

National People's Tribunal

Living Wage as a Fundamental Right of Indian Garment Workers

Bangalore, November 22- 25, 2012

Public Hearings held on November 22, 23

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Pampa Mahakavi Road, Chamarajpet, Bangalore

Verdict Delivered on November 25

Unnati Auditorium, Pampa Mahakavi Road, Shankara
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1. 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, Multinational 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 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

1

http://www.texmin.nic.in/sector/note_on_indian_textile_and_clothing_exports_intl_trade_section.pdf

2

http://www.texmin.nic.in/ermiu/stat_exports_eu_ermiu_akb.pdf

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;

3

http://www.texmin.nic.in/ermiu/stat_exports_top_10_ermiu_akb.pdf

⁴ 1 crore = ten million

⁵ 1 lakh = 100,000

- Brand representatives of H&M, and a written statement received from Adidas;
- expert presentations on the garment industry, the Sumangali 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.

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.

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

⁶ Statement by brand representative

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 arrival, 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".

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 apprentice 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.

⁷ Dowry is illegal in India since 1961

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

⁸ Expert witness Dr. Vijay Bhaskar, Madras Institute for Development Studies

⁹ Currently declared by labour authorities and Madras High Court at 110 rupees per day

¹⁰ For qualification under the Act, an advance is required, but one could reason that the delayed payment presents a mirror image of an advance

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 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" issue¹¹ 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 workers, in their own words, to machines. Combined with the negative working atmosphere, the workers need

¹¹ Brands testimony

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.

¹² Testimony of Labour Commissioner

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 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 excluded 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 is 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:

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

Testimonies given by workers clearly show that wage theft is taking place across the

industry.

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.

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.

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 1 (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.

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 authorities 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.

Annexure 1 – Petition submitted to the Jury

We, as representatives of Indian garment workers employed in the global garment industry petition the Peoples’ Tribunal on “Minimum Living Wage and Decent Working Conditions as a Fundamental Human Right” to hear the workers’ testimonies, experts’ evidence, and presentations from different parties and to render a recommendation for redressing the deficit in decent labour standards in the garment industry in India.

The multinational brands and retailers that source garment from Asia are responsible for grave exploitation and human rights violations of Asian garment workers, and in this case, in India. Such violations in producing countries have robbed the workers of a basic humane existence and Asian countries and industry of their due revenue. We thus seek a remedy to this situation.

The Petitioners are:

The members consist of 20 organizations representing garment workers across India, defending the need for a living wage to be implemented in the garment industry as a fundamental human right of workers. The members are:

Hind Mazdoor Sabha (HMS)
Indian National Trade Union Congress (INTUC)
All India Trade Union Congress (AITUC)
Centre of Indian Trade Unions (CITU)
Hind Mazdoor Kisan Panchayat (HMKP)
New Trade Union Initiative (NTUI)
Garment and Allied Workers Union (GAWU)
Garment and Textile Workers Union (GATWU)
Karnataka Garment Workers Union (KGWU)
Garment Labour Union (GLU)
Garment and Fashion Workers Union (GAFWU)
Society for Labour and Development (SLD)
SAVE
CIVIDEP
FEDINA
Alternate Law Forum
Vimochana
Maraa
Asia Floor Wage Alliance

Our Vision: Workers in India must have decent work and conditions, and live with dignity and freedom.

Preamble

According to the International Labour Organisation (ILO), “Wage employment and wages are central to the world of work. Approximately half of the global labour force works for a wage. Living standards and the livelihood of wage earners and families depend on the level of wages, when and how they are adjusted and paid. Wages are a major component of overall consumption and a key factor in the economic performance of countries. The enormous expansion of the labour force participating directly and indirectly in the international exchange of goods and services and the growing interdependence of low-, middle- and high-income countries has squarely placed wages at the centre of the debate on globalization” (Global Wage Report 2008). In 1944, the International Labour Organisation (the ILO) adopted the *Declaration of Philadelphia*, as an addition to the ILO’s constitution. The *Declaration* articulated key principles: labour is not a commodity, freedom of expression and of association are essential to sustained progress, poverty anywhere constitutes a danger to prosperity everywhere, and that all human beings have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

In June 2008, the International Labour Conference adopted an *ILO Declaration on Social Justice for a Fair Globalization*, based on the principles in the *Declaration of Philadelphia*. The *Declaration on Social Justice* supports “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...” The 2008 Declaration recognises the importance of “full employment and the raising of standards of living, a *minimum living wage* and the extension of social security measures to provide a basic income to all in need...” In other words, social security, a decent wage, and formal and full employment are essential for a minimum living standard.

