

Workers and TNCs: Reshaping International Law for the Protection of Workers

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Abstract

This thesis examines the current state of international labour law, and places it in the context of international development. It looks at issues within development, namely capital mobility, globalization and the race to the bottom, the lack of international labour laws under the International Labour Organization (ILO), and the power of transnational corporations. It then looks at the current system the ILO has in place to protect workers, then highlights at one of its member states to see how this system works on the ground. Lastly it looks at one specific case in Colombia; bottling factory unionists v. Coca Cola. All the issues and the data presented in the thesis paint a picture for development; that what is happening seriously impedes development for countries in the Global South, and that the current system that exists does not protect workers. This thesis seeks to answer the question: what are the barriers workers face when attempting to access legal remedies at an international level? It ultimately argues that there are significant barriers that workers must overcome if they choose to seek legal action against their transnational employer when their workplace protections have been violated.

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Introduction

In countries in the Global North today we are increasingly seeing the erosion of rights to collective bargaining. Teachers, nurses, journalists, etc. strike and people say that workers are making unreasonable demands; that unions are irrelevant today. They forget that not so long ago there was no such thing as the 40 hour work week, worker's compensation, occupational health and safety committees, the right to freedom of association, and the right to refuse unsafe work.

Conversely, in countries in the Global South, we are seeing factory collapses where thousands of workers die, "sweatshops" with almost unimaginable conditions. We see factory fires where workers were unable to escape due to the bars on the windows, suicide nets in factory stairwells, and unionists and their families being kidnapped, tortured, and even murdered for exercising their legal right to freedom of association.

In both instances however there is one similarity, an apparent lack of public outcry. There may be a group of supporters behind the striking unionists in the Global North; then the strike goes on too long, or the government forces them back to work, and their support lulls. Undoubtedly, there is outrage when tragedies occur in the Global South. There are calls for boycotts, demands that something be done, better oversight, agreements that these companies must follow, and assurances that this will never happen again. But again, outcry in the court of public opinion fades quickly, and once apologies have been made, press conferences have been held, and empty non-binding agreements have been signed, people forget. Nobody goes to jail, no one is held accountable, and

people go back to buying from the companies in question, they no longer think about the tragedy that occurred and the people that died. They do so because they have been promised it will not happen again. And then it happens again.

These reoccurring violations of basic workers' protections have a clear link to development. Workers are an essential part of the productive economy; one could argue that the basis of any stable capitalist society is a stable working class. If workers' rights are being stripped away, or never implemented in the first place, the nature of their work is decidedly unstable. With this kind of instability, there is very little room for individual development, with few opportunities for upward mobility. Because developing countries largely rely on the working class, if workers are dying at work, or making so little they can barely sustain themselves, development at a national level also becomes increasingly difficult. In short, when work is threatened, development is threatened.

The world has become increasingly globalized, and as such transnational corporations (TNCs) are more and more commonplace. The question then arises, if a company's headquarters are in one country, but production occurs in another, at what level would a legal grievance take place? If workers' protections have been violated and they wanted to take their employers to court, where should that happen? What legal system do they need to follow? What are the logistics associated with cross-border litigation? The questions go on, with no clear answers. This thesis attempts to look at the state of affairs when it comes to international labour law, and will seek to answer the question: what are the barriers that workers face when attempting to access legal remedies at an international level? It will ultimately argue that there are significant barriers that

workers must overcome if they choose to seek legal action against their transnational employer when their workplace protections have been violated. In order to make this argument, this thesis is broken down into four main sections.

Firstly, the literature review which examines the main issues I have identified to be significant barriers which workers in the Global South are facing. The first issue I discuss is capital mobility, and how the fluidity and freedom of capital to move where it wants when it wants has a negative effect on workers' rights. The second issue is the effects that globalization has had on production, and what is known as the "race to the bottom" among developing countries. The third issue is the apparent lack of international labour laws under the International Labour Organization (ILO) to protect workers, and give them definite legal recourse regardless of what country they live in, or what TNC they work for. Lastly I discuss the immense power that TNCs have, how they came to have this power, and its effects on national governments in developing countries' ability to protect their citizens.

The second section contains data relating to these issues, and is meant to paint a picture of the current system of international labour laws, and how this system is playing out in the real world. Firstly in this section I discuss the ILO, what it stands for, and its system for protecting workers. Then I bring the focus in closer on one of its member states, Colombia. I look at its history of abuses against unionists in particular, despite its "legal" requirement to abide by the system the ILO has laid out. Lastly I bring the focus even closer and look at one particular case: Colombian bottling unionists v. Coca Cola, officially *Sinaltrainal v. The Coca Cola Company*.

In the third section I bring all the issues laid out in the first section, and all the data from the second section together for an analysis and discussion of what it all means. Namely what it means for workers in Colombia and the Global South, and more broadly what implications for international development as a whole.

Finally, the last section contains my conclusions and recommendations. This section sums up the findings presented in the thesis, and offers recommendations I believe are necessary to remedy the current issues we are seeing.

