

# Precarious Work in the Gap Global Value Chain





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



The Center for Alliance of Labor & Human Rights (CENTRAL) is a local Cambodian NGO. The organization empowers Cambodian working people to demand transparent and accountable governance for labor and human rights through legal aid and other appropriate means.



Sedane Labour Resource Centre/Lembaga Informasi Perburuhan Sedane (LIPS) is a non governmental organization in labor studies. LIPS works to strengthen the labor movement by documenting knowledge through participatory research and developing methods of popular education in labor groups and unions.



SLD is a Delhi-based labour rights organisation, that believes in equitable development through social and economic well-being of labour, migrants, and women workers; and through cultural renewal among disenfranchised people. SLD is a national organisation that originated with a focus on the National Capital Region and works with partners in Uttar Pradesh, Bihar, Jharkhand, and Kerala.



The National Centre for Development Cooperation, or CNCD-11.11.11, includes nearly 80 development NGOs, trade unions and associations engaged in continuing education for international solidarity in the French Community and Community of Belgium.



The United Workers Congress (UWC) is a strategic alliance of workers that are either by law or by practice excluded from the right to organize in the United States. This national network represents a base of workers, and also regional networks and individual organizations in industries where there is no national network.



Gap 5th Avenue, New York  
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In March 2014, U.S. President Barack Obama made headlines by ceremoniously shopping at a Gap store on East 42nd and Third Avenue. Obama’s decision to visit the store followed an announcement by Gap that they would raise minimum wages for U.S. workers to USD 10 per hour by 2015. Gap’s decision to raise minimum hourly wages broke with U.S. retailers and business groups that urged lawmakers to maintain the federal minimum wage at USD 7.25 an hour (Banjo 2014).

Gap—the parent company of Gap, Banana Republic and Old Navy—has committed to raising wages for U.S. workers but this commitment does not extend to establishing living wages for

garment workers in overseas production hubs. Although Gap has also publicly announced a commitment to set humane working conditions, just months before Gap announced an increase in wages for U.S. workers, the Institute for Global Labour and Human Rights exposed sweatshop conditions in Gap supplier factory run by the Ha-Meem Group in Bangladesh—where together Gap and Old Navy account for 70% of production (Boyer 2014). The 3,750-worker Next Collections factory in Ashulia, Bangladesh, on the outskirts of Dhaka, routinely forced workers into 14-17 hour shifts, seven days a week amounting to workweeks of over 100 hours. Workers were paid poverty level wages: just USD .20 - .24 per hour. Workers in the Next Collections factory reported

that physical punishment and illegal termination—especially of pregnant women who were also denied maternity benefits—were normal occurrences (IGLHR 2013).

Working conditions like those reported in Next Collections are far from isolated incidents. Gap lags far behind other brands in their commitments to decent work and safe workplaces. For instance, more than 200 brands signed the legally binding Accord on Fire and Building Safety following the collapse of the Rana Plaza Building in Bangladesh, killing 1,127 workers. Instead of signing the Accord, Gap together with Walmart, founded the Alliance for Bangladesh Worker Safety. Unlike the legally binding Accord on Fire and Building Safety, the Alliance for Bangladesh Worker Safety is a voluntary measure rather than a contractual

commitment. To date, Gap has refused to make a contractual commitment to work with their suppliers and local and international trade unions to ensure that repairs are made and workers have the right to refuse dangerous work.

Due in no small part to this egregious refusal to join the Accord, in 2014 Gap earned the Public Eye Jury Award from the Berne Declaration and Greenpeace Switzerland—an award that aims to shine a light on the current and most serious cases of human rights violations and disregard for environmental protection and sustainability (CCC 2014a).

Gap currently operates 3,300 stores and employs more than 150,000 employees across their global production network. (ILO 2014; Donaldson

*Campaigners on Oxford Street, London call on Gap to ensure better safety in their Bangladeshi factories. To date, Gap has refused to make a contractual commitment to work with their suppliers to ensure that repairs are made.*

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2016a). Brands like Gap wield the potential to transform working conditions through their supply chains. Gap has not, however, committed to ensuring a living wage for workers beyond U.S. employees and fails to disclose their suppliers—creating significant barriers to allowing labour rights groups, the government and other parties to monitor labour rights in their direct supplier and subcontractor factories. Rather than upholding rights and work for garment workers overseas, Gap maintains high pressure sourcing models within the garment global production network that create overwhelming incentives for factories to reduce costs and speed production by ignoring labour standards.

In recent years, the status of Gap commitments to human rights at work has been the subject of numerous studies by labour unions, human rights organizations and their allies—ranging from Human Rights Watch to the Institute for Global Labour and Human Rights. In the lead up to the 105th Session of the International Labour Conference, focused for the first time on decent work in global supply chains, this report revisits the status of Gap’s commitments to decent work through the lens of rights at work as they are protected under International Labour Organization (ILO) conventions and other instruments.

Shedding light on the gaps in implementation of Gap commitments, violations of international labour standards and challenges Gap may face in upholding commitments to decent work, this report contributes new research collected through interviews with 150 workers in India and Indonesia engaged in Gap supply chains. These recent findings, collected between August and October 2015, are situated in context of both previous studies on Gap supply chains in Cambodia, India and Indonesia and the broader context of the global production network.

Section one provides a brief overview of global production networks in general and the garment global production network in particular. It outlines key shifts in employment relationships as production processes evolve to include several companies across multiple countries. This section also traces the concentration and distribution of control over production processes across various actors in the garment global production network.

Section two reviews Gap public commitments to promoting decent work in their supply chains, including through the Gap Code of Conduct and partnership programs. Where possible, it includes discussions and research on the efficacy of these initiatives to date.

Section three provides a brief overview of the market share of Asian garment value chains and more focused country profiles on the Cambodian, Indian and Indonesian garment industries. These sections aim to contextualize empirical findings on working conditions presented in the final section of the report.

Section four discusses, in detail, the intensive labour exploitation and abuse faced by workers in Gap supply chains in Cambodia, India and Indonesia. Recent empirical findings are supplemented with evidence of rights violations drawn from existing studies. In this section the human rights violations and consequences of precarious work in the Gap supply chain are articulated thematically in order to surface the pattern of rights violations across Cambodia, India and Indonesia.

## Recommendations for the ILO at the International Labour Conference, 2016

*The ILO—the only global tripartite institution—has a unique role to play in setting standards for all of the actors that impact fundamental principles and rights at work.*

As detailed in this report on the garment global production network (GPN), due to the scale of global trade accounted for by Global Value Chains (GVCs) there is an urgent need for global mechanisms to monitor and regulate GVCs and GPNs. The ILO—the only global tripartite institution—has a unique role to play in setting standards for all of the actors that impact fundamental principles and rights at work.

Transnational Corporations (TNCs) and their suppliers have a duty to obey national laws and respect international standards—especially those pertaining to realization of the fundamental principles and rights at work. A number of ILO core labor standards, such as the Forced Labour Convention, 1930 (No. 29), Protocol to the Forced Labour Convention, 2014 and accompanying Recommendation, already protect workers in value chains. However, as this report details, changes in the modern workplace and globalization of value chains has opened up new gaps in the protection of fundamental principles and rights at work. In addition to clarifying the application of existing standards in global value

chains, the ILO should set new standards and enforcement mechanisms and encourage national governments to do the same.

The ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), 2006 provides a good starting point. However, within the MNE Declaration, MNE refers only to subsidiaries or franchises. Accordingly, GVCs and GPNs in their current form are not covered by this Declaration. The need of the hour is for the ILO to clarify and update its standards and mechanisms to protect workers employed by transnational corporations (TNCs) across vast GPNs.

The following recommendations emerge from our experience promoting rights at work in global value chains.

1. Given the well-documented and rampant exploitation of workers and resources by MNEs operating through GVCs, and noting the limits on regulation under national legal regimes, the ILO should move towards a binding legal convention regulating GVCs.
  - 1.1. Standards under this convention must be at least as effective and comprehensive as the UN Guiding Principle on Business and Human Rights and existing OECD mechanisms, including the 2011 OECD Guidelines for Multinational Enterprises.
  - 1.2. The Convention should include the following components, among others:
    - 1.2.1. Imposition of liability and sustainable contracting, capitalization and/or other requirements on lead firms to ensure accountability throughout the GVC.
    - 1.2.2. Establishment of a Global Labour Inspectorate with monitoring and enforcement powers.
    - 1.2.3. Publicly accessible transparency and

traceability provisions.

1.2.4. Specific provisions that address the special vulnerability of migrant workers in GVCs.

1.2.5. Specific provisions that address the special vulnerability of women workers in GVCs.

1.2.6. Limits on the use of temporary, outsourced, self-employed, or other forms of contract labor that limit employer liability for worker protections.

**2.** Pursue a Recommendation on human rights due diligence that takes into account and builds upon existing due diligence provisions that are evolving under the United Nations Guiding Principles on Business and Human Rights and the 2011 OECD Guidelines for Multinational Enterprises.

**3.** Take the following complementary measures to protect workers employed in global value chains:

3.1. Recognize the right to living wage as a human right and establish living wage criteria and mechanisms.

3.2. Promote sector-based and transnational collective bargaining and urge countries to remove national legal barriers to these forms of collective action.

3.3. Expand work towards the elimination of forced labour, including promoting ratification and implementation of the Forced Labour Convention, 1930 (No. 29), Protocol to the Forced Labour Convention 1930 and accompanying Recommendation, 2014.