The importance of setting a *minimum wage* is to signal that not all conditions of work, or of life, are subject to negotiation or coercion. The significance of setting a *living wage* is that it makes concrete the idea that work should provide for one’s life – that a working person should never, despite their efforts, be unable to support themselves and their families.

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

The International Covenant on Economic, Social and Cultural Rights (ICESCR) has two articles related to wage. Article 7 defines remuneration as providing workers at a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (iii) Safe and healthy working conditions;
- (iv) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

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

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

Unfortunately the universal body of human rights instruments and standards only imply rather than assert a positive “Right to Wage.” Based on the ILO’s standard on wage as described above, the India’s National Peoples’ Tribunal, as part of the Asia Floor Wage Campaign seeks to assert a “Right to Minimum Living Wage.”

The right to a Minimum Living Wage also flows from the commitments of the Indian Constitution. While interpretations of social welfare legislations by the Supreme Court in the post liberalization era have tended to chart a course often in collision with the protections guaranteed by the Indian Constitution, it is submitted that economic policy during the globalization era cannot whittle away the protections given to workers under social legislation. The Supreme Court has itself observed that “ I share the anxiety of my Lord Brother Justice Singhvi about a disturbing trend which is discernable in recent times(of whittling down labour rights by considering the management as the supreme master) and which is sought to be justified in the name of globalization and liberalization of the economy.” As noted by the Supreme Court in *Harjinder Singh v. Punjab State Warehousing Corporation* (AIR 2010 SC 1116 at para 23)

Therefore the approach of the court must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice should not be denied by entertaining the specious and untenable grounds put forward by the employer –public or private.

The relationship of wage to survival raises questions about the consequences of denial of wages. The growing gap between rich and poor and the increasing impoverishment of the majority of the working poor in Asia give rise to great economic inequality.

Denial of a minimum living wage is not only a grave injustice that perpetuates social, political and economic inequalities but jeopardises the entire global economic well-being, where the productive forces are deprived of the means of basic survival and of opportunities for development. Denial of a *minimum living wage* as a right directly impacts on the realization of universal and indivisible human rights, as illustrated herein:

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

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

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

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

Right to a standard of living adequate for himself and his family: Without a decent

minimum living wage, by no means are workers able to meet their basic needs of food, shelter or clothing. Based on pragmatic accounts of what is to be considered as decent, the AFW would ensure that their wages are capable of satisfying such basic necessities.

The proliferation of various public and private institutions, the increasing levels of mediation, and the growing complexity of the global economic structure have made accountability for the denial of wage difficult and elusive. In order to make “Right to Minimum Living Wage” justifiable, both public and private institutions would need to be identified and mechanisms implemented for the delivery of this right.

Conditions in the Indian garment industry

Introduction

The Indian textiles industry, according to the government, is valued at US\$ 55 billion at current prices, and 64% of this industry serves the domestic demand. The textiles industry accounts for 14% of industrial production, which is 4% of GDP; and employs 35 million people and accounts for nearly 12% share of the country’s total exports basket¹³.

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 6th largest in global export of clothing (behind China, EU 27, Hong Kong, Bangladesh, Turkey). During the year 2010-11, Readymade Garments account for almost 45% of the total textiles exports and apparel and cotton textiles products together contribute nearly 70% of the total textiles exports.

The textile exports to top 10 countries in the year 2011-2012 stands at 20497.52 million USD and this registers a 24.13% growth over the previous year¹⁴. Total export to European Union in the year 2011-2012 stands at 9311.63 million USD against the 8172.99 million USD in the previous years. The foregoing data shows that the textile sector, especially the export oriented sector, in India is reviving fast from the recent global economic crisis which engulfed most of India’s export markets.

