



**Submission of Asia Floor Wage Alliance to the
Session of the Permanent Peoples' Tribunals as a
Conclusion of National Peoples' Tribunals in Asia on
"Living Wage as a Fundamental Human Right & Role of International Institutions"
Sri Lanka Foundation Institute, Colombo, Sri Lanka, December 17-18, 2015**

Honourable Jury Members,

We, as representatives of Asia's garment workers employed in the global garment industry submit to the Permanent Peoples' Tribunal our final submission on "Living Wage as a Fundamental Human Right and the Role of International Institutions" after having presented workers' testimonies, experts' evidence, and presentations from different parties in the National Peoples' Tribunals (hitherto referred to as NPTs) in Cambodia, India, Indonesia and Sri Lanka.

The Asia Floor Wage Alliance is encouraged that through the four NPTs, the Permanent Peoples' Tribunal has recognised the global imperative to bring transnational companies, formally excluded from international law, into jurisdiction.

First, the four NPTs have established that multinational brands and retailers that source garment from Asia are responsible for grave exploitation and human rights violations of Asian garment workers. Such violations in producing countries have robbed the workers of a basic humane existence and Asian countries and industry of their due revenue. It is critical to take into account the *urgency* of the condition of lack of decency and dignity in the lives garment workers and correct this condition with the immediacy it deserves. We thus seek a remedy to this situation.

Second, the testimonies of workers reveal in great detail the extreme hardships borne by workers who are denied a minimum living wage. After an Asia-wide Tribunal process on "Living Wage and Decent Working Conditions in the Garment Industry", as Asia Floor Wage Alliance, we conclude that denial of a minimum living wage to any worker is a violation of his/her fundamental human rights. We thus seek a direction from the jury in this regard.

Third, AFWA has presented a first-of-its kind formulation of a cross-border minimum living wage. However, we submit that the international institution best fit to define and promote criteria for a minimum living wage is the International Labour Organisation (ILO). So far, although there is sufficient scholarship on this issue, the ILO has not yet defined criteria for a minimum living wage. This has allowed a global

slippage of statutory minimum wages towards poverty lines that are in themselves problematically defined. We thus seek a direction from the jury in this regard as well.

We submit this statement, as a concluding submission, by 45 labour organizations representing garment workers across Cambodia, India, Indonesia and Sri Lanka who have organized the four NPTs. We are also joined today by labour organisations in Bangladesh. After the tragic and momentous Rana Plaza deaths, Bangladesh has been centre stage in the struggle for labour rights of garment workers.

At the four National Peoples' Tribunals, the workers' testimonies and the submissions by national experts and other reports bring out the core violations in the garment industry. Patterns of violation are important indices for status of industrial relationships in the industry.

Four categories of violation of labour rights are as follows:

- 1) Suspension or violation of statutory minimum wage on a wide scale
- 2) Restructuring of labour relationships through short-term contracts and outsourcing
- 3) Increasing unfair labour practices and union busting
- 4) Criminalisation of industrial relationship and violation of civil and political rights of labour activists who are actually Human Rights Defenders.

We would urge the jury to see this pattern of violation as a system at whose core are the concurrent suppression of 1) Wages and 2) Freedom of Association and Collective Bargaining. Unionisation leads to workers having a voice at work and one of the most important demands voiced by workers is for higher wages. Freedom of Association and higher wages (which we call "Minimum Living Wages") are integrally linked.

The testimonies from the four countries show common exploitative working conditions at the core of which are 1) under-valuation of workers' labour and 2) dismissal of Freedom of Association and Collective Bargaining.

First, we lift up the main egregious exploitative conditions.

1) Dehumanising of workers: Workers in the garment industry come from marginalised sections of their society. They are most often women from poor rural backgrounds, with low levels of education, and have families that their wages are expected to support. The testimonies express a strong feeling of urgency that that is linked to the deep level of marginalisation, dis-empowerment and even dehumanisation that workers in the garment industry are subjected to. The meaning of dehumanisation is aptly but simply captured in the experience of many workers that a simple family life is impossible even after years in the industry.

2) Poverty Wages: Testimonies and various studies show that legal wages are set at the poverty threshold and the wages of garment workers hover around the legal wage. In addition, the Tribunals brought out the fact that the prevailing wages of garment workers (and therefore, the legal wage in each country) is only about one-third the required living wage. Wages in the garment industry have stagnated, if not declined over the past decade. This wage regime removes the capacity of garment workers and women garment workers to extricate themselves from the cycle of poverty, elevate their economic and political status, and maintain their dignity and self respect.