3.4. Continue programs to ensure social protection, fair wages and health and safety at every level of GVCs.

**4.** Convene research to inform ILO global supply chain programming, including:

4.1. Research on adverse impacts of TNC purchasing practices upon

4.1.1. Core labour standards for all categories of workers across value chains.

4.1.2. Wages and benefits for all categories of value chain workers. This research should aim to satisfy basic needs of workers and their families.

4.1.3. Access to fundamental rights to food, housing, and education for all categories of value chain workers and their families.

4.2. Research into the range of global actors that may have leverage over GVCs including investors, hedge funds, pension funds and GVC networks that define industry standards such as Free on Board (FOB) prices.

4.3. Research into the types of technical advice needed by OECD government participants taking a multi-stakeholder approach to address risks of adverse impacts associated with products.

4.4. Research into mechanisms deployed by authoritative actors within GVCs that contribute to violations of fundamental principles and rights at work, including but not limited to attacks on freedom of association, collective bargaining, forced overtime, wage theft and forced labour.

4.5. Since women represent the greatest majority of garment workers, the situation of women should be urgently included in monitoring programmes to assess the spectrum of their clinical, social and personal risks.

4.6. Require an urgent, epidemiological study into deaths and disabilities resulting from conditions of work and life of garment workers. This information should be made available publicly and to international agencies.

**5.** Organize a Tripartite Conference on the adverse impact of contracting and purchasing practices upon migrant workers rights. This conference should focus on:

5.1. Protection of migrant rights as conferred under the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

5.2. The intersection of migrant rights and ILO initiatives to promote Decent Work in Global Supply Chains.

This report is one in of a series of reports, entitled Workers Voices from the Global Supply Chain: A Report to the ILO 2016. Investigation of production conditions in Gap factories in India and Indonesia was coordinated by the Society for Labour and Development (SLD).

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Center for Alliance of Labor & Human Rights (CENTRAL) in Cambodia.

This report was edited by Anannya Bhattacharjee. Recommendations for the ILO at the International Labour Conference, 2016 were formulated by a group of organizations, including the international Asia Floor Wage Alliance, Jobs with Justice (USA), National Guestworkers Alliance (USA), and Society for Labour and Development (India).

We extend gratitude to the workers who shared their time, experience and materials for the purpose of this study.

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<b>AFWA</b>	Asia Floor Wage Alliance
<b>AFWA-C</b>	Asia Floor Wage Cambodia
<b>AFWA-I</b>	Asia Floor Wage Indonesia
<b>CCAWDU</b>	Coalition of Cambodian Apparel Workers Democratic Union
<b>CCC</b>	Clean Clothes Campaign
<b>CENTRAL</b>	Center for Alliance of Labor and Human Rights
<b>GMAC</b>	Garment Manufacturers Association in Cambodia
<b>HRW</b>	Human Rights Watch
<b>ILC</b>	International Labour Conference
<b>ILO</b>	International Labour Organization
<b>ILRF</b>	International Labour Rights Forum
<b>MLVT</b>	Ministry of Labour and Vocational Training
<b>NCEUS</b>	National Commission on Enterprises in the Unorganized Sector
<b>NCR</b>	National Capital Region
<b>SLD</b>	Society for Labour and Development
<b>TATA</b>	Textiles and Apparel Trade Agreement
<b>TCLF</b>	Textile, Clothing, Leather and Footwear
<b>USAS</b>	United Students Against Sweatshops
<b>WRC</b>	Worker Rights Consortium



*Documenting rights violations in Gap factories is particularly challenging because Gap refuses to disclose basic information about its suppliers.*

*Asia Floor Wage Alliance*

This report is based upon 150 structured interviews conducted between August and October 2015 with garment workers in Phnom Penh, Cambodia; Bogor, Indonesia; and the Delhi, National Capital Region (NCR), India. Structured interviews were conducted by Sedane Labour Resource Centre/Lembaga Informasi Perburuhan Sedane (LIPS) in Indonesia and the Delhi-based Society for Labour and Development (SLD) in India. Investigative fieldwork was conducted in Cambodia by Center for Alliance of Labor & Human Rights (CENTRAL). This information was contextualized through further interviews with workers and trade union activists.

New empirical findings on working conditions in Gap factories are based upon data collection and analysis of working conditions in 8 Gap

supplier factories, including 4 supplier factories in Indonesia and 4 supplier factories in the Delhi-NCR, India.

Interviews lasted between 30 and 65 minutes. All worker interviews were conducted in person with full consent from workers. Interviews took place in workers' residences, after working hours or during time off. In order to protect the identity of workers who participated in this study, all individual names have been changed. To ensure that workers cannot be identified based upon identifying case information, factories are referenced by company name but in some cases locations of particular production units have been removed. In India, interviews were conducted in Hindi. In Indonesia, interviews were conducted in Bahasa.

Analysis of structured interviews aimed to identify violations of rights at work protected under International Labour Organization standards, national laws and the Gap Code of Vendor Conduct.

These findings have been situated in context of the global garment production networks and previous research on Gap supply chains. Secondary sources included reports on production conditions in the garment industry, academic articles and newspaper reports.

## India

In India, research included investigation of working conditions in four Gap supplier companies (Table 2). In order to protect the identity of workers interviewed for this study, in some cases the names of particular production units have been withheld. In total, we interviewed 50 workers engaged in producing Gap garments within the Delhi, National Capital Region (NCR).

**Table 1:** Overview of study respondents in Delhi-NCR, India

Supplier	No. of respondents
Orient Craft	20
Pearl Global	12
Pyoginam	8
Tets N Rai	10
Total: 50	

## Indonesia

In Indonesia, research included investigation of working conditions in 4 Gap supplier companies (Table 2). In order to protect the identity of workers interviewed for this study, in some cases,

names of particular production units have been withheld.

In total, we interviewed 100 workers engaged in producing Gap garments within Indonesia and surrounding areas.

**Table 2:** Overview of study respondents in Indonesia

Supplier	No. of respondents
Panca Prima	30
Putra Pilar Sejati	30
Sandrafine	20
Tainan Enterprises Indonesia	20
Total: 100	

# Part 1

## Global garment production

This section aims to situate new empirical findings on working conditions in Gap factories in India, Indonesia and Cambodia within the broader context of global production networks in general and the garment global production network in particular. This basic overview outlines key shifts in employment relationships as production processes evolve to include several companies across multiple countries. It also identifies trends in concentration and distribution of control over production processes across various actors in the garment global production network.

### Global production networks

The Global Production Network (GPN) is a term that describes contemporary production systems, characterized by production processes that involve several companies across multiple countries. Companies linked through GPNs are related through various legal forms, with exchanges between firms structured so that transnational corporations (TNCs) do not legally own overseas subsidiaries or franchisees but only outsource production to them. The UNCTAD World Investment Report 2013 notes the structure and prevalence of this mode of production:

Today's global economy is characterized by global value chains (GVCs), in which intermediate goods and services are traded in fragmented and internationally dispersed production processes. GVCs are typically coordinated by TNCs, with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers. TNC-coordinated GVCs account for some 80 per cent of global trade. (UNCTAD 2013)

*TNC-coordinated GVCs account for some 80 percent of global trade.*

As described by UNCTAD, GPNs shift market relationships between firms from trade relationships to quasi-production relationships without the risks of ownership. Within this model, TNCs drive coordinated production of goods while disbursing risk associated with market fluctuations across global value chains.

### Garment global production networks

As described by the International Labour Organization (ILO), the Textile, Clothing, Leather and Footwear (TCLF) is characterized by geographically dispersed production and rapid market-driven changes (ILO 2016). Brands engage in high value market research, design, sales, marketing and financial services. They typically outsource garment production to Tier 1 companies. Tier 1 companies may, in turn, subcontract some or all of the garment production process to manufacturing companies known as suppliers. This production structure allows brands and retailers to drive coordinated production of goods by capitalizing upon new technology, relaxed regulatory frameworks and a supply of low wage labour in developing countries (Ghosh 2015). While brands and retailers do not carry out production, they drive sourcing and production patterns overseas. This production model has been characterized as a buyer-driven value chain (Barria 2014).



According to this model, the structure of garment value chains can be divided into five main segments:

- Segment 1: raw material supply, including natural and synthetic fibers;
- Segment 2: component supply, including yarn and fabrics;
- Segment 3: production networks, including domestic and overseas subcontractors;
- Segment 4: export channels established by trade intermediaries;
- Segment 5: marketing networks at the retail level. (Ghosh 2015)

Firms that control design, branding and marketing (segment 5) also control sourcing decisions. Production costs are one significant factor in determining sourcing preferences. Decisions regarding how value addition activities and profits are distributed along the value chain, in turn, have a significant impact upon employers, workers and markets in producing countries. Profit generation by capitalizing upon price differentials between markets has been referred to as “global labour arbitrage” (Roach 2004).

Assembly (segment 3) is typically separated organizationally and geographically from other value generating aspects of the value chain. Product suppliers and their workers (segment 3) depend upon orders from marketing networks, firms and brands (segment 5). Tier 1 companies holding primary contracts with brands often subcontract production to smaller suppliers. At this level of the value chain, Tier 1 companies compete for contracts with buyers. In a parallel process, subcontractors compete for contracts with Tier 1 companies (Ghosh 2015).

