GALS Newsletter

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Short Takes
Multinational Companies and Tort Liability

On July 22, 2013, the Superior Court of Ontario ruled that Guatemalan plaintiffs could sue a Canadian company for torts committed by security personnel of its subsidiary in Guatemala.
The case was brought by a group of indigenous Mayan Q’eqchi’ living in El Estor who alleged that security personnel employed by HudBay’s subsidiaries in Guatemala, and which were under control and supervision of the parent, HudBay, committed human rights violations, including rape and murder, on and around the Fenix nickel mine. The conflict arose out of a land dispute. Part of the mine was on land claimed by the indigenous community, a claim the Guatemalan Constitutional Court later recognized. The majority of plaintiffs’ claims asserted direct rather than vicarious liability of the parent company for its negligence in failing to prevent the harms caused by the security personnel it helped to supervise. In one cause of action, plaintiffs also alleged that the subsidiary acted as an agent of the parent. While the plaintiffs in Choc were not employees of the company or the subsidiary, the court’s ruling has implications for actions alleging labor violations by overseas subsidiaries of Canadian corporations. The ruling suggests that there is jurisdiction in Canada for foreign workers to bring actions in tort against Canadian corporations for acts committed by its subsidiaries against their workers overseas. Indeed, in an employment case, arguably the parent corporation’s duty of care would likely be even stronger than in the Choc v. HudBay Minerals case. (See Choc v. HudBay Minerals, 2013 ONSC 1414).

--Jeffrey Vogt, Legal Advisor, Department of Human and Trade Union Rights, International Trade Union Confederation

**Country-Specific Case Studies: India**


**Abstract:**
The authors describe a heated debate in India over labor market regulation. Recent trends in labor market regulation tend toward liberalization; neoliberals, who favor deregulation, claim that pro-worker and pro-union laws confer a disproportionate amount of power on trade unions and worker groups. In many Indian states, policy makers have responded by chipping away at labor protections, particularly laws that make it difficult for employers to downsize or reshape their workforces. The neoliberals claim that over-empowered worker groups and unions have created unnecessary conflicts, hindered workforce flexibility, and caused low productivity. Business lobbies claim that regulation hinders economic development and thereby hurts workers. The authors examine survey data from Maharashtra, a state with pro-worker labor laws, to examine whether these claims are true. The survey data comes from union representatives in both the public and private sector. The authors find that employers in Maharashtra frequently act in contravention of labor law, despite the unions’ supposedly disproportionate power. Further, they find that unions in Maharashtra are not likely to strike or cause a labor conflict, while employers increasingly cause labor stoppages by locking employees out or refusing to negotiate. In addition, judicial interpretation of labor law has favored employers. The authors find that, contrary to the predictions of neoliberals, even in states that have pro-labor regimes union power is limited and decreasing while employers have become more powerful and militant.

**Subjects:** [Country-Specific Case Studies](#), [Full-text links: WESTLAW](#)
Globalization


Abstract:
The author argues that multinational firms pose a challenge to traditional labor organizations because no single union or policy regime can simultaneously affect all of the firm’s component parts. He argues that local regulation and small bargaining units are piecemeal solutions that have little effect on labor standards and social norms. The author begins by providing an overview of some of the major trends in multinational companies and predicts how these trends might affect labor relations. For example, the author describes how companies often operate as strategic actors, escaping a home country’s labor standards by operating in a less regulated host country. He gives a case study about U.S. and European multinational companies operating in Canada, focusing on Canadian labor organizations’ and policy makers’ responses to these companies. The author describes policy and union organizing actions that have largely resulted in net losses for unions and pro-labor politicians, and proposes new avenues for reviving labor standards in an era of increasing globalization. The author proposes that firms and unions work together rather than as adversaries, that multiple stakeholders be brought into discussions involving labor regulations, and that policymakers adopt novel approaches to labor policy, such as mandating the involvement of third party stakeholders in labor arbitration and developing cross-ministry labor law trainings and initiatives.

