**Recommendations: How to Prevent Trafficking and Discrimination Against Women in Corporate Supply Chains**

In the following paper, we will explain how the Worker-driven Social Responsibility (WSR) model addresses worker vulnerabilities to trafficking, redress while being trafficked, and the ultimate remedy: prevention of human rights abuses. In particular, we will detail how some of the most vulnerable populations- low-wage workers in corporate supply chains, many of whom are women and migrants- have been able to successfully protect themselves from trafficking and discrimination, as well as establish a proven framework for the prevention of forced labor.

In a shrinking world of increasingly globalized markets, low-wage workers- including many women and migrants- at the base of corporate supply chains remain isolated, vulnerable, exploited and abused. Governments, which the UNGP charges with responsibility for protecting the rights of their citizens, often lack the resources or political will to do so. **State-based enforcement agencies and policy frameworks consistently fail to protect workers from dangerous sweatshop conditions and even severe abuses, including forced labor, sexual harassment and rape, in no small part because those suffering the abuses are largely voiceless within the society in which they occur.** Where collective bargaining rights exist and are enforced, unions can provide effective workplace protections. But even when those rights exist in the law, they are ignored in practice for millions of workers, while millions more are excluded from the legal right to form a union altogether.

**Corporations bear responsibility for ensuring that human rights are respected in their suppliers’ operations**, but they tend to treat the discovery of abuses in their supply chains as public relations crises to be managed, rather than human rights violations to be remedied. Seeking to protect their brands from reputational harm, corporations embrace strategies that profess adherence to fundamental human rights standards but offer no effective mechanisms for enforcing those standards. This approach, known broadly as Corporate Social Responsibility (CSR), is characterized by voluntary commitments, broad standards that mostly mirror local law, ineffective or non-existent monitoring, and the absence of any commitment to or mechanisms for enforcement of the meager standards that do exist. CSR, in effect a form of corporate self-regulation, has failed to address the ongoing human rights crisis in global supply chains in large part because it does not put workers—the very people whose rights are in question and who have the most direct knowledge of the relevant environment—at the center of developing and enforcing solutions to the problem. This failure is evident at all levels of CSR—in its structure, governance, operation and allocation of resources— and it is this fundamental design flaw that makes the failure of these systems inevitable.

In recent years, however, this bleak portrait has begun to change. Both in the US and abroad, workers and their organizations have forged effective solutions that ensure the real, verifiable protection of human rights in corporate supply chains. This new paradigm is known as Worker-driven Social Responsibility (WSR). WSR has been tested in some of the most stubbornly exploitative labor environments in the world today—from the agricultural fields of Florida, which were once dubbed “ground zero for modern-day slavery” by federal prosecutors, to the apparel sweatshops of Bangladesh, the locus of some of this century’s most horrific factory calamities. In these oppressive environments, WSR has demonstrated its ability to eliminate longstanding abuses and change workers’ lives for the better.

WSR provides a proven new form of power for previously powerless workers to protect and enforce their own rights. **These fundamental rights can include—according to the circumstances and priorities of the workers driving the program—the right to freedom of association, the right to a safe and healthy work environment (including the right to work free from sexual harassment and sexual violence), and the right to work free of forced labor or violence**, among others. The WSR paradigm is founded on the understanding that in order to achieve meaningful and lasting improvements, human rights protections in corporate supply chains must be worker-driven, enforcement-focused, and based on legally binding commitments that assign ultimate responsibility for improving working conditions to the global corporations at the top of those supply chains.

Several essential features distinguish the WSR approach from others, specifically:

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*1. Labor Rights Initiatives Must Be Worker-Driven:*

Workers are the only actors in the supply chain with a vital and abiding interest in ensuring their rights are protected. If, therefore, a program intended to improve their situation is to work, workers and their representative organizations—global, national or local labor unions, worker-based human rights organizations, or other organizations that genuinely represent workers’ interests—must be at the head of the table in creating and implementing the program, including its priorities, design, monitoring and enforcement.

