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Session on

LIVING WAGE AS A FUNDAMENTAL HUMAN RIGHT AND THE ROLE OF INTERNATIONAL INSTITUTIONS

Conclusion of National Peoples' Tribunals in Asia

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I. INTRODUCTION

1.1 The historical framework

This Session of the Permanent Peoples' Tribunal (PPT) concludes a long process of mobilization and investigation promoted and backed by the Asia Floor Wage Alliance (AFWA). The purpose and the objectives of the AFWA were defined through a collective consensus building process among Asian labour movements. This led to the formulation of a methodology for the calculation and establishment of a cross-country floor for a "living wage" in the garment sector.

The struggle entered a new phase after the public launch of the AFW campaign on 7 October 2009, the World Day of Decent Work. This second phase included numerous meetings with brands, multi-stakeholders and international institutions providing ground for the gradual legitimization of the AFW as a credible formulation for a living wage (a minimum living wage) in the Asian garment industry.

As part of this process and in order to take the campaign forward, AFWA, in collaboration with the PPT, organized a series of National Peoples' Tribunals (NPTs) on Living Wage for Garment Workers in Asia Garment Industry between 2011 and 2014. The first NPT in the series, the Tribunal on Minimum Living Wage and Decent Working Conditions as a Fundamental Human Right, was organized in Colombo, Sri Lanka, on 27-30 March, 2011. This was followed by the NPT on Living Wage as a Fundamental Right of Cambodian Garment Workers, organized in Phnom Penh, Cambodia on 5-8 February 2012. After this, the NPT 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 held in two of the regions where most of the production takes place, the National Capital Region (NCR) around Delhi and in Bangalore in the State of Karnataka. Finally, the Indonesian Peoples' Tribunal on Living Wage and Decent Working Conditions for Garment Workers as Fundamental Rights was held in Jakarta, Indonesia on 21-24 June 2014.

The close collaboration with the PPT, which assured its presence in the juries that presided over the hearings, was intended to give the AFW campaign the doctrinal and methodological support of the experience accumulated during the PPTs activities since 1979, having as a reference framework the Universal Declaration of Peoples' Rights (Algiers, 1976). For the full documentation on the PPT Statute and its results, see: www.tribunalepermanentedeiopoli.fondazionebasso.it.

Since the late 1980s, the interest and the judgments of the PPT included specifically 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 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 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 Right, 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 global 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 rights. Perpetrators of violations of these rights, in the many and various forms that 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 Permanent Peoples' 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 the passive role of victims. In the process, the PPT rehabilitates their dignity through the recognition of the truth of their suffering.

1.2 The procedure

The submission of the Asia Floor Wage Alliance to the concluding Session of the four hearings was recognized by the PPT not only as a coherent implementation of its goals, but even more importantly as a significant and original contribution to the development of a renewed vision of human and peoples' rights. Such rights need to be affirmed and made attributable to their subjects, and given priority in those areas which remain marginalized or denied in the present scenarios of binding international law. The experience of extensive participation and documentation provided by so many testimonies and experts in the years long process is documented in the report of the four hearings and must be considered an essential part of this judgment (see Annex 1). Its main points are summarized in the submission (Annex 2), whose core purpose is worth being reported here:

“The ILO Declaration on Fundamental Principles and Rights at Work defined four core labour standards:

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

We find the lack of mention of wages in the core labour standards to be a very serious gap, given that the NPTs show the intimate connection between wages and human rights. If we examine the four core labour standards, we find that all four are intimately connected to a living wage. We have already shown earlier the connection with Freedom of Association. Forced labour is impossible to eliminate without a minimum living wage because as we show, economic needs force workers into forced labour. Child labour is impossible to eliminate without a living wage because children work when a family cannot survive in the absence of a minimum living wage. Finally, as the garment industry primarily employs women workers it

is prone to discriminatory poverty wages due to the vulnerabilities faced by a labour force composed mainly of women, as the NPTs have extensively documented. Therefore, with regard to the fourth core labour standard, it is impossible to eliminate discrimination without protecting vulnerable workforces through the delivery of a minimum living wage.

Therefore, we propose that the minimum living wage be included in universal core labour standards. The denial of a minimum living wage as a right directly impacts on the realization of universal and indivisible human rights.

The public hearings of the Session took place in Colombo, Sri Lanka, in the Sri Lanka Foundation Institute, according to the program presented in the Annex 3.

By definition, this Session has assumed the report of Annex 1 as its main terms of reference, with respect to the facts which are considered in the judgment, their qualification, and the positions of the concerned parties who took part in the hearings (Governments, International organizations, mainly ILO, Brands).

The program of the Session therefore concentrated on an update of the situation in the four countries considered in the hearings, with the important inclusion of Bangladesh, whose critical significance is demonstrated by the tragedy of Rana Plaza, and subsequent events in that country. Thus the five sessions taken together, represent an indispensable and exemplary expression and integration of the key materials available on conditions of work and life of Asian garment workers at the present time.

1.3 Composition of the jury

The Jury was composed of the following members:

. **Gill H. Boehringer (Australia)**, who acted as President of the Jury, is Former Dean of Macquarie University School of Law, 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 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. Currently he is a member of the Monitoring Committee on Attacks on Lawyers of the International Association of People's Lawyers. In 2015 he has served on People's Tribunals in Australia, the Philippines and New York City and was an Observer for the PPT at a People's Tribunal in Washington, DC. He previously sat on the Cambodia and Indonesia PPTs on the garment industries in those countries.

