introduction

Haiti’s Choices in a Global Economy

In 2000, six years after the international community came to the support of the democratic movement in Haiti and put an end to the de facto dictatorship of General Raoul Cédras, many political and civic rights had been restored. Economic and social rights, however, declined precipitously during this time, despite more than $2 billion in aid and loans from the international community. Conditions attached to international aid, such as budget-tightening measures, reductions in social services, privatization and downsizing of state-owned enterprises and drastic reductions in import tariffs exacerbated Haiti’s economic decline.

Inflation rates have reduced the buying power of the minimum wage from US$3 per day in 1995 to US$1. According to the Bank of the Republic of Haiti (BRH), national production deteriorated from September, 1997 to March, 1999. While exports from Haiti increased in 1998, imports increased faster. For example, weak domestic agricultural production and strong demand for energy led to an 18 percent increase in food imports in 1998 and a nearly 8 percent rise in fuel imports. This worsened Haiti’s current account deficit and made the country even more dependent on international capital.

Although accurate statistics are hard to obtain, available data show total unemployment up from 49.1 percent in 1987-89 to 70 percent currently. For most of the newly unemployed, retraining and government support to help find new jobs are distant dreams. Life has deteriorated even for those with jobs in assembly plants, where global competition has, according to the plant owners, made for razor-thin profit margins. Plant owners in turn have ratcheted up pressure on workers to produce more for fewer benefits. Some Haitians describe their lives today as worse than what they endured under the Cédras regime. The country’s infrastructure and commercial assets continue to degrade. Haiti is experiencing an acute housing crisis, and the nation’s telephone and electrical services are badly deteriorated, with the poor deprived of even basic services. Meanwhile, international donors collect the debts of past dictatorships, draining resources that might go to social programs and leaving Haitians to rely on personal resources at a time when real wages are frighteningly low.

The traditional support structures of the extended family and local communities are strained to what many fear may be the breaking point. Haitians are used to living on the edge and helping one another, but today few are left with the means to assist those in dire need. Many people depend on one person’s income. Women in factory jobs must find additional work to survive. The costs of goods and basic necessities have escalated beyond the reach of most Haitians. Choices for survival have virtually disappeared. The convergence of all these factors puts severe stress on social and political cohesion, laying part of the groundwork for the ongoing political crisis.

It was in this context of growing political crisis, economic reform and decay that the Haitian government revisited labor law reform in 1999 and 2000. A participatory reform process that fully integrates the perspectives, priorities and needs of workers could be a vital part of rebuilding and strengthening Haiti’s economy as well as its democratic system of government. Labor law reform, however, can easily be used to further strengthen the prerogatives of capital at the expense of workers, as has happened around the world.

The questions for workers in Haiti are: Will the new labor law reform serve to protect worker rights, increase income, provide better access to productive resources, and enhance worker dignity? Or will reform serve to further “flexibilize” labor and undermine worker rights in a desperate bid for international investment? Will
reform reflect the development strategy favored by international financial institutions, where labor standards are seen as an impediment to growth? Or will reform support the strategy supported by labor organizations and many economists that labor standards are a means of increasing and more fairly distributing economic growth? In other words, will reform provide workers with what they need to survive and prosper, in turn strengthening Haiti’s overall economy?

This report takes an in-depth look at some of the issues surrounding labor law reform and provides recommendations for an inclusive, pro-worker process of reform that ultimately would help reshape the social contract for all Haitians. Dozens of interviews with individuals, organizations and institutions in government, the private sector, unions, worker associations, women’s organizations, peasant movements, worker support organizations, human rights groups, development organizations, academic organizations, and bilateral and multilateral organizations were conducted for this report. The process was inclusive and took into consideration myriad viewpoints, yet is grounded in a labor perspective with an overarching purpose of making worker protection a top priority in upcoming labor law reform efforts. The report’s issues and recommendations for reform should be read with this in mind.

Below is a brief description of the actors in Haiti’s Labor Code reform process.

**The Haitian Government**

Within the Haitian Government a number of entities are charged with the protection of worker rights and the application of the Labor Code and related legislation. During the past forty years, most of the regulatory oversight has been concentrated in and around the Ministry of Social Affairs and Labor and its agencies. The Ministry is charged under the Code with carrying out workplace inspections to assess compliance with the Code, receiving workplace complaints, assisting in the voluntary resolution of labor-management disputes, overseeing a broad network of social benefits administered through government agencies, and promoting the development of businesses and artisanal production as well as the welfare of workers, children and families.

In addition to the Cabinet of the Minister of Social Affairs and Labor, a number of other government agencies have responsibility for the promotion of worker and employer rights, including the following:

- Directorate of Labor
- Inspectorate of Labor
- Tripartite Commission of Consultation and Arbitration (including its subcommittees, to the extent that they are operational)
- ONA (National Insurance Agency)
- OFATMA agencies (Office for Work Injury, Sickness, and Maternity)
- IBESR (Social Welfare and Research Institute)
- Service of Social Organizations
- Conseil Supérieur des Salaires (Superior Council on Wages), along with the Commission Tripartite des Salaires – (Tripartite Commission on Wages)
- Labor Tribunals

Other government entities involved in more peripheral ways include the Haitian Institute for Statistics and Data Processing (IHSI), the Presidential Commission on the Modernization of Public Enterprises (CMEP), the Central Management Unit (UCG), and such ministries as the Office of the Prime Minister and the Ministry for Public Health and Population. The inevitably complex interaction among the
various government agencies requires a high level of coordination and effective oversight, which is rarely available. The Haitian Government has noted the need for overall administrative reform directed at improving the coordination and effectiveness of government structures to promote labor rights.6

**Formal Sector Employers**

The Haitian private sector generally is well organized through a number of associations. These associations are active in promoting economic and social policies favorable to private sector interests. They lobby government officials, Parliament, the international community and the media.

The primary employer organizations and associations include:

- ADIH  Association des Industries d’Haiti
- ASHAV  Association Haïtienne des Agences de Voyages
- AAH  Association des Assureurs d’Haïti
- AHEC  Association Haïtienne des Entreprises de Construction
- Association Professionnelle des Banques
- APA  Association des Producteurs Agricoles
- AALM  Association des Agences de Ligne Maritime
- AHTH  Association Hôtelière et Touristique
- AIHE  Association Interaméricaine des Hommes d’affaires
- APRONA  Association des Producteurs Nationaux
- ANADIPP  Association Nationale des Distributeurs de Produits Pétroliers
- Association Nationale des Importateurs et Distributeurs de Produits Pharmaceutiques
- ASDEC  Association des Exportateurs de Café d’HaVti
- CLED  Centre pour la Libre Entreprise et la Démocratie
- CHCI  Chambre Haïtienne de Commerce et d’Industrie
- CFHCI  Chambre franco-haïtienne de Commerce et d’Industrie
- Chambre de Commerce et d’Industrie Haitian Américaine

Haiti’s many private sector organizations overlap significantly. In fact, a relatively small number of employers, many of whom are related by birth or marriage, control a large proportion of the assets in Haiti. This has created a de facto oligarchy that has a number of informal mechanisms for developing and implementing business strategies.

The business community has tended, especially during difficult political and economic times, to remain closely knit, protecting its interests through its links to the country’s power centers. Historically, the business community has played a key role in both public and private sector monopolies and has been criticized for supporting authoritarian governments. For example, some private sector individuals allegedly provided financial and other resources to support both the 1991 coup and the resultant illegal military dictatorship. Many of the details of this relationship and its broader consequences are not yet fully understood.7

Shortly before the 1994 restoration of the elected government, a small number of new-generation entrepreneurs emerged to challenge the authority of the established families. These business leaders declared their support for the constitutional government and called for its return, in part to break through old monopolies. They now want to stimulate com-
petition and broaden access to the inner circle of the economic elite.

In contrast to the traditional economic powers, these new business leaders ally themselves with more democratic currents, and they could open the door to better employer/employee communication, such as the new employer/worker forum discussed later in this report. Thus far, however, worker interests are far down these leaders’ list of priorities. For example, they have consistently opposed increases in the minimum wage and privatization. They support unregulated trade, open markets, and regional competitiveness – the basket of neoliberal economic policies that time and time again lower labor standards and violate worker rights.

**Worker Organizations**

In 1997, 3,500 social organizations, including 243 labor unions, 10 labor union confederations, and 21 employer organizations, were registered with the Ministry of Social Affairs and Labor. About twenty of the unions operate at the national level. With the exception of the teachers’ union and a few of the public sector unions, all unions are open to workers from any profession. Civil service employees are banned from forming unions and thus are not registered with the Ministry even though the government is the largest employer in Haiti today. Among the most prominent national unions registered with the Ministry are the following:

- CATH (Centrale Autonome des Travailleurs Haïtiens, or Autonomous Haitian Workers Central)
- CTH (Confédération des Travailleurs Haïtiens, or Confederation of Haitian Workers)
- CGT (Centrale Générale des Travailleurs, or Workers Central)
- ONTH (Organisation Nationale des Travailleurs Haïtiens, or National Organization of Haitian Workers)
- KOTA (Konfederasyon Ouvriye Travaye Ayisen, or Confederation of Haitian Workers)
- CNTH (Centrale Nationale des Travailleurs Haïtiens, or National Central of Haitian Workers)
- FOS (Fédération des Ouvriers Syndiqués, or Trade Union Federation)
- OGITH (Organisation Générale Indépendante des Travailleurs Haïtiens, or General Independent Organization of Haitian Workers).

In addition to unions representing private sector and agricultural workers, Haiti has single-sector unions such as the CNEH (Confédération Nationale des Educateurs d’Haïti, or National Confederation of Haitian Teachers) and UNNOH (Union Nationale des Normaliens Haïtiens, or National Union of Haitian Teachers). Also, several worker support organizations have been effective in Haiti, including: Batay Ouvriye, a small, action-oriented organization that uses advocacy, campaigns, organizing, and international solidarity to assist workers facing a violation of the Labor Code; Anten Ouvriye, a pro-labor research organization; the Centre Pétion-Bolivar, a resource and training center for workers; and the Centre pour la Promotion des Femmes Ouvrières, or the Center to Promote Women Workers (CPFO). Other groups fighting economic globalization’s negative impact on workers include the Haitian Platform for an Alternative Development (PAPDA), the Platform of Haitian Human Rights Organizations, and Kay Fanm and SOFA, two of the most important women’s advocacy and education groups.

COSYNH, or Collectif Syndical Haïtien, was unique among trade union organizations for bringing together unions from several public enterprises. It was organized in June, 1998 with representatives from SOETEL, the union of telephone workers of TELECO; FESTREDH, the union of the electrical workers at
Electricité d’Haïti; SPH, a postal workers’ union; Forum 450, a civil service union; SNTPH, a journalists’ union; and the National Lottery Union, SELNAH. Other unions have been added since 1998 as observers or members. COSYNAH took a position against structural adjustment policies and privatization in Haiti and defended the interests of workers threatened by globalization and the neoliberal model, particularly public sector employees facing privatization. It cooperated with popular organizations that shared its vision and advocated broad discussions of the country’s problems that involve many organizations and associations outside the traditional trade union community, including cooperatives, artisans, peasants, academics, professionals, and other civil society sectors.

**International Organizations**

Both bilateral and multilateral international organizations have historically played an important role in the lives of Haitian workers. Among the most important of the institutions are the International Monetary Fund (IMF), the World Bank, the International Development Bank (IDB), the International Labor Organization (ILO), and the US Agency for International Development (USAID).

Of these institutions, only the ILO, one of the specialized agencies of the United Nations, has a mandate to address labor issues. Haiti was one of the founding members of the ILO in 1919 and is a signatory to more than two dozen ILO conventions, most notably Convention No. 81 on workplace inspections, and Convention No. 98, which guarantees workers the right to organize. In addition, the concept of tripartism promoted by the ILO is manifest in Haiti today in the form of its Tripartite Commission of Consultation and Arbitration.

The most important outside influence on worker rights in Haiti, however, comes from the policy reforms, loan conditions, technical assistance, project funding, and political pressure that international financial institutions (IFIs) and USAID have used during the past several decades to promote a free-market, export-led development model for Haiti. Under this model, workers are seen primarily as a production cost. Thus, in the name of increased efficiency and competitiveness, the IFIs and USAID encouraged low wages, few labor standards, and reductions in workforce wherever possible. Indeed, turning Haiti into a low-wage, export-friendly economy has been a primary goal of U.S. development assistance since the 1960s, when offshore assembly first made significant inroads. The IFIs became full partners in this strategy in 1982, when the World Bank made its first structural adjustment loan to Haiti.

Unlike the ILO, which has no power to enforce the labor standards to which its members are supposed to adhere, the IFIs and USAID, which together provide a large portion of the Haitian government’s budget, have enormous power to ensure their policies are adopted. They can, and do, simply withhold development assistance and loans if the Haitian government does not follow IFI-supported policies. Furthermore, the IFIs, especially the IMF, act as the gatekeepers for other multilateral and bilateral funding and for commercial credit and investment. Thus they wield influence far beyond the resources they actually disburse to Haiti.

Examples of how IFIs and USAID have influenced labor law and worker rights in Haiti range from funding the activities of outside consultants and paying them to write the governing by-laws for Haiti’s Tripartite Commission, to conditioning IMF funds on government layoffs and the maintenance of low wages. The IFIs also have called on the Haitian government to “seek external assistance to review and revise the current Labor Code and improve the regulatory framework to make reforms more complementary to sectoral
policy objectives of increasing industrial production.” In other words, these institutions want Haiti to make labor more “flexible” to increase competitiveness in the new global economy.

Endnotes


3. Ibid.


5. From interviews with workers and factory owners, September 1999.

6. Meetings with senior officials of the Ministry for Social Affairs and Labor, Port-au-Prince, September 1999.


9. Ibid.
Chapter 2
History of Labor Regulation and Worker Activism

Haiti has a long and proud history of labor activism and respect for workers, but also a tragic legacy of labor exploitation. Haitian historians point to the indigenous Arawak civilization as a positive example, as the dependent employer/employee relationship virtually was unknown then. Arawak workers apprenticed to acquire skills and became respected as independent artisans, a model that continues to inspire Haitian labor activists today.

The tables turned, however, when colonial Spain enslaved and extinguished the Arawaks and brought the first slaves from Africa, ushering in a four-hundred-year struggle for worker rights in Haiti. To understand the country’s current labor law and the struggle for worker protections, one must understand the country’s difficult past and consequent diverse systems of government: colonial exploitation, independence, dictatorships, and occupation. All have left their mark on Haiti’s labor movement and current collection of rights and laws.

Early Labor Protections in the French Colony

In 1697, the Spanish ceded the island to the French and it became the French colony of St. Domingue. At that time, there was no such thing as labor rights per se. Worker protections evolved out of the day’s political and social movements as well as France’s desire to protect its investment in slaves; the African slave was not to be worked to death like the Arawaks.

France’s Code Noir of 1685 provided food, clothing, a day of rest, and some medical care for slaves in the French colonies, an almost imperceptible mitigation of France’s brutal treatment of St. Domingue’s slaves. Even these small protections were short-lived. Almost a century later, in 1784, Louis XVI awarded slaves two hours rest at midday and a small piece of land to grow food. Pregnant and nursing women had special dispensation from work, and the slaves had health care centers. When the Bois Caiman Revolt led to the abolition of slavery in St. Domingue in 1793, French Commissioner Léger Santhonax specified certain working conditions for the north of St. Domingue, requiring time limits on domestic service with salaries to be agreed upon by employer and employee, payment of wages every three months, and, for the first time, limits on child labor up to age fifteen. Women received what amounted to four months paid maternity leave. (It is worth noting that this is well beyond what is provided under current Haitian law.) A number of other regulations were promulgated during the next five years with varying effect.

St. Domingue Governor Toussaint L’Ouverture’s 1801 constitution formalized a paternalistic relationship between the landowner and those who worked the land, and he allotted workers a share of the income. Each cultivator and worker was a member of a “constant and active family,” and the owner of the soil was “necessarily the father,” according to the constitution. Today, similar paternalistic language pervades the Labor Code.

In his edict of 1804, which declared Haiti independent of France, Haiti’s first head of state, Jean-Jacques Dessalines, required farmers to provide health care and medicine for their workers. Around this time, Henry Christophe rose to power and in 1811 declared himself king of the north of Haiti. His Rural Code specified two hospitals on every plantation for farm workers, divided the dawn-to-dusk workday into three periods with breaks totaling three hours, and devised a new system of revenue sharing for agricultural workers on the plantations. Worker interests might not have been at the heart of these reforms, as regulating the workday likely was meant to prevent idleness. Similarly, restrictions on work by pregnant women are said to have been in response to the decline in the black population from 800,000 in 1680 to 290,000 in 1776.¹
With Haitian President Alexandre Pétion’s land reforms of 1809 and 1810, large plantations gradually were dismantled and divided into small landholdings awarded to soldiers and civil servants for small-scale food production. Sugar exports dropped to a fraction of earlier levels. Pétion’s battle to end the colonial-era dominance of the great plantations may have been the first round in a debate that continues today: Should the government support food security through domestic production, or through an economy primarily dependent on exports? Pétion obviously believed the former, but decentralization had mixed results for workers. While laborers certainly gained some long-sought independence on the small farms, the sheer number of farms and lack of government coordination and oversight made them less efficient. As well, workers lost some of the paternalistic social benefits awarded by large plantations.

In those early days of the nation, the government addressed worker issues through rural legislation, as Haiti still did not have a large urban working class. President Jean-Pierre Boyer, the president after Pétion, sought to bring back the days of the great plantations in his Rural Code of 1826. But the peasants did not share Boyer’s zeal for overregulation of agriculture, nor his nostalgia for the ancien régime. The Rural Code did, however, further refine the work week to five days, and, among its other provisions, banned pregnant women from working in the fields six months before giving birth until four months after. But the peasants felt that, on the whole, the Code not only undermined their newly acquired individual liberties, but essentially viewed workers as little more than animals. When Boyer’s unpopular government was toppled in 1843, the Rural Code was abandoned. The following five governments lasted only a matter of months. The military often was in control and did little for the peasants.

By the time the Geffrard Rural Code was written in 1864, most of the social protections for workers were gone, and the document was suffused with contempt for the agricultural worker. It was rarely applied, as the peasants continued their resistance to the central government, occupying government lands and growing their own crops to feed their extended families.

Not until the 1920s did Haitian workers have any real leverage against the raw power of the employer. The U.S. occupation from 1915 to 1934 accelerated the industrialization of the textile, oil, carbonated beverage, tobacco, and leather industries but did little if anything to improve working conditions. The relative political stability during this time created a favorable environment for labor organizing. In 1922, construction workers organized a union. Similar to other communist movements around the world, Jacques Roumain’s Fondation du Parti Communiste set up worker cells from 1934 to 1937.

Haiti was a founding member of the International Labor Organization (ILO) in 1919, the preeminent intergovernmental organization responsible for developing international labor standards and rights. The ILO’s impact on Haiti grew during the following years and it strongly encouraged Haiti to create a Department of Labor, which it did in 1924. Subsequent laws in 1926 and 1931 addressed vacation days, but the law of 1934 went considerably further, establishing the right to annual paid vacation and regulating the work week to eight hours work, eight hours sleep, and eight hours rest with a minimum daily eight-hour wage of two gourdes. The Haitian Government also established a fund for social assistance in 1939 and a fund for social insurance in 1943.

The government and employers failed to apply most of these social protections for workers. Labor experts estimate that more than one million gourdes were collected from workers for social insurance without a penny actually being spent for that purpose. By the end of 1943, tensions between workers and employers threat-
ened to destabilize the country. To defuse the mounting crisis, the Haitian government asked the ILO for technical assistance in preparing two studies that would form the basis of Haiti’s first social legislation. The first was to examine labor rights and make recommendations for worker protection legislation; the second was to facilitate the introduction of social insurance.

**The Birth of Modern Labor Activism in Haiti**

In 1946, labor issues advanced markedly. The Democratic populist movement gained power and applied pressure for worker rights. Haitian President Dumarsais Estimé, widely regarded as a friend to labor, created an office at the Department of Labor to support trade unionism and provide legal services for workers. In 1947, the Estimé government passed a series of laws to protect trade union rights and expand government oversight and inspection of the workplace.

During this period, with growing numbers of industrial workers and population shifts from rural areas to cities, workers began organizing and calling their first strikes. The first was in 1946 in the leather industry, followed by successive strikes at the HASCO sugar plant, the wharf, railroad, electrical plants, the Dauphine Plantation, and other places. The Fédération des Travailleurs Haïtiens, or Federation of Haitian Workers – strong in rail, electrical, printing, and agriculture – spearheaded most of the organizing. This was followed by the charismatic Daniel Fignolé’s Mouvement Ouvrier Paysan (MOP), or Worker and Peasant Movement, which tried to mobilize a general strike.

Workers won the right to assemble and organize, limits to the workday, a minimum wage, paid holidays and maternity leave, insurance for accidents at work, conciliation in labor disputes, and severance pay. The government hired labor inspectors and, in contrast to earlier days, applied many of the new laws. The reforms fell in place even as the conservative government worked to constrain, or in many cases co-opt, the labor movement through open repression and more subtly through establishment of its own “yellow” unions.

The government adopted the first law to regulate labor unions on February 22, 1948. Additional laws in 1949 and 1951 reorganized the Office of Labor and established the Haitian Institute for Social Insurance. In 1952, Haiti adopted a law on labor contracts. This was followed by a series of laws and decrees during the next eight years that reinforced the structure of government administration for labor, regulated paid time off, modified the law on work contracts, set conditions for the termination of contracts, and raised the standards for working conditions.