*2. Obligations for Global Corporations Must Be Binding and Enforceable:* Respect for human rights in corporate supply chains cannot be optional or voluntary. Effective enforcement is key to the success of any social responsibility program. Worker organizations must be able to enforce the commitments of brands and retailers as a matter of contractual obligation.

*3. Buyers Must Afford Suppliers the Financial Incentive and Capacity to Comply:* Corporations at the top of supply chains place constant price pressure on their suppliers, which inexorably translates into downward pressure on wages and labor conditions: the market incentivizes abuse. Corporations must instead be required to incentivize respect for human rights through a price premium, negotiated higher prices, and/or other financial inducements that enable suppliers to afford the additional cost of compliance with the agreed labor standards.

*4. Consequences for Non-Compliant Suppliers Must Be Mandatory:* The obligations of global brands and retailers must include the imposition of meaningful, swift, and certain economic consequences for suppliers that violate their workers’ human rights, whether or not ending the supplier relationship suits the economic and logistical convenience of the brand or retailer. Only programs that include such economic consequences can ensure protection for workers.

*5. Gains for Workers Must be Measurable and Timely:* The ability of brands and retailers to obscure the failure of voluntary labor rights initiatives is greatly aided by the absence from these initiatives of the obligation to achieve concrete, measurable outcomes at the workplace level within specific time-frames. To ensure accountability, any program designed to correct specific labor rights problems must include objectively measurable outcomes and clear deadlines.

*6. Verification of Workplace Compliance Must Be Rigorous and Independent:* Workplace audits— often infrequent and perfunctory and never free of buyer influence—are the exclusive monitoring mechanism in traditional CSR programs and have proven inadequate time and again. Effective verification of supplier compliance is essential and must include the following components: inspectors who have deep knowledge of the relevant industry and labor issues and who operate independently of financial control and influence by buyers; in-depth worker interviews, carried out under conditions where workers can speak freely, as a central component of the process; effective worker education that enables workers to function as partners with outside inspectors; and, most importantly, a complaint resolution mechanism that operates independently of buyers and suppliers and which can be used by workers 24/7 without fear of retaliation of any kind.

**A WSR Case Study: The Fair Food Program**

The most mature example of the WSR approach is the Coalition of Immokalee Workers’ (CIW) Fair Food Program (FFP). The Program was born from a human rights crisis in U.S. agriculture made possible by the continuing poverty and powerlessness of farmworkers. As described by Senator Bernie Sanders during a fact-finding visit to Florida, an agricultural hub: **“[T]he norm is a disaster, and the extreme is slavery**.”

Since 1997, the U.S. Department of Justice (“DOJ”) has successfully prosecuted eight farm labor servitude cases in Florida, prompting one federal official to label the state “ground zero for modern slavery.” CIW was an active participant in all but one of these cases, often conducting the initial investigations that brought the cases to the attention of the DOJ, and sometimes sending members into the labor camps undercover. In these cases, workers were held against their will by their employers through threats and, all too often, the actual use of violence—including beatings, shootings, and pistol-whippings. The eight successful prosecutions resulted in the liberation of over 1200 farmworkers.

Numerous midlevel supervisors went to prison as a result of the prosecutions, but the growers who benefitted from the forced labor were never prosecuted. As a result, nothing changed. This reality eventually led Luis C.deBaca, then the U.S. Ambassador-at-Large of the Office to Monitor and Combat Trafficking in Persons, and previously one of the prosecutors in an early forced labor case, to conclude that the investigation/prosecution model for combating slavery was insufficient to accomplish its intended goal, telling a national gathering of anti-trafficking advocates in 2013 that “**We can’t prosecute our way out of this problem**.”