Brief Profile of Textile and Clothing Manufacturing and Exporting Hubs in India

According to the 2009 Study of Apparel Export Promotion Council of India, National Capital Region, Tirupur and Bangalore alone contributes anywhere between 55% to 60% of the total exports from India. Tirupur, NCR, Bangalore, Chennai, and Jaipur are found to be clusters where more than 70% of the manufactured products are exported. Brief profiles of a few clusters are below

Tirupur, Tamil Nadu: Tirupur came into the scene of apparel manufacturing with the

¹³ http://www.texmin.nic.in/sector/note_on_indian_textile_and_clothing_exports_intl_trade_section.pdf

¹⁴ http://www.texmin.nic.in/ermiu/stat_exports_top_10_ermiu_akb.pdf

production of 'baniyans' in 1970s. As per the 2009 data, Tirupur tops all hubs in terms of turnover (Rs 13450 crore). There are a total of 2599 manufacturing units in Tirupur and the direct and indirect employment generation in the textile and garment sector in Tirupur is estimated at 6 lakh. 74% of the total production is exported and EU is the largest market followed by USA. The total annual capacity of the cluster is estimated at 200 crore pieces; however, the actual production for the year was 144 crore pieces and thus the industry is operating at 72% capacity utilisation¹⁵. Average export price per piece of garment was calculated as Rs 100 in 2009. Tirupur focuses mainly on knitwear and hosiery.

Bangalore, Karnataka: The total turnover of Bangalore cluster is calculated to be Rs 5000 crore in 2009. There are 850 manufacturing units engaged in producing garments in Bangalore and the direct and indirect employment generation in the cluster is estimated at 4.5 lakh. The total number of garment pieces made annually in Bangalore stood at 32 crore in 2009. 80% of the workforce in Bangalore cluster is women. Bangalore focuses on gents wear with over 75% products being gents wear. Cost of production is relatively lower than that in NCR but higher than that of Tirupur and Chennai.

NCR (Delhi, Haryana, UP): There are a total of 1675 manufacturing units in NCR and the total turnover in 2009 was 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. NCR is known for its skilled workforce. About 83% of the combined production in NCR is exported. NCR focuses on ladies fashion wear.

Chennai, Tamil Nadu: This cluster has 650 manufacturing units and the total turnover in 2009 was Rs 2500 crore and out of which 80% of this was for export. Chennai cluster generated a total of 2.4 lakhs employment in 2009, direct and indirect together. Most of the workers in this cluster are women.

Ludhiana, Punjab: Ludhiana enjoys monopoly in winter wear with 95% share of the total woollen/acrylic knitwear production in India. There are about 10000-12000 units including spinning, weaving, knitting, chemical processing and garment manufacturing in Ludhiana and the total turnover in 2009 was Rs. 7000 crores. Annual production is estimated to be 14 lakh pieces in 2009 and 20% this is estimated to be for export. Total employment (direct and indirect) generated in 2009 was 3.5 lakh.

Workers' Concerns

Wage: Wage has been a major issue in all these manufacturing hubs. The minimum wages in the industry is actually at the poverty level wage. On top of these poverty level wages, in most of the above mentioned manufacturing hubs, employers and contractors actively engage in wage theft in various forms: namely, illegal and unauthorised deduction from earned wages, non-payment of legal overtime wages, non-payment of wages according to the skill level, inordinate delay in payment of wages.

The gap between the minimum wages and the living wage as calculated by AFW Alliance is given in the table.

¹⁵ Indian Apparel Clusters-An Assessment, AEPC Study 2009

Region	Minimum Monthly Wage (in Rs.)	Minimum Wage as % of AFW
Bangalore	4472	37%
Gurgaon	4847	40%

Working Conditions: Employers practice various violations including illegal extension of working hours, practice of compulsory overtime, inhuman productivity measures, not providing adequate health and safety measures such as drinking water, hygienic and sufficient latrines and urinals and canteen facility. No crèches are present, and no constitution of mandatory Works Committee, Sexual Harassment Committee and Occupational Health and Safety Committee. Various social security laws of Provident Fund, Employees State Insurance, Bonus and Gratuity are often violated by employers. Illegal retrenchment, lockouts, layoffs without following proper procedure along with indiscriminate use of contract labour is the norm of the day. Gender discrimination in terms of lower pay, sexual harassment etc. is also very common in many of these globally celebrated manufacturing zones.

Freedom of Association: Freedom of Association of garment workers is the least respected by employers. Collusion of the labour departments, police and anti-social elements is the major threat faced by workers in organising themselves for their rights. There have been many incidence of violence including kidnapping of union leaders in the northern region. Most of the employers invariably practice unfair labour practices listed in the 5th Schedule of the Industrial Disputes Act, 1947. The ILO Conventions on Freedom of Association and Protection of the Right to Organise (C No. 87) and Right to Organise and Collective Bargaining (C No. 98) are also violated by many of the employers.

Right to a Life with Dignity

The workers have also been refused a life with dignity. The violations of a dignified life include harassment, verbal comments, not allowing workers to use the toilet and sexual and inappropriate comments and touching. All this forms the very structure of the industrial relationship and is antithetical to the promise of a dignified life which is made to every citizen under Article 21 of the Constitution.