Brands typically draw a distinction between their liability for authorized and unauthorized

subcontracts. Unauthorized subcontractors may also be unregistered and therefore outside the purview of government regulation. Due to diminished government and brand accountability—especially among unregistered suppliers, working conditions among garment subcontractors have been found to deteriorate (Kashyap 2015). Within this structure, employers and workers engaged in assembly operations, including primary stitching and embellishment, have comparatively little negotiating power (Ghosh 2015).

*Rise in employment of contract workers has been attributed to buyer purchasing practices: downward pressure on the prices paid to suppliers combined with increasingly unpredictable and extreme seasonal variation in production, together, require garment suppliers to reduce production costs.*

Since 2010, garment brand and retail members of the UK Ethical Trading Initiative (ETI) have reported an increasing reliance on contract labour within garment value chains, marked by a growth in the proportion of the workforce that consists of contract workers. Contract work is particularly widespread in Bangladesh, India, Pakistan and Turkey. These trends have been associated with the onset of the global financial crisis in 2007-2008. Rise in employment of contract workers has been attributed to buyer purchasing practices:

downward pressure on the prices paid to suppliers combined with increasingly unpredictable and extreme seasonal variation in production, together, require garment suppliers to reduce production costs. Contract workers cost less to employ per unit because they often receive lower wages and rarely receive non-wage benefits, including paid leave and social security benefits. These terms of employment leave contract workers particularly vulnerable to exploitation, with poorer working conditions and a higher risk of serious abuse when compared to directly employed workers (Chan 2013).

*Industrial uncertainty caused by buyer purchasing practices is displaced upon workers*

*Indonesian workers rally for decent work*  
by AFWA



*through the use of flexible job contracts, unemployment due to fluctuations in production and downward pressure on wages.*

Due to the structure of garment value chains, workers bear the brunt of global uncertainties within the industry. Industrial uncertainty caused by buyer purchasing practices is displaced upon workers through the use of flexible job contracts, unemployment due to fluctuations in production and downward pressure on wages. Obstacles to freedom of association and collective bargaining further undermine workers’ negotiation power.



# Part 2

## Overview of Gap initiatives to promote decent work

Brand and retail codes of conduct establishing social and environmental principles have developed in response to anti-sweatshop and consumer-driven accountability movements in Europe and the United States. In some cases, these codes of conduct have been developed through multi-stakeholder initiatives, including corporate, non-governmental organization, trade union, state and academic representatives (Barria 2014).

Gap has committed to several initiatives for improving the lives of employees worldwide. Their public commitment to promoting decent work has been announced in the Gap Code of Conduct, Gap Human Rights Policy, Alliance for Bangladesh Worker Safety and partnerships with the ILO and other industry stakeholders. While codes of conduct and other measures described in this report constitute declarations of intent they do not generate binding legal obligations.

This section reviews Gap's public commitments to promoting decent work in their supply chains. Where possible, it includes discussions and research on the efficacy of these initiatives to date.

### GAP Principles and Standards of Work

*Our team talks extensively with workers at factories where our clothes are made, and we follow up on the issues we find. We focus much of our time on complex issues such as tackling the use of unauthorized subcontracting, fire and safety issues inside factories, freedom of association and excessive overtime. –Gap 2016*

Gap outlines its principles and standards of work in two documents, the Gap Human Rights Policy, a broad framework containing principles governing Gap work spaces and employment relationships; and the Code of Vendor Conduct, that establishes standards that supplier factories need to meet in order to work with Gap. According to the Gap Human Rights Policy, these principles are binding for all direct employees and global suppliers.

The Gap Code of Vendor Conduct details model guideline for business with suppliers across continents. As a rule, Gap claims to engage in business with only suppliers that are in compliance with all guidelines outlined in the document. Suppliers are also explicitly required to invest in building monitoring systems that facilitate assessment of sourcing factories. The document also spells out requirements for decent working conditions that must be followed by suppliers and applied to all workers, including those hired on contracts. Further analysis of the Code of Conduct and enforcement of the same informs the section on rights violation.

### Gap support for California Transparency in Supply Chains Act

In January 2012, Gap supported the California Transparency in Supply Chains Act. The Act seeks to abolish child, bonded labour and human trafficking in global supply chains. It requires companies to publicly disclose the steps they are taking to identify and eradicate forced labour in their supply chains.

To uphold the clauses in the Act, Gap has publicly declared stringent monitoring mechanisms,

including periodic social audits and review processes for each of their sourcing factories aimed at ensuring the absence of trafficking and bonded labour.

Gap has outlined several steps designed to protect contract workers. These include locally-hired Social Responsibility Specialists tasked with monitoring Gap commitments to decent work for contract workers. According to Gap reports accessed in 2016, in 2012, the team monitored more than 923 active, full-year factories, allegedly through announced and unannounced audits—96.4 percent of the active, full-year garment factories produce Gap Inc. branded apparel. Gap also claims to require that vendors certify that materials incorporated

into the product comply with laws regarding slavery and human trafficking in the country of business. Finally, Gap claims to provide training to employees and management with responsibility for supply chain management (Gap 2016a).

This approach has significant shortcomings:

- Monitoring year-round factories neither accounts for working conditions for contract workers in factories that do not produce year round nor for production units that receive subcontracts from Gap full time factories. Given the structure of the garment global value chain, these types of production processes are both highly significant and also the site of the most significant rights abuses.

- Based upon a 2016 search, no monitoring reports have been released for 2013, 2014 or 2015.
- Monitoring is conducted by an internal set of Social Responsibility Specialists hired by Gap. This monitoring structure does not produce external evaluations.
- Monitoring reports are impossible to verify since Gap does not disclose factory locations or particular violations disaggregated by factory.

*We remain committed to the principle that wages for a standard working week should meet the basic needs of factory workers and provide them with discretionary income. Our approach to wages is aligned with international legal standards set by the ILO and in accordance with the ETI's Base Code, as well as with SAI's principles (CCC 2014).*

Gap has not, however, released a formula or methodology for determining living wage rates.

Filling this conceptual Gap, the Asia Floor Wage Alliance (AFWA), a global coalition of trade unions, workers' rights and human rights organizations, provides a detailed formula for calculating living wages across national contexts. The AFWA definition of a living wage specifies that living wage calculations must include support for all family members, basic nutritional needs of a worker and other basic needs, including housing,

Figure 1: Basic needs included in Asia Floor Wage calculations



## Wage standards

In a survey conducted by the Clean Clothes Campaign, Gap declared that their conception of a living wage varies from the standard definition used globally.

Figure 2: Asia Floor Wage calculations consider financial dependents and corresponding responsibility of workers



healthcare, education and some basic savings.

The Asia Floor Wage Alliance bases their calculations on the following considerations:

- A worker needs to support themselves and two other consumption units. [One consumption unit supports either one adult or two children.] (Figure 2)
- An adult requires 3000 calories a day in order to carry out physically demanding work in good health.
- Within Asia, food costs amount for half of a worker’s monthly expenditure.

Based upon these assumptions, the Asia Floor Wage is calculated in Purchasing Power Parity \$ (PPP\$). This fictitious World Bank currency is built upon consumption of goods and services, allowing standard of living between countries to be compared regardless of the national currency. In order to calculate annual Asia Floor Wage figures, the AFWA carries out regular and ongoing food basket research (AFWA 2016a).

Accounting for high inflation, Asia Floor Wage figures are calculated annually. As explained by AFWA Coordinator, Anannya Bhattacharjee:

*The gap between the minimum wage and the cost of living has widened in recent years. High inflation has sent the cost of living soaring in many Asian countries, but starting salaries remain unchanged—often for several years.* (Pasariello 2013)

AFW annual PPP\$ wage figures are therefore calculated annually based upon up to date national food basket research. For instance, the 2015 Asia Floor Wage figure is PPP\$ 1021. These wage figures are then converted into local currency (Table 3)(AFWA 2016b).

**Table 3:** 2015 Asia Floor Wage Figure in local currencies

Country	Asia Floor Wage in local currency
Cambodia	1,630,045 Riel
India	18,727 Rupees (INR)
Indonesia	4,684,570 Rupiah
Sri Lanka	48,608 Rupees (SLR)

The AFW wage calculation method provides an instructive model for Gap and other brands in setting living wages that correspond to workers needs and consider rising costs of living.

## Initiatives on working conditions

Gap has partnered with Verite, a U.S. based non-governmental organization with the articulated objective of improving working conditions. This initiative claims to measure and improve how much workers feel valued and engaged at work. The collaboration allegedly aims to focus on workers and their voices in order to improve their experience of work.

With similar claims to attending to workers’ needs, in 2011, Gap Inc. created a Brand Integration and Vendor Performance project team. Gap declared that the efforts would be directed towards gathering data on vendors for effecting change at the level of management in the supplier factories. Stated initiatives include:

- meeting with leaders in the Gap Inc. Sourcing Department to examine any issues related to



Garment workers in India protest against Gap for unfair labour practices. Society for Labour and Development

- working conditions that may have stemmed from decisions at headquarters;
- meeting regularly with strategic and low-performing vendors to assess their performance against Gap’s Code of Vendor Conduct and discuss how the timing and planning of Gap’s orders are affecting their workers;
- training all new hires in inventory management, merchandising, production, and sourcing on the importance of responsible purchasing practices; and
- highlighting case studies and tools to ensure that factory orders are made with a full understanding of their potential impact on workers.