3) Wage Theft and Intensification of Work: Workers testimonies and reports have been submitted to the jury during the NPTs showing the extensive failure in complying with the legal wage in the garment industry. Workers are subjected to wage theft, excessive hours and underpaid overtime. In addition, there

is lack of access to social security; a lack of protection for women workers especially with regard to health and safety, sexual harassment, maternity and reproductive health, and child care. The workers are subjected to inhuman productivity targets that lead to the violations of core labour standards. The contract labour or short-term contract system, practiced widely and illegally, facilitates a complex illegal system that allows for wage theft including the social security component and unfair labour practice. The contract labour system shifts the accountability and liability for legal responsibility and promotes a culture of impunity, contempt of law and corruption.

4) Short-term contracts: The testimonies highlighted the trend of the abuse of short-term contracts and the fact that it is at different stages becoming a structural element of the employer-employee relationship in the region. Short-term contracts (called Fixed Duration Contracts, FDC in Cambodia and contract labour in India) effectively negate workers' rights to statutory benefits such as maternity leave, provident fund, health schemes and seniority bonus. In addition, workers feel vulnerable to their employers' demands and worry that their contract may not be renewed if they do not work overtime when requested by the employer, if they take sick leave, or do anything that will make their supervisors unhappy. It was widely felt that, as union militancy increases, short-term contracts are used against union building and collective bargaining.

4) Caloric intake and health: Many testimonies refer to feelings of exhaustion after work that do not allow them to do their housework, or that lead them to go to bed without having prepared dinner for themselves. Testimonies also highlighted long hours of work negatively affecting reproductive health, violations to the right to health care as a result of practices such as forced overtime; not being permitted to go to the toilet; poverty wages that prevent workers from buying health insurance for themselves and their family; and the country's poor health infrastructure and facilities that do not readily provide assistance to workers in need of medical care. Workers from all countries reported being unable to take leave when sick due to the prevalence of punitive measures. A startling instance of the long term impact of such living conditions, and particularly of the combination of low caloric intake and harsh working conditions on workers health was the case of mass fainting in Cambodia.

To conclude, it is clear that workers are not able to make a living from their job in the garment industry, but are compelled to remain in this employment due to high levels of economic and social distress and lack of alternatives. The expectation from government and workers that the garment industry would provide a positive contribution to poverty alleviation was misplaced. Ironically, in the period after the onset of the global financial crisis, garment exports from Asia have grown. According to data, in the period from 2008 to 2013, world garment exports grew at more than 5% per annum, led by an even faster growth in the Asian region. Prices of garments in destination countries have contracted in the same period, but the market has expanded. However, while the industry and its exports grew, working conditions and company requirements became worse, including production targets. This same period has been one of high inflation in most countries where garment production is concentrated. Inflation should have led to an increase in wages.

Second, we move to the question of responsibility.

Neither governments nor suppliers testified in the Tribunals; however, we take this opportunity to inform you about their inputs when approached informally.

Governments in the region buy into the argument that providing minimum living wage or even statutory wages and benefits to workers would compromise the country's competitiveness in the global market and compromise foreign direct investment in the country. From the evidence it is becoming clear that we are

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witnessing an erosion of the justice system. Government is abdicating its responsibility to intervene and resolve industrial disputes.

Suppliers in the region say that they do not have the financial capacity to pay minimum living wage and furthermore engage in wage theft with regard to statutory wages. Their persistent claim is that brands and retailers suppress the prices they pay for the garment, resulting in diminishing profits. The suppliers claim that asking for higher prices would lead to loss of contracts with brand and retailers who would relocate to another country.

This brings us to the Global Supply Chain or the Global Production Network (hitherto called GPN). In the global garment industry, structured as a GPN dominated by brands, any one country's demand reaches its limit. The threat of relocation by brands that has been revealed by the NPTs acts as a deterrent on the government of supplier countries as well as the supplier industry.

The loss of minimum living wage earnings for workers correspond to a benefit in huge profits for the principal employers of the garment industry who have profited hugely from outsourcing production to low wage countries. Significant portion of the garment industry is organized for foreign market and is integrated into global production network where production is done in developing countries, exclusively for the sale and consumption in the Global North market. In view of this emergence of a GPN the capacity to pay wages has to be assessed in relationship to the GPN. It is argued that the GPN of the brands has the capacity to pay minimum living wage to the garment workers in the producing country.