Marina Forti (Italy): she started her professional life at Radio Popolare in the late '70s. 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*, on environmental justice and conflicts for the natural resources, 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. Her latest book is *Il cuore di tenebra dell'India* (Bruno Mondadori 2013).

Balachandran Gowthaman (Sri Lanka): he is currently working on a civil society support and strengthening program in Sri Lanka for MSI. Previously he was the Country Director for Oxfam Australia in Sri Lanka (2004-2010). During that time he was the Coordinator for ALaRM (Apparel-Industry Labour Rights Movement) which consisted of Unions, Women's Groups and NGOs working for the rights of the garment industry workers. He has conducted research and written on protecting labour rights during industry restructuring, sector specific living wage, GSP and WTO regulations.

Corinne Kumar (India): with an abiding faith in women's knowledges and all vulnerable wisdoms, Corinne is a woman deeply committed to issues related to women, human rights and justice. She has initiated and sustained groups at the local, regional and international level, whose core is a transformational politics that is rooted in more caring and compassionate communities. These include the CIEDS Collective and Vimochana, a women's collective, both based in Bangalore, India, the Asian Women's Human Rights Council, a regional network of women's and human rights organisations in the Asia Pacific region and El Taller International in Tunis, North Africa. She has contributed to several journals and books on the universality of the human rights discourse and on alternative imaginaries. Her more recent essays are in *Dialogue and Difference: Feminisms Challenge Globalisation* (Palgrave 2005) and *The Gift* (Athakor 2004). She has also edited several publications, the recent one being a four volume publication titled *Asking, We Walk: the south as new political imaginary*. She is sometimes philosopher activist: another of her enduring initiatives has been the movement of the Courts of Women. Organised across the world in different countries of the global south, the Courts of Women are Courts of Conscience which through the voices and visions of women who have been the victims, survivors and resisters to the escalating violence of our times, seeks to make unthinkable, violence against women.

Kalpana Sharma (India): she is an independent journalist, a columnist with *The Hindu*, and consulting editor with *Economic & Political Weekly*. In over four decades as a journalist specializing in developmental and environmental issues as well as gender, she has held senior editorial positions with *Himmat Weekly*, *Indian Express*, *The Times of India* and *The Hindu*. She is the author of "Rediscovering Dharavi: Stories from Asia's Largest Slum" and editor of "Missing: Half the Story, Journalism as if Gender Matters", "Whose News? The Media and Women's Issues", and "Terror Counter-Terror: Women Speak Out".

Udeni Thewarapperuma (Sri Lanka): she is a lawyer in women's rights and labour rights. She has been a women's rights and labour rights activist for fifteen years and has worked on gender equality with many organisations locally and internationally. She practised in the courts for many years and is a gender trainer for organisations, trade unions, and government. She is intimately aware about women workers' conditions in the Free Trade Zones. She has spoken about Sri Lankan women workers' issues locally and internationally.

Gianni Tognoni (Italy): Doctor of medicine and surgery, since 1969 Gianni Tognoni has undertaken basic, clinical, epidemiological and public health research in some of the most critical fields of medicine, such as cardiology, intensive therapy, neurology, psychiatry and oncology, publishing results in more than 600 articles in the most prestigious international journals. Among his activities he is a WHO consultant for the selection of essential medicines, founding member of the international society for independent information on pharmaceuticals, coordinator of projects on community epidemiology in countries in Central and Latin America,

as well as some in Africa. From his collaboration with the second Russell Tribunal to scientific activities he has actively worked in the fields of human rights, right to health, and rights of peoples. Since its establishment in 1979, he has been Secretary-General of the Permanent Peoples' Tribunal.

1 . 4 **Structure of the document**

The framework presented in Section 2, “The social crisis presented by the Asian garment industry is an Asian social crisis in need of urgent solution”, provides the overall background of the judgment as derived from the comprehensive consideration of the findings and decisions generated in the four NPTs. Section 3 presents (without substituting the details of Annex 1) a synthetic view of the facts, including the updates presented in this Session. Section 4 is dedicated to the main conceptual, cultural and juridical qualifications of the evidence presented to the PPT.

Section 5 presents the conclusions of the PPT with respect to the responsibilities for the violation of labour and human rights, and the recommendations which should be pursued to fill the unsustainable gaps which separate the garment workers from the full fruition of their human right to a wage capable of assuring a life in dignity.

II. THE SOCIAL CRISIS PRESENTED BY THE ASIAN GARMENT INDUSTRY IS AN ASIAN SOCIAL CRISIS IN NEED OF URGENT SOLUTION

The Permanent Peoples' Tribunal has received a wealth of information during the hearings over the past years which presents a picture of societies in a deep social crisis. We salute the sophistication of the research, the effectiveness of the individual and group presentations, and the courage and perseverance of all those engaged in the process of resistance and the eventual creation of a new democratic order.

The Social Crisis: Millions of Garment Workers Living in Misery

With up to 40 million workers on poverty wages, often extreme poverty wages, the Asian garment industry represents a systemic neo-liberal path into a social crisis. At the lower end of the global supply chain, garment workers—largely young rural, unskilled women with little education and desperate for employment, are at the mercy of “market conditions”. That is, the determination of the “brands” to source their supplies at low wage cost and factory owners who are willing to meet that demand even if it means paying poverty wages and sometimes taking steps to avoid paying the full amount legally required (e.g. wage theft; non payment; payment under the legal minimum).