The espoused aims of these initiatives, however, are in stark contrast to Gap responses to worker-led initiatives to engage the brand in improving working conditions. For instance, Gap was invited to engage with workers at the People’s Tribunal on Living Wage as a fundamental right of Sri Lankan garment workers, held from March 17-28, 2011 in Colombo; Cambodian garment workers, held from February 5-8, 2012 in Phnom Penh, Cambodia; Indian garment workers, held from November 22-25, 2012 in Bangalore; and Indonesian garment workers, held from June 21-24, 2014 in Jakarta. Gap denied invitations to engage with workers at each of these tribunals, despite being notified of persistent rights violations in their supplier factories (Butler 2012; Barria 2014).

## Better Work Programme

Gap first engaged with the ILO in 2001 at the start of the Better Factories Cambodia programme.

This initiative led to the creation of the ILO Better Work Programme in 2007, which Gap joined as a partner. This partnership between the ILO and the International Finance Corporation (IFC) seeks to help governments, workers and companies achieve compliance with the ILO's core labor standards as well as national labor laws.

In countries where Better Work programs are established, Gap subscribes to Better Work assessment reports and has stopped their own monitoring. In 2011-12 Gap Inc. claims to have collaborated with Better Work in Cambodia, Haiti, Indonesia, Jordan, Lesotho, Nicaragua, and Vietnam to monitor more than 90 factories. The extent to which Gap engages with the Better Work assessment module varies according to countries. For instance all registered branded apparel suppliers in Cambodia, Haiti, Jordan and Lesotho are legally required to participate in the Better Work program. However, in Vietnam, Better Work monitored approximately 30 percent of the factories sourced from over that time period (2016b).

Better Work Programmes play an important role in monitoring working conditions in export-oriented factories, including by producing factory reports, providing technical guidance and supporting remediation of labour rights violations when factories engage their services.

However, workers and labour rights activists have voiced concerns about factory monitoring methods, coverage and transparency. For instance, Human Rights Watch revealed that in

Cambodia, workers reported being coached by factory management and being unable to engage with brand representatives, external monitors, government officials or Better Factory Cambodia (BFC) monitors. As one worker reported to Human Rights Watch:

*Before ILO comes to check, the factory arranges everything. They reduce the quota for us so there are fewer pieces on our desks. ILO came in the afternoon and we all found out in the morning they were coming. They told us to take all the materials and hide it in the stock room. We are told not to tell them the factory makes us do overtime work for so long. They also tell us that is [we] say anything we will lose business.*

Workers in Cambodia called for mechanisms to report violations of rights at work to BFC monitors off site without fear of surveillance or retaliation by management. Confirming this narrative, BFC experts reported to Human Rights Watch that their monitors were aware of factories coaching workers and that they attempted to mitigate the impact of coaching as much as possible. Labour rights activists reported that the efficacy of BFC is further undermined because factory inspection reports are made available to managers and brands but not to workers or unions without prior factory authorization (Kashyap 2015).

Finally, since Better Work Programmes are limited to monitoring and advisory services and lack enforcement authority, labour rights activists have critique the programme on the grounds that lack of transparency and failure to release brand names reduces brand accountability for rights violations in their supply chains (Kashyap 2015).

## Personal Advancement & Career Enhancement (P.A.C.E)

In 2014, Gap Inc. became the first Fortune 500 Company to announce that it pays female and male employees equally for equal work around the world. Currently women make up more than 70% of Gap Inc.'s worldwide employee base, including in sourcing factories. Additionally, women currently lead four out of five Gap Inc. brands.

In order to meet articulated commitments to gender equality, Gap initiated the Personal Advancement and Career Enhancement programme. The P.A.C.E programme aims to secure skill enhancement for women employees. According to Gap, this programme is currently active in 7 countries and more than 25,000 women have participated in the program since its inception in 2007. Gap Inc. has made a commitment to scale and expand the program to reach one million women by the end of 2020 (Gap 2016c).

According to a report by the International Center for Research on Women (ICRW), conducted by ICRW from 2009 - 2013 at six factory sites where P.A.C.E. is implemented - two in India and one each in Cambodia, Vietnam, Bangladesh and China, P.A.C.E. is an effective, sustainable and scalable model that yields high returns for women, their families and the businesses where they work (ICRW 2013).

It is significant to note, however, that the number of women reached by this programme represents a tiny fraction of the number of women supply chain workers employed by Gap worldwide.

For context, within the Gurgaon-Kapashera production area of India's Delhi-National Capital Region (NCR) just one garment factory may employ up to 7,000 workers. Put another way, this programme in aggregate reaches approximately the number of workers in four Gap supplier factories.

## Alliance for Bangladesh Worker Safety

On April 24, 2013, the Rana Plaza, an eight-story commercial building, collapsed in Savar sub-district in the Greater Area of Dhaka, Bangladesh. The Rana Plaza industrial factory fire that killed 1,139 workers and injured 2,500 more is considered the most serious fatal accident to have occurred in a textile factory in modern history.



*Thousands of garment workers and their unions rally on the one-year anniversary of the Rana Plaza collapse that killed more than 1,100 garment workers.*

*licensed by the Solidarity Center under CC 2.0*

*Following the devastating collapse of Rana Plaza, 200 brands signed the 2013 Accord on Fire and Building Safety in Bangladesh—Gap did not.*

Following the devastating collapse of Rana Plaza, 200 brands signed the 2013 Accord on Fire and Building Safety in Bangladesh—Gap did not. The Accord is a legally-binding agreement that commits signatory brands and retailers to require their factories to undergo essential safety renovation, provide financial assistance to factories to conduct renovations as needed and stop doing business with factories that fail to undertake renovations according to deadlines established by the Accord's independent inspectorate. Accord inspections are undertaken by qualified safety engineers with in-depth expertise in fire, building and electrical safety.

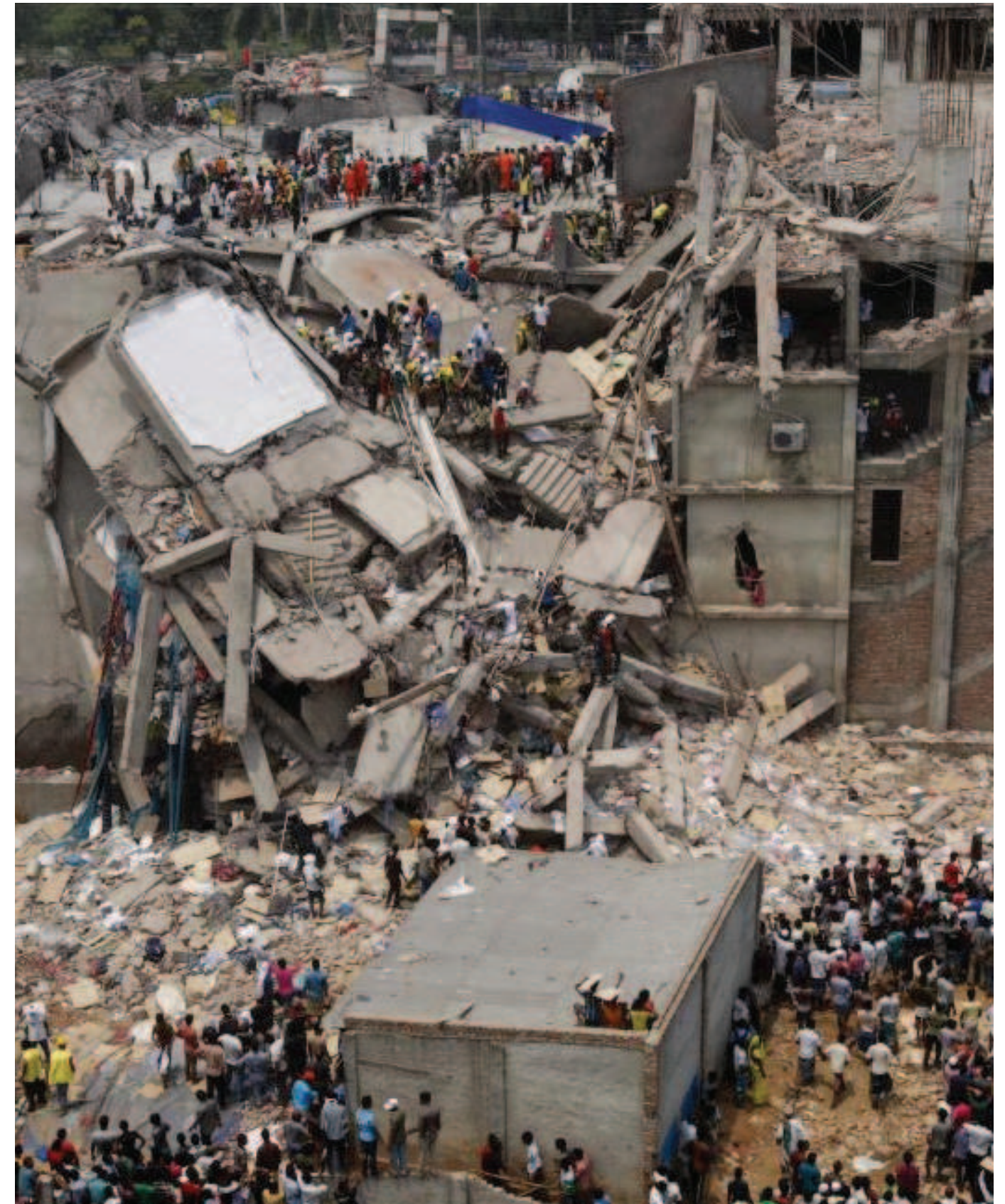
Just months after Rana Plaza, eight workers were killed during a fire at the Aswad factory in Bangladesh, a known Gap supplier. Gap denied having a relationship with the company despite documents clearly showing their involvement (CCC 2014a).