It is very clear from the evidence and also from various global studies of the garment industry that this is a buyer driven supply chain. It is a well-accepted framework within which the responsibility has to be recast. We need a new legal notion to define this responsibility. It is our submission that in reality the employer employee relationship is embedded in transnational commercial relationship. It opens up the possibility of joint ownership in the production system and thereby in the employer-employee relationship. This concept has been accepted as a legal notion in many countries and needs to be applied to the global garment industry to specific relationship of a particular buyer and the supplier factory workers.

Brands are collectively responsible for the conditions in the whole supply chain. If brands are part of a production system of the garment industry all over Asia, are dependent for their sourcing and dominant in terms of their power to determine prices which has a direct impact on wage level of the workers in the production of products which they are selling, then they are responsible to ensure that those production centres have Freedom of Association and Minimum Living Wage. So if the outcome of the production system is the reverse, the brand as the lead organization of the global supply chain is responsible.

Brands have talked about various incentives and sanctions for Corporate Social Responsibility but have failed to show incentives and sanction system to ensure that the outcome is Freedom of Association and Living Wage. The grounds that brands take that because of structural injustice – that is, government does not enforce law, suppliers are not following the law – is an evasion when they have the power to reform it. They are required to exercise the power in a human rights era for a fair outcome as they have the capacity and effective mechanisms.

It is possible to provide a minimum living wage and as we have done in the four NPTs, we propose that the Asia Floor Wage is a legitimate minimum living wage option that minimally meets the conditions for decent labour standards. Asia Floor Wage can be a solution to raising the wages of workers from the lowest rung of the industry, increasing their bargaining power throughout the supply chain, in attenuating women's unequal bargaining power, in addressing gender wage gaps and in improving workers' well

being. We submit the synthesis report, “Living Wage for Garment Workers in Asia” and the report “Towards Asia Floor Wage” as these issues have been argued and proposed in earlier NPTs.

Third, we move to the status, definition and criteria of Living Wage within the ILO.

Historical experiences as well as contemporary evidence shows that living wage cannot be provided by market but can be ensured either in a condition and practice of collective bargaining or, the state promoting and legislating minimum living wage. In the case of GPN, as we say above, a new legal notion and responsibility has to be fixed to the principal employers of the GPN.

In 1998, the ILO produced the Declaration on Fundamental Principles and Rights at Work where core labour standards (to be followed whether they have been ratified or not) were defined:

- Freedom of association and the effective recognition of the right to collective bargaining (Convention No. 87 & No. 98)
- The elimination of all forms of forced and compulsory labour (Convention No. 29 & No. 105)
- The effective abolition of child labour (Convention No. 138 & No. 182)
- The elimination of discrimination in respect of employment and occupation (Convention No. 100 & No. 111)

We find that the lack of mention of wage in the core labour standards to be a very serious gap, given that the NPTs show the intimate connection between wage and human rights. If we examine the four core labour standards, we find that all four are intimately connected to living wage. We have already shown earlier the connection with Freedom of Association. Forced labour is impossible to eliminate without a minimum living wage because as we show, economic exigencies force workers into forced labour. Child labour is impossible to eliminate without living wage because again children work when a family cannot survive in the absence of a minimum living wage. Finally, it is our submission, that the garment industry that is dominated by women workers – indeed industries that primarily employ women workers – are prone to discriminatory poverty wages due to the vulnerabilities faced by a women-only labour force which the NPTs have extensively documented. Therefore with regard to the fourth core labour standard, it is impossible to eliminate discrimination without protecting vulnerable workforces through the delivery of minimum living wage.

Therefore, we propose that minimum living wage be included in core labour standards. However, there is a problem in implementing this and we explain this now.

Although, ILO’s commitment to a minimum living wage has been unambiguous from its inception, ILO has been unable to develop criteria for what it has defined as “minimum living wage.” The Preamble to the ILO Constitution of 1919 asserts the urgency of improving labour conditions through provision such as “an **adequate living wage**.” In 1944 at the International Labour Conference in Philadelphia, the ILO Declaration was reaffirmed: “the Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve:...a **minimum living wage** [for] all employed and in need of such protection” (emphasis added).