1. Literature Review

1.1. Capital Mobility

Capital mobility is a concept often discussed in economics, however it has significant impacts for development as well. Capital mobility, for the purposes of this thesis, refers to the unimpeded flow of capital (be that monetary investment or physical capital) in and out of any given country at the whim of those who own the capital. In the early days of globalization, there was a belief that both labour and capital were mobile. Today however, we are finding that labour is increasingly static, while capital is increasingly mobile. This inequality causes labour to bear the burden of negative shocks, because capital is free to move across borders, and even across the planet, when conditions suddenly become unfavourable (Diwan 2001: 2).

Walker (1978: 31) argues that due to increased mobility and decreased geographical specificity, there are significant implications for local development. He argues that should local finance be linked to national capital markets, locally generated savings can easily slip away to be invested elsewhere (Walker 1978: 32); I would presume that this would be the case should local finance be linked to international capital markets. This kind of mobility not only affects savings, and investment capital, but also affects physical capital such as factories. They too are becoming more mobile, he argues, not only due to advancements in communication and transport, but also because they are increasingly related to a whole network of producers, markets, and commands, rather than being rooted in the local economy (Walker 1978: 32).

He goes on to say that the implications of capital mobility go hand in hand with what he calls spatial differentiation, and that they both develop together. Therefore, under Capitalist development there is growing fragmentation, and decreasing attachment of capital to a specific place (Walker 1978: 32). This then results in fewer backwards and forwards linkages, more leakage of surplus value, and greater externalization. Ultimately this mobility, and the fragmentation he describes (referred to today as distributed chains of production) doesn't allow for local development to occur.

There are, in some circles, perceived benefits of this kind of capital mobility. Namely from a neo-classical economic point of view, it does several things, firstly it increases portfolio investment outcomes by offering a wider range of investment opportunities. However due to the concentration of wealth, this increase only really affects wealthy elites (Palley 2009: 2-3). Secondly it allows companies to operate global supply chains by allowing the ability to own production facilities in other countries which also increases foreign direct investment (FDI). Additional research challenges this assertion however, and suggests that though outsourcing and FDI are good for companies, they are detrimental to national income and worker's wages (Palley 2009: 3). Lastly, there is a belief that capital mobility "fosters trade, FDI, technology transfer, and financial development, and together this improves efficiency and growth" (Palley 2009: 7). Palley tells us that these claims are particularly popular among business media, despite the fact that there is a lack of empirical evidence that demonstrates a positive relationship between trade liberalization, and growth. Moreover it ignores that all four of those benefits listed above are possible when capital controls are in place (Palley 2009: 7).

These neoclassical arguments are often complimented by neoliberal political economy arguments. Namely that capital mobility provides market discipline which then improves the quality of policy and governance. The idea being that that capital will flee countries with bad governance and flow into countries with good governance. This then creates a 'race to the top' where countries are constantly seeking to improve their governance and create more efficient markets in order to attract capital. However "more efficient" under this model, is markets that are free of government involvement (Palley 2009: 7). As we will see in the next section, this 'race to the top' never actually occurs, and in fact, this and other factors are causing a race to the bottom.

1.2. Globalization and the Race to the Bottom

It could be argued that this kind of mobility and globalized production are clear indicators of the results of globalization. Oftentimes, critics of globalization will argue that it is ultimately bad for the poor; this is especially true in least developed countries (LDCs). Under globalization LDCs are forced to compete with one another in the global marketplace. National governments then, must increasingly cut wages and lessen worker's protection in order to incentivize transnational corporations (TNCs) to set up shop in their country over another. This then causes what's known as the race to the bottom (RTB). The race to the bottom argues that in a global market free from capital controls, that TNCs will simply scour the globe in search for areas that will offer them the highest returns for the lowest cost (Rudra 2008: 2).

Countries then that institute policies which raise production cost (and thus lower profit margins) risk that capital will flee to another country. This then prevents countries from initiating and maintaining policies which benefit their citizens, such as social safety nets (unemployment insurance, disability payments, universal healthcare, etc.), high environmental standards (to ensure that factories can't pollute the local air, earth, and water indiscriminately, thus poisoning the people who live near it), and adequate worker's wages and workplace protections (to ensure people who work full-time are able to feed themselves and their families, and are not subjected to unsafe working conditions) (Rudra 2008: 2). Additionally, there has been an emerging body of research that shows that globalization and worsening conditions for the poorest people have a positive correlation in both an absolute and relative sense (Rudra 2008: 6). The race to the bottom then tells us that if international market pressures are going to determine public policy at the national level, then a lack of welfare protections for those in LDCs is inevitable (Rudra 2008: 3).