Instead of signing the Accord, Gap together with Walmart, founded the Alliance for Bangladesh Worker Safety. Unlike the legally binding 2013 Accord on Fire and Building Safety, the Alliance for Bangladesh Worker Safety is a voluntary measure rather than a contractual commitment. To date, Gap has refused to make a contractual commitment to work with their suppliers and local and international trade unions to ensure that repairs are made and workers have the right to refuse dangerous work.

*To date, Gap has refused to make a contractual commitment to work with their suppliers and local and international trade unions to ensure that repairs are made and workers have the right to refuse dangerous work.*

Due in no small part to this egregious refusal to join the Accord, in 2014 Gap earned the Public Eye Jury Award from the Berne Declaration and Greenpeace Switzerland—an award that aims to shine a light on the current and most serious cases of human rights violations and disregard for environmental protection and sustainability (CCC 2014a).

*An image of the Rana Plaza building after the collapse.*  
Rijans CC 2.0



# Part 3

## Asian garment value chains

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

**Table 4:** Asian countries' share of global apparel exports, 2000-2013

Globally, Asia tops apparel exports worldwide. In 2013, more than 60% of the 460.27 billion dollars in global apparel exports originated from 10 Asian countries, including—in order of market share: China, Bangladesh, Hong Kong, Viet Nam, India, Indonesia, Cambodia, Malaysia, Pakistan and Sri Lanka (Table 3).

Concentration of garment production in Asia can be attributed to a range of factors. Low wages, government policies, trade practices, transaction time, currency appreciation and infrastructure availability all influence the location of global production network activities. For instance, China has systematically leveraged economies of scale through major investment in the infrastructure of supply-chain cities. These global supply chain hubs lower transportation costs and increase the rate at which goods enter the market. Accordingly, although labour costs are much lower in India

than in China, Chinese firms retain a competitive advantage in the non-labour components of their costs (Ghosh 2015).

Due to a range of factors—including poor capacity, limited resources, infrastructural needs and, in some cases, adverse disposition towards protective labour standards—national labour standards in producing countries remain weak. Proclivity toward driving down labour standards, furthermore, is often linked to dominant global policy frameworks that prescribe labour deregulation as a prerequisite to attracting investment capital (Ghosh 2015).

The following sections provide an overview of garment value chains in Cambodia, India and Indonesia. These country-level overviews provide basic information on market structure and workforce demographics.

## Cambodia

Cambodia entered the export-oriented global garment and textile industry in the 1990s with the passage of the 1993 Constitution of the Kingdom of Cambodia which established a free market in Cambodia (CCC 2016a; CCHR 2014). Between 1995 and 2006, bilateral trade agreements with the United States, the European Union and Canada spurred growth in the garment industry. With the exception of a downturn in 2008 during the global economic crisis, the industry has shown consistent growth (Kashyap 2015). Between 1995 and 2014, the sector grew 200-fold (ILO 2015).

*Women dominate the Cambodian garment production sector, comprising an estimated 90-92% of the industry's 700,000 workers.*

*Cambodian garment workers, exact location undisclosed, by Asia Floor Wage Alliance.*



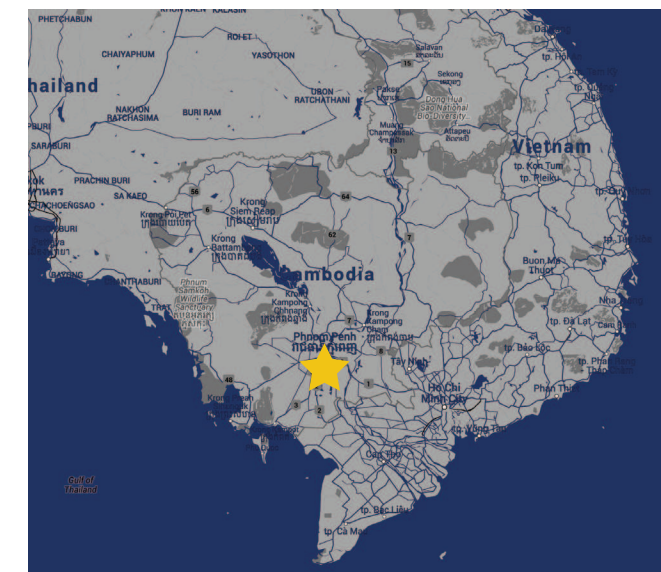
*At the time of writing, top brands sourcing from Cambodia include H&M, GAP, Levi Strauss & Co., Adidas and Target (CCC 2016a).*

Today, garment and textile exports are critical to the Cambodian economy. In 2013, garments accounted for 13% of the Cambodian GDP (CCC 2016a). Cambodian global exports amounted to roughly USD 6.48 billion, of which garment and textile exports accounted for USD 4.96 billion. By 2014, garment exports totaled USD 5.7 billion.

The US, EU, Canada and Japan are the largest importers of Cambodian garments, textiles and shoes (Kashyap 2015). At the time of writing, top brands sourcing from Cambodia included H&M, GAP, Levi Strauss & Co., Adidas and Target (CCC 2016a).

The Cambodian garment industry is largely foreign-owned, with Cambodians owning less than 10% of factories (Kashyap 2015). An estimated 85% of garment factories located in Cambodia are foreign controlled, predominantly by investors from China, Hong Kong, Malaysia, Singapore, South Korea and Taiwan (Kashyap 2015; CCC 2016). Foreign owned companies have kept the production processes within Cambodia limited. The majority of factories undertake “cut-make-trim” production functions—manufacturing clothes from imported textiles based upon designs provided by international buyers. This exclusive focus on producing garments circumscribes the range of employment available to firms and workers in Cambodia (Ghosh 2015).

Phnom Penh is a hub for garment factories. However, garment production has expanded to other areas, including the adjoining Kandal province. In these areas, factories vary in size and



operations, ranging from export licensed factories with up to 8,000 workers to small, unmarked factories employing fewer than 100 workers. These smaller factories largely fill subcontracts for larger suppliers. Outsourcing of production to smaller factories may be either authorized or unauthorized by apparel brands (Kashyap 2015).

*Women between the ages of 18 and 35 dominate the Cambodian garment production sector, comprising an estimated 90-95% of the industry's estimated 700,000 workers*

Women between the ages of 18 and 35 dominate the Cambodian garment production sector, comprising an estimated 90-95% of the industry's estimated 700,000 workers (Barria 2014; Kashyap 2015). These numbers do not, however, include women engaged in seasonal, home-based garment work (Finster 2015; Kashyap 2015).

*Cambodian garment workers were found to intake an average of 1598 calories per day, around half the recommended amount for a woman working in an industrial context*

The garment industry has been a major source of employment for young women from rural areas who migrate for employment to garment production hubs (McMullen 2013). In a February



2012 hearing before the Permanent People's Tribunal held in Phnom Penh Cambodia, Asia Floor Wage Alliance-Cambodia (AFWA-C) reported that these internal migrants work far from their families and communities and are thereby cut off from traditional support networks. Despite their numerical majority within the garment sector, they remain within low skill level employment and rarely reach leadership positions in their unions (Barria 2014).

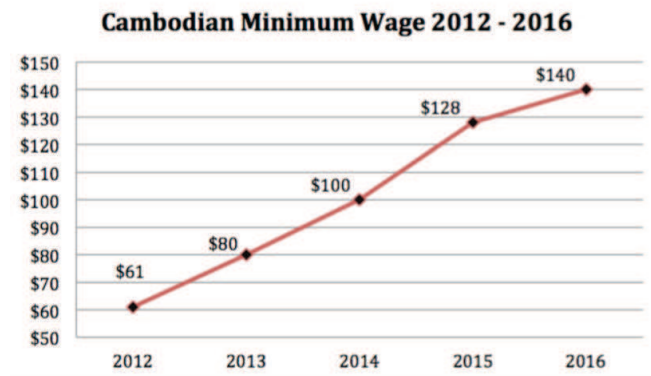
Malnutrition is also prevalent among Cambodian garment workers. Data gathered by tracking monthly food purchases by 95 workers employed in a range of garment factories in Cambodia, compared with recommended amounts and workers' Body Mass Index (BMI), revealed that workers were found to intake an average of 1598 calories per day, around half the recommended amount for a woman working in an industrial context (McMullen 2013).

Sexual harassment is a significant concern for women workers but due to lack of legal awareness, women rarely if ever seek access to justice in cases of abuse (Barria 2014).

## Labour protections

Article 36 of the 1993 Constitution of Cambodia provides for basic labour rights, including the right to freely chose employment, equal pay for equal work, recognition of household work, the right to obtain social security and other social benefits and the right to form and to be members of trade unions.

The Cambodian Labour Ministry is responsible for establishing policy standards and engaging in monitoring and compliance. The 1997 Cambodian Labour Law governs all garment factories.



**Figure 3:** Progressive increase in Cambodian minimum wages, 2012-2016

Irrespective of their size. Provisions of the 1997 law regulate working conditions in factories, including protection against discrimination, wages, overtime work, minimum age, pregnancy entitlements, leave and occupational health and safety standards. The Labour Ministry has also issued model internal factory regulations. Despite these protective measures, enforcement of these standards is weak. This is due in part to inefficient labour inspections, corruption and rapid expansion of the number of factories in Cambodia (Kashyap 2015).