The Petition

The Petitioner presents to the National Peoples Tribunal on Minimum Living Wage as a Fundamental Right of Indian Garment Workers the following testimonies:

1. Case studies from workers and women workers in the garment industry in across India from the manufacturing hubs described above.
2. Expert testimony on India's garment industry
3. Expert testimony on Indian Labour Laws

4. Expert testimony on gender aspects of labour
5. Expert testimony on Asia Floor Wage and its feasibility
6. Government Presentation (Additional Labour Commissioner-Karnataka)
7. Brand presentation (H&M)
8. Brand statement (ADIDAS)
9. Union Submissions from four major national federations (CITU, INTUC, HMKP, NTUI)

- The Petitioner, through the People's Advocates, argues that there is a deficit in wages paid to workers and especially, women workers in the garment sector in India, that the wages paid to the workers falls far below a living wage standard that should provide adequate wages for basic food, clothing and accommodation, health, fuel and transport, education and communication and other expenses such as contribution to family, subscriptions such as to trade unions, care for children and parents, and other social functions.
- The Petitioner argues that Freedom of Association is one of the most violated rights of workers, by their employers and that in the absence of such a right, it is impossible for workers to represent themselves democratically and have their human rights be respected and enforced.
- The Petitioner argues that India is party to international standards including Core Conventions of the ILO, and has enacted laws and policies in line with these international standards. However there is a weak capacity and lack of political will on the part of the state and government to ensure implementation of and compliance with the international standards and national laws and policies, with lacunas that allow employers to circumvent the law.
- The Petitioner argues that workers in the garment industry receive poverty wages, and in addition, are subjected to **wage theft**, excessive hours, underpaid overtime, and poor and stressful working conditions. In addition, there is lack of access to social security; a lack of protection for women workers especially with regard to health and safety, sexual harassment, maternity and reproductive health, and child care. The workers are subjected to inhuman productivity targets which lead to the violations of core labour standards.
- The Petitioner argues that the contract labour system, practiced widely and illegally, facilitates a complex illegal system that allows for wage theft including the social security component, use of extra-legal disciplinary methods, and unfair labour practice. The contract labour system shifts the accountability and liability for legal responsibility and promotes a culture of impunity, contempt of law and corruption.
- The Petitioner argues that the existence of extra-legal punitive power of corporal punishment into industrial discipline undermines women's equality and capacity to organize and improve their working conditions.
- The Petitioner confirms that garment workers are mostly migrants, mothers, caregivers, young, and have a double burden in society because they are both

homemakers and economic providers. This deficit denies their dreams: for education, for professional development, for marriage, to have children, to care for their parents, to provide for their families, to build their own homes.

- The Petitioner argues that this wage regime removes the capacity of garment workers and women garment workers to extricate themselves from the cycle of poverty, elevate their economic and political status, and maintain their dignity and self respect.
- The Petitioner will argue that it is the loss of living wage earnings for workers that correspond to a benefit in huge profits for the garment industry of today who have profited hugely from outsourcing production to low wage countries. This we will show in evidence gathered on the global supply chain and on working and living conditions that fall short of the decent labour standards.
- The Petitioner argues that the Corporate Social Responsibility (CSR) programmes of the brands have failed to achieve their claims as seen over a long historical period and that brands need to take immediate concrete steps to allow access to unionisation, promote collective bargaining, and negotiate with the representative unions of garment workers.
- The Petitioner argues that significant portion of the garment industry is organized for foreign market and is integrated into global production network where production is done in India and similar developing countries, exclusively for the sale and consumption in the Global North market. In view of this emergence of a global production system the capacity to pay wages has to be assessed in relationship to the global production network. It is argued that the global production network of the brands has the capacity to pay living wage to the garment workers in the producing country.
- The Petitioner argues that it is possible to provide a living wage and proposes that the Asia Floor Wage is a legitimate minimum living wage option that minimally meets the conditions for decent labour standards. Asia Floor Wage can be a solution to raising the wages of workers from the lowest rung of the industry, increasing their bargaining power throughout the supply chain, in attenuating women's unequal bargaining power, in addressing gender wage gaps and in improving workers' well being.
- The Petitioner argues that historical experiences as well as contemporary evidence shows that living wage cannot be provided by market but can be ensured either in a condition and practice of collective bargaining or, the state promoting and legislating minimum living wage. It has to be a part of wage policy of the government and it is in this aspect, that there is a **policy deficit** that has become more pronounced after 1991 when the government subordinated its regulatory and promotional instruments to the prerogatives of a "free market".

