



NATIONAL PEOPLE'S TRIBUNALS ON LIVING WAGE FOR GARMENT WORKERS IN ASIA



ASIA FLOOR WAGE ALLIANCE
International Secretariat, c/o Society for Labour and Development,
C 23, 1st Floor (Back Side), Hauz Khas, New Delhi - 110016, INDIA,
E-mail: asiafloorwage@gmail.com

SYNTHESIS
REPORT

NATIONAL PEOPLE'S TRIBUNALS ON
LIVING WAGE FOR
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Written by **Susana Barria**

In collaboration with **Ashim Roy**

On behalf of the **Asia Floor Wage Alliance**

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Introduction

The struggle for a Living Wage in the labour movement has seen new developments in the last decade giving rise to voices demanding for a Regional Floor Wage in the garment sector of Asia also. The demand began taking shape in 2006 through a collective consensus building process among Asian labour organisations which led to the formulation of a methodology for the calculation and establishing of a cross-country floor for wages in the garment sector in the region known as Asia Floor Wage (AFW). The struggle entered a new phase after the public launch of AFW Campaign led by the Asia Floor Wage Alliance (AFWA) on 7th October 2009, the World Day of Decent Work. This second phase of presentation of its demands included numerous meetings with brands, multi-stakeholders and international institutions providing ground for the gradual legitimisation of the AFW as a credible formulation for the floor level of a living wage (a minimum living wage) in the garment industry in Asia.

As part of this process and in order to take the campaign forward, AFWA, in collaboration with the Permanent People's Tribunal, organised a series of National People's Tribunals (NPTs) on Living Wage for Garment Workers in Asian Garment Industry between 2011 and 2014¹. This process is moving towards a Synthesis Hearing on Decent Work and Living Wage in the Global Garment Industry to be organised in November, 2014 to capture the lessons and results of the NPTs and to articulate future steps towards the implementation of the AFW.

¹ The Permanent Peoples' Tribunal is an international opinion tribunal independent from State authorities. It examines and provides judgements relative to violations of human rights and rights of peoples. The Tribunal was founded in Bologna (Italy) on June 24, 1979, by law experts, writers and other intellectuals. It succeeded the Russell Tribunal (or International War Crimes Tribunal), which, in 1967, exposed the war crimes committed against the Vietnamese people. The Permanent Peoples' Tribunal was created out of the Lelio Basso International Foundation for the Rights and Liberation of Peoples (FILB), established in 1976 and inspired by the Universal Declaration of the Rights of Peoples at Algiers (also named the Algiers Declaration).

The Synthesis Hearing, to be held on 17 November, 2014 in Hong Kong, aims to:

- take the NPT process from the national to the international level
- absorb the learnings from the Tribunals and recommend future steps for the implementation of a living wage
- consolidate engagement with the Global Union Federations (GUFs), especially in view of developing a 'brand bargaining' strategy, and
- contribute towards a roadmap to an International Hearing in 2015

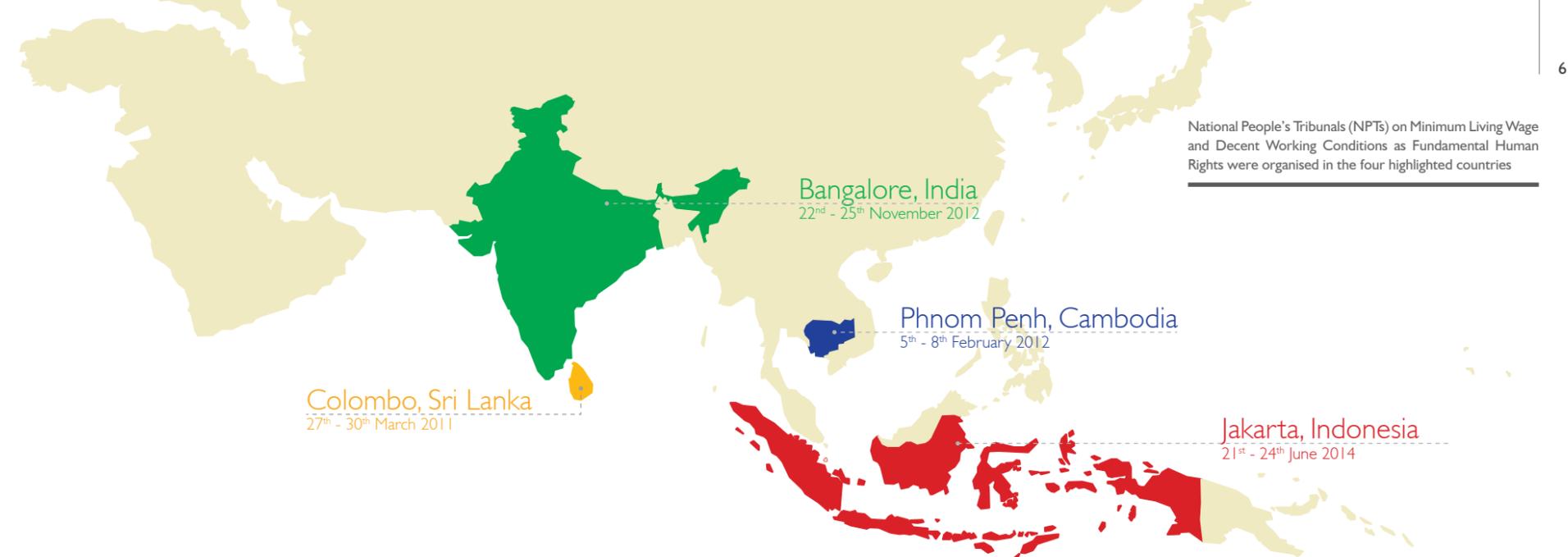
The first NPT in the series, the Tribunal on Minimum Living Wage and Decent Working Conditions as Fundamental Human Rights, was organised in Colombo, Sri Lanka on 27-30 March, 2011. This was followed by the People's Tribunal on Living Wage as a Fundamental Right of Cambodian Garment Workers, organised in Phnom Penh, Cambodia on 5-8 February, 2012. After this, the National People's Tribunal on Living Wage as a Fundamental Right of Indian Garment Workers was held in Bangalore on 22-25 November 2012 as the culmination of the local hearings processes from two of the regions where most of the production takes place, the National Capital Region (NCR) around Delhi and Bangalore, in the State of Karnataka. Finally, the Indonesian People's Tribunal on Living Wage and Decent Working Conditions for Garment Workers as Fundamental Rights was held in Jakarta, Indonesia on 21-24 June, 2014.

It's worth noting that during each of the NPTs, the jury members in each concerned country were selected by local organisations organising the Tribunal. The Permanent People's Tribunal had a seat on the jury in all the NPTs except the one in Sri Lanka.

This report aims to give an overview of the key outcomes of the NPTs to the Panel of the Synthesis Hearing in Hong Kong. It is based on the background readings given to the juries of the NPTs,

the testimonies presented at the Tribunals, the verdicts of the Tribunals and relevant literature, especially on the garment industry and international governance of global industries.

Following this introductory section, section 2 gives an overview of theories of international governance of global industries and of the garment industry. It draws on the background readings provided to the jury, experts' testimonies at the NPTs, as well as relevant complementary literature from scholars and civil society organisations. It aims to provide a broad framework to help locating the specific issues emerging from the proceedings of the NPTs. Key issues are developed in section 3. It is organised to allow for regional trends to emerge and to draw out the connections between them and the broader framework discussed in section 2. This section is mostly based on the detailed testimonies made at the hearings by workers from the four countries in which the NPTs took place. Section 4 is mostly based on the verdicts of the NPTs and gives special attention to the recommendations made by the juries. It tries to bring the country-level recommendations of the NPTs and the AFW campaign proposals in convergence with one another. The final section, section 5, draws conclusions that, we hope, will enlighten the way forward in the struggle for a living wage for garment workers in Asia and in the world. The Annexures give an overview of the materials presented during the NPTs.



SECTION - II

Overview of the Garment Industry in Asia

I. Global Value Chain Theory and Application to the Garment Industry

The advance of globalisation has led to increasing complexity in production processes and company structures. In globalised industries, it is difficult to follow the production process of a commodity from the raw material to the end consumer. Global Production commonly involves several countries, as well as several companies related through various legal forms and tacit working relations. Some scholars have taken the task of identifying not only the patterns emerging from these new production networks, but also the mechanisms that allow them to function (Gereffi, Humphrey and Sturgeon, 2005; Barrientos, 2007; Blair, 2014). This includes the specific interests of the different actors of the networks and the relations of power between them that underpin an overall production system that sustains over a period of time. In addition, the differences in levels of development of the regions and countries where the nodes (points of contact between the different actors) of the network are located further inform these mechanisms (Gereffi and Memedovic, 2003).

Global Production Network (GPN)² theories have identified two kinds of networks, according to which the weight of the influence lies: with the producer of the commodity (called producer-driven network/industry),

² Other nomenclatures of theories of internationalised production processes include Global Value Chains, GVC, or Global Commodity Chains, GCC.

This section provides a framework to the Tribunals and draws on the rich expert testimonies as well as complementary literature from scholars and civil society organisations.



INDIA | A local tailor

or with the company trading the commodity from the manufacturing hub to the end market (called buyer-driven network/industry) (Gereffi 1994). We will examine the functioning of the buyer-driven industry as it is more applicable to the garment industry (Gereffi and Memedovic, 2003).

There are four key actors in buyer-driven globalised production systems (Gereffi, Humphrey and Sturgeon, 2005). At the start of the process are the workers in the specific industry. They are mostly located in countries with comparatively low-wages which helps in keeping the cost of production at lower level. The second key actors are the manufacturing companies, also called 'suppliers.' Here due to sub-contracting, there are layers of companies involved in manufacturing at different stages of the production process. However, the companies that are seen as key in the articulation of the network are the Tier 1 companies (the top company that has the direct contractual relationship with the buyers or brands) in the country/region of production. The 'buyers' are the third key actors of the network. These are both retailers and brands that target the retail market predominantly in high-income countries. They typically do not have manufacturing facilities of their own. Finally, at the end of the process are the consumers, mostly located in developed countries where the average purchasing capacity is comparatively higher than in middle and low-income countries, thus providing sizeable and reliable retail market. There are other major actors that can influence these networks, such as nation-state regulatory frameworks and regional/global trade and economic cooperation frameworks. However, they are not internal to the production process and as such they can be taken as playing the role of influencing it from the outside.

Now, let us see the mechanisms which also have equally significant role in strengthening such a network. A precondition to globalised production was the opening up of industrial bases in low and middle income countries for export-oriented industrialisation that provided a terrain for the expansion of high income business houses (Gereffi and Memedovic, 2003). This enabled the articulation of GPNs around low cost labour, which was essentially a workforce remunerated with poverty level wages. However, this workforce is not homogeneous. It has been argued that it is highly segmented geographically (due to the limitations attached with labour mobility) and its characteristics depend on the poverty level of the region and the country where it is located (Bhattacharjee and Roy, 2012: 2). The neo-classical assumption believed that with the infusion of capital in export processing zones, productivity would grow and wages would adjust to this growth. But,

the present trends emerging on a wide spectrum have proved it to be empirically wrong while things are in fact moving towards a reverse direction. In fact, productivity has increased and wage share has declined across the world as shown in the Global Wage Report (2010-11) of International Labour Organisation (ILO), which notes "[the] short-term impacts of the [global financial] crisis should be looked at within the context of a long-term decline in the share of wages in GDP, a growing disconnection between long-term wage growth and productivity growth, as well as widespread and growing inequality" (ILO Global Wage Report, 2012: 79).

There are several levels of competition operating within and along the chain also. On the side of high-income countries, buyers compete in the consumer market for a larger share of the market. On the side of low and middle-income countries, suppliers compete among themselves for contracts with buyers. But there is also competition between buyers and suppliers over the distribution of profits generated in the network. In his famous book *Competitive Strategy*, business expert Michael Porter writes, "having a low-cost production yields the firm above-average returns in the industry" (Porter, 1980: 35). In other words, buyers compete in high-income country markets on the basis of their capacity to access low-cost production areas. Following this understanding, business analyst Stephen Roach coined the term 'global labour arbitrage'. In this context, 'arbitrage' means creating profits by exploiting a difference in price of the same asset in different markets. In other words, a single product, through access to two different markets, creates the condition for profitability, unrelated to the cost of production itself. It can be argued that 'low-cost production' has come to be synonymous with low-wage workforce, and so the price difference is linked to the international wage hierarchy between high-income and low and middle-income countries. Thus, 'foreign labour content replaces domestic labour input' (Roach, 2004). The final piece in the puzzle is the systems that keep suppliers' access to high income countries' markets closed (Gereffi and Memedovic, 2003).

The implication of the global labour arbitrage system, in which brands and retailers dominate suppliers in the production network, is the disproportionate distribution of profits between suppliers and buyers. The price at which the commodities are exchanged be-

tween the supplier and the buyer is the point, or the node, at which the disproportionate distribution of profits takes place (Bhattacharjee and Roy, 2012). This is at the point of transfer from location of production to location of consumption.

Another aspect of the GPN is the shift in international trade from exchanges based on market relationships to one based on closely connected interlinked firms (Gereffi, Humphrey and Sturgeon, 2005). This is not the same model as that of trade exchanges between Trans-National Companies (TNCs) and their subsidiaries, as there is no formal ownership of the overseas firms, though production is, in fact, outsourced to them. This process of exchange expands and transforms intra-firm trade to new dimensions. The GPN is the expression of organisational linkages used by TNCs to reorganise production through contractual agreements and services. The World Investment Report 2013 released by United Nations Conference on Trade and Development (UNCTAD) states: "*Today's global economy is characterized by global value chains (GVCs), in which intermediate goods and services are traded in fragmented and internationally dispersed production processes. GVCs are typically coordinated by TNCs, with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers. TNC-coordinated GVCs account for some 80 per cent of global trade*" (UNCTAD 2013b:x). Thus the GPN is organised as a global sub-contracting production chain in which the buyer is the principal employer and the supplier a sub-contractor.

However, the weight of the TNC in deciding the production process remains substantial. Buyers dominate as lead firms and retain the capacity to influence the articulation of the network: buyers choose their suppliers; they maintain domination on the retail market to which suppliers have no direct access; and through their capacity to create competition between suppliers, they set the production norms. It is important to foreground the employment relationship embedded in the commercial contract (Bhattacharjee and Roy, forthcoming 2015). Thus, relations along the GPN become 'quasi-production' relationships, which do not carry the burden of legal ownership and associated risks.

³Merk Jeroen, Clean Clothes Campaign, expert testimony, Sri Lanka NPT, March 2011.

⁴Studies have documented the role of Asian capital in setting up tier 1 manufacturing companies in Asia, as well as in other regions. For more literature on Asian-controlled garment multinationals, see De Haan and Van der Stichele 2007; Gibbon 2003; Wong, Van Grunsven and Smakman 2005; Yeung 2006

⁵Data from WTO Statistical Program online, at <http://stat.wto.org/Home/WSDB-Home.aspx?Language=>.

⁶Four of them, India, Sri Lanka, Indonesia and Cambodia, were covered by the National People's Tribunals process.

II: ASIA IN THE GLOBAL GARMENT INDUSTRY

As mentioned earlier, the garment industry is a typical buyer-driven GPN. Brands and retailers (also called brand-name retailers), mostly from Europe or the United States of America (USA), control the consumer markets in high-income countries. They are the 'buyers' in the GPN. According to studies, they source from hundreds, up to thousands of suppliers, which are generally not disclosed, making it very difficult to establish links between consumers and producers (SOMO, 2012). However, brand-name retailers often place the majority of their orders with a relatively small number of key suppliers. For example, 20 per cent of contracted factories account for around 80 per cent of Nike's total merchandise volume (Merk, 2012).

There is a visible functional split between the role of the brand-name retailers and the suppliers or manufacturers that take up the labour-intensive or assembling aspects of production. The suppliers have become increasingly focused on producing either high-quality components or finished products, often for several (competing) brand-name retailers (Merk, 2012). In some of the literature (Hurley, 2005), they have been referred to as Tier 1 manufacturers due to their direct supply relations with brand-name retailers. Some Tier 1 manufacturers have emerged as TNCs, but this is a tendency more than a dominant feature (Merk, 2012)⁴.

While the garment manufacturing is predominantly based in the developing world, Asia as a region tops apparel exports (UNCTAD, 2014). In 2013, as apparel trade amounted to 460.27 billion dollars, more than 60% of it originated from 10 Asian countries (see Table 1 below). The share of Asian countries in apparel exports increased over the last ten years from around 50% in 2000 to close to 65% today.⁵ Out of the top ten world garment exporters in 2013, seven were from Asia. In the region, China, Bangladesh, India, Sri Lanka, Indonesia and Cambodia have covered the bulk of garment production in the last decade.⁶ It has been argued that the space for relocation of manufacturing firms is regional - within Asia - rather than global (Bhattacharjee and Roy, 2012).

The rest of the chain is hard to track. Tier 1 manufacturers may

Table 1: World Garment Exports - Key Asian Countries

	2000	2003	2008	2013
Total (in billion US\$)	197.64	233.23	363.87	460.27
Share of Key Asian Countries				
China	18.25	22.32	33.09	38.55
Bangladesh	2.56	2.42	3.21	5.11
Hong Kong, China	12.25	9.93	7.67	4.77
Viet Nam	0.92	1.49	2.40	3.74
India	3.02	2.71	3.01	3.66
Indonesia	2.40	1.74	1.73	1.67
Cambodia	0.49	0.69	0.83	1.11
Malaysia	1.14	0.88	1.00	1.00
Pakistan	1.08	1.16	1.07	0.99
Sri Lanka	1.42	1.08	0.94	0.98
Share of top 10 Asians	43.54	44.41	54.95	61.57
Value of top 10 Asians	86.06	103.59	199.94	283.38

Source: World Trade Organisation Statistics Data base <http://stat.wto.org/Home/WSDB-Home.aspx?Language=>

distribute work to smaller production units or labour contractors, which, in turn, may subcontract this work out to home-based workers (Hurley, 2005). All these production activities might also happen in the factory premises of the Tier 1 manufacturer through labour contracting, as shown in recent studies in India's NCR (Srivastava, 2014). It has been argued that this supply chain has purposely been made opaque (Srivastava, 2014). As a consequence, the vast majority of the garment workers across the world are employed by small, locally-owned enterprises, which enjoy very little or often no legal protections (Merk, 2012).

On the other side, garment is a key sector in many countries in the region. The garment industry is a critical part of Cambodia's economy, accounting for more than 80% of the country's total exports and around 16% of the country's Gross Domestic Product in 2009 (Lowenstein, 2011). Similarly, in Sri Lanka, the contribution by the apparel sector to the economy was 46.2% of the total exports, with an income of \$ 3,274.2 million in 2009. The industry also



Cambodian workers eating on break

Table 2: Sharp contrast: brands' and retailers' profits

While poverty wages are being paid, prominent brands in the garment industry are making massive profits, even during and after the economic crisis.

In Euros	2008		2010		2012		2014	
	Turn over	Profits						
Hugo Boss AGv	1.68bn	112m	1.73bn	188.9m	2.35bn	307.4m	2.43bn	329m
Adidas Group	10.8bn	642m	11.99bn	567m	14.88bn	791m	14.49bn	839m
H&M	11.74bn	1.73bn	14.32bn	2.11bn	15.9bn	1.9bn	16.98bn	1.94bn
Inditex Group	10.41bn	1.26bn	12.53bn	1.74bn	15.95bn	2.37bn	16.72bn	2.38bn

Source: Luginbühl and Musiolek 2014

represented more than 75% of Bangladesh's total exports in 2012 (UNCTAD, 2014) and is the third largest non-oil and gas export revenue generator (after palm oil and rubber).

The garment industry is also a key source of employment, representing more than 30% of manufacturing employment in India in 2011-12, or close to 18 million jobs. It also should be noted that more than 40% of these workers are women (Srivastava, 2014a). Similarly, in Cambodia, the garment industry accounted for around 45% of all workers employed in manufacturing in 2009 (Lowenstein, 2011). In Indonesia, the sector is estimated to employ about 3.1 million workers.

However, labour markets in these countries are not homogeneous. More than 90% of the workers in the Cambodian garment industry are women, while men dominate the rest of the non-agricultural labour market. In Sri Lanka, women are said to be 78% of the garment workforce. The majority of these women are young migrants from rural areas having low levels of education. Being poverty ridden, struggling to earn their livelihood and mostly lacking any type of social security, they are vulnerable to pressures from employers, such as on their wages and work conditions. This means that power relations within this segmented labour market opens up the further possibility for downward pressure on wages in already low-wage countries. The expert presentations at the NPTs indicated that the general trend in wages described above (stagnation of nominal wages and fall of real wages) also applies to the garment sector in Asia (see section on poverty wage below). Hence, Asia is not only the largest host of investment in the garment sector; but also the host of most of the global working poor, among which

women comprise a significantly high proportion (Bhattacharjee and Roy, forthcoming 2015).

Finally, experts mention the important role of governments in setting the ground for the current structure of GPN in the garment industry. On the one hand, countries from the Global North have pushed international trade and investment agreements to facilitate export-led industrialisation in low and middle-income countries. On the other hand, low and middle-income countries have themselves put in place national regulations facilitating such a development model of which a stark example are the export processing zones. With the intention to attract elusive investments, governments have favoured manufacturing companies over human rights of workers in these companies, as is very clear from several instances shared at the tribunal (see for instance the discussion about Export Processing Zones in Sri Lanka).

To conclude, the discussion above and in the abundant literature on the subject, clearly depict the dominance of GPNs in the Asian garment industry indicating that any intervention that aims to benefit production workers in this buyer driven industry has to consider the interlinked factors of (a) low retail prices for consumers, (b) retailers and brands' huge profits, (c) reduced prices for suppliers, and (d) stagnant wages of workers. It is important to point out that the issue of low wage is often linked to economic crisis or lack of sufficient resources. However this is far from the reality, as we can see from the table below. It reveals the fact that while poverty wages are being paid, prominent brands in the garment industry are making massive profits, even during and after the economic crisis.

SECTION - III

Key Issues in Garment Industry: Towards a Regional Perspective

I. DEHUMANISING WORKERS

There is a strong feeling of urgency that emanates from the testimonies and is likewise captured in the verdicts of the juries. In many ways, this urgency 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.

Dammika, 39 years old, originally from Walapane, 300 kilometres from Colombo, Sri Lanka, has worked in the garment industry in the Katunayake Free Trade Zone for 19 years. In her testimony at the Sri Lanka People's Tribunal in 2011 in Colombo, she shared:

"I was compelled to marry late because of my poor salary which was barely adequate to meet my basic needs [...]. [Now] I am not able to have a normal family life with my husband and child mainly because I do not earn enough. [...] I live separately from my husband and my child [because the cost of keeping my child with me is too high]. I can hardly participate in the nurturing of my child who will grow without her mother because her mother earns too little."

This section synthesises the key issues emerging from the testimonies made at the Tribunals, with a focus on the detailed testimonies of 40 workers. It also draws from the rich expert testimonies and the few buyers' testimonies.

Chisshanthi, who has worked in the same FTZ for 6 years, adds,

I have been married for 4 years now and I have not been able to conceive yet. The doctors have diagnosed that this condition is due to excessive work and mental stress at work. Though I have been advised to take more rest, I have not been able to do so due to economic reasons.

A women worker from Cambodia (Heap Kimhour) concluded her testimonies by saying,

After describing my situation in this hearing, I hope that all the concerned parties will help to make workers get the living wage so that we can meet all my daily basic needs, enjoy good health and support our families to live in dignity as human beings.

These women have migrated at a young age from the countryside in search of a livelihood for their families. But it is painful to see that even after years in the industry, they are still not even in a position to have a family of their own.

As mentioned earlier, workers in the garment industry usually 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 factory incomes are expected to support. While these characteristics are fairly similar across the Asian garment workforce, the poverty level of the region or country where workers live and work also informs the nature of the labour market and industrial relations they are faced with.

Poverty Wages

The workers' testimonies and various studies presented and highlighted in the Tribunals show that in all countries, except in Indonesia, legal wages are set at the poverty threshold. In addition to this, the poverty line is itself defined at a very low level. The wages of garment workers were consistently shown to be hovering around the legal wage. In case of Indonesia, though there is a legal definition of the living wage it has been defined on the base of a person's and not of a family's needs, as is the standard definition. In consequence, the actual wage, even in Greater Jakarta where the labour movement is strongest, is not adequate for a family. In the words of Anoma, a worker in the Biyagama Free Trade Zone near Colombo, "Having worked for more than 13 years, I still do not get a wage that is enough to meet my needs". It was shown by the testimonies that the garment industry in Asia does not support decent standards of living for workers and their families.

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.

A worker from Cambodia (Heap Kimhour) states:

"My basic wage as a worker at Grand Twins is 66 US\$ per month. Such a low wage, cannot cover my [expenses]. In total I need to spend around 180-185 USD\$ per month. My wage does not cover all my expenses but I have a food allowance from the factory. Apart from taking help from my husband's income, sometimes I take a loan to cover all my daily expenses"

This is supported by the recent study by Workers' Rights Consortium (WRC) in 15 leading garment exporting countries, which shows that wages 'provide barely more than a third (36.8%) of the income necessary to provide a living wage' (WRC, 2013: 2). According to this study, the minimum wage in Bangladesh, even after the revisions forced by the growing struggle of workers, is only 14% of the living wage. The WRC study further shows that the wages for garment workers fell in real terms between 2001 and 2011, and the gap between the wages of garment workers and the general prevailing wage has widened (WRC 2013: 3). As discussed in section 2.2 above, wages in the garment industry have stagnated, if not declined over the past decade.

Further, workers from all the countries testified to the extensive failure in complying with the legal wage in the garment industry. This is supported by the audit report done by the Fair Labour Association (FLA), a multi-stakeholders' initiative, of its member companies which are among the dominant brands globally (FLA 2008). The audit report shows the abysmal failure of these companies to ensure implementation of even minimum wages in the industry despite decades of campaigning, CSR initiatives and private auditing of firms (see section on Codes of Conduct below).

Wage Theft and Intensification of Work

One of the expressions of the unequal relation of power in industrial relations is that of 'wage theft'. Though the phrase was mostly used in the testimonies of workers from India, the same dynamics can be seen in different parts of the region. Different forms of wage theft include: paying single rate for overtime while the statutory overtime rate is double the regular rate; paying workers at a salary grade (or scale) below the skill level of their employment; under-payment of statutory minimum wages and non-payment of benefits; as well as random cuts in salary and 'miscalculation' of tally of overtime hours (Anuradha Verma, NCR, India); compulsory overtime without pay (colloquially called 'OC' in Bangalore). The question remains as to why such blatant violations of the law can be perpetrated.

The testimonies from NCR, in India, indicate that a climate of

fear prevails and is actively maintained. Scolding has become a common phenomenon and abusive language is used abundantly. The vulnerability of the worker that has led him/her to this job is continually exploited and any attempt at unionising is suppressed at the very initial phase, ensuring that there is no collective process to raise a voice of disagreement, let alone protest. As an additional preventive measure, any trace of employer - employee relationship is avoided. In such a context there is no other choice but to tolerate abuses.

- Vinod Kumar, Jannpur district of Uttar Pradesh, "Nobody raises [the wage theft issue] in the factory due to fear of losing the job."
- Arvind Kumar, Asadiya village, Uttar Pradesh, "Once we formed a union but our leader was sent to jail on the false charges of eve-teasing."
- Ashok Kumar Singh, Jaunpur district of Uttar Pradesh, "We tried to make a union secretly twice, but we were given death threat and our leaders were terminated from the company."
- Anuradha Verma, Kanpur, Uttar Pradesh, "I was a union member of my company and for that I bore atrocities from managers."
- Sanjay Kumar, Badaya village, Uttar Pradesh, "I meet union people very secretly, if company people come to know about it, they will oust me from the company."

In Bangalore too, similar dynamics are visible. Most women are the main earners of their families, carrying heavy responsibilities on their shoulders. Testimonies report a climate of fear:

Scolding and harassment is so common that it has driven workers to suicide, as testified by Mallige, 38 years old, in a garment factory near Bangalore for 8 years:

Any woman, who dresses well, invites dirty looks and comments – the production supervisors de-

* NCR is one region where men outnumber women as garment workers

¹⁰ OC = un-paid compulsory overtime in colloquial parlance used in the factories around Bangalore.

liberately touch your hand or body while taking the production – we are expected to stay silent or face their wrath. [The supervisors shout at us for no reason.] Unable to bear the shouting and the pressure, we end up crying many times – even that, we have to go to the bathroom to cry and come back to the work. Such insults and harassment has driven women like Ammu, Rekha and many other women in the industry to suicide.

These cases reveal not simply a disrespectful and inhuman treatment but is an expression of the skewed power relation between these workers and the factory managers.

Another expression and tool of this dynamic is the setting of unrealistic production targets testified to by many workers. Targets are often by the hour and do not seem to have any scientific grounding.

Sakamma, 22 years old, garment worker near Bangalore for the past 8 years explains,

If [the production target] is 80 pieces one day, next week it is 100, 120, 150, 160. Like this each day the production increases. Because of this we have to work without even drinking water. If we drink water we have to go to the toilet [and we don't have time for that]. Though we have 30 minutes lunch break we finish eating within 10 minutes and work another 20 minutes. If we do not complete the production then they punch our card and make us do OC till 6.30. If we do not complete our production they scold us [...] snatch the piece from us [...] and throw the piece on our face.

In both Bangalore and the NCR, the necessity of home based work or overtime in order to ensure that workers can make ends meet is overwhelming. This was also expressed in the testimonies from the three other countries, especially Cambodia and Sri Lanka. How-

ever, workers are at the mercy of factory managers about when they will be able to do overtime, and it is then a compulsory requirement.

This is best expressed by Sanjay Kumar, from Badaya village, Uttar Pradesh, India and has been working the garment sector in the NCR for the past four years,

I have limited salary and it is tough to survive in that amount, hence I do overtime also. However, overtime is possible only if company offers it. Moreover, it's compulsory. Even if you are ill, you have to do it. [...] When there is no demand for goods [there is no overtime]. Usually then, I have to either borrow money or I have to delay the payment of rent and for groceries.

It is important to note that India, as several other countries in the region, has a high level of inflation. Thus a sustained standard of living for workers and their families can be ensured, only if the employers increase wages at least at par with inflation. In the absence of such increases, the pressure on workers' income is one more element that skews the balance of power against the workers and results in intensification of work for a falling real wage.

Caloric intake and health

It is not only the workers' family life that gets affected, but also their own health. Many testimonies refer to feelings of exhaustion after work that do not allow them to do their housework (especially testimonies from workers based in Bangalore), or that lead them to go to bed without having prepared dinner for themselves (for instance in the NCR). Testimonies also highlighted that long hours of work negatively affected their reproductive health (for instance Anoma in Sri Lanka). Workers from Indonesia reported 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. Importantly, workers on strike have been denied medical care when they were abused and attacked physically. 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 in 2011. It is estimated that in that year alone, around 2000 workers fainted while working.

A worker (Hang Kimseak) explains,

Before fainting, workers had worked up to 12 or 14 hours per day and sometimes they worked continuously overnight [for overtime]. Workers [under Fixed Duration Contracts] have no job security and they need to work overtime when the employer asks them to. [The production process] uses a lot of glue which emit strong odours. The temperature in factory is high, and the ventilation is poor and a lot of chemicals are used. They eat cheap food [as they] cannot afford to eat more nutritious food because they earn such low wages.

Another worker (Suon Sokhunthea) adds,

[Work in the garment industry] results in the pale and weak appearance of workers who are under-nourished. We notice that those who work for more than five years suffer poor health and become increasingly weak and thousands of workers are fainting in the workplace.

Workers noted stress, anaemia and malnutrition as common ailments and shared that their income was not adequate for a



(Above 4 pics) Cambodian workers and experts testifying
(Right page) Cambodian workers meeting together

nutritious diet. Workers from Sri Lanka identified the long hours as an impediment to having nutritious meals as they were forced to buy pre-cooked meal because of time pressures. This was confirmed by a report that showed that malnutrition due to low wages and time poverty is endemic in Cambodia's garment workers and has led to a situation where workers are constantly weak and prone to collapse, triggered by any of the causes faced at the workplace (McMullen 2013). The report found that workers would intake an average of 1598 calories per day, or around half the recommended calories. Studies of workers' Body Mass Index showed that 33% of workers were medically malnourished, and 25% seriously so. Finally, the report found that workers spend \$1.53 USD daily on food on average, when a nutritious diet of 3000 calories would cost \$2.50 USD per day. A nutritious diet would equate to \$75.03 USD a month while the monthly minimum wage is currently around \$80 USD (McMullen 2013).

It becomes clear that workers' poor health, including severe malnutrition, is due to conditions of work as well as living conditions largely determined by low salary levels.

Gender relations

One compelling instance of how gender and class relations intertwine to strengthen each other is the case of Tirupur, in the Indian southern state of Tamil Nadu. Workers who testified from Tirupur, are from landless agricultural labour families, probably Dalits. They are recruited through job brokers under a controversial scheme called Sumangali. This scheme is meant to allow poor families to save financial resources for the dowry expected from them at the time of marrying their daughters. It provides for a three to five year contract at a low monthly salary (generally less than half the statutory minimum wage) at the end of which a lump-sum is provided to the worker. A report on the scheme qualifies the scheme to say: "This exploitative scheme is tantamount to bonded labour, because employers withhold part of the workers' wages until they have worked there for three to five years. In addition it was found that workers are severely restricted in their freedom of movement and privacy" (SOMO 2012).

Jesurani, from Keezhasadaiyankulam village in Kalakadu block of Tirunelveli district, started working at Tirupur mills at 15 years of age.

"I stayed in a small room along with 8 girls of my age. There were only 2 toilets and 2 bathrooms for the 500 workers. We had to get up at 4'o clock in the morning [...] there wasn't enough time to take a bath and to have our breakfast. Most of the time, I skipped my breakfast, though I felt hungry. The management did not allow us to take a break during the work hours and without any rest we had to work like machines. I managed to work for two years continuously and I did not want to work further in the mill. I went home for a temple festival in 2008 and I told my father that I would not go back to the mill. But the warden from the mill called my father and said that I should come back so that I can receive the promised lump sum money. So my father took me back to the mill after the holidays. I worked for one more year and asked for the money. But the management said that I had taken more holidays and so I had to work one more year to get the money. Due to compulsion from my parents, I worked for four years in the mill to get Rs. 25,000 against the promised sum of Rs. 35,000."