Rudra's findings show that globalization does in fact cause international demand for low-skilled labour in LDCs and thus generates intense competition between these countries (2008: 30). Her data additionally shows that the poorer the country, the more likely they are to engage in export-based, low-skilled manufacturing (Rudra 2008: 31). She then looks at low-skilled work, and surplus labour in terms of worker's ability to engage in collective action. Ultimately she finds that with LDC's high rates of low-skilled

labour, and their large pool of surplus labour, that their ability to engage in collective action is low, and they will likely not be able to overcome this problem (Rudra 2008: 33)¹

1.3. Lack of International Labour Laws under the ILO

As it stands today, the International Labour Organization (ILO), which is the branch of the United Nations (UN) responsible for labour. They are the only tripartite UN agency, bringing together employers, workers, and governments from its 187 member states to “set labour standards, develop policies and devise programmes promoting decent work for all women and men” (ILO 2018: About the ILO para. 1).

The ILO operates by setting conventions, which are then ratified by its member states by their highest national authority (which is usually their parliament). Article 19 of the Constitution of the ILO requires that member states must bring all new conventions and recommendations to their relevant authorities within a year of its conference at which it was adopted for consideration of ratification (ILO 2014: 3). Despite this requirement that countries must bring conventions forward for ratification, they are merely “strongly encouraged” to actually ratify the convention, not required (ILO 2014: 3). If a convention is not ratified, member states are still required to report to the Director-General of the ILO regarding the position of its national law in relation to the issues covered under the convention that was not ratified when requested to do so.

¹ For more information on the scholars she cites, and the calculations she uses to come to this conclusion, one should consult her book which is cited in the bibliography of this thesis

Under article 22 of the Constitution when a convention is ratified countries must report on the policies they have adopted to address the provisions of the convention they are party to every year (ILO 2014: 3). However in 2012 a new reporting system came into effect which states that members must report on the ILO's fundamental and governance conventions² every three years, and all other conventions every five years (ILO 2012: 20, 22). This system does, unfortunately rely on self-reporting at the national level and does however leave the door open to misreporting on the part of national authorities.

Should a country be found to not be in compliance with the conventions it has ratified, a complaint can be filed by another member state, the Governing Body of the ILO, or a delegate to the International Labour Conference. Once this complaint has been received the Governing Body may form a Commission of Inquiry, which is made up of three independent members. The Commission is then responsible for conducting the investigation and making recommendations to address the complaint (ILO 2018: Complaints para. 1). A Commission of Inquiry is the ILO's highest-level investigative procedure and is usually only called for when a country has been committing serious and ongoing violations, and has made no effort to remedy the situation. Despite this investigative mechanism, the ILO has no international dispute settlement court and as such has no ability to try countries in a court of law. Additionally, this process only applies to member *states* and not to TNCs.

² More on the fundamental and governance conventions in the data section of this thesis

1.4. The Power of Transnational Corporations

For the purposes of this thesis, the definition of a transnational corporation (TNC) is a company which operates in at least two or more countries. In today's world of global production, TNCs are quite common and include companies such as Apple Computer Inc., Walmart Stores Inc., and the Coca Cola Company, to name just a few. Due to the distributed nature of production as discussed above, it could be argued that nearly every major producer today is a TNC. Due to their size, the number of people they employ, and their vast amounts of capital, TNCs are very influential and exert a lot of control.

Namely, it has been argued that due to their immense influence they have seriously limited the ability for governments in developing countries to effectively create, implement, and maintain national policies (Biersteker 1980: 207). Biersteker goes on to argue that some scholars believe that the "resurgence of the State" has counteracted the power of TNCs and put control back into the hands of national governments. Ultimately however he finds that the imagined vs. actual power of the State are incongruent and if TNCs continue to respond to national policies as they always have (and there is nothing to suggest that they will change), then efforts made by these governments to control the production which occurs within their country will be significantly hampered by TNCs (1980: 220).

The power of TNCs is so widely known that the UN Economic and Social Council laid out their "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" (UN 2003: 1). In this document they lay out obligations that TNCs have. Particularly the "right to equal opportunity and non-

discriminatory treatment”, “right to security of persons”, and “rights of workers”. Under the rights of workers is listed

“Transnational corporations and other business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and ... to join organizations of their own choosing ... for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organization” (UN 2003: 5).

One of the factors which has been attributed to the growth of TNCs more broadly is the ability for TNCs to buy up smaller companies. This in turn, eliminates competition and allows TNCs to influence market prices (Hobson 2006: 24). The idea of the “free-market” is what has allowed TNCs to become so increasingly mobile, spread out, and powerful, and now they are violating the very rules which “free-market” ideology lays out, specifically the need for competition in the market (Hobson 2006: 24-25). It is through this manipulation that TNCs have been able to exert control over national governments. TNCs demand that LDCs open themselves to the world economy which then destroys what little stability they had in the first place. National governments then suppress unions in order to keep wages, labour standards, and benefits costs low (Hobson 2006: 25). Capital mobility and capital accumulation then play into the power that TNCs have, and this power then plays into the race to the bottom.