ILO has always maintained that different countries may have different methods for setting the minimum living wage. But what the wage ought to be has not been clear. In 1945, the ILO Conference adopted a resolution that necessary measures ought to be taken “to assure the material well-being of children and young persons by...the **provision of a living wage for all employed persons sufficient to maintain the family at an adequate standards of living**.” The Preamble to the Employment Policy Convention, 1964 refers to the importance of an “**adequate living wage**”. In 2007, the ILC resolution on Sustainable

Enterprises emphasized that workers need to be able to participate in the success of enterprises and to gain a **fair share in the benefits of economic activities and increased productivity**, and that effective exercise of the right to organize and bargain collectively is also an effective means to ensure **fair distribution of productivity gains and adequate remuneration of workers**.

The most relevant Convention that the ILO has with regard to wage is the Minimum Wage Fixing Convention, 1970 (C-131) and we propose that it be made part of core labour standards. However, fixing does not guarantee that wage would be fixed as a living wage. Despite a plethora of scholarship, the ILO has not been able to fix criteria for living wage given its tripartite structure and multiplicity of national norms.

However, we propose that the ILO convene a Tripartite Discussion on the criteria and principles of Minimum Living Wage set forth in an amended Convention 131 or a new Convention. The importance of setting criteria and standard for a *minimum living wage* is to signal that not all conditions of work, or of life, are subject to negotiation or contractual agreement. The significance of setting a *minimum living wage* is that it makes concrete the idea that work should provide for one's life – that a working person should never, despite their efforts, be unable to support themselves and their families.

Fourth, we move to the status of Living Wage in the United Nations world of Fundamental Human Rights.

The Universal Declaration of Human Rights (UDHR) states in Article 23 (3) that “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR) has two articles related to wage. Article 7 defines remuneration as providing workers at a minimum, with:^{[[SEP]]}(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work;

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

(iii) Safe and healthy working conditions;^{[[SEP]]}(iv) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 11 (1) of ICESCR defines “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

The Convention on the Elimination of All Forms of Discrimination Against Women's (CEDAW) Article 11 articulates the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; it prohibits, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

The Convention on the Elimination of Racial Discrimination (CERD) Article 5 articulates the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

We see almost without exception, “fair wage,” “just and favourable remuneration,” and “adequate standard of living” articulated across human rights conventions. We would maintain that although significant, these articulations have nevertheless not lifted the question of a “minimum living wage” to the unquestioned status of being a fundamental human right.

Denial of a *minimum living wage* as a right directly impacts on the realization of universal and indivisible human rights.

Right to life: The relationship of wage to survival raises questions about the consequences of denial of wages to Right to Life. The insecurities that arise when workers are paid less than minimum living wage make it impossible to actually satisfy the right to life, as it denies access to medical care in case of illness or accidents; it prevents the household from purchasing necessary nutritious food on a day to day basis; it removes the means to provide education to children towards improving their living standards; it means outright starvation for those without access to emergency assistance and relief goods in times of calamities or natural or man-made disasters.

Right to Food: The UDHR recognises the right to adequate food as a human right through Article 25 and 11 respectively: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services. Similarly does Article 11 of the ICESCR. In 1999, the right to food was interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) in the General Comment 12 establishing that: The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement. In addition, the United Nations Special Rapporteur on the Right to Food also defined the right to food: “The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.”

Denial of *minimum living wage* unquestionably violates the right to food which is also related to a life free from fear.

Right to Housing: has been articulated in UDHR, ICESCR and promoted by various other international mechanisms to the status of a fundamental human right. Denial of *minimum living wage* unquestionably violates the right to housing.

Let us now come to the unit for minimum living wage. Is it sufficient for a worker to support just himself or herself?

In UDHR, ICCPR and ICESCR the *family* is the natural and fundamental group unit of society and is entitled to protection by society and the State. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

Therefore, the minimum living wage needs to support not just the individual worker but his or her family.

We maintain that it is imperative to elevate the status of *minimum living wage* that allows workers to access the right to life, right to housing, right to food for himself or herself and his or her family.

The ILO has noted wage to be the most important source of household income across the globe. In developing countries where self-employment contributes significantly to household income, nevertheless,

we would maintain that norms with regard to “wage” – especially statutory wage – continues to define the standard for household income. Therefore, wage has both the value of delivering income as well as setting the norm for income.