The unequal gender relations further skew the balance of power between the worker and the employer. While these young women have to live through the consequences, the decision of joining or leaving the scheme is mostly taken by their brothers and fathers. In some of the testimonies, the workers shared that they were working so that their elder brothers could study (for instance Thulasi, who joined a spinning mill in Tirupur at 15 years). The dowry is itself a crystallisation of a patriarchal system that de-values women and reduces them to property, worthy of little value, belonging to the men in the family.

These realities are echoed by women who have to accept whatever mental

¹¹ A dowry can be equated to a sort of maintenance fee. It is illegal in India since 1961, yet the practice is rampant

and physical trauma they face; the decision to resign is not in their hands and they have no option. This was expressed in the testimony of Karpakam, from Thalapatty village:

" I was paid a monthly salary of Rs. 1,250 after deducting money for food and accommodation expenses. My brother used to come to factory once a month to get my salary. [...] I suffered heavy pain and blood loss during menstruation and I became physically weak. I was abused and harassed by the supervisors. Even with this entire physical and mental trauma [I] had to tolerate everything, as I needed the job for the income."

In each of these countries, women are a larger component of the workforce in the garment sector than in the national economy. This is true within India also, with the exception of the NCR. As discussed earlier, foreign investment actively seeks out the most pliant, poor and undervalued sections of the workforce. Despite the frequent assumption that women's incomes are dispensable for the family, we have seen that women employed in the garment sector are often the main wage earners in their families. This kind of precarious work is a key factor contributing to the pay gap between man and women at the national and global levels. Raising the floor of vulnerable women's income is both a way to decrease the gender wage gap and to raise the value of women's work, and thereby their social status and value.

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. In fact, the industry exploits the vulnerability of the very people it is supposed to help, in order to take advantage of them. In the process, worker's basic rights, such as the Right to Health, family

life and Right to Life with Dignity, are set in peril. The argument that the garment industry, as an example of manufacturing in the South, is leading the poor out of poverty is therefore not valid.

3.2 TRADE UNIONS AND WORKERS RIGHTS

It has been argued by several workers and experts that workers' Right to Association is a pre-condition to the promotion and enjoyment of other labour and human rights. One instance of it is the significant increase in the minimum wage in Jakarta (by 40%) brought about by the pressure put on the Indonesian government by workers' militancy largely led by trade unions. However, the picture that emerges from the region with respect to subsequent obstruction to unionisation is bleak.

In Sri Lanka, the location of garment production in Export Processing Zones allows companies to restrict the entry of labour activists into the zone. There are only a few collective bargaining agreements that have been signed with workers in the industry and the prevailing minimum wage (in reality a poverty wage) is the benchmark at which wage is determined. At the Sri Lanka NPT, the People's Advocate explained that there is a strong opposition to unionisation by the manufacturers. In several cases, unions have not been recognised or could not be formed because of manufacturers' opposition and the apathy of the state. Instead of, supporting the genuine demands of workers, the State, itself, is engaged in denial of their rights. The ground situation provides us with many stories of victimisation of the workers when trying to raise a collective voice (for instance, Srimathi). Effectively, workers in the garment industry in Sri Lanka's SEZs face a 'legal' restriction to their Right to Association (Sri Lanka NPT, 2011).

The picture in India is that of an illegal but effective denial of the Right to Association. Workers testified of overwhelming violations of this right and the list of unfair labour practices is almost endless. Workers attempting to organize have been dismissed, displaced, or shifted. Some were demoted, threatened with pay deductions or intimidated and threatened through violent means. Intimidation and threats are used by employers to maintain an artificial sense

of industrial peace while they obstruct the recognition of unions through ungrounded, time-consuming labour court petitions. Most extreme is the presence and posting of criminal elements in and around factories as a warning to workers not to raise their voice. In addition, there seems to be an intentional State failure to protect workers (India NPT, 2012). It must be emphasised here that in a democratic state, it is the duty of State to protect their workers' right to dignified livelihood making adequate measures for their social security and ensuring ground-level implementation. But the apex institutions of the present socio-political system are hardly willing to support their workers' cause, consciously pushing them towards the margins of social structures. In fact, every effort is being made to keep them outside of power structures in order to extract maximum profit out of their labour.

In Cambodia too, the situation is grim and workers in the garment sector are facing a recent surge in violent repression against union actions. There is an increased pressure against workers' freedom of association through widespread victimisation of union activists. In addition, the freedom to demonstrate and to strike (already restricted by law) are under attack. Workers testified of 118 union leaders and activists dismissed by their employer and 145 workers sued for protesting for a wage increase at a factory. At the time of the hearing in Cambodia (February, 2012), a minimum of 100 workers had not been reinstated in their jobs. In the same period, four workers were shot by the police during a demonstration over unfair working conditions at a large factory (Phnom Penh Post, 20 February, 2012).

In Indonesia, trade unions in the industry are generally strong. However, successful struggles by trade unions appear to have elicited a range of anti-labour and anti-union policies and practices from the employers, and a high degree of government indifference, providing substantial impunity from the law. This is despite the fact that Indonesian law includes an evolved body of laws on criminal offences against workers. However, the police has shown unwillingness to investigate crimes against labour and seems to have an unstated policy that labour cases should be resolved in the Industrial Relations Court, i.e. as a civil law offence. Simultaneously, Indonesia is seeing a worrying trend of increased criminalisation of trade union

activism. The Tribunal was presented with five instances of shallow criminal cases against workers who were part of a collective action for workers' rights. This comes as a response to unions' assertion of the legitimacy of their role and demands.

Short-term contracts

The testimonies highlighted the trend of the abuse of short-term contracts and the fact that it is at different stages of becoming a structural element of the employer-employee relationship in the region. In Cambodia, this practice was systematically imposed from around the mid 2000s and Undetermined Duration Contracts (for long term employment) are now the exception, counting for as low as 5% or 10% of the workforce in certain companies (such as in Blossom Century (Cambodia) Ltd. and M & V International Manufacturing Ltd Branch # 4 respectively). Contracts are often as short as two to three months. In Indonesia, the use of short-term contracts is a more recent phenomenon, but already covers a reported 60% of the workforce in the Indonesian garment industry. It has been largely implemented through closing down of factories or through lay-offs and re-deployment on short-term contract. In India, short-term contracts have become prevalent through aggressive and widespread labour sub-contracting creating a mediated relationship between the worker and the principal employer.

Short-term contracts (called Fixed Duration Contracts, FDC in Cambodia) 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". (Gnuon Chheng Hour, Cambodia). An intended effect of labour sub-contracting as in India is a shift in legal liability, be it minimum wages or core labour standards, from the manufacturer to the labour contractor.

It was stressed in every country that term contracts have a negative role on unionisation.

In case 2, the worker and local union leader at M & V International Manufacturing Ltd Branch # 4, Cambodia, explains:

Workers fear that their contract may not be renewed if they participate in union activities or become union members. [...] They] do not dare to join in struggles to demand for any rights or benefits because they are worried that the employer will not renew their contract.

Ironically, in the period after the onset of the global financial crisis, garment exports from Asia have grown. According to data, during 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, and in countries with the strongest unions, it did indeed, such as in the region near Jakarta. But overall response from the industry and the government has been a crackdown on unionising efforts, including through the use of Short Term Contracts, as is evident in most countries, but most clearly shown by the testimonies from Indonesia.

It was widely felt that, short term contracts are used as a strategy against union building and collective bargaining all over the region, to minimise or ban any possibility of increase in union strength. The end result overall is stagnant wages and an intensification of work in a period of inflation while the prices of the end commodity has decreased, markets have expanded, leading to increasing profits of brands and retailers.

Workers' Struggles

It is important to note that despite extremely adverse situations,

every hearing witnessed testimonies of workers' struggles. In Sri Lanka, Srimathi shared her successful struggle to ensure statutory payment for her and her colleagues' wages. In Cambodia the jury heard of the general strike of 13- 15 September, 2010 (Suon Sokhunthea) demanding for increased wages and better working conditions. NCR has been witness to courageous union struggles in Viva Global Company for increase in salary, as testified by Anuradha Verma. In Bangalore workers protested to force the management of Bombay Rayon Fashions Ltd. to pay entitlements and compensation to the families of deceased workers (Bharathi). Struggles against the termination of workers and change in their working conditions from permanent to fixed term workers in PT Crystal Garment and in PT Olympic Garment International and against suspension of wage increases at PT ADI were respectively shared by Suparmi, Herdiansyah Latief and Muhtarim, from Greater Jakarta, Indonesia. From these experiences, one can see that most of the struggles are related to increase in wages and minimum wages.

However, the backlash against unions in Indonesia, also points to the constraints of country-level based struggles in effectively ensuring workers' rights and higher wages in a predominantly global industry. The labour struggles and demands of the unions created enough pressure for wages to be revised. However, companies were quick in using a legal loophole to demand an exemption from the application of the revised wage on grounds of economic inability to pay. In 2013, 949 companies submitted an application for exemption and more than half were accepted, though predominantly outside of Greater Jakarta (as trade unions are strongest there in the industry). This has been coupled with threats by companies to reduce their labour force through lay-offs, as well as threats to relocate the factory to other areas or even to other countries. Brand-name retailers have engaged fully in shaking their hands of any responsibility.

In conclusion, the importance of a regional framework of union action that reduces the real possibility for relocation of the factories while reasserting the importance of freedom of association, coupled with a strategy that diverts the burden of increased

wages from suppliers (already under price squeeze) to buyers (financially highly more profitable), stands out.

3.3 THE LEGAL FRAMEWORK

Buyers' testimonies showed that brands and retailers alike assume that the dominant trend is one of the implementation of core labour standards within global supply chains. It is indeed true that the governments of most countries where the core of garment production takes place in Asia have ratified or signed most of the nine core international human rights treaties within the United Nations (see table 3 below), as well as the 8 core International Labour Organisation Conventions (ILO), on Freedom of Association (C087 and C098), Forced Labour (C029 and C105), Discrimination (C100 and C111) and Child Labour (C138 and C182), with the noticeable exception of India

In addition, legal frameworks in Asia are often developed enough that core labour rights are included in most constitutions and often

Table 3: Nine United Nation Human Rights core treaties

ICERD International Convention on the Elimination of All Forms of Racial Discrimination 21 Dec 1965	ICCPR International Covenant on Economic, Social and Cultural Rights 16 Dec 1966	ICESCR International Covenant on Civil and Political Rights 16 Dec 1966
CEDAW Convention on the Elimination of All Forms of Discrimination against Women 18 Dec 1979	CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10 Dec 1984	CRC Convention on the Rights of the Child 20 Nov 1989
ICRMW International Convention on the Protection of the Rights of all Migrant Workers and members of their families 18 Dec 1990	ICPED International Convention for the Protection of All Persons from Enforced Disappearance 20 Dec 2006	ICRPD International Convention on the Rights of Persons with Disabilities 13 Dec 2006

translated into legislations (see Table 4 below). However, the legal systems fail most workers in the test of practice and implementation. This was best captured by a presentation made by human rights defenders from the Jakarta Legal Aid Institute for Research and Development at the Indonesia PT. The expert presentation showed on the one side, the ineffectiveness of Industrial Relations Courts, and on the other side, the weakness and laissez-faire nature of labour supervision. Similar situations were reported from India, and Sri Lanka. The Indonesian Tribunal termed it as 'an intentional state failure to protect workers' (Indonesia PT 2014: 24-26).

It was demonstrated that first, the legal process in Industrial Relations Court takes a very long time. Second, workers often have difficulty in providing evidence because much of it is in documents and records held by the factory management, and therefore difficult to obtain. Third, verdicts are rarely implemented often due to legal manoeuvres by company's management, including declaring bankruptcy. Fourth, government agencies often appear to take a "hands off" position when it comes to ensuring that workers' rights are protected. There is a blatant lack of oversight and sanctions for deploying insufficient number of labour inspectors. Labour department officials frequently direct that the employer's criminal offences under the law should be treated instead as a civil dispute - to be resolved through the Industrial Relations Court. This means that workers have to defend their rights under an inefficient section in the civil realm without the government support that would be provided in a criminal action. Finally, it is common belief amongst workers that government officials, including at the Industrial Relations Court, are corruptible and might side with the company against financial favours. According to evidence presented to the Indonesian NPT, there has been a one-third decrease in the use of the IRC by workers in the last three years, suggesting a loss of confidence in the integrity and independence of Industrial Relations Court (Indonesia NPT 2014: 15-16). This means that workers are not getting the justice they deserve. It also contradicts the assumption that Asia has an established, accessible and robust legal framework that brands and retailers can rely on.

Often, buyers have their own assessment mechanisms of working conditions in their supplier factories. The testimonies reveal that

Table 4: Legal Framework of Target Countries

While poverty wages are being paid, prominent brands in the garment industry are making massive profits, even during and after the economic crisis.

	UN HR Framework	ILO Framework	Constitution	National Laws
Indonesia	8 core treaties are legally binding; has signed ICPED.	8 core documents ratified	Guarantees human rights	Right to live, right to feel safe, right to organize, right to a living wage are guaranteed
Sri Lanka	7 core treaties are legally binding; has signed ICRPD, not ICPED.	8 core documents ratified	Guarantees human rights and worker's rights	No major deficiencies with regard to human and workers rights
Cambodia	8 core treaties are legally binding; has signed ICRMW.	8 core documents ratified	Guarantees human rights	No major deficiencies with regard to human and workers rights
India	6 core treaties are legally binding; has signed CAT and ICPED, not ICRMW.	Only 4 core documents ratified, C087, C098, C138 and C182 are yet to be ratified	Guarantees human rights and worker's rights	No major deficiencies with regard to human and workers rights

Source: Office of the High Commissioner for Human Rights website, <http://www.ohchr.org/>; ILO website, Normlex page, <http://www.ilo.org/dyn/normlex/en>, National People's Tribunals' verdicts.

manufacturers control workers' access to government inspectors as well as buyers' representatives, either through fear, or by ensuring that the most vocal workers are physically kept away.

- "When buyers come to the company, we were forced to tell that we don't have any problem in the company, we get everything here. If we won't say accordingly, they will throw us out of the company." Vakeel Mayan, 35 years old, Lorriya village, Bihar, garment industry in NCR.
- "Union members are [...] prevented from speaking to the visiting buyers." Bharathi, Maddur town, Bombay Rayon Fashion Ltd, Bangalore.
- "When buyers came, the workers were tutored how to interact with them." Chikkaiah, Bhimagondanahalli, AI Enterprises, garment factory in Bangalore.

Expert testimonies also highlighted the role of governments in providing a policy framework adverse to workers in the industry. In the expectation of employment creation, national and local government policies are prioritizing labour-intensive industries that employ a mass of workers. However, these investment-friendly policies include, explicitly or implicitly, curbs to workers' rights. An instance of explicit curb are the provisions related to Export Processing Zones (EPZ also referred to as Free Trade Zones) created in 1987 to generate economic development through the promotion of foreign investments in Sri Lanka. Similar situations were reported from India (Special Economic Zones) and Indonesia (Export Processing Zones) also. In addition to a tax-free status and other benefits, workers' rights are curbed in the zones by restricting the entry of trade union leaders as well as labour inspectors and representatives from the Labour Ministry. In Sri Lanka, entry is subject to approval by companies and the zones' Board of Investment (BOI). In addition, wage and work conditions are not set by the Wage Boards, as in the rest of the country, but by the companies and BOI, de facto exempting companies in the zone from providing statutory minimum wages, standard working conditions and benefits (Sri Lanka NPT 2011: 7-9).

Governments in the region buy into the argument that providing living wage to workers would compromise the country's competitiveness in the global market and compromise Foreign Direct Investment (FDI) in the country. As a consequence, governments have been non-responsive to the plea of workers and their practices have ranged from collusion with the company to laissez-faire when dealing with industrial relations issues. In the face of growing evidence of the negative impact of their national competitiveness-led policies on people, and in the longer run, on the economy it seems that governments in the region are showing short-sightedness in framing policies for the industry. In effect, governments have actively contributed to the failure of the industry to deliver the promises of development. This course has to be corrected and governments should ensure that manufacturers provide at least legal wages in the country and actively develop frameworks that set buyers to their responsibility to share their profits more equitably and provide living wages to workers in global industries.

SECTION - IV

Recommendations from the Tribunals and Asia Floor Wage

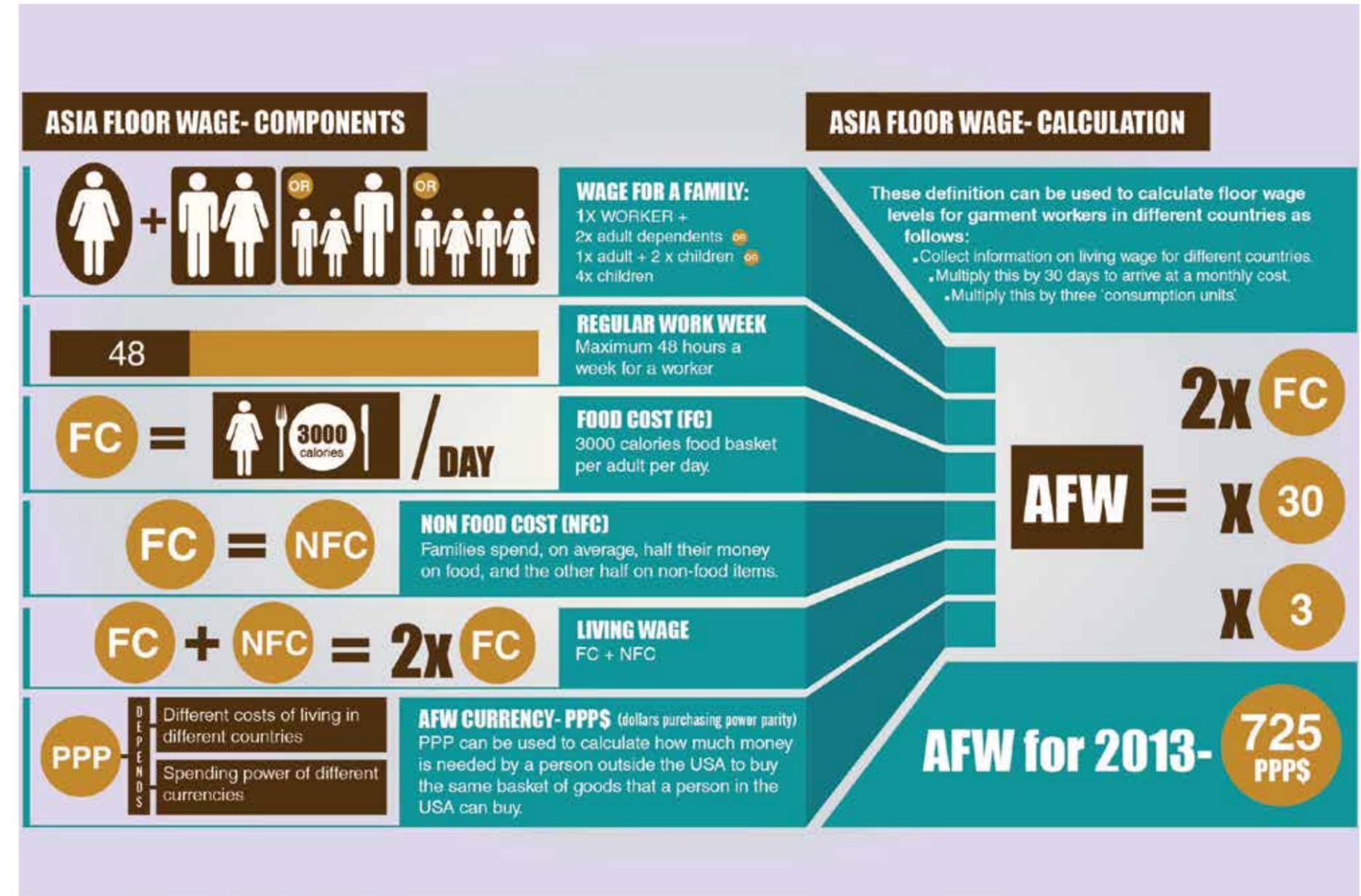
I. RIGHT TO A MINIMUM LIVING WAGE

Taken together, the NPTs' verdicts find overwhelming evidence of significant deficits in the implementation of internationally recognized standards for work with human dignity. The verdict from India states that there is "evidence of a situation of grave and systematic violations of individual and collective human rights" (India NPT 2012: 19). The verdict from Indonesia goes further and states: "The nature, extent and long duration of continuing violations of garment workers' rights is indicative of a systemic violation of their fundamental right to a decent life lived with human dignity" (Indonesia NPT 2014: 24).

Taken together, the NPTs' verdicts find overwhelming evidence of significant deficits in the implementation of internationally recognized standards for work with human dignity. The verdict from India states that there is "evidence of a situation of grave and systematic violations of individual and collective human rights" (India NPT, 2012: 19). The verdict from Indonesia goes further and states: "The nature, extent and long duration of continuing violations of garment workers' rights is indicative of a systemic violation of their fundamental right to a decent life lived with human dignity" (Indonesia, NPT 2014: 24).

Further, the verdicts conclude that not only are countries' legal minimum wages far below what is needed for a decent life, but many workers in the garment industry receive less than the legal minimum wage also, with "disastrous effect which ripples through the family, the community and the nation" (Indonesia NPT, 2014: 25). The wages paid have been judi-

This section synthesises the recommendations from the four National People's Tribunals and draws linkages with the Asia Floor Wage proposal, in relation to its legitimacy, feasibility and the constraints to its implementation. It also discusses the weaknesses and failures of the existing governance mechanisms in global industries.





Workers waiting for Tribunal to start

ciously termed as “poverty wages”.

The Tribunals invariably “accept that the Right to a Living Wage is both a distinct human right in itself and an enabling condition for the realisation of other economic and social rights” (Sri Lanka NPT, 2011: 5). Hence, they recommend its adoption in labour standards and regulatory frameworks of the countries (Sri Lanka NPT, 2011: 15). In addition, they also endorse that the ILO should integrate and develop an international framework that specifies the Right to a Minimum Living Wage (Cambodia NPT, 2011: 18, Sri Lanka NPT, 2011: 16). The Convention on Minimum Wage of the ILO is inadequate in this context as it does not define any criteria for quantifying sufficient minimum wage. In fact, it only deals with firms and states within national frameworks, and is therefore ineffective to address issues in industries where GPNs are the dominant form. It is useful to note that the due diligence mechanism evolved by the Human Rights Council within the Business and Human Rights discussion is an important instrument from the perspective of industries structured within GPNs. The Asia Floor Wage framework presents an opportunity to bridge both these international mechanisms.

The verdicts resoundingly approved the legitimacy of the living wage concept and recommend its urgent implementation, as a “concrete expression of accessibility to a fundamental human right” (Indonesia NPT, 2014: 27). The verdict from the India NPT states that the proposal of the AFWA represents an important instrument that allows the applicability of “a general concept to the real conditions of the garment industry” (India NPT 2012: 17). Thus, the verdicts recognise the Asia Floor Wage as a quantitative definition of the qualitative concept of living wage. In this sense, the Asia Floor Wage is a practical implementation of the concept of living wage.

The verdict from Indonesia recommends “The recognition and implementation of the living floor wage as defined, developed, updated by the AFW must be the joint and urgent responsibility of the Government, of all dominant brands, of the factory owners and suppliers” (Indonesia NPT, 2014: 27). The verdict from Cambodia NPT specifies that the government of Cambodia should “develop both the international and national legal frameworks as to clearly

specify the ‘right to a minimum living wage’ (Cambodia NPT, 2012: 16). The Asia Floor Wage is therefore an accepted, legitimate and necessary norm to respond to the situation presented at the four NPTs and faced across the region.

II. NEED FOR GOVERNANCE MECHANISMS IN GLOBAL INDUSTRIES

The dominant instrument for regulating labour standards in global industries are the voluntary Codes of Conduct of TNCs (CoC). These codes lay down social and environmental principles to be followed in the supply chain and are also meant to regulate abusive working conditions in global industries. In a sense, CoC were developed under the impact of the anti-sweatshop and consumer movements in USA and Europe. It was a response to maintain the brand reputations and share in the competitive consumers’ markets.

However, in legal terms, these codes are simply declarations of intent and do not generate legal obligations for TNCs to ensure their implementation. Supervision of the codes remains within the TNC itself through mechanisms of internal monitoring. Even in the few cases where external auditors have been brought into the monitoring process, the decision on actions to be taken remains with the TNCs. In most cases, the results of the audits are not made public.

Codes were also developed through ‘multi-stakeholder initiatives’ (MSIs), which bring onto one platform corporates, non-governmental organisations, trade unions, state representatives and academics. This platform negotiates CoCs to be applied by member companies, and other stakeholders are involved in monitoring and sanction mechanisms. Since these codes open spaces for the inclusion of trade unions, they are considered more effective in improving working conditions in global supply chains. However, studies have also highlighted that MSIs are not always as inclusive of stakeholders in the monitoring and sanctions process as they set out to be (Fransen and Kolk 2007: 11).

In short, brands and retailers have framed the codes as part of their Corporate Social Responsibility (CSR) initiatives and made it a private mechanism for regulating labour rights. However, various studies have shown that these codes have barely made any impact on unionisation, collective bargaining or creating decent wages and working conditions. Clean Cloths Campaign (CCC) found that social audits were incapable of finding, reporting and remedying violations of freedom of association (CCC 2005). Even in case of multi-stakeholder initiatives such as ETI a study (Barrientos and Smith 2006) showed that the codes could not adequately address labour rights violations. In addition, there is hardly any transparency regarding the implementation mechanisms and outcomes of the codes (Papadakis 2008), besides lack of involvement of workers and unions in the process. The World Bank has concluded that the unilateral, top-down approach of the codes was “insufficient and even inefficient in achieving further real and sustained improvements” (World Bank 2003: 2). After revising the implementation of existing codes in the concerned countries, every Tribunal recommended that brands and retailers should go beyond this instrument (Sri Lanka NPT 2011: 12, 14; Cambodia NPT 2012: 8, 18; India NPT 2014: 10-11, 21; Indonesia NPT 2014: 18).

The need for an alternative mechanism to ensure implementation of labour rights and a living wage in global industries is glaring. This alternative needs to be adapted to the functioning of GPNs, provide for a bottom up process and transparent mechanism in defining standards and norms, and meaningful involvement of workers and trade unions.

III. FEASIBILITY OF THE ASIA FLOOR WAGE

AFW proposes a mechanism to implement a living wage which is grounded in the functioning of GPNs. Taken together, the verdicts find that the dominant position of the brands and their search for low cost supply drive suppliers to violate the constitutional and legal provisions in their countries, and international normative standards, for fear of losing orders or even relocation of production. “Brands work closely with the suppliers, enter into contracts with them and are largely responsible for all aspects of the production other than

Table 5: Labour cost of a shirt in global supply chain

Component	INDIA		BANGLADESH
	Cost	% Retail Price	% Retail Price
Fabric	\$2.80	12.4%	14.2%
Label/Pkg	\$0.45	2.0%	3.2%
Labour Cost	\$0.64	2.8%	2.8%
Overhead	\$0.59	2.6%	0.9%
Profit to Tier I	\$0.28	1.2%	0.9%
Wash	\$0.15	0.7%	
FOB Cost to Brand	\$4.90	21.8%	22.0%
Shipping, duty	\$0.75	3.3%	3.3%
Total Cost to Brand	\$5.65	25.1%	25.3%
Retail Price	\$22.50	100%	

Source: AFWA 2014

Table 6: Asia Floor Wage Figure for 2013 in local currencies

Country Name	PPP conversion factor (pvt consumption 2011)	Local currency figure for 725 PPP
Cambodia	2,182.99	1,582,668 Riel
India	22.40	16,240 INR
Indonesia	5,583.76	4,048,226 Rupiah
Sri Lanka	63.68	46,168 SLR
Bangladesh	35.43	25,687 Takas
China	4.32	3,132 RMB
Malaysia	2.16	1,566 Ringgit
Nepal	39.11	28,355 NPR
Pakistan	36.38	26,376 PKR
Philippines	27.92	20,242 PHP
Thailand	18.19	13,188 Bhat
Vietnam	10,178.57	7,379,463 VND

Source: AFWA 2014

the actual manufacture of the garments” (Indonesia NPT 2014: 24) and are therefore the principal employers in the GPN. In addition, the opacity of buyer-supplier relations is used as an excuse for refusing to accept responsibility for the transgressions of their suppliers and appears as a mechanism to avoid accountability. In this regard, the Indian NPT saw in the opacity of the relationship between the brands and suppliers “a specific and powerful mechanism to avoid being accountable” (Indian NPT 2012: 21). The Tribunals have found that there is ground for “joint responsibility” of both buyers and suppliers (Indonesia NPT 2014: 24). In addition, the current economic conditions are a culmination of policies actively pursued by the State. Hence, the buyers have the responsibility of ensuring a minimum living wage and the State the responsibility to facilitate and oversee its implementation.

The Tribunals were presented with evidence of the distribution of profits along the chain. As per experts, suppliers receive approximately 25% of retail price, while workers receive only around 1 - 3% of the retail price (2.8% in India) (see table 5 below). Further, it was shown that the cost of wage increase on business is minimal, and the Tribunal concluded, “the evidence presented [...] indicates that a living wage can be afforded and that such a wage would not make [a country] uncompetitive” (Cambodia NPT, 2012: 14).

The logic of the calculation of the AFW across the region is that the wages earned by workers in the same industry should roughly provide the same purchasing power so as to not undermine each other and, to some extent, take the wage component out of the competition. The AFW found that wages are roughly the same when measured in terms of purchasing power (and amount to 20-25% of the wages of the poorest worker in developed world, i.e. a worker earning minimum wages in USA). In addition, worker and expert testimonies showed that current wages paid to workers in the industry in the region amount to a third of what they require for a decent life. The national legal wage definition arises from an analysis of prevailing wages within the country and are therefore adapted to national conditions. However, AFW’s implementation of a living wage is formulated based on the paying capacity of the global industry: the burden of the wage increase (from legal wage level to the living wage level) has to be born by the buyer, while the

DEMANDS OF THE BRANDS BARGAINING GROUP

The Asia Brand Bargaining Group (ABBG), initiated by AFWA, comprises of trade unions from Asian countries that are manufacturing for the global garment market. The countries currently represented by unions in the ABBG are Cambodia, India, Indonesia and Sri Lanka. The ABBG enlists the support of NGOs such as research organisations in the AFWA, whenever necessary.

The main purpose of the ABBG is to coordinate bargaining across countries, while focusing on the global supply chain in the garment industry. Its goal is to negotiate with international brands and retailers to obtain benefits for workers in the global garment supply chain. The ABBG considers these brands and retailers to be the principal employers in the global supply chain. In addition, the ABBG focuses on the local suppliers and subcontracting employers to ensure that workers’ rights and labour laws are upheld.

The ABBG has four main demands:

- i. A living wage for garment workers
- ii. Stop attacks on freedom of association and collective bargaining
- iii. Abolish and regulate contract labour and short term contracts
- iv. End gender discrimination.

In conclusion, AFW not only provides a legitimate quantitative definition of the concept in living wage, it also offers a mechanism for its practical implementation. This mechanism is adapted to the functioning of GPNs and the relations of power between its different actors, with a concrete location of a bottom up and transparent bargaining process (the FOB price) in which workers and trade unions play a key role.



Jury questioning experts at Tribunal

supplier has to commit to ensure implementation, which should be supported by the State.

The AFW mechanism is based on the understanding that the FOB is the nodal point between buyers and suppliers. It therefore proposes to fix the floor of labour cost, while the other FOB costs are left to discussions between the different actors. This has been termed as ring fencing of the labour cost, which in a way takes labour cost out of the price bargaining process and out of the competition for contracts between Asian suppliers. However, such a mechanism implies the intervention of trade unions in the price bargaining process of the FOB price, in order to ensure the accountability of different actors. The verdicts supported this proposal and recommend that brands and retailers integrate negoti-

ations on the FOB price in their procurement and pricing policies (Sri Lanka, NPT 2011: 15).

IV. OVERCOMING CONSTRAINTS TO ACHIEVING A LIVING WAGE

On a few occasions, buyer companies testified in the hearings and expressed reluctance to take the steps needed to implement a living wage. Addidas and H & M shared their Corporate Social Responsibility (CSR) efforts and pilot projects for model factories where workers would be paid a living wage. As pointed out by the jury in the verdict from the Indonesia NPT, their responses to a situation of urgency as has been described above, in circumstances

in which they are clearly and by far the major financial beneficiaries, is highly inadequate. Given the low labour cost in production (estimated to be between 1 and 3% of the retail price) "it is not clear why wages cannot move to the level of a living wage without delay" (Indonesia NPT 2014: 18). While some of them have been working on projects for living wages for workers in the sector for 25 years, there is no figure offered of what a living wage should be. At the same time, there is reluctance to accept the figure given by the AFWA. This shows a clear lack of will and leads the jury to believe that the mentioned projects are just delaying tactics.

Another constraint is the reluctance of buyers to accept their role as principal employers of workers manufacturing the products they sell. Buyers take an incentive based flexible approach to securing compliance with their CoC, while it is amply clear that they have enough control over the production process and that they have the capacity to influence workers' wages and working conditions. Further more, when buyers negotiate an FOB price with suppliers they are directly responsible for the low wages in the factories (Indonesia NPT 2014: 19). However, buyers are not comfortable with the proposition of opening these negotiations to scrutiny and are resisting the demands to ensure transparency with regard to their purchasing practices.

The lack of a national or international framework under which transnational corporations, including most buyers, can be brought to justice is another constraint to the implementation of a living wage. Buyers are manufacturers without factories that have shed their contractual obligations to workers by moving production to Asia. On the one hand, workers are not accessing justice against their direct employers in their country of work, on the other, violations of workers and human rights along the supply chain occurs with impunity in the interest of the buyers driving the system. As pointed out in the Indonesia verdict, the concept of brand responsibility in these circumstances exists in the concept of vicarious liability in common law, which in essence is reflected in the UN Guiding Principles on Business and Human Rights (Indonesia NPT 2014: 20). Verdicts recommended that buyers accept and comply with mandatory mechanisms for protection of workers' human rights (Cambodia NPT 2012:18) and ensure implementation across the

production network (Sri Lanka NPT 2011:15). In this context, it is important to note the recent developments at the Human Rights Council towards a binding treaty violation of human rights by TNCs.