Since its inception in 2011, the FFP has proved uniquely capable of tackling even the most pernicious, and previously intractable, problems in corporate supply chains. Most famously, of course, the FFP has for the first time rooted out forced labor of any kind on the farms participating in the Program, transforming the Florida tomato industry from “ground zero for modern slavery” to the “**best working environment in American agriculture**.” But equally impressive is the fact that sexual violence and harassment, otherwise ubiquitous in American agriculture, have also been eliminated. Indeed, the mechanisms implemented by the FFP have proven so successful that a special task force of **the Equal Employment Opportunity Commission** recently **singled out the Program and suggested the adoption of some of its core mechanisms by others seeking to rid their workplaces of these abuses**.

So how has the FFP succeeded so spectacularly in not only remedying, but preventing forced labor, discrimination, and sexual violence? The short answer is that the Program is singularly dedicated to enforcement. Unlike CSR regimes and other NGO approaches that promulgate flowery codes of conduct but lack any effective mechanisms to enforce their “standards,” the FFP has at every level of the program constructed mechanisms that ensure, not just promise, lasting social change. Those mechanisms include binding legal agreements between CIW and each participating buyer in the FFP; a code of conduct drafted with the direct input of the workers whose interests it is designed to protect; comprehensive worker-to-worker education; an effective and timely complaint resolution mechanism that workers can access without fear of retaliation; and probing management, payroll, and field audits conducted by a dedicated audit organization, the Fair Food Standards Council (“FFSC”), that has the power to suspend suppliers who fail to bring their operations into compliance with the code.

*Violence and Discrimination Against Women: A WSR Approach*

Sexual abuse at work is ubiquitous, but obstacles to reporting abuse make it difficult to quantify sexual harassment and sexual violence. Research suggests that at least 1 in 3 women experience sexual harassment in the workplace; however, an estimated 75% of workplace sexual harassment is never reported to employers or the government.

Sadly, women who do step forward are unlikely to achieve a successful outcome. In 2015, the EEOC investigated 6,822 allegations of sexual harassment in the workplace. Claimants were successful only 25% of the time, and these cases normally take years to resolve. Victims may want closure quickly. Witnesses may be reluctant to come forward. Beyond this, the legal system presents real challenges related to burden of proof and proof of injury.

For the hundreds of thousands of farmworker women in the US, the situation is much worse.

Human Rights Watch cites a 2010 survey of farmworker women in California’s Central Valley which found that 80 percent had experienced sexual harassment or assault. Indeed, sexual harassment and violence are so common that some farmworker women “see these abuses as an unavoidable condition of agricultural work.” As one female worker succinctly put it, “**You allow it or they fire you**.”

As an EEOC regional attorney told investigators, “Sexual violence doesn’t happen unless there’s an imbalance of power. And in the agricultural industry, the imbalance of power between perpetrator, company and the worker is probably at its greatest.”

**Women employed at Fair Food Program farms now live a different reality**. All participants in the FFP have committed themselves to the eradication of forced labor, child labor, violence, and sexual assault, which represent the worst offenses suffered by thousands of farmworkers over many decades. **The Code requires termination of supervisors found to have violated the Code’s zero-tolerance provisions**, including sexual assault. Any such offenders are ineligible for employment at FFP farms for two seasons to five years, depending on the offense. Retraining acceptable to FFSC must be completed before employment eligibility at Participating Growers can be reinstated. A second offense results in a lifetime ban from Fair Food Program farms. **Failure by a Participating Grower to impose these sanctions results in suspension from the Program and loss of access to the markets represented by 14 of the largest companies in the world.**

In addition to zero-tolerance provisions against violence and sexual assault, Participating Growers must provide all employees with training on the prevention of sexual harassment and discrimination, including sexually charged language and other conduct that contributes to a hostile environment. Supervisors and workers are informed of disciplinary consequences for all forms of sexual harassment.