With the overthrow of President Estimé in 1950, and the subsequent rule by a military junta led by Colonel Paul Magloire, the labor movement again faced hard times. The Magloire government joined forces with the private sector and promoted the idea of common interest for workers and employers, an idea Haitian workers are hearing again today. Slogans such as “Let’s swear loyalty to the boss” were part of official celebrations. It soon became evident that neither the state nor employers had the worker’s interest at heart. More repression and arrests followed, particularly in the wake of the drivers’ union strike in 1954.

Despite François Duvalier’s ascension to power in 1957, the labor movement managed to consolidate and advance. Following a meeting between hospitality industry workers and some fourteen other unions, workers launched the Comité Intersyndical, a confederation of unions created to develop a unified strategy for worker rights. The confederation also was created out of desire to overthrow Duvalier and promote socialist ideals at a time when U.S. businesses were flocking to Haiti to mine the island’s riches, both labor and mineral. After
Duvalier banned the 1958 May Day demonstration and intensified repression, the Intersyndicale reorganized itself as the Union Intersyndicale d’Haïti (UIH). The general assembly of the UIH met in April, 1960 to reinforce internal democratic structures and prepare elections for its executive council. At that time its article denouncing the anti-labor policy of Duvalier was published in Auberge, the publication of the Union of Hotel Bar and Restaurant Workers. From 1960 until the UIH was dissolved in 1963, more than two dozen unions and federations joined. The unions pressed for improved working conditions and salaries, job security and respect for collective bargaining agreements, and they campaigned against arbitrary termination of workers. They supported the strike of the UNEH, the National Union of Haitian Students, and protested when Duvalier crushed the UNEH and dissolved all Haitian youth organizations. The UIH published a journal, opened a literacy center, and reached out, with modest success, for international labor solidarity. The UIH experienced many struggles, including the arrest of labor leaders, the sacking of union offices, and its eventual dissolution by the government on the pretext that it was a communist organization.

In September, 1961, Duvalier issued a new Labor Code, meant in part to harmonize prior laws. At the time, labor activists criticized the Code because they believed it heavily favored management and profits over workers and regarded labor as a commodity to be exploited. Duvalier’s Code was contrary to their belief that labor is one of the primary relationships between people and is the foundation upon which a society where all people are equal is built. The unions also faulted the new Code for maintaining semi-feudal relationships and lacking any requirement that landowners invest in the land. They denounced the system of de-moitié, or sharecropping. The unions also were angry that the Code only provided a minimum wage for salaried agricultural workers and ignored rural/domestic workers assigned work in the fields. The unions compared the working conditions of house workers to those of slavery, including the Code’s provisions allowing children as young as fourteen years old to do agricultural work. Not surprisingly, the Duvalier government rarely applied what meager protections it provided. The minimum wage was pathetically inadequate, especially given the “dizzying increase in the cost of food, rent, fabrics and clothing, books, medicines, etc.”

By the late 1960s, the progressive trade union movement effectively had been quashed by Duvalier’s regime and replaced by mobs carrying the name of “syndicat,” little more than political fronts for the dictator. Many union leaders and activists were arrested, tortured, killed, or forced into exile.

During Duvalier’s rule, offshore assembly, fueled primarily by U.S. investors, made significant inroads in Haiti and was touted by Duvalier and the U.S. government as “aid” to Haiti. In 1971, the Nixon Administration agreed to support the transition of power from François Duvalier to his son, Jean-Claude – from dictator to dictator – in return for Jean-Claude’s support for a new economic program guided by the United States. Haiti began a series of incentives to attract private investors, including the elimination of customs taxes, an extremely low minimum wage, and the suppression of labor unions. Ironically, the bargain was struck at a time when U.S. bilateral development assistance to Haiti had been cut off because of the terrible human rights record of the Duvalier regime.

In its simultaneous support for and denunciation of Duvalier, the U.S. government was playing out two sometimes divergent, sometimes convergent streams of U.S. policy. Since the 1960s (and, in a different way, even before that time), economic policy has steadily supported the interests of U.S. investors and exporters while political policy has been less consistent, careening between support for democracy and
collusion with the elites and the military. Whether political or economic, however, U.S. policies in Haiti often have had a disastrous impact on workers.

Under “President for Life” Jean-Claude Duvalier, U.S. corporations continued to set up assembly operations in special factory zones near Port-au-Prince. The brutal repression of workers continued, and Duvalier did not allow union organizing.10

In the late 1970s, Carter Administration human rights policies pressured Jean-Claude Duvalier to ease repressive measures, and Haitian workers began to reorganize unions. In 1980, a group of exiled union leaders in Venezuela, with access to a clandestine network of workers in Haiti, set up the Centrale Autonome des Travailleurs Haïtiens (CATH). After Duvalier cracked down again on labor, many leaders in Haiti went underground or into exile, but the union continued to fight the Duvalier government throughout the early 1980s.

Also in the early 1980s, two external factors – creating investment and marketing opportunities for U.S. business and ensuring the repayment of World Bank and IMF loans – converged in Haiti, as in the rest of the world, to advance the notion that export-led development was the only option for poor countries. During the past two decades, this dogma has been put into operation by successive rounds of World Bank and IMF loans and bilateral assistance that are conditioned on government downsizing, the maintenance of low wages, privatization, and adherence to flexible labor markets.

In 1983, the Caribbean Basin Initiative – a new U.S. law that tied duty-free entry benefits for Haitian exports to the rights of workers to organize and bargain – forced the Duvalier regime to assume a public posture of tolerance for labor activities. As part of this posture, in 1984, Duvalier created the Federation of Unionized Workers (FOS) with assistance from the AFL-CIO’s American Institute for Free Labor Development (AIFLD). FOS espoused a moderate approach to trade union action, emphasizing collective bargaining and cooperative relationships with employers over political demands.11 Its members were concentrated in the traditional production sector: state enterprises around Port-au-Prince and a sugar refinery in Les Cayes. This reportedly was the only labor federation allowed to function under the Jean-Claude Duvalier government.

Also in 1984, Duvalier established the current Labor Code, which, with some modifications, still is in use today. Duvalier’s Code consisted of revisions to the 1961 Labor Code and added seven new laws, including sections on government administration, health care for workers, regulation of night work, the abolition of forced labor, a decree on working conditions, and a law on the state bureaucracy.12 Labor activists considered these new laws to be, by and large, a step forward. The revised Labor Code also held that whenever the Labor Code did not offer a clear provision, the Haitian Civil Code was to apply – a condition that is still in place today. Still, it is important to note that virtually all of Haiti’s current codes were written well before the election of a democratic government and are in need of revision.

**Labor Law Reform after Duvalier**

With the exile of Jean-Claude Duvalier on February 7, 1986, trade unions flourished. The CATH surfaced in Haiti, and workers were organized in unions such as the CNEH or Confédération Nationale des Enseignants d’Haïti, FESTREDH, and others in the health, teaching, and postal sectors. Pressure to revise the Labor Code led to tripartite negotiations involving labor, employers, and a reluctant CNG or Conseil National de Gouvernement, led by General Henri Namphy. The government did not actively participate and employ-
ers remained inflexible. Labor, through the CATH, was increasingly moving to the frontlines of the popular democratic movement and energetically pressing its demands but little progress was made in these negotiations.

In 1987, the same year that the current Constitution of Haiti was adopted by popular vote, there was a large-scale and dramatic effort to reform the Labor Code. Legal experts, workers led by CATH, and employers all participated. Again, the Namphy government was reluctant to get involved and essentially became a bystander in the negotiations. Some thirty articles of the Labor Code reportedly were discussed at length.\(^\text{13}\)

At the time, there existed no recent history of labor-management negotiations, nor was there much trust between the parties.\(^\text{14}\) Labor was strong in its positions, even though it had only just begun to reassert itself after the repression of the Duvalier years. The CATH did not compromise, understandably given the ongoing government repression. The negotiations were tense and dramatic, and without a trusted interlocutor, seemed destined to fail – and fail they did. The CATH took its case to the streets and called a general strike on June 22, 1987. The strike was brutally repressed, the CATH office ransacked, and three of the leaders arrested and severely beaten.

While the strike itself was only modestly successful, the democratic movement rallied around the CATH, and it became a fertile time for labor organizing. The Secteur Syndical, an alliance of trade unions, prepared two different draft proposals for reform of the Labor Code. However, not until 1988 did a reform effort take place again, this time under the Leslie Manigat government. Once again, the climate was not favorable for Labor Code reform. Haitians had been betrayed at the polls in the election massacre only a few months earlier.\(^\text{15}\) The Manigat government, which had come to power in hastily organized and largely boycotted elections, had very little popular support. Reform negotiations were on hold as Manigat fell from power in a military coup led by General Prosper Avril.

In 1989, under the military dictatorship of General Avril, the different camps attempted another Labor Code negotiation. Again no intermediary was enlisted. As well, the ILO and the U.S. were promoting the tripartite model in Haiti, where representatives of government, employers, and workers sit down together to address common issues – an effort that labor and grassroots organizations viewed with much suspicion. The ILO effort evolved into the Tripartite Commission of Consultation and Arbitration.

The Avril government developed a set of sixty draft amendments to the Labor Code. Although they did not become law, the current government refers to these amendments to guide today’s reform efforts.\(^\text{16}\) A number of the changes would benefit workers:

- requiring Creole in all written documents rather than solely French;
- lifting some of the burden on employees who register complaints with the Directorate of Labor;
- making it easier to register new unions with the government;
- requiring employers to give improved notice of lockouts and termination of contracts;
- encouraging employers to negotiate collective contracts;
- removing some limits on the right to strike;
- decriminalizing strikes or lockouts;
- broadening worker eligibility for certain benefits;
- increasing certain maternity benefits;
• requiring installation of sanitary employee facilities; and
• adding some protection against sexual harassment.

A few changes would benefit both workers and employers:

• removing the ceiling on damages awarded for illegal or abusive breach of contract;
• clarifying the role of the Tripartite Commission of Consultation and Arbitration;
• forbidding the use of hearsay in reports of the Labor Inspectors; and
• significantly increasing fines for Code violations (although other sanctions against employers remain relatively slight).

The proposed 1989 amendments also change the philosophy of the Labor Code by removing references to the state as guarantor of all life consistent with the great principles of humanism, building a just society, etc. Instead, the amendments say Haiti must adapt to “the new facts of the national reality while taking into account the international norms of the ILO” – a phrase that many labor activists interpreted as a subtle but significant subordination of worker rights in the name of adapting to the global economy.

Around the time the government was drafting these amendments, unions continued to form. By 1988, workers organized several unions across sectors, including CATH, CATH/CLAT, CNEH, Konfedérayon Ouviye Travaye Ayisen (KOTA), Organisation Générale Indépendante des Travailleurs Haitiens (OGITH), and FOS. Two years later, Union Nationale des Normaliens Haïtiens (UNNOH), Centrale Générale des Travailleurs (CGT), Fédération des Travailleurs Haïtiens (FTH), and others were established.

With the landslide victory of Jean-Bertrand Aristide in the presidential election of 1990, labor had an advocate in the palace. Soon after taking office, Aristide proposed raising the minimum wage, which had been declining in value since 1970, to a combined cash and benefit total of US$0.75 per day. This policy was met by a not-so-subtle web of donor opposition. USAID, which had poured millions of dollars into the development of a low-wage export platform for U.S. businesses, warned that “wage systems should not be the forum for welfare and social programs.” USAID also funded several studies by U.S. consulting firms that concluded that the country’s “new wage bill” would “reduce the overall competitiveness of Haiti.” Haiti’s elite was not happy with the proposal either. In fact, Aristide’s attempt to raise the minimum wage has been cited as one of the precipitating factors in the 1991 coup against his administration.

After the coup, the military junta targeted progressive labor leaders for arrest, torture and murder, forcing many into exile. At the same time, the junta supported other newly formed unions with which it had close ties. Meanwhile, in 1992, the Dominican Republic used a committee of experts to reform its Labor Code and invited the ILO to compare the Dominican Republic’s social benefits, worker rights, and economic competitiveness with those of other countries in the region. Some Haitian labor experts, such as Jean Frédéric Sales, were impressed with the Dominican Republic’s approach, and they still believe it can be useful in the current round of reform efforts.

In 1993, during the period of illegal military rule, the Haitian Government prepared a series of recommendations for amendments to the Labor Code. Most union activity came to a standstill under the repression of the de facto military dictatorship.

In 1994, President Aristide returned to Haiti with the help of the U.S. Government. This support
carried a price, however. As part of the bargain, Aristide was under tremendous pressure to agree to a structural adjustment program conditioned, once again, on the maintenance of low wages (by, for example, revising the article of Haiti’s Constitution that requires indexing of wages), firing half of Haiti’s civil servants, and privatizing state enterprises. In 1995, the government decreed a new minimum wage of 36 gourdes per day, essentially putting into law a real-wage decrease for Haitian workers. Even so, this new wage was higher than the 29 gourdes per day wage proposed by the business-dominated and USAID-supported Tripartite Commission.

In 1997, the Haitian Government assigned the Tripartite Commission of Consultation and Arbitration the task of reform of the Labor Code. The Commission claims that it invited employer and worker organizations to participate in the Code’s revisions but that only one group responded. As a result, the labor law reform process was put on hold and did not resurface until October 1999 when the Haitian Government finally sponsored, with the Tripartite Commission, a Labor Code reform colloquium, inviting labor and business organizations not represented on the Commission. (See Chapter 6 for a discussion of current Labor Law Reform efforts.)

Today’s Union Movement

Unions, labor historians and other activists generally agree that the Haitian labor movement is facing enormous challenges to its very survival. These threats include:

- a dramatic decline in formal sector jobs with employers ready and able to take advantage of the tremendous number of job seekers;
- widespread frustration and discouragement at the overall slow pace of reforms;
- the government’s failure to enforce existing labor protections;
- the extremely high cost of living and scarcity of services;
- the persistence of a post-traumatic state resulting from the repression and destruction of resources during the coup d’état, as well as the continued impunity of those responsible, and the ongoing political and economic crisis;
- pressures and conditionalities attached to international assistance that discourage popular participation in decision making;
- tripartite as well as employer-union initiatives promoted as new cooperation but which provoke widespread popular mistrust;
- dramatic declines in union membership with the six largest labor confederations together making up less than 5 percent of the labor force; and
- a decline in the traditional militant spirit of the Haitian workers.

The democratic movement’s desire to replace the vestiges of dictatorship with a truly democratic government was largely expressed through the labor movement in the 1980s. Now the democratic movement finds its voice more with peasant movements, community groups, and NGOs, a reflection of the anti-labor organizing environment, rampant job loss, decline in union membership, and political changes in Haiti’s democratic movement.

Ironically, it may be the global economy’s assault on state enterprises that will ultimately revitalize trade union activism and unite it with the mainstream agenda of the democratic movement. Increased cooperation among public sector unions, aggressive negotiating by public sector workers, greater international solidarity, and Haitians’ growing interest in the fate of workers could all have a positive effect on the labor environment. As well, human rights groups pledge to continue flexing their growing political muscle in an effort
to help workers and influence upcoming labor law reforms. All are signs of hope for Haiti’s labor movement.

Endnotes

3. Latortue (1992), p. 44.
5. Ibid., p. 67.
6. Ibid., p. 49.
7. Unfortunately, their appeals were not widely heeded by the international trade union community. Only the Fédération Syndicale Mondiale (FSM) reportedly responded with a promise of support, though there were limited contacts with the Confédération Internationale des Syndicats Chrétiens (CISC).
10. Ibid.
12. To complement the Labor Code, the Haitian Civil Code applies wherever there is not a clear provision in the Labor Code. This also applies with respect to other laws and codes, including the penal code, the Rural Code, and the code on work at sea, to the extent that these laws have not been replaced or supplanted by other laws. The Constitution of 1987 contains provisions which have the clear intent of replacing archaic provisions in Haitian law. It is expected that the implementation of new legislation will be included as part of future efforts at code reform. The body of laws is further complemented by extensive administrative regulations. From interviews with Haitian labor law experts and government officials, September 1999.
13. A number of sets of detailed proposals for reform of the Labor Code, prepared by various actors in the labor movement over the past fifteen years, exist but are not widely available. In some cases, labor activists are reluctant to make these documents available, given the generalized demoralization of the movement, their lack of faith in the government’s political will to reform, and suspicion as to the agenda of international actors involved in current labor reform projects.
14. In 1987, the July 23 massacre at Jean Rabel, the November 29 election-day massacre, and the numerous cases of killings and arbitrary arrests contrasted with the popular-driven adoption of the Constitution on March 29.
15. On election day, November 27, 1987, army troops and TonTon Macoutes (members of a paramilitary force) roamed the streets of Port-au-Prince, shooting and killing voters as they waited in line at polling stations. The elections were called off, and the Conseil National de Gouvernement, the military-controlled de facto government, stayed in power.
18. Ibid.
19. Interview with Jean Frédéric Sales, September 1999.
21. Ibid.
22. Meeting with the Platform of Haitian Human Rights Organizations at which leaders highlighted the organization’s increasing interest in social and economic rights, including labor rights, August 18-19, 1999.
Chapter 3
Women in the Labor Force

To best understand the challenges facing women in the workforce, one must first understand the structure of the labor force as a whole and the rapid changes taking place today for all Haitian workers. Haitian labor can be divided more or less into three major groups: 1) the rural labor force, characterized predominantly by non-wage family labor; 2) agricultural wage labor by landless peasants and seasonal agricultural workers; and 3) the labor force in the urban informal and formal sectors. A more detailed analysis and estimate of employment and underemployment are difficult because the Haitian workplace is so diverse and the country has a high number of “own-account” and non-wage family labor.¹

What we do know is that during the past 25 years the labor force has changed considerably and is characterized today by the following trends:

• a significant increase in the services sector, which now represents approximately 47 percent of the GDP;²

• rapid urbanization without commensurate growth of an urban industrial base;

• stagnation of the formal sector, which, according to recent studies, provides only 23 percent of the employment in urban areas;³

• rapid development of the informal sector, which, recent estimates suggest, may employ more than 80 percent of the active population in Haiti;⁴

• high rates of underemployment and unemployment.⁵

Women in the Workplace

Compared to other Caribbean and Latin American countries, Haiti has one of the highest percentages of women in the workforce.⁶ It also has a high number of female-headed households in which women are primarily responsible for supporting their families. Little data, however, has been collected on women’s productive or reproductive work. This lack of focus on women has meant that their importance and contribution to the national economy and society continues to be underestimated or ignored.

According to 1982 census data, the most recent census data available, women represent 31 percent of the active population engaged in agricultural activities, 46 percent engaged in manufacturing and light industry, 48 percent in services, and 78 percent in commerce and tourism.⁷ The lack of more recent gender disaggregated data makes it difficult to project specific trends for women within the labor force. One can safely assume, however, that general labor trends in Haiti – the shift from agricultural production to other types of economic activities, the increase of commerce and trading activities, and the rapid growth of the informal sector – also apply to women’s participation in the labor force.

In this chapter, we provide a brief overview of six sectors where women are significantly represented in the workplace.⁸ The workplace is defined broadly here to include all arenas, both inside and outside the formal economy, in which women are actively engaged in economic activities. This includes those arenas where women’s work is “invisible” – that is, economic activity not covered by legal frameworks such as occurs as a natural extension of “traditional” work in the home.

Agriculture

Women play an important role in agricultural production, a role that varies from region to region. In some areas, women traditionally are largely responsible for home gardens and small livestock such as chickens and goats, while men assume responsibility for export commodities, wood plots, and large livestock.
In other regions, women actively participate in on-farm work. In fact, and perhaps as a result of the prevailing socioeconomic crisis and the increase in women-headed households, women increasingly have become involved in all aspects of agricultural production from preparing fields for planting, to seeding, harvesting and grain storage. Women’s participation in agriculture is mostly unpaid, and is considered almost an extension of their domestic responsibilities, which is one of the reasons why women’s participation in agriculture is under-reported.

Women in all regions have retained an important role in the marketing of agricultural products, being responsible for selling most farm products with the exception of livestock. Women also play a critical role in the distribution of agricultural products between rural communities and between rural and urban markets.

**Industry Manufacturing**

Today the majority of women working in the industrial or manufacturing sector are employed in the light assembly sector producing finished goods for export. Women make up more than 80 percent of the labor force in this sector.

According to a recent International Labor Organization (ILO) study, the workforce in the light assembly sector is composed primarily of women between the ages of twenty-five and thirty. Most of these women are heads of households and have two or three children for whom they are completely responsible. In general, they are a highly mobile group, moving from one factory to another hoping to find a better wage and working environment.

The majority of workers interviewed in the ILO report said that their wages could not cover living costs. A case study in the report showed that a factory worker had less than fifty gourdes left after paying for food and transportation to the workplace. As a result, most workers are engaged in other income-generating activities to make ends meet. The majority of women engage in some form of petty trading to supplement their incomes.

Some women receive remittances from family members abroad that help them cover the cost of housing and education for their children. Many workers participate in a *solde*, a rotating fund established by individuals who contribute a fixed sum on a biweekly or monthly basis. The capital in the *solde* is then distributed to each member on a rotating basis, enabling them to periodically cover certain expenses requiring significant cash outlays.

Employment in this sector is precarious. Factories often have temporary work stoppages, laying off workers for up to three months during a calendar year. The factories open and close often, as they are subject to the volatility of the market. Job security is low because of the abundance of job seekers.

Women working in the light assembly sector sometimes see their work as a way to earn enough to start their own businesses. For these women and many other workers in Haiti, the dream is to be self-employed, “own-account” workers. Various studies of factory, craft and domestic workers have shown this dream pervades the Haitian workforce, as it holds the promise of autonomy, improved income and greater dignity with independence.

**Domestic Service or House Workers**

Not surprisingly, women are the vast majority of domestic workers in Haiti. Domestic service is the third largest form of employment for women after agriculture and petty trading.