The verdicts of the Tribunals have delved into the important role of trade unions in ensuring workers' rights. Freedom of Association is a necessary condition for the successful implementation of a living wage. However, freedom of association remains one of "labour's most threatened rights" in the recent era of textile and garment production (De Neeve 2008: 214). As discussed above, there is a deliberate denial of this right across the region by suppliers and governments, often in collusion, though for different reasons. Governments are prioritising conditions that would attract illusive foreign investment from a perspective of competition between nations – refusing to recognise the reality of GPNs' competition dynamics. Suppliers recognise the effects of GPNs on production, but feel that they are already under a price squeeze and do not want to be restrained in their flexibility in organising the production process, including wages and working conditions. Buyers seem to be avoiding giving legitimacy to trade unions, maybe not to upset their profitable supplier relationships.

Finally, the verdicts delved into the constellation of actors that are required to ensure the successful struggle for a living wage for garment workers. Verdicts recommended deepening and strengthening social alliances between unions and labour rights NGOs and consumer organisations to pressure brands to adopt a living wage along the entirety of their supply chain (Sri Lanka NPT 2011: 16). In addition, one of the recommendations from the Cambodia NPT points out that "unions and Federations should be united in their efforts to build their collective bargaining power, as well as their efforts [...] whilst negotiating CBA" (Cambodia NPT 2012: 17). The implementation of a living wage in the industry will require strong coordinated work between unions at the national and global level, as well as with civil society. Fostering joint efforts of Global Union Federations (GUFs) and local unions in the garment sector will be key if trade unions have to play a key role in enforcement of any global agreement that would encompass the entire GPN of an industry.

Way Forward

AFW emerged in context of the rapid relocation of garment production to the South and the earlier gains of unionisation in the North, which could not be transferred to the South. Local efforts to unionise garment workers were constrained by a) the limitations of global unions in providing adequate resources and support; b) the widespread organisational fragmentation in trade unionism; c) the failure of CoCs to deliver labour rights; d) the massive retaliation by employers; and d) the relocation of sourcing orders by brands. The situation demanded new ways of scaling up from the ground and building an effective social alliance at various levels to support new unionism. AFW brought about an alliance between the affiliates of GUFs and new unions emerging from militant and different traditions, into a shared framework that foregrounded the wage struggle as the context for unionisation. AFW is an effort to combine the procedural issues related to FoA with key substantive issues which in the case of working poor centred on the struggle for living wage.

AFW is a Southern initiative that has tried to address the key issues that were identified as impediments to unionisation. Lipschutz (2005: 76) identified three key propositions: 'the capital views unionization as an obstacle to efficiency and profits; States worry that labour activism

will drive away capital; and workers fear – with good reason – that attempts to organize will get them fired'.

The AFW alliance responded with a demand for a living wage that was not connected to production targets; on the one hand, a transnational concept of a living wage and bargaining to address the relocation threat of capital and, on the other hand, local/international social alliance to address the retaliation by employers. In this sense, AFW is a combination of a transnational union network and a social alliance network for labour rights. These two axes reflect the broad alliance that is required to address the components of the global supply chain.

AFW is an important contribution as a measure of a minimum living wage within a global production network framework. National and plant level unions as well as GUFs have developed more specific criteria for living wages at national and sub-national levels, and for different sectors. The prevailing wages and these different living wage calculations can be put in a matrix, or a 'wage ladder', and become a tool for assessment of living wage gaps and for bargaining. The AFW, based on cross border comparative measure in Asia, has emerged as an important tool in the living wage movement. It has also opened up the opportunity for study and research on concrete operationalisation of the concept of living wage.

In the next phase, the AFW intends to engage with the GUFs and contribute to the convergence and consolidation of garment unions. This engagement of transnational union network and GUFs is likely to draw these unions of the global south into global federations; create more robust social alliances for additional support for solidarity and access to labour rights; enhance political capacity to enforce framework agreements over global supply chains; and bring about a renewal of unionisation in the global south and deepen these unions' participation in GUFs. As the campaign transitions to the next phase, the transnational union network is building up to having a convergent organizing plan and a bargaining strategy addressed to specific brands - through the Asia Brand Bargaining Group.

Another element of this strategy will be to influence the evolution of an ILO instrument for defining the criteria for a minimum living wage and the recognition of gross violation of a legal wage as a form of economic coercion, equivalent to new forms of forced labour. The Convention on Minimum Wage of the ILO is inadequate as it does not define any criteria for quantifying an adequate minimum wage. In addition, it only deals with firms and states within national frameworks, and is therefore inadequate to address issues in industries where GPNs are the dominant form. It is useful to note that the due diligence mechanism evolved by the Human Rights Council within the Business and Human Rights discussion is an important instrument from the perspective of industries structured within GPNs. The AFW framework presents an opportunity to bridge both these international mechanisms and build an international binding mechanism for the regulation of global production networks and to ensure effective and efficient punitive actions against the violation of FoA and CB.

In order to build an effective bargaining strategy it is important to bring the buying practices of the brands into the ambit of negotiations to protect the employment security and wages of garment workers. This will create mechanisms to allow the enhanced resources coming from the brands to be passed on to the workers through a mechanism agreed upon by local unions and suppliers in the supply chain. The next step is brand bargaining, and a framework for converging strategies and actions between global, national and local unions, as well as broaden and deepen the key role of the social alliance networks - between GUFs, national and plant level unions, labour rights organisations, consumer campaigns and social movements - in building an enabling environment for labour rights. The GUFs can enable the evolution towards a Global Wage Accord, a framework agreement adapted to encompass the entire production network that makes Living Wage in the global garment industry a reality.

¹³ In fact, at times, the CoCs limited the struggles of unions in the South to procedural matters allowing yellow unionism to emerge and become a safe channel for representation in the workplace (ITUC 2007).

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INDONESIA PEOPLE'S TRIBUNAL

"On Minimum Living Wage and Decent Working Condition for Garment Workers as a Fundamental Rights

LIVING WAGES NOW!

Jakarta-Indonesia, June 21 to 24, 2014

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Tribunal on
Minimum Living Wage and
Decent Working Conditions
as Fundamental Human Rights



Sri Lanka

COLOMBO

27TH - 28TH MARCH 2011



I. INTRODUCTION: CONTEXT OF THE TRIBUNAL

This tribunal was convened to inquire into concerns raised by workers, trade unions and civil society that garment industry workers are unable to obtain a living wage and a decent standard of living. These parties contend that the globalisation of the garment industry and capital has forced down wages and conditions for workers.

It was put to the tribunal that the largest concentration of garment production is in Asia, employing mostly young women who migrate from the rural areas to the free trade and special export processing zones of Southeast and South Asia. Ninety percent of garment workers in Sri Lanka are young women, working at the end of the supply chain. Approximately 70% of the workers have less than five years work experience. Often the reasons for such short terms of service are the poor wages, monotonous and hard working conditions, marriage and its consequences i.e. lack of employment opportunities for the spouse, lack of affordable accommodation for a family unit in close proximity to the work place, long hours of work which are not conducive to mothers with young children and a lack of social recognition for the apparel industry workers (Oxfam Community Aid Abroad - 2004).

The Tribunal is being undertaken as part of a global campaign for an Asia Floor Wage targeting garment manufacturers, suppliers, consumer-importers, garment workers and government officials. The Sri Lanka tribunal is the first hearing in a scheduled series that will culminate in a session at the People's Permanent Tribunal.

Tribunal

The Peoples Tribunal held on 27 and 28 March was organised by the Apparel Industry Labour Rights Movement with support from the Committee for Asian Women to promote decent wages in the country through an Asian Floor Wage. The Asian Floor Wage is a campaign involving the garment sector in Asian countries aimed at establishing a formula for a fair and equitable living wage in Asia. A People's Tribunal was held in Negombo where judges, selected on the criteria of human rights, labour rights and women's rights expertise were prominent international activists and who came from five Asia Pacific countries - Bangladesh, Philippines, Sri Lanka, Singapore, Australia heard the experiences of six women garment workers.¹ The tribunal heard testimonies of six women garment factories (Annex I).

The objectives of the Tribunal established by the organisers were

- to affirm the human rights of women who are workers, to

assert their rights to decent work and respectable wages in order to live a full and progressive life, sustain family life, and contribute to the development of their community and their country;

- to establish whether the Supply Chain of garment industry is conducive for decent labour standards for workers, specifically women workers, using the ILO guidelines, and if not, determine the magnitude of working and living in conditions that fall far short of Decent Labour Standards;
- to analyse the role of gender- the double burden of women, the wide spread gender discrimination in global garment industry, the gender wage gap, non-consideration of gender roles in determining the state of labour standards in the garment industry;
- to evaluate Proposals for establishing Decent Labour Standards and make Recommendations

II. FOCUS OF TRIBUNAL – LIVING WAGE AS A FUNDAMENTAL HUMAN RIGHT

The judges utilised a human rights framework to conduct their deliberations. The primary focus of the tribunal was to determine whether the right to an adequate standard of living for a worker and their family could be enjoyed by workers in the garment industry in Sri Lanka. The tribunal members, however, also enquired into other human rights violations that may either cause the right to an adequate livelihood to be undermined or may not be achieved as a result of an inadequate wage.

Article 23 (3) of the UN Declaration of Human Rights (1948) says that everyone who works has a right to just and favourable remuneration ensuring for himself (sic) and his (sic) family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;

Articles 7 (a) (ii) and 11 of the International Covenant of Economic, Social and Cultural Rights (1966) refer to providing all workers

with an adequate standard of living.

The ILO Convention and the ILO Declaration on Social Justice for Fair Globalisation (2008) require states to ensure a minimum living wage is provided to workers and for workers to share the fruits of economic growth and the fruits of their labour.

The tribunal also considered a range of other state obligations that must be met to ensure an adequate standard of living. They included

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW);

The core conventions of the ILO and particularly convention 87, Freedom of Association and Protection of the Right to Organise and convention 98, Right to Organise and Collective bargaining, 1949.

III. ISSUES RAISED BY THE WITNESSES RELATED TO WAGES AND DECENT CONDITIONS OF WORK

The tribunal heard that the export garment industry is a major foreign exchange earner with women workers contributing 65% to its total earnings. The contribution of this sector to the national economy in 2009 was 46.2%. Women workers testified that they migrated to EPZ's to work to support their families and lead a decent standard of life.

The tribunal heard evidence that the basic wage for garment industry workers in the EPZs is approximately Rs 9000. Both workers and expert witnesses argued that this amount is inadequate to meet the needs of workers let alone their families. Petitioners argued that the rapidly rising cost of living had eroded real wages and led to a decline in family incomes. Low wages led to an exodus of workers from the industry. It was estimated that approximately 70% of the workers had less than five years of work experience, which suggests that they did not find employment in garment factories sufficient to meet the basic needs of their families.

¹ The Chief Judge for this hearing was Shanthi Dairiam. Other judges were Hameeda Hussein, Renee --, Sonali --, Soh Lung -- and Kate Lappin.

A living wage survey carried out by ALARM in 2005 was presented to the tribunal. That survey found that in 2005, after adjusting to the cost of living index, an eight hour working day should entitle a worker to Rs 12,504.0 as a basic wage. Further evidence suggested that after further cost of living adjustments are made for the following 6 years the amount in 2011 is approximately Rs20,000.

Workers gave evidence that the basic wage is inadequate and that several hours overtime is required to bring the basic wage to a

viable rate. All of the workers relied on overtime payments. Wage receipts were tabled at the tribunal revealing overtime regularly amounts to an additional 40 – 65 hours per month.

The Tribunal heard testimonies from six garment industry workers on wages and conditions of work that had implications for the exercise of several rights including their right to a family life, dignity of work, a decent standard of living, and rights to health and freedom from stress.

a) Right to a family life

The tribunal heard evidence that workers commonly leave their natal homes and travel 150 to 300 kms to take up work in the export processing zones. Most came to the zones as single women trying to support their families but a number of them married while working in the zones. They testified that after they married they were unable to live with their husbands because they could not afford to maintain a household. As a result they live in boarding houses shared with other women, often in the same room.

Women with children appeared to be most affected by the wages and conditions of the industry. As few factories provided crèches women were forced to pay for child care. The workers stated that the cost of private child care is between Rs 2500 and Rs3500 per child, amounting to one third of the basic wage. The prohibitive cost of childcare and the need to work daily overtime to make ends meet resulted in all the workers who testified reluctantly taking their children to live with grandparents. As a result they now see their children only twice a year. This, in the tribunal's opinion, is a denial of the right to a family life.

The tribunal also heard evidence that the pressure to work overtime and the lack of on-site childcare meant that women were rarely able to breastfeed babies even though the law allows for two breastfeeding breaks a day.

Furthermore, the Tribunal heard evidence from workers that work pressure and financial insecurity had been diagnosed as a cause of infertility. According to the testimony of one worker, her inability to conceive after four years of marriage was attributed by her doctor as "excessive hard work and mental stress at work".

The Tribunal heard that a large proportion of wages are spent by the workers on their own board and food expenses, so they are unable to save towards building a home to live together with their husbands. Unable to share a family life, separated from their children or little babies, the workers are subject to emotional stress.

One worker testified that the stress of living separately and financial insecurity led her husband to desert her when she was seven months pregnant. As a single parent she struggled to meet the demands of the EPZ hours of work and she testified that she was dismissed because of her inability to undertake overtime hours demanded by the company.

The workers testified that "Workers in a factory should earn an adequate monthly income to enable them to maintain their families and dependants in the same areas, where they work and this is a fundamental right."³

b) Right to an adequate standard of living

The workers testified that they were unable to maintain a minimum standard of living even after receiving an annual increase of Rs 500.0[2] to their basic wage of Rs. 9,000 because the cost of living index was much higher than their increase in wages. Between December 2009 and December 2010 it had risen by 15 points, but this was not factored into the increase in wages.

The expense of adequate housing was cited as a major impediment to the workers. Workers live in boarding houses in shared rooms, depriving them of privacy and proper rest.

c) Right to adequate food

The Tribunal heard evidence from workers that their consolidated wages of a basic Rs 9,550 together with overtime payments was not adequate for a nutritious diet. Some factories provided them breakfast and lunch, at a cost of approximately Rs 900.0 per month. They spent an additional Rs 5,500 a month on food for themselves. The workers cited the long hours as an impediment to a nutritious, affordable meal as they were forced to buy pre-cooked meal because of time pressures

Of the six workers three testified that their low wages prevented them from living together with their family(children and husbands). All workers testified that they were unable to maintain an adequate standard of living and two stated that their health was affected and their productivity was lowered because they could not afford a nutritious diet.

After hearing the evidence the tribunal members found that the following human rights have been impeded by the denial of a living wage:

d) Right to health

The tribunal heard evidence that long hours of work negatively affected workers' health. In addition to the reproductive health detriments cited in section a., workers noted stress, anaemia and malnutrition as common ailments.

Other occupational health problems brought about by long, repetitive hours of work and particle inhalation included muscular pain, repetitive stress injuries and respiratory problems.

Since medical facilities provided by the factories were regarded as poor, workers had to pay for private doctors' fees and purchase medicines which was an added burden on their low budgets.

e) Right to rest and leisure

Workers testified that they are compelled to work overtime and on holidays when there is a rush of orders. At times they are expected to continue working the day directly after night duty. This has a very bad effect on workers' health and on their productivity.

² The Chief Judge for this hearing was Shanthi Dairiam. Other judges were Hameeda Hussein, Renee --, Sonali --, Soh Lung -- and Kate Lappin.

³ Workers statement annex --

⁴ The right to an adequate standard of living article is included in article 11(1) of the International Covenant on Economic, Social and Cultural Rights which provides, "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself (sic) and his family (sic), including adequate food, clothing and housing, and to the continuous improvement of living conditions."

IV. LIVING WAGE

The tribunal accepts that the right to a living wage is both a distinct human right in itself and an enabling condition for the realisation of other economic and social rights. The Universal Declaration of Human Rights article 23(3) established that "Everyone who works has the right to just and favourable remuneration ensuring for himself (sic) and his (sic) family an existence worthy of human dignity ...". The ILO recognises the need for a 'minimum living wage' both in its constitution and its instruments.

A number of different methods have been formulated to arrive at a living wage. The tribunal heard a number of different calculations. While the tribunal members do not intend to prescribe a specific amount that should be immediately set in Sri Lanka we have come to conclusions about some of the requirements for a living wage.

Requirements for a living wage:

a) Adequate to sustain a family: The tribunal is convinced that a living wage must be sufficient for an average family. It is clear that this is the intention of article 23(3) of the UDHR. Historically women have received lower wages sometimes justified by the erroneous belief that women do not have dependents. This discriminatory assumption has aided the systemic undervaluing of women's labour. All the women who testified supported family members.

The tribunal accepts the evidence presented that the minimum basis for a family should be a family of four – 2 adults and 2 children, which equates to 3 adults or 1 adult and 4 children.

The tribunal also accepts the evidence that the calculation should be based on the calculation of 1 wage earner. This calculation recognises that where 2 parents work the need for domestic work will necessitate the payment of a wage. Domestic workers should also be entitled to a living wage.

b) Living wage should be based on an 8 hour day: The tribunal heard evidence that workers in the garment industry struggle

to survive on their take home pay even though it includes overtime. Overtime appears to have become an essential part of wage calculations, not an additional payment made on a periodic basis. The systematic reliance on overtime particularly disadvantaged women workers with young children who were unable to survive on the basic rate of pay and forced to live separately from their children in order to accept overtime hours. Other testimony indicated that the long hours of overtime had a serious impact on the health of workers. The reliance on overtime also made it difficult for workers to take annual leave where they would only be paid the basic rate and would be unable to survive on that payment.

c) Living wage should be based on 3000 calories per day per adult – The tribunal understands that there are numerous ways to determine the costs of food for workers. The tribunal heard evidence about the increases in food prices over a number of years. This method of calculating costs based on a 'food basket' may be useful in a local setting. However, the tribunal found that the calorie intake method of calculation allows for the most objective method to be utilized across regions and countries.

The tribunal heard evidence that a number of workers do not eat adequately on existing wages and some would confine themselves to the food provided at the factory to save costs.

The tribunal heard evidence of the hard, exhausting work carried out by workers in the garment industry. It is clear from the evidence that this work is not sedentary work and the calorie intake must reflect at least a minimal level of physical work. The tribunal heard evidence that Indonesia has set the calorie intake at 3000 calories after consulting with the ILO and workers. The tribunal therefore finds that a calorie intake of 3000 should be utilised to measure the living wage

d) Living wage should calculate food costs at a rate that is equal to or less than 50% of the wage - The living wage must ensure that workers can live with dignity and enjoy other economic, social and cultural rights. Non food items are an essential part of livelihoods and include housing, clothing, education, childcare, enter-

tainment, transport. The tribunal heard evidence that a number of workers begun working in the garment industry with the hope that they could earn enough money to pay for education for family members, provide housing, save money or purchase household items. However the workers found that the wage earned did not allow them to utilize the wages for this purpose. The tribunal heard that the women do not have enough money left after the cost of food to even purchase the clothing they manufacture.

The percentage of the wage that is spent on food is an indicator of the adequacy of the wage to provide for a living wage. The higher the percentage spent on food, the closer to poverty levels. The tribunal accepts that a living wage should enable no more than 50% of the wage to be spent on food for the family.

Living wage, rather than minimum wage

Sri Lanka, like most countries, has established a minimum wage. The evidence presented to the tribunal was that many, however not all, workers in the garment industry receive the mandated minimum wage or higher. The minimum wage, however, has not been set as a minimum living wage based on indicators that suggest a family could survive on that wage.

Globally the minimum wage has been set at a subsistence rate, at poverty levels. The tribunal accepts that wages set at minimum wage rates do not amount to just and favourable remuneration that would allow for a dignified family life.

Other evidence on living wage setting

The tribunal heard various arguments around the rate at which a living wage should be set. While the various calculations proposed by the witnesses varied it should be noted that the universal result was that the existing minimum and actual wages are not adequate for a dignified, adequate livelihood for a family. The testimony of the workers themselves confirmed the arguments of the expert witnesses and, although the workers estimates of what they would need varied, it is likely that the living wage indicators mentioned above would result in a basic wage that matched the suggested amounts required by the workers.

Millenium Development Goals and a Living Wage

The goal to eradicate poverty includes the target to increase the percentage of people living on more than \$2 per day. For a family of 4 with one wage earner this would amount to USD240 per month or USD180 if 2 children are counted as 1 person. This target can only be achieved with a commitment to a living wage for workers in the global south.

V. EXISTING LEGAL FRAMEWORK AND TREATIES AND OBLIGATIONS UNDERTAKEN BY SL GOVERNMENT

The Sri Lankan Government has ratified all important international conventions with regard to labour. It was presented to the tribunal there are no major deficiencies in national laws. National labour legislations the garment trade has had a history of poor implementation practices with regards to labour standards. The manufacturers have managed to work hand in hand with the Government to protect and increase the foreign investment in this country at the expense of the workers. It appears from the testimonies presented that the voice of Sri Lankan workers in this global industry is silenced.

Relevant laws and applicable National standards

The tribunal has not found any major deficiency in Sri Lanka's national labour legislation with regard to the garment industry. The Sri Lankan Government is signatory and has ratified all important international conventions with regard to labour. However the garment trade has a history of poor implementation practices with regard to labour standards. It appears from the testimonies presented that the voice of Sri Lankan workers in this industry is silenced.

The important national laws governing the garment industry in Sri Lanka are as follows.

- Wages Board Ordinance -section 29 (3) of the Wages Board Ordinance (Chapter 136)
- Employees' Council Act No. 32 of 1979
- Industrial Disputes (Amendment) Act No. 56 of 1999
- Unfair Labour Practices (Part VA to the Industrial Dispute Act)
- Trade Union Ordinance Act No. 14 of 1935
- Factories Ordinance 45/1942
- Employment of Women, Young Persons and Children Act – Act 47 of 1956, Act No. 32 of 1984
- Workmen's Compensation Ordinance (Act No. 15 of 1990)
- Employees' Provident fund Act 15 of 1958, Act 14 of 1992
- Employees Trust fund Act Act 96/ 1980
- Gratuity Act 2/1983
- Maternity Benefits Act – Act No. 43 of 1985.
- Termination of Employment of Workmen (Special Provision) Act of 1971 as amended by Act No. 4 of 1976 and Act No. 51 of 1988

The International Conventions which Sri Lanka has signed and ratified are given below.

International Conventions ratified by Sri Lanka

ILO 87 Freedom of Association and Protection of the Right to Organise Convention, 1948. Ratified 15/09/1995

ILO 98 Right to Organise and Collective Bargaining Convention, 1949 Ratified 13/12/1972 ILO 29 and ILO 105 abolition of forced and compulsory labour
ILO 111 Discrimination (Employment and Occupation) Convention, 1958 Ratified 27/11/1998.
ILO 138 Minimum Age Convention, 1973 Ratified 11/02/2000

- International Covenant on Economic Social and Cultural Rights – ICESCR Art. 13, 14 Accession: 11 Jun 1980.
- International Covenant on Civil and Political Rights - ICCPR Accession: 11 Jun 1980.
- Optional Protocol to the ICCPR – Acceded: 3 Oct 1997.
- International Convention on the Elimination of all Forms of Racial Discrimination - CERD
- Accession: 18 Feb 1982
- International Convention on the Elimination of All Forms of Discrimination against Women – CEDAW
- Ratified: 5 Oct 1981
- Optional Protocol to CEDAW Ratified on 15 Oct 2002
- Convention on the Rights of the Child - CRC - Ratified: 12 Jul 1991.
- International Convention on the Rights of Persons with Disabilities - CRPD - Signed: 30 March 2007



Expert testifying at Tribunal in Sri Lanka

The Wages Board Ordinance

The Wages Boards Ordinance prescribes minimum wages and other conditions such as holidays, leave and overtime rates for trades that have been established. At present there are thirty seven Wages Boards.

The Wages Boards are established pursuant to the Wages Boards Ordinance. Each wages board is constituted by the Commissioner of Labour and consists of an equal number of representatives of employers and employees of a particular trade and not more than three nominated members appointed by the Minister of Labour. The Commissioner of Labour is the chairman of the Board but has no voting right.

The most important function of these boards is to determine the minimum rate of wages for the trade and they may also determine a general minimum overtime rate. The minimum rate of wages may consist of a basic rate plus a special living allowance. However most of the wages boards have now abolished the special living allowance and basic rate and have determined a consolidated wage, which is monthly.

Role of the BOI

Export Processing Zones (EPZ) were set up under the Greater Colombo Economic Commission (GCEC Act) No. 4 of 1987. These zones are intended to foster and generate the economic development of the country and generally to promote foreign investment. As incentive these companies enjoy a tax free status and other benefits guaranteed by the Sri Lankan Government.

Entry into the EPZ requires the permission of the Company and the BOI. This administrative restriction prevents the entry of trade union leaders interested in organising the workers as well as labour auditors even from the Labour Ministry.

In the EPZ's the Board of Investment (BOI) have entered into an agreement with enterprises recommending annual increments of Rs. 500 to employees with not less than a one year service. But this rate of increment appears to have been fixed at Rs 500.0 and was not revised annually despite the rise in the cost of living within the country.

Employees Council

Every company that employs not less than 100 but not exceeding 500 employees belonging to the manufacturing sector shall establish an Employees' Council under the Employees' Council Act.

The constitution of the Employees Council is as follows:

- (a) Not less than 5 and not more than 10 worker representatives elected by the workers themselves, if necessary by secret ballot;
- (b) Elections are monitored by the BOI and Department of Labour;
- (c) Meeting should be held once a month;
- (d) Council is empowered to discuss any matter affecting the employees of the enterprise;
- (e) Employer and Council are expected to endeavour to bring about a settlement within 30 days and if this is not possible, to refer the matter to the BOI;
- (f) The labour dept. is brought in after a further period of 30 days;
- (g) The employer and council are expected to refrain from any act likely to impair the efficiency and productivity of the enterprise;
- (h) Monitoring of standards is the responsibility of the BOI.

In EPZ's the Employees' Councils are also known as Workers Councils.

Obstacles towards the implementation of local labour laws

Freedom of Association and Collective Bargaining violations

Violations resulting from the inability to implement the Industrial Dispute Act and the Trade Union Ordinance have resulted in the weakening of trade unions with regard to the garment industry in this country. There are just a handful of Collective Bargaining Agreements that have been signed with workers in the garment industry. The prevailing minimum wage or poverty wage is the benchmark at which wage is determined and the trade unions have not been effective in influencing the Government and manufacturers for an increase in wages. All the testimonies from workers confirmed that workers in the garment industry received the minimum wages determined by the Wages Board.

The trade unions in the garment industry appear to be weak. The main reason for trade unions' inability to make a difference in the workers situation is because there is a strong opposition to unionising by the manufacturers as cited by the People's advocate at the tribunal hearing. The Peoples Advocates explained that in some cases unions were not recognised or could not be formed because of strong opposition from the manufactures. According to testimonies from the workers the Workers Council members work closely with the management and tend to take the side of the management when there is a dispute. It seems that the EPZ's have been set up promising foreign investors a union free workforce. In the testimonies presented, a worker had to wait for two months to report her dispute to the Labour Department because of the procedures set up by the BOI. Complaints by the workers cannot be taken directly to the Labour Department without first been referred to the Workers Council and BOI.

Workers' testimonies showed there is no credible complaint mechanism within the factory. The Labour

Department is the final arbiter for disputes that cannot be resolved by the Company. From the testimonies recorded at the tribunal the Labour Department did not seem to have effectively addressed the issues brought before them.

The majority of trade union leaders in this country are male-dominated, with severe handicaps in understanding the problems women workers face. This adds to the workers' unwillingness to join trade unions. Adding to the fact that women workers have very limited time to spare for union activities, trade unions are fragmented and do not work well together. Competition and politics between them has hampered the work for women workers in the industry.

Overtime violations

The local labour laws allow workers to do 60 hours of overtime a month. There are some manufacturers that practice 48 hours of overtime a month. According to the law, women who work from 6am to 6pm shall not be employed after 10pm on any day.

From the workers' testimonies it appears that in some instances, workers did more than 100 hours of overtime a month. These workers reported receiving two pay slips from the factory - one payslip that records up to 60 hours of overtime and the other pay slip records overtime over 60 hours. This is in gross violation to the local labour laws. Some workers reported working 24 hours at one stretch if there is an urgent shipment from the factory, which is a blatant breach of national law. Testimony of workers further revealed that all overtime hours worked were not adequately compensated by the factory management.

Night work

The local legislation for night work: The Employment of Women, Young Persons and Children Act states

that 'no woman shall be employed for more than 10 days on night work, during any one month.' Another requirement is 'no woman shall be compelled to work at night against her will and written sanction of the commissioner of labour should be obtained by every employer, prior to the employment by him of women to work after 10 pm at night.'

According to the testimony of a worker she was forced to give her consent to do night work by the factory management. She reported suffering from low blood count and not being able to conceive because she worked continuously at night and did long overtime hours. She was advised by the doctor to stop her night shifts in order to improve her health. Because of excessive work and mental stress at work she has left her job and is now working with Subcontract Company that has less pressure on the worker.

Maternity benefit violation

The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be twelve weeks. The employer of more than a prescribed number of women workers shall establish and maintain a creche for children under five years of age. The employer of a woman worker who is nursing a child under one year of age shall allow her in any period of 9 hours, two nursing intervals of not less than 60 minutes in addition to her normal breaks. It was also stated that in some instances women were unable to take their required nursing breaks because of heavy shipments that demanded intense labour from the factory.

Employees' Provident Fund

The employer is obliged to deduct 8% from a worker's total earning each month and contribute 12% per of the worker's basic monthly earning towards the Employment Provident Fund.

Under the Ordinance the monetary board shall notify the employer within 9 months of the amount credited towards the worker. It is the duty of the employer to notify the worker of the amount credited to his/her account.

According to the testimony of a worker, she was not aware if her employer contributes towards this fund. She was not informed of any contributions.

6. IMPEDIMENTS: INTERNATIONAL

The impact of globalization in the supply chain in the export-oriented garment industry

The inability of workers to organise and engage successfully in collective bargaining is compounded by structural difficulties arising from the global trade chain. Globalization has brought unprecedented opportunities to developed and developing countries. It has introduced a global trade regime through which goods are bought sold and consumed. It has expanded and transferred capital and labour from one part of the world to another and made them foot loose with serious and varying consequences for buyer, seller, producer and consumer. This free movement has caused labour intensive and hazardous processes of production to labour-flexible low wage countries. Women workers in many of these countries have been targeted to take on low paying and flexible, unregulated and temporary jobs to meet the demands of the global production process. This global trend has therefore spurred the over hasty growth of industries that have disregarded labour and safety standards.

The production process is also characterised by a demand and supply chain with many actors between the production and market end, designed to maintain the advantage of the buyer and seller. The main actors are the multi-national corporations sourcing countries and manufacturers who will manufacture cheap goods for the global market. The chain also consists of middlemen who maximise their own profits while meeting the demand of the multi-national companies by squeezing manufacturers producing for the export market and who in turn squeeze the workers.

The structural conditions behind poverty wages

Even if collective bargaining for a living wage is successful, it may not be sustainable because of the nexus of the buyers,

the big garment brands and retailers who have control over the processes of production and trade. Barriers to organising or sustaining gains in collective bargaining are created by, relocation threat, and falling prices.

The buyers' engage in policies such as shift in sourcing and pitch developing countries, where the production of the garments take place, in competition with one another offering exemption from national labour laws or suspend the legal minimum wage. This 'race to the bottom' is exploited by the buyers who are in a position to choose countries offering the most competitive conditions for the 'efficient production' of the garments at the lowest cost and with the shortest lead time and on time delivery. Labour laws and social protection standards are not respected in this process. It makes it impossible for suppliers to pay a living wage or to give a choice to their workers to avoid over time work. The huge pressure to cut costs or lose their business is passed on to the suppliers at the national level.

Major consuming countries have become used to buying the garments at unrealistically low prices. So all companies selling to consumers in the developed world are in competition to provide cheap goods, a trend instigated by powerful global buyers. The size and outreach of the some of the largest global retailers and buyers gives them great power to source their goods at the lowest possible cost in order to grab the largest share of the consumer market, thus driving down the prices of the products. All other competitors in the retail industry are also compelled to follow a low cost strategy or be priced out of the market. Most global buyers reject calls for a 'living wage' standard and insist instead that wages set at the legal minimum wage level are acceptable. Manufactures are at the mercy of this trend as their labour practices are in effect controlled by the global chain of trade and business if they do not want to lose their international competitiveness. So even if there are laws protecting the rights of labour such as those penalizing unfair labour practices, these are not observed.

Strategies

This raises the question of strategies for change and the protec-

tion of the rights of the workers. All points in the global trade chain must be addressed and the industry at the national level cannot be addressed in isolation. When local capital is subordinated by the dynamism and cohesion of the global trade, then the labour movement too has to become globalised and must become more cohesive. There has to be a global bargaining strategy and the competition among developing countries for a share of the economic activity must be broken. There also has to be cohesion at the national level between labour, manufacturer and government.

However, the internal / national labour movement is fractured and scattered as compared to the global trade chain which is cohesive. We have seen in the previous section that there are many reasons for the lack of cohesion in the labour movement. The repression of political rights and trade unions and the lack of democracy undermines the workers' capacity to organize. We have also seen that while the workers in the garment industry are largely women, trade unions are dominated by men. So women's rights issues are not given pre-eminence. In many instances workers have irregular contracts and work flexibly and so move from job to job, hence they are scattered and are unable to unionise. The international outsourcing of production has altered the balance of power between employers and unions as well as weakened the traditional regulatory processes of the state. International outsourcing has detached corporations from the specific communities and labour pools associated with them and on whom they depended. Now corporations call the shots and are able shift their investments and business if they meet with demands of the manufacturers they do not wish to comply with. In other words the global buyer retains control of sourcing and prices by relocation threat and shift in sourcing to other countries.