Governments welcome the garment industry because it provides foreign investment, large-scale employment, and tax revenue. In order to retain the industry within their borders, governments play certain key roles according to neo-liberal ideology. First, minimal regulation of labor relations, including health and safety (as exposed in the Rana Plaza tragedy). But more importantly, regarding wages. While in each country there are legislative mandates regarding such issues, e.g. minimum wage requirements, little is done to enforce such labor standards. Second, making freedom of association—trade union organization difficult to achieve by establishing various bureaucratic hurdles, by sacking organizers and activists and limiting the possibility and efficacy of collective bargaining. Third, repression of resistance to this fundamental right by favouring employers and brands at the expense of the workers. Thus worker protests and demonstrations are often met by aggressive actions, including killings (Cambodia), by state forces, military and police. There are occasions when “goons” are allowed to attack workers with the same impunity enjoyed by state forces (Indonesia).

Further elements of victimization involve specific attacks on women (e.g. discharge if worker becomes pregnant; harassment of various kinds, including sexual).

Why do these facts amount to a social crisis?

Millions of workers and their families across the Asian region are working under conditions that make it impossible for them to have a decent life, to live a dignified human life including a family they can provide for. The *crucial factor is, amongst all other violations of their legal rights to which we have referred, the lack of a living wage*. Throughout the region the living wage is far higher than the legal minimum wage that is normally set at a poverty level.

Workers, as human beings, are entitled to the universal human rights to be found in many international instruments e.g. the UNDHR, and the many subsequent Conventions and ILO pronouncements specifying labor rights and standards going back to 1919. It is clear that throughout these instruments, the living wage was considered a human right. Unfortunately,

but unsurprisingly, in a system of “private enterprise” capitalism, wages are considered an economic category, essentially a matter for private sector determination, not to be considered a worker’s right.

Following on from this juridical denial of living wage as a human right, and the reality of the lack of living wages in the industry, millions of garment workers are left without other human rights such as health care, education, etc (see document from AFWA). The result is an underclass of working poor who have no decent life. This is growing in size and in the depressed conditions of work and life they are experiencing. At the same time suppliers continue to exploit them, while the brands are largely content to take their profits and do not significantly aid the workers to pressure state and suppliers for better conditions.

Recent research shows that the growth in inequality as is happening in the region, is a source of many social problems. Thus the high level of economic distress experienced by workers in the garment industry is bringing with it a social crisis, and perhaps a crisis of legitimacy for the political orders that have allowed such conditions to emerge.

The problem requires a systemic analysis

To properly understand this material, it is necessary to see what is happening as systemic, interlinked phenomena, not simply the failure of reforms, or the poor management of the state, or the greed of some of those with power and wealth. From the heaven of neoliberal ideology and media triumphalism on behalf of the success of “free trade” brought by neo-liberal globalization, it is clearly important to come down to the reality on earth: Asian societies, like so many others around the globe, have been devastated in a pursuit of profits backed up by the propaganda and coercive force of the state.

For some years there has been a general consensus on a neo-liberal ideology which effectively has seen the development at an international level of free market policies correlative to a reduction of expenditure of the state on social welfare and regulatory practices, increase in measures to reduce the effectiveness of trade unions, establishment of law reforms to make work more “flexible” (read precarious), and society more insecure for the mass of people. This neoliberal plan has been imposed undemocratically across the globe.

In Asian countries, this withdrawal or “thinning of the state” has been accompanied by an increase in the power and implementation of the coercive forces, the military and police. This is a necessary response to the imposition of the neoliberal plan: thus “Free Market, Strong State”. Such strengthening of coercive capacity does not result from random choices by governments. It is a necessary, structural response to the conditions that neo-liberal policies have dictated, and because for the big enterprises, foreign or domestic, private or public, profits come before people, and the people must be taught not to resist. For workers and peasants, the system now operating has been an unwelcome, undemocratic imposition that has destroyed lives, communities, trade unions and civil society groups, as well as introducing grave distortions in the economy. The state ignores the rights of the people in favour of the big enterprises. Illegal actions and violations of human rights are largely unpunished as the state provides impunity for the MNCs with which it is in alliance.

III. EVIDENCE PRESENTED

This Concluding session of the Permanent Peoples' Tribunal on “Living Wage as a Fundamental Human Right & the Role of International Institutions” heard the reports submitted by representatives of Asia's garment workers from Cambodia, India, Indonesia, Sri Lanka, plus a report from Bangladesh.

The National Peoples' Tribunals offered first hand testimonies of the conditions of the workers employed in the global garment industry, vividly illustrating what is at the one end of the global supply chain: mostly women workers, from poor rural backgrounds or from marginalized sectors of their societies, working long hours to support their families in dehumanising conditions and subject to harassment and humiliation.

The testimonies to the NPTs highlighted the general situation of the workers; poor wages, not sufficient to support workers and their families, as well as impossible working conditions. Testimonies before the NPTs also revealed systematic violations, wage theft, overtime made compulsory. The NPTs further highlighted a general pattern of attacks on the workers' right to unionize and widespread practices of union-busting.

Prevailing Asian structural discrimination, or unequal treatment based on personal differences/identities such as gender, has paved the path toward an unequal bargaining position which has affected women workers in enjoying the freedom of association to claim a decent living wage which recognizes the dignity of a human being. The pattern of human rights violations of garment workers is clear evidence of an unequal power relation between the female workers and others in the patriarchal structures of the industry (companies, brands, governments, male workers and trade unions).