2. Data

2.1. Data on the International Labour Organization

The ILO has been in existence since 1919, and as stated in section 1.3. it is a



International
Labour
Organization

tripartite organization which brings together
employees, workers, and its 187 member

Figure 1: The International Labour Organization Logo

states to convene on the subject of labour
standards, and to create programs which

promote decent work for all (ILO 2018: About the ILO para. 1). The ILO works through three main bodies which all comprise employers', workers', states' representatives. The first body is the International Labour Conference which meets once annually in Geneva. This is where the International Labour Standards and the broad policies of the ILO are set. This conference also acts a discussion forum for important social and labour topics (ILO 2018: How the ILO Works para. 5). The second is the Governing Body which functions as the executive council of the ILO. This body convenes three times yearly in Geneva and makes decisions on ILO policies, creates the programme and the budget which it then submits to the Conference to be adopted (ILO 2018: How the ILO Works para. 6). Lastly there is the International Labour Office which is the ILO's permanent secretariat. Under the supervision of the Governing Body and the Director-General it is the locus for the overall activities of the ILO (ILO 2018: How the ILO Works para. 7).

Member states agree to follow the ILO's Constitution and they are expected to ratify the ILO's fundamental conventions. The ILO has eight fundamental conventions which cover topics the ILO believes to be fundamental principles and rights at work. These conventions have a 91.4% ratification rate³. The eight fundamental conventions are:

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No.98)
3. Forced Labour Convention, 1930 (No. 29)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Minimum Wage Convention, 1973 (No. 138)
6. Worst Forms of Child Labour Convention, 1999 (No. 182)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ILO 2018: Conventions and Recommendations para. 3)

On top of the fundamental conventions there are four governance conventions. The ILO identifies these as “priority instruments” and encourages member states to ratify them as they are incredibly important to the functioning of the ILO (ILO 2018: Conventions and Recommendations para. 4). The four governance conventions are:

³ there are over 1,367 ratifications of these conventions which is 91.4% of all possible ratifications. Only a further 129 ratifications need to be made in order for them to be universally accepted

1. Labour Inspection Convention, 1947 (No. 81)
2. Employment Policy Convention, 1964 (No. 122)
3. Labour Inspection (Agriculture) Convention, 1969 (No. 129)
4. Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ILO 2018: Conventions and Recommendations para. 4)

Since its creation the ILO has created and maintained its International Labour Standards which are a set of legal instruments that exist to promote productive and decent work in conditions which are free, secure, equal, and dignified (ILO Introduction to International Labour Standards 2018: para 2). These standards contain both conventions and recommendations. Now, there is an important distinction between these two things. A convention is a legally binding⁴ international treaty which must be put forward for ratification by the ILO's member states. Recommendations on the other hand, are non-binding guidelines which are often related to specific conventions and offers more specific guidelines on how that convention should be applied (ILO 2018: Conventions and Recommendations para. 1).

The ILO has two supervisory systems with which it ensures that conventions which have been ratified by member states are actually implemented and practiced. Firstly it has the regular system of supervision which relies on the examination of reports submitted by member states regarding the measures they have put in place to address the ratified convention (ILO 2018: Applying and Promoting International Labour Standards para. 1-4). These reports must be submitted every three years for fundamental and

⁴ It is unclear what is meant by "legal instruments" and "legally-binding" because as previously mentioned the ILO has no international dispute settlement court

governance conventions, and every five for all other ratified conventions (ILO 2012: 20, 22). The second supervisory system are called special procedures and there are three sub-systems within this. Firstly there is the procedure for representations on the application of ratified Conventions. This representation against a member state may be made by international and national worker's and employer's associations. Individuals may not make a representation, but may pass on any information to their association (if they are represented by an association at all) (ILO 2018: Representations para. 2). Once the representation has been brought to the Governing Body, tripartite committee comprised of three members from the Governing Body *may* be formed to investigate. The committee then submits a report to the Governing Body which contains the practical and legal aspects of the case, examines the information which has been presented, and offers recommendations (ILO 2018: Representations para. 1).

The second sub-system is through a body called the Committee on Freedom of Association (CFA). Seeing as the rights to freedom of association and collective bargaining are foundational to the ILO, it created the CFA in 1951 to address complaints regarding violations of these rights (ILO 2018: Committee on Freedom of Association para. 1). Complaints may be made against a member state of the ILO by a workers' or employers' organizations, regardless of whether or not that member state had ratified the Conventions relevant to the freedom of association. If the committee then decides to hear the case then it establishes the facts in discussion with the government in question. If it does find a violation has occurred, it then sends a report to the Governing Body, and makes recommendations on how to address the situation. If the country has ratified ILO conventions regarding the freedom of association, the CFA may refer the legislative

aspects to the Committee of Experts (ILO 2018: Committee on Freedom of Association para. 1). Over the course of its existence, the CFA has looked at over 3,000 cases.