Codes of conduct and corporate accountability

Since the early nineties a group of global buyers and retailers have responded to worker demands for better pay and working conditions and have adopted codes of conduct for minimum standards for labour rights. While standards for decent work as set by ILO have been adopted, there has been no consensus on

the idea of a living wage. What has been accepted is standards for a legal minimum wage as set by the laws of the country. It was submitted to the Tribunal, that this is insufficient as legal minimum wage or anything that falls short of a living wage, even if above a legal minimum wage, is inadequate to meet basic needs of the workers and their families and leave the workers in low pay jobs and their families in poverty.

The Tribunal also heard that a further impediment is the failure in many instances to ensure progress in the implementation of codes of conduct such as the Ethical Trade Initiative (ETI) adopted by some multi-national companies. ETIs have also not been useful in furthering the concept of a living wage as there is still no consensus on the measurement and yard stick for a living wage. To be effective, consensus on such measurements have to be collectively decided at regional and global levels. Hence the Asia Floor Wage submitted to the judges that regional and global bargaining strategies are essential to complement local strategies for a living wage. The judges are of the view that to ensure compliance with ethical standards for the idea of a living wage and decent work, measures need to be in place for corporate social accountability at the regional and global level, supervised by the ILO and related UN bodies.

- a) The structural conditions behind poverty wages
- b) Even if collective bargaining for a living wage is successful, it may not be sustainable because of the nexus of the buyers, the big garment brands and retailers who have control over the processes of production and trade. Barriers to organising or sustaining gains in collective bargaining are created by, relocation threat, and falling prices.
- c) The buyers' engage in policies such as shift in sourcing and pitch developing countries, where the production of the garments take place, in competition with one another offering exemption from national labour laws or suspend the legal minimum wage. This 'race to the bottom' is exploited by the buyers who are in a position to choose countries offering the most competitive conditions for the 'efficient production' of the garments at the lowest cost and with

the shortest lead time and on time delivery. Labour laws and social protection standards are not respected in this process. It makes it impossible for suppliers to pay a living wage or to give a choice to their workers to avoid over time work. The huge pressure to cut costs or lose their business is passed on to the suppliers at the national level.

- d) Major consuming countries have become used to buying the garments at unrealistically low prices. So all companies selling to consumers in the developed world are in competition to provide cheap goods, a trend instigated by powerful global buyers. The size and outreach of the some of the largest global retailers and buyers gives them great power to source their goods at the lowest possible cost in order to grab the largest share of the consumer market, thus driving down the prices of the products. All other competitors in the retail industry are also compelled to follow a low cost strategy or be priced out of the market. Most global buyers reject calls for a 'living wage' standard and insist instead that wages set at the legal minimum wage level are acceptable. Manufactures are at the mercy of this trend as their labour practices are in effect controlled by the global chain of trade and business if they do not want to lose their international competitiveness. So even if there are laws protecting the rights of labour such as those penalizing unfair labour practices, these are not observed.
- e) This raises the question of strategies for change and the protection of the rights of the workers. All points in the global trade chain must be addressed and the industry at the national level cannot be addressed in isolation. When local capital is subordinated by the dynamism and cohesion of the global trade, then the labour movement too has to become globalised and must become more cohesive. There has to be a global bargaining strategy and the competition among developing countries for a share of the economic activity must be broken. There also has to be cohesion at the national level between labour, manufacturer and government

7. RECOMMENDATIONS

Recommendation towards changes in the law Shaping a global, sustainable and humane garments industry

The challenge facing Sri Lanka – and other countries (both exporting and importing) – is how to shape a global yet sustainable and humane garments industry.

The testimonies received by This Tribunal on the situation in Sri Lanka, supplemented by the abundant literature on the international garments industry and its production-marketing value chain across the globe, indicates a veritable Race to the Bottom taking place at the national, regional and global levels. This Race to the Bottom collides with the UN's Millennium Development Goal of halving mass poverty and enhancing social welfare because the resulting subsistence wages literally emaciate workers and their families. It also collides with the ILO's promotion of "decent work", which is defined as work obtained in conditions of

freedom, equality, security and dignity. Moreover, this Race to the Bottom threatens the sustainability of the economy for the long-term growth and productivity of a country depend on a stable and contented work force. The migration of Sri Lankan garments firms in search of willing workers in neighboring countries is a clear indication of this. Globally, this Race to the Bottom also puts governments, buyers and consumers on collision course everywhere, as they jostle over jobs and markets.

This Race to the Bottom, which has caused so much suffering and human and labor rights violations, can not go on. It should not be allowed to go on. This Tribunal is fully in accord with the demand of trade unions and civil society organizations seeking a global and Asian minimum living wage in the most global of the globalized industries, the garments and textile industries. This Tribunal also feels that it is in the best national interest of a democratic and modernizing Sri Lanka, now that it is emerging from its decades-old civil strife, to heed this call and work out with other governments in South Asia and in the Asia Pacific how this concept can be operationalized region-wide.

IN THIS CONTEXT, THE TRIBUNAL MAKES THE FOLLOWING RECOMMENDATIONS:

Recommendations to the Government of the Democratic Socialist Republic of Sri Lanka:

- That the government of Sri Lanka move toward the adoption of a living wage in its labour standards regulatory framework;
- That the government of Sri Lanka advance the argument for a living wage at regional and national level and address the global supply chain that pushes wages lower through a collective approach from governments;
- That the government of Sri Lanka establish an independent statutory authority to determine minimum living wage setting, labour conditions and to hear labour disputes. The authority should be comprised of independent experts from civil society with expertise in labour standards. The authority should be mandated to oversee and ensure compliance with international labour standards and be independent of investment bodies;
- That the government of Sri Lanka enforce the Unfair Labour Practices Act, ILO conventions 87 and 98 on Freedom of Association and Collective bargaining, and ensure that trade unions are able to organise and represent workers without impediment;
- That the women's ministry within the government of Sri Lanka ensure that women working in the garment industry can enjoy all rights enshrined in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and that they include a section on the fulfilment of the rights of women workers in the garment industry in the report to CEDAW.
- That the government of Sri Lanka amend the monetary board regulations to require workers to be directly advised of their EPF contributions on a regular basis, including through electronic means.

Recommendations to Trade Unions:

- For trade unions in Sri Lanka and globally to adopt the living wage mechanism as part of their bargaining and organising strategies in the garment industry;
- To increase the representation of women garment workers within trade unions as officials and elected representatives;

Recommendations to Women's Organizations:

- For Women's Organizations, in addition to local advocacy, to raise the issues pertaining to the human rights of women workers in the garment industry, in their international and regional advocacy such as with CEDAW, the Committee on the ICESCR and SAARC.

Recommendations to Multi-National Corporations involved in the garment industry:

- For international corporations to recognise and prioritise human rights of workers in their pricing and procurement policies;
- For international corporations to go beyond the voluntary Codes of Conduct and commit to a system of universal acceptance of the application of a living wage at all levels of the value chain, including all firms involved in the complex subcontracting system that characterizes the global production of garments and textiles.

Recommendations to consumers:

- For international consumers to support the global efforts of trade unions and CSOs like the Clean Clothes Campaign for global ethical rules in the garments and textile industries, including the universal acceptance of a minimum living wage in each country.

Recommendations to UN bodies

- For the ILO, to adopt the minimum living wage as a key element in the decent work program and prioritize its promotion in the global purchasing chain of the garments and textile industries. The ILO's campaign for freedom of association and collective bargaining should be supplemented by the global campaign for a minimum living wage;
- For the UNDP, to promote the concepts of ethical outsourcing and universal social accountability as integral part of its Global Compact Initiative (GCI) and include the enforcement of minimum living wage as one of the "human development indicators" of UN member countries.
- For the UN Special Rapporteur on Business and Human Rights to conduct a thematic inquiry into a Living Wage in the garment industry. Furthermore for the mandate holder to seek an invitation to make a country visit to Sri Lanka;
- For the UN Special Rapporteur on Freedom of Association to conduct a thematic inquiry into freedom of association in the global garment industry. Furthermore for the mandate holder to seek an invitation to make a country visit to Sri Lanka;
- That the international community recognise a living wage as right that requires a fundamental shift in global economic systems to be realised by workers in the garment industry. That the existence of a minimum living wage be included as an indicator in future development goals.

Cambodia

CAMBODIA - JAPAN
CO-OPERATION CENTER, PHNOM PENH

5TH - 8TH FEBRUARY 2012



I. GENERAL FRAMEWORK

The Peoples Tribunal on Living Wage as a fundamental right of Cambodian Garment Workers has convened following the petition of Asia Floor Wage Cambodia (AFW-C), as Member of the Asia Floor Wage Alliance (AFWA), and on the behalf of Cambodian Garment Workers, to hear the workers' plea and experts' evidences, and render an informed non-binding opinion and recommen-

dations on the question of decent labor standards in the garment industry of Cambodia.

The AFWA was officially formed in 2006, and includes up to 71 organizations, which constitute a network from 17 countries across Asia, Europa and North America to represent garment industry, trade unions, NGOs, consumer groups, and research institutes.

The host institution AFW-C consists of organizations of the 9 major garment workers federations, workers confederations, and civil society:

CAMBODIA CONFEDERATION OF TRADE UNIONS	CAMBODIA LABOUR CONFEDERATION	COMMUNITY LEGAL EDUCATION CENTER
CAMBODIA NATIONAL CONFEDERATION	CAMBODIA WOMEN MOVEMENT ORGANIZATION	NATIONAL UNION ALLIANCE CHAMBER OF CAMBODIA
CAMBODIAN CONFEDERATION UNIONS	CAMBODIA WORKER CENTER FOR DEVELOPMENT	AMERICAN CENTER FOR INTERNATIONAL LABOR SOLIDARITY

The public hearings were held according to the program detailed in the Annexe 1, in the auditorium of the Cambodia-Japan Cooperation Center, in Phnom Penh, on February 5 and 6, 2012, in front of an international panel of 5 judges (see their profile in Annexe 2): Dr. Gianni Tognoni (Italy), Chair; Professor Gill H. Boehringer (Australia); Mr.

Nhean So Munin (Cambodia); Ms. Prok Vanny (Cambodia); Dr. Kek Pung (Cambodia). Besides the oral testimonies and the experts reports listed in the Annexe 1, the panel took in due consideration the source documents listed in Annexe 3.

2. THE PETITION

The questions submitted by the petitioners to the attention of the Peoples' Tribunal are based on the consideration that the universal body of human rights instruments and standards (including Core Conventions of the ILO) only imply rather than assert a positive "right to wage", and seek to assert a "right of living wage", whose denial would directly impact on the realization of the universal and indivisible, individual and collective, rights to life, to equal opportunities, to equal protection of the law, to decent working conditions, to standards of living adequate for the workers and their families.

In particular the Peoples' Tribunal is requested to examine and to answer to the following questions:

- Is there a deficit, and of what magnitude, in decent labour standards in Cambodia's garment industry, with specific considerations of women workers?
- What are the causes, and the responsibilities, of the wage deficit, which translates into deficit of decent living standards?
- Could the AFWA platform and its criteria for the definition of living wage be considered a reliable and viable tool to redress the existing situation of massive violations?
- What are the criteria for, and the implication of, the definition of a living wage as a human right?

3. THE EVIDENCE OF DATA AND FACTS

3.1. Working conditions and low wages

The critical importance of the garment industry in the general economic and social scenario of Cambodia is very synthetically summarized in the figures presented in Table 7: approximately 450,000 workers, distributed in more than 500 factories, and constituted for 90-95% of women in their full reproductive age, 18-35 years, contribute to a huge income and specifically to 80%

Table 7

Average annual income per capita (2009):	1,848 USD (2,158 men; 1,465 women)
Human development index:	0,593 (Cambodia is 137th among studied countries below Congo and Myanmar)
Human poverty index:	30.4%
Strong indicators of social and economic inequality (WB, 2008):	20% of the population control 50% of wealth; 40% of men, 60% of women with no formal education in the Northern Province, vs. 15% in the Capital (Center for the Economic and Social Rights 2009); Cambodia near to the bottom in terms of public spending as a percentage of the GDP.

of total export of Cambodia.

The scenarios which have emerged from the presentations (and the information provided during the in-depth questioning by the panel of the Peoples' Tribunal) consistently document a situation of working conditions which cannot be considered acceptable for a society which subscribed to, and enshrined in its Constitution, the principles recognized by international law as the normative framework.

The problems created by the bad environment, humid and hot, noisy, poorly lit, with scarce if any ventilation, the uncontrolled and uninformed use of chemicals, excessive dust, lack of preventative education and little availability of personal protective equipment are dramatically exacerbated by the level of wages which have been shown in detailed presentations, not to be sufficient even for the survival needs of one person. The harmful consequences and complications are inevitable:

- women workers are forced to base their nutrition on food with a totally insufficient caloric content, many hours of overtime work become practically mandatory, thus making much



Workers' housing area in Cambodia

worse the chronic exposure to the harmful environment;

- to minimize the impossible length of transportation (most of the times in very bad conditions in trucks crowded with up to 40-80 people), small rented rooms shared by 4-10 persons, with insufficient access to basic sanitary services, become the rule, thus depriving the women workers even of a minimum of personal privacy and hygiene.
- The low wages become an even heavier burden if the working woman plans to marry or has a family, as should be the free choice and opportunity for her age. Besides the clear economic deficit for the child/children, the restrictions imposed by the working conditions do not allow a normal, and due, mother-child-family relation with obvious consequence on the education, growth of the child(ren) and sexual reproductive health.

The need to seek loans to cope with the basic needs not covered by the low wages cannot but worsen substantially the overall autonomy of life, especially because of the monthly interest rates which are charged (up to 20%, 10 USD for a loan of 50 USD), in the absence of socially oriented loan services.

The situation has become even more unsustainable with the increasingly widespread job insecurity which is implied with the practice of the Fixed Duration Contract (FDC), which not only allows the easier and unjustified dismissal of workers (with the easier selection of those who are more active in the defense of rights to more sustainable working conditions), but imposes a more general restriction in the fruition of basic rights such as maternity leave for pregnant women, to whom not even the 50% of the salary are assured, or the annual leaves FDCs also make hardly applicable the maturation of seniority bonuses, thus levelling even more the wages to their minimum. A few exemplary data are worth being quoted to document the extension and the severity of this phenomenon:

- the workers hired by the owner of a factory, the 4th branch of M&V International Manufacturing located in Kampong Chhnang, are up to a 50% on a 3mos FDC contract, 40% on

a 6 mos, only 10% on UDCs;

- following an organized protest for a wage increase, 118 union leaders and activists were dismissed by another employer; 145 people were sued in court, and to date 100 union leaders have not been restated in their jobs.

The impact of the "legal" denial of renewal of the FDC is further complicated, by the increasing unopposed pressure against the freedom to demonstrate and/or to strike (already restricted by law).

Against the above background it is hardly surprising that such phenomena occur, like the well known, highly publicized, but not systematically and independently investigated, "mass fainting" episodes in many factories (mainly during 2011, with a last report in 2012). The Peoples' Tribunal has heard and discussed at length very detailed reports on this specific issue. It is abundantly clear from the scientific (medical, epidemiological, sociological) literature, that the patterns of occasional and repeated appearance of this type of phenomena cannot be attributed with certainty to one or the other specific (biological, environmental, psychological) cause. It is similarly very clear from the same literature that the concurrence and/or the occasional exacerbation of "clusters" of the many harmful variables described above do amply justify the qualification of the phenomena as inevitable "contagious" symptomatic expression (of defence and/or resistance and/of denunciation and/or of withdrawal from) of a situation of intolerability. In the background, the chronic undernutrition recalled above is one of the key and more widespread consequences of the equation low-wage = low calories (well below the extreme acceptable low caloric intake: the 500 riel soup for lunch documented to the Peoples' Tribunal is the symbolic, but dramatically real, reminder of this "cause of the cause"). It is interesting to recall here the confirmative testimony of the representative of PUMA (see below), who quoted an "internal", though partial, assessment of one of the "mass fainting" episodes in one of their factories.

3.2 The broader framework of Minimum vs. Living wages

The rigidity of the Cambodian labour market of the garment industry (certainly not substantially alleviated by the 5% USD increase given as a gift by the Prime Minister at the beginning of 2012) has been thoroughly explored and documented by a report which has focused on:

- The absolute dis-proportion between the yearly revenues and after tax profits of the major Brands active in Cambodia;
- The already existing differences between minimum wages in equally profitable producers;
- The comparison of minimum wages between Vietnam and Cambodia (against the overall development of the markets) demonstrates that wages do not necessarily inhibit increased sourcing by foreign buyers;
- The model success story of the “ethical apparel” in Alta Gracia (Dominican Republic), where an highly participatory approach to the overall management of the “supply chain” has empowered the workers with a “living wage” combined with a favourable market outcome (which would translate for Cambodian workers into a living wage of 274 USD/month!).

A detailed presentation of the legal framework which does not only support but requires a “living wage” interpretation (as opposed to the strictly contractual and legal minimum wage) of the principles and the prescriptions of the Cambodian Constitution and of the Cambodian Labour Law (as they reflect also the International Covenants on Economic, Social and Cultural Rights) has provided the Peoples’ Tribunal with important legal information and definitions of wage which must be related on one side to the right of a decent standard of life, on the other side to the broader obligation of the Government to make its application feasible as part of a political and economic framework which defends and promotes a well planned development of the labour sector.

The overall social, economic, technical feasibility and need for the definition and the implementation of a work policy based on a living wage has been documented and advocated by the representative of AFWA, on the basis of intensive doctrinal and field research conducted over the last several years by the organization. The broader political and economic context is well summarized in figures reflecting a broad consensus viz-a-viz the data and reports of international agencies and experts in the field: the very tiny fraction represented by the contribution of the labour cost to the retail price of garments in the supply chain (in India 2.8% of the retail price; in other countries of the region it was at similar level) must be seen as an expression of a more general evolution of the indicators of the market labour over the last two decades:

- workers are getting poorer: their annual wage growth is set at 1.9% against an average global economic growth of 3.3%;
- ILO data document an increase of working poor in up to 70% of the countries (550.000 million, women in the greatest majority), and of workers in vulnerable employment (1.53 billion, up to 50% of world workers);
- a scenario of growing inequality (to quote one by now classical example: the 1% top layer in US economy, increased their growth by 10 times against a bare 22% for a median family);
- in Cambodia, over the past decade inflation has risen more rapidly (about 50%) than wages meaning real wages are actually going backwards.

The technical and political definition of a living wage has been presented and abundantly supported with the analysis of the components of a workers’ wage (where food for personal survival in borderline caloric supply could occupy up to 40-60%). The data has been tested and validated in various societal contexts, where the individual components are expected to be variable, and by considering three consumption units per wage.

It has been demonstrated how a policy based on living wage must, and can, be implemented only in a regional Asian perspec-





Jury listening as Brands and Experts testify

tive (which is the real and unavoidable scenario of the garment industry) and on the basis of the calculation of the “purchasing power parity” (PPP) across highly different countries. The Peoples’

Tribunal has been presented with very detailed data on how this approach translates a regionally homogeneous PPP into local currency and minimum wage level, which set e.g. a level of 120.25 USD for Cambodia. This matter was discussed at length. The overall sustainability of this approach (and its advantages also for the expansion of the regional economies) also has been discussed with respect to the – certainly controversial – positions, and duties, of the Brands.

3.3 Women workers and gender rights in Cambodia

The conditions of women who constitute the greatest majority of the workers in the garment industry must be framed in the general context of women’s rights in Cambodia, as they are specifically and well analyzed in a recent report received by the

Tribunal (See Annexes 3).

Since 1992, Cambodia has launched concrete policy measures for achieving legal, political and social rights that improve both the conditions and position of women in Cambodian society. These measures are described in the government’s reports. However, despite some progress, there is still a long way to go for change – as highlighted by the Concluding Comments of the CEDAW Committee (Concluding Comments) in its review of the 2006 report. Despite some changes, the disparity between men and women is still patently obvious in examining certain indicators such as health, literacy, political participation and access to economic resources. Gender equality remains a challenge in Cambodia.

Concerning specific gender indicators, Cambodia is ranked 113th on the Gender related Development Index list and 91st in Gender Empowerment Measures, according to UNDP’s 2009 Human Rights Report. Up to 81% of Cambodian women between 15 and 64 years old participate in economic activities



– one of the highest rates in Southeast Asia. However, participation of Cambodian women in the formal economic sector is still limited. Only approximately 17% of Cambodian women are employed and receive remuneration, while 83% of Cambodian women participate in the informal economic sector, which includes self-employment (mainly small-scale farming and household business operations) or family work without remuneration. The literacy rate of employed women is only 69%, compared to 84% for men. This gap strongly influences employment opportunities for women. In addition to the education gap, other factors contribute to depress the economic status of women. These include the lack of experience and enterprise skills, lack of awareness about marketing, their mindset, social discrimination, lack of resources such as credit and lack of production means. Customary roles also influence women’s participation in the economic sector in that they are expected to spend most of their time carrying out traditional roles.

On the other hand, women’s domestic roles are undervalued. Over 90% of the time spent on household and family care is provided by women. Women between 18 and 60 years old dedicate three more hours to household work per day than men (3.3 hours compared to 0.3 hours). As a result, women have no free time for personal activities or to attend classes that improve their job skills. The responsibilities of being caretakers for their relatives and to do all the housework prevents women from engaging in productive work, community decision-making and planning processes.

The garment factory industry has been seen as a main source of employment for young women from rural areas, who become however internal migrants, far from even the basic family and community support. Despite their absolute numerical majority, they rarely reach leading union positions, because of the low education levels, lack of time, skills and experience, which add to the general discriminatory causes which have been mentioned above, and which are reflected in the attitude of factory owners.

Sexual harassment is another concern for female factory workers. One out of ten female garment factory workers has re-

ported being the victim of sexual harassment at the workplace. The number of vulnerable females is expected to increase due to the global economic crisis that has led to the closure of approximately 70 factories and the loss of more than 51,000 jobs. Although sexual harassment cases arise constantly, to date, not a single victim has filed a complaint in Cambodia’s courts. This is because women lack awareness of the laws which supposedly protect them, and there is no proper mechanism in place to help the victims to file a complaint.

As hinted at, and documented by all witnesses and experts, steps toward the recognition and implementation of a living wage strategy in the garment industry would by definition coincide with a very specific and substantial contribution to a concrete, not simply formal, positive change of the gender related inequality in the whole society of Cambodia.

3.4 The position of the Brands

According to the terms of reference of the Peoples’ Tribunal, all the major Brands which are presently active in Cambodia as well as the Garment Manufactures Association of Cambodia (GMAC) had been invited not only to follow the hearings, but to give direct evidence on their positions related to the questions raised in the Petition. Unfortunately GMAC Justifies its absence, with a generic declaration reported in the daily press stating that they could not accept a criminal court biased in favor of unions and workers, the Peoples’ Tribunal:

- received only a written statement from H&Ms (however H&M’s program were also presented and analyzed for the Peoples’ Tribunal by an independent expert), with the title: “H&M’s engagement towards sustainable wages in our supply chain”;
- listened to the reports submitted (and discussed at length by the Panel) by the representatives of ADIDAS and PUMA.

Beyond the obviously expected differences, both Brands documented the stage of development of their plan to face the challenge represented by the wage issue, the well recognized deficits of the standards of working conditions, the exclusively internal provisions activated to monitor and audit the compli-

ance of the suppliers with legal requirements and with quality of working conditions. While the generally accepted framework is that of self-regulated and self-accountable codes of conduct, it was recognized that a real transparency of their concrete action (and not simply in the proposals and the “pilot” initiatives) could assume credibility, and had the potential for progress, to a substantial dialogue with the concerned parties, specifically AFWA and Cambodian workers, based on the mandatory principle of shared decisions in all what has to do with respect on human rights.

3.5 Towards a comprehensive understanding of the concept, and the practices, of living wage

The overall evidences made available to the Peoples' Tribunal may be summarized as follow.

The original and authoritative documents which address explicitly the issues related to the question raised by the Petitioners in front of the Peoples' Tribunal are the ILO Constitution and the Declaration of Philadelphia. It is however clear that the ILO Convention on minimum wage, suggesting a necessary coincidence with the more universalistic concept of “minimum living wage” was somehow diluted into a legal dimension, where wage is defined as an outcome of the two principles: need of a worker and the constraints of the general economic development and wage level of the country. Like most conventions of the ILO it was framed within a nation state framework with states implementing it through national laws. In Asian countries, and possibly in all developing countries as this convention was translated into national laws, it was seen as a tool of developmental policy. With growing focus on poverty alleviation as a universal focus and concern of international institutions, the minimum wage determination in most countries was linked to eliminating extreme poverty. It actually became framed as a poverty level wage. In most Asian countries as is also evident in Cambodia from various studies, this was also related to the structural change taking place in their economy, as the rural population shifted to any industrializing world.

Moreover, in a global economy model where growth is equated solely with profits and disconnected from rise in poverty, minimum wages have stagnated and declined to poverty level wages. This is especially true of developing countries where growth is equated with the level of foreign investment and disconnected from the growth in poverty.

The constraints of a national economy should not operate in wage determination of an export industry. Global garment production takes place with near poverty level wages, and yet garment prices are not determined by poverty level wages.

The absence of a consensus and of a legally recognized common definition of living wage, cannot be used as a pretext to ignore the plentiful evidences submitted to the Tribunal originating from various sources and context (see Annexe 3), which support the possibility, and in fact the need, of a comprehensive definition which has the real life of peoples and populations as the reference category for (a) definition(s) which are “measurable” at least as reliably and comprehensively as economic market variable.

Specifically all the reports point directly, and with very concrete reference, to the necessary switch of focus from a contracts based approach which has individual countries as partners and scenarios of application, to an approach which take seriously the challenges posed to “universal” rights by “global” macro and microeconomics actors and powers. The garment workers scenarios presented by AFWA for Cambodia, and the advantages of a regional strategies, appear to be promising and propitious indications and concrete instruments in this direction.

4. HUMAN RIGHTS, THE LIVING WAGE AND WORKING CONDITIONS: THE LEGAL CONTEXT

Workers cannot enjoy the human rights they are guaranteed under national and international standards if they are paid wages which do not fulfill their basic needs.



Cambodian workers buying from food vendors



Cambodian workers leaving work

We accept that workers must, therefore, be paid a living wage. Further, we accept the position put forward by the AFW coalition: a living wage is a human right. It is implied in the other human rights; it should now be accepted expressly as a human right.

Evidence presented to the tribunal is clear and overwhelming: Cambodian garment workers are not paid a living wage.

We are persuaded that the failure to pay a living wage violates both national and international standards. First let us consider the Cambodian Constitution and Cambodian Labor Law.

4.1 Constitution

Art. 31 (1): "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights"

Art. 31 (2): "Every Khmer Citizen shall be equal before the law, enjoy the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth, or other status."

Art. 31 (3): "The exercise of personal rights and freedom by a n individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with law."

Art. 32: "Every Khmer citizen shall have the right to life, personal freedom and security."

Art. 35 (1): "Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation."

Art. 38 (2): "The law shall protect the life, honor

and dignity of the citizens"

Art. 46 (2): "A woman shall not lose her job because of pregnancy. Women shall have the right to take maternity leave with full pay and with no loss of seniority or other social benefits."

Art. 46 (3): "The state and society shall provide opportunities to women, especially to those living in rural areas without adequate support, so they can get employment, medical care, and send their children to school, and to have decent living conditions."

Art. 47 (1): "Parents shall have the right to take care of and educate their children to become good citizens."

Art. 48(1): "The state shall protect the rights of children as stipulated in the convention on children, in particular the right to life, education, protection during wartime and from economic or sexual exploitation."

Art. 48(2): "The state shall protect children from acts that are injurious to their education opportunities, health and welfare."

Art. 51(1): "The Kingdom of Cambodia adopts a policy of Liberal democracy and Pluralism"

Art. 56(1): "The kingdom of Cambodia shall adopt market economy system. The preparation and process of this economic system shall be determined by law."

(see labor law below)

It is, of course, the constitutional council which has the authority to interpret the constitution and laws (Art. 117). Nevertheless, we believe that it is the clear intention of the framers, as specifically expressed in Art. 51 (1), was the establishment of a participatory democracy in the classical sense: a liberal democracy.



Cambodian workers' room

Such a democracy requires an active citizenry, therefore the constitutional provisions above provide guarantees that an active citizenry, living with dignity, will be able to participate in the social, political and economic life of the country.

From this we can deduce that it is intended that conditions which deprive workers of the capacity to actively engage in the social, political and economic life of the country are not to be tolerated.

Thus, a non-living wage, which fails to provide for even the basic needs of a citizen to live in dignity, can be seen as a violation of the spirit of a liberal democratic society, and therefore of the Constitution.

4.2 Labor Law

Art. 104: "The wage must be at least equal to the guaranteed minimum wage; that is, it must ensure every worker of a decent standard of living compatible with human dignity."

This provision, along with Art. 38(2) of the constitution (see above), refer to the human dignity of workers and citizens. Workers who are paid wages which do not cover their basic needs cannot live with dignity. Human dignity requires the opportunity to live free of chronic stress which arises from the fear of not being able to meet the cost of maintaining a decent standard of living for self and family.

Human dignity requires a level of wages that enables a worker to have adequate and nutritious food, and shelter. Human dignity also requires sufficient money to allow for some savings to cover costs of such contingencies as sickness, childbirth and the education for Cambodia's future citizens.

It can be concluded, that a living wage is implied. Without a living wage which meets basic human needs a worker cannot be the active, participating citizen in the liberal democracy which the framers of the Constitution intended.

To have a "decent standard of living" allows one to live in dignity,

and to have the necessary physical and mental autonomy to be an active participant in a liberal democracy.

This requires that a worker's wage must fulfill the basic human needs. With those needs fulfilled, the worker can move into the public sphere and participate fully in the life of Cambodian society.

4.3 International Standards

As we have seen above, Article 31 of the Cambodian Constitution recognizes the applicability to its citizens of the universal standards relating to human rights, and women's and children specific rights, as established in a number of internationally agreed documents.

Again, we believe that they mandate a living wage, at least by logical implication.

The basic document for considering the rights of people is the Universal Declaration of Human Rights. According to Art. 23(1) "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" while (2) provides protection against discrimination, and (3) states that "Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worth of human dignity..."

Further, Art. 24 provides "the right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay.

In addition, and more generally, Art. 25 states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care..."

Other more general provisions provide rights to education (Art. 26) and the right to participate in the cultural life of the community (Art. 27).

A worker cannot enjoy these rights if paid less than a living wage.

Further support for the living wage and decent work conditions can be found in the International Covenant on Economic, Social, and Cultural rights. Article 7 recognizes the right of everyone to the enjoyment of "just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (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;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays.

Art. 6 provides a right to work, "which includes the right of everyone to the opportunity to gain his living by work which he freely chooses." Art. 11 adopts the UDHR right referred to above "the right of everyone to an adequate standard of living" for self and family. This includes "adequate food, clothing, housing" and importantly, a right to "continuous improvement of living conditions." Art. 12 recognizes the right of everyone to "the enjoyment of the highest attainable standard of physical and mental health."

All of these rights must be recognized if Cambodian garment workers are to have decent working conditions. And they are reliant on workers having a living wage, without which all rights are put in jeopardy.

The International Convention on Civil and Political Rights also provides rights to workers which are relevant to the living wage and decent conditions of work.

Art. 22(1) provides a right to freedom of association, including trade unions. A living wage and decent working conditions are only likely to result through the collective bargaining which trade unions presuppose.

Art. 23 (1): "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state." Section 2 provides "The right of men and women of marriageable age to marry and form a family shall be recognized." Without a living wage, workers generally find it impossible to take advantage of these rights.

Art. 25 provides rights to political participation. A worker who does not earn a living wage and who works in poor conditions is very unlikely to be able to fully participate as a citizen in the political community.

Art. 26 provides for equal protection of the law and non-discrimination. Workers in the garment industry do not have protection of the law as do other sections of society. While others are able to rely on the law to protect their rights – civil, political, social, economic and cultural – the evidence presented to the Tribunal demonstrates, that garment workers suffer a "deficit" in legal protection.

In an industry where 90% of workers are women, and where they generally occupy the lowest levels of wages and skills it is appropriate to pay particular attention to their situation. Thus we refer to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Art. 2 requires the state not only to condemn discrimination against women in all its forms but "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women". Art. 2(f) is of particular relevance to the garment industry, seeking the abolition of "all existing laws, regulations, customs and practices which continue discrimination against women".

Art. 3 requires that the state take action "to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men."



View into a working area of garment workers

Art. 11 is specifically aimed at the employment sector, listing six rights including, perhaps most relevant to the evidence we received about conditions in the garment industry, the right "to protection of health and safety... including the safeguarding of the function of reproduction." It also grants rights to equal employment remuneration opportunities, and social security (family benefits are included in Art. 13(a)). Art 11 also lists 6 positive measures which can aid in eliminating discrimination at work.

It is clear that the provisions of universally accepted rights of humans, referred to above, have a purpose: to protect the human dignity of workers and their families. They are consistent with, and reinforce, the provisions of the Cambodian Constitution and Labor Law discussed above. Together, they seek to ensure the conditions in which workers, as citizens, can actively participate in the liberal democratic life of the political, social, and economic spheres of human life. That is, the suite of provisions endeavor to ensure that Cambodian workers are guaranteed the right to human dignity.

It is only a living wage and decent work conditions that provide the foundation of human dignity. That is why we believe there is a right to a living wage and much improved working conditions in the garment factories of Cambodia.

It is probably also useful to mention here the Declaration of the Right to Development (General Assembly resolution 41/28, 1986). The declaration was the formalization of a resolution by the U.N. Commission Human Rights (CHR res. 4(XXXIII) 1977). Although somewhat ambiguous and even in parts controversial the declaration is helpful here as it makes explicit the participatory principle which we have argued is the essence of human dignity based on a living wage.

Art. 1 of the declaration states that "the right to development is an inalienable human right by virtue of which every person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

According to Art. 2(1) the human person is the central subject of

development and should be the active participant and beneficiary of the right to development." While Art. 2(3) declares: "states have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participating in development in the fair distribution of the benefits resulting there from."

Article 8(2) provides that "states should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights."

It has been suggested to the Tribunal that the provision in the Labor Code, Article 104, is only a general principle and does not require the payment of a living wage. This view, supported by reference to Article 107 (dealing with the criteria for establishing the guaranteed minimum wage), should be rejected in our opinion.

In order to understand the meaning of the law we must ask "what is the purpose which the law is intended for?" It is the general principles of the constitution with which the law must be consistent. In the case of Article 104, it is perfectly consistent with the general principles of the constitution (and the suite of international norms). Workers must be remunerated to a level which provides them with human dignity. That requires a wage that meets their basic needs: a living wage.