The Peoples Tribunal is asked to examine the evidence and find for the petitioner:

1. Is there a deficit in Decent Labour Standards in India's garment industry?
2. Determine the magnitude of workers, specifically women workers, in the Garment

Global Supply Chain, working and living in conditions that fall far short of Decent Labour Standards

3. Is there a wage deficit for basic living standards?
4. What are the causes of the wage deficit? Who are responsible?
5. Can AFW address this wage deficit?
6. What are the criteria for a wage that is defined as a human right?

Prayer:

It is our prayer therefore to the Respectful Panel of the Tribunal to find that there are wage deficits in the Indian Garment industry that these deficits violate human rights and labour standards, and that living wage is a redress to these violations if enacted and implemented, and adequate mechanisms are in place.

It is our prayer that the Respectful Panel of the Tribunal find that government, industry and trade unions have respective duties and responsibilities towards the fulfilment of workers' living wage.

END

Annexure 2 – Biographies of Jury Panel for National People’s Tribunal

1. 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 more in general foreign affairs, serving subsequently as Chief Editor and Foreign Editor. As a Foreign Correspondent she traveled mainly in South Asia, South East Asia and Iran. 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 with the Elsa Morante Prize for Communication, 2004. She is resident in Rome.

2. 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 fields of women's studies and feminist issues. Recent publications include a co-authored study on the 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).

3. Coen Kompier:

Coen Kompier, senior specialist at the ILO South Asia Decent Work Team, has been working at the ILO in the field of international labour standards since 1994. He has been working in Northwest and East Africa until 1999, 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. He holds a Masters in International Law and International Relations from the University of Groningen, the Netherlands, his native country.

4. Hemalata Mahishi:

Hemalata Mahishi is a practising advocate, practising in Bangalore since 1975. She is also

the author of 14 books in Kannada mainly relating to women and law. She is an outside member in the Sexual Harassment Complaints Committee of several institutions including Indian Institute of Science, Reserve Bank of India, Bangalore University, 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.

5. Utsa Patnaik:

Utsa Patnaik taught economics at Jawaharlal Nehru University, India since 1973 after obtaining a doctorate at the University of Oxford, U.K. She became Professor of Economics in 1983 and served as Dean, School of Social Sciences, from 1998 to 2000. She has occupied visiting fellowships at various times at the University of London, the University of Wisconsin and the University of California. At present after retiring she holds a National Fellowship, Indian Council of Social Science Research, and 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, both in a historical context and at present in relation to India; the mechanisms of colonial exploitation; and questions relating to food security and poverty. These issues have been discussed in 110 papers published as chapters in books and in journals. 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). A German translation of selections from the last book appeared in 2009. She has also edited and co-edited several volumes including *Chains of Servitude- Bondage and Slavery in India* (1986) *Agrarian Relations and Accumulation- the Mode of Production Debate* (1991); *The Making of History – Essays presented to Irfan Habib* (2000) and *The Agrarian Question in Marx and his Successors* in two volumes (2007, 2011).

6. Gianni Tognioni:

Since 1979, Gianni Tognioni has been Secretary General of Permanent People's Tribunal. 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. Dr. Tognioni is also the Director for the Consorzio Mario Negri Sud, an Italian non-profit organization for biomedical and pharmacological research. He holds a Doctorate degree in Philosophy and Medicine. He has also acted as the editor for several books and of more than 500 articles in major pharmacological and medical journals.

Annexure 3: Schedule of the Tribunal Programme

November 22nd, Thursday

Venue: Krishna Raja Parishanmandir, Kannada Sahitya Parishat, Pampa Mahakavi Road, Chamarajpet, Bangalore

9:00-10:15 am – Registration of participants
Tea

10:15-10:30 am – Welcome Address
Deepa, Munnade

10:30-10:45 am – Invocation Song

10:45-11:00 am - Introduction to the Bangalore Organising Committee
Pratibha, Garment and Textile Workers Unions (GATWU)

11:00-11:15 am – Introduction to the National Tribunal and Jury Members
Anannya Bhattacharjee, International Coordinator, Asia Floor Wage Alliance

11:15-1:00 pm – Testimonies of garment workers from Gurgaon, Tirupur, Chennai, Bangalore