The third and final sub-system is the procedure for complaints over the application of ratified Conventions. These complaints are filed against member states who have ratified specific Conventions and are believed to be in non-compliance with these, by another member state which has also ratified the Convention in question. This is the highest investigative mechanism available to the ILO, and is usually only implemented when a country has been in consistent violation of ratified Conventions, and has shown little to no indication of addressing them (ILO 2018: Complaints para. 1). Once a complaint of this nature has been received, the Governing Body *may* form a Commission of Inquiry to investigate the matter. The creation of this kind of commission are very rare, and to date there have only been 12 that have been established. The most recent was in 2008 against the government of Zimbabwe (ILO 2018: Complaints para. 1). If a country refuses to adopt the recommendations made by the Commission of Inquiry, article 33 of the ILO constitution states that “the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith” (ILO 2018: Complaints para. 2).

2.2 Colombia

Colombia has been a member state of the ILO since the 28th of June 1919. It has ratified all eight of the ILO’s fundamental conventions, the most relevant to this thesis, however being the first two regarding the Freedom of Association and Protection of the

Right to Organise and the Right to Organise and Collective Bargaining, with both of these being ratified in 1976 (ILO 2018: Ratifications of Fundamental Conventions by Country). Colombia has also ratified the ILO's International Labour Standards, and has had them in force since the 9th of November 1999 (ILO 2018: Ratifications of C144 – Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)).

Despite its membership and ratification of all the relevant conventions, the ILO has received five representations against Colombia. One of the most recent being in 2016 for being in non-compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) among others, which was filed by the Confederation of Workers of Colombia (ILO 2018: Representations (Art. 24)). Again, despite its ratifications of ILO conventions regarding freedom of association there have been 128 cases brought against Colombia in the past 20 years alone under the Freedom of Association Committee, with many more cases which date all the way back to 1952 (ILO 2018: Freedom of Association Cases). In spite of what could be described as “serious and persistent”⁵ in regards to Colombia's continual failure to respect the union rights that it has agreed to uphold there has never been a Commission of Inquiry created to investigate this long and ongoing history of blatant disregard for rights to freedom of association and collective bargaining.

⁵ The ILO's own wording regarding when it would be necessary to form a Commission of Inquiry. See ILO Complaints para 1.

Knowing this history of continual disregard for the conventions which it has ratified it is then not surprising to learn that Colombia is known in some circles as the trade unionist murder capital of the world, with over 4,000 trade unionists having been murdered since 1986 and only 5 cases having been successfully prosecuted (The Coca Cola Case 2009). Additionally it has been heralded as the worst place to be a trade union official after 184 unionists were murdered in 2002 alone (Osborne 2003: para 1). Some have argued that since the signing of the US-Colombia Labour Action Plan (LAP) in 2011, that union-related murders have dropped, thus fulfilling this plan's mission. However actual unionists in Colombia have a different opinion, and argue that although over a decade-long period, deaths have fallen, the amount of death threats, violence, and attempts on their lives have not (Zelenko 2014: para 18, 20).

2.3 The Coca Cola Case

Though there have been many unionists murdered in Colombia, this section focuses on one specific case: that of Coca Cola bottling factory workers in Colombia. This case was initially filed in 2001 under the Alien Torts Statute (ATS) in the United States. The ATS is one of the oldest legal statutes in the U.S. and was signed into law by George Washington in 1789. The statute is only one sentence long and reads: "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States" (Earth Rights International 2018: The Alien Torts Statute: Holding Human Rights Abusers Accountable para. 4-5). The ATS was virtually unused until the 1980s when there was a host of human rights cases that were being brought under it, for human rights violations which were

committed in developing countries (Institute for Legal Reform 2016: para 2); with the first ATS case filed against a corporation being filed in 1996 (The Coca Cola Case 2009). In 2013 however the Supreme Court ruled in *Kiobel v. Royal Dutch Petroleum* that the ATS is limited in that it is presumed that the laws of the U.S. do not extend past its sovereign borders unless Congress states otherwise. This decision put an end to nearly all ATS cases against U.S. companies (Institute for Legal Reform 2016: para 4).

The case against Coca Cola was filed in 2001 by Sinaltrainal, the union representing the bottling factory workers, and their lawyers were Dan Kovalik of the United Steel Workers, and Terry Collingsworth. There were initially four complaints filed which were:

1. The Murder of Isidro Gil in 1996
2. Unlawful imprisonment of 3 people in 1996
3. Detention and torture
4. Threats and attempted assassinations

Isidro Gil was pulled out of the Coca Cola truck he was driving and shot 9 times by a paramilitary group because he was the leader of the Carepa factory union. The next day paramilitaries entered the factory in Carepa and gave all the known unionists an ultimatum: resign or die. There were pre-written letters of resignation done by the managers of the factory, and all the unionists signed them on the spot. After the resignation of the unionists and union leaders, wages at the factory plummeted (The Coca Cola Case 2009).