Bangladesh

If there is one incident that shocked consciences worldwide and exposed the brutal conditions under which garment workers operate, it was the Rana Plaza tragedy in Bangladesh on April 24, 2013. The collapse of a building whose owners had violated multiple building and safety codes crushed 1132 workers and injured 2438. The missing figure is 332, one that must necessarily be added to the final death toll.

Two years after the collapse, the survivors or the next of kin of those who died have yet to receive the financial assistance promised, even though 85 per cent of it has already been deposited in the Prime Minister's Relief and Welfare Fund.

While the Rana Plaza tragedy became a galvanising moment whereby the inhuman aspects of the global garment export sector stood exposed, the changes in local laws, in their enforcement or in the attitude of the multinational companies sourcing goods from Bangladesh, has been unremarkable.

So while countries like the US and those belonging to the EU speak of a "sustainability compact" that would include worker safety and fair wages, in fact not much has changed. For one, the global brands shrug off the responsibility for the safety conditions in the factories to which work is subcontracted or the less- than- minimum wages that workers are paid.

While the Bangladesh Labour Act 2006 was amended in 2013 resulting in 464 new trade unions in the readymade garment sector, the preconditions for union formation and registration have been made more difficult.

Eighty per cent of garment workers are women. Most of them are not permanent. They have complained of sexual harassment, of the lack of established medical facilities to address reproductive health problems and not being allowed breaks even on days when they have their periods.

What is worse is that the promise of higher wages is linked with unrealistic production targets. For example, from 36 pieces an hour, in some instances targets have been raised to 120 pieces an hour.

These reports from Bangladesh emphasize that even tragedies of appalling proportions like Rana Plaza have not led to significant positive changes in law or working conditions for garment workers. Far from it, as the majority work in the unregulated sub-contracting sector, where they continue to face hazards in their work places and do not benefit from wage increases.

The multinationals have paid lip service to worker safety, but wages have not risen to anything close to the concept of a living wage. Furthermore, worker safety remains compromised as these companies or their local suppliers refuse to take responsibility for conditions where the work is sub-contracted.

The Bangladesh government has made efforts to increase vigilance on safety conditions in garment factories through a more stringent inspection regime. But chronic corruption and lack of adequate manpower has undermined the efficacy of these measures. In any case, the conditions in the unregistered factories, where much of the work is executed, fall outside the remit of these laws.

Cambodia

Cambodian garment workers won successive wages hikes after taking massively to the streets in late December 2013 and January 2014, effectively closing the entire industry for a week. Their wages increased from the equivalent of 61 to 140 US\$ (effective in 2016), a total increase of 130 percent compared to 2012. However, "this we obtained at the cost of a long struggle and the death of fellow workers shot and killed during the protests", a representative of the National Cambodian Alliance of Trade Union told this Tribunal. Repression was harsh; workers were attacked by armed soldiers with slingshot and batons in front of the factories; in one instance live ammunition was used. Trade unionists and workers were detained, many were injured.

It was reported that the Cambodian government failed to thoroughly and transparently investigate the deaths, injuries and disappearances that resulted from such violent suppression. Following the strike, the Cambodian government did implement policies to grant some control on rent and services costs for the workers. However, it also moved to limit the freedom of assembly. Since 2012 there have been more than 100 cases of violence against workers and more than 100 cases where independent union leaders and members have been arrested or summoned to court.

In addition, the government is moving to reform the labour and freedom of association laws. However, no draft of the reform has been made public; unions and human rights organizations could only obtain a draft text through informal channels.

The brands did not engage directly with the worker's unions during the period of worker demonstrations. However H&M, the largest buyer of Cambodian garments, announced an internal policy for suppliers requiring all Cambodian workers with two years of seniority to be converted to contracts of unlimited durations. H&M also claims to have piloted a “Fair living wage method” in one Cambodian factory, where the average wage is now US\$ 216 before overtime. But it refuses to disclose the name of that factory: "The brands do not act transparently", said a Cambodian union's representative.

Sri Lanka

Sri Lankan garment manufacturers project the image of an industry committed to ethical and sustainable practices. Yet what this Tribunal heard regarding wages, the conditions of work, as well as freedom of association in the industry, clearly contradicts this image.

The garment industry is the largest export sector of Sri Lanka, contributing to 44 percent of the total export value (US\$ 4.7 billion in 2014); it is also the largest industrial employment generator in the country and the largest foreign currency earner.

However, very little of the profit made by this industry passes on to the workers.

The apparel industry employs mostly young women who migrate from far away cities and villages to work in factories, generally located within Export Processing Zones (EPZs), where they live in appalling conditions, mostly in boarding houses. The minimum wage applicable in the garment industry is far below what is needed to meet the constantly rising cost of living. The wage effectively paid to the workers is usually higher than the minimum wage: but to reach an average of 20,000 SL Rupees per month (130 euros) long overtime hours are needed. Moreover part of the wage is paid as “attendance bonus”, productivity bonus or similar provisions: that is, tied to growing productivity targets. Even so, wages remain insufficient to cover the needs of a worker, let alone a family, and certainly are far from a “living wage”.

A crucial issue in Sri Lanka's apparel industry is labour hired through private agencies, commonly referred to as “Manpower Workers”. Although they perform the same work as the permanent or contract workers, the factory is not accountable for them and they are not entitled to medical care and insurance. They receive a daily wage from the manpower agency (which will deduct a fee: if the firm pays 1,000 SL Rupees to the agency, the worker will receive 600). This represent a further erosion of the salaries and guarantees for the workers.