This sector is characterized by exceedingly low wages. Domestic workers, although covered by the Labor Code, are classified as “special workers” and do not benefit from the majority of legal provisions for workers in the commercial
and industrial sectors. The wages and working conditions are established by the employer without reference to any legal standard. Domestic work is precarious with high turnover and low severance benefits.

One of the biggest problems facing domestic workers is that they are obliged to “sleep in,” or have a permanent presence in the employer’s home. Consequently, women in domestic service, who are most often heads of households, must find child care. The extended kin networks of rural areas often do not exist in urban areas. Unless the woman has other adult female relatives in the household, she must find other solutions such as restaveks, or bonded child labor (see section in this chapter).

Domestic workers in Haiti have less “status” than other workers, and the majority of the women in this sector are looking for a way out. Many hope to make enough money to start up a business. An informal survey of petty traders found that a good number had been involved in domestic service until they had accumulated sufficient funds with which to purchase a small stock of goods to trade. Likewise, women in petty trading may temporarily return to domestic work to rebuild their capital.

Craft Production

Women are important in craft production in Haiti. Recent studies estimate that women constitute between 10 percent and 20 percent of this sector in Haiti, undoubtedly low figures because of the difficulty measuring women’s invisible participation in crafts that have been traditionally male-dominated. Women are mostly involved in needlework and certain types of fiber crafts, while men have dominated most other segments of the handicraft sector.

Craft production can be classified into two major categories: utilitarian crafts for household consumption and decorative crafts for a national or export market. Utilitarian crafts are often produced at the household level and are a potentially important source of non-agricultural revenue for rural families. Work in this sector continues to be non-wage family labor. Marketing takes place either in small regional markets or cooperatives supporting small artisans.

Decorative crafts have developed into a semi-industrial sector with production in households, ateliers, and factories. During the 1970s, this sector grew rapidly but went into recession in the 1980s. Today, it again constitutes an important source of employment and wage labor for urban artisans. Among the factories producing for export, handicrafts are the second most important sector after textiles.

For women working in craft-producing factories, working conditions are similar to those in other factories producing for export: low wages and little job security. Home workers, however, are in an even more vulnerable situation because their income is directly tied to the level of production of a given article, and often they do not receive any social benefits. Despite years of work, women in the handicraft sector are treated as jobbers or temporary workers without any of the benefits and legal protections given to permanent workers.

Petty Trade

In Haiti, petty trade, or “higgling” as it is called in the rest of the Caribbean, is dominated exclusively by women. According to the Comité Inter-Agences Femmes et Développement, it constitutes the second largest form of economic activity for women after agriculture. Given today’s high rate of inflation and cost of living, the number of women petty traders is certainly much higher and may even rival the figures for agriculture.

For many poor urban women, even those employed in wage-labor occupations, petty trade is both a complementary source of income and an integral part of survival. Trade also is considered a stepping stone to self-employment.
Trade activities run the gamut. Some poor women buy a cuvet, a small lot of goods that fit into a laundry basin. They may resell these goods on their front stoop, the sidewalk, or as they walk around poor neighborhoods in the city. Women engaged in multiple activities or permanent wage labor usually trade from their homes, selling clothing and basic commodities such as oil, sugar, matches, candles, sweets, or cooked food from the porch or front room. Some women traders specialize in particular commodities such as underwear or spices, while others change their goods to respond to their perception of clients’ needs.

The madam sara is a particular type of trader specializing in inter-island or inter-regional trade. Madam sara, or hucksters as they are called in the English-speaking Caribbean, purchase inexpensive manufactured goods in other countries and resell them in Haiti. Many also purchase Haitian goods, particularly crafts, and then resell them in other countries using profits to purchase manufactured goods. Such trade has flourished between Haiti and the Dominican Republic, Panama, Curacao, Puerto Rico, and Miami. One can emphatically state that the first steps toward regional integration were taken by women in this informal sector with no support from either the state or formal private sector entrepreneurs.

The specific constraints facing this sector will be addressed in the following chapter dealing with “own-account” or independent workers not covered by existing labor legislation.

Unpaid Child Labor: The “Restavek”

In Haiti, a certain amount of domestic work is carried out by unpaid child laborers, more than 75 percent of whom are girls. This practice is called restavek, which means “to stay with” in Creole. Restavek is the equivalent of bonded child labor, which is outlawed in many countries because it is considered a severe violation of human rights. Although this practice has existed for many years in various forms, the public and state have been slow to recognize the problem. The lack of recognition coupled with the difficulties inherent in researching this type of practice have made it virtually invisible until recently.

According to a 1998 study, approximately 300,000 children are living in bonded labor. The majority of these children are between the ages of eleven and fourteen, while approximately 20 percent are under the age of ten. About 80 percent of the children come from rural areas and from poor families with more than three children. The overwhelming majority of children are placed in bonded labor by their parents, more specifically by their mothers.

Many rural mothers who place their children as restaveks firmly believe they are acting in their children’s best interest and sending them to a “better life” in an urban area. Confronted by the difficulties of taking care of numerous children with ever decreasing financial resources and basic support services, mothers think their children will have a better chance with a family living in an urban area. Theoretically, the children will be fed, clothed, housed, and educated in return for domestic tasks. A mother often seeks a relative or extended family member to take on their child, or, more rarely, an unrelated person from the same region.

Various studies have confirmed that the overwhelming majority of children receive very little in exchange for services rendered, which can include all domestic tasks: cooking, cleaning, washing, fetching water, and taking care of other children in the household. Tasks start at daybreak and finish late in the evening with the extent and range of services demanded of restaveks often going far beyond what should be asked of any child. These children are given secondhand clothes, fed leftover or low-quality food, usually in lesser amounts than others in the household are fed, and are rarely
sent to school. For those restaveks who do go to school, household duties preclude effective time for schoolwork. Friendships with other children or simply time to play do not enter into the equation.

Restaveks also are often physically and psychologically abused. The children are often chastised and physically punished for perceived infractions or insubordination. They also can be sexually abused by the parents, older children and/or relatives of the employing family. Most often girls are the victims, but boys also are sexually abused. In most cases, restaveks are considered second-class citizens by the family and the community and subjected to harassment and humiliation. In Creole, the term restavek has become an insult for a person who is totally dependent, without character, and submissive.

Once children enter into bonded labor they rarely see their family of origin. The economic circumstances of the family of origin, the distance and costs of travel, and perhaps the unwillingness of employing families conspire to cut off these children. Restaveks are virtual hostages. Some try to run away and establish a new life in the streets, but, caught or free, the consequences are disastrous for the children.

What was mostly a middle-class practice now has become more common among the urban poor. According to organizations working on child labor issues, the Haitian middle class became increasingly reluctant to use child labor, in part due to international condemnation of the practice. Instead, the middle class is turning more and more to domestic paid labor for household help.

The increase in restaveks among the poor has been exacerbated by Haiti’s economic collapse. The poverty driving rural mothers to send their children to town as restaveks also is leading poor urban women to leave their households in hope of finding work. Maids, traders, and women working in factories and markets seek help taking care of their households. Very often the help is a young restavek.

Poor women cannot afford to pay their child laborer, so it thus becomes a vicious circle perpetuated and maintained by a society in crisis. The adult worker exploited by low wages in turn exploits a child in order to survive.

**Women and the Labor Movement**

In the late 1940s, with the rise of industrialization in Haiti, a number of trade unions were established in key manufacturing and agro-export industries. Although men dominated union leadership positions then, women had a significant presence in the nascent Haitian labor movement. For example, women working as coffee bean sorters formed a union called the Syndicat Indépendant des Trieuses de Café. This union played an important role both in negotiating better working conditions within the sector and in furthering the labor movement as a whole. Women also actively participated in other unions and in some cases assumed leadership positions.

Today, women represent almost 45 percent of the labor force in Haiti, yet they remain underrepresented in most trade unions and few hold leadership positions. Even unions in the light assembly sector, which is dominated by women, do not have women in leadership positions. The few exceptions include the national confederation of teachers, the union of nurses, and the postal workers union.

New developments in the labor movement such as worker associations and other types of formal and informal worker rights groups appear to be more gender-balanced and open to women in leadership positions. These organizations also tend to be less hierarchical than traditional unions with less distance between the leadership and the base. This
can help place more women into influential positions and more fully integrate their perspectives into the struggle for worker rights in Haiti.

Endnotes


2. Ibid.

3. Ibid.

4. Ibid.

5. Figures for the rate of unemployment and underemployment in Haiti vary considerably. The World Bank states that unemployment figures are 70 percent, while Montas (1998) claims that the combined rate of unemployment and underemployment is 50 percent.


8. Because of the lack of gender disaggregated data on women in the labor force, this section will draw on existing data where available and will be completed with information from sector specific studies, interviews with women’s support organizations, and with individual women. The information presented and the subsequent analysis will thus be indicative of trends but will not and cannot constitute a systematic analysis of women’s contribution to the labor force in Haiti.


18. Interviews with women’s organizations, September 1999.


20. Ibid.

21. Ibid.


Chapter 4
The Rural Code and Its Implications for Workers

Eighty percent of Haiti’s workers are engaged in agricultural labor, yet they are not covered under the Labor Code. Haiti does have a Rural Code. It is composed of nineteen specific laws that govern the administrative structure and functioning of rural areas, the use and management of natural resources, and the regulation of certain types of economic activities in rural areas. It was established in 1961 by François Duvalier, whose regime was characterized by intense political repression that prompted thousands of Haitians to seek refuge in other countries.

The Rural Code reflects this period in its underlying intent not only to regulate but also to control rural areas. Many people believe the Code itself is an instrument of repression, a perspective shared by national peasant organizations such as the Mouvman Peyizan Papay (MPP). By singling out the rural population for control, the Rural Code perpetuates and institutionalizes historical racial and class divisions in Haitian society: the urban versus the rural dweller, or, in other words, the French speaker versus the Creole speaker, the literate versus illiterate, the Catholic versus the voodoo practitioner. During the flowering of the union movement in the late 1980s, when new social alliances formed, unions reported sizable gains in farm worker organizing, and peasant organizations joined forces with labor unions in the larger fight for social and economic justice. Today, most peasant farmers and rural workers have organized themselves into cooperatives and other types of associations that address the economic, social, and political priorities of the rural poor.

The very existence of a Rural Code is called into question by the Haitian Constitution of 1987 and more recently by legislation dealing with decentralization. However, it is still important, in large part because of the way the Code structured rural society and exploited rural people during the past several decades. The following is a brief examination of the Code’s continuing implications for the rural population in general and workers in particular.

Administration of Rural Areas

The first two chapters of the Rural Code dealing with administrative issues clearly charged a communal leader with administration and representation of the power of the state. This leader was considered a “notable,” a term used in Haiti to designate traditional power holders in the economic and/or political arena. Most often the notable was a “large” landowner, speculator, and/or businessman selling basic commodities or services to rural communities.

The “notable” was often one of the key players in a system of pesze-souse (“squeeze and suck”), or systematic exploitation of poor rural families through such interrelated activities as leasing land, loaning money at exorbitant rates, selling goods and services, and playing “mediator” vis-à-vis political authorities and rural police. The Rural Code further concentrated power in the hands of this already dominant minority and as a result exacerbated the marginalization of the vast majority of the rural population. Although the formal power of the “notables” has diminished to the extent that the Rural Code is no longer applied, the structure of exploitation remains.

During the Duvalier years (1961-1986) the rural police force operating under the aegis of the Haitian army was another key player in pesze-souse. The most powerful figure in the rural police was the chef de section, or section chief, who derived his authority from the Rural Code and who was responsible for law enforcement and compliance with decisions of the central government and the local Administrative Council. In fact, the section chief basically was a law unto himself, controlling almost every social and economic activity in his jurisdiction.

In 1986, following the fall of the Duvalier regime, peasant organizations protested against section chiefs and denounced the rural police’s systematic acts of corruption and extortion. Their abuse of power has been documented in
numerous reports prepared by human rights organizations. In 1991, the Aristide government mandated the removal of the rural police and their section chiefs from the military and placed them under civilian control. It was not until the return of Aristide to Haiti in 1994, however, that the army actually was dismantled and a new civilian police force established.

Agricultural Workers

The Rural Code does not deal specifically with agricultural workers per se. The only direct mention in the Code is in Article 60, which requires any rural landowner with more than twenty hectares and employing permanent agricultural workers to provide the workers with access to land on which they can plant subsistence crops. The size of the plot must be determined by the number of workers, with exceptions for landowners who provide workers with subsidized food or who are already engaged in growing subsistence crops.

The Rural Code also recognizes the practice of sharecropping. Law XIV provides a basic legislative framework governing contracts and conventions between landowners and individuals renting agricultural land. The clauses of the contract and/or conventions are governed by the Civil Code, the Rural Code, and local customs and practices. Article 285 states that the landowner must cover half the costs of production unless the contract specifically stipulates that the sharecropper will cover all the costs in exchange for two-thirds of the harvest.

Strengths and Weaknesses of the Rural Code

The following briefly outlines the Rural Code’s inherent weakness and its strengths.

- With the exception of the sections dealing with administrative issues, the Code primarily is a technical document concerned with governing natural resource management and land use.

- The Code does not reflect the complexity of the various actors and transactions occurring in rural communities, including labor relations.

- Although the provisions dealing with natural resource management and land use are progressive in that they encourage the use of more environmentally sound technologies, these provisions are completely disconnected from the social, economic, and cultural realities facing small rural farmers.

- The provisions for technical assistance and support from the Ministries never materialized and thus further weakened the possibility of implementation of such technologies.

- The Code is not supported by any type of implementing legislation and thus it mostly has been applied in an arbitrary and uneven manner, often accompanied by extortion.

Questions Remaining

There remains today considerable confusion about the status of the Rural Code and a lack of consensus among key actors. The Minister of Justice says that the Rural Code is still valid and will continue to be applied until replaced by another legislative framework. According to peasant organizations such as the MPP, which used the Rural Code to mobilize peasants against the Duvalier regime, the Code is no longer valid and thus no longer an issue. In fact, according to Chavannes Jean-Baptiste, the head of MPP, his organization has not focused on the Rural Code since 1986 after the fall of the Duvalier regime.
Clearly, the debate will continue over the Rural Code’s provisions and its very future. The following is a list of questions that must be resolved in the debates to come:

- Is the existence of a Rural Code in violation of the Constitution because it is discriminatory in seeking to legislate a specific category of people within the overall population, while ignoring their rights?

- Can the broader legislative frameworks that govern society as a whole also adequately govern rural areas, with their particular needs and challenges?

- If the Rural Code is abolished, will other legislation be reviewed and revised to fully integrate rural dwellers and ensure them all the rights granted by the Haitian Constitution?

- For the purposes of this study, perhaps the most important question is, given that most of Haiti’s workforce is concentrated in agriculture, how will the particular needs, priorities and situations of peasants and rural workers be integrated into any labor law reform?

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**Endnotes**

1. Interviews with peasant movement leaders and academics, September 1999.

2. Interviews with labor union representatives, September 1999.

3. Interviews with peasant movement representatives, September 1999.


8. Interview with Minister Camille Leblanc, September 1999.

9. Interview with Chavannes Jean-Baptiste, September 1999.
Chapter 5
The Labor Code

The Labor Code in force in Haiti today includes introductory articles prohibiting discrimination in the workplace (Article 3), granting workers the right to organize (Article 7), encouraging them to engage in collective bargaining (Article 5), and finally, stating that work, as an integral part of society and a social good, must not be exploitative (Article 8).

Despite this pro-worker language, many organizations inside and outside the Haitian labor movement believe that the Labor Code has an implicit pro-employer bias. Further, they believe serious and widespread problems exist with implementation of the pro-worker aspects of the law (see Chapter 6).

It is interesting to note that in 2000, Minister of Justice Camille Leblanc shared these concerns. In an interview for this report, he said, “The Labor Code is based on the concept of free choice and the presumed equality between the employer and the employee. It is apparent, however, that they are not in a condition of equality. ... The legal framework is clearly biased in favor of private investment.”

The following examination of Haiti’s Labor Code and related laws focuses on those elements that directly and indirectly impact worker rights.

Title I: Contracts

The Labor Code clearly defines the nature of the contractual obligations that govern the relationship between employer and employee. The Code states that there are two types of contracts: individual contracts, which govern the relationship between an employer and one employee, and collective contracts, which govern the relationship between an employer and a group of employees. Further, the Code makes specific provisions for verbal contracts, which are considered binding when made in the presence of two or more witnesses. Both written and verbal contracts clearly identify each signatory and document each signatory’s respective rights and obligations. According to the Labor Code, after three months of permanent employment an employee is considered a contractual worker and falls under the provisions of the law.

According to workers and worker associations, certain chronic violations of the law are apparent in almost all sectors of the economy, including the industrial sector, which is the primary point of reference for the Labor Code.

Individual Contracts

Worker organizations claim that some employers use the three-month cutoff point for employees to avoid giving full benefits and compensation. In some cases, employees are fired and then rehired, thus beginning a new three-month cycle. This practice, however, appears to be less and less prevalent, with employers using other strategies such as “jobbers.” Jobbers, or temporary workers, allow employers to maintain a flexible workforce and avoid paying benefits and compensation.

Despite the provisions in the Labor Code, many workers do not have contracts. Even within the industrial sector, some workers are employed without a written contract and under the best of circumstances fall under the aegis of an unwritten contract. Reports document workers who have been employed for more than two years without any form of contractual agreement. As with jobbers, this enables employers to avoid paying social security fees and gives them greater latitude with severance pay laws.

One of the consequences of not having a written contract is that many workers do not know the legal name of the factory in which they work, nor do they know the name of the factory owner. Most often the enterprise is known only by the first name of the employer. For example, a woman factory worker will say that
she works for “Allan.” Problems arise when workers cannot properly identify their place of employment when defending their rights before the Ministry of Social Affairs and Labor or the labor courts. The inability to provide this information also handicaps efforts to track legal responsibility when an owner closes a factory and opens another under a different name.

**Collective Contracts**

Collective worker contracts, which the Labor Code encourages, are in fact no longer operative in the industrial sector. In the 1980s, certain factories were governed by collective contracts that were the result of negotiations between management and union representatives. In general, these contracts provided workers with better wages and benefits. Collective bargaining is important because it can provide better worker benefits and create a legal precedent for other factories employing workers in the same sector. Unfortunately, no precedent has ever been invoked even though such a strategy could be potentially important for establishing jurisprudence with regard to compensation and working conditions.

Labor activists attribute today’s lack of collective bargaining to several factors: the private sector’s opposition to union organizing, the related weakening of the labor movement and finally, high unemployment, which provides the private sector with a large pool of job seekers.

One can find examples of collective contracts in other sectors such as the electric company and the National Port Authority, both of which are state-owned enterprises targeted for privatization.

**Apprenticeships**

The Labor Code also refers to apprentices, defined as workers who sign on with a particular employer to learn a trade. This practice appears to be limited primarily to urban micro-enterprises and certain segments of the informal sector such as handicrafts, woodworking and shoemaking. Some reports claim that apprenticeship is not subject to oversight by the Minister of Social Affairs and Labor.

**Rights and Obligations**

Contracts also are supposed to stipulate the rights and obligations of each party. However, even a cursory reading of Articles 30 and 31 makes it apparent that the obligations of each party are not equitable. For example, a worker must conform to both the Labor Code and the internal regulations of the workplace. The employer must only establish and make known the internal regulations governing the workplace.

The vast majority of workers, particularly those not belonging to unions or other types of worker associations, do not have access to the Labor Code and therefore do not know their rights and obligations. Despite the fact that the 1987 Constitution calls for all official documents to be published in Creole and French, to date there is no official Creole translation of the Labor Code. The only Creole translation, which is widely available, was done by Anten Ouvriye, a worker rights association. Moreover, employees often are not provided with the internal regulations of their workplace, and, not surprisingly, when these regulations are published, they are almost always in French.

Article 51 prohibits employers from terminating contracts on the basis of racial, religious or gender discrimination or affiliation with any type of organization. This article also prohibits termination of contracts on the basis of opinions expressed by the worker or their participation in union activities.

Despite the clear language of this article, workers continue to be fired for raising issues with regard to their rights and working conditions and for participation in union activities.
In the factory where I used to work, the doors leading to the outside yard were always locked at 2:30 in the afternoon to keep workers from going outside to use the facilities before the end of the workday. One day I had to go to the bathroom badly and asked the supervisors to please have the doors opened so I could go to the restroom. They refused to do so. Finally, I was obliged to raise my skirts to urinate in an empty plastic juice bottle. The supervisors were furious and called the manager who proceeded to fire me on the spot. Other workers began to protest but to no avail. A male worker decided to also urinate in a plastic bottle and declared that he should be fired as well. Despite his gesture, I was fired that afternoon, but the man was not. Needless to say, I am a member of a union.13

A group of women workers published a tract denouncing poor working conditions that were damaging to their health and asking that these conditions be changed. They [the management] fired everyone whom they suspected might have written this tract. I don’t need to tell you how difficult it is to create a union under such circumstances.14

Employers, of course, do not cite these reasons for the termination of contracts. This concern has been raised by worker organizations in Haiti and documented by international delegations from both unions and the International Labor Organization.15 In spite of repeated and systematic infractions of this article, neither the government nor the private sector has taken concrete steps to enforce the law.

**Title II: Working Conditions**

This analysis of worker rights under Title II will be limited to two aspects: length of the workday and salaries and compensation.

**Length of the Workday**

The Labor Code specifies that the normal workday should not exceed eight hours per day and 48 hours per week. Certain variations are allowed according to the classification of the enterprise – agricultural, industrial, or commercial – and procedures are defined whereby an employer, under extraordinary circumstances, may be authorized to extend the workday. The law stipulates that work accomplished outside the hours of the normal workday should receive extra compensation.