These standards and their enforcement have brought an end to impunity for sexual violence and other forms of sexual harassment at FFP farms. Since the start of the FFP, dozens of supervisors have been disciplined for sexual harassment as a result of complaint resolutions or corrective actions that addressed audit findings, and every case of sexual harassment with physical contact committed by supervisors or co-workers resulted in termination. As a result, there **have been zero cases of rape or attempted rape since the implementation of FFP standards in Season One**. Cases of sexual harassment by supervisors with any type of physical contact have been virtually eliminated, with only two such cases found since 2013

During Season 6, 100% of Participating Growers had implemented company-led trainings for workers and supervisors on the prevention of sexual harassment and discrimination based on gender, race, national origin, or sexual preference. Growers continue to work towards or maintain best practices, including ensuring that all field-level supervisors understand their roles in responding to and preventing violations of these policies. During the 2016- 2017 season, **FFSC received no worker reports of sexual harassment or discrimination at over 70% of FFP farms**.

As part of case resolutions and audit corrective actions, extensive crew-wide meetings and re-trainings on company and FFP policies have also been held, to reinforce standards and ensure the prevention of sexual harassment and discriminatory conduct. Participating Growers’ supervisory staff have also largely accepted their responsibility to prevent hostile environments and to respond effectively to complaints of sexual harassment and discrimination. **This has resulted in reports by the overwhelming majority of workers during FFSC audits of vastly improved work environments.**

Starting in 2014, the Fair Food Program became the host site for the development of an innovative curriculum on sexual harassment prevention, specifically designed to ad- dress abuses suffered by workers in agriculture. Collaborating with several stakeholders, CIW helped to developed the first culturally appropriate training curriculum for workers and supervisors in agriculture to address the impacts of sexual violence and sexual harassment in the workplace. This project created a powerful new tool for combatting gender-based violence and sexual harassment, and has helped set the national standard for addressing these abuses in the agricultural sector.

After a year-long investigation of sexual assault in the fields from California to Florida, entitled "Rape in the Fields," **PBS Frontline declared the FFP to be the single most effective prevention program in the US agricultural industry**. In an interview on NPR, the producer cited the FFP's “**proactive policies, the participation of workers, and the** **economic incentives placed on anti-harassment policies**."

In 2016, the federal Equal Employment Opportunity Commission’s Equal Employment Select Task Force on the Study of Harassment in the Workplace solicited testimony from representatives of the Fair Food Program. In the report on its nationwide study the Task Force, identified the Fair Food Program as a “radically different accountability mechanism” and adopted many of the FFP’s mechanisms as core recommendations in its report.

**WSR and Private Regulation**

On a macro level, the FFP is a private regulatory system almost completely divorced from the U.S. legal system. The only point of contact between the two is the ability of CIW or a participating buyer to resort to the courts if there has been a breach of a Fair Food Agreement. This near total separation is by design, and reflects two basic realities.

* First, our legal system has not, to date, proved particularly hospitable to farmworkers or other disempowered people, either legislatively or judicially. Because such groups have a greatly diminished voice in the arena of political debate, their views and interests, if considered at all, are always diluted. However, in the WSR model that is the FFP, **the diminished voice of the marginalized is raised in chorus with the powerful voice of consumers**. When together they demand that corporations clean up their supply chains, **the outside noise and procedural barriers of the legal system fall away, the gears of the marketplace engage, and the interested parties are freed to devise effective solutions** that work for both sides.
* Second, by divorcing the solution from any particular legal system and instead harnessing the power of the market, **WSR can more easily address supply-chain problems around the world**, largely, although not entirely, **without regard to international borders or differing legal norms**. If a corporation’s consumer base lies in the U.S. or Europe, for example, it is the attitudes of those consumers that matter, not those of government officials in, say, Bangladesh. This reality promises a much more uniform approach to supply-chain reform around the world, for the fear of lost sales to megacorporations is just as great, and effective, for suppliers in developing countries as it is in the U.S.