Although Sri Lanka has ratified all the ILO and other relevant conventions on worker's rights and the freedom of expression, and a legislation passed in 1999 specifically allow workers in the EPZ to join trade unions, on the ground this right continues to be largely denied. Outsiders are not allowed into the EPZ unless authorized, thus interfering with union organizational work; the firms often resort to intimidation and thuggery to prevent such work.

An example presented to the Tribunal is the case of the Smart Shirt apparel factory in the Katunayake EPZ, where five workers were indicted and one dismissed after attempting to start

a union. In one instance a workers' meeting was secretly videotaped; later the firm called on individual employees featuring in the video and threatened to terminate their jobs if they joined the union. “ This is intimidation and a clear violation of the laws, but proving such violations is extremely difficult so firms always get away with it”, said a representative of the National Free Trade Union of Sri Lanka.

Indonesia

The garment, textile and footwear industry in Indonesia employs 3.1 million workers and is the third largest revenue generator after oil and gas based industries. In 2012, it was estimated to have generated US\$15 billion in revenue. Yet, as testimonies at the National People's Tribunal held in Jakarta revealed, the workers do not receive much benefit from this revenue. Even in the region of Jakarta, which houses much of this industry, workers earn an estimated 73 per cent of what they believe should be a living wage. This is after worker militancy and agitation led to an increase of about 40 per cent in their wages.

The excuse given by employers against a raise in wages is that Indonesia would then lose its competitive advantage in this labour intensive industry that generates employment and attracts foreign direct investment.

The testimony of workers traced a common journey. Apart from low wages, the problem of outsourcing work results in workers being paid even lower than the official minimum wage and gives them no security of service. Short term contracts with workers replicate this, with workers paid less than minimum wages and being laid off at the will of management.

Women, who constitute the large majority of the workers, have faced harassment at many levels, from sexual harassment to being denied time off during pregnancy and even when they need a break during menstruation.

Some of these egregious violations of the country's law could be checked if industrial courts worked as they should or if there was a better system of labour supervision by the state. With both lacking, workers are basically left with no recourse. When unions are formed, despite obstacles put in their way, they too have to battle union-busting tactics by management.

An additional concern for workers is a new law that the Indonesian government is considering that will further erode workers rights.

On October 23, 2015, the Indonesian Government issued Government Regulation No. 78 of 2015 (hereafter PP78). PP78 regulates the minimum wage with a new wage formulation and mandatory wage scale, overtime wage, taxes, wage fines and remuneration for piece rate and casual workers. In November, the minimum wage based on PP78 increased on average by 11.5% from 2015. Labour unions in Indonesia, however, reject PP78 on the grounds that it changes the wage system to encourage flexible employment.

The only positive development in Indonesia in the last year is the beginning of a dialogue between unions and representatives of some brands on the concept of a living wage and also more humane working conditions. Yet, no brand has given a commitment, and they express a preference to defer to a later date, unspecified, the implementation of any changes.

India

There are 35 million workers engaged in the garment industry in India, an estimated 80 per cent of whom are women. The garment industry is the second largest employer and its export earnings constitute 20 per cent of India's total export earnings. It is currently valued at US\$ 37 billion.

Yet the women and men engaged in this profitable industry have failed to benefit from it. On the contrary, not only have they seen an actual decline in their real earnings but continue to face harassment and gender discrimination as well hurdles placed in their way to form associations that would facilitate collective bargaining.

The findings of the National People's Tribunal on the garment industry have noted these violations.

The increasing trend of casualisation and contract labour has added a further dimension to the exploitation of workers. Ninety per cent of the workers are employed through labour contractors. As a result, they are denied the benefits to which permanent employees are entitled under the law. Ironically, Indian garment workers are recognized by the National Commission for Enterprises in the Unorganised Sector as "informal workers in the formal sector". These workers, despite being part of what is recognized as the formal sector, are unable to organize or be part of unions.

Another negative aspect of this type of employment is the inability of workers to negotiate in face of violation of their rights. Casual workers are not issued identity cards either by the employer or the contractor. Hence, they are unable to establish their identities as workers in case of an accident in the factory, or if they have to go to the police with a complaint.

As for wages, changes in labour laws now permit state governments in India's federal structure to determine minimum wages. As a result, states are literally in "a race to the bottom" to attract this labour-intensive and profitable industry by minimizing the wage bill on employers.

The Indian government is currently discussing further changes in labour laws that would directly affect workers in the garment industry. Many of the protective features of previous laws are being dismantled in the belief that such changes will attract more foreign direct investment.

For instance, the 2015 Draft Labour Code on Wages aims to consolidate the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Payment of Bonus Act, 1965 and Equal Remuneration Act, 1976. The 2015 Draft Code on Wages dilutes protective standards, including minimum wages standards, prohibitions on gender-based discrimination in remuneration and protected bonuses; opens the door to rights abuses, including arbitrary and illegal wage deductions and forced labour; and undermines accountability by dismantling labour law inspection and accountability mechanisms, restricting the functioning of workers organizations and trade unions and systematically undermining access to justice.

The suggested changes in the law will undermine the rights of trade unions by creating barriers to registration, imposing restrictions on union governance structures, reducing

obstacles to canceling union registration and prohibiting strikes and lockouts. Workers are also increasingly vulnerable to retrenchment and changes in service without prior notice. The proposed changes will also weaken accountability for upholding labour standards by diluting government inspection authority, removing existing arbitration forums and appeals mechanisms and lowering incentives to speedily resolve industrial disputes. Finally, standing orders—establishing conditions and regulations—no longer apply to establishments with less than 100 workers. Standing orders, moreover, can now be established without workers' input as previously required under the principle act.