Nothing in Article 107 can be read to derogate from the Constitution or Article 104, both of which clearly and expressly seek to ensure that Cambodian workers shall live with dignity, without which their very essence as human beings will be lost.

4.4 Law and Dynamics of Development

In the case of Cambodian garment workers implementation of human rights will be very difficult to achieve if we think in ordinary terms: human rights as the responsibility of the State.

The power and economic advantage rests largely in the hands of large buyers or 'Brands'. Therefore a mechanism must be found

where by the right to a living wage and decent working conditions can be extracted from those with the economic power to provide them.

The AFW campaign presents such an opportunity. The government should consider supporting the concept of a living wage. And the 'Brands', for the sake of their reputation as responsible stakeholders in the Asian Garment sector, should be encouraged to support the concept of a living wage.

The evidence presented before the tribunal indicates that a living wage can be afforded, and that such a wage policy would not make Cambodia uncompetitive. Indeed, it would likely lead to a more competitive industry as worker productivity would no doubt rise, and labor peace and stability in the local industry would make Cambodia a more attractive base for sourcing garments. It would also be likely to ensure a better labor supply in an industry with a tightening labor market.

The ILO Convention and the ILO Declaration on Social Justice for Fair Globalization (2008) require states to ensure a minimum living wage is provided to workers and for workers to share the fruits of economic growth and the fruits of their labour.

With regard to the TNCs conduct in relation to human rights, the Tribunal has identified various levels of liability. With their behaviour, as manifested in the situations examined by this Tribunal, directly and through the supply chain, the Brands of garment industries are causing significant violation of human rights.

TNCs are not persons governed by international law, such as States and a number of other public law entities, but they can be holders of international rights and duties, in the same way as natural persons, as evidenced to proceedings before the International Criminal Court (ICC) and can file complaints before various international organizations.

BASED ON THE ABOVE FINDINGS AND CONSIDERATIONS, THIS PEOPLES' TRIBUNAL

CONCLUDES:

- The situation of workers in the Cambodian garment supply chain presents severe deficits which correspond to a systematic violation of their fundamental right to a decent human life.
- The living wage concept and concrete propositions as set forth in the present report (and spelled out in their specific constituents in the report of the Sri Lanka Peoples' Tribunal). The living wage must include at least what is adequate to sustain a family; an 8 hour day; a sufficient caloric intake for a working adult; the capacity of assuring basic educational and health needs for the children. As a human right, this must be enforced in Cambodia; also as a powerful instrument to contribute to the overall compliance of the Cambodian governing institutions, as well as of those who have decisional responsibilities in the garment industry supply chain with the principles set out in the Cambodian Constitution and Labour Law.
- Because of its comprehensiveness and urgency, the implementation of the living wage concept cannot be postponed, to wait for univocal and rigid defi-

nitions: it must be concretely experimented in the real contexts of work and life, in Cambodia and at the regional level. Because of its central relevance, it is recommended that the garment industry supply chain could be considered an urgent priority.

- All the public and private actors who have been identified in this report as having decisional roles, must be considered directly responsible and accountable for the commission of violations of human rights, as described and qualified in this report (especially in view of the impunity they have benefited from), as well as for any delay and/or refusal to redress such violations.
- It is not in the power, and it is even less the role of a Peoples' Tribunal to pronounce legal verdicts of condemnation or punishment. But by exposing, giving voice, qualifying the hows and whys of the violations of the rights of the garment workers, our aim is to provide knowledge and reasons, which could be instrumental in helping their efforts and struggles to have their rights fully recognized.



Workers' housing area in Cambodia

RECOMMENDATIONS

To the Royal Government of Cambodia

- Further develop both the international and national legal frameworks as to clearly specify the “right to a minimum living wage”, with precise standards and methods of wage calculation. The work need take into account local, as well as individual household, contexts. The minimum living wage should clearly identify food costs to be no-more than 50% of the overall wage package. The overall wage should be determined by the actual number of certified/accepted dependent members of workers household, with the provisions of Art. 45, 46, 47, 58 of constitution in mind, as well as clear verification means for determining dependent household members.
- To effectively address the debate on the use of short term contracts, provisions of Labor Law regarding FDC require clarification. Measures should be undertaken by the RGC in order to amend Article 73 of the Labor Law to indicate whether FDCs is permissible after 2 years of employment. They also should provide for situations such as temporary contract termination for a short period (e.g. less than one month) in order to ensure that benefits such as seniority may be retained.
- The RGC should take urgent steps to ensure that trade unions are able to freely organize, represent workers, and bargain collectively with Cambodian suppliers without harassment, intimidation or victimization.
- RGC should set up pilot project on housing for the most vulnerable workers; those who fall victim to FDC practices as well as those discriminated against in lawful unionization activities. This should be brought about in collaboration with ILO/BFC and other donors and NGOs.
- The government should launch comprehensive independent investigations into mass fainting in order to establish firm foundations for determining the responsibility. Appropriate measures for prevention also need to be enacted in order to ensure the safety of garment workers and help repair the reputation of the Cambodian garment industry in the perspective of the international community.
- Utilize the opportunity presented by the global garment industry placing increasing importance and investment in suppliers from China and the South East Asian Region. The RGC should advance the arguments for a living wage at regional and national levels through a collective approach with other governments in order to address the global supply chain which sees real wages declining. In particular, SEA member states should be encouraged to discuss the establishment of a regional floor wage within the context of the ASEAN framework.

To Multinational Corporations ('Brands') as well as other International Actors

- Mechanisms for monitoring compliance, as well as reviewing wage standards, should be adequately funded for pro-active operations in order to assist the activities of the LAC and RGC.
- They should move beyond “good intentions” and recognize and prioritize the need for human rights in the workplace in their pricing and procurement policies.
- Go beyond codes of conduct and other “standards” and commit to the application of a mandatory living wage at all levels and sectors of the supply chain.

To Trade Unions, Federations and Labor NGOs

- Unions and Federations should adopt the living wage concept as part of their bargaining strategy and as a political goal.
- Unions and Federations need to increase the proportion of women garment workers holding positions within their leadership and representative roles.
- Unions and Federations should be united in their efforts to build their collective bargaining power, as well as their efforts to build confidence of employers and buyers whilst negotiating CBA.
- Unions and Federations should place greater emphasis on the importance of pressurizing buyers for decent labor standards and wage increases. They appreciate the existence of global supply chains in relation to the garment industry which places not only employers but also brands in a position to deal with the demands of a higher wage. Unions should work collaboratively, but without corruption, with employers and factory management to pressurize the buyers into sharing their profits. This will result in mutual benefits for both employees and employers and improve both working conditions and productivity.
- Unions and Federations need to be trained and equipped with the necessary tools to preserve evidence of any abuses or violations of the law, especially in cases of pregnant female workers and union discrimination, so that it may be effectively used in adjudication and/or arbitration processes for collective dispute resolution.
- Unions and Labor Right NGOs and ILO should look for ways to provide low interest rates (micro-credit schemes), and easy access to short term loans in order to meet workers needs.
- Unions should adopt a system of worker representatives of health and safety aspects, and the establishment of safety committees in all garment industry workplaces.

To the United Nations, other interested parties, consumers

- A visit to Cambodia to verify the compliance of the garment industry with the rights included in the respective areas of competence, should be assured at their earliest convenience by the UN Special Rapporteurs on:
 - Business and Human Rights (living wage)
 - Freedom of Expression
 - Freedom of Association
- The ILO should adopt the living wage as a key element in its work to promote “decent work” and “better factories”, and prioritize the promotion of the living wage concept in the global supply chain of the garment industry and other low wage industries.
- Women's Groups should advocate locally, regionally, internationally for the better protection of the rights of women workers in the garment industry. They should lobby the UN committees of CEDAW and the ICESCR.
- Consumers should support the global efforts of trade unions and other labour organizations and NGOs, such as Clean Clothes Campaign, to pressure Multinational Corporations ('Brands') to adopt ethical rules and practices, as well as the living wage in their supply chain.

India

BANGALORE

22ND - 25TH NOVEMBER 2012



I. GENERAL FRAMEWORK

The National People's Tribunal on "Living Wage as a Fundamental Right of Indian Garment Workers" was convened in response to a Petition of twenty organizations representing garment workers across India who have been defending the need to implement a living wage in the garment industry as a fundamental right. A list of the petitioners is available in the Annexures together with the programme of the public hearings, along with the supplementary written documentation provided.

The members of the International jury included:

- Gianni Tognoni, Secretary General, Permanent People's Tribunal, Italy (Chair of panel)
- Marina Forti, Senior Journalist, Italy
- Mary E. John, Senior Fellow and former Director, Centre for Women and Development Studies, New Delhi, India
- Coen Kompier, Senior Specialist International Labour Standards, ILO
- Hemlatha Mahishi, Distinguished Advocate, Bangalore, India
- Utsa Patnaik, Economist and Professor Emeritus, Jawaharlal Nehru University, New Delhi, India.

The People's Tribunal convened in Bangalore is part of a series of National Public Hearings coordinated by the Asia Floor Wage Campaign with the support and participation of country organizations representing the interests of the workers of the garment sector.

The first two National Tribunals took place in Negombo, Sri Lanka, 27-28 March 2011, and in Phnom Penh, Cambodia, 5-8 February 2012. The series will culminate in a session of the Permanent People's Tribunal scheduled in 2013.

The purpose and aims of these Tribunals can be summarized as follows:

- 1 - To document and assess the nature and extent of the exploitation and human rights violations of garment workers in Asia, in this case in India;
- 2 - To explore and determine the infringement of national and international laws by different actors (Government, Multi-national Brands, National suppliers, International agencies), who have the responsibility to guarantee the respect of human rights within the supply chain of the garment industry;
- 3 - To formulate recommendations for redressing the deficits



Garment workers going back in vans after the Tribunal in India



Garment workers protesting being fired for unionization at a GAP supplier factory



which were ascertained, and which have not hitherto been satisfactorily addressed by the existing normative and judicial powers, in terms of prevention or judgement.

By definition, People's Tribunals do not have the capacity to enforce their deliberations. Their strength and significance however lie in their main aim: to give basic dignity and visibility - habeas corpus - to the victims of violations, who must be recognized as subjects of those fundamental human rights which have been established in the Indian Constitution, in the UN Universal Declaration, and in the core Conventions of the ILO to which the Indian government is a signatory. Grave violations of these rights, which are inalienable, must therefore be fully taken into account above all economic, political and social interests. Their denial adversely impacts the credibility of the principles on which democratic societies are based. The opinions and recommendations of the People's Tribunal on the need to consider a living wage as a human right contribute in this sense to the broader and obligatory duties of society to assure to all its members the indivisible right to a life with dignity.

2. THE GARMENT AND TEXTILE INDUSTRY IN INDIA

The characteristics of the textile and garment sector in India and its relevance within the overall economic, labour and social developments in the country have been submitted in detail to the Tribunal both in written and oral form.

It is acknowledged that an unequivocally clear and complete picture is not available due to the very nature of the industry itself, with its high degree of informalisation and unreported forms of production (which represents one of the most critical aspects of this sector). Therefore, the data presented below should only be taken as indicative.

According to the Note on Indian Textiles and Clothing Exports supplied by the Textile Ministry dated 26 March 2012, the Indian textiles industry output value is estimated at USD 55 billion at current prices, of which 64% serves domestic demand. The textile industry accounts for 14% of industrial production, which is 4% of

GDP; it employs 35 million people and accounts for nearly 12% share of the country's total exports basket¹.

As per the WTO data on international trade, India ranked as the third largest exporter in the global export of textiles (just behind China and EU 27), and is the 6th largest in the global export of clothing (after China, EU 27, Hong Kong, Bangladesh, and Turkey). During the year 2010-11, Readymade Garments accounted for almost 45% of the total textiles exports and apparel and cotton textiles products together contribute nearly 70% of the total textiles exports.

The total textile exports from India for the year 2011-12 is USD 33161.74 million and shows a growth of 19.43% over the previous year (USD 27766.11 million)². The textile exports to the top 10 countries in the year 2011-12 stands at USD 20497.52 million and registers a 24.13% growth over the previous year³. Total exports to the European Union in the year 2011-12 stand at USD 9311.63 million (against the USD 8172.99 million in the previous year). The foregoing data thus show that the textile sector in India, especially the export oriented sector, has managed to revive quite swiftly from the recent global economic crisis which engulfed most of India's export markets.

According to the 2009 Study of the Apparel Export Promotion Council of India, the textile and clothing manufacturing hubs of the National Capital Region (in and around Delhi), Tirupur (in Tamil Nadu) and Bangalore (in Karnataka) together contribute anywhere between 55% to 60% of the total exports from India. Tirupur, the NCR, Bangalore, Chennai, and Jaipur are clusters from where more than 70% of the manufactured products are exported.

As per the 2009 data, Tirupur tops all hubs in terms of turnover (Rs 13450 crore)⁴; there are a total of 2599 manufacturing units in Tirupur employing directly and indirectly around 6 lakh⁵ workers.

The total turnover of the Bangalore cluster was calculated to be Rs 5000 crore in 2009, with 850 manufacturing units engaged in producing garments, generating direct and indirect employment estimated at 4.5 lakh. 80% of the workforce in Bangalore cluster

consist of women workers.

There are a total of 1675 manufacturing units in the NCR with a total turnover in 2009 of Rs. 10300 crores. Employment generation in NCR is estimated to be about 3 lakhs. Most of the workers in NCR are migrants from Uttar Pradesh and Bihar and, unlike other clusters, over 80 % of the workforce is male.

The Chennai cluster has 650 manufacturing units, employing a total of 2.4 lakhs workers in 2009; the total turnover in that year was Rs. 2500 crore out of which 80% was for export.

3. THE PROCEDURE

Over one and a half days, on November 22 and 23 2012, members of the Jury listened to a wide range of presentations by diverse speakers:

- Workers from garment units in Bangalore (Karnataka), Gurgaon (NCT of Delhi), Tirupur (Tamil Nadu), together with a written submission by workers from Chennai;
- Trade Union representatives (Global Union Federation: IndustriALL, HMKP, Karnataka, the CITU, and NTUI);
- The Additional Labour Commissioner from the Government of Karnataka;
- Brand representatives of H&M, and a written statement received from Adidas;
- Expert presentations on the garment industry, the Sumanjali scheme in Tirupur, Gender and Labour issues, Labour Laws, and the Asia Floor Wage.

The government of Karnataka participated in the program whereas the government of Haryana refused to participate. The government of Tamil Nadu did not respond favourably either.

All textile 'Brands' present in India in the garments and textile sector were invited well in advance of the event to participate and

offer their views. Only H&M participated while Adidas provided a written statement.

Even though express efforts were made to invite representatives of suppliers and local employer organisations from the garment industry in India, the few who responded rejected the invitation. Thus their voices or perspectives could not be included in the deliberations of the Jury.

4. TESTIMONIES AND REPRESENTATIONS

4.1 Workers

The most powerful presentations came from the workers themselves, women and men, where testimony after testimony exposed the extraordinary levels of exploitation that characterise their labour in the garment units, whether it be Gurgaon, Bangalore or Tirupur. The Jury heard about impossible working conditions, systematic violations, and the extent to which workers were being subjected to harsh labour in order to survive.

Lack of a living wage. Workers generally confirmed that their salaries are not sufficient to support themselves, and their families. To meet their basic needs many are compelled to do long hours of overtime. The Tribunal also heard of women taking additional jobs to supplement the wage earned in the factory, either as domestic workers or in informal jobs like "making papads, stitching clothes, making flower garlands, rolling agarbattis or beedis", as one testimony said. Many workers said they are compelled to take loans.

Overtime is an obligation both because most workers need it to supplement their wages and because it is compulsory anyway. Refusing to do overtime means to risk losing one's job. "Company treats us like slaves, complete slaves", said one worker; "If you refuse to do overtime you will be manhandled and kicked out of the company". In Gurgaon workers reported overtime rates of up to 40 hours a week, in some cases due to pressure from the management. One worker reported 200 overtime hours in the month of June due to heavy pressure to meet targets.



Workers' housing area in India

Under payments. Another common feature is what many called “wage theft”. This refers to arbitrary wage deductions under various names, often without any explanation; delay in payments, non recognition of wages according to the grade of skill, non compliance with over time rates of pay, deductions for Provident Fund (PF) or ESI (Employees State Insurance) which then never materialise, even cases of non-payment of such dues in the case of contract workers. Overtime hours are often underestimated, and in most cases are paid at a single rate instead of the statutory double rate.

Working conditions are particularly appalling and inhumane, and evoked conditions of early industrialisation in Britain. All testimonies pointed to long working days of up to 12 hours or even more. For women this adds to the usual burden of domestic work. Women testified to starting their working days at 4.30 or 5 am in the morning, preparing breakfast and lunch for their families and performing other domestic tasks before going to the factory (often on foot), only to have to then do extra jobs after leaving the factory gates, before the domestic tasks of cooking, cleaning etc. As one worker said: “I do not even fall asleep with the constant ringing and shouting and screaming of the factory supervisor in my head. With this disturbed sleep I wake up at 4.30 a.m. to start my routine again”. The low wages are the main reason for this unending work cycle, as pointed out a worker, who asked: “How much burden can a woman bear?”

Many testimonies pointed out that there is no provision for holidays, leave or sick leave. Work on Sundays is common.

The pace of work is relentless. All testimonies mentioned targets as a veritable nightmare, as the pressure keeps rising: “If you complete your target in an hour, they give you a bigger target for the next hour”, as one worker said. “There has not have been a single working day when I have been able to reach the target fixed within the eight hours”, said another. Many have told the Tribunal that they started to cut short their lunch time; some reached the point of avoiding to drinking water during the day so that they would not need to use the toilet - so heavy is the pressure to meet the set target of production. As a worker in



Gurgaon summarized: “You work as a machine and feel yourself becoming a machine”.

Workers at the Tribunal recounted their casual employment status, shifting temporary jobs between factories, reducing entitlements generically related to longer term employment agreements. Many work without employment contracts and identification cards, making them virtually invisible to labour authorities. Where employment contracts are being issued, workers lack basic information about working conditions and employment terms, which allows employers to wrongly depreciate worker’s skills level classification, denying their due wages.



Garment workers’ children engaged in cultural activity in their community

The large majority of workers are migrants, ‘supplied’ by labour brokers. These labour agencies are reported to charge high prices to workers as well, violating basic ILO principles prescribing that workers should not be charged for services provided by labour agents. As an explanation of why they do not return to their homes after regular working hours are over, it is being claimed⁶ that workers are keen to maximize their income by working as many hours as possible. Little awareness seems to exist about potential production drops caused by excessive working hours and the outright threat to health and safety of workers. Hours missed at work due to sickness and late arriv-

al, are disproportionately recovered by employers resulting in punitive measures. The extremely high production targets demanded by manufacturers mainly caused by increasingly tight ‘lead time’ demands by brands are the main causes for excessive working hours. Where workers have no option but to comply with overtime demands, the practice can evolve into an element of forced labour. The alternative response by factory owners to employ more workers reducing average working hours in factories was nowhere in evidence.

Pay violations seem to be the norm generally. The jury was shown one ‘pay-slip’, consisting of an envelope containing only the name and registration number of the worker, and the disbursed amount. Lacking proper information about remuneration levels, workers are unable to verify the justifications of sums paid to them and express constant suspicion of underpayment. In addition, workers report late payment, delayed payment, and no payment. Entitlements to Provident Fund (PF) and Employees Statutory Insurance (ESI) are rarely implemented, despite explicit legal entitlements also extending to contract workers.

The tribunal heard testimonies of workers being routinely scolded and insulted, often in an abusive manner. Shouting and insults await those who arrive even a few minutes late to work, those who cannot complete the target assigned, those who take a day of leave, or those who raise questions.

This is part of a pattern of the systematic humiliation of workers and the denial of any dignity. Punishment and humiliation came with the job, and took on gendered forms, including outright sexual harassment through frequent verbal abuse and unwanted physical touch. Men were beaten for raising questions, women had pieces of cloth thrown at them, and described being treated like animals. When she was late by five minutes a woman worker was made to stand for hours outside the factory gates. Along with the high levels of exploitation and forms of under payment, the systematic and everyday forms in which workers could be subjected to constant punishment and humiliation, were starkly visible. As one worker summarized it: “Workers are treated like cattle”.



Street theatre to raise workers' awareness

Special mention must be made of the 'Sumangali' labour practice prevailing in spinning mills in the Tirupur/Coimbatore area of Tamil Nadu. Young migrant women, almost exclusively dalit adolescent girls from rural landless labour families, are hired through deceptive means by labour brokers, entering an apprenticeship contract of 3 to 5 years. During the contract period they receive some pocket money in addition to food and lodging. At the end of the contract period the women workers receive a lump-sum payment, varying from 35,000 to 100,000 rupees depending on the contract period of 3 to 5 years, which is intended to be used for dowry purposes.⁷ An opaque system of pay deductions is applied and many workers report incomplete payments of the promised lump-sum payment.

The Sumangali system has two labour peculiarities. First, the fact that the large majority of workers operate as apprentices. By law, no more than ten per cent of the total workers are allowed to be apprenticed, and the workers remain apprentices during the entire contract period. An expert submission estimates the genuine required apprenticeship period at three months instead.⁸ Special reduced wage rates apply to apprentices, who should only be treated as trainees under the Apprenticeship Act.⁹ Second, the lump-sum practice prevents workers from leaving their employment without facing several severe penalties. In practice workers are forcefully tied to their workplace for the duration of the contract period. It can be legally debated whether the 'Sumangali' system amounts to bonded labour as defined by the Bonded Labour System Act¹⁰, but there exists little doubt that under certain conditions and with the prevailing practices 'Sumangali' is forced labour.

Sexual harassment is a constant feature mentioned by many women workers, from vulgar and insulting comments, to unwanted touching and beating. But while such harassments are a common experience, most are also told they should bear and avoid complaining, as "it is life".

Many workers are migrants and often vulnerable to being further exploited by locals in their places of work. The costs of rent and electricity keep increasing; without ID cards, they are unable

to get government rations or gas connections. The Tribunal also heard the case of workers being forced to buy their food from the grocery shops owned by the landlords.

4.2 Government Representatives and Brands

Along with the workers' testimonies, the views of government representatives as well as the Brands were also heard by the Jury.

The Additional Labour Commissioner from the government of Karnataka named the Labour Laws in the statute books of that state dealing with Trade Unions, disputes, working conditions, social security, welfare schemes and so on. He said that due to a severe shortage of inspectors and the large numbers of units under their purview, they were unable to carry out inspections to the extent required. No action is taken unless a complaint is received. Moreover, even though the government recognised Trade Unions, according to existing law it is the prerogative of the employer to recognise and accept such organisations representing workers. It was his view that in the garment sector there were problems and possible violations only in the smaller units. This was contradicted by workers who asked questions in turn. When one of them testified to her experience of lodging her complaint with the labour dept, which was summarily dismissed, the answer given by the Commissioner was that she should have taken it up with the higher authorities.

The representatives of the Brand H&M spoke about their situation in India with about 700 suppliers worldwide (see H&M reference statement), a head office in Bangalore with 128 employees, including a special section on sustainability. India currently makes up a relatively small share of their global network of suppliers, which they hope to increase. They outlined their methods for rating suppliers giving up to 30% for sustainability related criteria. Following a compliance index based on H&M's Code of Conduct, derived from the ILO and other international law standards, they said that they undertook full audits with teams of around two people visiting a factory for 2-3 days. They recognised certain problems especially that of overtime (with only

17% suppliers being compliant on this score), and high levels of contract workers especially around Delhi. They also recognised the problem of fair or living wages, but when questioned said that they had not done any exercises or projections in this regard. They described their relationship with suppliers as 'cat and mouse', lacking in trust, while nonetheless placing responsibility on these suppliers for maintaining labour and other standards. They agreed that there should be more space for workers' complaints to be heard, at least through a grievance system if not a Trade Union. When asked what was stopping them from addressing the concerns of workers or raising wages, their answer was that this was an industry wide problem. In 2013 they claimed they would initiate a pilot project in a number of countries including India to improve their inspection system and to have a more transparent system of reporting about the state of the industry. However, they were unable to provide any further information in this regard.

4.3 Comments

These statements on the part of global employers and the state



Garment worker giving a speech at a demonstration

in fact only reinforced the testimonies of the workers in relation to their lack of freedom of association and the vacuity of inspections.

Freedom of association

Taking all these into account, it becomes quite evident that India's labour relations are characterized by confrontation and lack of trust. Interviews with workers regarding compliance with the code norms were mentioned to be a "sensitive" issue which by itself proves that relations between workers and managers within factories are tense. The jury noted no efforts which could spur social dialogue or remedy misunderstanding. On the contrary, intimidation and threats seem to be the tools preferred by employers to maintain an artificial sense of industrial peace. Most extreme is the presence and posting of criminal elements in and around factories as a warning to workers not to raise their voice. It is clear that under these conditions the right to organize is reduced to a farce.

Production targets generally are set at a very high level, reducing



Garment workers and children collecting water from common taps in housing areas

workers, in their own words, to machines. Combined with the negative working atmosphere, the workers need and demand for trade unions is being reinforced and this is the only logical outcome for a better defense of their rights. But even had relations between workers and management been benign, the right to freedom of association is a basic, constitutional entitlement for all workers in any case.

Violations of this right were abundantly reported, and the list of unfair labour practices is almost endless. Workers trying to organize have been dismissed, displaced, or shifted to opposite workspaces in factories to minimize contacts between them. Some were demoted, threatened with pay deductions or intimidated and threatened through violent means.

Where unions were set up and/or registered, employers have been unwilling to recognize unions, thus evading bargaining processes. Reports have been filed of employers obstructing the recognition of unions through excessive, time-consuming labour court petitions. Labour authorities do not mediate and remain absent or silent, and only act upon complaints by parties.¹² At the same time, access by workers for filing adjudication requests to labour authorities and brands compliance officers seems highly restricted and workers gave witness to a sense of being completely powerless.

Labour inspection

As the statements of the labour commissioner and Brand representatives attest, factories are being inspected by the labour authorities as well as by compliance officers representing the brands. Brands do their inspections on the basis of soft law norms, called Codes of Conduct. Coordinated relations between the state labour inspectorate and private compliance initiatives for exchange of information, experience and data are not taking place. Although inspection visits are often presented as "surprise inspections", workers expressed their doubts as factories were usually cleaned up and temporary toilets installed just before such team visits. The brand representative acknowledged that practical problems exist in maintaining the surprise character of their visits to check for

compliance with their norms. Workers complained of not being integrated in the inspection process, and of often having to make testimonies in front of management representatives.

The inspection procedures and involvement of brands in compliance practices presents a vicious cycle. Since brands totally rely on local suppliers who are known to take labour laws with a pinch of salt, they would normally expect the state labour authorities to undertake regular inspections. Since these do not occur, the inspection burden shifts back to the brands. On their part, brands are reluctant to share their individual inspection findings with each other, and with the state authorities. It is clear that increased inspection by the labour authorities not only presents a legal obligation, but that effective inspection also flows from ILO Convention No. 81 on Labour Inspection, ratified by India. In case the lack of reliability of state inspections remains a source of concern for the brands, close inspection collaboration and joint inspections between private and state entities is the only way out of this dilemma.

will be affected if higher wages are paid to workers. Competitiveness is affected by a number of other factors including the unwise policy of allowing unregulated export of raw cotton when world price rises, which has pushed up the price of yarn to the domestic industry greatly, and by the policy of reducing subsidies on power which too has raised the cost per unit of output.

The testimonies and statistical evidence show that the wages actually received by workers in the garment industry are far below a reasonable living wage and basic needs of adequate food, rest, housing, medical care and education for children are not met. Making workers bear the burden through lowered wages, of policy decisions raising raw material and power costs, is doubly unwise because the purchasing power of workers is an important part of the market demand for the textiles they produce. This part of market demand has been contracting, and the consumption expenditure data from the National Sample Survey show that the real spending on cloth has actually been falling on average for the last decade in India.

Further the testimonies and statistics show that wages actually received are so low that the worker is left with no alternative but to perform overtime to almost the full extent of a normal working week, with the total working day stretching to between 12 to 14 hours and often with no weekly day off. This is sweated labour, and attention to work is bound to suffer. Employers too would be better off by treating workers humanely and allowing adequate rest which is bound to raise work efficiency. Employers however continue to function in a myopic manner employing methods which became obsolete in the advanced world nearly two centuries ago.

Part of the reason for the observed underpayment and overwork lies in the worsening bargaining power of labour which is taken advantage of by employers to deprive workers of a living wage by extracting long hours of work for inadequate remuneration. The bargaining power of workers has worsened because with slowing of agricultural growth and depressed earnings the flow of labour seeking other employment has increased. Most workers migrating in search of alternative work come from the landless labour and poor peasant classes, which show a predominance of socially ex-

5. OVERVIEW OF ECONOMIC AND SOCIAL DEVELOPMENTS REGARDING THE PRESENT SITUATION OF THE WORKERS IN GARMENT MANUFACTURING

The share of total manufacturing in the Gross Domestic Product (GDP) of the country has remained roughly the same at about one quarter for the last decade. Within this the textiles and garments manufacturing sector is the largest provider of employment and output. The conditions of work and living of the workers in this sector have definitely worsened over the last two decades. First there has been a marked fall in the share of wages in value added. Value added is calculated by subtracting from the final gross value of output, all non-labour costs. What remains, the value added, is made up of wages of workers on the one hand, and all other incomes -- profit, rent and interest, on the other. The share of the latter which are property incomes has become inflated at the expense of fall the share of labour. While this is true of all branches of manufacturing the garment and textile sector is particularly affected. There is no truth in the argument that the competitiveness of this sector



Workers' housing area in India

cluded groups (dalits and adivasis) most vulnerable to underpayment and discrimination, including a growing proportion of women. This is seen in its most extreme form in the exploitation of adolescent girls who work virtually free for the employer on contract for a number of years with a lump sum payment at the end. Their effective payment (cost of their bare subsistence plus the discounted value of the lump sum payment) works out to half of the wage rate of adult workers.

The bargaining power of workers has also reduced owing to the deliberate attempts to replace regular workers more and more with contract workers and casual workers especially migrant workers who are the most insecure, thereby breaking up existing unions. Barriers are placed to the formation of new unions through intimidation of workers and termination of their services. These tactics are anti-democratic and in violation of the provisions of the Indian Constitution. The level of unionisation is an important indicator of a well-functioning democracy. The share of wages in national income has been found to be statistically directly related to the level of unionization in the advanced countries like USA and India is no exception. The share of wages has declined during the period that unions have declined.

It is widely recognized that India has seen jobless growth. The secondary data on employment from the National Sample Survey show that while during 1999-2000 to 2004-05 employment growth was 2.7 % annually, in the next five years to 2009-10 it has fallen drastically to only 0.9 %.

The international garment companies (the 'Brands' in prevailing language) source the goods from local suppliers in a number of developing countries and they claim that are in no position to intervene directly in the production process for which suppliers are responsible. They are direct beneficiaries however, of underpaid and overworked, sweated labour. It is their demands on suppliers to complete and deliver orders in an unrealistically short time and at prices which are too low, which is passed on workers as unreasonable working hours. They are also direct beneficiaries of the continuous pressure on the supplier countries to devalue and they have been procuring their goods at falling dollar prices per unit.

The same devaluation produces a high inflation rate in the supplier country which now has to import essential goods at a higher cost. The high inflation rate cuts into the purchasing power of workers whose falling living standards are reflected in falling nutritional intake as they cut back on food to make ends meet. In urban Delhi for example over the five years ending in 2009-10 the proportion of persons consuming below 1800 calories per day has risen from 24% to 54%. The Brands have the responsibility to take a small reduction in their high profits and pay better prices to suppliers while ensuring that there is compliance by them particularly as regards overtime payments which at present does not exist.

6. CONSTITUTIONAL FRAMEWORK ON LABOUR RIGHTS IN INDIA

The large majority of workers in India are covered by a regime of informality outside the reach of labour laws. Constitutionally a concurrent subject (implying shared responsibility between the Central and State governments), India has enacted a complete set of labour laws. The area of weakness however lies in the lack of application of the laws, as testimonies at the Tribunal have revealed. This can be explained by four major factors. Firstly, the inability of the labour authorities to properly enforce labour legislation. Secondly, the unwillingness by employers to apply labour laws as a normal routine of doing business. Thirdly, the regulatory implementation framework is not providing effective guidance on practical application of labour laws. Fourth, the low degree of unionization of workers prevents sufficient voice representation as a countervailing power against labour law violations.

As far the Indian Constitution is concerned, Article 21, Article 19 (1) C, and Article 43 deal with the Fundamental Right to Life, the Fundamental Right of forming Association and Unions, and Fair Labour Practices (under the Directive Principles) respectively. Under these provisions of the Constitution, the Supreme Court of India has rendered several landmark decisions relating to working conditions, living wage, right to dignity and the freedom to form a union of his/her own choice. Some of these are listed below:



Food vendor in industrial working class area



Workers' housing area in India

6.1 Right to Life – Article 21 of the Constitution of India

- Article 21 is a fundamental right guaranteed under the Constitution of India.
- Enjoyment of quality of life by the people is the essence of the guaranteed right under Article 21 (AIR 2001 SC 3215).
- Right to Life means something more than survival or animal existence (AIR 1983 SC 803).
- It includes the right to live with human dignity (AIR 1986 SC 180).
- It includes all those aspects of life which go to make a man's life meaningful, complete and worth living (AIR 1983 SC 109).
- The right to life guaranteed under Article 21 of the Constitution of India embraces within its sweep not only physical existence, but the quality of life. If any statutory provision runs counter to such a right, it must be held to be unconstitutional and ultra vires Part III of the Constitution (AIR 2006 SC 2945).
- Payment of Bonus Act is a piece of welfare legislation enacted for the benefit of a large category of workmen seeking a living wage to make their lives more meaningful and for fructifying the benevolent guarantee of Article 21 (AIR 1998 SC 344).
- Right to Life would include the right of a person not to be subjected to "bonded labour" or to "unfair conditions of labour" (AIR 1982 SC 1473).
- The right to work, though not a fundamental right, is a means to development and source to earn livelihood for a workman, lower class, middle class and poor people and after the appointment, the employee is to be dealt with as per public element and in public interest assuring him equality under Article 14 and all concomitant rights emanating there from (AIR 1997 SC 645).