The Code also specifies that if a worker works six days per week and furnishes 48 hours of work, the employer is obliged to pay time and a half for work on Saturday and also pay the seventh day. If a worker works twelve full days in a two-week period, the worker is entitled to be paid as if he or she had worked fourteen full days.

The record of implementation is at best uneven. Some employers do pay overtime and increase the hourly wage by 50 percent for the number of hours worked beyond the normal workday. Others do not comply with this provision.16 According to interviews with workers and worker support organizations,17 employers use a number of strategies to limit or avoid the number of supplementary hours paid to workers.

For example, some factories do not ask their regular employees to come to work on Saturdays, eliminating the need to pay the seventh day. Instead, they call on jobbers to ensure weekend production. Another strategy is to require workers to work overtime during the work week, even though the employer might have to pay overtime.18

Factory owners often ask us to do overtime so that they do not have to have us work on Saturdays, because when we work on Saturday they are supposed to pay us for Sunday as well. ... Some have us work nine hours rather than eight hours, but they don’t pay us for overtime. Even when they pay us for overtime, the little money we get does not allow us to do anything. And if we don’t want to work overtime, we are forced to.19
A new development in Haiti’s industrial sector also allows employers to avoid paying overtime. In 1999, some employers introduced production groups, or “modules,” into the assembly sector, particularly the garment factories. A module is a group of workers organized into a production team that has all the skills and materials to produce finished pieces. The module is given a daily quota of finished pieces and incentives for achieving the quota. Often, the module must work longer than a normal working day to achieve the set goal. Employers avoid daily wages and overtime and instead calculate salaries based on the production quota.

In theory, the module system could allow workers to earn more than the sector’s minimum wage. According to workers, however, what really happens is that production goes up, but wages and incentives do not keep pace, especially when workers cannot achieve unrealistic quotas. The employer almost always ends up getting more for less.

This year, the factory where I used to work started to do modules in certain sections. After working on a module for several weeks, I decided that I could not do it any more. We were promised one hundred gourdes if we reached our quota. But it is almost impossible to reach the quota, and when you don’t reach it, even if you are only one or two dozen short, you only get a small fraction of the price. But even to do this, you have to work all day long virtually without stopping. Even if you have to go to the bathroom, the other workers on the line don’t want you to go because you will slow down production. We barely have time to eat, and most often we stay until late afternoon or early evening to try to make the quota. Everyone is under pressure and everyone is angry. Sometimes I think that this is something which the owners have come up with to make it more difficult to organize. How do you sit down and talk with someone who has been on your case all day. Is this any way to work?

Representatives of the employer organization ADIH confirmed that modules are a new trend in the light assembly sector. According to one manager, the introduction of the module system builds “team spirit.” A team is a self-regulatory mechanism whereby each member pressures others to perform. It might have worked in an environment where unionization was strong. The module system could have led to worker empowerment and ownership in a process. Instead, it has become a tool to shift “policing” functions to workers, unburden management, undermine worker solidarity, and more efficiently exploit workers.

A 1998 ILO-sponsored study raised similar concerns about the module production strategy. The report says this strategy “makes workers believe that the quota established is within reach of the average worker when in fact it requires an exceptional physical effort which will have a negative impact on the health of workers.”

Salaries and Compensation

Article 136 states that all workers, be they manual or intellectual, are entitled to a minimum wage established by the state through law or decree. Article 137 states that the minimum wage is determined by the Superior Council on Wages under the aegis of the Ministry of Social Affairs and Labor. Further, it states that the minimum wage shall be periodically adjusted to the cost of living whenever the rate of inflation, as established by the Haitian Statistical Institute (IHSI), is higher than 10 percent in a fiscal year, October 1 to September 30.

The 1984 decree on minimum wages established a minimum wage of fifteen gourdes per day in the urban metropolitan area (Port-au-Prince). Despite rampant inflation and demands from workers to raise the minimum wage, not until 1995 did a presidential decree increase the minimum wage in Haiti to thirty-
six gourdes per day. Because of inflation and devaluation, however, the real wage actually has decreased. In October 2002 it was worth less than $1 a day.

The industrial sector, which had proposed a far lower increase, responded with several different strategies to avoid the new wage. One strategy decreases the number of workers in the factory and increases production quotas, thereby hoping to “even” things out in the long run. Five people do what ten people did before. Another strategy simply increases production quotas to a point where workers cannot reasonably achieve the new minimum wage.

Workers sometimes refer to two types of wage regimes: Kouray blan and Kouray pa’m. Loosely translated, this refers to working for the boss, or more specifically the foreigner or white man, and working for one’s own benefit.

When a worker is working for Kouray blan, the boss is supposed to pay 36 gourdes per day. When working for Kouray pa’m, the worker is paid on the basis of what is produced. Which means that if she produces an amount of work which is worth more than 36 gourdes per day, she is paid more. But she also may not be able to produce enough work to make 36 gourdes, she may only be able to produce enough to be paid 20 gourdes or even 10 gourdes per day. So when the law says that a worker cannot be paid less than 36 gourdes per day, well it is not respected. Because the boss establishes all by himself the quota.

According to information gathered by the Center for the Promotion of Women Factory Workers (CPFO), a woman factory worker making thirty-six gourdes per day is left with less than twenty gourdes per day after paying for transportation to and from work and buying something to eat during the workday. The remaining twenty gourdes must pay for housing, water, food for her family, children’s education and medical costs. This is a virtual impossibility given the rising cost of living. Workers today are being forced into a spiral of debt with little hope of getting out.

By some accounts, it appears that indexing wages and production quotas is arbitrary and up to individual employers, who are thus free to establish production quotas based on what they feel are reasonable levels of output for their workers. Some ADIH representatives said they conducted studies to establish production quotas and index wages. But even these measures are conducted at the employer’s discretion with no external oversight and obviously with a strong bias toward management interests.

The fight to index wages to productivity in a manner that respects worker rights is one of the major issues in the debate over labor reform and worker protections in Haiti. This will be a difficult battle because worker rights will always get short shrift in an environment characterized by endemic underemployment and unemployment, low levels of unionization, and the chronic absence of rule of law. The disastrous economy is forcing workers themselves to focus on revenue rather than exploitation.

**Title III: Labor Conflicts**

The Labor Code contains a number of articles that deal with the management of labor conflicts, ranging from mediation and arbitration to collective action. The Code also recognizes the right of both union and non-union workers to strike, distinguishing between three types of strikes, each governed by rules regulating the duration and type of activity in which striking workers can engage. The Code also recognizes the right of employers to use a lockout.

The Code was modified in 1986 by the provisional military government headed by General
Henri Namphy. The private sector was concerned that the many strikes and rampant union activity of the time would hurt investment in Haiti. The Code’s preamble states that the protection of capital and labor are preconditions for social peace and economic development. Further modifications to the Labor Code limit and regulate the use of strikes as a negotiating strategy by unions and establish preconditions necessary for a legal strike, such as requiring unions to give prior warning. The modifications also define sanctions if authorities perceive the strike as disturbing public order. Regulations concerning lockouts, which rarely have been used in Haiti, were largely left unchanged.

The ILO repeatedly has asked Haiti to amend or delete certain restrictions on the right to strike that are contrary to ILO conventions. Haiti has promised to take action but has made no progress for the past several years.

Arbitration and Mediation

The Code stipulates that parties in a labor conflict must try to resolve differences through a process of mediation, conciliation and arbitration under the direction of the Ministry of Social Affairs and Labor. The Directorate of Labor is directly responsible for facilitating this process in the case of individual claims. If mediation does not resolve the issue, the case is transferred to the Labor Court for review and legal action.

In the event of collective claims, defined not as class action suits but rather as a compilation of individual claims, the conflict is first referred to the Directorate of Labor for conciliation. If this does not lead to agreement between the parties, the claim is referred to an Arbitration Committee composed of three persons: a representative from the Directorate of Labor, a union or worker representative, and an employer representative. If the parties still cannot reach an agreement or it is contested by one of the parties, a claim may be presented before the Tripartite Commission of Consultation and Arbitration. The Commission’s decisions are binding and may not be appealed.

Before 1986, arbitration was the responsibility of the National Supreme Arbitration Council. Subsequent revisions of the Labor Code transferred this responsibility to the Tripartite Commission, composed of representatives of the public and private sectors and unions. The Commission’s mandate covers resolution of labor conflicts, monitoring working conditions, Labor Code reform, and other related activities.

Worker organizations have raised concerns regarding the Tripartite Commission’s lack of activity in labor dispute resolution. Aside from two or three disputes in the first two years after the Commission was created, cases that labor representatives say were abandoned rather than resolved, the Commission has not been involved in labor conflict resolution. This was confirmed by both a report prepared by the Commission and in discussions with its members. According to the current Commission, the one case brought to its attention concerned a public sector employee and therefore was outside its jurisdiction. The Commission claims a lack of clarity in the legislation that replaced the National Supreme Arbitration Council with the Commission (see Chapter 6 for more information about the Tripartite Commission).

A further concern was raised by Jean Frédéric Sales, a labor lawyer, who pointed out that the arbitration mandate given to the Tripartite Commission created a new domain of state jurisdiction outside the judiciary system. Sales thus raised concerns about the potential conflict between the rule of law and the role of the judiciary in labor conflict resolution.

It is apparent that the Commission has not played a proactive role in creating a legal and
regulatory climate that encourages workers to come forward with claims and that facilitates an effective process of conciliation, mediation and arbitration.

**Strikes and Lockouts**

The Labor Code stipulates that each party in a conflict has the right to call a strike or a lockout. However, for it to be a legal action in both cases, the parties are obliged first to go through the process of mediation and arbitration. The decree of 1986, which modified this chapter of the Labor Code, further requires that each party provide 48 hours’ notice before either calling a strike or lockout and that the strike can last for only one day.37

The Code defines three kinds of strikes by the type of action allowed and the duration. Any strike that goes beyond these three kinds is considered illegal, and workers, after three days of absence, may be fired for breach of contract.

Labor organizations have noted that the Labor Code creates disincentives for striking – particularly, the obligation to provide two days notice prior to striking.38 This provision provides employers with time to organize a “response.” Prior to the *coup d’état*, the mandatory warning clause caused some *grèves sauvages*, or undeclared or wildcat strikes. Since 1994, worker organizations and unions have called few if any strikes. A leading labor specialist and lawyer who has participated in many of the previous exercises of Labor Code reform stated that the 1986 modifications to the Labor Code make it almost impossible for unions to organize legal strikes.39

One factory owner and member of ADIH recognized the right of workers to strike, but said it was necessary to organize strike calls, or other forms of worker pressure, in such a manner that they do not disrupt production.40 This is a double-edged sword: While this approach ostensibly recognizes the right to strike, it severely limits the right in order to minimize inconvenience for management and make striking less effective for workers.

Strikes of any type are considered illegal in public service enterprises. Labor conflicts in the public service sector must be resolved exclusively through conciliation and arbitration. Should a strike action be called in a public service enterprise, the Code provides the state with the authority to intervene and forcibly reopen the enterprise.

Despite the Labor Code’s prohibitions against public sector strikes and unions, employees in this sector have in fact organized unions and called strikes. The government has had mixed responses to strikes among civil service employees. In some cases, the strikes are tolerated without direct reprisals, as with the recent teachers’ strikes. On other occasions, the reprisals have been severe and violent. In February, 1999, the state called in police to suppress a demonstration called by the electric company union. The police’s abusive use of force led to the death of two bystanders and the wounding of several strikers.41 In October, 2001, according to the ICFTU, security guards at the National Port Authority disrupted the general assembly of the employees trade union (SEAPN) held on the eve of an announced work stoppage aimed at demanding wage increases that management had been promising for over four months. The members of the Union’s Executive Committee received death threats and some were forced into hiding.

Although the Labor Code recognizes the right of employers to use a lockout, this has never happened in Haiti. According to worker support organizations, employers have other legal and more flexible weapons with which they can achieve the same end, including the temporary cessation of activities. According to labor activists, employers can easily create an
artificial scarcity of raw materials or a drop in production levels by channeling contracts temporarily to other factories. Under the Code, an employer may temporarily shut down his or her enterprise and suspend workers for two to three months. This way employers can pre-empt or break a strike, suspend workers without pay, and start up operations after a reasonable period of time.

Title IV: Unions

The Labor Code guarantees freedom of association for workers and their right to organize in defense of their interests. The union registration process, while not cumbersome, does require that employers be advised once a union is formed and provided with the name of at least one union representative. Further, the Code says that the state may not intervene in the internal affairs of unions and may not dissolve any legally recognized union. The Code, however, does not require employers to meet or negotiate with union representatives.

For unions and worker associations, this article was an important gain for the growth and consolidation of the labor movement. But there are shortcomings. Currently, the most pressing issue is implementation, as employers often violate the union-organizing protections in the Code. Numerous testimonies from workers and reports by international labor and human rights organizations make this patently clear.

Employers use two main strategies to discourage union activity: arbitrary dismissal of unionized employees and providing incentives or benefits to non-union labor.

In the first strategy, employers rarely, if ever, terminate contracts for union activities. Instead, they cite other reasons such as insubordination and low productivity. This, of course, makes it much harder to monitor and punish this type of violation. According to workers, it is clear that unions are not encouraged on the factory floor, and should they choose to join a union, they run the risk of losing their jobs.

In the second strategy, an employer focuses on incentives for non-union labor. In 1986, the management of a large factory employing several hundred workers provided non-union labor with a number of benefits, including televisions and food. This clearly is an infraction of the Labor Code, the Haitian Constitution, and international labor conventions.

In light of employers’ hostility toward unions, some workers have decided to form clandestine associations to avoid registration and exposing union leaders to reprisals from employers. Some labor federations will no longer help assembly sector workers form legally recognized unions for fear of endangering their jobs.

What one union member called “union phobia” has deeply affected workers within the assembly sector. In fact, women participating in activities of CPFO feel they must do so in an almost clandestine manner. This environment has weakened unions and, in the final analysis, infringed on the right of workers to organize in defense of their interests.

Title V: Workers Governed by Specific Laws

Title V of the Labor Code contains special provisions for certain categories of workers, making it clear that not all workers are equal before the law, particularly domestic workers, including children working as domestics, home workers, and agricultural workers. The Labor Code thus codifies the stratification and mechanisms of exclusion within Haitian society. These provisions contradict the Labor Code’s own prescriptions against discrimination and directly contradict the Haitian Constitution, which stands against all forms of discrimination.
House Workers

The first category of "special" workers is house workers, also called domestic workers. House workers are loosely defined as people who work in private homes and non-profit organizations, the vast majority of whom are women, as well as those who provide services that include cooking, cleaning, gardening, and other types of maintenance work. According to Article 255, unless another agreement is made, house workers generally are entitled to wages, housing and adequate food. Article 257 says house workers are not covered by the general provisions of the Code and thus employers are not obliged to offer wages and benefits accorded to other workers.

In 1998, a coalition of women’s organizations advocated changing the Labor Code statute for house workers. The organizations formed an ad hoc negotiating committee and prepared a position paper that was presented before the parliamentary Health and Women’s Affairs Committee.47

Domestic workers are treated as non-persons. In deciding to raise this issue, the Committee wanted to draw attention to the importance and social value of domestic work. Women generally carry out this unpaid work which benefits society. While it is true that Haitian society has not yet been able to provide adequate responses to the problems posed by the reproduction and care of children within the society, the issue concerns the society as a whole. This situation must be addressed through equitable legislation. Through this action, the Committee would like to give this work the recognition and the visibility which it deserves.48

The committee of women’s organizations began a long process of negotiation with Parliament about proposed legislation and finally arrived at legislative changes to extend coverage to house workers. The new legislation would provide one day off per week, annual leave, and an annual bonus, in conformity with the provisions of the Constitution and the Labor Code. The proposed legislation was presented to the Senate and adopted. However, the ensuing political crisis and dissolution of Parliament in January, 1999, temporarily halted this process.

Despite the gains with Parliament, the committee of women’s organizations noted certain limitations in the proposed legislation:

- paternalism still lurks in the proposed legislation because domestic worker rights remain subject to the whims and/or the financial situation of the employer;49 and
- the state is still shrugging off its responsibility with regard to health insurance and maternity leave and effective mechanisms for implementation that protect the rights of domestic workers. This situation, however, concerns almost all Haitian workers.50

Despite these limitations, the initiative of these women’s organizations is an important contribution to the advancement of worker rights and to the identification of mechanisms and strategies for civil society participation in decision-making processes. The latter will be explored more fully in a following section.

Women Workers

Chapter 7 of the Labor Code contains provisions applying to all women workers, with the exception of women domestic workers. This chapter states that women are entitled to equal pay for equal work.

In fact, worker organizations have amply documented that women often do not receive equal pay for equal work.51 Wage disparities are most apparent when women rise to a supervisory position, which itself is quite rare. The composition of the labor force in the industrial sector tends to run along gender lines; women tend
to be floor workers, working for a piece rate or a production quota, while men comprise the majority of supervisors and make a daily fixed wage. The few women supervisors are often paid subpar wages not tied to the type of work performed or the seniority of the employee.\textsuperscript{52}

The Code has a certain number of provisions dealing with pregnancy and maternity leave. Article 330 makes it illegal to discriminate against pregnant women, whatever their marital status, and to fire a woman for being pregnant, unless a special dispensation is provided by the Directorate of Labor. Article 329 says that pregnant women are entitled to an additional hour of rest per day. Employees are eligible for twelve weeks of maternity leave paid by OFATMA, a state agency. If OFATMA is not operational and unable to provide the coverage, the employer is required to provide six weeks of paid maternity leave. In the event of a miscarriage or the birth of a stillborn child, the woman is entitled to two to four weeks of paid leave. After the birth of a child, a women is entitled to one hour per day, with pay, to breast-feed her child.

Workers have reported violations of Article 330: pregnant women have been dismissed from their jobs with no apparent motive other than that they were pregnant.\textsuperscript{53}

With regard to maternity leave, OFATMA remains inoperative, thus the obligation falls on employers to provide six weeks of paid maternity leave. Some employers comply, while others do not. Some employers will not pay for the full six weeks. Others do not pay at all but will hold the job open for the six-week period.

Some organizations working with women factory workers have noted that the Code’s provisions discriminate against women who either have had a miscarriage or a stillborn child. They believe that the Code penalizes women for not bringing a pregnancy to term – as if the protections for women apply only if a woman “succeeds” in her reproductive functions.\textsuperscript{55}

Given the distance between the workplace and home, it is logical to assume that the Code’s breast-feeding provision suggests that employers must provide day-care centers so women can breast-feed their babies. Needless to say, employers have not created such facilities, and women have not been able to benefit from the provision. In any case, the poor state of public transportation would seriously impede women wanting to bring small babies to work.\textsuperscript{56}

One of the Labor Code’s major shortfalls is that it does not deal with sexual harassment in the workplace. According to a report produced by the National Labor Committee and a recent ILO-sponsored study, sexual harassment does exist in the workplace.\textsuperscript{57} Women have had to provide sexual favors to gain and maintain employment and to benefit from services in the workplace. An example cited in both studies reported women being forced to provide sexual favors to factory maintenance workers in order to have their machines repaired quickly.

**Children Working as Domestics**

The Code seeks to regulate child labor in homes rather than putting an end to what is, in effect, Haiti’s new form of slavery or bonded labor (see Chapter 3). The Code establishes a minimum age for children working as domestics, eligibility requirements for the “employing” family, registration requirements
and mechanisms for monitoring. However, the government has not implemented even this weak attempt to protect child workers.

The plight of the child worker has been documented in various reports and been denounced both nationally and internationally. Nevertheless, the problem likely is growing in Haiti given the worsening socio-economic situation of the country’s poor. Organizations working on the issue of child labor say that until the economic situation of rural families changes, restaveks, or child laborers, will continue to exist. Public and popular education programs can help educate rural families about what really happens when they place their child with an urban family, and perhaps decrease the number of children sent away. But such programs do not provide these families with an economic alternative.

Peasant organizations such as the Mouvement Peyizan Papay (MPP) have been creating economic alternatives for small peasant families. MPP has helped members develop agricultural production as well as non-farm economic activities such as beekeeping, brick-and-tile making, food processing, craft production, etc. The economic impact of these activities and other types of support services has significantly changed the standard of living of MPP members.

MPP representatives say that placing children in urban homes as restaveks, once a widespread practice in the Central Plateau, has now become the exception for members of the organization. MPP credits the economic progress of rural families affiliated with MPP for this change. Increased employment opportunities, higher revenues, access to certain types of basic services, and solidarity within the association create a safety net and economic alternatives within rural communities and thus decrease the need to place children with families in Port-au-Prince.

**Home Workers**

The home worker is someone providing services to an industrial or commercial enterprise on a cottage industry basis. Employers using home workers are obliged to comply with all of the provisions in Titles I, II, and III of the Code with regard to contracts, wages, and benefits.

In reality, however, the home worker often does not benefit from any of these provisions. For the most part, the home worker is treated similarly to a jobber or other type of non-documented or illegal worker. The home worker does not have any job security and receives neither bonuses nor paid leave. The employer must pay for the piecework rendered and nothing more. The rate for piecework may or may not be equivalent to payment for similar work performed in a factory or other workplace.

This type of work is common in the handicraft industry and certain types of needlework industries such as beading. Although changes in the industrial and assembly sectors have led to a comparative decrease of these businesses, this type of work continues in small workshops throughout Port-au-Prince.

**Agricultural Workers**

The Labor Code defines an agricultural worker as any person involved in wage labor in either agricultural production or animal husbandry. Other activities linked to agricultural production, such as agro-processing or marketing, are considered industrial or commercial enterprises and are not covered by the Code.