1:00-2:00 pm – Lunch Break

2:00 -2:20 pm – Expert Presentation: Sumangali
R. Ramesh, SAVE, Tirupur

2.20 – 2.40 pm - Provisions for Garment Workers under Government Schemes
Gurudas M Bhat, Additional Labour Commissioner (Karnataka)

2:40 -3 pm - Statement from Brand: H&M
Niklas Klingh, Country Manager-India & Tobias Fischer, Relations Sustainability Manager

3:00-3:30 pm – Tea/Coffee

3:30-3:50 pm – Songs by union representatives

3.50-4 pm – Statement of Brand: Adidas

4-4.20 pm- Presentation by Global Union Federation: IndustriALL
Sudharshan Rao Sarde, Regional Secretary

4.20-4.40 pm – Expert Presentation: Garment Industry
Vijay Bhaskar, Madras Institute for Development Studies

4.40 – 5 pm – Union Submission: HMKP
Michael Fernandes, President

5 – 5.10 pm – Closing Remarks
Pratibha, GATWU

November 23rd, Thursday

Venue: Krishna Raja Parishanmandir, Kannada Sahitya Parishat, Pampa Mahakavi Road, Chamarajpet, Bangalore

9:00-10:00 am – Registration and Tea

10:00-10:15 am – Screening of Digital Story on Lives of Garment Workers
Ekta, Maraa

10:15- 10:35 am – Expert Presentation: Labour Laws
V. Prakash, Supreme Court Advocate, Chennai

10.35-10.55 am – Expert Presentation: Asia Floor Wage
Jeroen Merk, Asia Floor Wage Alliance

10.55 –11.15 am - Expert Presentation: Gender and Labour
Nandita Dhawan, Professor, School of Women's Studies, Jadavpur University

11.15-12.15 pm – Union Submissions:
CITU (Meenakshi Sundaram, Secretary-Karnataka State Committee)
INTUC (N.M. Mudappa, Vice President-Karnataka)
NTUI (Ashim Roy, General Secretary)

12.15 pm – 1.15pm – People's Advocate Group's Summation

1.15 – 1.30 pm – Vote of Thanks and Closing Remarks
Sebastian, KGWU

1.30 pm - Lunch

Verdict Day

November 25th, Sunday

Venue: "UNNATI' Auditorium, Pampa Mahakavi Road, Shankara Puram,

Next to National College Swimming Pool, Bangalore.

10:00-11:00 – Registration and Tea

11:00-11:10 – Welcome & Moderator

Pratibha, GATWU

11:10-12:40 pm – Announcement of Verdict

Presented by Jury Members (List Attached)

Kannada Summary by Nandini

12:40 -1:10 pm – Receipt of Verdict by Government Official

1:10-1:45 pm – Open House for Q and A

1:45 – 2:00 pm – Vote of Thanks and Closing Remarks

Sebastian, KGWU

2 pm - Lunch

Annexure 4 - List of Written submissions and _list of Background Material handed over to the Jury

Written submissions

1. Petition from the People's Advocates – Arvind Narrain and Vikas Barnwal
2. Statement from Brand : Adidas
3. Submission on ; Gender And Labour from Nandita Dhawan, Professor, School of Women's Studies, Jadavpur University
4. Submission on Policy Deficit on wages by NTUI (Ashim Roy, General Secretary)
5. Submission on Wage Issues of Garment Workers from V.Prakash, Senior Advocate
6. Submission from the Peoples' advocates – Arvind Narrain and Vikas Barnwal

List of Background Material handed over to the Jury

1. Let's clean up fashion 2011 by *Anna McMullen and Sam Maher*
2. Towards sustainable labour costing in UK fashion retail by *Doug Miller*
3. Towards sustainable labour costing in the global apparel sector by *John Ruskin*
4. Asia floor wage and global industrial collective bargaining by *Anannya Bhattacharjee and Ashim Roy*
5. Stitching a decent wage across borders- People's tribunals in Asia establishing the right to minimum living wage as a fundamental human right, *Asia Floor Wage Alliance*
6. A study of the Contract Labour System in the Garment industry in Gurgaon by *The Society for labour and development*
7. How 'fair' are wage practices along the supply chain? Global assessment in 2010-11' by *Daniel Vaughan-Whitehead*
8. Garments sector and Unionisation in India-Some critical issues by *Mohan Mani*
9. The governance of global value chains by *Gary Gereffi, John Humphrey and Timothy Sturgeon*
10. Trends in Urban poverty under economic reforms : 1993-94 to 2004-05 by *Utsa Patnaik*
11. The Republic of hunger by *Utsa Patnaik*