A 2011 government regulation outlines a set of permission and notifications for suppliers engaged in subcontracting. The government also set up an inter-ministerial commission comprising members drawn from Labour, Commerce and Interior Ministries to trace unregistered subcontractor factories and ensure labour compliance. Under these guidelines, factories with export licenses subcontracting to unregistered factories can face temporary suspension of their export licenses and repeat offenders may have their licenses evoked (Kashyap 2015).

In October 2015, the Cambodian government announced a revised minimum wage of USD 140 per month. This marked increase from the

minimum wage of USD 66 in November 2011 is the result of significant wage protests in recent years that succeeded in gaining progressive minimum wage increases between 2011 and 2015 (Figure 3). Wages are also increased through the addition of bonuses, including transport, attendance, health and seniority bonuses (McMullen 2016). Current minimum wages, however, still fall short of the USD 177 per month called for by garment workers and unions.

## Better Factories Cambodia

In 1999, Cambodia signed the Textiles and Apparel Trade Agreement (TATA) with the United States, under which the United States imposed quotas to imports from Cambodia. Under TATA, Cambodia's import quotes were to be increased annually in exchange for a gradual improvement in working conditions in the factories, in compliance with domestic and international labour laws and standards. In 2001, in order to monitor compliance with TATA, the International Labour Organization (ILO) created Better Factories Cambodia (BFC). BFC, a third-party monitor, is tasked with monitoring factories with an export license. Although TATA expired in 2004, the BFC continues to monitor compliance with labour laws and standards within the garment industry. Participation in the BFC monitoring programme is required in order to hold a government export license (CCHR 2014). According to January 2015 data, BFC monitors 536 garment and 12 footwear factories (Kashyap 2015).

BFC publishes an overview of working conditions within factories through synthesis reports. Factory-level monitoring reports are made available to factories free of cost and international brands for a cost. Third parties, including labour unions and NGOs are unable to access monitoring reports unless the factory authorizes access. Labour rights groups have called for greater

transparency in BFC monitoring and reporting. In March 2014, BFC launched a Transparency Database that publicly names 10 low compliance factories every three months.

Brands can participate in BFC by endorsing BFC, purchasing monitoring reports, employing BFC training and advisory services and joining the BFC buyers forum—a platform that brings together buyers, government authorities, factories and unions to discuss key concerns and possible ways forward.

BFC has been upheld as a model for the IFC-ILO Better Work Programme that operates in other garment producing countries, including Vietnam, Indonesia, Bangladesh and Haiti. Although BFC monitors some subcontractors that supply to export licensed factories, mandatory monitoring is limited to export-oriented factories (Kashyap 2015).

## Garment Manufacturers Association in Cambodia

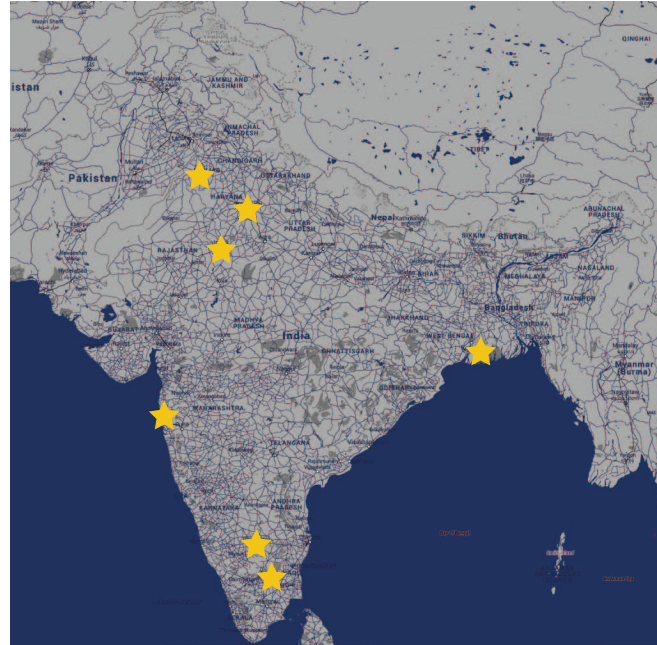
In 1999, the Garment Manufacturers Association in Cambodia (GMAC) was established with the expressed purpose of increasing collaboration between all stakeholders, including the Cambodian government, to create a better business environment. GMAC was officially registered with the Ministry of Social Affairs, Labour, Veteran and Youth Affairs as an employer organization. In 2014, GMAC members included 593 different garment and footwear factories operating across Cambodia. In practice, GMAC acts as a powerful lobby for garment manufacturers to influence the Cambodian government to implement business friendly policies and legislation (CCHR 2015).

## India

*In 2014, the Indian textile and garment industry employed 45 million workers.*

Since the adoption of liberalized economic policies during the economic reforms of 1991, the Indian export garment industry has emerged as one of the leading industrial segments in the Indian economy. Export earnings of the apparel industry alone were valued at USD 15.7 billion in 2014 and combined textile and apparel export earnings were valued at USD 40 billion. In 2013, textiles and clothing contributed 4% to the gross domestic product. In 2014, the Indian textile and garment industry employed 45 million workers. Despite the significant segment of Indian workers employed in the garment industry, national level data on economic and social profile of the garment workforce remain alarmingly thin (Kane 2015).

*Today, the major hubs of garment manufacturing are located in the industrial clusters of the Delhi-National Capital Region (NCR), Bangalore in Karnataka, Ludhiana in Punjab, Mumbai in Maharashtra, Jaipur in Rajasthan, Kolkata in West Bengal and Tirupur in Tamil Nadu (Roy 2015).*



A majority of workers are migrants who migrate to the industrial clusters from Andhra Pradesh, Bihar, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal (ICN 2016). For instance, up to 80% of garment workers in Bangalore are believed to be migrant workers (Bain 2016). Despite the staggering presence of low wage migrant workers in the unorganized sector and their significant economic contributions, there are large gaps in government and civil society services to protect their rights. For instance, India's Inter-State Migrant Workmen Act, 1979, aims to regulate working conditions but is inadequate and unimplemented, with no gender perspective (Roy 2015).

Modernization of the Indian textile industry has been pursued vigorously since the mid-1980s with the elimination of the licensing regime, quotas, and quantitative restrictions in an attempt to attract state-of-the-art machinery and technology, know-how and skill sets from abroad. The massive drive towards modernizing the textile industry has gone hand-in-hand with firms resorting to

widespread informalization of the workforce. Within the textile industry, this trend has been most apparent in the ready-made garment industry, which has become a leading outsourcing destination for TNCs over the past two decades (Sridhar 2014).

Approximately 60% of garment workers in India are women, although workplace demographics shift depending upon the region (Kane 2015). Long working hours, hazardous working conditions, lack of basic services such as first aid, drinking water and sanitation affect women workers more severely than men (Chen 2007). Women workers are also particularly vulnerable to lewd comments, sexist taunts and other forms of harassment from supervisors and male employees. Extended hours in the informal garment sector also places women workers in extremely unsafe and precarious scenarios. They must travel at night through poorly lit areas where they face growing incidences of rape, sexual assault and physical violence. Women workers are also rarely given sick leave and denied pay during maternity leave in violation of the Maternity Benefit Act, 1961. The vulnerability of unorganized sector women garment workers is heightened since most are from socially weaker or marginalized sections of the society. Their ability to bargain collectively is further undermined by high levels of labour mobility within the garment sector.

### Labour law changes

Proliferation of unorganized work within India's garment sector has led to a sharp increase in the number of precarious workers engaged in work that was once protected. Common employment practices to transform protected work into precarious work include use of short-term contracts, casualization, use of labour supply agencies and employment of foreign and domestic

migrant workers. These employment strategies are also used to restrict collective bargaining and reduce the bargaining power of unions. As a result, jobs that were once associated with regulated wages and labour standards governing paid leave, maternity benefits, workplace safety, retirement and other non-wage benefits are now uncertain, unpredictable and risky for workers.

In 2015, the Indian government proposed a series of labour laws changes that would further weaken protection for workers in the garment industry. The proposed 2015 Draft Code on Wages dilutes protective standards, including minimum wage 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 (Bhattacharjee 2016).

The proposed 2015 Draft Code on Industrial Relations undermines 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 2015 Draft Code on Industrial Relations simultaneously weakens 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 (Bhattacharjee 2016).

## Indonesia

Encompassing production of fabric, apparel and leather goods, the Indonesian textile and clothing industry accounted for almost 2% of national GDP and more than 7% of the total exports in 2013 (GBG 2016). More than 170 foreign brands and companies are active in Indonesia's garment industry. In 2014, Indonesia accounted for 2.9% of the world market for garment export, placing Indonesia among the top ten garment supplier companies globally (CCC 2015a). While the industry is projected to remain slow through 2016, forecasts predict that by 2030, textiles will emerge as Indonesia's largest export sector (GBG 2016).

Indonesia's garment industry exemplifies regional integration. Indonesia sources cotton, exports yarn, imports fabrics and exports garments. Indonesia is ranked 9th for global cotton consumption but produces less than 2% of the domestic cotton demand. This deficit is filled through raw cotton imports from Brazil, the US

and Australia that is then spun in Indonesia and either exported as yarn or further processed into cloth and garments (GBG 2016). The principle buyers of yarn from Indonesia are China and Japan. Indonesia sources the majority of fabric used in garment production from China and South Korea (CCC 2015a). This integrated textile manufacturing base is a draw for brands and investors (GBG 2016).