Article 357 stipulates that if a head of household, which the state presumes to be a man, is employed as an agricultural worker, other members of his family who may participate in the work are not considered workers unless the employer provides his consent. Individual contracts in this sector may be either verbal or written, but all collective contracts must be written.
Article 379 explicitly states that the daily wage earned by an agricultural worker must be at least the equivalent of the minimum wage established for rural areas. Article 380 recognizes that some of the wage compensation can be paid in kind, but no more than half. Article 381 states that agricultural workers are covered by the same provisions as other workers with regard to contracts, working conditions, and labor conflicts. If an employer has more than twenty workers, the law requires the employer to provide free medical care to employees and their families.

The intent of the article dealing with agricultural workers is to regulate both temporary and permanent workers in large-scale agricultural enterprises, even though this type of agricultural business is not widespread. Overall, most agriculture in Haiti is subsistence-oriented and family-based. According to agronomists and peasant associations, the majority of permanent farm workers are based in the Artibonite Valley and work in the rice paddies. In some cases, workers have migrated from their home communities and established "residence" in the valley’s small villages. They may work exclusively for one landowner or sell their services to several. From the little information available, farm workers usually do not make the minimum wage, nor do they benefit from the other provisions in the Labor Code.

Few, if any, studies have dealt with the specific situation of the agricultural worker, which in its narrowest definition is someone who sells his or her labor on a permanent or seasonal basis to an agricultural enterprise. More information is needed to identify the predominant types of agricultural production requiring wage labor, the number of such enterprises, and the type of wage labor used.

Agricultural workers today are limited, for the most part, to several types:

- permanent laborers who derive all of their income from wage labor in the agricultural sector;
- seasonal laborers who are small landowners themselves but who hire out to supplement their cash reserves at key periods in the cropping cycle; and
- seasonal laborers who cross the border into the Dominican Republic either to participate in vegetable harvests or to join the ranks of cane cutters in the bateys of the Dominican Republic.

None of these agricultural workers benefit from even the minimum protections of the Labor Code, and most are in situations where their rights are tenuous at best.

Seasonal laborers provide temporary labor during peak periods in the production cycle. Some laborers work for large- and medium-sized rice growers in the Artibonite region or for truck farmers producing for the national or export markets. In some cases, remuneration may reach the equivalent of minimum wage, but again employers provide no other benefits such as health care or overtime. Housing is rarely, if ever, provided.

Seasonal laborers also may provide labor to small farmers. Traditionally, community work associations, such as eskad, koumbit, boukante maten, douvanjou, performed these types of labor-intensive tasks. These associations were organized around payment in kind or community solidarity rather than wage labor. Over time, however, they have become increasingly oriented around wage labor and now are outside the range of possibilities for many small peasant farmers.

Representatives of MPP say even small landowners may hire themselves out to supplement income with seasonal wage labor. Thus the small peasant farmer often is both an independent and wage worker. Even
though they work for wages, however, these people are not considered agricultural workers and therefore are not covered by the Labor Code.

Although some worker organizations consider sharecroppers to be agricultural workers, they do not fall within the Labor Code’s strict definition of the agricultural worker. Sharecroppers do not, in fact, earn a wage. Rather, they provide half of their harvest to a landowner in exchange for use of the land, which is why sharecroppers are called demwatye, or half, in Haitian Creole. Typically, the sharecropper’s portion of the harvest provides a very meager living. Further, the “contract” between landowner and farmer is most often verbal and can be broken or renewed at the landowner’s discretion. “Customary law,” or tradition within rural communities, provides a minimal framework for these types of agreements, but neither the Labor Code nor Rural Code have provisions to protect sharecropper rights.

The lack of consensus as to whether the Labor Code defines sharecroppers as agricultural workers further indicates the need to clarify the definition of the agricultural worker in Haiti.

Whatever the type of farm worker, the State has not developed any mechanisms to monitor compliance with the Labor Code’s provisions governing agricultural workers. Consequently, this sector functions with little if any oversight from the Ministry of Labor and thus does not benefit from any of the rights and privileges accorded under the Labor Code.

Upcoming discussions about the rights and wages of farm workers likely will be linked to broader agricultural policy issues, specifically the future development of the agricultural sector in Haiti. Haiti’s approaches to sector-specific policies, the relative weight given to international and national agricultural markets, and tariffs on imported foodstuffs will have an impact on the rights and wages of the country’s agricultural workers.

Title VI: Inspection of Working Conditions and Workplace Standards, Directorate of Labor and Inspections

Chapter 4 of the Labor Code stipulates that a body of inspectors is responsible for ensuring compliance with the Code’s provisions regarding working conditions and respect for workers’ rights. Further, the inspectors must conduct investigations to verify infractions of these laws.

Implementation of these provisions has been inadequate. Few inspections take place and those that do are limited exclusively to large industries and the assembly sector. Worker rights in other sectors have no government oversight. Most workers and workers’ associations report that they have never witnessed an inspection. For the most part, they believe the Ministry of Social Affairs and Labor has been derelict in its responsibilities in this area.

When an inspector does go to a factory, the employer will often deny access. This is common enough that the Ministry of Social Affairs and Labor recently issued a press statement reminding owners that inspectors are allowed to enter a workplace at any time without prior warning or permission. When denied access, the inspector is authorized to return with a Peace Court Judge to document the obstruction and proceed with the inspection. Worker organizations have raised issues about the impartiality of inspectors. Many workers claim inspectors are not impartial and are more apt to defend the interests of employers than the rights of employees.

Workplace Safety and Comfort

The Labor Code clearly calls for minimum standards of workplace safety and comfort.
However, labor unions and worker associations say that once again enforcement and implementation are lacking.

For example, one of the most simple and inexpensive pieces of worker safety equipment is a mask to protect workers from breathing fibers and noxious fumes. While some textile factories and factories that use paint and varnishes provide masks to some workers, others don’t, even when the factory has poor ventilation.\(^7^1\)

Workers also have complained about work stations, citing lack of chairs and inadequate lighting. Both contribute to lower productivity and health problems.\(^7^2\)

Article 439 calls for employers to provide potable water. Some workers report that employers catch rain from the roof and store it in unsanitary open reservoirs. Others report that employers buy untreated water that private companies draw from rivers adjacent to the capital.\(^7^3\)

Article 470 has specific and clear norms for the number of toilet facilities per worker and minimum standards of hygiene. However, many employers do not respect these basic norms, providing overcrowded and unsanitary facilities.\(^7^4\)

Article 459 calls for employers to provide access to a cafeteria, or at the very least adequate space to comfortably eat and rest during their breaks or lunch. Many owners do not provide this service, and workers must often buy from small vendors outside the factory who often do not meet even minimum standards of hygiene.\(^7^5\)

**Transportation**

Article 466 of the Labor Code requires employers to provide employee transportation if the workplace is either in an industrial park or the city outskirts. In Port-au-Prince, many industries are located in the several industrial parks, but employers have not created a collective employee transportation system.\(^7^6\)

The dilapidated and comparatively expensive public transportation system forces many workers to spend more than two hours commuting and to allocate a significant portion of their pay to transportation.

**Health Care and Medical Services**

The Labor Code requires employers to ensure basic first aid and health care in the workplace. Article 478 establishes norms for all businesses having more than twenty employees. For example, factories with more than fifty employees must have a full-time nurse on the premises and at least two weekly visits by a certified doctor. Enterprises with more than two hundred employees must have a full-time clinic. A basic first aid kit with essential medicines is required in all businesses regardless of the number of people employed.

Some factories do not comply with these standards.

*Article 478 states that employers must provide basic first aid and health care in the workplace. However, some factories do not have doctors or nurses available. The law says that there must be a doctor on the premises to treat emergency situations. But often there are only some pills for headaches or some rubbing alcohol. If a worker feels ill, some factories do not have a bed for her to lie down so she has to lie down on a piece of cardboard on the ground.\(^7^7\)*

The privatization of health services is a growing trend in Haiti. Employers are contracting with private providers to provide health care and certification for their employees. When an employee is ill, he or she must go to the private health center for an exam. If the employee is too ill to work, the provider gives the employee a medical certificate to take authorized sick leave. Workers claim, however, that the health provider only
gives the certificate in the most extreme circumstances, appearing to favor the financial interests of the employer over the worker’s health.78

Sometimes employers will not recognize certificates issued by other health professionals, which undermines an employee’s freedom to seek the best health care. Further, workers must pay for the health services. The cost of a medical examination is fifty gourdes, comparable to the cost in other private medical centers. Medicines at these centers are significantly more expensive than in Port-au-Prince.79

**Health Insurance and Pensions**

The Labor Code makes provisions for employers and employees to contribute to a national health service (OFATMA) and pension fund (ONA), which form part of the national social security system. These organizations, which are autonomous institutions under the Ministry of Social Affairs and Labor, fall under separate legislation outside the Labor Code’s purview. All employers are obliged to pay in full a contribution for accident insurance. Employer and employees are required to contribute a fixed percentage of the monthly wage for health insurance and maternity coverage. In return, OFATMA must provide health and accident insurance, basic health services, and maternity care. ONA must provide a pension and loans against the retirement contributions made in the employee’s name. According to workers’ organizations, many workers do not even know that OFATMA exists.80 ONA is better known because it provides limited credit facilities and has a higher visibility.

Some employers do not make any contributions, arguing that ONA and OFATMA do not provide adequate services. When employers do contribute, many workers are unable to verify that the frequency and amount of payments conform with the law or that payments have even been made. Labor organizations cite cases of workers going to the ONA office for a loan only to discover that no contributions had been made in their name, despite the fact that the employer withdrew contributions from every paycheck.81

The state has not taken the necessary measures to ensure that both of these organizations provide adequate coverage and services to their clients, thus cheating employees and paving the way for management complacency.

**Title VII: The Labor Court**

The Labor Code calls for the creation of a special Labor Court to help resolve disputes arising from conflicts over the Code’s provisions. However, Article 488 says that the Court is not authorized to intervene in labor disputes among the state and municipal authorities and state-owned enterprises and their respective employees. This article also imposes a ceiling for claims: not more than the equivalent of twelve months salary, with the exact amount determined by a Labor Court judge.

When a worker needs legal representation, the Court appoints a lawyer (Article 499). Either party may contest the outcome on the basis of criteria defined in Article 506 and appeal to the Supreme Court.

According to worker associations and private and government representatives, the Labor Court system simply does not function. Many of the problems are linked to the overall dysfunction of the Haitian judicial system: lack of due process, impartiality and jurisprudence; inadequate training of judiciary officers; delayed court dates and sentences; inadequate legal aid; and the high cost of lawyers’ fees.82

In addition, the Haitian legal system functions almost exclusively in French despite the provisions of the Haitian Constitution. When a Creole-speaking worker testifies, translations are provided by a Court-appointed official even
when all persons present both speak and understand Creole. Aside from problems arising over the quality and fidelity of the translation, this practice makes the entire exercise more cumbersome and further humiliates workers.

Few workers have recourse to the Labor Court. Once a claim has been presented to the Court, a worker may have to wait weeks or months until it comes up on the docket. In the meantime, the worker is out of work and without benefits. If a worker is not a union member nor has legal representation, he or she must wait until the Court appoints legal counsel and the counsel is available. Private lawyer fees tend to be prohibitive, and many lawyers will not accept these cases because of the length of time before trial and the exceedingly low damages awards.

A number of workers had been illegally fired for union activity within a large factory working for the export market. The union and the workers decided to take them to court. It took us three years. The case was first heard in the Labor Court and on the basis of the evidence presented, the judge found that in fact the dismissal had been based on the workers’ participation in union activities. A sentence was pronounced in favor of the workers requiring the employer to pay damages and interest. The lawyers working for the owner of the factory appealed the decision before the Supreme Court but declined to notify the workers’ legal representation. Fortunately our lawyer was notified by a sympathetic Court officer and thus was able to appear at the hearing. The Supreme Court upheld the decision taken by the lower court and found again in favor of the workers. We have not yet been able to claim damages from the factory owner despite the fact that the case went before both the Labor Court and the Supreme Court. Is it any wonder that few workers can afford to go through this kind of process?83

**Workers Not Covered by the Labor Code**

The following categories of the workforce are not covered by the Labor Code:

- those sectors governed by sector-specific legislation, such as civil service employees and employees in public sector enterprises; and

- those sectors that fall outside of all categories and therefore are not covered by either the Labor Code or sector-specific labor legislation, such as peasants, self-employed, and informal sector workers.

**Public Sector Employees**

**Civil Service Employees**

The state remains the largest single employer in Haiti despite structural adjustment programs calling for government downsizing.84 Civil service employees are covered by specific legislation85 that provides neither adequate nor appropriate coverage concerning hiring, promotions, performance evaluations, wages, benefits and the right to organize. For example, it prohibits civil service employees from forming unions or other types of worker-interest and defense organizations.

Despite the prohibition on public sector unions, several have been formed. These unions have either a sectoral focus, such as education (CNEH, UNNOH, for example) and health (SPI), or they have a multi-sectoral focus, such as Forum 450, which brings together cadres in various ministries. The unionization of the civil service is one of the important social gains of post-1986 Haiti.

The 1982 law governing civil service employees is currently under revision. The National Commission on Administrative Reform (CNRA) made specific recommendations concerning wages, promotions, performance evaluations, and the right to organize.86 It is unclear, however, whether the recommendations were based
on broad-based and participatory consultation with civil service employees. The CNRA’s proposals went before the executive branch to be validated and reviewed, before being passed to Parliament for ratification.

The state has a technical training program to help former civil servants transition into other sectors. To date, however, there has been no evaluation of the program and its impact on workers and no mechanisms created to monitor re-employment rates.87

The state continues to be confronted by periodic strikes and demands from civil service employees. For the most part, strikes or work stoppages are for basic wage increases and payment of arrears. This has happened in various Ministries as well as in public service institutes such as the National Hospital, where both doctors and nurses protested low wages and poor working conditions.

The most active sector is the education sector, which has a high level of unionization. The two major unions are the Union Nationale des Normaliens d’Haiti (UNNOH) and the Confédération Nationale des Educateurs Haïtiens (CNEH). In 1997, the educational sector began a process of collective bargaining with the government around a number of key issues: payment of salary arrears, an increase in basic wages, and improvements in the physical infrastructure of public schools.

The government and education unions reached an agreement in 1997, but in 2000 the government had only been able to partially comply with the terms, a failure it attributes to budget shortfalls and lack of other resources.88 The unions, meanwhile, continued to strike, criticizing government for lack of follow-up and little transparency in decision making.

*Employees in Public Sector Enterprises*

Employees in public sector enterprises present a rather complicated case in terms of labor legislation and worker rights. Although ostensibly engaged in the civil service, many employees do not fall under the legislation covering civil service employees.

According to the Law on Civil Servants, employees in autonomous state organizations engaged in either financial or commercial activities are not considered civil servants and therefore not covered by the Law on Civil Servants. These employees by default fall instead under the aegis of the Labor Code. Among the enterprises under the category of autonomous state organizations involved in financial and/or commercial activities are the electric company (Ed’H), the water company (CAMEP), the postal service, the lottery, the Port Authority (APN), the industrial park (SONAPI), and two national banks (BNC and BPH).

Another interesting aspect of public enterprises are state-owned joint ventures, or Société Anonyme Mixte (SAM). Among these are Ciment d’Haïti (the cement company), the former Minoterie d’Haïti (the flour mill) and TELECO (the telephone company). The state was the majority shareholder in the first two companies. The majority shareholder of TELECO is another autonomous state organization, the Banque de la République d’Haïti (the Central Bank). Employees in all of these organizations also are governed by the Labor Code. Again, it is unclear to what extent CNRA will review these situations and whether it will make specific recommendations to harmonize the legal frameworks in this sector. In any case, any reform of the Labor Code clearly must take into consideration these autonomous state organizations.

Unions have been formed in the following public sector enterprises: telecommunications, the electric company, postal services, the airport and the seaport in Port-au-Prince. For labor activists, this is a victory for the labor movement. But the cost has been high because
of the predominantly hostile climate toward
unions and organizing.

Since the 1991 Paris Meeting of the Consultative Group of the World Bank, the situation has been further complicated for this sector because of privatization. Transferring state-owned enterprises to the private sector is a pre-condition for all of the structural adjustment programs and access to international aid.

The privatization program, called “modernization” in Haïti, falls under the Conseil de Modernisation des Entreprises Publiques (CMEP), which was established by law in 1996. The law defines three types of management models for the modernization of state-owned enterprises:

- management contracts are allocated to a third party, and the state retains full ownership;
- concessions are granted to a third party and the state retains full ownership;
- capitalization, where a joint venture is established between the state and a third party that brings in investment capital.

To date, two enterprises have been privatized, the Minoterie d’Haïti and Ciment d’Haïti. The flour mill was privatized in 1997 as a joint venture, with the state retaining ownership. Seven other enterprises were targeted for privatization, among them the telephone company, port authority, airport, and National Credit Bank.

The issue of privatization has raised great debate within Haitian society and protest among labor unions in sectors that have been privatized or are targeted for privatization. In the last few months of 1999, for example, protests were organized by employees at the flour mill and the soon-to-be-privatized National Port Authority (APN).

While the question of whether to privatize or not is perhaps outside the scope of this document, what happens to workers under privatization is not. How are worker rights protected and under what conditions are contracts terminated? What benefits and damages are paid to employees and what types of policies are used for hiring the new workforce?

CMEP members have said that their mandate specifically requires them to address the issue of worker rights under privatization.

CMEP representatives make a distinction between what they call a “political” versus a “legalistic” approach which went beyond Labor Code requirements, a bow more to political than legal imperatives.

The various modernization scenarios allow the state to go beyond the Labor Code and include specific provisions protecting worker rights and the right to unionize and bargain collectively.

- Under the provisions of a management contract, the state is free to define specific social objectives or policies that could limit the profitability of the enterprise. As the state is the only shareholder under this scenario, it has the freedom to establish an equilibrium between social and economic priorities.
- Under the provisions of a concession, the state can include worker protection as one of the conditions for concession. This can be included in a memorandum of understanding annexed to the contractual agreement. The memorandum would define the obligations of each party.
- Under the provisions of capitalization, the state has the least amount of freedom to establish terms and conditions for workers because it must ensure that the other shareholders make a “reasonable” profit.

According to CMEP, the contracts for the already privatized enterprises, the flour mill and cement
factory, contain specific wording dealing with worker rights, and violations of these provisions are considered breach of contract. Copies of these documents were not available for review at the time this report was written.93

In 2000, CMEP was in the process of finalizing guidelines for integration of worker concerns into the various phases of modernization from preliminary analysis to contract negotiation to monitoring after privatization. This document was to be validated by the executive branch, a precondition for distribution.94

Members of CMEP interviewed for this report clearly voiced their concern for and commitment to integrating worker rights into their guidelines on privatization. It is important to monitor the extent to which this concern has, in fact, created more favorable conditions for workers in new enterprises and to meet with union representatives to get their perspective on CMEP’s track record.

**Independent or Self-Employed Workers**

The second category of workers not covered by the Labor Code are self-employed, or independent, workers. In Haiti, these workers constitute the overwhelming majority of the working population. As previously mentioned, there is a debate within the labor movement as to whether they should be considered “workers.” In any case, self-employed workers often have been excluded not only from the Labor Code, but also from all other types of social legislation that would provide some level of security.

**Peasants and Other Economic Actors in Rural Areas**

More than 60 percent of Haiti’s population are rural dwellers, the traditional backbone of the Haitian economy. Despite the dramatic decline in agricultural production over the past two decades, the overwhelming majority of the rural population remains actively involved in agriculture and in other activities linked to production, transformation and marketing of farm produce.

Other than the special provisions for agricultural workers, the Labor Code does not recognize most farm workers as part of the national labor force and therefore does not provide any worker benefits.

As independent workers, peasants also do not benefit from the support services provided to other types of private sector entrepreneurs in Haiti. Among the constraints facing small farmers are insecure land tenure, lack of productive arable land, an eroding natural resource base resulting from demographic pressure and unsustainable land-use practices, lack of access to agricultural credit, high cost of agricultural inputs such as seeds and fertilizers, lack of access to technical assistance, insufficient irrigation systems and storage facilities (which force farmers to sell produce when the price is low), poor infrastructure, lack of access to markets, and, finally, lack of government policies to adequately protect national production from low-cost food imports.

Many small farmers in Haiti must produce in a high-risk environment where the costs of doing business are disproportionately high. Small farmers who seek credit often pay up to 260 percent per year for loans from moneylenders. Peasants have a high level of worker organization compared with other categories of wage workers and independent laborers. During the past twenty years, small farmers have created myriad types of organizations and federations, but it is difficult to estimate the percentage of affiliation. One thing is certain, however, whether they belong to large peasant movements such as Mouvman Peyizan Papay (MPP) or Tet Kole Ti Peyizan or to smaller regional groupings, organized peasants are an important element in Haiti’s sociopolitical landscape.
Through these organizations, peasants have been able to mobilize, organize and implement a number of programs to improve their lives. Organizations like MPP work to raise the peasants’ standing in political, economic, social and cultural arenas with programs such as business cooperatives, unions and political movements to defend peasants’ rights and improve popular participation in decision-making.

While the peasant movements make significant progress, their overall impact is limited by national development policies and the regulatory environment, including social legislation. Small farmers and peasants continue to be marginalized and overlooked in national policies and programs.

*Independent or Self-Employed Workers in the Urban Informal Sector*

According to some observers, the informal sector is the most dynamic and fastest growing segment of the national economy, a reflection of the formal economy’s increasing inability to provide living wages.

The workers in the informal sector do not pay taxes and therefore their productivity is not calculated into Haiti’s gross national product. Some people call the informal sector the “popular economy.” This sector is occupied primarily by the poor or working class and characterized by precariousness of employment.