The case was brought in through the Florida district court, but the charges against Coke were dropped in 2003, after the court found that Coke's agreement with their bottlers did not allow them to intervene, and thus they were not liable. The charges filed against the individual bottlers still stood, but were also dismissed in 2006 due to lack of subject matter. The workers appealed the case but the U.S Court of Appeals 11th Circuit dismissed the case once again in 2009 citing a lack of evidence linking Coke to the activities in Colombia.

Shortly after the case was initially filed in the U.S an advocacy group was created to "stop Killer Coke". The group, known as The Killer Coke Campaign was headed up by Ray Rogers, though it was largely a student-driven campaign with university students all across the world demanding that Coca Cola be removed from their campuses. Some campuses active in the campaign were Stockholm



Figure 2: A prominent image used by the Killer Coke Campaign at their rallies and displays

University, Sweden; University of California, Berkley, California; and University of British Columbia, Canada to name just a small few (Killer Coke 2018: Colleges, Universities, and High Schools Active in the Campaign to Stop Killer Coke). Mr. Rogers headed up public displays of civil disobedience, was present at student campaigns against Coke, and even spoke to Neville Isedell, the CEO of Coke at Coca Cola's annual shareholders' meeting.

3. Analysis and Discussion

Looking at all the issues, and all the data presented in the previous two sections then, how is one to make sense of all of it? What are its implications for workers, and development as a whole? This section will analyze this issue at every level, and attempt to understand how such an atrocity was able to occur (and how these things continue to occur).

3.1 Analysis at the Corporate Level

There are two possible ways to view Coca Cola's degree of liability with regard to what is happening in Colombia. Staunch free-market advocates would argue that Coca Cola is a business. They are driven by profit, and their only responsibility is to their shareholders. Coke can't possibly be liable for things that occur in their factories overseas, that responsibility should fall to individual owners, managers, and national governments. Another argument for this viewpoint is that often (and indeed in the case discussed in this thesis) is that TNCs often use subsidiaries in other countries to do their manufacturing. Because these factories are merely contracted by the larger corporation then, the parent company can't possibly be responsible for activities that occur therein. Additionally, one could argue that because of the complexities of global supply chains, that it is unreasonable for parent companies to ensure adequate working conditions at link in the chain. This way of thinking benefits TNCs a great deal, as it absolves them of any responsibility, and allows them plausible deniability by arguing that their agreements with their subsidiaries doesn't allow them to intervene.

There is one important factor that this argument does not take into consideration: negligence. The possibility that TNCs can be complicit in situations such as this due to willful ignorance, and the turning of a blind eye to the potential negative outcomes that come with continuing production in a specific factory. The argument that it is simply too complex for TNCs to have adequate oversight of their supply chains could be countered with the fact that never before have companies *had* to be accountable for this, and that perhaps if they faced potential consequences, that they would somehow manage to find ways in which to ensure this kind of necessary oversight. What does it say about the above approach also, when shareholders themselves speak out about atrocities committed in subsidiary factories? At the shareholders' meeting discussed in section 2.3 one of Coca Cola's shareholders brought up such concerns. William C. Wardlaw III who at the time of the meeting owned roughly 35,000 shares, which dated back to his grandfather who had invested in the initial Coke offering. He addresses Mr. Isedell at the meeting stating that he and his family were feeling deeply concerned with reports coming out about conditions that Coca Cola workers were facing and other allegations made against Coke. He goes on to say that:

“... People all over the world are now connected so that the villagers in arid areas of India whose wells are being sucked dry and whose streams are being polluted by Coke bottling plants are in touch with Coke workers in Colombia, South America who have seen many of their leaders assassinated. Our relationship with our bottlers is crucial and extremely complex, but some issues are not complex at all, and are non-negotiable. We do not sell syrup to bottlers who violate basic international standards of human rights,

terrorizing workers and their union organizers. We do not, or should not, sell syrup to bottlers who suck dry the wells of villagers.” (The Coca Cola Case 2009).

To this, Mr. Isedell responds with a statement which completely disregards Mr. Wardlaw’s concerns, saying:

“I don’t impugn your integrity at all Mr. Wardlaw. But I would say that I do wish that your statement that we’re enlightened by truth telling on the internet were entirely true. There is a great deal of truth on the internet but unfortunately there is a great deal of perversion of the truth on the internet.” (The Coca Cola Case 2009).

Effectively he dismisses the many allegations, court cases, and first-hand accounts of workers as “lies on the internet”. It then becomes clear that even despite concerns from workers, the public at large, and even its own shareholders, that Coca Cola is indifferent to the atrocities caused by its manufacturing. With this level of disregard, it is difficult to imagine that any small lawsuits by workers, or even public outcry and threats of boycott will be enough to change their mind, and ensure that they begin holding themselves accountable.

One might say that what happened in Colombia is just a one-off event. That due to Colombia’s history of violence against unionists that, it is not entirely Coke’s fault, and it could have happened in any other factory in Colombia. However complaints of this nature made against Coca Cola were not unheard of before Colombia. In fact in the 1970s there were 8 Coca Cola bottling union leaders killed in a row in Guatemala. Coke claimed that

the bottler was merely a franchise of Coke, so it was not liable for the murders. Coke did eventually intervene however, and the factory was sold to new owners, and the killings stopped. Coke was never found liable in a court of law for the murdered unionists (The Coca Cola Case 2009).