Gender discrimination remains at the heart of the working conditions of workers in the garment sector. As in other countries, women work under stressful conditions where they are denied breaks even on days when they menstruate and are dismissed if they become pregnant. Young, often underage, girls from rural areas are lured to take up employment where a lump sum is paid at the end of three years under schemes like the 'Sumangali' scheme. This is a modern version of bonded labour that also actively encourages regressive social practices like dowry.

The "precarious" work in which garment workers are engaged has not changed despite the increasing profits made by this industry.

Common trends

Certain common trends emerge from the NPTs held in Indonesia, Cambodia, India and Sri Lanka as well as the report from Bangladesh presented to this Tribunal:

1. The violations of women's sexual and reproductive rights came across strongly in all the submissions. These consisted of making women quit on getting pregnant, refusing breaks during their periods, heavy and long hours of work and insufficient health facilities.
2. Although most countries have seen an increase in the wages of the garment workers, Cambodia standing out as one with a substantial increase, in most cases the cost of living has cancelled out the value of the increase. Furthermore, linking higher wages to higher productivity targets has increased the burden on workers.
3. In all countries new laws to attract foreign investment have diluted rights like freedom of association and have placed hurdles in the way of union organization. For garment workers this has been a particular blow as the nature of their work has always made collective bargaining difficult.
4. In all countries contract work is virtually the norm, leaving workers vulnerable to arbitrary dismissal, no benefits and unreasonable workloads.
5. In the "race to the bottom", countries have argued to keep wages low and nowhere has the concept of a "living wage" been implemented.
6. Despite their repeated goodwill declarations in favour of dialogue, the major brands of the global garment industry are in fact systematically delaying any concrete action to ensure the worker's right to a living wage and denying even a minimum of transparency and accountability. Continuous postponements and/or "pilot projects" exercises in fact masquerade the persistence of deliberate violations of the basic rights. This

is even more outrageous given the persistence and even the aggravation of the extension of the violations. A similar absence of a genuine change in policy has been documented in some countries where these brands are based, despite some domestic pressure.

IV. JURIDICAL ANALYSIS AND IMPLICATIONS OF EVIDENCE

4.1 Gender based violations

As clearly shown in Section III, the updates on the facts of massive violations of the workers of the garment industry confirm fully the analysis in the previous report (Annex 1). The PPT has decided, however, that the evidence of the permanence and of the diffusion of the specific gender-based violence against the lives and dignity of women deserves to be strongly underlined and clearly set out.

As a result of the accepted norms and practices in setting up garment industries, the expanded opportunities for women's rights to employment, mobility and decision making in a patriarchal society in Asia are often indicated as substantial steps forward for their overall dignity. It is, however, clear that the testimonies presented to the NPTs and the PPT have set out a diffuse negative impact on the lives of women workers for the reason that they are women and therefore subjected to violence, degrading treatment and many conditions and restrictions that contribute to the deterioration of their health as well as marginalization.

Further, and even more importantly, the PPT stresses what emerges consistently from many reports and cannot be ignored because "expected": due to stigma attached to sexual abuse and discrimination, many women will not come forward in seeking justice and only in rare cases will come forward to claim redress over abuse or other forms of denial of the autonomy of free and informed contractual and living choices. The "happy married employment contract" (sumangali) in India is just but one example of such violation.

The above notes do not necessarily add to the substantiation of the severity of the abuses. Nor do they need to as that severity has been well established in the NPTs. However, the PPT sees their specific relevance in the fact that what continues to happen in the industry is the permanent and conscious, irresponsible absence of the governments, of the judicial powers, as well as of the trade unions, where the position and the roles of the women is maintained in an unacceptable condition of marginalization.

4.2 Living wage as human right

The definition of living wage as a concept and its proposed use as a concrete instrument to substitute for the strictly contractual, economic term of "minimum wage" has been the central objective of the AFW campaign. The detailed history and documentation of the extensive research work which has been conducted over the years to explore and quantify the social and economic components which should be included in the definition of "living wage", in view of the development of a transnational platform for the garment industry in Asian country, can be found in the many publications of the AFWA, and has been the object of detailed presentation in the NPTs (See Annex 1).

The implications of the core concept "living wage" are very straightforward: a wage cannot correspond purely to an economic and arbitrarily defined fraction of the market value of a product. It must be the economic recognition of the right of workers to a wage which assures her/him and her/his family to live their lives with the dignity: i.e. with adequate food for the worker; adequate food for the worker's family; housing, medical care, and education for

children; rest and recuperation time; social and cultural opportunities; child care and domestic work also to be paid at living wage level if there are two wage earners.

On the basis of the evidence presented to the NPTs and to the PPT in the public hearings, as well as in the written documentation, the substantive, not simply legal or contractual, definition of “living wage” in terms of human rights, and its inclusion in the core list of labour rights of the ILO “Declaration of Fundamental principles and Rights at Work”, derives from two apparently opposite, but in fact complementary, orders of evidence.

a) The wage can be considered the synthetic indicator of the position of workers in the labour market and in an increasingly unequal society. The role of this indicator is enormously accentuated in the context of a global supply chain such as in the garment industry, where the great majority of its workers are women and live in countries like those considered in the NPTs and in the concluding Session of the PPT. The intolerable low levels of the wages which are applied (and their extremely slow and marginal increases) coincide with, and produce, conditions of life which are simply non human, and correspond to explicit, well known and structural violation of formally recognized human rights, as they are individually considered in the relevant 9 UN treaties (International Convention on the elimination of all forms of racial discrimination, 1965; International covenant of economic, social and cultural rights, 1966; International covenant on civil and political rights, 1966; Convention on the elimination of all form of discrimination against women, 1979; Convention against torture and other cruel inhuman or degrading treatment or punishment, 1984; Convention on the rights of the child, 1989; International convention on the protection of the rights of all migrant workers and members of their families, 1990; International convention for the protection of all persons from enforced disappearance; International convention on the rights of persons with disabilities, 2006) and in the 8 core International Labour Organization Conventions, on Freedom of association (C087 and C098), Forced Labour (C029 and C105), Discrimination (C100 and C111) and Child Labour (C138 and C182).