In this section, we will refer to just the urban informal sector. Despite its importance and the critical role it plays in the urban poor’s survival, this sector has not been well analyzed. It is extremely diverse and continually changing as it adapts to the socioeconomic conditions in Haiti.

The informal sector is composed of both traditional workers and self-employed entrepreneurs. Most microenterprises in poor urban areas are part of the informal economy. These small businesses cover a wide range from commercial activities (buying and selling basic consumer goods) to small-scale workshops for tradesmen (carpenters, cabinetmakers, cobblers, dressmakers, tailors, mechanics, and others) to services such as hairdressing.

Many of these businesses employ family members, workers many would consider apprentices, and a limited number of non-family wage workers. According to a study of this sector, these employees, regardless of type, benefit from few, if any, of the provisions of the Labor Code.

Because the informal sector entrepreneur does not pay taxes, he or she also has no government help for business development. These entrepreneurs face a number of constraints: inadequate work space, as much of the work is often performed in the home; a lack of basic services such as electricity and water; no credit from the banking sector; no technical assistance to help improve the quality of the product or services; and little or no financial management training. Under these circumstances, the entrepreneur develops his or her business as best as possible.

Petty traders form the vast majority of the informal economy in urban areas. These include market women, sidewalk traders, ambulatory traders, newspaper vendors, shaved ice vendors, young children cleaning cars at stop lights, shoe shiners, and knife sharpeners, to mention just a few.

The vendor “invasion” of Port-au-Prince has created sometimes intense conflicts between municipal authorities, aided by the police and these entrepreneurs of the informal sector. Police have forcibly removed petty traders and market women from the sidewalks, in the process often destroying their goods and equipment. They have taken old vehicles from side-street garages and taken them to the dump. Authorities have prohibited food vendors from
several areas. But neither the central government nor municipal authorities have provided viable alternatives in terms of work space or access to basic infrastructure and services.97

Forcible displacement has provoked informal sector operators. They have organized protests in front of the mayor’s office, and the major media have spoken out against the mistreatment of traders and vendors. But a constant, low-intensity conflict continues between the informal sector and government authorities. Effectively organizing this sector so it can resist mistreatment and participate in the policies affecting it is important, but not surprisingly, difficult for individuals struggling to make ends meet.

The municipal markets were built by the state and managed by committees designated by municipal authorities. Market women pay rent to the management committee, which varies from market to market and may be calculated on the amount and type of space allocated. For example, a whole shop can cost 125 to 500 gourdes per month, while a simple counter costs approximately 25 to 50 gourdes per month. Rent also can be based on the volume of goods sold, a system primarily applicable to vendors selling food or drinks. In exchange, the committee allocates space, keeps the market clean, ensures security, and resolves conflicts.98

Because of the relative stability of market women and traders, they are more organized than other members of the informal economy. In the past few years, they have created a number of associations to protect their interests. Interestingly, they also work to protect the interests of factory workers, since many are former factory workers themselves and still feel connected to this sector. They understand that higher wages for the industrial sector mean a more stable client base for the markets.99

Conclusion

This overview of the Labor Code and its record of implementation makes it woefully apparent that worker rights – in contracts, wages, benefits, working conditions and organizing – are not protected in the Haitian workplace. Studies conducted on behalf of the International Labor Organization (ILO), as well as reports produced by independent international monitors confirm this conclusion.100

But not all factories are equal in this regard. Some are considered by employers as “model factories” and not surprisingly, are often showplaces for international delegations. At the other extreme are factories with such notoriously bad working conditions that they are known as Ein pou aprann, or a factory where you only go to learn. Mostly new, inexperienced workers accept jobs at these places, staying only long enough to learn specific tasks before seeking employment elsewhere.

Whatever the differences among workplaces, working conditions and compliance with the law largely are left to the whim of management and are therefore arbitrary and voluntary. The ability of workers to defend their rights effectively has been curtailed by repeated and systematic violations of their right to freedom of association.

Despite this hostile climate, a group of organized workers, the Factory Vigilance Committee (KVF), recently sent a letter to the Secretariat of the International Labor Organization protesting the situation of workers in Haiti:

The Factory Vigilance Committee read your September 1998 report on working conditions in the assembly sector. We read it with a great deal of attention and this enabled us to see that working conditions are not satisfactory in many other countries as well. We know that when the ILO makes a statement, employers are more likely to listen. As a result of the ILO’s
work, there have been changes in the working conditions of workers in other countries.

Why hasn’t the situation of women changed in Haiti? Because you have not taken actions in favor of women who are working in the assembly sector. We know that there are maquilas in every country and things have improved for workers. But why can’t we in Haiti be treated as people too?

The International Declaration of Human Rights states in Article 23-3: Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 150 countries signed this declaration, and among them, Haiti. We the members of the Factory Vigilance Committee want the working conditions in Haitian factories to change. But this cannot happen without support from the International Labor Organization because the working conditions are terrible and we do not have the right to form unions to defend ourselves.

If we do not provide specific examples of the working conditions in Haiti, you might feel that the situation here is no different from that in other countries. Here are some of our needs: factories do not have cafeterias, there are no dispensaries, no potable water, toilets are not clean, and there is no safety equipment provided for those of us who have to breathe harmful fumes.

As you know, the state provides employers with numerous customs advantages. We believe that this should oblige them to provide us with better working conditions. These benefits accrue only to the owner. As the state only provides these benefits for a certain period of time, once the time has elapsed, they declare bankruptcy so that they can shut the factory down. A short time later, they open a factory under another name.

Today we want to yell out so that the entire world will respond to our call and help us deal with employers. We cannot take it anymore. That is why we are writing to you today. We would like to work with you on investigations into working conditions in Haiti. We must be very vigilant because employers always have ten people who are willing to testify in their favor, while at the same time we are struggling in the factories. Where else in the world do women factory workers make two dollars per day for eight hours work?

We do not believe that democracy is possible in a country where workers are dying from hunger. We the members of the Committee have made a commitment even if we lose everything we have. The situation of factory women in Haiti must change.”

This letter, signed by thirteen workers, demonstrates both the situation of workers in Haiti and the lack of recourse available to them. It also underscores the fundamental differences between the advantages, recognition and legitimacy accorded to employers and workers.

Worker rights in Haiti are affected by three factors:

- a Labor Code that is neither adapted to nor in conformity with international standards and the Haitian Constitution;
- weaknesses in implementation of the Code; and
- inadequate and non-operational social legislation that impacts the rights of all Haitian citizens.

To be clear, the systematic violation of worker rights in Haiti is not merely the result of omissions in the existing legislation or failure of implementation. Such a purely technical analysis misses an essential point: given that laws reflect how a society perceives certain categories of citizens, the debate must go beyond mere technical revisions of existing labor law.
and address the underlying nature of the social contract between capital and labor in Haiti. Only when labor’s power is equal to its contributions to society can worker rights be fully recognized and guaranteed.

Endnotes

1. Interview with Minister Camille Leblanc, September 1999.
2. This section will be organized around and follow the specific structure of the Haitian Labor Code.
3. Interviews with workers’ organizations and worker support organizations, September 1999.
4. Interviews with workers and with worker support organizations, September 1999.
5. Interview with members of SOFTA, September 1999; and Jounal Fanm Ouvriye. Number 80, March 1997.
6. Interviews with union members working with Batay Ouvriye, September 1999.
7. According to interviews with workers in September 1999, this was common practice during the period between 1986 and 1991 and may have been used by management as a strategy to deal with labor conflicts.
8. According to interviews with worker support organizations in September 1999, the few collective contracts that existed prior to the coup d’etat ended because of two factors: a political climate that was more conducive to union busting; and the embargo, which caused a certain number of factories to temporarily shut down operations. Even those that reopened under the special provisions granted by the U.S. government did not return to any form of collective bargaining.
9. Interview with François Latortue, September 1999.
11. Ibid.; and interviews with workers’ organizations, September 1999.
12. The first Creole translation was published in 1986 and was subsequently revised in 1997.
13. Interview with a woman union member, September 1999.
16. Interviews with factory workers and worker support organizations, September 1999.
17. Interviews with Anten Ouvriye, Batay Ouvriye, and the Center for the Promotion of Women Workers (CPFO), September 1999.
18. Ibid.
20. Interviews with worker support organizations and representatives of ADIH, September 1999.
21. Interview with a woman factory worker who has since gone to work in another factory, September 1999.
22. Interview with ADIH representatives, September 1999.
24. Interview with worker support organizations, September 1999.
25. In discussions with the members of the Tripartite Commission, we learned that in 1991 the Aristide-Préval Government was studying the possibility of increasing the minimum wage to twenty-six gourdes per day. The coup d’etat of September 1991 brought this process to a halt.
26. Interview with worker support organizations and with Platform Ayisyen Pledwaye pou yon Devlopman Altenatif (PAPDA) representatives, September 1999.
30. Interview with Batay Ouvriye, September 1999.
31. Interviews with workers and with Batay Ouvriye, September 1999.
32. Preamble to the Decree of May 27, 1986, Moniteur #46, Port-au-Prince, June 1996.
35. Public sector employees do not fall under the jurisdiction of the Labor Code. This particular case then went before the Cour Supérieure des Comptes et du
Contentieux Administratif, which also stated that they had no jurisdiction. The case was finally resolved in a civil court and thus created jurisprudence for dealing with labor disputes concerning civil service employees.

36. Interview with Jean Frédéric Sales, September 1999.
38. Ibid.
39. Interview with Jean Frédéric Sales, September 1999.
40. Interview with ADIH members, September 1999.
41. Interview with COSYNAH union members, September 1999.
42. Interviews with worker support organizations, September 1999.
43. Ibid.
44. Interview with representatives of Batay Ouvriye, September 1999.
45. Interview with representatives from Fédération des Ouvriers Syndiqués (FOS), September 1999.
46. Interview with Batay Ouvriye, September 1999.
48. Ibid.
49. Ibid.
50. Ibid.
51. Interview with representatives from the Centre de Promotion des Femmes Ouvrières, September 1999.
52. Ibid.
53. Interview with workers and representatives of Batay Ouvriye, September 1999.
55. Interview with representatives from CPFO, September 1999.
56. Ibid.
59. As mentioned in the section dealing specifically with restavek, according to interviews with representatives from Escale, this phenomenon has changed through time, and child labor is now primarily used by families in very low income households in urban popular neighborhoods. This was further confirmed in meetings with informal sector market women in September 1999.
60. Interview with Escale representatives, September 1999.
61. Interview with Chavannes Jean-Baptiste and other representatives of groups affiliated to MPP, September 1999.
62. Interviews with worker support organizations, September 1999.
63. Ibid.
64. Interviews with agronomists and with representatives from MPP and Tet Kole, September 1999.
65. Because of the time limitations inherent to this study, the issue of trans-border workers in general and cane cutters in particular was not addressed. The situation of cane cutters and other illegal workers in the Dominican Republic has constituted an area of focus for certain NGOs in Haiti, such as the Groupe d’Appui aux Réfugiés et Rapatriés (GARR) and sister organizations in the Dominican Republic.
66. Interview with MPP representatives, September 1999.
67. Interview with workers and worker support organizations, September 1999.
68. Interview with the Minister of Social Affairs and Labor, September 1999.
69. Ibid.
70. Interviews with workers and worker support organizations, September 1999.
71. Ibid.
72. Ibid.
73. Ibid.
74. Ibid.
75. Ibid.
76. Interviews with worker support organizations and interviews with ADIH representatives, September 1999.
78. Interview with Batay Ouvriye, September 1999.
79. Ibid.
80. According to worker support organizations, the first OFATMA Maternity Center was recently inaugurated. It is too early to assess how effective the services will
be and to what extent workers will have access to maternity care.

81. Interviews with worker support organizations, September 1999.

82. Interviews with Batay Ouvriye and the Federation of Labor Unions, September 1999.

83. Interview with Batay Ouvriye and union members, September 1999.

84. According to interviews with PAPDA and COSYNAH, it is estimated that over seven thousand civil servants will lose their jobs over the coming two years.


87. Interview with PAPDA and COSYNAH representatives, September 1999.

88. Interview with CNEH representatives, September 1999.

89. The CMEP is a five-member commission designated by presidential decree. Under the original provisions of the CMEP, one of the five members was to be designated by labor union representatives. When CMEP was formed, unions were invited to nominate candidates to represent the sector. Unfortunately, no labor representatives were in fact named to the Commission.

90. According to an interview with CMEP representatives in September 1999, concessions require parliamentary approval while other forms of modernization do not.

91. Interview with PAPDA representatives, September 1999.

92. Interview with CMEP representatives, September 1999.

93. Ibid.

94. Ibid.

95. It would be erroneous to consider that the sector is informal in terms of its structure and organization. Interviews with market women and other informal sector operators bear witness to the “formality” of the sector, its modes of organization, and its internal regulations.


97. Ibid.

98. Ibid.

99. Interviews with informal sector market women, September 1999.

100. Moïse et al. (1998); and ILO (1998).

Chapter 6
Labor Code Implementation and Emerging Strategies to Promote Labor Rights

Alternative Strategies for Labor Rights

For many worker organizations and labor supporters, Labor Code reform in Haiti must take a back seat to implementation of current law. For others, reform is necessary precisely because the current law does not equalize and mediate among the power of the divergent interests of capital, labor and employers. The Code thus fails to adequately promote and protect the full range of worker rights. In fact, according to this view, labor law reform must be part of a whole series of reforms in Haiti that systematically enhance the social, political and economic power of working people.

Meanwhile, the government, international agencies, worker organizations and employer groups – for different reasons all impatient to make changes in the labor arena – have introduced a number of new strategies to address labor rights and conflicts of interest surrounding labor issues. In this chapter, we look at the serious problems in implementation of the current Labor Code and some of these new strategies for labor protections. We also examine how the desperate need for jobs in Haiti, coupled with serious global competition and neoliberal economic policies, is narrowing space for the promotion of worker rights to the longterm detriment of Haiti’s workers and its overall economy.

Implementation of the Labor Code: Government Mechanisms

A network of government agencies – most importantly, the Ministry of Social Affairs and Labor – is responsible for implementing labor rights protection in Haiti. These agencies receive complaints, initiate inspections, administer benefits and identify vulnerable worker populations. According to the Labor Code, the frontlines in this effort are the labor inspectors, who work for the Ministry of Social Affairs and Labor. With unusual detail, the Code defines how nearly every hour should be spent in a labor inspector’s day. However, reports from numerous sectors indicate this guidance is rarely followed and indeed, the inspection system is in such disarray that it has hurt more than helped Haitian workers.

Based on the interviews conducted for this report, it is clear that government officials and labor activists agree that inspectors are seriously hampered by inadequate training, supervision, staffing, and recruitment. For example, the Ministry’s Western Region, which includes Port-au-Prince, has only seventeen inspectors – a severe shortfall due, in part, to the perennial shortage in funding the Ministry. But the problem runs deeper than budget shortfalls and poorly trained and supervised staff. Most employers have never truly accepted the principle of labor inspection and often treat inspectors with contempt. Further, inspectors often do not understand their role and fail to enforce their authority, a situation made worse by lack of support from labor ministries and the rest of the government. As the inspectors likely are the only direct contact a worker has with a government official regarding labor rights, workers often perceive government protection in the same light as they see inspectors: ineffective, weak and biased in favor of the employer.

Some labor activists complain that while the international community – for example, USAID – provides an abundance of resources for reform of the Haitian judicial system, relatively little is available for the promotion of worker rights. Even funds dedicated to labor-related programs do not necessarily support worker organizations. For example, the U.S. Department of Labor and the ILO made a grant to the employer organization ADIH to help encourage employers to respect labor rights and standards. No funds from this $1 million grant went directly to worker organizations.

Workers outside Port-au-Prince have had difficulty gaining access to the Ministry of Social
Affairs and Labor’s regional offices. Minister Mathilde Flambert reported in 1999 that she was trying to upgrade these offices with better training, computers, improved supervision and a new branch of the National Office for artisan Crafts at each regional office. The Western Regional Office was to be staffed with lawyers to advise workers and protect their rights under the law. And the Minister hoped to start special programs for single mothers and orphans.5

The Ministry also is mandated by the Labor Code to resolve labor disputes through conciliation, a process plagued with problems. Conciliators reportedly experience the same problems as inspectors: poor training, hiring and supervision, as well as burnout. At least one labor expert has suggested rotation of conciliators.6 Further, workers fear reprisals from employers, which is one reason labor experts and activists have been trying to amend current procedures that do not protect confidentiality. Many employers fail to show up at hearings, another example of employers showing disdain for worker rights by ignoring Haitian law.

In recent years, the government increasingly has relied on a special commission to oversee reform and, to a certain extent, implementation of the Labor Code. The Tripartite Commission of Consultation and Arbitration, composed of labor, government and private sector representatives, was created by government decree on January 16, 1989, in light of ILO Convention 144 on tripartite consultation.7 A decree on January 4, 1995, further defined its mandate and a third decree on January 16, 1995, designated its fifteen members to make the Commission operational. The Commission initially was funded in part by USAID funds.8

The government intended the commission to:

- facilitate mutual understanding and good relations among these parties to promote employment and improve working conditions and business productivity; and
- make recommendations to the government regarding the Commission’s own duties and a wide range of labor issues.

From the outset, however, the Haitian adaptation of the tripartite model has yielded few concrete results. Two subcommittees called for in the Commission’s statutes – the Evaluation and Conciliation Committee and the Transport and Housing Committee – have never been established. Further, the arbitration and mediation role of the commission is greatly undermined by the imbalance of power and authority among the three sectors, with labor the weakest. In fact, labor activists perceived the Commission as mysterious and secretive, not to mention ineffective, in promoting worker rights. The labor sector’s weakness on the Commission was evident from the start in 1995 when the Commission recommended a new minimum wage that in real terms was lower than the minimum wage in 1985.10

By its own account, the Commission has faced a number of difficulties. In a report describing its work from 1995 to 1998, the Commission cited budget shortages, logistical problems and lack of clarity regarding its role in labor conflict resolution as reasons why it failed to accomplish a number of items on its agenda. The report also listed accomplishments and activities: its recommendations for increasing the minimum wage, its “investigation” into allegations by the National Labor Committee about conditions in the assembly sector, attendance by members of the Commission at ILO annual membership meetings, and preparation of a colloquium on Labor Code reform.11 The colloquium, however, actually took place in October, 1999, not in 1997 as planned and well after the publication of the Commission’s report.
While the Haitian government intended that the Tripartite Commission would resolve labor conflicts, as of 2001 it had not arbitrated a case since 1995. The Commission has been reluctant to act in this capacity, initially citing its unclear role in mediation and conciliation. These functions previously had been delegated to the Conseil Supérieur d’Arbitrage (Superior Council of Arbitration), but this court convened so infrequently that few knew of its existence. The decrees of January 16, 1989, and June 15, 1990, were intended to transfer these functions to the Tripartite Commission, but the terms were unclear with no distinct plan to ensure the transfer nor the Commission’s ability to carry out this mission. Further, the Commission believes that it can only intervene when a court gives it a case. This understanding, accurate or not, is reinforced by the fact that courts frequently pass a case along until a court finally is found that has jurisdiction to hear it. They rarely, if ever, pass cases to the Commission. This is particularly true of cases involving state enterprises, which are largely excluded from the Labor Code. Some of these cases have been resolved in common law, or civil courts.

As noted above, because the Labor Code does not cover public sector workers, the Council for the Modernization of Public Enterprises (CMEP) – the government agency charged with “modernization” or privatization of all of Haiti’s state enterprises – has de facto responsibility for workers during the privatization process. By law, it must have five members, including the Prime Minister or his representative and four others appointed by the executive, with one representing workers and another representing employers. CMEP may become involved in labor disputes in cases where the Tripartite Commission will not be involved, although jurisdiction issues remain unclear.

Reintegration of laid-off workers is not part of CMEP’s initial mandate, and neither CMEP nor any other agency of the Haitian government has taken on this responsibility in a systematic way. In some cases, the government provides small grants to laid-off workers so they can start new businesses.

CMEP does not believe workers should be part of determining the fate of their enterprise, but it claims it wants workers to be informed about the privatization process and have the right to speak on these issues. CMEP says that it works with management and unions to raise awareness about what will happen to workers. CMEP reports working closely with unions from January to November, 1997 during the privatization of the cement and flour mills. Workers in these industries were paid severance packages and back salaries for the twenty-one months that the mills had been closed. This amount was determined by what CMEP calls “political negotiations” rather than the Labor Code, which would have been less generous. CMEP says it will apply the code in the absence of a collective contract, and will insist on a contract in cases where a union exists.

Whatever CMEP’s future in protecting worker rights, the opportunity has been lost to manage privatization through an open and participatory program that accounts for worker priorities, concerns and expertise. Workers have a democratic right to be involved in decision-making about privatization, but the government simply has excluded them.

Emerging Alternative Strategies to the Labor Code

Voluntary Compliance: The “Be Nice” Approach to Labor Conflicts

With the adoption of the Universal Declaration of Human Rights fifty-four years ago, and subsequent conventions and protocols, nations around the world agreed that fundamental human rights are not negotiable. These nations incorporated human rights pro-
tections into domestic laws with enforcement by domestic security agencies and judicial systems. Bilateral and multilateral diplomacy, principally by the United Nations, subsequently applied pressure on nations to uphold these rights.

Until recently, international pressure has held nations accountable for violations of civil and political rights more than economic and social rights, even though most nations’ laws have significant worker protections. Lately, however, awareness of all human rights has been growing and people realize how a violation of one leads to violations of others. Social movements to protect children, for example, have begun spotlighting child labor, which, in turn, has led to investigations of sweatshops and the shameful working conditions of many workers in the world, regardless of age. Many labor experts believe this new awareness presents a great opportunity to push harder for enforcement of worker protection laws and new legislation to extend labor rights.