- Includes right to decent environment and a reasonable accommodation (AIR 1990 SC 630, AIR 1990 SC 2060).
- Includes the right to good health [(1999) 6 SCC 12].
- Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter (AIR 1996 SC 1051).
- It is a basic right of a female to be treated with decency and proper dignity (AIR 1999 SC 2378).
- Right to health and medical care is a fundamental right under Article 21 read with Articles 39 (e), 41 and 43 and makes the life of the workman meaningful and purposeful with dignity of a person (AIR 2004 SC 3054, (2006) 8 SCC 399].
- Health and strength of the worker is an integral facet of the right to life. Denial thereof denudes the workman of the finer facets of life violating Article 21 (AIR 1995 SC 922).
- In an appropriate case, the Court would give appropriate direction to the employer be it the state, or its undertaking or private employer to make the right meaningful. The Authorities or even private persons are bound by the directions issued by the Supreme Court (AIR 1995 SC 922).

6.2 Article 19(1) (c) of the Constitution of India

All citizens shall have the right to form associations or unions.

This right has also been recognised in decisions by the Supreme Court:

- AIR 1963 SC 812 – Every workman has the freedom to form a union of his own choice.
- AIR 2002 SC 2279 – Non-recognized union have the right to meet and discuss with the employer or any person appointed by him on issues relating to

grievances of any individual member regarding his service conditions and to appear on behalf of their members in any domestic or departmental enquiry held by the employer or before the Conciliation Officer or Labour Court or Industrial Tribunal, though not for collective bargaining on behalf of workmen in general.

6.3 Article 43 of the Constitution of India

The mandate for a living wage can be derived from the Directive Principles of State Policy which are fundamental to the governance of the country.

The state's responsibility is to secure by suitable legislation or economic organization or in any other way to all workers a living wage, conditions of work, decent standard of life and full enjoyment of leisure and social and cultural opportunities. This Article has been relied upon to uphold the reasonableness of the Minimum Wages Act, to condemn unfair practices, to uphold the applicability of Maternity Benefit Act, 1961 entitling maternity leave to women engaged on casual basis or a muster roll basis on daily wages.

Articles 39 (c), 41 and 43 aim at establishing a "socialist" state as envisaged by the preamble, which would endeavour to secure a decent standard of life and economic security to the working people (AIR 1983 SC 130).

The Supreme Court in *Workmen Represented by Secretary vs. Management of Reptakos Brett* observed: The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way-behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today.

The Tripartite Committee of the Indian Labour Conference 1957 has formulated five norms for the fixation of 'minimum wage':

- (i) three consumption units for one earner disregarding earnings of women, children and adolescents;
- (ii) minimum food requirement based on net intake calories;
- (iii) clothing requirement at 72 yards per annum for an average working family of four;
- (iv) house rent corresponding to minimum area provided for under the Government's Industrial Housing Scheme;
- (v) 20% of total minimum wage for fuel, lighting and other miscellaneous items. [p. 136 D- G] *Express Newspapers (P) Ltd. vs. Union of India*, [1959] SCR 12, followed *Standard Vacuum Refining Co. of India vs. Its Workmen & Anr.*, [1961] 3 SC.

Keeping in view the socio-economic aspect of the wage structure the following additional component has also to be taken into account:

- (vi) children's education, medical requirements, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25% of the total minimum wage. The wage structure which approximately answers these six components is nothing more than a minimum wage at subsistence level.

Express Newspapers (Private) ... vs. The Union Of India (AIR 1958 SC 579)

According to this judgement, the content of these expressions is not static and fixed. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve, and so would the notions about the respective categories of wages expand and be more progressive.

Distinction between a bare subsistence or minimum wage and a statutory minimum wage: Minimum wage covers the bare physical needs of a worker and his family. It has got to be paid irrespective of the capacity of the industry to pay. If an industry is unable to pay at least this wage, it has no right to exist. The

statutory minimum wage, however, may be higher than the minimum wage, providing for some measure of education, medical requirement and amenities. The fair wage is a mean between the living wage and the minimum wage. The living wage is the ideal for which the welfare state should strive.

6.4 A.I.R. 1997 S.C. 3011 (Visakha Judgment)

In this case, the Supreme Court has laid down the guidelines for the protection of women from sexual harassment at workplaces in the absence of the law. All employers, private or public, are under the obligation to set up appropriate complaint mechanisms to redress the complaints of sexual harassment at the workplace to protect women workers.

A Bill for the Protection of women from sexual harassment has been passed in the Lok Sabha (Lower House of Parliament) but is currently pending in the Rajya Sabha (Upper House).

7. TOWARDS AN EFFECTIVE IMPLEMENTATION OF LIVING WAGE AS A HUMAN RIGHT

Throughout the hearings, the terms minimum wage, fair wage, living wage have been used, often inter-changeably, though in different contexts and with highly variable implications. Taking into due consideration the relevant constitutional articles as well as the declarations and definitions of the Supreme Court of India, the ILO conventions, the technical reports presented to support the petition and mainly the powerful testimonies which were heard, the position of the tribunal can be summarised as follows:

1. The concept of a Living Wage should be adopted as a preferred comprehensive term to link wage levels not only to working and living conditions but first and foremost to the constitutional right of a life with dignity.
2. The technical proposal of the AFW campaign represents a methodologically important framework and instrument which favours the applicability of general principles to the real conditions of the garment industry. It specifically allows

for reliable and transparent comparisons across countries and regions, thus addressing the risks of arbitrariness, fragmentation, conflicts of contracts, and relationships between brands, suppliers and public authorities, workers organizations.

3. The components which are essential for the computation of a living wage must not only include adequate food to the worker and her/his family, but all the elements of a life with dignity, namely, housing, medical care and education for children, rest and leisure time, including social and cultural opportunities.
4. The operational definition of a living wage must be periodically monitored in order take account of increasingly rapid changes in the cost of living and the impact of the market.
5. The integration of the concept a living wage with the human and constitutional rights of workers must be established according to explicit criteria and through procedures which include the qualified representation of workers' organizations

8.A. TAKING COGNISANCE OF THE PHENOMENON OF WAGE THEFT

Wage theft includes -

1. Late payment of wages
2. Illegal deductions (e.g., Provident Fund deducted but not deposited , ESI not deposited)
3. Incorrect payment of overtime
4. Non payment of wages
5. Wages not paid according to workers' skill
6. Women paid less than men
7. Pay-slips not given and workers not communicated exact wages

Wage theft constitutes a gross violation of national laws and international labour standards and conventions. The government must initiate steps to prevent the occurrence of such unfair practices. Article 4 of ILO Convention No. 26 says:

- i) Each Member which ratifies this Convention shall take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable.
- ii) A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other legalised proceedings. The amount by which he/she has been underpaid, subject to such limitation of time, may be determined by national laws or regulations.

The government needs to recognise this violation beyond the offense of the non-payment of minimum wages. Brands cannot leave this to the suppliers as an internal matter, whatever their 'sensitivity' to the issue. There is a clear lack of will in tackling this problem and even in recognising its extent.



(Above) Garment workers waiting for jury's verdict announcement after the Tribunal

8.B. TAKING COGNISANCE OF THE EXTENT OF GENDERED EXPLOITATION AND HUMILIATION

The Jury was struck by the systematic ways in which the exploitation of the garment workers was reinforced by extra-economic forms of harassment, coercion and punishment on a daily basis. Women workers in particular were subjected to forms of treatment that can only be described as humiliating, including forms of corporal punishment beyond sexual harassment per se. In the case of the Sumangali system, caste, gender and impoverishment were fully taken advantage of in the quasi bonded nature of the labour practices young Dalit girls were subjected to.

The government needs to recognise the extent of such violations which clearly violate Constitutional norms of equality and dignity, including non-discrimination based on caste or gender.

9. JURY DELIBERATIONS AND RECOMMENDATIONS

9.1 Verdict

The preceding factual material and the internal consistency of the testimonies of individual workers representing the views

and experiences of the majority of their fellow workers, provide overwhelming evidence of a situation of grave and systematic violations of individual and collective human rights.

The responsibility of the competent public authorities are even more clear as the violations are perpetrated in a country where compulsory legal provisions to prevent, judge and redress the rights of the workers are mandated in the Constitution, in the signed International Labour Conventions with the ILO, in the national labour laws, and in guiding judgements by the Indian judiciary. The garment industry in India is one where all the laws relating to conditions of labour are fully applicable.

While assessing and confirming the gravity and extent of the violation of a Living Wage as a human right, the Tribunal has been provided with sufficient evidence to confirm the effective undermining of the freedom of association of workers; discriminatory practices against socially excluded groups based on caste and gender; which are deepening levels of exploitation; sexual harassment and violence against women; a combination of long working hours and low wages which amount to bonded and forced labour practices.

9.2 The Tribunal therefore recommends the following:

It must be recognized that the current economic conditions are the culmination of the policies being actively pursued by the State. By leaving the determination of wages to the market, the proportion of those without work and who are underemployed, and the conditions of workers such as the garment workers are being worsened.



Garment worker giving a speech at a demonstration

RECOMMENDATIONS REGARDING EMPLOYMENT:

- 1) The government of India must declare and pursue an active employment policy, considering decent employment generation an imperative policy tool to eradicate poverty and promote inclusion. Such an employment policy is mandatory and in conformity with the ILO Employment Policy Convention (no. 122), ratified by India.
- 2) The government needs to adopt and effectively implement new legislation regarding licensing and registration of labour brokers and employment agencies, in full compliance with the ILO Convention on Private Employment Agencies (No. 181).
- 3) The Planning Commission and relevant financing authorities need to allocate more and sufficient budget resources to the labour ministries and departments in order to increase their capacity to enforce labour laws and deal with labour disputes.
- 4) The strict application of ILO Labour Inspection Convention (No. 81) should give the highest priority to the registration of workers and the maintenance of accurate registers of workers by employers.
- 5) The labour authorities need to consult with employers and workers organizations to fix wages in conformity with Convention No. 26 of the ILO.

The particular level of wages which constitutes a living wage can be determined on the basis of the existing information fairly precisely and the way it will vary by regions can also be determined. Rapid inflation requires that there should be annual indexation of the living wage.

Recommendations regarding Trade Unions:

- 6) In consonance with Article 19 I (c) on freedom of association, it is essential for the labour authorities to actively process requests for trade union registration within the prescribed legal timeframes without interference into principles of freedom of association and the right of trade unions to manage their own affairs (such as the disclosure of names of trade union officials and members to employers).
- 7) The government must amend existing labour laws to ensure that there is mandatory recognition of the majority trade union in a plant.
- 8) The labour authorities must consider it their priority duty to be proactive in countering unfair labour practices by introducing sufficient dissuasive penalties and effectively prosecuting unfair practices where they occur.
 - a) In the event of becoming aware of such unfair labour practices, the Labour Department must take proactive and suo motto action to prevent and provide remedy for the same.
 - b) The penalties provided in cases of violations are minimal and do not act as a deterrent. It must be ensured that penalties act as a deterrent, especially in cases of repeat offenders.
 - c) There must be publicity of the rights of workers and remedies available. Decentralisation of the offices of the Labour Department in order to provide easier access to the Department by the workers must be ensured. A single window system must be set up which allows workers to make their complaints in order to ensure that workers have proper access. There must be a time limit to provide remedy to any grievance.
 - d) The supervisor staff in all establishments must be trained in labour laws and the rights of workers as they are in contact with the workers and are responsible for a large number of violations.

Recommendations regarding "Wage Theft"

- 9) "Wage theft" must be taken note of seriously and the labour department and the Brands must ensure that special training programs are conducted for workers on how to identify and redress wage theft.

Recommendations for government regarding Living Wages

- 10) Towards realisation of the constitutional requirement for a living wage under Article 43, it is required that the minimum wage should be progressively enhanced in a time bound fashion, towards the living wage.

Recommendations for Government for Asia-wide engagement

- 11) The Government should explore bilateral and multilateral mechanisms at an Asia level to promote and ensure core labour standards.

Recommendation regarding Gendered Exploitation, Violence and Humiliation

- 12) The violation of Constitutional Rights to equality based on gender and caste visible in the everyday discrimination and punishment suffered by women workers in particular needs to be taken note of seriously. Violence within the world of work is unacceptable, as it is unacceptable outside the world of work. Violence must be redressed and punished in accordance with prevailing laws.



Workers' housing area in India



Garment workers demonstrate in India

THE ROLE OF THE ILO

The Tribunal underlines the importance of a more active involvement of the ILO as a critical actor in the specific area of garment industry. The ILO provides ample opportunities and concrete tools for social partners to actually complain against the government about the violation of rights at work. Employers and workers organizations are called upon to intensify the use of these supervisory entitlements at their disposal in conformity with the Constitution of the ILO. In particular to intensify their reporting contributions regarding the application of ratified conventions (article 23 of the ILO Constitution); to file "Representations" for violations by the government of India of ratified conventions (Article 24); to file complaints with the ILO Committee on Freedom of Association for the alleged violation of principles of freedom of association. For the government to comply with, and effectively implement the Recommendations mandated by the ILO supervisory machinery.

The role of International Brands and national employers and suppliers

The Tribunal underlines that the attitude of non response if not indifference by the great majority of the Brands and Employers Associations cannot but be judged to be in profound contradiction with respect to the repeated affirmation of their willingness to promote transparency and to comply with codes of conduct. These instruments remain in fact strictly internal, not open to au-

thorities and consumers, without reliable or timely data, never going beyond statements about future "pilot experiments" which are never implemented.

Further, the Tribunal sees in the non transparency of the relationship between the Brands and national employers and suppliers a specific and powerful mechanism to avoid being accountable, and thus to exercise more effectively their arbitrariness and violence in denying a living wage and decent working conditions to garment workers.

Brands have to recognise their complicity in the violation of the basic rights of workers, the myth of surprise inspections by their representatives, the need for skill training to stabilize the workforce, and their own role in the setting of impossibly high production targets. Moreover, they must confront the myth that their profitability and competitiveness will be negatively affected by wage increases.

Unless these are taken into account, our recommendations to them would remain a mockery: where human rights are violated, mere declarations of good will imply an unwillingness to change. Rather than empty gestures of good will, this Jury demands more credibility on the part of employers by participating in a genuine dialogue in a relation of parity among all stakeholders.

10. CONCLUSION

The strength of the People's Tribunal – of its judgements, proposals, recommendations for a future where a living Wage becomes at the same time a reality and a broader symbol of dignity – has its roots in the sufferings and hopes of all those who in their daily lives had the courage to speak out, to resist, to add their efforts in order to strive for opportunities for a decent life. This Tribunal wishes to thank the workers who gave their testimonies, the invisible majorities they have represented, and declares its readiness to accompany them in their fight to translate into reality what in these pages has been, by all of us, formulated and imagined for realising a more just society.

Indonesia

JAKARTA

21ST - 24TH JUNE 2014



I. GENERAL FRAMEWORK

I.1. The background

The Hearing of the Indonesian People's Tribunal on Living wage and decent working condition for garment workers as fundamental rights is the fourth and the last of the four national cases which have been included in a long-term project, launched in New Delhi in 2009, to document, assess, and produce independent judgment on the impact of the working contracts and conditions existing in the garments sector on the human rights of the millions of employed workers and of their families.

The entire project was developed under the overall coordination of the Asian Floor Wage Alliance. The countries so far investigated and for which a judgment has been produced are Sri Lanka (27-28 March 2011), Cambodia (5-8 February 2012), India (22-25 November 2012).

From the beginning, the process of investigation, assessment of cases, and the assignment of responsibilities has been implemented in close collaboration with the Permanent Peoples' Tribunal (PPT), based in Rome, Italy. (See Annexe 2 for the PPT Verdicts which are the source of doctrine for this People's Tribunal.) The PPT has, since the late 1980s, specifically included

in its interests and activity, the investigation of what could be considered the most dramatic issue confronting the peoples' of the world: respect for fundamental rights in the face of the growing abdication and powerlessness of the international and constitutional jurisdictions with respect to economic (public and private) actors. Their crimes remain almost totally unaccountable, even more so in countries and cases where the asymmetry of power is the rule. With regret we might say that the issue remains effectively a juridical orphan.

In this perspective, the key role of wages – as the concrete expression and tool to assure the fundamental right of each individual and of his/her family to a decent life (Universal Declaration of Human Rights, Art. 23) - was identified and adopted as the most sensitive and comprehensive focus and object of investigation. Regard was paid to the specific characteristics of the structure and organization of the garment industry supply chain, where the various players – national suppliers, dominant international buyers, national governments and institutions, as well as international agencies – share, and at the same time deny, their specific responsibility.

The recognition of a fair living wage associated with decent working conditions could and should coincide with the recognition of workers as individual and collective subjects of human

(Right) Jury in Indonesia Tribunal



rights. Perpetrators of violations of these rights, in the many and various forms which they take, must be held accountable before existing and/or newly formulated and enforceable jurisdictions. Impunity must be brought to an end.

The work of the People's Tribunal points in this direction. Though obviously non-binding in terms of formal legal implementation, its decisions do recognize the rights of those who otherwise would be condemned to a passive role of victims. In this process, the PPT rehabilitates their dignity through the recognition of the truth of their suffering.

1.2 The petition

The request to hold a specific Session of the Peoples' Tribunal for, and in, Indonesia was enthusiastically accepted by the PPT. The Session itself was the product of intensive preparatory work, which has included all the promoters of the hearing.

The full text of the Petition, which was presented by the People's Advocates, at the opening act of the proceedings, is available in Annexe 1, together with the list of the signing associations and organizations.

In its deliberations the People's Tribunal was specifically requested to consider, assess and determine the responsibilities of each of the main actors in the Indonesian sector of the global supply chain – brands, retailers, suppliers, governments and their institutions – as well as of their combined actions and omissions, with respect to:

- The systematic subversion of the rise in minimum wage, granted as the result of massive protests by garment workers;
- The active destruction of garment unions that fight for workers welfare through extreme increase in short term contracts, and intimidation;
- Failure to exercise due diligence to ensure respect and implementation of core labour standards, specifically Freedom of Association (FoA) and Right to Collective Bargaining (RCB);
- Increasing and systematic weakening of the legal system for

industrial dispute resolution and failure of the government to contain, investigate and prosecute unfair labour practices, including criminal actions of the management;

- Worsening deprivation of wages by the garment companies through unpaid overtime and failure to comply with or pursue a truly living wage standard to cover the real needs of a family, thereby preventing workers and their families from escaping the cycle of poverty, thus to improve their economic and political status, and to keep their dignity and self-esteem;
- Specific and systematic violations of the rights of the women, who are the greatest majority of the garment workers, have a double burden as homemakers and economic providers, and are exposed to sexual harassment and illegal measures against their reproductive and maternal rights;
- The absolute and unjustified disproportion between the degree of massive violations of human rights of the workers in Indonesia (which has subscribed to all international Conventions on labour rights), and the denial of clearly defined and binding living wages, which can be shown to be fully compatible with a country's industrial development.

1.3 The Jury and the procedures

According to the criteria adopted for all national cases included in the project, the judges included representatives of the PPT and representatives of the Indonesian society:

**Professor Gill H. Boehringer (Australia),
Chair of the Session**

Gianni Tognoni (Italy)

Harris Hazhar (Indonesia)

Lita Anggraini (Indonesia)

Nori Andriyani (Indonesia)

The public hearing took place in the Conference room of the Bunga Bunga hotel in Jakarta, according to the programme reported in the Annexe 4, where also the profiles of the experts and people's advocates can be found.

The Petition submitted to the People's Tribunal was forwarded in due time by the promoting organization to all concerned public and private parties, including the brands Nike, Adidas, H&M, GAP Inc. and Walmart, with an invitation to present and discuss their reasoning and evidence.

No Indonesian Government representatives nor Indonesian Manufacturers were present. Neither sent a reply to the invitation. H&M and Adidas participated in the hearings. In their replies, Nike and GAP Inc. declared it was not possible for them to participate.

1.4 The juridical framework

The legal framework for this Session of the PPT references a number of standard provisions in UN and ILO Declarations and Conventions. Also referenced are national legislation, regulations and the Constitution of Indonesia which are formally intended to ensure the fulfilment and protection of human rights and workers' rights. In addition, Indonesia recognizes International Human Rights Covenants/Conventions of United Nations with its 8 core documents. Almost all of the provisions of these documents have been ratified by the Indonesian Government in the last 2 decades, such as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), International Convention on Elimination of Discrimination Against Women (CEDAW) and others.

The International Labor Organization (ILO) also provides endorsement for principles, norms, and provision of protection and fulfilment of workers' fundamental rights. Indonesia has signed ILO 8 core documents. It means that Indonesia is obliged to protect workers from any actions or omissions which could worsen workers' health, safety or economic position and is obliged to fulfil workers' rights to have a life with human dignity. Amongst those provisions are the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1951) and the Equal Re-



Garment worker testifying in Indonesia

muneration Convention (1951).

The International provisions mentioned above not only have been ratified by Indonesian Government but they have become national laws or are in accordance with national legal provisions of Indonesia. The Indonesian Constitution asserts acknowledgement and the guarantee of human rights fulfilment. The derivatives of the international provisions mentioned above are found in several general Indonesian laws, such as the Law of Human Rights and other specific laws on Labour. Therefore, as an inseparable part of those provisions, the government of Indonesia is obliged to ensure and provide legal protection of fundamental rights of everyone, and to recognize the specific case of women workers, who are very vulnerable and more frequently become the victims of human rights violations. The basic protections and fulfilment are in the form of the right to live, the right to feel safe, the right to organize, right to living wage, right to protection for women, etc.

The legal provisions and standards indicated above provide the legal framework for the panel of judges to apply when considering the evidence presented in the Session of the Permanent Peoples' Tribunal sitting in Jakarta.

2. THE EVIDENCE OF DATA AND FACTS

2.1. The Indonesia Garment Industry Situation

The General Situation

Indonesia is the fourth largest country in the world in terms of population, now about 240 million. Out of 113 million workers, employment in various sectors of the economy is: agriculture (35.2%); services (22.2%); trade (21.3%); manufacturing (13.8) and Other (7.3%). Currently, of manufacturing employment, the garment, footwear and textile/textile products industries employ about 3.1 million workers. In economic terms that sector is one of the backbone sectors of the Indonesian economy, being the third largest non-oil or gas export revenue generator after palm oil and rubber. In 2012, the value of the sector exports reached nearly US\$15 billion, being 12.66% of non-oil or gas exports, and 7.74% of all Indonesian export revenue.

The Indonesian garment and textile industries largely produce for the global market. In sports shoes, it ranks with Viet Nam and China as the largest producers, as Indonesia produces about 12% of the total world supply. The industry has been an important contributor for the growth of Indonesian employment, growing by about 8% annually for a number of years. The growth is expected to continue. With expansion of the industry to small towns in Indonesia's regions, employment of labor is expanding in parallel.

The garment industry in Indonesia is not an independent nor direct actor in the global market supply chain. It is part of the three-level structure of global production and is in the lowest level of the global value chain as it manufactures and finishes orders from foreign countries, mainly for USA and European brands, largely using imported materials sourced through the brands from third countries such as Korea and China.

The position of the Indonesian TPT is such because national and local government policies are inviting and open to foreign investment and the expected creation of employment, prioritizing labor-intensive industry with a mass of workers. The industry suppliers for the brands argue that the position of the industry at the lowest level of the highly competitive supply chain forces them to pay low wages. They argue that increases of wages would require an increase of price to the brands which could result in the brands re-locating their source of supply to other locations, including foreign countries. The cost of wages, according to the companies, is 20-25% of the total cost of production.

The company's ability to pay the wages of garment workers is affected by a number of factors and interests:

- national wage policy; position of the company in the subcontracting chain;
- relationships with agents and buyers/brands; commitment by the buyer/brands to continue their sourcing with the supplier; global consumer pressure;
- worker militancy and trade union strength.



As an industry that is integrated into the global supply chain and markets, TPT Industry is susceptible to international market fluctuation. Nevertheless, during the GFC crisis period of recent years, the TPT exports for the last five years grew approximately 6.2%. However, while the industry and its exports grew, working conditions and company requirements, e.g. higher target production, became worse. The higher level of competition between brands, investors and sub contractors in Indonesia caused a poor system of dealing with workplace relations to emerge as discussed below, e.g. re union busting, suspension of minimum wages, outsourcing and temporary contracts.

In recent years it appears that increasing worker militancy largely led by the trade unions, particularly in the special production zones around Jakarta where most garment production is located, has brought about increases in the Jakarta region minimum wage. This has been largely a political response to pressure on governments. This surge in the level of the minimum wage (as much as 40% in Jakarta) appears, from the evidence presented, to have brought forth a range of anti-labor policies and practices from the employers, and a high degree of government indifference, providing substantial impunity for law violations, one of which is non-payment of overtime, another is payment below the legal minimum wage.

Labor issues in the garment industry

There are a number of wage issues that impact TPT workers. Some of the most important are indicated in the discussion below.

Wages in general

Since the trade unions have been historically weak, workers have largely had to rely on government legislation and the Wages Councils (see below) to set a minimum wage that must be paid by law. Government legislation is, of course, only as good as its enforcement, and much legislation in Indonesia while being formally impressive as a result of industrial relations reforms (urged by the IMF) in the period 2000-2003, remains largely symbolic with little attempt to enforce it. In regard to the Wages Councils, they determine the minimum

All sectors average Minimum Wages (2010-2013), selected provinces

Provinces	2011	2012	% increase from previous year	2013	% from previous year	US\$ (*)
Banten	1,000,000	1,042,000	4.20%	1,170,000	12.28%	106.36
Jakarta	1,290,000	1,529,150	18.54%	2,200,000	43.87%	200
West Java	732,000	780,000	6.56%	850,000	8.97%	77.27
Central Java	675,000	765,000	13.33%	830,000	8.50%	75.45
East Java	705,000	745,000	5.67%	866,250	16.28%	78.75
National (avg)	988,829.39	1,088,902.64	10.12%	1,296,908.48	19.10%	117.90

Note: Exchange rate: 1 US\$ equal to Rp.11.000

wage on a regional basis and regional politics therefore plays an important part in this process of wage setting.

In recent years the inadequacy of wages has been severely felt by workers and their families, and this has led to widespread demonstrations for a significant rise in the minimum wage, particularly in and around Jakarta where most of the industry is located. Even when nominally there are wage increases, real wages have not kept up. Several studies from the Central Bureau of Statistics indicate that during the period 2002-2012 industrial workers' minimum wage increased by 200% and nominal wages by 110.5%, yet real wages increased by only 7.3%. Interestingly, in the period just after the industrial relations reforms, 2004-2007, there was no significant increase. The table below shows the percentage increase and the disparity between the regions of the country during the period

The relation between the minimum wage established by law and the concept of a living wage is a major issue for workers and their families. Thus for 2012 (latest figures available) the minimum wage in the Jakarta region fell short of a living wage, being, at Rp 2.2 million, only 73% of the amount needed for a living wage. In West Java where conditions are less favorable for the workers, the minimum wage at Rp 850,000 is only 28% of a living wage.

A factor of great significance which illustrates the kind of factory management the Indonesian workers face is the non-payment of the minimum wage, i.e. again according to official data, in the period 2006-2012, the percentage of workers who were paid below the minimum wage was, on average 37%, with the range being from 24-44%. This non-payment is a criminal offense, but the employers seem to have been given immunity by the government as violators were not prosecuted.

While in Indonesian juridical and legislative culture there is a unique understanding that the minimum wage should be a "living wage" (this is unusually progressive by comparison with all other countries with significant garment production), nevertheless there are contradictions amongst the Indonesian elite. First, the National Planning Body and the Employers' Association have historically opposed the idea, claiming it was an obstacle to Foreign Direct Investment and, therefore it was said, to the economy. Second, while the concept of a living wage, as developed for instance by the All-Asian Floor Wage Alliance, refers to the wage of one worker with a putative family (wife and child), the Indonesian definition of living wage assumes there are two wage earners in that family.

Inadequacy of wages

The inadequacy of wages is demonstrated in the following information obtained in a survey conducted in 2012 by the trade unions SPSI and PPML in a traditional market, Cikarang, at Bekasi. The cost of living in this area is said to be comparable to that of other areas in and around Jakarta (where most garment workers live and are employed). The results of the survey were used in tripartite negotiations for determining wages in 2012. The Table below assumes a wage of Rp. 3 million per month (which of course is above what most garment workers are paid, and even more than the legally prescribed minimum wage which, again, is itself higher than the pay received by a substantial number of the workers).

The price survey considered seven basic needs and the cost per month of fulfilling those needs. (The breakdown of the

cost of 84 item daily needs, the specific costs of breakfast, lunch and dinners was surveyed but, although available to the Tribunal, in the interest of brevity we do not include these costs.)

Calculating cost of basic needs in Bekasi, 2012

Category	Value (Rp.)	Percentage
Food	877,635.43	29%
Cloth	381,522.17	13%
Housing	839,657.43	28%
Education	171,944.44	6%
Health	249,399.67	8%
Transportation and social needs	386,500.00	13%
Recreation and Saving	93,208.11	3%
Amount	2,999,867.25	100%

Note: Exchange rate: 1 US\$ equal to Rp.11.000

The evidence indicates that for workers in the garment industry, there is a "wage deficit". Efforts to secure increases in those wages are normally opposed, with accompanying threats to close the factory and relocate production, to another region or country or even termination of employment, particularly for those who are trade union activists or leaders.

By way of illustrating the "wage deficit" based on cost of living (above Table) and the nominal wage of Indonesian workers, we refer to data from the Central Bureau of Statistics for December, 2012. According to the Bureau, the average nominal wage of workers (below supervisor level) was as follows:

Textile workers:	Rp 1,271,400.
Garment workers:	Rp 1,631,000.
Textile products workers	Rp 1,667,700.
All industrial workers	Rp 1,615,800.

Trade union estimates indicate at least 70% of garment workers are women. Not less than 30% are the backbone of a



Workers and experts observing the Tribunal

family. They must provide for all family needs ranging from food, water, housing, health, and education for their children. Thus women workers are thought to be an advantage for the supplier company (and brands) as they are in a position of weakness due to their responsibilities (also low skills and education levels) and can be more easily exploited, including long working hours, sometimes until late at night, wages less than the minimum and even overtime work without pay. In the global supply chain, inadequate wages is a main reason for the emergence of the substantial Indonesian garment industry.

Minimum wage determination mechanism

As regulated by Labor Act, No. 13, 2003, minimum wage is defined every year by a tripartite institution called a Wages Council. They operate at different levels: city or region and province. They include representatives from labor, company and government, and some experts, mostly from a local university. After the implementation of the Regional Autonomy Act, No. 22, 2009 Indonesia became more decentralized. As a result, determination of wages is not the task of the Labor office which is now only responsible for establishing the criteria for determining wages and monitoring the implementation.

Calculation of minimum wage is formally based on the need for decent living. To determine what is needed for decent living, the Wages Councils do a survey in traditional markets in each region, city and province. According to the newest regulation, minimum wages are determined through the following steps:

- Wage Councils propose a scale of minimum wages for various work categories to the political authority in the jurisdiction e.g. mayor or senior provincial official;
- approval from the official responsible may be given with amendments;
- Wages Council analyze minimum wages proposed by these officials, and make a recommendation to the regional Governor;
- Governor sets the minimum wages for city, region and prov-

ince;

- Implementation of the minimum wage;
- Monitoring implementation by regional labor inspectors.

Calculating the Minimum Wages

The newest regulation on minimum wage is Ministerial Decision No.13, 2012 (replacing Ministerial Decision No.17, 2005), adding components to the calculation of the wages (46 items became 60). While the regulation made some administrative changes, the bases remain the same. Regulations about minimum wage have a market orientation. Article 6 from the most recent Labor Ministry decision says that "determination of minimum wage must consider the labor market conditions, economic development, macro productivity, situation in the most marginal sector and results of a market survey". This article seems to be intended to reinforce a similar article from previous regulations.

The market orientation of wages policy in the different regions across the country has stimulated governments, through Wages Councils, to compete to set the regional wages as low as they can, in the interest of maintaining and increasing the garment industry in their jurisdictions.

Suspension of increased minimum wage

The context for the following discussion is that during 2012 and 2013, there have been significant minimum wage increases in regions, cities and provinces. East Kalimantan, a province that has a large oil industry, enjoyed an increase in minimum wage from Rp.1.100.000 to Rp.1.700.000. In Jakarta, after a week of pressure from workers, Governor Joko Widodo and presidential aspirant, decided to increase the minimum wage as much as 43.9% (from Rp.1.500.000 to Rp.2.200.000), a decision that triggered substantial criticism from the Employers' Association. In less economically developed provinces, such as Papua and North Sumatra, increased wages were lower when compared with other provinces (7.9% and 8.8% respectively).

Under Indonesian law, Manpower Ministerial Decree No.: 231/2003, it is prohibited to pay less than the legally mandated minimum wages. However, the very same Decree permits companies to make application to the local, provincial or regional authorities to have a minimum wage increase suspended on grounds that their economic situation does not allow them to pay the increase ("in the event the company is unable to pay the minimum wage"). Applications should be submitted to the appropriate Governor, 10 days before the determination of the new minimum wage. Such a 'wage deferral' must be accompanied by the following: a written agreement of any trade unions in the company; financial statements (balance sheet, profit and loss, and wage data) for the last two years; plus some administrative documents.

In 2013, 949 companies submitted applications for such suspension to government, and 669 company were successful. There is regional variation in the number of suspensions submitted and granted:

Province	Submitted	Approved	%
Greater Jakarta	345	58	16.81
West Java	298	257	86.24
Banten	177	144	81.36
All Provinces	949	498	52.48

Labor resistance to such suspensions of wage increases have been answered by companies with a number of tactics, including threats to reduce their labor force through layoffs, and by the threat to relocate the factory to another area or even to another country.

Union busting

Despite Trade Union legislation (Act No.21, 2000) which asserts positive rights protection for Indonesian workers (see esp. Art. 28) by prohibiting a wide-range of anti-union activities, such activities are common and seldom investigated by police who often either refuse to accept the complaints from

workers/trade unions, or simply delay any proceedings for an unreasonable period. In addition, companies are expert in falsely claiming legitimate reasons for anti-union activity such as layoffs of labor activists and union officials for reasons other than union busting e.g. on efficiency grounds, or because of illegal strikes. Thus union busting is a major problem in the Indonesian garment industry.