The spectrum of the systematic violations which have been documented in the investigation and in the ascertainment of facts which accompany and are caused by the concrete denial of a living wage dramatically confirms the indivisibility of the rights which are indispensable to allow a life to be human. It suffices here to reiterate the principal violations which have been documented through very precise and objective, as well as narrative evidence , in the NPT hearings and in the present Session of the PPT:

- Mass poverty caused by cheap wages
- Breach of the child’s right to education
- Breach of the right to health
- Low wages in the worker’s household
- Inhuman punishment
- Employment contract manipulation
- Crimes to the rights of freedom of association, assembly and opinion (union busting) and criminalization and attacks against defenders of labour rights
- Crimes against integrity of women workers
- International and state failure to protect the workers

The substantive, as well as the formal, legal violation of fundamental rights of garment industry workers could be considered as an indirect but powerful reason for giving the living wage the binding status of a human right. It defines the severe and massive consequence of a

market-societal system which appears to be free to race to the bottom in the recognition of a “living standard”, and to race to the top for all other economic and commercial variables, thus contributing to the worsening of inequalities, which are considered now, by UN agencies and others, as a major threat to the development and sustainability of a democratic society.

b) There is on the other side – thanks primarily to the AFWA and its NPTs, whose results have been presented and widely debated in many international forums – what Frank Hoffer, a representative of ILO who testified in this Session, classified as “the obvious”: “A living wage is a human right and a minimum wage that does not provide for a living wage does not deserve the name minimum wage. When ILO was founded nearly a hundred years ago its founding members stated in the preamble of the constitution that the urgent improvement of working conditions is required by different means including “the provision of an adequate living wage”.

The 1948 Universal Declaration of Human Rights is similarly clear: “Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”.

It is important to underline that the concept of living wage is well understood and accepted globally. Though the term is not explicitly used in the conventional human rights law the definitions given to wage in them is congruent with living wage.

The Universal Declaration of Human Rights is considered to be the core of contemporary human rights normativity and discursivity, and remains of enormous impact even today, though it is technically only a declaration. It declares several labour rights as human rights. Article 4 of the UHDR prohibits slavery and servitude; article 23 provides that everyone has the right to work and that everyone should work in a job freely chosen; that everyone should receive equal pay for equal work; that everyone should get decent remuneration for work performed, which should guarantee a dignified life for herself and her family; and that everyone has a right to form and join trade unions; article 24, in turn, guarantees a right to rest and leisure, including reasonable limitation of working hours, as well as holidays with pay.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) from as long ago as 1966, affirms ‘the right of everyone to the enjoyment of just and favorable conditions of work’ which includes ‘fair wages’ that give workers ‘a decent living for themselves and their families’ (Articles 6 and 7). The formulation does not leave any doubt as to whether ‘fair wages’ refers to ‘living wage’. The general comment 18 further elaborates that the right to work is to allow a person to live in dignity and contributes to the survival of the individual and that of his/her family, thus the right enshrined in article 6 is linked to the remuneration that allows the worker to support themselves and their families referred to in Article 7. Of the regional human rights documents, the European Social Charter, revised in 1996, states that ‘All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families’ (1.4). Similarly the additional protocol of the American Convention on Human Rights says that fair wage has to be ‘Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families’ (Art.7).

The ILO, at its founding in 1919, set out in its preamble to the constitution ‘the provision of adequate living wages’ explicitly in its objectives to improve working conditions. Later it emphasized the aspect in its minimum wage setting resolution (1928) and convention (No 131

of 1971). In its declaration on fair globalization (2008) it called for Policies in regard to wages and earnings, hours and other conditions of work designed to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection. But in practice the country governments have set minimum wages that are grossly inadequate for sustaining the worker and his/her family. This divergence needs to be arrested urgently.

The reports presented during this Session by experts representing international organizations, as well as the increasingly concordant opinion of the European, USA, and Asian academic world, have been clearly supportive of the demands presented in the submission:

- Global recognition of a minimum living wage as a fundamental human right;
- Recognition of freedom of association and collective bargaining as essential to enforcement of a minimum living wage;
- Joint responsibility for minimum living wages must be shared among global North and South governments and brands; and
- Action by international institutions, especially the ILO, in:
 - i. Adopting and publishing criteria for minimum living wage, using the Asia Floor Wage as credible benchmark in the global garment industry; and
 - ii. Contribution towards strong accountability and enforcement mechanisms. This requires taking into account labor market dynamics in sectors such as the garment industry with profit models developed on transnational supply chains and use of high global mobility to demand low cost production even at times of high profits.

There is certainly a long way to go from the present state of impunity for the non-application of the “obvious” definition of living wage as human right, to a situation of its transparent experimentation in different social and market contexts. A spectrum of different definitions of living wage could be expected. Differences in technical details must not, however, threaten compliance with the core components and objectives which have the assurance of a life with dignity as a substantial measure.