In 2014, the Indonesian garment, footwear and textile productions industries employed an estimated 2 million workers (AFWI-2015). Due to an economic slowdown in Indonesia in 2015, many smaller garment producers closed down or fired considerable portions of workers. In September 2015, the jobs of around 36,000 textile and garment employees were under threat from weak sales—adding to the 45,000 workers who had already been let go from factories.

90% of garment production is concentrated on Java Island, with 55% in the western end of Java Island. Central and eastern Java, however, are increasingly significant production hubs. The Ministry of Industry plans greater onshore warehousing of cotton and is promoting the Central Java province as a new textile hub, with

a dedicated industrial estate planned on its northern coast. In order to promote the industry, the Economic Ministry is overseeing policy changes to promote special economic zones, new tax holidays, lower nighttime electricity costs, and incentives to buy new machinery (GBG 2016).

According to the Better Work Indonesia Report, 2013, garment, textile and footwear industries have very low levels of compliance with ILO core conventions and national laws. Better work Indonesia also reports an industry-wide low level of compliance with laws governing overtime pay, provision of social security benefits and short-term contractual employment relationships.

### Labour law changes

On October 23, 2015, the Indonesian Government issued Government Regulation No. 78 of 2015 (hereinafter "PP78"). PP78 is applicable for at least 40 million formal workers. It regulated a range of wages, including minimum wage, overtime wage, taxes and wage fines. While some articles codify existing wage regulations—including overtime, piece rate and casual worker remuneration; others introduce a new wage system—including a new minimum wage formulation and a new mandatory wage scale structure.

At the same time, the Indonesian Government issued a range of services and amenities for investors and businesses. These include a Special Desk for Textile and Footwear Investments and Economic Policy Package Volume 6. This economic package encourages the operation of Special Economic Zones (SEZs) through income tax reductions for 15-25 years, tax allowances for 6 years and compensation for losses for 5 to 10 years, freedom from paying import and export taxes and authority to issue land use permits and building rights. Within SEZs, labour unions

are restricted and only labour union forums are allowed.

Labour unions in Indonesia have rejected PP78 on the grounds that it facilitates flexible employment, institutes a minimum wage formula that erases workers' needs and eliminates the opportunity to negotiate before the Minimum Wage Council. In protest, labour unions held demonstrations and strikes in front of administrative centers and industrial estates. They mobilized international support, including through a petition signed by one million people rejecting PP78. They also submitted a call for judicial review to the Constitutional Court of the Republic of Indonesia.

On October 30, 2015, demonstrations against PP78 were violently repressed by security forces. Labour union officials were beaten, kicked and dragged. 23 labour union officials and 2 public attorneys were detained for resisting the state (AFWA-I 2015).



# Part 4

## Precarious work in Gap garment supply chains

On Thursday, December 10, 2015, 6000 garment workers in Phnom Penh, Kampong Speu and Kampong Som organized to protest employment practices in global value chains headed by Gap and other key international retailers. Supported by the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU), Cambodian workers sought fair wages and working conditions. In India, garment workers from six factories that produce for brands including Gap rallied in solidarity. From diverse sites across the garment global production network (GPN), workers and their allies called upon brands, including Gap, to ensure their rights to earn a living wage, unionize without dismissal and resist labour law changes that undermine freedom of association, maintain poverty level minimum wages and facilitate flexible employment relations (Finster 2015).

*The growth of global production networks (GPNs) within the garment industry is an important source of employment in many countries. Jobs for workers at the base of the garment global value chain, however, typically entail precarious employment relationships, low wages, excessive working hours and poor working conditions (Ghosh 2015).*

The term precarious work refers to employment that is uncertain, unpredictable and risky from the perspective of the worker (Kalleberg 2009). As employers within the Gap supply chain seek

to easily adjust their workforce in response to supply and demand conditions, they generate more non-standard work. Suppliers, in turn, adjust to increased risk through precarious employment relationships characterized by low wages and temporary work.

Proliferation of precarious work has a far-reaching impact upon the nature of work and workplaces and the gender-based distribution of work. Consequences of precarious work include greater economic inequality, insecurity and instability among workers. These forces have severe impacts on workers lives and their roles within their families and communities (Kalleberg 2009).

This study identifies persistent violations of rights at work within Gap value chains in Cambodia, India and Indonesia. It draws upon evidence of rights violations collected through 150 structured interviews conducted between August and October 2015 with garment workers in the Java area of Indonesia and the Gurgaon, National Capital Region (NCR). Information from these interviews is supplemented by evidence of rights violations documented in recent studies and news reports. Documentation of rights violations in Gap sourcing factories in Cambodia is comprised primarily of case studies and secondary research, including news media articles and recent human rights reports.

Within this section, human rights violations and violations of rights at work are articulated thematically in order to surface the pattern of rights violations across Cambodia, India and Indonesia. As the *lex specialis* or specialized law in this area, this study uses ILO labour standards protecting workers as a primary benchmark to identify rights violations. The iteration of these rights violations across Cambodia, Indonesia and India suggests the structural nature of these

*Campaigners on Oxford Street, London call on Gap to ensure better safety in their Bangladeshi factories by Trade Union Congress CC 2.0*

abuses, reproduced across contexts and integrally linked to the structure of the garment GVC.

Documenting rights violations in Gap factories is particularly challenging because Gap refuses to disclose basic information about its suppliers. In a context where rampant rights abuse are structurally embedded within supply chains, the importance of full public disclosure cannot be underestimated. In response to an October 2014 inquiry by Human Rights Watch, Gap cited commercial interests and feasibility as grounds for refusing to disclose suppliers:

*We currently do not disclose our supplier lists. There are commercial reasons—we feel that we have invested a lot in our supply chain—some are our strategic partners and we don’t know the implication of disclosing. And we are still understanding the supplier side of this—how can we manage and update the list? How can we maintain an accurate and current list? I’m not saying we will never disclose but we don’t disclose now (Kashyap 2015).*

Gap’s concern with feasibility is far from compelling since numerous brands do disclose suppliers. H&M, for instance, started publicly disclosing of suppliers in 2013 and updates supplier lists annually. In 2014, H&M expanded their supplier lists to include factories that are approved to perform subcontracted or designated outsourced work (Donaldson 2015). Lists of suppliers and designated subcontractors are available on the H&M website.

According to an April 2014 letter from H&M to Human Rights Watch, within Cambodia, H&M has even distributed a translated copy of its suppliers’ list to local unions and labour rights groups to encourage whistleblowing in cases of abusive labour practices (Kashyap 2015). Public disclosure

of suppliers provides a step toward accountability by allowing labour rights groups, the government and other parties to monitor labour rights in their direct supplier and subcontractor factories. Gap’s reluctance to facilitate monitoring further undermines accountability for the rights violations detailed in this section.

## Temporary and contract workers

The ILO Termination of Employment Convention, 1982 (No. 158) and Termination of Employment Recommendation, 1982 (No. 166) govern the use of short-term contracts. These instruments call upon states to ensure that contracts for specific periods are not used to diminish protection against unfair termination. Instead, fixed term contracts should be limited to conditions where the nature of work, circumstances or interests of the worker require them. In instances where short-term contracts are renewed one or more times, or when they are not required, states are instructed to consider fixed term contracts as contracts of indeterminate duration (R166, Art. 3).

In order to curb arbitrary dismissals, states are required to implement safeguards including written warning followed by a reasonable period for improvement. Where an employer needs to terminate a worker due to economic, technological, structural or other like considerations, these decisions should be made according to pre-defined criteria that consider the interests of the worker as well as the employer (R166, Arts. 8, 23). Although neither Cambodia, India nor Indonesia has ratified Convention No. 158, this convention and corresponding recommendation provide significant guidance

on emerging international norms governing termination of employment.

Departing from international standards, the Gap Code of Vendor Conduct—containing the standards for sourcing factories set by Gap—does not explicitly address hiring non-permanent workers. The document does contain guidelines for use of fixed duration contracts for employing foreign migrants engaged in contract labour in a destination country. Gap has no direct standards governing employment of contract and casual workers.

Temporary and contract employment relations are common modes of maintaining a precarious workforce across global production networks. Short-term contracts make it easier to hire and fire workers. Precarious employment relationships with workers engaged in labour intensive processes have allowed employers within the garment global production network to ensure that labour costs are not expended during cycles when production wanes.

### *Threats of non-renewal undermine workers’ ability to demand safe workplaces, exercise their rights to freedom of association and refuse overtime work.*

Illegal use of short-term contracts is common in the garment industries of all three countries—including in Gap supply chains. Threats of non-renewal undermine workers’ ability to demand safe workplaces, exercise their rights to freedom of association and refuse overtime work. As a result, illegal use of short-term contracts undermines ILO core labour standards protected

under the Declaration on Fundamental Principles and Rights at Work, including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

## Cambodia

Under Cambodian labour law, factory owners can either engage workers on undetermined duration contracts (UDCs) or on fixed duration contracts (FDCs) that specify a contract end date. Factory managers can issue FDCs and renew them one or more times for up to two years. If an FDC is extended so that the total period of the contract is more than two years, then the contract will automatically turn into a UDC.