In a world where income is dominated by wage labour through employment or labour based on normative wage concept (as in self-employment), there is an urgent need to examine employment. The state is no longer the only or even the primary source of support for a citizen today; it then is imperative to recognize who provides wages. Whereas social security or social protection floor are recognized as state obligations, they are not a substitute for wage.

In fact wage today is given through employment. In such a scenario, we face the urgent task of ensuring that workers in employment are protected from the denial of a minimum living wage.

In this case, the state becomes the body that enables and creates the conditions for the assured delivery of this minimum living wage. In the context of the GPN, international cooperation among interdependent states becomes urgent in order to create the conditions for the delivery of minimum living wage across the GPN.

Finally, we present to you the importance of a minimum living wage in assuring other important human rights such as

Right to equal opportunity: The global gender division of labour, where female dominated industries are characterized by lower than minimum wages and exploitative practices, sustains the global manufacturing industry, and is central to their profit-driven survival. Thus violating the right to equal opportunity and the right to minimum wage is the norm for those industries which seek to be so-called globally competitive.

Right to equal protection of the law: Propelled by globalisation, countries have created legal and political environments where it will be more difficult to petition the government to protect the right to minimum wage. Workers that have unionised and waged struggles on wage issues find that they lack the necessary protection against arbitrary dismissals or terminations. Many companies simply do not allow the formation and registration of unions.

Right to decent working hours: As a result of both challenging industrial relations and the need to satisfy their most basic necessities, garment workers are compelled to work overtime hours when their wages are below minimum wage. This subliminal form of coercion may be concealed, but its consequences clearly are visible in the daily struggles of workers who have succumbed to lengthy working hours to earn that scant extra revenue for survival. In light of such, the AFW grasps the need to establish a *minimum living wage*, as a means to impede forced labour and to ensure a liberating, not limiting society.

Today, you will also hear country reports from Cambodia, India, Indonesia, and Sri Lanka about recent developments in these countries and about Brands’ efforts. We pray for the jury to:

- 1) Assess developments in policies, laws and institutions in four countries
- 2) Recommend ways in which human and labour rights violations in the global supply chain can be remedied
- 3) Assess brands’ efforts in defining living wage, and taking responsibility for implementation; more specifically on purchasing practices enabling living wage and on due diligence
- 4) Assess the claim that Minimum Living Wage be given the status of a Fundamental Human Right
- 5) Recommend that the ILO include Wage Fixing in its Core Labour Standards and begin tripartite process for setting criteria for minimum living wage
- 6) Recommend roles of UN institutions and other international bodies for promotion and integration of living wage in international mechanisms

- 7) Conclusively assess the status of Asia Floor Wage as a credible benchmark of minimum living wage in the global garment industry

Submitted by:

1. Cambodia Confederation of Trade Unions
2. Cambodian Labour Confederation
3. Community Legal Education Center
4. Cambodian National Confederation
5. Cambodia Women Movement Organisation
6. National Union Alliance Chamber of Cambodia

7. Cambodian Confederation of Unions
8. Cambodia Worker Center for Development
9. American Center For International Labor Solidarity
10. Hind Mazdoor Sabha (HMS)
11. Indian National Trade Union Congress (INTUC)
12. All India Trade Union Congress (AITUC)
13. Centre of Indian Trade Unions (CITU)
14. Hind Mazdoor Kisan Panchayat (HMKP)
15. New Trade Union Initiative (NTUI)
16. Garment and Allied Workers Union (GAWU)
17. Garment and Textile Workers Union (GATWU)
18. Karnataka Garment Workers Union (KGWU)
19. Garment Labour Union (GLU)
20. Garment and Fashion Workers Union (GAFWU)
21. Society for Labour and Development (SLD)
22. SAVE
23. CIVIDEP
24. FEDINA
25. Alternate Law Forum
26. Vimochana
27. Maraa
28. Asia Floor Wage Alliance
29. GSBI
30. FSBI
31. SBSI'92
32. SPN
33. LIPS
34. TURC
35. National Free Trade Union
36. United Federation of Labour (UFL)
37. The Progress Union
38. Red Flag Women Movement
39. All Ceylon United Workers Union
40. National Workers Congress (NWC)
41. Right to Life
42. Young Christian Workers (YCW)
43. Dabindu Collective
44. Womens' Centre
45. Movement of "StandUp"