Today, however, a new trend threatens to undermine progress in human rights protections: a shift to voluntary compliance with laws. While partly a response to weak government capacity to enforce the law, the shift to voluntary compliance is also a way the private sector can pre-empt stronger laws and enforcement and substitute its legal responsibility with what it calls “moral duty,” a vague and unenforceable term that allows it the flexibility to operate as it likes in the modern economy.

The notion that companies can choose freely and voluntarily to improve working conditions is not in itself bad. For socially responsible companies, this indeed might be sufficient guarantee for worker rights. The reality, however, is that the first priority of most companies is making a profit, and, unless required, they will not uphold worker rights if they perceive that profits will suffer. By all accounts, this certainly is true in Haiti.

In Haiti, voluntary compliance trends are manifested in the assembly sector’s new voluntary Code of Ethics, partnerships such as the Employer/Trade Union Initiative (IPS), and in a recent program of voluntary self-monitoring of industries funded by the U.S. Department of Labor and implemented in-country by the ILO. These programs are described below.

**Voluntary Monitoring of the Assembly Sector**

Under this program, initiated in 1999, ILO monitors and employer representatives from ADIH, the lead employer organization for the assembly sector, would work to check compliance with labor laws and to develop an improvement plan for each enterprise. The project’s public goal was improved working conditions, but another, albeit less publicized mission, was to ward off international criticism. Employers in Haiti were still smarting from the National Labor Committee’s campaign that shone an international spotlight on the Disney Company for the terrible labor conditions of assembly plant workers producing Disney goods for sale in the United States. While project inspectors would perform a function similar to the government’s labor inspectors, they could not impose sanctions other than potentially negative publicity.

The project had little support from labor activists, as it was developed without worker input, did not include unions or worker support organizations in its activities, did not require employers to provide unions access to plants so they could conduct independent inspections, and included no enforcement mechanisms nor any provisions to strengthen the capacity of the state to protect worker rights. Worker advocates doubted that the same employers who for years had been violating labor laws and treating workers badly were going to change their behavior as a result of seminars and self-monitoring. One
activist expressed clear disdain: “The bosses will get seminars, but what will the workers themselves get out of it?”

A 2002 mid-term evaluation reported that the project had yet to meet its goal of improving working conditions in Haiti. Most of the private enterprises were not willing to participate due to a lack of incentives for the business owners. In addition, the project was seriously behind schedule due to the difficulty encountered in recruiting a director to live and work in Haiti.

The “Secteur Syndical” and the “Initiative Patronat/Syndical”

In May 1998, the six trade unions of the Secteur Syndical, or Trade Union Sector, invited employer associations to discuss a new partnership, the Initiative Patronat/Syndical (IPS), also known as the Employer/Trade Union Initiative. A subsequent meeting led to a written agreement on May 1, 1999, emphasizing a common desire to “promote lasting economic development in Haiti and to participate in the establishment of a stable climate favorable to investment and employment.” The agreement also notes the need to better “integrate the forces of production” to meet the new challenges of the global economy.

This unusual initiative, which several union leaders have described as unprecedented in Haiti’s history, is a strategic calculation by the initiative’s labor supporters. They believe unions must put aside for the short-term the traditional demands of the labor movement: wages, working conditions and the right to organize and strike. Instead, these leaders believe unions must focus on what they think are the preconditions for the unions’ revival: more jobs and an improved economy.

The Secteur Syndical unions recognize that employers likely will remain anti-union, but believe the initiative was necessary to better understand what was preventing investment in Haiti. ADIH reportedly was the first organization to respond to the invitation, with the Chamber of Commerce following. The unions found that some of the younger employers were quite open about common problems, including the political vacuum created by the stalemate between the executive branch and Parliament, the reluctance of international capital to invest in Haiti, and the absence of infrastructure.

The partnership has just gotten off the ground, focusing most of its efforts on pressing the Provisional Electoral Council to hold national elections as one way to unblock the political stalemate the partnership sees as responsible for the lack of international investment. It also has given support to structural adjustment programs but wants to see it done “in the right way.” Further, the group was concerned that assets and funds would disappear from cash-rich state businesses like TELECO and ONA because the country’s assets have not been well inventoried. So far, the partnership has not taken concrete action on this issue.

As of 2001, the partnership’s union leaders had not set a date for bringing wages, working conditions and other more traditional issues to the negotiating table. Many of the union leaders concede they have little to show to their members beyond some increased credibility with the private sector and some international donors, such as USAID, and greater access to management. When asked if they have abandoned traditional labor issues, a member of the Initiative replied that the partnership’s union leaders are carrying on “a psychological effort” with the employers, which, even if it is not antagonistic, will cause them to be more familiar with other problems faced by the workers. “If the employers accept the principle of unionism by sitting down with us, then we feel we can negotiate collective contracts with them gradually. We can still be strong in other ways in defending the worker’s interests, otherwise we see union
activism collapsing. By sitting down with the employer, he hears our problems, though we don’t know how far this exercise will go.”

**Code of Ethics**

Encouraged by some international trade unions and by employers worried about the impact of negative publicity about labor rights on their bottom line, ADIH developed a voluntary Code of Ethics. The Code of Ethics has been adopted by ADIH members and one of its chapters, IDAH, the Assembly Industry of Haiti. In the declaration of support for the Code of Ethics, each ADIH member commits himself to “promote compliance with the law and respect (for) human rights, the worker’s social and economic development within a safe environment, as well as his active participation in the sustainable and harmonious development of Haiti.” The Code of Ethics contains provisions on:

- legal requirements (for example, to uphold human rights, the Labor Code and universal principles governing work ethics);
- hiring practices (for example, never use child, prison or forced labor, or pay less than the minimum salary and benefits);
- health and security (for example, meet standards on workplace conditions, safety and hygiene);
- environment (for example, follow sound environmental practices on waste processing and discharge); and
- behavioral ethics (for example, submit to legally authorized inspections relating to the Labor Code and the Code of Ethics and encourage implementation of social programs for workers).

IDAH shows the Code of Ethics to companies considering locating a facility in Haiti. It wants to demonstrate that Haitian employers are working to meet international standards. In fact, most of what the group does is about luring investment to Haiti. It uses the slogan, “Trust Haiti with IDAH,” and the statement, “In a time when companies are shifting from South Asia to Latin America and the Caribbean, Haiti becomes the logical answer.”

**Right to Work vs. Worker Rights: Exploitation as a Comparative Advantage**

By all accounts, Haiti’s unemployment rate, estimated as high as 70 percent, is one of the most serious manifestations of Haiti’s multifaceted economic crisis and stagnating formal economy. Indeed, the high number of jobless Haitians has forced the government, international community, private sector and unions to put much energy into finding ways to maintain existing jobs and create new ones. Since 1994, with the return of the constitutional government, the state has sponsored a number of job-creation programs through various ministries and a special unit, the Unité Centrale de Gestion (UCG). This unit was created specifically to channel international assistance toward infrastructure repairs and other labor-intensive work during the period of rehabilitation and reconstruction following the coup d’état. This model of labor-intensive job creation has continued within the public sector and NGO, or social, sector.

Unfortunately, despite repeated calls from a broad base of civil society to develop an overall strategy of economic development focused on productive employment and sustainable and equitable growth, the government has failed to do so. Productive employment means jobs with a living wage that produce goods for domestic consumption as well export. Key to this type of productive employment is the “multiplier effect,” which occurs when workers both produce and purchase locally produced goods, thus increasing local demand and creating more jobs. In 1999, the government, in collab-
oration with the United Nations Development Program (UNDP) and the ILO, began the
design phase of a new jobs program focused on
productive employment. At the time of the
interviews conducted for this report, however,
neither the private sector nor trade unions had
been consulted to help develop the
UNDP/ILO program.

Faced with serious competition in the global
economy, private sector employers approach
the issue of job scarcity from the perspective of
their own self-interest and have little interest in
improving the quality of jobs. The private sec-
tor producing goods for export focuses first
and foremost on maintaining existing jobs,
which means ensuring contracts and access to
markets. ADIH representatives paint a picture
of a sector under siege, with production con-
tacts becoming ever more tenuous and busi-
nesses on the brink of closing. Regional inte-
gration and globalization appear to be either
exhilarating and threatening to these business-
es depending on how prepared they are to
meet the challenges of competitiveness.
Generally, however, the businesses are con-
cerned with maintaining their comparative
advantages in this competitive global market-
place, and that advantage, according to them,
is low-wage labor and low levels of unioniza-
tion. This analysis is also supported by USAID
(which has heavily subsidized this sector over
the decades), the World Bank and the IMF.

The notion that “macroeconomic stability,”
combined with low wages and flexible labor, will
lead to growth and increased well-being for the
poor has not been borne out. According to a
1999 ILO report on Latin America and the
Caribbean, a decade of economic reform and
modernization (in which low-wage, flexible
labor has figured heavily) has not brought
about a significant improvement in employment
or wages even if it has contributed to economic
growth and price stability. The report notes that
in 1998, nearly all new jobs were created in the
informal sector, where workers are almost never
protected by labor laws, nor can they usually
join recognized unions that would protect their
interests. Further, poor families suffered dispro-
portionately from the growing deterioration in
the quality of employment, and child labor con-
tinues to plague the region. This hardly seems
a model that Haiti should follow.

Some labor unions in sectors hardest hit by
both the embargo against Haiti during the mil-
itary coup and by global competition have sup-
ported, if somewhat reluctantly, sacrificing
labor standards in the short-term to increase
jobs now and in the future. Their reasoning is
that only when unemployment has receded to
acceptable levels can unions attract and keep
members, giving them the power they need to
tackle wages and working conditions.

Those private sector interests producing more
for local consumption (which tend to be
more highly represented in the Initiative
Patronat/ Syndical [IPS] than in ADIH) often
favor creating more jobs, as that is seen as a
way to increase overall consumption of their
goods. These interests are not concerned with
job quality or worker rights; however, they
share the export sector’s resistance to wage
increases and are not in any particular way
concerned about the plight of workers.

Private sector members of IPS have few rec-
ommendations for specific actions, but under-
score the need to address political instability
and create an environment more conducive
to national and foreign investment.

Some private sector actors realize that low
wages are not the only factor in competi-
tiveness. In 1991, the private sector identified a
number of non-wage constraints on their com-
petitiveness and performance, including:

- the lack of basic services such as electricity,
  telephones and water, and the high cost of
  compensating for the lack of these services
  (a decade later this problem is even
  worse); and
the cost of transportation, most notably port fees, which possibly are the highest in the region.

Capital Consult, a consulting firm specializing in the private sector, produced a report on competitiveness for the Commission Présidentielle pour la Croissance et la Modernisation Economique. This seminal report analyzes Haiti’s performance in comparison to five countries within the region: Dominican Republic, Jamaica, Mexico, El Salvador and Cuba, and one Asian country, China.

Haiti has the lowest wage burden of all the countries with the exception of Jamaica and China. Despite this, Haiti is not competitive because of other non-wage factors. Capital Consult concludes the report by saying:

The results of the study lead one to question the validity of economic development which is based on industrial competitiveness and to remember that there are alternatives, most notably a competitive insertion in the world market through the development of tourism (in all of its various forms), of certain service activities, such as culture in which the synergy with tourism is apparent and which can take the form of mass production, such as industrialized handicraft production, and specific niches in the area of agro-industry which are based on local know-how and natural comparative advantages.15

A Capital Consult representative confirmed that low wages are not Haiti’s competitive advantage today and that in fact, wages could be increased without difficulty. He also said that Haiti’s challenge is to move from a development strategy based on low wages to a new one based on other factors: developing its human resource base and providing commensurate compensation, and identifying niches where the industrial and manufacturing sectors can fuel the local economy and build on national skills, capacities and resources.

In the end, however, the fundamental questions remain: What has happened to the rule of law and compliance with international standards in the debate over jobs in Haiti? What has happened to worker rights? It seems like all parties are waiting for a better moment – which may never arrive. A recent ILO report describes Haiti’s desperate state: “It is frightening to note that given the poverty in Haiti, workers constitute a ‘privileged’ sector among the poor. Standard of living and poor working conditions are mutually reinforcing and make it very difficult for sectors to mobilize for social change. The concerned sectors (the State, private sector and unions) are trapped in a vicious circle which immobilizes everyone and each one tries to take advantage of a situation over which none of them has any real control.”

Endnotes

1. Conversations with academic experts and union leaders, September 1999.
2. Meeting with Mme. Mathilde Flambert, Minister of Social Affairs and Labor, August 18, 1999.
3. Conversations with workers and labor activists, September 1999.
5. Meeting with Mme. Mathilde Flambert, Minister of Social Affairs and Labor, August 18, 1999.
7. ILO Convention 144 has had considerable influence on the Haitian government, though it has not yet been ratified.
9. Ibid.

11. That investigation three years ago, carried out by the Commission’s Committee on Hygiene and Security and discussed elsewhere in this report, was an ad hoc project and did not lead to any further monitoring or investigation of any of the factories visited by the Commission’s investigators. The Commission claims that its members lack the time to carry out such work, and the Commission has no budget to hire experts.


13. Meetings with Jean Frédéric Sales and with the Tripartite Commission, September 1999.


Chapter 7
Form over Substance: Current Labor Law Reform Processes in Haiti

As noted in Chapter 6 of this report, many labor activists and supporters believe that Labor Code reform is a waste of time without attempting more fundamental reforms—specifically, changing the government’s underlying hostility toward workers and developing adequate mechanisms for enforcement. They question how serious labor reforms are possible when economic and social rights are hampered by inadequate government resources and training, the government’s reluctance or inability to negotiate alternatives to International Monetary Fund (IMF) and World Bank loan conditions that hurt working people, and the headlong rush into a global economy that pits worker against worker in a race to the bottom. In short, many believe that the same government that wants to reform the Labor Code has failed utterly to provide the necessary leadership against intense international pressure to undermine worker rights.

It is in this context that the recent process of labor law reform began in 1997 when the Ministry of Social Affairs and Labor sent a letter to labor and employer organizations inviting ideas for Labor Code reform. The Ministry said reform was necessary because of conflicts arising over the Code as well as Haiti’s new economic environment created by opening markets and greater regional and global competitiveness. Little input was forthcoming, however, and the process languished.

In 1999, the Tripartite Commission decided to host a colloquium to discuss the spirit, or philosophie, of the Labor Code. It took place in October of that year. The United Nations Development Program (UNDP), the ILO, UNICEF, and USAID all participated. The government invited participants from the traditional sectors of trade unions, government, employers and academia as well as other civil society groups.

The National Colloquium on Labor Reform

The National Colloquium on Labor Code Reform was held October 1-3, 1999, by the Tripartite Commission under the auspices of the Ministry of Social Affairs and Labor. The primary objective of the conference was to bring together all social actors concerned with labor law (employers, unions, peasant organizations) to review existing legislation with the intention of “adapting the code to the new socioeconomic realities of the country while taking into consideration international norms elaborated by the International Labor Organization.”

Despite the stated objectives of the Colloquium, several logistical and representational issues seemed to undermine its capacity to engage a broad base of workers. For example, many labor organizations and some private sector organizations only found out about the Colloquium through the media. Others received formal invitations just days before it convened, leaving no time to prepare and in some cases, too late to make arrangements to attend. Some labor organizations and worker support groups were not even invited to participate despite years of working on the issue of worker rights in Haiti.

Representation was also skewed in favor of government representatives, who accounted for about one-third of the 150 participants. Union representatives and labor leaders expressed concern about the level of representation of labor unions and their ability to effectively defend and promote the rights of the sector as a whole. According to some labor leaders, the low level of representation of rural-based labor unions or worker organizations resulted in a strong urban bias. This indicates that at least one of the Colloquium’s objectives—to bring agricultural workers and other rural workers into the process—was not met.
Still, many important observations and perspectives were aired at the Colloquium. Arnold Saint Vil, member of the Fédération des Ouvriers Syndiqués (FOS) and Vice President (representing labor) of the Tripartite Commission, stated in his opening address that labor unions wanted the Labor Code revision process to take into consideration the following points:

- the right of both private and public sector workers to organize;
- integration of new categories of workers into the legislation;
- equal treatment for house workers or domestic employees;
- job security and the right to work;
- social security;
- creation of a tripartite committee to manage ONA and OFATMA;
- creation of a National Economic and Social Council; and
- ratification of international conventions that have been signed by Haiti.

These points certainly reflected many of the issues that have been raised by a broad cross-section of labor organizations in Haiti, and indicated that labor representatives wanted these issues addressed in a substantive manner.

In his opening speech, the Vice President of the Tripartite Commission from the private sector, Henri Clesca of the Association Nationale des Distributeurs de Produits Pétroliers (ANADIPP), stated that the Colloquium was an opportunity to establish an equilibrium between social justice and financial viability. This elusive search for balance between two apparently contradictory goals reflects the concerns raised in a White Paper published by the private sector (see Chapter 6). Thus, for private sector representatives, the Colloquium was an opportunity to see how the inevitable tradeoff would be managed in practice. Participants also noted that the Labor Code:

- does not protect or promote workers’ economic and social rights or their right to organize;
- does not comply with a number of international ILO conventions ratified by Haiti;
- does not provide coverage for many workers; and
- legitimates the second-class treatment of domestic workers and encourages a form of child exploitation.

Based on these observations, participants recommended that the new Labor Code:

- institutionalize concerted action as a legal principle by establishing tripartite mechanisms based on parity and equity between social partners;
- protect the rights of all workers whether urban or rural, professional or manual;
- encourage foreign investment while promoting job creation and protecting national investment;
- comply with the prescriptions of the 1987 Constitution;
- take into consideration international ILO conventions, in particular those that guarantee the basic rights of workers – the right to organize, to negotiate and engage in collective bargaining, to strike and to receive social security;
- encourage training and technical assistance for workers through employer contributions;
- include special dispositions to assist, promote and protect small and microenterprises, in particular those enterprises – cooperatives, savings and loans associations and community banks – based on solidarity;
• eliminate the section of the Code dealing with children working as domestics;
• grant domestic employees the same rights and privileges granted to other categories of workers;
• take into consideration the reality and the risks of economic globalization; and
• revise the appeals process for the Special Labor Tribunal.

According to the Tripartite Commission, the Colloquium was the first step in a long and participatory process of consultation, which was to be followed by a number of subsequent phases:

• creation of a technical commission composed of labor experts charged with preparing a first draft of the new legislation;
• organization of another colloquium to review and revise the proposed legislation;
• submission of the revised propositions to ILO experts to ensure compliance with international norms and conventions; and
• resubmission of the corrected propositions to social partners prior to their presentation to the executive branch for submission to Parliament.

Thus, the results of the Colloquium were to serve as a foundation for drafting a new labor code through a participatory and inclusive process of consultation.

Revised Labor Code: Code du Travail Actualisé

A Technical Commission was formed with the mandate to draft the new legislation based on the guiding principles defined during the Colloquium. The Commission brought together representatives from labor, the private sector and government. After more than six months of work, the draft of the revised labor code (Code du Travail Actualisé, or CTA) was officially presented to the public in May 2000.

The 1984 Duvalier Labor Code has 516 articles. The Tripartite Working Group responsible for revising the Code made changes to and/or added 53 articles, notwithstanding the changes made in the preamble to the Code. Of these 53 articles, only 19 represent either substantive changes or new additions to the Labor Code. The rest are primarily minor changes related to style or formulation (see Appendix 2).

Perspectives on Process and Content

Subsequent to public distribution of the CTA, the three primary actors – government, private sector and labor – involved in or concerned by labor law reform in Haiti have revealed varying perspectives and positions about the process and content of proposed labor law revisions.

The Ministry of Social Affairs and Labor

The Ministry of Social Affairs and Labor was contacted for its perspective on the process. Conversations in 2000 with officials from the Ministry suggest that the Haitian government believed it was making progress toward labor reform on several fronts:

• continuing its process of consultation with labor and employers;
• refining its draft proposals for reform of the 1984 Labor Code based on comments from labor activists and employer associations;
• working with other government ministries to broaden protections for children and adult workers; and
• improving the range of services offered to workers and employers.

The Ministry cited several steps it had taken over the past several months to advance the process of labor law reform.
Consultation and Analysis

The Ministry produced a report of the Colloquium which was distributed in March 2000. The Ministry’s Directorate of Labor set up an internal Technical Commission to analyze a number of proposals and comments submitted by employer and worker organizations in response to the government’s new draft Labor Code. The Commission was to re-examine the draft code in light of the submissions, make revisions it deemed appropriate, and prepare a final draft of a revised code, which the government intended to submit to the new Haitian parliament, scheduled to sit in the fall of 2000. The Technical Commission’s Laure Garçon noted that more than one thousand copies of the draft were distributed to labor organizations, employer associations, students, lawyers, civil society organizations and government officials. The Haitian government expected the process of consultation and education to continue after the final draft of the proposed revisions to the Labor Code is presented to the Haitian Parliament. A full and informed public debate on the issues would benefit all those interested in labor rights.

New Legislation

The government recognized that there is a legal vacuum with respect to regulations concerning associations. In 2000, the Ministry was working with the office of the Secretary of State for Youth and Sport to draft a new law to fill that void and to improve Haiti’s compliance with the provisions of ILO conventions protecting freedom of association.

The Ministry worked with UNICEF and Haitian civil society organizations to draft a Children’s Code to present to Haiti’s parliament. All issues related to children in domestic service, including restavek, that were formally covered in the Labor Code are dealt with in the Children’s Code. The Ministry believed that this draft law would enable Haiti to comply with international standards with respect to children’s rights.