There are many techniques used by the companies to prohibit effective union representation for the workers e.g using a favored "company union" and barring any other union; threats and intimidation; layoffs of union leaders and activists; offering cash bribes or promise of promotion to union leaders and/or activists.

In the search for profits through paying low wages in particular; such aggressive actions by companies to maintain "managerial prerogatives", cheap labor and a docile workforce has very serious negative effects on workers conditions of labor and, further, the entire economy. Without the advantage of union organization and collective bargaining, the workforce in garment factories has been super-exploited e.g. overtime work without pay, less than the minimum wage as the real wage. The result of that is millions of workers on the edge of starvation, in debt, poorly nourished, unable to afford medical care, without skills development, low education for their children and little discretionary income to consume or to save. In addition to low wages, as also discussed below, workers without union power have had to see their permanent contracts transformed into temporary contracts which leaves them in an even worse position of precarity, liable to intermittent employment, even lower wages and without social security. Industrial relations based on temporary contracts worsens the life of labor. Labor is forced to obey orders without being able to question and management has the capacity easily to terminate contract prematurely if a worker labor becomes a member of a trade union or is involved in trade union activity.

Outsourcing

The practice of outsourcing is a main issue for Indonesian



labor. Most TPT factories now use this method of production as well as the short-term contracts discussed below. These methods were used to a small extent long before the enactment of Labor Law No. 13, 2003 which was intended, *inter alia* to regulate these practices. It appears that such regulations, protective of workers, are frequently violated.

In addition to not providing job security, the outsourcing system has strong potential, realized widely in practice, to cause violations of the basic rights of workers. Many cases show they received wage under the minimum wage, do not get social security, are not paid overtime wages.

There appears to be a growing trend for companies in the garment sector to outsource production. As well as a way to deprive workers of adequate wages, this system also avoids many responsibilities of the companies, is effectively immune from monitoring by the government and deprives workers of many rights. It also is an important technique for union busting, as it is a major obstacle to freedom of association.

Short term contracts

As in other countries in the global garment supply chain, Indonesian workers are being increasingly disadvantaged by the use of short term contracts rather than being employed on permanent contracts. The workers are coerced into accepting such contracts as they offer high risks of loss of benefits, violation of rights and other abuses, even lower wages than the low wages paid to permanent workers, unemployment and sporadic employment, and are often used as a way of subverting authentic unions and punishing their activists and leaders.

The lack of government protection of workers, despite legislation which is intended to protect them, is clearly illustrated by the ease and frequency of the employers' use of methods which violate those laws in order to terminate permanent contracts and to intimidate and coerce workers to accept the short term contracts. Employers guilty of such law violations appear to have impunity from government prosecution,

even when they refuse to pay benefits earned and compensation owed under the acts. For example, while the Manpower Act, Art. 151 stipulates that terminations are supposed to be avoided, and the employer, worker, trade union and government must "make all efforts" possible to avoid terminations (chap.1) and that where termination is unavoidable, the process must be negotiated with worker or trade union (chap. 2), in reality employers are not held to either legal prescription.

Other examples of deceitful termination by employers and government acquiescence in these crimes, are : 1) the false claim of the need to rationalize the work production process on grounds of efficiency under Art.164, chap. 3 of the Manpower Act, whereby permanent workers are terminated-only to be re-hired on short term contracts; 2) the false claim of pending bankruptcy (under the Act Concerning Bankruptcy, in which Art. 165, chap. 1) which companies use to threaten workers they will be terminated (allowed by Art. 156 under conditions of payment/compensation) if they do not agree to switch to short term contracts. A similar ploy is used with threats to re-locate, leaving workers behind, unless they agree to the switch. Again, in many cases employers are not forced to pay the relevant benefits and compensation, and if taken to court the process is very long and can be expensive even if the workers are successful.

Discrimination against women

Most of the workers in the garment and textile industry are women. This reflects the tendency of company management to choose females, based on the assumption that women may be willing to accept a job that pays low wages and will be reluctant to oppose management policies and practices through fear of losing the job. The latter could be true as about 1/3 of the women are the main (or only) source of family income. Promotion, for example to become a supervisor, is usually given to male workers and not female. This appears to be influenced by the belief that many women will choose to stop working after they marry. Differences in career opportunity are, of course, ultimately reflected in wage

rates and income potential.

In workplaces where there is a large number of women while supervisors and security personnel are mainly men, various reports from many countries indicate that complaints often occur arising out of work place sexual harassment conducted by superiors and security officers. In some Indonesian garment factories such is the case also. Acts of sexual harassment (touch, kiss) often happen in the factories such as those in the bonded area Cakung to women workers. There seems to be a significant degree of impunity for the perpetrators which would only encourage such activity. Other reports concerned other forms of misuse of a senior position e.g. to threaten or intimidate subordinates, even to the extent of coercing the victim into becoming a second or third wife. It was indicated that that wife would be later abandoned.

2.2. The testimonies

A. Workers' Testimonies

There were five worker testimonies presented at the People's Tribunal. The first case was by a worker from Rismar Daewoo Apparel in Nusantara Bonded Zone, in Cakung, North Jakarta with 700 workers. The factory produces apparel for various international brands, including Aoki, C&A, Calvin Klein, Chaterine, Dressbarn, Ellena, Ellen Tracy, E Land, H&M, JC Penney, Juvens, Jones, Milano, Michael Kors, Protrend, Torrid. The second case was by a worker from Olympic Garment International in Nusantara Bonded Zone, in Cakung, North Jakarta with 800 workers. This factory also produces international branded clothing including B Three, JC Penney, J.Crew, and GAP. The third case was by a worker from Crystal Garment with 664 workers, producing garments for international brands including Kohls, Old Navy and products for Walmart. The fourth case was by a worker from Industrial Dwimitra Asia in Tangerang that produces shoes for NIKE with 4800 workers. The fifth case was by a worker from Panarub Dwi Karya that produces branded shoes, including Adidas, Mizuno and Specs with 2560 workers.

Workers in all of these factories are mainly women. The cases presented by the workers involved incidents and disputes which happened in 2012 and 2013.

The worker testimonies reported various types of violations. These cases do not stand alone. They are systematic. Meaning that there is a pattern of similar violations. In almost every case there is union busting or suppression of rights of Freedom of Association (FoA). This suppression is viewed to be systemic as it involves important persons in the major institutions concerned: the company, the labor office, the police and the courts.

In the case at Panarub Dwi Karya there was a conflict of interest whereby an Ad Hoc Judge of the Supreme Court was also the former Human Resources Manager at the company, and was still involved as advisor to the management up to the time of the tribunal. There was also an effort to bribe the Panarub worker who was leading the union with improved job offer. The matter was reported by the workers to the police and the Judicial Commission, to no avail. There was also an effort to bribe the Panarub worker who was leading the union with an improved job offer. It was also reported that Panarub management banned one union and forced workers to join the the company's preferred union. Thugs were used by the company to revoke the not-preferred union membership card from the workers.

Still in Panarub, when the workers staged a strike on 12-23, July 2012 they were harassed and physically attacked by factory security officers, the police and groups of thugs. The police were reported to have sprayed tear gas on the strikers, some of whom were pregnant women workers. Some workers were also reported herded to the yard and forced to stand under the sun for a considerable time. Later 1,300 workers were laid off by the company due to the strike. The workers in Panarub were further harassed by the company when it sent security officers, including army members, to their homes, to put pressure on the workers through in-



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timidation family members. Layoffs and intimidation were also suffered by relatives of the protesting workers who also work in Panarub. Furthermore, the company distributed a list of workers who were laid off to other shoes factories in Tangerang so that they would not be able to get a job in other local factories.

The Panarub workers have reported these matters to the Labor Office but have received no response. They have also conducted hearings with members of the House of Representatives, again with no follow up. These measures taken by the company and the failure by government offices and political representatives to take appropriate action indicate the systemic nature of the suppression of workers' rights.

A major trend threatening workers' rights, as reported by workers and experts testifying at the PPT, is the change in the workers' status from permanent to contract, or temporary, worker. This is a trend world-wide, not least in the garment industry. Indonesian workers are being forced onto these temporary contracts. There is no sign that the government opposes this trend. Workers' legal benefits which accompany permanent status are lost, and the precarious situation they find themselves in makes them more vulnerable to company pressure and rights violations, and, in many cases, less resistant to the suppression of their rights and their union. In attempting to prevent this forced change in their status, workers at Industrial Dwimitra Asia protested, demonstrated and went on strike (other matters were also involved, see next para). In retaliation, the company imposed forced layoffs on many workers.

Wages are a major focus of contestation between the workers and the employers. A number of issues arise concerning the attempts by the latter to keep wage costs down regardless of the effect on the workers and their families. First, the wages paid to workers in this sector are not adequate by a considerable degree. One worker reported that the wage could not cover the cost for clothes and child needs. This means that minimum wage set by the government-which is

often not paid anyway- is too low. Another worker reported that he and his wife both work and therefore they had to hire a nanny to take care of their child. This cost of caring for the child is not yet covered in the items to set the minimum wage. To cover the insufficient wage, workers have resorted to borrowing money with high interest rates.

Another, serious form of wage violation is non-payment of overtime work; and, at Panarub, the workers must attend meetings without pay before and after work. Each such meetings can last 20 minutes.

A rather unusual and very serious form of abuse of workers' rights is the Indonesian system of "minimum wage suspension". The implementation of the current applicable minimum wage may be suspended by Regional Governors on the application of a company. The workers and experts testified that such suspension is easily obtained (about 2/3 of all requests for suspension are granted.) In the case mentioned above, relating to Industrial Dwimitra Asia, the minimum wage suspension from Rp.2.310.000 to Rp.2.000.000 was approved by the Banten Governor and the Banten Labor Office.

Through the testimonies, there was also evidence of factories being relocated to other parts in Indonesia where labor is cheaper and less militant than, for instance, in the Jakarta area. The Crystal Garment factory was reported to have moved to Central Java, while Panarub Dwi Karya shifted its production to a sister company that also located in Tangerang. Thus it is clear that workers' precarious position is threatened even more because of the pressure on them- workers must accept lower wages, even a minimum wage suspension, or the factory will relocate and they will be unemployed.

Other violations mentioned in the worker testimonies dealt with micro control over the workers by management: pressure to maintain production levels and staffing continuity without regard to the impact on workers' health and safety or even that of their family. Thus it was reported that in Rismar, there was constraint by supervisors on workers going to

the toilet if the production target was not yet achieved. This production target was increased in time, which causes more pressure on the workers. Still in Rismar, it was also reported that when a worker gets sick, the supervisor made it hard for the worker to get permission to go home. In Panarub, a woman worker who did not get permission from the management to leave while her son was very sick, could not be with him when the child died.

There are also many specific violations of women workers' rights reported in the testimonies. They include: women workers are not allowed to get pregnant in the first year of employment; they are refused or deterred from taking menstruation leave which is a legal right in Indonesian law (the deterrence often involves having to report to a medical officer and take down panties to show evidence of blood from menstruation); sexual harassment of women by supervisors and managers, was also reported as common incidents. There are also negative impacts particularly affecting women workers as a result of rights violations, for example, forced lay off. These include being divorced by husbands and cancelled wedding.

Testimony from workers at the factories listed during an on-site visit by the PPT judges indicated that labor inspectors were seldom to be seen inside the factories making their inspections.

B. Information from the Defenders

During the tribunal, there was also current information on the situation of Indonesian workers presented by the human rights defenders from the Jakarta Legal Aid Institute for Research and Development.

1. Ineffectiveness of the Industrial Relations Court

The Industrial Relations Court has shown that it is not a solution for the workers to get justice: 1) the legal process in this court takes a very long time; 2) the workers often have difficulty in providing proof because much of the evidence

to prove their case is in written documents/records held by the factory management and therefore difficult to obtain; 3) in general, verdicts have difficulty in being implemented for a number of reasons, including appeals and other legal maneuvers employed by the companies; 4) often, workers win only on paper as the verdict is not executed and the company has closed or has declared bankruptcy. In one such case, the victorious workers were even asked to find any assets that can still be confiscated by the court for a verdict to be executed. In this legal process, therefore, there is pressure on the workers to be proactive. Of course they do not always have the resources to do this. Thus workers do not get the justice they deserve as the government agencies often appear to take a "hands off" position when it comes to ensuring workers rights are protected.

2. Weakness in Labour Supervision

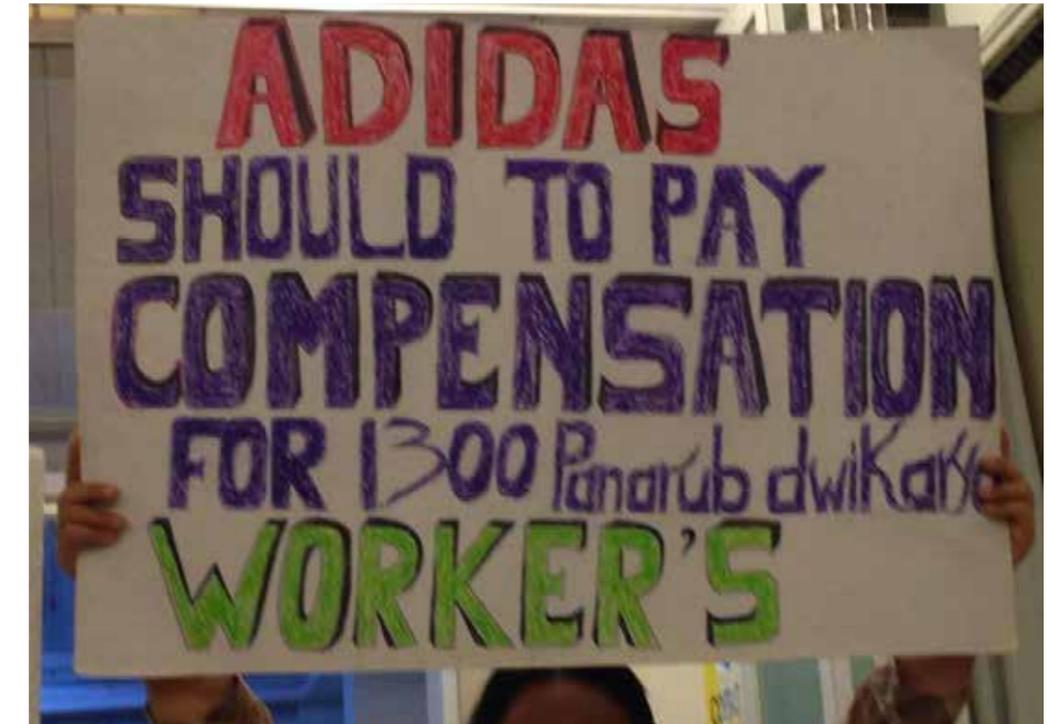
Continued violations of labor rights occur because of a lack of oversight and sanctions from the government through the Ministry of Manpower or through the local Department of Labor. This is due to the insufficient number and low quality of labor supervisors. According to Ministry of Manpower, there are currently 2,384 labor inspectors to handle about 216,547 companies and only 563 labor investigators throughout Indonesia. Another factor for continued violations is a function of the political structure: implementation of the country's scheme of regional autonomy gives enormous power to the regional governments, so that the course of supervision depends on the willingness of the region's head, who often is not independent of commercial interests.

A common phenomenon in labor cases is that Labor Department officials frequently direct that the employer's actions/omissions which are criminal offenses under the law, shall be treated instead as a civil dispute to be resolved through the Industrial Relations Court. This means that workers have to defend their rights in the civil realm without the government support which should be provided in a criminal action. (This unusual practice is apparently the result of the issuance of three laws, i.e. Law no.21 of 2000 on Workers' Unions; Law

no.13 of 2003 on Labor; and Law no.2 of 2004 on Industrial Relations Dispute Settlement.)

3. Workers Criminalization and Non Implementation of Labor Crime (Pidana Perburuhan)

There are around 30 Articles in Law no.13 of 2003 on Labor Crime and their sanctions. Further, there are also labor crime articles stipulated in Law no. 3/1992 on Social Security, Law no. 21/2000 on Workers Union, Law no. 2/2004 on Industrial Dispute Settlement (PPHI), Law no.1/1970 on Work Safety, and Law no.7/1981 on Obligatory Labor Reporting in a Company. However, these articles are very rarely applied. When cases are reported by workers to the Police, who have the obligation to investigate, they are often rejected or the police are not willing to proceed. The Jakarta Legal Aid Institute (LBH Jakarta) stated that almost all labor crime reports are not processed by the police. The LBH Jakarta handled 18 labor criminal cases in 2012, but only one resulted in being treated as a trial crime (pidana percobaan). The case of Panarub vs its workers is an example of weak implementation of the labor crime law. Actually the union busting by Panarub management violated article 28 jo 43 paragraph (1) of Law no. 21/2000 on Workers Union, punishable by 1-5 years imprisonment, however the case was not proceeded with by the police.



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The problem lies in the police inability or, more likely, unwillingness, to investigate labor crime and the apparent accepted policy that labor cases should generally be resolved in the Industrial Relations Court. Various trade unions have tried to push for the creation of a special desk for labor crime within the police so that the police can be focused in dealing with labor criminal cases. Often labor criminal cases are processed in irrelevant police units that have no competence in labor matters, e.g in the natural resources and environment unit.

On the contrary, workers are being criminalized by employers. Whether or not ultimately successful in pinning the criminal label on worker activity, it is a useful tactic for employers as it has negative effects on workers and their trade unions.

All sectors average Minimum Wages (2010-2013), selected provinces

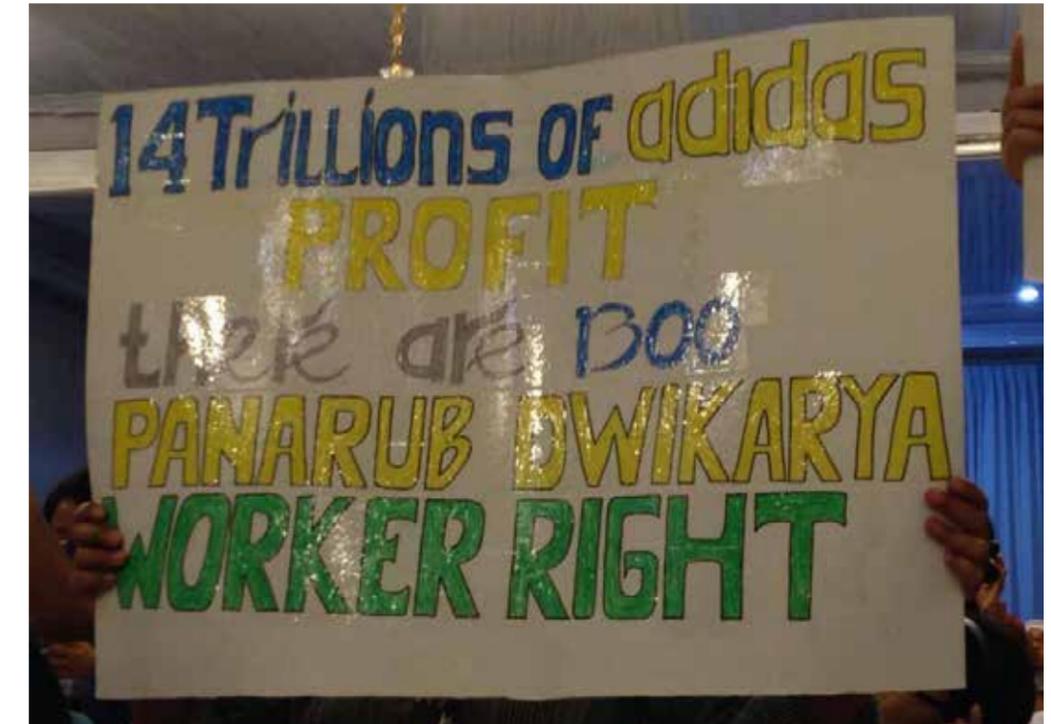
CASE	CASE POSITION	RESULT/PROGRESS
Cemi and other workers. A worker at PT.Asietex Karawang (2012)	CEMI and fellow workers set up a labor union, demanding their rights. CEMI produced pamphlets. Cemi was reported to the police for defamation and unpleasant acts.	Acquittal. The decision is not yet issued by the Supreme Court.
Sultoni (Federasi Progresip)	In September 2012, the Progresip Union at PT. Dong An staged a strike demanding abolition of outsourcing and fulfillment of workers' normative rights. The employer reported Sultoni for unpleasant acts.	There is no clarity of the case. His status is still a suspect.
Sartono (worker at PT. Panarub Industri, Tangerang)	Sartono questioned his boss who was offensive to his colleagues. Sartono was reported to the police for unpleasant acts (Article 335 of the Criminal Code) and for defamation. He was detained for 7 days.	PT. Panarub revoked the case at the first trial.
Omih (worker at PT. Panarub Dwikarya)	Omih was frustrated because of continued labor rights violations, suppression of unions, and mass layoffs. Omih sent an SMS about a bomb threat. Omih was charged under Article 336 of the Criminal Code for threatening public safety and disseminating threatening information which is a violation of Article 45, paragraph 1 and 2, paragraph 4 of Law No. 11 of 2008 on Information and Electronic Transactions.	The case was discontinued after significant workers' pressure and a letter from the House of Representatives.
Sahrudin (Labour at PT. Afix Kogyo)	Sahrudin formed a union and became the chairman. He fought for workers, including the issue of cooperatives. When he was seeking advice on the cooperative matter to Ibu Yani, Chairman of the Cooperative, Ibu Yani suddenly fainted and Sahrudin was accused of maltreatment.	Found guilty probation. Currently under cassation to Supreme Court

4. Corruption in the Labour Sector

Indonesia is currently ranked 114 out of 177 countries in the Corruption Perception Index of 2013. Two of the institutions most perceived corrupt are the justice institutions and the police. The presence of an Adhoc Chief Justice who aided the company in intimidating workers in the case of PT. Panarub indicates that corruption is indeed present in the labor sector. Another example is the arrest of a judge of the Industrial Relations Court in Bandung who received kickbacks from PT. Onamba. He had decided for the company in a labor case that resulted in the dismissal of 176 workers. The PPT was informed that it is common knowledge amongst ordinary people/workers that government officials including at the Industrial Relations Court are corrupt. Of course, not many offenses can be proven. According to evidence from the Peoples' Advocates there has been a decrease of nearly 1/3 in the use of the IRC by workers in the last three years. It suggests that they have lost a degree of confidence in the integrity and independence of the IRC.

2.3 Trade Unions

There is a widespread international movement of trade unions, NGOs etc for workers to receive a living wage. In the last three



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years, Indonesian workers' resistance has grown to the cheap labour policy in the new export industrial areas in particular in the three industrial cities of Bekasi, Tangerang, and Serang. The year 2012 witnessed major and successful wage campaign led by expanding broad coalitions of the trade unions from Majelis Pekerja/ Buruh Indonesia (MPBI) to National Consolidation of Labour Movement (KNGM). As a result the government was compelled to reverse the decision of the Higher Administrative Court (on the plea of the Indonesian Business Association (AP-INDO)) and increase the minimum wage in some provinces up to 40% as well as to expand the basket of items to better define the living wage needs of a worker and his/her family.

In the garment sector, the unions that are part of this broad struggle of the living wage movement- GSBI, SPN, FSBI, SBSI



'92- have made specific demands on the brands, citing the Asian Floor Wage (AFW)FW as a legitimate bargainable wage to fulfill the requirements of decent living standard of a family in Indonesia. The garment unions have built on the FOA Protocol, to which GSBI and SPN were signatories, to expand the unionisation of garment workers. As a result of this initiative, union density has reached 40% in the garment export sector in many areas, e.g. West Java.

The garment unions note with concern the growing offensive of the garment manufacturers, both to undermine unionization and cut back wage levels. The agreed FOA Protocol has been rendered ineffective by large scale rise of short term contracts which has reached up to 60% in the garment industry. Further the suspension of the minimum wage rise has become a growing trend in the garment industry supported by government. In some areas like Western Java the government has allowed more than 65% of the applicants for the suspension of minimum wage.

In this situation GSBI, SPN, FSBI, SBSI '92 call upon the brands to negotiate a Wage Accord, on the basis of the AFW.

2.4 The Brands and Corporate responsibility

The five major brands with a significant presence in the Indonesian garment, textile and footwear sectors of the economy (hereafter the garment industry) were invited to make presentations on their policies and practices relevant to workers' wages, conditions and industrial relations generally. Two, H&M and Adidas took the opportunity to do so. They were also invited to ask questions of the other presenters should they wish to do so.

The Tribunal also heard presentations relevant to the policies and practices of H & M, Adidas as well as other brands, from five international experts. In addition, there was expert testimony on the garment industry in Indonesia and the global supply chain from Indonesian experts, much of which was relevant to the brands activities in the country. Further testimony relating to the conditions of work in the garment sector was received from five Indonesian workers who were or had been employed in factories supplying the brands, including Adidas. The Tribunal also received substantial relevant background material from academics, NGOs and others on the global supply chain and the

(Pics above) Brands, Experts and Workers Testify at the Tribunal in Indonesia

garment industry in Indonesia, industrial relations in the country and the relevant legal and constitutional framework. From the above we were able to gain a comprehensive picture of the relevant policies and practices of the brands in the context of the global garment industry supply chain and its Indonesian specificity, and the political economy of Indonesia.

While the two brands' presentations differed in content, there were basic similarities. Both are actively engaged in pursuing their vision of a future garment industry with well managed factories with contented workers paid a fair living wage and, through collective bargaining and state legislation, with their human rights at work guaranteed. This is a noble and most welcome long term vision. It appears that the two are leaders in this endeavour and have begun investing resources in their project.

Both H&M and Adidas recognize the challenges presented by the inevitable tension between the logic of business and the logic of the human rights of workers and their families. The two brands are taking steps they believe will mitigate that tension e.g. by seeking more managerial efficiency in the suppliers' factories, and an increase in owners' and managements' understanding of

their responsibilities toward the rights of workers; by providing innovative communication facilities for workers and management; and by capacity building and skill development programs for workers. Both brands have committed to a fair living wage, freedom of association and collective bargaining.

As was stated at the opening of the tribunal, in recent years some progress has been made in tackling the challenges facing workers in an industry dominated by a small number of buyers. Governments, brands, unions, NGOs and civil society groups, and suppliers have established a dialogue toward collaboration to solve the problems they all now recognize and are affected by in different ways. The Tribunal is one site of that dialogue. While welcoming the presentations of the brands and noting with favour some of their initiatives, we also have some concerns about the adequacy of their responses to some of the difficulties and complexities of the circumstances in which they are clearly and by far the major financial beneficiary.

In the spirit of that dialogue, we express the following concerns: First, the lack of urgency. It is clear that workers and their families are suffering under the present regime of poverty wages and



the extensive violations of law and human rights which exists in the Indonesian garment sector. Both brands commenced their CSR planning in the late 1990s. They are cautiously envisioning a bright future in the long term for those suffering now. But elaborate programs involving model factories, pilot studies, surveys, training and monitoring, etc. do not put food on the workers' tables now. Given the low labor costs in production it is not clear why wages cannot move to the living floor wage level without delay. We were reminded of the garment factory in the Dominican Republic where the workers' wages have been put to a living wage level.

Second, both brands seem to have taken an incentive based, flexible approach to securing supplier compliance with their Codes of Conduct and even national and international law. Given the

powerful position they have viz a viz governments and their suppliers, the Tribunal believes that the present policy of toleration sends mixed messages. The tribunal believes that expressions of discretion in their policies such as "employers should" ought to be replaced by the mandatory expression "employers must", together with an indication of the precise sanctions the brand will impose if compliance with their requirements (fair living wage, etc.) is not achieved. That change would signal that the brands want decent working conditions, no harassment, victimization, criminalization of trade union members, activists and officials; collective bargaining and living wages without exception.

Third, the brands are attempting to impose their programs from above. No doubt these have been drawn up by experts and influenced by the latest theories of industrial relations, human re-

(Above) Workers watching the proceedings of the Tribunal.

sources developments, advances in communication technology and theory, and other approaches to dealing with workers and their grievances. The Tribunal is concerned that this approach has resulted in a missed opportunity to send a clear message to all stakeholders in the supply chain, and more broadly that workers must be involved in all proceedings which concern their working conditions. Such an approach proves successful in the evolution of the FoA Protocol.

Fourth, the elaborate and in some ways impressive, though still to be proven programmes of H&M ("the Road Map") and Adidas ("Social and Environmental Program") both rely on the concept of tripartite collaboration between governments, factory owners-managers and workers. While this model may have proven in more developed countries, one size does not fit all. In the garment supply chain, it is an unrealistic model because of the huge asymmetry of powers which are confronted.

Fifth, the brands must ensure that transparency exists with regard to their purchasing practices and all other financial aspects of their dealings with the suppliers. The brands must also ensure transparency exists regarding their CSR programs such as monitoring factories, surveys, pilot studies, model factories etc. Transparency must include not simply the material availability of summary and uncontrolled information in the brands websites, but an easily accessible information to all stakeholders and in the language of the relevance workers.

Six, brands do not want to accept that they have a real, not just a philosophical or ethical, responsibility for what happens in Indonesian garment factories and, importantly, other sides of production were subcontractors produce for the suppliers. Presumably this is the major reason for their 'stance' when it comes to the realities of their labour right violations. Other realities of Indonesian garment industry ignored are the business imperatives of the suppliers, the growth and developments trickled down new neoliberal policies of pro-business governments, corruption and bias in the national systems of regulation including the courts; and the general impunity existing for labour right violators. Brands negotiate a price FOB with the suppliers, so they are

directly responsible for low wages. The responsibility for brands is a systemic one based in the structure of the industry and the power relations that operate on a daily basis. As one expert commented, brands have become in effect manufacturers without factories. They have shed their contractual obligations to workers by moving production to Asia. Brands drive the system and suppliers are reliant on them.

The brands and other powerful transnational corporations are not yet easily brought to justice under existing national and international law. Therefore, critical thought must be given to developing the jurisprudential concepts and a legal framework by which those corporations can be held responsible for violations of worker's human rights occurring in the supply chain as a result of this impunity.

One analogy which could be developed to support the concept of brand responsibility in these circumstances exists in the concept of vicarious liability in the common law. If, as a result of a contractual relationship, such as that existing between brands and suppliers, Brand X has control of sufficient elements of what Supplier Y does to fulfil the contract obligations, then Brand X is legally responsible for the damage to others caused by Supplier Y. (This principle of vicarious liability, as well as concepts of joint responsibility found in the law of many countries, are, in essence, reflected in the UN Guiding Principles on Business and Human Rights).

3. ENUMERATION OF HUMAN RIGHTS VIOLATIONS

1. Mass Poverty Caused by Cheap Wages

The Tribunal panel of judges found that the practice of employing workers at cheap wages was the basic cause of mass impoverishment and related social problems suffered by the country's workers. From workers' testimony and that of experts on the garment, textile and footwear sector of the Indonesian economy, it is clear that the wages paid in that sector are insufficient to provide a decent standard of life for the workers and their families. The fulfillment of the right to work includes the right

of everyone to the opportunity to gain a decent living by work (article 6 of ICESCR). In other words, the right to work should be interpreted as the fulfillment of a good quality of life as mandated by the Indonesian Constitution, Second Amendment (2000) article 28D par.2, which is similar in concept as article 7 of ICESCR, as follows:

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

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

According to the evidence presented, it appears that the systematic paying of low wages by the supplier companies is effectively a form of deliberate massive impoverishment of the workers. In contrast to this, the Tribunal received presentations of several programs drawn up by brands (H & M; Adidas) to implement human development strategies, including supervision/monitoring of factory conditions maintained by their suppliers, and long term evaluation of living wage experiments in a small number of factories. Nevertheless, the brands seem unwilling to commit to an early implementation of a living wage. And they appear unwilling to weigh in on the side of workers to force improvement in wages paid by their suppliers. However these programmes do not stop the mass impoverishment. In many cases, the programs are inaccessible by workers in vulnerable situations.

2. Breach of the Child’s Right to Education

Low wages and impoverishment result in workers’ low ability to provide education for their children. On the basis of the evidence presented, the judges found that the child’s right to education was being violated. In their testimony, workers stated that their wages only covered their living cost, without covering the cost of their children’s education. The company does not include education cost as one of the wage components they pay to workers. On the other side, although right to education is guaranteed by ICESCR (article 12-14) and Indonesian Constitution (article 28C and 28E) and Law No. 39 of 1999 on Human Rights

(article 12 and 60), in reality, the Government of Indonesia does not have any uniform policy on local level to ensure free education for poor people. This should be the responsibility of local government leaders. For workers who live in the regions where the head of a district, or a mayor, does not favour vulnerable groups such as workers, the condition is very difficult. The situation in which the head of district or mayor does not have a positive education policy, or the company paying the wages does not profit much and therefore pays very low wages are not valid reasons for a child to lose their right to a decent education. Therefore, the Government of Indonesia, local governments and the companies who employ workers at low wages who have children of an age to be educated, are all responsible for the violation of childrens’ right to education.

3. Breach of the Right to Health

As stipulated in the Indonesian Constitution, art.28H, and the Health Law, art.4, every Indonesian person has a right to healthcare. And art.5, para.2, states that qualified and affordable healthcare must be provided for Indonesian people. The judges received evidence of a number of violations of the rights to healthcare. The judges therefore found the right to health had been violated. The violations recounted by the witnesses can be categorized as follows:

1) the violation of the right to healthcare is a result of forced overtime by supervisor or of not being permitted to go to the toilet by the supervisor as stated by Sahroji’s testimony; 2) violation of the right to healthcare happened when workers were on strike, they were denied to have medical care when they were abused and physically attacked; 3) the violation of the right to healthcare is also a result of the impoverishment that prevents workers from affording health insurance for her/himself and their family. It also should be noted that only certain companies provide health insurance, and only for permanent workers; 4) the countries health infrastructure and facility is not ready to provide assistance for workers in need of medical care.

4. Low wages in the Worker’s Household

Worker evidence revealed and the judges found that situations

in which the same human rights violations suffered in the factories regarding low wages, also occur inside workers’ households. For example, both husband and wife go to work and must leave their baby (or more than one) with a babysitter or nanny as inexpensive or even free childcare facilities are not provided by government nor by factory management. Such parents can only afford low wage to the baby sitter or nanny or other domestic workers. This has led to more serious vulnerability for domestic workers since they receive insufficient wages for their survival.