3.2 Analysis at the National Level

If corporations then are not being held accountable, and are refusing to acknowledge any kind of responsibility, we must then shift to looking at what can be done at the national level. Often in development discourse, there is a tendency to simply say that all the blame, and responsibility for creating and adopting solutions needs to fall to the government in question. It should be clear however from the issues outlined in section 1 of this thesis that there are forces at play which are above the capabilities of national governments in developing countries. National governments often have very little say in the effects of globalization, capital mobility, the race to the bottom, and so on. Additionally other challenges have not even been taken into consideration such as corruption, civil war, and potential unrest or instability caused by any other number of things.

The issue of who can afford it also must be brought into consideration. Is it necessarily fair that countries who have GDPs lower than corporations' annual revenue be expected to bear the entirety of the financial burden required to create, implement, and maintain systems to enforce strict labour laws? Or to deal with the issues of corruption that they may be facing. It seems unfair also, that these countries are often quite

dependent on the investment, and jobs that these corporations bring, and are arguably not in a position of power in the country-TNC relationship, and yet are the ones who must risk capital flight should they attempt to advocate for workers and stronger labour laws. To illustrate this, Figure 1 is a table from the World Bank showing the top 100 richest entities in the world. Of particular note is in the number 10 slot in which the first TNC appears. The World Bank goes on to say that out of the top 100 entities, only 31 are countries and the remaining 69 are corporations (Green 2016: para. 1).

Top 100 Countries/Corporations					
Country/Corporation	Revenue (US\$, bns)	Country/Corporation	Revenue (US\$, bns)	Country/Corporation	Revenue (US\$, bns)
1 United States	3,251	35 Austria	189	69 Ping An Insurance	110
2 China	2,426	36 Samsung Electronics	177	70 United Arab Emirates	110
3 Germany	1,515	37 Turkey	175	71 Kroger	110
4 Japan	1,439	38 Glencore	170	72 Société Générale	108
5 France	1,253	39 Industrial & Commercial Bank of China	167	73 Amazon.com	107
6 United Kingdom	1,101	40 Daimler	166	74 China Mobile Communications	107
7 Italy	876	41 Denmark	162	75 SAIC Motor	107
8 Brazil	631	42 UnitedHealth Group	157	76 Walgreens Boots Alliance	103
9 Canada	585	43 CVS Health	153	77 HP	103
10 Walmart	482	44 EXOR Group	153	78 Assicurazioni Generali	103
11 Spain	474	45 General Motors	152	79 Cardinal Health	103
12 Australia	426	46 Ford Motor	150	80 BMW	102
13 Netherlands	337	47 China Construction Bank	148	81 Express Scripts Holding	102
14 State Grid	330	48 AT&T	147	82 Nissan Motor	102
15 China National Petroleum	299	49 Total	143	83 China Life Insurance	101
16 Sinopec Group	294	50 Argentina	143	84 J.P. Morgan Chase	101
17 Korea, South	291	51 Hon Hai Precision Industry	141	85 Gazprom	99
18 Royal Dutch Shell	272	52 General Electric	140	86 China Railway Engineering	99
19 Mexico	260	53 China State Construction Engineering	140	87 Petrobras	97
20 Sweden	251	54 AmerisourceBergen	136	88 Trafiquora Group	97
21 Exxon Mobil	246	55 Agricultural Bank of China	133	89 Nippon Telegraph & Telephone	96
22 Volkswagen	237	56 Verizon	132	90 Boeing	96
23 Toyota Motor	237	57 Finland	131	91 China Railway Construction	96
24 India	236	58 Chevron	131	92 Microsoft	94
25 Apple	234	59 E.ON	129	93 Bank of America Corp.	93
26 Belgium	227	60 AXA	129	94 ENI	93
27 BP	226	61 Indonesia	123	95 Nestlé	92
28 Switzerland	222	62 Allianz	123	96 Wells Fargo	90
29 Norway	220	63 Bank of China	122	97 Portugal	90
30 Russia	216	64 Honda Motor	122	98 HSBC Holdings	89
31 Berkshire Hathaway	211	65 Japan Post Holdings	119	99 Home Depot	89
32 Venezuela	203	66 Costco	116	100 Citigroup	88
33 Saudi Arabia	193	67 BNP Paribas	112		
34 McKesson	192	68 Fannie Mae	110		

Figure 3: World Bank chart listing the richest 100 entities

This is not to say that national governments have absolutely no role to play, or that their own problems which negatively affect workers and their rights are unimportant and need not be addressed. However when we look the bigger picture and realize the factors

which are outside countries' control, it becomes clear that even if a national government was absolutely perfect, with no corruption, and a genuine desire to improve conditions for their workers, that if they are stuck in these systems, that change may be largely out of their control. What real effects do national development have then when this is the system under which countries operate? How can development agencies argue that it is solely the fault of countries who have failed to protect their citizens when TNCs knowingly set up manufacturing in these countries precisely because they have low labour standards, and very little ability to do anything about it?