The question of the rights of public sector workers to organize and strike, guaranteed under ILO conventions ratified by Haiti but prohibited under Haitian law, will not be addressed in a new Labor Code. The Haitian government claims that these rights fall under the jurisdiction of Haiti’s Law on Public Administration. Accordingly, the fate of public sector workers is in the hands of the drafters of revisions to the Public Administration Law currently underway. It is not clear what position the Haitian government will take on the rights of public sector employees.

Expanded Services

According to representatives from the Ministry of Social Affairs and Labor, the Ministry has recently set up a free legal assistance service for employers and workers. Some ten officials of the Ministry are providing information about the rights of workers and employers under the law, covering such topics as wages, bonuses and dismissals.

The OFATMA maternity hospital resumed functioning in 1999, providing maternity services to Haitian workers under the national maternity insurance plan.

Enforcement of the Laws

The Ministry recognizes that labor inspection continues to be a matter of concern to both workers and employers. In some cases, employers refuse to allow labor inspectors from the Ministry access to the workplace. In such cases, it is necessary to summon a justice of the peace in order to obtain access. The Ministry believes that workers who are convinced that the law is not being applied should take the initiative of contacting the Ministry to seek enforcement of the laws.
As to enforcement of existing laws, such as the requirement under Article 137 of the current Labor Code for adjustments to the minimum wage when inflation increases by 10 percent, the Ministry points to the increase in the minimum wage effected by the Executive in 1995. The government notes Haiti’s history of political instability, its status as a fledgling democracy, the many competing priorities for government action, and the scarcity of resources as factors that may have impacted implementation of Article 137. The officials expressed hope that the political climate will become more stable in the near future.

Employers and Private Sector Associations

Many in the private sector are critical of the proposed legislation despite the fact that they were represented on the Technical Commission responsible for drafting the legislation. In an open letter to the Ministry of Social Affairs and Labor, a group of six private sector associations identified four issues that they felt were not taken into consideration in the draft legislation:

- the creation of an environment that favors job creation;
- conditions that will promote and protect investment;
- the health and well-being of workers; and
- competitiveness with other countries in the region and the rest of the world.

Worker Organizations

Overall, the modifications and additions to the Labor Code failed to address concerns brought up by workers, and while some progress was achieved, it was marginal.

The most outspoken and systematic critiques of both the process and the draft legislation are by organizations that were not invited to partic-
Finally, the proposed legislation does not address the issue of implementation and the ability of the state to force compliance with the law.

In July, 2000, worker support organizations, including Anten Ouvriye, Batay Ouvriye, Action Catholique Ouvrière (ACO), Chandel, Tet Kole Ti Peyizan, and the Port-au-Prince branch of the Justice and Peace Commission, formed a coalition to challenge the proposed Labor Code. A Creole document critiquing the draft legislation was prepared. It was distributed throughout the country with a view to planning workshops with workers in both rural and urban areas and organizing a national, broad-based campaign against the proposed legislation.

A similar initiative was begun by COSYNAH, the confederation of public sector employee unions. In September, 2000, COSYNAH organized a workshop with representatives of its membership and other unions to analyze the proposed legislation, and the critiques that emerged are similar to those of the coalition. As a follow-up to the two-day workshop, COSYNAH and other partner organizations established a commission charged with preparing a systematic critique of the proposed legislation and elaborating an alternative proposition that takes into consideration the interests and concerns of workers.

Despite fifteen years of support to worker organizations, close links to both national and international trade unions, and extensive collaboration with the ILO on worker education programs, the Centre Pétion-Bolivar did not participate in the Labor Code revision process. From the perspective of the Centre, neither the process nor the objectives of the proposed legislative changes are clear. What is clear is that currently the forces of globalization are being used to promote further “flexibilization” of the workforce at the same time as labor unions and other pro-worker activists are drawing on human rights laws in general and worker rights laws in particular to promote and protect the rights of workers. According to the Centre, the recent exercise in Labor Code revision in Haiti is in fact a sort of ahistorical hybrid in that it addresses neither of those realities. As a result, both labor and management have substantive critiques of the CTA.

Labor leaders have also expressed concern that the Tripartite Commission and the Ministry of Social Affairs and Labor do not intend to follow the consultation process that was outlined at the Colloquium. In fact, some of the steps that were proposed – for example, restitution to the various groups through another general meeting as well as submission of the final version to the ILO to check for compliance – seem to have been lost in the process. The general feeling among labor is that the government will move forward quickly with the legislation and try to submit it to Parliament through a fast track mechanism. This would appear to be confirmed by statements made by representatives from the Ministry of Social Affairs and Labor.

For the labor groups interviewed for this report, labor law reform is a priority. Should the proposed legislation be passed as is, worker rights will continue to be violated with impunity, and workers will have little recourse before the law. Thus, the challenge is how to mobilize against the proposed legislation, how to garner support among a broad cross section of the population and in international forums, and finally how to propose alternative legislation in keeping with the demands of the workers’ movement in Haiti and around the world.
Conclusions

Haiti’s labor-related government agencies, private sector actors and most worker organizations agree that the country’s Labor Code needs revision and better implementation. Not surprisingly, however, the consensus breaks apart where the interests of the various sectors diverge. Each party has different views on how to revise the Code with regard to content and process, as well as different visions for the economic development of Haiti and how the Labor Code should ultimately serve those sometimes divergent visions. It is the conclusion of this study that labor law reform proposals facilitating greater labor flexibility will further erode worker rights, increase casualization of the labor force, and ultimately enhance only the short-term global economic competitiveness of a few Haitian firms. On the other hand, reform that protects worker rights and is designed as part of a development strategy that enhances productivity across all sectors will help ensure a healthier and sustainable regional and global economic integration for Haiti.

The following recommendations can help ensure that the content and process of labor law reform reflect the needs and priorities of workers and spur productivity throughout all of Haiti’s economic sectors. These recommendations arise from the comments of people committed to protecting worker rights, consolidating and strengthening the labor movement in Haiti, and constructing a new sustainable economic development paradigm for Haiti.

1. The process of Labor Code revision must be participatory and inclusive of workers as well as employers and government. This will require a means of establishing trust among the parties and a clear commitment by the state to provide social actors with sufficient information, access to reform activities, and time to participate effectively in all phases of the reform process.

Too often decisions have been made in the name of concerned social sectors without their input and insight. So-called participation exercises have been used to legitimatize policies that already have been defined and not as forums to encourage citizen participation in decision-making.

The decision by Haiti’s Ministry of Social Affairs and Labor to undertake Labor Code reform, and its efforts to elicit comments on the initial stages of the reform process, has already spurred dialogue on key economic and social issues affecting the survival of Haiti’s people.

2. Specific problems with the Labor Code already identified by labor and the private sector should be addressed and concrete measures should be proposed to correct the problems.

These include, according to the labor movement: the lack of the Code’s conformity with the Constitution and international labor conventions; confusion with regard to roles and responsibilities for implementing the Labor Code; no attention to the special needs of and constraints facing women workers; unequal obligations required of workers and management; no protections for domestic workers; no protection for restaveks and child workers generally; inadequate sanctions for Labor Code violations; inadequate measures to promote and protect the right of association; and discrimination against women and other categories of workers. According to the private sector, the shortfalls have to do primarily with such issues as poor management, malfeasance related to social security payments, and the cost of benefits.

3. The Labor Code should address and mediate conflicts between the private sector and workers in a way that protects worker rights in a national economy increasingly driven by the exigencies of the global economy.

Worker organizations, women’s groups and other social actors interviewed for this report share a fundamental concern that labor law reform will ultimately erode the basic rights of workers in the name of globalization, regional integration, industry competitiveness and foreign investment.
A broad social dialogue is needed to elaborate on these concerns, define potential alternatives, and develop the political and social support for a pro-worker approach to defining Haiti’s niche in the global economy.

4. As a corollary to Labor Law reform, the Haitian government should develop, in consultation with worker organizations, the private sector, peasant organizations, cooperatives and other social actors, a national policy on productive employment and job creation for men and women workers in all sectors.

Haiti is facing an employment crisis that encourages the government, the private sector and even some trade unions to trade away worker rights, natural resources, environmental safeguards and food security in order to attract foreign investment that ultimately creates few jobs. The Haitian government, with grant and loan funds from foreign aid sources, also has supported labor-intensive employment schemes for Haiti’s poor. While potentially part of a short-term solution, these schemes have had little real success in Haiti, in part because they were designed to provide short-term, emergency employment rather than systematically enhance the productivity of the peasant, informal and local manufacturing sectors, which provide the bulk of Haiti’s employment.

To generate sustained increases in both the number and quality of jobs, the Haitian government must protect worker rights and provide an overall plan to enhance the efficiency, output, and income-generating capacity of all of Haiti’s productive sectors (agriculture, arts and handicrafts, local manufacturing), not just the export assembly industries, which are the beneficiaries of current economic and labor policies. Such an overall plan also should include strengthening Haiti’s strategic industries, such as cement and grain processing, to ensure that they help increase the multiplier effect of local production.

This integrated approach would more equally distribute the benefits of production and economic growth between men and women, producers and market people, and workers and employers—a much more stable path to long-term, sustained employment and economic development than current schemes, which exploit labor, particularly women’s labor, as a major competitive strategy.

5. Corresponding social security legislation should be examined and reformed to ensure worker rights, adequate access to benefits, and efficient, effective and transparent functioning of the administrative agencies responsible for carrying out the legislation.

Both labor and the private sector leveled serious criticisms against the social security agencies. Criticisms include total agency dysfunction, blatant non-compliance, mismanagement of funds taken from workers and management, and inadequate provisions for women and children. These problems must be corrected and sufficient oversight instituted.

6. Bilateral and multilateral donor and lending agencies such as USAID, the World Bank, the IMF and the UNDP should work with the Haitian government, labor organizations and civil society to change the institutions’ sectoral and macroeconomic policies and programs to enhance, rather than undermine, labor rights in Haiti. Such policies would see labor rights as a primary means to achieving poverty reduction in Haiti.

Economic policy issues will continue to exacerbate current and future political, social and economic crises in Haiti if they are not addressed in a coherent and participatory manner. Recent public statements and policies by USAID and the IFIs have acknowledged both the importance of core labor standards to sustainable and equitable development and the right of workers to participate in shaping economic policy. It is time to turn the rhetoric into reality in Haiti, and to engage with workers in an honest and open process of dialogue and policy change.
## Appendix 1

**List of Organizations and Resource Persons Interviewed**

<table>
<thead>
<tr>
<th>Organization</th>
<th>Resource Person</th>
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<tbody>
<tr>
<td>Antenn Ouvriye</td>
<td>Hector, Michel, Centre d’Etudes des Mouvements Sociaux, Université d’Etat d’Haïti</td>
</tr>
<tr>
<td>Association des Femmes Marchandes</td>
<td>Initiative Patronat Syndicale</td>
</tr>
<tr>
<td>Association des Industries d’Haïti (ADIH)</td>
<td>InterAmerican Development Bank (IDB)</td>
</tr>
<tr>
<td>Batay Ouvriye</td>
<td>International Labor Organization (ILO)</td>
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<tr>
<td>Canadian International Development Association (CIDA)</td>
<td>Kay Fanm</td>
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<tr>
<td>Centre Pétion Bolivar</td>
<td>KOTA</td>
</tr>
<tr>
<td>Centre pour la Promotion des Femmes Ouvrières (CPFO)</td>
<td>Latortue, François, Labor Expert, Former Minister of Justice, Former Director of Labor Inspection</td>
</tr>
<tr>
<td>Commission Tripartite de Consultation et d’Arbitrage</td>
<td>Minister of Justice, Camille Leblanc</td>
</tr>
<tr>
<td>Comité des Femmes pour la Négociation avec le Parlement</td>
<td>Minister of Social Affairs and Labor, Mathilde Flambert</td>
</tr>
<tr>
<td>Confédération Autonome des Travailleurs Haïtiens (CATH)</td>
<td>Mouvman Peyizan Papay (MPP)</td>
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<tr>
<td>Confédération des Syndicats Nationaux d’Haïti (KOSYNAH)</td>
<td>Organisation Générale Indépendante des Travailleurs Haïtiens (OGITH)</td>
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<td>Confédération des Travailleurs Haïtiens (CTH)</td>
<td>Plateforme pour la Promotion d’un Développement Alternatif (PAPDA)</td>
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<tr>
<td>Confédération Nationale des Enseignants d’Haïti (CNEH)</td>
<td>Plateforme des Organisations Haïtiennes de Droits Humains (POHDH)</td>
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<tr>
<td>Confédération Général des Travailleurs Haïtiens (CGT)</td>
<td>Programme pour une Alternative de Justice</td>
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<td>Confédération des Travailleurs Autonomes (CTH)</td>
<td>Sales, Jean Frédérick, Lawyer, Private Sector Labor Specialist</td>
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<tr>
<td>Conseil de Modernisation des Entreprises Publiques (CMEP)</td>
<td>SOFTHA</td>
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<td>Escale</td>
<td>Solidarité des Ouvriers et Travailleurs Haïtiens</td>
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<tr>
<td>Fédération des Ouvriers Syndiqués (FOS)</td>
<td>Solidarité Fanm Ayisyen (SOFA)</td>
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<td>Tet Kole Ti Peyizan Ayisyen</td>
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<td>World Bank</td>
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## Appendix 2

### Comparative Analysis of 2001 Labor Law Reform Proposal and 1984 Labor Law

<table>
<thead>
<tr>
<th>Article CTA 2001</th>
<th>Article Code 1984</th>
<th>Comments</th>
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<tbody>
<tr>
<td><strong>Suspension of individual contracts</strong></td>
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<tr>
<td>21</td>
<td>33</td>
<td>New version prohibits more than two temporary suspensions within a six-month period</td>
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<tr>
<td><strong>Termination of individual contracts</strong></td>
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<tr>
<td>29</td>
<td>41</td>
<td>Clarification with regard to benefits due when an employee terminates a contract</td>
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<td><strong>Severance pay and leave</strong></td>
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<td>33</td>
<td>45</td>
<td>Reworking of the scale of severance pay based on employees with more than fifteen years of service</td>
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<tr>
<td>372</td>
<td>49</td>
<td>Removes limitations on damages paid when a contract has been terminated illegally</td>
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<td><strong>Collective contracts</strong></td>
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<tr>
<td>56</td>
<td>68</td>
<td>Decrease in the number of union workers in a workplace required in order to engage in collective bargaining</td>
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<tr>
<td><strong>Length of the workday</strong></td>
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<tr>
<td>83</td>
<td>96</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>86</td>
<td>98</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>88</td>
<td></td>
<td>New article requiring employers to provide three obligatory breaks during the workday</td>
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<td>89</td>
<td>101</td>
<td>Exempts certain types of enterprises from the prescriptions regarding the length of the workday and the payment of overtime (for example, hospitals, restaurants, airlines)</td>
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<tr>
<td><strong>Rest periods and holidays</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>95</td>
<td>107</td>
<td>Reworded for clarity</td>
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<tr>
<td>97</td>
<td>109,110, 111</td>
<td>Reworded to provide the list of legal holidays</td>
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<tr>
<td>112</td>
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<td>Eliminated as a result of Article 97 of the CTA</td>
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<tr>
<td>104</td>
<td>118</td>
<td>Reworded to include other enterprises that are exempt from paying overtime and may require employees to work on legal holidays</td>
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<tr>
<td><strong>Paid leave</strong></td>
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<td></td>
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<tr>
<td>108</td>
<td>123</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>Article CTA 2001</td>
<td>Article Code 1984</td>
<td>Comments</td>
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<tr>
<td>109</td>
<td>124</td>
<td>Reworded for clarity</td>
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<tr>
<td>126</td>
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<td>Eliminated from the CTA</td>
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**Salary, tips, and bonus**

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<td>128</td>
<td>45</td>
<td>Reworded and simplified</td>
</tr>
<tr>
<td>129</td>
<td></td>
<td>Completes Article 128 (CTA) by adding the second paragraph of Article 144 of the 1984 Code</td>
</tr>
<tr>
<td>130</td>
<td></td>
<td>New article obliging employers to provide employees with a pay slip showing payment and all deductions made</td>
</tr>
<tr>
<td>132</td>
<td>146</td>
<td>Reworded for clarity to specify that conditions of employment and/or changes in conditions of employment must be negotiated with employees</td>
</tr>
<tr>
<td>135</td>
<td>149</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>136</td>
<td>150,151</td>
<td>Reworded and integrated into one article</td>
</tr>
<tr>
<td>139</td>
<td>154</td>
<td>Modified and paragraph concerning exemptions for NGO and philanthropic institutions removed</td>
</tr>
<tr>
<td>144</td>
<td>159</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>145</td>
<td></td>
<td>Completes the preceding article and prohibits employers, in the event of a pending labor conflict with workers, from removing raw materials and/or equipment to another country without authorization of the Ministry of Social Affairs and Labor</td>
</tr>
</tbody>
</table>

**Individual and collective labor conflicts**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>147</td>
<td>161</td>
<td>Reworded for clarity and to integrate the role of the Tripartite Commission for Consultation and Arbitration</td>
</tr>
<tr>
<td>149</td>
<td>163</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>150</td>
<td>164</td>
<td>Addition of a new clause extending the period of reclamation and integrating the Special Labor Tribunal</td>
</tr>
<tr>
<td>151</td>
<td>165</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>152</td>
<td>166</td>
<td>Modified to extend the delay to 48 hours rather than 24 hours</td>
</tr>
<tr>
<td>153</td>
<td>167</td>
<td>Reworded</td>
</tr>
<tr>
<td>Article CTA 2001</td>
<td>Article Code 1984</td>
<td>Comments</td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------</td>
<td>----------</td>
</tr>
<tr>
<td>154</td>
<td>168</td>
<td>Modified to include the possibility of establishing a payment schedule for indemnities</td>
</tr>
<tr>
<td>168</td>
<td>181</td>
<td>Reworded to include reference to the Tripartite Commission</td>
</tr>
</tbody>
</table>

**Unions**

<table>
<thead>
<tr>
<th>Article Code 1984</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>191</td>
<td>Fourth and fifth paragraphs removed and integrated into Article 192</td>
</tr>
<tr>
<td>192</td>
<td>New article integrating list of types of undue influence that are illegal and an increase in the sanctions</td>
</tr>
<tr>
<td>193</td>
<td>Reduction in the number of employees needed to form a union</td>
</tr>
<tr>
<td>194</td>
<td>Reduction in the number of employees needed to form a union</td>
</tr>
<tr>
<td>195</td>
<td>Reworded</td>
</tr>
<tr>
<td>210</td>
<td>New article specifying conditions for creating a federation of unions and a confederation of unions</td>
</tr>
<tr>
<td>213</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>217</td>
<td>New article attributing to the Ministry and the Tripartite Commission a role in the event of a conflict that endangers the survival of a union</td>
</tr>
</tbody>
</table>

**House workers**

<table>
<thead>
<tr>
<th>Article Code 1984</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>219</td>
<td>Reworded for clarity and introduction of new term for domestic employees – house workers</td>
</tr>
<tr>
<td>220</td>
<td>Reworded and simplified</td>
</tr>
<tr>
<td>221</td>
<td>Reworded and simplified</td>
</tr>
<tr>
<td>225</td>
<td>Introduction of severance pay for house workers based on the length of employment</td>
</tr>
<tr>
<td>230</td>
<td>New article stipulating a minimum wage for house workers based on 50 percent of the national minimum wage while retaining all other aspects of the statute</td>
</tr>
</tbody>
</table>

**Truckers and drivers**

<table>
<thead>
<tr>
<th>Article Code 1984</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>251</td>
<td>Reworded for clarity</td>
</tr>
<tr>
<td>253</td>
<td>Reworded and modified to stipulate that private chauffeurs are eligible for the same severance as other workers</td>
</tr>
<tr>
<td>Article CTA 2001</td>
<td>Article Code 1984</td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------</td>
</tr>
<tr>
<td><strong>Foreign workers</strong></td>
<td></td>
</tr>
<tr>
<td>274</td>
<td>308</td>
</tr>
<tr>
<td><strong>Women</strong></td>
<td></td>
</tr>
<tr>
<td>287</td>
<td>321</td>
</tr>
<tr>
<td>298</td>
<td></td>
</tr>
<tr>
<td><strong>Minors</strong></td>
<td></td>
</tr>
<tr>
<td>301</td>
<td>334</td>
</tr>
<tr>
<td><strong>Identification of the enterprise</strong></td>
<td></td>
</tr>
<tr>
<td>365</td>
<td>392</td>
</tr>
<tr>
<td><strong>Internal regulations in the workplace</strong></td>
<td></td>
</tr>
<tr>
<td>372</td>
<td>399</td>
</tr>
<tr>
<td><strong>Labor Inspectorate</strong></td>
<td></td>
</tr>
<tr>
<td>399</td>
<td>426</td>
</tr>
<tr>
<td><strong>Hygiene and workplace safety</strong></td>
<td></td>
</tr>
<tr>
<td>438</td>
<td>466</td>
</tr>
<tr>
<td><strong>Labor Tribunal</strong></td>
<td></td>
</tr>
<tr>
<td>460</td>
<td>488</td>
</tr>
<tr>
<td>461</td>
<td>489</td>
</tr>
<tr>
<td>466</td>
<td>494</td>
</tr>
</tbody>
</table>

1. These were drawn from a document prepared by the Ministry of Social Affairs and Labor, Guide des principales modifications opérées au niveau du Code du Travail Actualisé (undated). The guide provides an overview of the changes made, although the text has mislabeled those articles within the CTA and the reference to the 1984 Code. Corrections have been made in this presentation.

2. The articles that appear in bold are articles that have been tagged by worker support organizations as either new or as articles that have been substantially modified and require further analysis and reflection.

3. The articles that appear in italics represent changes from the 1984 Code but were not designated as such in the introductory text prepared by the Ministry. This may suggest that other minor changes have not been included in the Ministry’s overview.