In this sense, the PPT sees the AFWA experience as an exemplary expression of the possibility of posing and pursuing conversation-ensuring questions about the living wage as a fundamental human right not divorced from the global and local market scenarios.

As many testimonies have emphasized, global brands’ profits continue to increase while workers’ wages and purchasing power decrease due to systemic inflation. A human rights analysis cannot exist in a legal vacuum and must take growing inequality into account.

AFWA and other platforms representing real populations are not only building on the power of existing human rights framework: they are challenging human rights norms and international institutions to meet the lived reality of workers.

Where a human rights approach opens up emancipatory spaces against oppressive globalization, the impetus comes from the working class, their trade unions, and collaboration with social movements.

V. CONCLUSIONS

5.1 We confirm the existence of massive violations across the region of garment workers' labor rights and therefore of their human rights. The evidence from the four NPTs is overwhelming and undeniable.

5.2 Given the scale and persistence of the violations, there is now an urgent absolute priority for the establishment, with a deadline evidencing the immediacy of the need, to adopt the substance of the methodology developed for establishing living wage as well as the concept of the living wage as a human right and one of the core principles and labour standards of the ILO. Evidence presented indicates that there is a growing conceptual and juridical consensus that this must now be achieved. Without this adoption and implementation, the reality will be the continuing violation of workers' human, social and labor rights.

5.3 Despite the ability of brands and governments to present a positive media image of progress in bringing improvements to the conditions of workers, the evidence indicates that in reality little has changed, and in some countries at least, change has been in a negative direction. Governments should specifically be accountable for their violations of ILO labour standards related to freedom association and right to resist.

5.4 The brands have shown no willingness to take the initiative to ensure that its suppliers pay a living wage. While the brands have made some noises in this direction, they have, in truth, been stumbling blocks toward positive change on the issue of the living wage.

5.5 Inspection regimes have failed the workers. Government-based inspections are underfunded and suffer from corruption. Inspection schemes developed by the brands lack legitimacy as they are not seen to be independent and do not ensure transparency. The ILO has been passive on this issue and needs to take strong positive action to ensure workers are involved as they are the ones who know what is happening in the factories.

5.6 We endorse the AFWA proposals to make clear and concrete the responsibilities for rights violations of those who dominate the production network, the brands, along with those who are also involved, suppliers and governments.

5.7 Multi-national companies register in Western countries and are responsible for massive violations of workers' rights in the developing countries. The governments, and the trade unions, of those countries where the MNCs are registered have largely ignored such violations.

5.8 A very considerable industry has emerged, encouraged by the brands and to some extent funded by the brands, whereby constant delays are caused in dealing substantively with the critical condition in which the garment industry and its workers are mired.

5.9 We note the evidence from Bangladesh concerning the situation in that country after Rana Plaza. While there was a flurry of activity in that country and internationally immediately after the tragedy, the reality is that little positive change has been experienced by the workers, and to some extent their conditions have worsened. Clearly and understandably, the immediate response of government and brands was to concentrate on a Safety Accord. But other

conditions for workers, including desperately low wages, did not change. Further, most of the money donated/collected for the survivors and families has still not been distributed to them.

5.10 We endorse the view put to us that it is time to look at the question of profits. While brands, suppliers, and governments engage in endless discussions about the wage question, the question about profits has been off the table. Yet if workers are limited to a “fair wage”, why should MNCs not be subject to the same criteria? There is a growing consensus, even among such organizations as the WTO, the IMF, and the Roman Catholic Church, that the high level of inequality in and between countries is unsustainable, economically and politically. The concept of “fair profit” should now be on the table in global discussions of wages and workers’ rights.

VI. RECOMMENDATIONS

6.1 The ILO should immediately adopt the living wage concept as one of its core labour standards, and should ensure that the living wage is recognized as a human right by the UN, international agencies, trade unions and opinion makers. It should not wait for agreement from the brands who can be expected to voice opposition and will cause delay through endless discussions.

6.2 Adoption of the living wage concept should be seen as a policy, a strategy to improve the conditions of workers, rather than a technical matter that will lead to delay because of detailed discussions and negotiations over the substance of the living wage.

6.3 The goodwill of the brands is no longer credible. Even after Rana Plaza, the conditions of garment workers have not improved significantly, and in some ways have deteriorated. The brands have increased their profits even while they have watched a race to the bottom in conditions for workers.

The brands’ goodwill, to be legitimated, should translate into concrete financial investments for the urgent implementation of effective living wage policies in support and collaboration with Governments and workers’ organizations.

6.4 Given the important role the media plays in exposing injustices and given the nature and extent of human rights violations in the garment sector, as well as the need to challenge the ideological hegemony of brands and governments, it is important for workers’ movements to strategize with the media on how to give these issues maximum exposure and to promote initiatives to research and monitor the garment industry.

6.5 An urgent independent epidemiological study should be organized into deaths and disabilities resulting from conditions of work and life of garment workers. We believe it is likely that there is a “silent and diffuse Rana Plaza epidemic” operating and that this information should be made available to international agencies and the public at large.

6.6 Because women represent the greatest majority of the garment workers and the evidence of the violation of their specific rights appears more systematic and at the same time continues to be denied, the situation of women should be urgently included in monitoring programs by independent commissions, to assess the spectrum of their clinical, social and personal risks, and to allow adequate actions of juridical qualification and reparation.