3.3 Analysis at the International Level

If one of the key problems to solutions at the national level is ongoing international forces, then what is going on at that level to address these workers' violations? It would appear that in many cases, countries hands are tied, that even if they want to help they are too dependent on the TNCs, and any attempt to change or enforce national policies will simply cause them to move production to another developing country where they are unwilling or unable to make changes to protect workers. Due to the issues faced at the national level, it seems apparent that any effective solution will have to start at this level.

Section 1.1 lays out the framework built and operated by the ILO. There exist conventions, which have been ratified by many countries, whose goal is to address these violations of rights to freedom of association. The ILO has mechanisms with which to "enforce" these conventions. Yet violations continue to occur. What is arguably most

striking is that despite the many cases filed against Colombia through the ILOs Freedom of Association Committee, there has yet to be a complaint made by another member state, and the creation of a Commission of Inquiry. The ILO calls its conventions and International Labour Standards “legally-binding” but how effective are these “legal” mechanisms when the body which created and is meant to enforce them has no international dispute resolution in which to hear these cases?

Capitalism today has become such a hegemonic force that TNCs are now permitted to treat their workers in this fashion. People no longer see any viable alternatives to capitalism, and as such, it has been allowed to run absolutely rampant. Before the end of the Cold War, there was the potential that workers would revolt and turn to communism or socialism. However, now that capitalism has achieved this level of domination, TNCs no longer fear that they will lose workers to other ways of social organization. As such they no longer need to bargain collectively with workers, and union rights have become weaker and weaker.

Perhaps most importantly, are the implications that all of these issues have on international development. It would seem clear that in the age of globalization that the majority of manufacturing today will continue to take place in LDCs. How then are countries expected to develop when in many ways their hands are tied? Their citizens need to work in order to take care of themselves and their families, the government itself needs them to work to generate badly needed tax revenue for the State. Yet they are unable to raise standards of working conditions for fear that TNCs will take their capital elsewhere and they will be even worse off than before. Development as a field must

adapt to these changing circumstances, so as to not duplicate past mistakes and fall into hegemony and rhetoric regarding the free-market and the invisible hand. We as an international community cannot allow TNCs to play with national jurisdictions, and face no consequences when people are dying at their workplace.

4. Conclusions and Recommendations

After examining all the issues and data above, it should be clear that the problem at hand is a serious challenge, and an impediment to development. In many ways we already know this, that is why there is so much public outcry when a workplace tragedy occurs in a developing country. People become outraged, because they know it is wrong that in this day and age people are still dying at work. They feel guilty because they know they are somehow complicit by purchasing products from these companies.

We also acknowledge the severity of the problem because we already have systems in place which are intended to protect workers. The ILO's systems of ratification and reporting are designed to ensure that member states are following the conventions they agreed to. Their systems of representations, complaints, and processes through the Freedom of Association Committee are also in place to ensure that member states who repeatedly fail to comply with the ratified conventions be held accountable.

Despite these good intentions, the purpose of this thesis has been to suggest that these mechanisms are not sufficient, and ultimately do not succeed in protecting workers. Although these systems exist to help them, workers still face significant barriers to access legal remedies at the international level.

In looking at the overarching issues that both workers and developing countries face, I believe that solutions at the corporate or national level will not be effective in addressing the barriers workers are up against. The precedent has been set that companies who have been found to be connected with workplace violations in developing countries do very little to change their behaviour. Instead they argue that the blame falls to their individual subsidiaries, and their agreements with them don't allow them the oversight and accountability that people are demanding. Alternatively, if they do acknowledge any wrongdoing, empty agreements are signed until the dust settles, and then business resumes as usual. Due to the nature of capital mobility, globalization, and the ensuing race to the bottom among developing countries, it is not feasible to suggest that countries must simply stand up for their citizens and implement stricter labour laws.

It is my strong belief that any solution which seeks to be truly meaningful and effective must be administered at the international level. The ILO must have a system of binding laws with international jurisdiction, under which both countries and TNCs fall. Additionally, it must have an international dispute settlement court in which it can hear cases relating to violations of these laws.

This is a tall order, and in no way am I suggesting that it will be easy. Despite the challenges it will pose, something must be done to address the ineffective systems that are currently in place which are failing to protect workers. Production as it occurs today shows no signs of stopping. TNCs are generating more profits than ever before and their ability to disregard worker safety and workers' rights allows them to increase their profit margins even more. TNCs will not change on their own. Many developing countries do

not possess the resources necessary to implement change, and if they did, they are under pressure from forces beyond their control to keep labour costs low for TNCs. People are dying, and will continue to die at work unless changes at the international are implemented to protect them.

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