The FFP, for example, has just entered into an agreement with Mexico that, on Program farms, rids the U.S. H2A agricultural guest worker program of the illegal recruiting fees that are currently endemic in that program. Such illegal fees, which are of course known to the DOL, are often the basis for debt bondage, but the DOL is largely powerless to prevent the practice because almost all of the illegal activity takes place in Mexico, beyond the DOL’s jurisdiction. ~~In the~~ The FFP, however, was not willing to import Mexico’s problems into the Program. Therefore, as a predicate to using guest workers in the FFP, and based on knowledge originally provided by workers who had participated in Canada’s guest worker program, the Program developed a contract-based “clean channel” recruiting process with Mexico’s Ministry of Labor, and all participating growers will now use only that channel to recruit guest workers.

The FFP has now demonstrated beyond cavil that its WSR approach can quickly rid supply chains of deep-rooted problems like forced labor and ubiquitous problems like sexual harassment. It has also demonstrated the potential for its precepts to operate internationally, with a dexterity that governments simply cannot match. But ridding corporate supply chains of unwanted behavior requires ongoing vigilance. It is not like painting a house, where the hard work is done up front and one can then enjoy the fruits of that labor for years to come. Rather, maintaining a clean supply chain, a supply chain free of human trafficking, is more like weeding a garden. No matter how thorough a job one does up front, without constant attention the weeds will return.

While the FFP’s market-based economic incentives have indeed helped transform the Florida tomato industry into “the best working environment in American agriculture,” the Program’s architects never assumed that economic incentives alone would be sufficient to eliminate forced labor entirely from the industry. That is why the Program includes the multiple, redundant oversight mechanisms described above—including worker-to-worker education, the twenty-four-hour complaint line, and in-depth field and farm audits—to ensure that **when violations do arise they are identified and remedied as quickly and effectively as possible**.

In short, while the market consequences built into the WSR model will indeed prevent the vast majority of human rights violations in corporate supply chains, the enforcement mechanisms exist to catch the rest. Inexorably, those systems, together, are ridding Florida agriculture of its worst actors and its worst abuses, and, if the same mechanisms are employed, similar results can be achieved in other supply chains that rely on low-wage labor.

**Role of the State**

State actors can and should play an important role in eliminating trafficking and sexual harassment, in particular by adopting the WSR model of incentives, remedy, and prevention.

First, governments are leading procurers of many goods, with the U.S. government the single largest purchaser in the world. Government procurement policies- especially in OECD countries- require that suppliers eliminate human trafficking from their supply chains by refusing to enter into (and, when applicable, canceling) contracts for some significant period of time with suppliers associated with forced labor. The market will adapt its practices in order to do business with its largest customers and governments are often the largest customers in the market.

Second, states can and should respond to their citizens’ demands for corporations doing business within their borders to be held responsible for the conditions in their supply chains, at home and abroad. Because many of the largest corporations in the world are based in or serve markets in OECD countries, they are subject to the demands of developed world consumers, who demand ever increasing corporate transparency.

Third, states should foster multisector approaches among law enforcement and NGOs to identify and eliminate slavery operations. As has been the case with CIW, NGOs with relationships to or members in vulnerable workplaces are ideally positioned to identify instances of forced labor early.

Finally, at the very least, governments should establish regulatory environments in which NGOs themselves can implement WSR programs. This would include enforcement of private contracts, of course, but also requires that NGOs not be restricted or penalized for conducting public campaigns, informing consumers of real-world supply chain conditions, and once agreements are reached, providing the monitoring and enforcement of those agreements.

WSR offers the promise of supply chains around the world that are free of forced labor and sexual harassment. By placing workers at the center of design and implementation, WSR better identifies and detects workplace abuses, fashions oversight systems and remedies that work, and brings to bear the vast resources of workers as the first line of defense for their own rights. When backed by the purchasing decisions and power of multinational corporations- or government procurers- WSR has demonstrated that it can address even the most pernicious and stubborn workplace abuses~~.~~