5. Inhuman Punishment

Worker testimony revealed cases of the exercise of physical violence against workers as a form of punishment by supervisors in several factories. Although these incidents were reported to authorities, there was no legal sanction applied to the supervisor. In this case, the judges found that Government of Indonesia law enforcement officials have violated art.16 of the Convention Against Torture and Other cruel, Inhuman, or Degrading Treatment or Punishment (CAT) which stipulates that such actions degrade human dignity.

6. Employment Contract Manipulation

The judges found that workers rights were being negated and avoided through the manipulation of the contractual relationship between workers and the companies. Evidence was presented to the Peoples’ Tribunal concerning widespread violation of the Manpower Act, art. 164, para. 3 which regulates the ability of companies to change the status of the work relationship from permanent contract employment to short term contract employment. In order to change the contractual relationship of permanent workers, companies can claim that they must close and re-structure the employment relationship, citing the need for more efficiency. The Act requires that for a company to close, and then re-employ workers on the temporary contracts on grounds of efficiency, the close down must be permanent. Since according to article 164 para. 3 of Law No.13 of 2003, per Constitutional Court Ruling No. 19/PUU-IX/2011 the interpretation of the phrase “closed down” in article 164 par.3 should be “permanently closed, not to do any production activities for temporary time”. Thus, based on the legal interpretation of this

provision, one of the requirements for a company to do efficiently is that the company is permanently closed. But in reality the companies are using “efficiency” as a smokescreen for an illegal change in the contractual relationship with their workers. It appears from the witness’s testimony that the government looks the other way, and violators are effectively given impunity for these actions.

In addition to being a violation of the rights of the workers affected, the change of contract employment status has serious negative effects on the workers and their families. Since their employment status has been changed into temporary workers, they are considered as new workers with zero years of service. It means that workers would lose their rights such as holiday allowance, menstruation leave for women, and worker benefits under Social Security legislation. However, the most important impact of the employment contract change is workers receive very low wages. And when the company successfully applies for wage suspension, workers who work on contracts for less than a year would only receive the existing minimum wage at most.

7. Crimes to the rights of freedom of association, assembly and opinion (Union Busting) and Criminalization and attacks toward defenders of labour rights

Testimony from witnesses indicates that workers’ rights are compromised in a number of ways, some minor but others serious. The judges found that taken together, they represent a systematic attack on fundamental workers’ rights in a democracy rights. Effectively there is a widespread management policy of “union busting”: threats and actions against workers’ rights of association. In one common form that such anti-worker activity takes, the company forms, or recognizes, its favored trade union and obliges all its workers to be members of that trade union. The company also exercises violence to make workers terminate their membership in other trade unions. That management considers not under its control. In this way the company also creates horizontal conflict between workers. Such conflict negates the possibility of strong, united worker pressure on management for better pay and conditions. The company has

many other ways to create horizontal conflicts i.e. by offering higher position with higher wage to union leaders so they would leave the union; mass lay off in which the leaders of the union were amongst them who were laid off.

More direct methods were recounted to the Tribunal judges: threats, intimidation, harassment and even including visits to the workers' homes. Workers are also criminalized through legal processes instituted by police officers who appear to favour the companies when there are disputes, especially when there are demonstrations and/or strikes. The extent of such actions revealed by witnesses before the Tribunal appears to indicate there is corrupt collaboration between certain companies with law agencies to build hostility against trade unions and their leaders. These measures appear to constitute an abuse of legal process in the interest of certain groups for illegitimate objectives: the denial of workers' rights.

The policy, and practice, of union busting as discussed above represents a deliberate denial of the Freedom of Association Protocol agreed to by the Indonesian government, trade unions and companies, and is a violation of workers' freedom to associate, organize and assemble (as guaranteed by arts. 19-22 of ICCPR) and the violation of fundamental right specifically entitled to workers i.e. the right to strike to collective bargaining (article 8, especially para.d of ICESCR).

8. Crimes against Integrity of Women Workers

Many of the complaints brought to the Tribunal in the evidence presented about the conditions of workers in the factories involved violations and crimes against women workers. The judges found that such violations and crimes include sexual harassment; refusal of menstruation leave, or the requirement that women undergo humiliating "inspections" to justify their application for such leave; women workers are prohibited from getting pregnant in their first year and, if they do so, are subject to discharge or other punishments such as not being allowed to take leave to take care of her sick child. These are violations of the right to marry and to choose a partner freely without any pressure

from anyone; of the rights of reproduction; and they are also violations of article 11, para. 2, CEDAW which stipulates the prohibition of discrimination against women on the ground of pregnancy, marriage, etc.

9. Intentional State failure to protect the workers

The judges found facts that demonstrate the failure of the Indonesian state to provide legal protection for workers, e.g. the state provides regulations that allow company owners great advantages vis a vis workers while ignoring the disparity in their economic positions (minimum wage suspension); state juridical and police/army institutions have demonstrated bias in protecting business interests instead of remaining neutral; the state has failed to adequately control/sanction gangs and/or paramilitaries which represent a "force multiplier" favouring business interests and causing fear and even injury amongst workers; the state has failed to exercise its duty to act as a protective supervisor; state only passively waits for workers complaints and even then the perpetrators of violations of human rights and crimes under law enjoy impunity from government sanctions.. If there is ever legal process in response to the complaints, it would take long time and the result would be a non-binding memorandum of services that the companies should comply with but often do not; finally, there are known instances where the judge in Industrial Relation Court, whether ad hoc or career judge, are prone to bribery and corruption.

Based on the above findings and considerations, this Peoples' Tribunal

CONCLUDES:

- 1 The general situation of workers in the Indonesian part of the global garment supply chain is a matter of great concern. There are significant deficits between their working conditions and the internationally recognized standards for work with human dignity. There are clear indications that work is becoming more precarious because of a trend toward short term contracts. The nature, extent and long duration of continuing violations of garment workers' rights is indicative of a systematic violation of their fundamental right to a decent life lived with human dignity.
- 2 The poor conditions of the garment workers results from violations by the suppliers (factory owners and managers) of the Indonesian Constitution, Indonesian Labor Law, and the unjustified use of Indonesian criminal law against workers and their unions. Furthermore, the conditions of which we have been informed also violate many international normative standards, e.g. the Universal Declaration of Human Rights, ILO Conventions, the International Covenant on Social, Economic and Cultural Rights.
- 3 These violations are the result of a structure of commercial transactions which follow the logic of business (profits) while disregarding the human rights of the workers. Given the increasingly dominant position of the brands and their search for low cost supply, Indonesian factory owners and managers are driven to violating the laws and other standards for fear of losing orders or even the relocation of production to another area or country.
- 4 The brands have generally failed to use their position of dominance to ensure that the conditions of workers meet the standards to which they are entitled. Instead they have taken huge profits from their advantageous position, while refusing to accept responsibility for the transgressions of their suppliers. This is an unjustified position as the brands work closely with the suppliers, enter contracts with them and are largely responsible for all aspects of the production other than the actual manufacture of the garments. There is joint benefit in the supplier-buyer relationship and the opinion of the Tribunal is that there should be joint responsibility, a concept recognized in other systems of law and even reflected in the UN Guiding Principles on Business and Human Rights.
- 5 Like many other governments of countries with garment industries, the Government of Indonesia appears to have been more concerned with the growth and development of the economy than the human rights of the workers who would make that

possible but would not receive a fair share as a result. We were surprised to learn of the legislation making suspension of the minimum wage a relatively easy process, and one that is not uncommon. Recently, in one province 65% of applications for suspension were approved.

- 6 The Government's legal institutions do not function in a manner which protects the rights of workers adequately, and in some situations involving Government agencies such as the police, the interests of employers appear to be favoured over those of the workers. The principle regulatory agency dealing with industrial relations disputes, the Industrial Relations Court, appears incapable of effectively protecting the interests of the workers in an expeditious, independent and transparent manner. The resolution of cases is often reached after an excessive elapse of time; the cost of pursuing a matter to final resolution is high and deters workers from doing so; decisions favourable to the workers are often not implemented so that the process is seen to be biased in favour of employer interests. Several cases of 1) proven corruption or 2) obvious conflict of interest involving IRC judges further demonstrate cause for concern about the independence of the IRC. These matters may explain the worrying trend in the decreased use of the IRC in the past three years as cases taken to it have declined by about 30%, thus leaving unresolved disputes to fester.
- 7 In an industry employing a high percentage of women, we find patterns exist of discrimination and violation of their rights, e.g. they are often denied their legal entitlement to menstrual leave, and even when it is granted it may be after going through the humiliating process of showing the medical officer the inside of their under pants to prove their application for leave is valid; first year workers must sign a contract which stipulates they must not become pregnant or they will be terminated; there are reported frequent instances of sexual harassment; women are in general placed in certain work categories only, all of which are lower paid than some of the categories reserved for men.
- 8 Poverty wages are a crucial issue for the garment workers. The minimum wage is far below what is needed for a decent life, and many workers in the garment industry receive less than the minimum wage. The lack of a living wage has a disastrous effect which ripples through the family, the community and the nation. There can be no justification for ignoring this social tragedy which has continued too long. The living wage must be a family wage (3 members) not just a wage calculated on the needs of the single worker as is the case now with the Indonesian minimum wage calculation.
- 9 The living wage concept has now received support at the highest levels in international discourse. We are aware that the Berlin Round Table Conference (November

2013) was held to work on a program for implementation of the living wage in the garment industry. The conference attracted representatives of all the industry stakeholders and was sponsored by the German and Dutch governments. There is now a solid foundation in Indonesia to build on the accepted practice of linking wages to the needs of the worker through the KHL. It is an opportune time for negotiations involving government, unions, brands and factory owners/managers to sit around a table and negotiate a living wage.

10 While a Freedom of Association Protocol applies in Indonesia, we were made aware that the right to form or to join a trade union was often violated. Union organizers, activists, officials and even members are harassed, intimidated and victimized. There appears to be little protection against such activity by government or factory management who, it seems, are only too happy for this to happen and, in some cases, are directly involved. This situation is a major factor in the inability of workers to obtain decent working conditions and increased wages. Given this situation, it is not realistic for the brands to maintain that unions should negotiate the content of the living wage with employers and the government. It is of great concern that there appears to be a significant increase in deliberate, organized "union-busting" in the garment industry.

11 Collective bargaining is the traditional method for workers to try to offset the power of employers. It is a foundational right for workers. In the Indonesian garment industry it is often an empty right. Managements will not bargain, or if they do so they cannot be held to the agreement except when a strong case is taken to the IRC, although workers' success rate there is very low compared to that of the employers. We understand that proceedings in the court brought by workers often drag on for a substantial period.

12 Government has a responsibility to ensure the workers are free to exercise their rights. We are concerned that workers and unions report that members of the military and of the police, and members of preman para-military gangs have been involved in incidents of assault, harassment and intimidation of workers who were engaged in legal activities.

RECOMMENDATIONS

The decision of the Indonesian People's Tribunal, with a clear identification and categorization of the specific, direct and joint, responsibilities of the main actors, is only one component of the role and the objectives of a Tribunal established to promote the raising of consciousness and of the concrete accessibility of all the members of the people of the garment industry to their fundamental rights.

While fully aware of the inevitable "soft" character of recommendations, they are proposed to represent a platform and a road-map, whose success will certainly be principally the result of many and long struggles.

What is formulated here for the Indonesian scenario of the garment sector must therefore be received and utilized:

- in strict integration with what was proposed for the countries of Sri Lanka, Cambodia, India, as well as for the other peoples who are part of the global chain of the garment industry;
- in the broader context of the many movements (including those who are supporting Ecuador led States initiative for a similar claim in the context of the UN Commission for Human Rights in Geneva in these same days) which are engaged, with their struggles and their doctrinal research, in the challenging task of dismantling the impunity of corporate power; to make it accountable to the binding obligation to respect and promote human and peoples' rights, which is the mandatory criteria for recognition of recognize the credibility of their policies of purely economic development.

To all the stakeholders in the garment industry

1. The recognition and the implementation of the living floor wage as defined, developed, updated by the AFWA must be the joint and the urgent responsibility of the Government, of all the dominant brands, of the factory owners and suppliers. As the concrete expression of accessibility to a fundamental human right, a fair living wage must be considered an urgent and mandatory step, in compliance with the binding normative principles of the national Constitution as well as of the International Covenants subscribed to by Indonesia.
2. Because of their critical importance for assuring the independence of workers in the expression, the defence, the promotion of their fundamental rights, the Government of Indonesia must give their high priority to assume a leading role (in compliance with the constitutional norms) in promoting the collaboration with the dominant stakeholders of the garment sector, for the recognition and the implementation of the two basic rights of Freedom of Association and Collective Bargaining.

To the Government of Indonesia

3. Given the evidence provided to the People's Tribunal on the failures as well of the abuses of the national judicial system (including the Industrial Relations Court) which is most often biased against the rights of the workers and in favour of the brands and of manufactures, the Government should give high and urgent priority to assure the independence of the competent Courts, and to guarantee the timely and fair solutions of the cases of violations presented by the workers, as far as they are related to their activity for the defence and promotion of their right to living fair wages, freedom of association and the right to bargain collectively.
4. A specific and urgent attention of the Government appears to be mandatory in controlling the abuses and the violence of the police and military forces, as well as of the paramilitary groups which are involved in the process of intimidation and victimization of the workers and of their legitimate representatives, when they are exercising their rights, as well as of their families.
5. The Government must invest the resources which appear necessary to develop the basic social and health services which are essential for assuring the sustainability of fair living policies across the regions of the country, with specific attention to the cases of delocalization of the factories, and of the evidence of an undue application of short-term contracts by the manufactures.
6. The failure of the Government in its duty of supervising and timely monitoring the violations of the labour laws, and of the delays or denial of the above mentioned workers' rights, must be addressed with investments leading to a fair availability of properly trained and personnel who are not prone to corruption.

To the brands

7. Because of their dominant position, the brands should be first actors in the promotion of binding policies based on living floor wages: the declared readiness to activate pilot projects must be asap translated into a systematic implementation of a living wage based strategy: reliable data are already available to show that, besides being a due action for the respect of human rights, such policy is highly compatible with the goals of an economic sustainable activity.
8. To ensure the credibility of their willingness to be positive actors in the promotion of decent working conditions which coincide with the respect of a life in dignity, the brands should assure a true transparency in their auditing and training activities, by favouring as much as possible the participation of independent groups who assure both reliability of data collection and reporting, as well as a close connection with workers and their representatives.

To the Unions

9. The growing capacity to be active promoters of action favouring the degree of conscience and autonomy of the workers which has been documented over the last years could be further strengthened by looking for a more effective coordination of action, both in the struggles as well as in the dialogue with the dominant stakeholders of the garment sector; and with the Government.
10. The present situation of gender discrimination which has been documented to the Tribunal should be challenged and reversed also with a much stronger representativeness of women in all levels of the institution and activities of the unions, taking specifically into account that the greatest majority of the workers are women and their living conditions are the most affected.

To ILO

11. Because of the critical importance, but also of the great weaknesses, of the workers in the garment sector; and in consideration of the potential positive developments of the Indonesian scenario in this field, a specific, significant investment of resources in Indonesia could have a decisive role in the implementation of all the above recommendations.

To the NGOs active in Indonesia

12. This People's Tribunal could not become a reality, without the contribution of resources and competences by NGOs from various countries. Their fundamental role in assuring an independent, influential, critical bridge between the home country of the brands and their policies in Indonesia must be further strengthened and become more effective. This would result if the relevant NGOs would transform their individual collaboration into a true network of actions and of knowledge, which would have a decisive and specific impact on the effectiveness, the transparency, the implementation of the auditing and monitoring activities, as well as on the information and training of the needed competences in human rights among the workers.

BIOGRAPHY

JURY

Sri Lanka

Mary Shanti Dairiam

Mary Shanthi Dairiam is a Malaysian human rights and women's rights advocate and United Nations official. Since 2004, she is on the UN's Gender Equality Task Force and the Committee on Elimination of Discrimination Against Women. From 2004 to 2008 she was a member of the UN's CEDAW committee, within which she was appointed Rapporteur in January 2007. She is the founder and a previous director of International Women's Rights Action Watch – an Asia Pacific, regional, independent, non-profit NGO that collaborates with national women's groups, governments, inter-governmental bodies and academic institutions, to monitor and facilitate the implementation of the UN CEDAW Convention. The programme works in fourteen countries of Asia and coordinates international advocacy through networking with women throughout the world.

Rene E, Orfeneo

Dr. Ofreneo is Professor XII and Former Dean of the School of Labor and Industrial Relations (SOLAIR), University of the Philippines. He is a seven-time recipient of the "International Publication Award" of the University of the Philippines. He is one of the recipients of the UP Centennial Professorial Chair for 2009-2010. He served as an Undersecretary for Labor Relations in the Philippine Department of Labor and Employment in 1997-98. In 2010, he assisted the ITUC/Asia-Pacific and LOFTF in their labor law reform assessment project for Bangladesh, Cambodia and Nepal. He has served as Research Consultant of the Asia-Pacific Regional Organization (APRO) of the Union Network International (UNI) since 2000. He was also on the Board of the Asia Monitor Resource Center (AMRC) in Hong Kong, 2001-07. He served as Executive Director of the Fair Trade Alliance, a unique industry-labor-CSO multi-sectoral coalition and social partnership initiative in the Philippines, 2002-2008.

Hameeda Hossain

Dr. Hameeda Hossain is a women's rights and human rights activist from Bangladesh. She is founding member and currently chairperson of Ain O Shalish Kendra (ASK), a national legal aid and human rights organization based in Bangladesh. She is also a member of Sramik Nirapotta Forum (Workers' Safety Forum), a support network. She has been involved in drafting Bangladesh' Alternative Report to UNCEDAW in 2004 and 2011.

Kate Lappin

Kate Lappin is a Regional Coordinator of Asia Pacific Forum on Women, Law and Development, a network of organisations from all over the Asia-Pacific region. Ms. Lappin also served as a campaign coordinator for Amnesty International Australia's campaign "Stop Violence Against Women."

TeoSoh Lung

Teo Soh Lung is a prominent lawyer and a human rights activist from Singapore. In 1980 she had been one of the first collaborators of the Catholic Centre and its foundation and offered her services to the foreign workers especially in its activities regarding Malaysians and Filipinos.

Sonali Gunasekera

Sonali Gunasekera is a freelance consultant to the garment industry and has extensive experience auditing factories and building the capacity of NGOs. She was the convenor of the Ethical Trading Initiative, and is an expert on gender and violence.

BIOGRAPHY

JURY

Cambodia

Gill H. Boehringer

Professor Boehringer is Former Dean of Macquarie Law School, Macquarie University, Sydney, Australia, and Former Director of the Center for the Critical and Historical Study of the Common Law. Currently, he is Honorary Associate, Macquarie Law School. He is also a member of the Editorial Committee, *Alternative Law Journal* (Australia) and former member of the Editorial Boards of the *Australian Journal of Law and Society* and the *Alternative Criminology Journal* (Australia), and an Editorial Consultant to the international journal, *Contemporary Crises*. He is the co-editor of a monograph: *Critique of Law* and the author of several chapters in books. Prof Boehringer has published over two hundred articles on a wide range of subjects including worker health and safety; human rights; crime, policing and prisons; law, state and ideology; lawyers and the rule of law; mental health issues.

Nhean So Munin

Mr. Munin is Arbitrator on Arbitration Council (AC). He has been the National Legal Advisor/Land Law Expert for East-West Management Institute, and the Legal Consultant for land law dissemination and legislative drafting projects of UNICEF, GTZ-LMAP, DANIDA-NRLMP, ADB-EWMI and EWMI-DRL-ECOSORN-USAID. Mr. Munin also has been Local Consultant on good governance (D&D/DFGG) projects of GTZARDP and World Bank-Mol-AC/MoLVT, and served as legal trainer and interpreter for USF-CLEC.

Prok Vanny

Ms. Prok Vanny is a Freelance consultant on Gender and Social Development issues. In this capacity she has worked with the ILO on Gender training and Danida/DFID/NZAID for CSPPM and NRMLP from January to March 2010. Previously she had acted as Cambodia's National Coordinator for UNIFEM CEDAW South East Asian Program from 2006 – 2009 where she successfully helped with engaging the government into ratifying the Optional Protocol to CEDAW. She holds a position on the board of directors for many national NGOs including, Star Kampuche, KWWA, NAPA, DKA, and Nun and Law Woman Association.

Kek Pung

Dr. Kek Pung has worked as the President of the Cambodian League for the Promotion and Defense of Human Rights (LICAHDO) after founding it in 1992. She was instrumental in the signing of Paris Peace Agreements on 23 October 1991 between Prince Sihanouk and then President of the opposition coalition Hun Sen. She is the Chair of the Cambodian Working Group for the establishment of regional (ASEAN) human rights mechanisms since 2000. She has an express concern in Women's Rights, founding and chairing the Cambodian Committee for Women in 2000 (CAMBOW) a local network of 32 NGOs engaged in advancing the women's causes, and has been working as the Chair of the NGO-CEDAW Network of 72 NGOs from September 2009 to June 2011. She was also a consultant for UNIFEM for CEDAW South East Asia Program on 2004.

Gianni Tognioni

Gianni Tognioni has been Secretary General of Permanent People's Tribunal since 1979. He is the currently the Head of the Laboratory of Clinical Pharmacology and Coordinator of the Department of Cardiovascular Research for the Istituto Mario Negri in Italy.

BIOGRAPHY

India

Marina Forti

Marina Forti was born in Milan, Italy, in 1959. In Milan she started her professional life at Radio Popolare. A professional journalist since 1983 she has been associated with the daily newspaper "Il Manifesto". She covered issues related to immigration, sustainable development and general foreign affairs, serving subsequently as Chief Editor and Foreign Editor. For her column "TerraTerra" in 1999 she was awarded the "Premiolino." Her book *La signora di Narmada. Le lotte degli sfollati ambientali nel sud del mondo* (Feltrinelli 2004) was awarded the Elsa Morante Prize for Communication, 2004.

Mary E. John

Mary E John is currently Senior Fellow at the Centre for Women's Development Studies in New Delhi. She was Director of the Centre from 2006-2012 and before that Deputy Director of the Women's Studies Programme at Jawaharlal Nehru University from 2001-2006. She has written and lectured widely in the field of women's studies and feminist issues. Recent publications include a co-authored study on adverse sex ratio, *Planning Families Planning Gender*; the volume *Women's Studies in India; A Reader* (Penguin), and guest editing an issue of the journal *Seminar* on Higher education in the time of reforms (August 2011).

Coen Kompier

Coen Kompier is Senior Specialist at the ILO South Asia Decent Work Team. He has been working at the ILO in the field of international labour standards since 1994. He had been working in Northwest and East Africa until 1999, was based in Dakar (Senegal) and Addis Ababa (Ethiopia). After stints at ILO headquarters in Geneva and the ILO International Training Centre in Turin, he has been based in New Delhi since late 2000, covering eight countries in South Asia. His responsibilities cover all aspects related to ILO Constitutional and labour standards matters.

Hemalata Mahishi

Hemalata Mahishi is a practising advocate in Bangalore since 1975. She is also the author of 14 books in Kannada mainly relating to women and law. She is an external member in the Sexual Harassment Complaints Committee of several institutions including Indian Institute of Science, Reserve Bank of India, Bangalore University, and Kannada University, Hampi. She is also the president of the Karnataka Federation of Women Lawyers and also a member of the Board of Directors of Institute for Social and Economic Change. She is an activist interested in issues concerning women.

Utsa Patnaik

Utsa Patnaik has taught at Jawaharlal Nehru University, New Delhi. Currently, she is a national fellow at Indian Council of Social Science Research which is affiliated to Jawaharlal Nehru University. Utsa Patnaik's main areas of research interest are the problems of transition from agriculture and peasant predominant societies to industrial society. She has authored several books including *Peasant Class Differentiation - A Study in Method* (1987) *The Long Transition* (1999) and *The Republic of Hunger and Other Essays* (2007).

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Indonesia

Professor Gill H. Boehringer:

Professor Boehringer is Former Dean of Macquarie Law School, Macquarie University, Sydney, Australia, and Former Director of the Center for the Critical and Historical Study of the Common Law. Currently, he is Honorary Associate, Macquarie Law School. He is also a member of the Editorial Committee, *Alternative Law Journal* (Australia) and former member of the Editorial Boards of the *Australian Journal of Law and Society* and the *Alternative Criminology Journal* (Australia), and an Editorial Consultant to the international journal, *Contemporary Crises*. He is the co-editor of a monograph: *Critique of Law* and the author of several chapters in books. Prof Boehringer has published over two hundred articles on a wide range of subjects including worker health and safety; human rights; crime, policing and prisons; law, state and ideology; lawyers and the rule of law; mental health issues.

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Haris Azhar:

Haris Azhar has worked for KontraS, a nationwide human rights NGO based in Jakarta since 1999. He started as a volunteer for the Advocacy Division and continued as a staff member of the Monitoring & Research Bureau before going on to become Head of Documentation Research Bureau, Head of Research, Investigation and Database Bureau, and then the Vice Coordinator of KontraS before becoming the Coordinator in 2010.

Lita Anggraini:

Lita Anggraini has been working with marginalized domestic workers of Indonesian society. Her work includes educating workers, raising public awareness of the issues that affect them, and changing the laws so that the state recognizes, appreciates, and protects their rights as workers, persons, citizens, and women.

Nori Andriyani:

Nori Andriyani works in several development agencies. Her areas of interest and expertise are sociology, women's studies, violence against women, community development as well as project monitoring and evaluation. Previously she was involved in grassroots work mainly in organizing and advocating for urban poor and peasant communities. Later she put more attention on popular education and organizing women workers in greater Jakarta (Jakarta, Bogor, and Tangerang). She has done her Masters from Memorial University of Newfoundland, Canada, in 1996.

List of Petitioners for Each Tribunal

SRI LANKA, 2011

Sri Lankan Garment Workers

INDIA, 2012

1. Hind Mazdoor Sabha (HMS)
2. Indian National Trade Union Congress (INTUC)
3. All India Trade Union Congress (AITUC)
4. Centre of Indian Trade Unions (CITU)
5. Hind Mazdoor Kisan Panchayat (HMKP)
6. New Trade Union Initiative (NTUI)
7. Garment and Allied Workers Union (GAWU)
8. Garment and Textile Workers Union (GATWU)
9. Karnataka Garment Workers Union (KGWU)
10. Garment Labour Union (GLU)
11. Garment and Fashion Workers Union (GAFWU)
12. Society for Labour and Development (SLD)
13. SAVE
14. CIVIDEP
15. FEDINA
16. Alternate Law Forum
17. Vimochana
18. Maraa
19. Asia Floor Wage Alliance

CAMBODIA, 2012

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

INDONESIA, 2014

1. GSBI
2. FSBI
3. SBSI'92
4. SPN
5. LIPS
6. TURC

List of People who gave Testimonies and People's Advocates

SRI LANKA, 2011

Workers

1. Anoma Kanthi Jayathilake, worked for Global Bagging (Pvt) Limited at Biyagama Free Trade Zone (north of Colombo) for 10 years.
2. Dhammika Damayanthi, 39, worked for Bratex Garment factory, owned by Hong Kong investors at Katunayake Free Trade Zone. She has worked here for 19 years. She started work at 18.
3. Chryshanthi Weerasinghe, working as an Embroidery Machine Operator for 6 years at FTZ, Colombo.
4. Srimathi, she has worked with Summit Industries Private Limited, a garment manufacturing company in Ratnapura district, 100km South-East of Colombo. She worked for 8 years.
5. Nadeeka Priyadarshini, 30, has worked with several companies at FTZ. She started work at 18.
6. Swarna Malkanthi, 29, worked with Nygai Company at FTZ. She started working at 20.

Experts

1. Dr. Pratima Paul Majumdar, senior fellow, Bangladesh Institute of Development Studies (BIDS)
2. Mr. Saranapala, Secretary, United Federation of Labour
3. Ms. Anandi, Secretary, the Red Flag Women's Movement (the women's section of the Red Flag Union)
4. Mr. Ashim Roy, General Secretary, New Trade Union Initiative
5. Mr. Jeroen Merk, Clean Clothes Campaign

People's Advocate

Leon Joseph Arulvasagam

CAMBODIA, 2012

Workers

1. Ms Heap Kimhour
2. Ms Gnuon Chheng Hour
3. Mr. Hang Kimseak
4. Ms. Suon Sokhunthea
5. Mr. Ek Sopheakdev

Experts

1. Mr. Kem Ley, political analyst
2. Mr. Reim Bora, President of the Federal Union of Khmer Democracy Workers
3. Mr. Bent Gehrt, Workers' Rights Consortium, Cambodia
4. Ms. Anannya Bhattacharjee, International Coordinator, Asia Floor Wage Alliance
5. Christopher Riddselius, Fair Trade Centre

Brands

1. Harry Nurmansyah, Adidas
2. Edel Anit, Puma

People's Advocate

1. Lim Thida
2. Heng Bon
3. David Welsh
4. Ashim Roy

INDIA, 2012

Workers

1. Vijay Kumar, 23, Worked at Pearl Global Industries Limited (makes garments for GAP and NEXT) for 7 years in Gurgaon
2. Akshay Kumar, 36, worked at Richa & Company, Udyod Vihar, Gurgaon. He has been working in garment industry for 15 years.
3. Arvind Kumar, Pearl Global Industries Limited, Gurgaon. Started working at the age of 15.
4. Vinod Kumar, Modelama Export Limited, Gurgaon. He is a post graduate and has started working in the industry 3 years ago.
5. Sanjay Kumar, 32, started working in garment industry at 18.
6. Vakeel Miyan, 35, Ludhiana
7. Anuradha Verma, Viva Global, Gurgaon. Worked with Viva Global for 4 years.
8. Nagendra Singh, Viva Global
9. Ashok Kumar Singh, Modelama Export Limited. Working with Modelama for 6 years.
10. Ramkripal, 30 Choice Clothing Company Pvt Ltd, Gurgaon. He started work at 15.
11. Ms Jesurani, 21, works in Tirupur. She started work at the age of 15.
12. Ms Thulasi, 21, Tirupur: She joined in a spinning mill in Tirupur when she was 15.
13. Ms Karpakam, Tirupur. She started working at a textile mill at 13.
14. Ms Sudha, Tirupur, Coimbatore. She started work in a private textile mill at the age of 15.
15. Mallige, 38, Bombay Rayon Fashions Ltd, Bangalore for 8 years.
16. Bharathi, 39, Bombay Rayon Fashions Ltd, Bangalore for 7 years.
17. Yashoda, 40, worked at Srinagar, Bangalore
18. Angel, 25, worked at Nayundahalli, Bangalore
19. Ms Nagu, 23, tailor, Shahi Exports, Bommanahalli, Bangalore. She worked for 5 years.
20. Rehana Begum, 38, Instyle, Tavarekere. She started working at 13 as a helper.
21. Chikkaiah, 32, Quality Controller, AI Enterprises, Bommanahalli, Bangalore. She started working at the age of 20.
22. Kamamma, 38, has been working in the industry since 12 years.
23. Lakshmi, 40, checker, has worked with Shalini Company for 7 years. She started working at 12.
24. Sakamma, 33, checker. She started working at 25.

Experts

1. Jeroen Merk, Senior Researcher, Clean Clothes Campaign, The Netherlands
2. V. Prakash, Supreme Court Advocate, Chennai
3. Vijay Bhaskar, Madras Institute for Development Studies
4. R. Ramesh, SAVE, Tirupur
5. Nandita Dhawan, Professor, School of Women's Studies, Jadavpur
6. Ashim Roy, General Secretary, New Trade Union Initiative
7. Sudershan Rao Sarde, Regional Secretary, Industriall
8. Michael Fernandes, President, HMKP

Government

Gurudas M Bhat, the Additional Labour Commissioner from the government of Karnataka

Brands

1. Niklas Klingh, Production Office Manager India & Sri Lanka, H & M and Tobias Fischer, Relations Sustainability Manager, H&M
2. Sent a Statement: Adidas

People's Advocate

1. Vikash Barnwal, Society for Labour and Development
2. Arvind, Narrain, Alternate Law Forum

INDONESIA, 2014

Workers

1. Suparmi, 45, worked at PT Crystal Garment for 12 years as Quality Control.
2. Muhtarim, works at PT ADI (Industrial Dwimitra Asia) at Tangerang District since 2009.
3. Herdiansyah Latief, 39, works at PT Olympic Garment International in Kawasan Berikat Nusantara/KBN Cakung (Nusantara Bonded Zone).
4. Kokom Komalawati, 35, warehouse staff at PT Panarub Dwi Karya
5. Oji Sahroji, 33, worked at PT Rismar Daewoo Apparel.

Experts

1. Anannya Bhattacharjee, International Coordinator, Asia Floor Wage Alliance
2. Erica Smiley, Campaign Director, Jobs with Justice & United Workers Congress, USA
3. Djoko Heriyono, SPN, Indonesia
4. Hary Prabowo. INDIES (The Institute for National and Democracy Studies)
5. Indrasari Tjandraningsih, Peneliti, AKATIGA – Pusat Analisis Sosial, Bandung
6. Jeroen Merk, London School of Economics
7. Ismet Inoni, GSBI
8. Surya Tjandra, Trade Union Rights Centre

Brands

1. Payal Jain, Social Sustainability Responsible, Global Production, H&M and Oerum Anker, Country Manager, H&M, Indonesia
2. Adelina Simanjuntak, Area Manager, Social & Environmental Department, Adidas

People's Advocate

1. Ashim Roy, founding General Secretary of the New Trade Union Initiative. He is the President of Garment and Textile Workers Union in the southern state of Karnataka, India and member of the International Steering Committee for Asia Floor Wage Alliance.
2. Alghiffari Aqsa, a staff lawyer in the community legal empowerment department of the Jakarta Legal Aid Institute (LBH Jakarta) in Indonesia.
3. Asfinawati, joined LBH Jakarta (Jakarta Legal Aid) in 2000, and in August 2006 she was elected to be director of LBH Jakarta (Jakarta Legal Aid Institute) for 2006 to 2009.
4. Johannes Gea, a staff lawyer as a Public Interest Lawyer at Jakarta Legal Aid Institute from 2012 until now. Currently, Johannes Gea work at Case Handling Division which focuses on Labour Cases.