Subjects: Globalization, Country-Specific Case Studies, Collective Bargaining

Country-Specific Case Study: Pakistan


Abstract:
Pakistan has, until recently, been considered a country with relatively progressive labor laws. These labor laws are a result of populist, anti-imperialist uprisings against British employers. Since the middle of the last century, Pakistan’s relatively progressive labor laws were alternately expanded and curtailed by prime ministers eager to respond to either the voting populace or powerful business lobbies. In 2008 Pakistan passed constitutional amendment that shifted many legislative subjects from joint federal and provincial authority to the exclusive authority of the provinces. This amendment could threaten labor protections. The author argues that the Constitution should be interpreted to give federal courts the jurisdiction to enforce labor rights
that are granted by the Constitution. He acknowledges that such an interpretation would contrast with previous presidents’ passage of anti-labor laws that contravened the Constitution, but notes that such laws were simply changed by the next president rather than challenged in the Constitutional court. The author urges Pakistani courts to change course, and begin interpreting the Constitution in a more stringent manner and taking up more challenges to labor laws. In addition, the author argues that the new amendment still allows the federal government to implement and uphold rights guaranteed by the ILO Conventions the country has ratified because the state itself, not the individual provinces, is a member of the ILO.

**Subjects: Country-Specific Case Studies, Labor Rights in General.**

**Links to Related Projects**

**The International Labour Organization’s (ILO) Informal Economy Resource Database:**
http://www.ilo.org/dyn/infoecon/iebrowse.home

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

**International Labour Organization's (ILO) Conditions of Work and Employment Laws**
http://www.ilo.org/travdatabase

The Program maintains a Database of Conditions of Work and Employment Laws, which provides information on laws from around the world. The database covers measures on minimum wages, working hours and holidays, and maternity protection and provides information on around 130 countries from all regions.

**Asian Law Center:**

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

**Centre for Employment and Labour Relations Law:**
http://www.law.unimelb.edu.au/celrl/

Centre for Employment and Labour Relations Law is a research and teaching center devoted to
The development of an understanding of labor law at the University of Melbourne. The Center’s website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center’s Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at [http://www.austlii.edu.au/au/special/industrial/](http://www.austlii.edu.au/au/special/industrial/).

**ETUI Labourline:** [http://www.labourline.org/Etui](http://www.labourline.org/Etui)

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the European Trade Union Institute for Health and Safety (Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

**Globalization Bulletin:** [http://www.rci.rutgers.edu/~dbensman/bulletin.html](http://www.rci.rutgers.edu/~dbensman/bulletin.html)

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at dbensman@smlr.rutgers.edu.


The International Social Security and Workers Compensation Journal is an on-line journal that focuses on international scholarship in the areas of social security, workers compensation, and occupational health, and disability support. It is published by the School of Business Law, Curtin Institute of Technology in Perth Australia. The IJSSWC contains inter-disciplinary articles in fields such as law, occupational medicine, health economics, and disability studies.

**Labor and Global Change Database:** [http://www.ilir.umich.edu/lagn/](http://www.ilir.umich.edu/lagn/)

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

**LabourWeb:** [http://www.lex.unict.it/eurolabor/en/](http://www.lex.unict.it/eurolabor/en/)

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of
European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D’Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

The Marco Biagi Centre for International and Comparative Studies:  
http://www.csmb.unimo.it

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (http://www.csmb.unimo.it/journal.html). Currently only in Italian, the Center’s website will soon offer an English version.

Trade Unions and Labor Relations Database:  
http://www.polsoz.fu-berlin.de/polwiss/db_unions

The database, produced by the Center of Labor Relations of the Otto-Suhr-Institute of the Freie University Berlin, contains over 7,000 citations of books, articles, working papers, brochures, proceedings, etc. The bulk of the citations address aspects of labor relations in Germany and the EU, but there is a substantial body of literature in the database covering global labor issues as well.

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