FDCs and UDCs confer workers with distinct benefits upon termination:

- An FDC terminates on a specific end date, or earlier with the agreement of both parties or in cases of serious misconduct or “acts of god.” If an employer prematurely terminates an FDC for any other reason, the employee is entitled to remuneration equal to the wages she would have received until the natural end of the contract. If the period of an FDC is more than six months, employees are entitled to notice prior to termination.
- UDCs can be terminated at will by the employer or employee, but are subjected to specific notice periods based upon the length of time the employee worked. During these prescribed notice periods, the worker is entitled to two days of leave per week, with full payment, to search for new employment. If a UDC is terminated without notice or without compliance within specified notice periods, the employee is entitled to receive wages and benefits equal to those they would

have received during the notice period.

The UDC is distinct from the FDC because it fundamentally safeguards employees against unemployment by providing supported transition to alternate employment.

According to Better Factories Cambodia (BFC), however, factories persist in using FDCs beyond the two-year duration. BFC reported a drop in factory compliance with the two-year rule on FDCs from 76% of factories surveyed in 2011 to 67% of factories surveyed in 2013-2014. Since 2011, BFC has also consistently found that nearly one third of all factories in each survey period used FDCs to avoid paying maternity and seniority benefits (BFC 2014). Employers also use threats of nonrenewal of such agreements to pressure workers into non-voluntary overtime (CCHR 2014).

Cambodian workers have challenged the abusive use of FDCs in collective disputes before the Arbitration Council. The Council has consistently ruled that according to article 67 of the 1997 Labour Law, factories cannot engage workers on FDCs beyond two years and that if they do, such workers are entitled to the same benefits and protections as workers on UDCs. The Garment Manufacturers Association in Cambodia (GMAC) has contested this interpretation of the 1997 Labour Law.

In response to inquiries from Human Rights Watch in 2014, Gap did not provide any specific information about the use of FDCs in its supplier factories in Cambodia; or how the brand's 700 performance indicators integrated these in factory audits. However, Gap confirmed that "FDCs are a common practice in Cambodia" and reiterated its commitment to the Arbitration Council's ruling limiting use of short-term contracts. This statement from Gap refuses to take responsibility

for company purchasing practices that create a fertile ground for the proliferation of FDCs. Instead, Gap shifts responsibility to suppliers without attending to the needs of workers engaged in producing Gap products.

Workers unions, however, consistently cited short-term duration of contracts as a significant workplace challenge. According to a case study done by HRW in a small subcontractor factory in Cambodia that produces garments for Gap, frequent rights violations were associated with short-duration contracts including absence of benefits received by long-term workers. Workers reported working for more than two years but always on short-term contracts that were repeatedly renewed. The management would issue new identity cards with a new start date for each term. Workers from this factory also reported a hostility of the management towards union activities (Kashyap 2015).

## India

According to India's National Commission on Enterprises in the Unorganized Sector (NCEUS), within the garment industry, hiring workers on a regular contract is on decline while short-term and irregular contracts are emerging as the basis of most new recruitment in the sector. These employment trends have led NCEUS to characterize garment workers as "informal workers in the formal sector," appropriately accounting for home-based work, daily wage work and contractual labour. (Pratap 2015; Sridhar 2014).

Use of contract labour is most pervasive in Delhi-NCR with an estimated 60-80% of the garment workforce employed as contract workers. Casual and contract workers lack job security, social

## *Use of contract labour is most pervasive in Delhi-NCR with an estimated 60-80% of the garment workforce employed as contract workers.*

security benefits and freedom of association. This facilitates the sidestepping of statutory obligations by employers and creates a constant state of insecurity for workers (Chan 2013).

Both large labour contractors and small sub contractors supply workers to garment factories in Gurgaon. Casual and contract workers, hired with ambiguous terms of employment, most often cannot produce contract documents. Absent clear contracts, workers face significant challenges seeking relief in cases of abuse. Interviews with trade union leadres in the garment industry in the NCR further revealed that the practice of making workers sign on blank sheets during hiring is common. These signed sheets are later used to establish legal conditions that justify illegal termination.

All four factories producing for Gap that were investigated for this study employed a non-standard workforce, including short-term contract workers, daily wage workers and workers who work on piece-rate. Conditions of work varied for the different categories of workers:

- Contract and casual workers reported working longer hours and receiving fewer leaves when compared to permanent workers;
- Contract and casual workers reported receiving single rather than double overtime payment;
- Contract and daily wage workers reported that a deduction of the Provident Fund amount was taken from their wages while piece-rate

workers did not receive this social security benefit.

In addition to differential treatment, contract workers also reported loss of seniority and barriers to unionization as a common issue during renewal of contracts. For instance, the Manesar unit of Tets N Rai (Sector 4, Plot 42) produces only for Gap. With a total of 700 workers in 16 production lines, almost all of these workers are contracted from Balaji Enterprises, a contractor operating from Gurgaon. Balaji ensures that no worker is employed for a continuous period of five years to avoid payment of gratuity. Instead contracts are terminated upon reaching four years and then renewed, making workers rejoin with a new start date. Loss of seniority impacts workers' right to receive social security benefits.

Use of subcontracted labour at Tets N Rai also impacts workers' engagement with unions as a platform for negotiation by leaving workers vulnerable to termination for exercising their right to freedom of association. Workers and union organizers report that Balaji and Tets N Rai use short-term contracts to undermine freedom of association. By hiring workers on short-term contracts, Balaji and Tets N Rai can easily fire workers in retaliation for engaging in union activities.

## Indonesia

Under Indonesia's Manpower Act, 2003, non-permanent work agreements can only be used for four types of work:

- Work that is to be performed and completed at once or that is temporary by nature;
- Work in which the estimated time for completion is no longer than three years;
- Work that is dependent or seasonal; or
- Work that is related to a new product, new

activity or an additional product that is still in the experimental stage.

Under this scheme, Indonesia’s garment industry has been classified as an industry that is seasonal and relates to manufacturing new products. Accordingly, garment enterprises are permitted to recruit workers under non-permanent work agreements.

This initial non-permanent work agreement, however, can be made for up to only two years—with the possibility of extension of up to one year. Following this window that can be a maximum of three years, a worker must be employed under a permanent work contract (BWI 2012).

Non-permanent work agreements facilitate termination and changes in employment status based upon employer demand. For instance, in June 2014, Indonesian Workers formerly employed at PT Olympic—a Gap supplier—testified to mass layoffs and changes in their status from permanent to fixed term workers at the Hearing of the Indonesian People’s Tribunal on Living Wage and Decent Working Conditions for Garment Workers as a Fundamental right. Herdiansyah Latief, gave the following testimony before the tribunal:

*PT Olympic Garment International produces apparel for women to supply Gap, JC Penney, J.Crew and dan B Three. Gap and JC Penney had more orders than other brands. . . Gap has been produced here from 1997 until today.*

*I began working here since January 2001 as an operator in Accessories Warehouse—as a permanent worker.*

*Until 2013, the total number of workers of PT Olympic were more or less 800 permanent*

*workers. In April 2013, PT Olympic laid off all its workers. The company offered two schemes of compensation. First, workers who would accept severance as much as half of the amount set by the law would be re-employed as contract workers. Second, workers who would only accept severance set by the law would not be re-employed. . .*

*Out of 800 workers, 700 accepted the first scheme of compensation payment. Subsequent to that, the laid off workers were re-employed and worked in the same section . . . Employment Agreements for Certain Time only applied for three months, from May – July 2013. Since May 2013, women contract workers were not allowed to take menstruation leave and did not receive health benefits . . . Workers who were considered ineligible and unqualified such as old sick and those who could not reach targeted production were terminated. They were considered as having zero years of service as they had only been working for three months on the new contract. (Latief 2014).*

Terminated workers sought relief by approaching management, using legal channels and seeking government intervention. Although Gap was called upon to attend the Indonesian People’s Tribunal on Living Wage and Decent Working Conditions for Garment Workers, from June 21-24, 2014 in Jakarta, Gap refused to attend the hearing and engage workers on the issue of unjust termination.

## Wage related rights abuses

The ILO Protection of Wages Convention, 1949 (No. 95) aims to guarantee payment of wages in a full and timely manner, whether fixed by mutual agreement, national law or regulation; or payable under a written or unwritten employment contract. The Convention applies to all persons to whom wages are paid or payable. Workers have to be informed of the conditions of their employment with respect to wages and the conditions under which their wages are subject to change.

The ILO Minimum Wage Fixing Convention, 1970 (No. 131) and Minimum Wage Fixing Recommendation, 1970 (No. 135) call for a minimum sum payable to workers that is guaranteed by law and fixed to cover the minimum needs of workers and their families. Under the Minimum Wage Fixing Convention, 1970 (No. 131) minimum wages should be established for groups of wage earners in consultation with employers’ and workers’ organizations and enforced by law. Lack of inclusion of wage standards in ILO core labour standards constitutes a serious gap in protections.

The Gap Code of Vendor Conduct, urges suppliers to provide wages and benefits that meet the basic needs of a worker and some other discretionary income. The Code of Vendor Conduct requires payment of wages that meet set legal minimum wages or the local industry standards—whichever is greater. Gap does not, however, subscribe to global living wage definitions and limits wage requirements to minimum wages. The Code of Vendor Conduct also fails to explain the ambiguous term “discretionary income.”

In response to a 2014 Human Rights Watch inquiry on supply chain management practices, Gap assured Human Rights Watch that wherever sourcing factories terminate workers they ensure due processes and payment of appropriate wages or severance packages by the vendor.

This study found that across Cambodia, India and Indonesia, workers surveyed received minimum wages according to national legal standards. Many did not, however, receive regular overtime payments consistent with national standards. Accordingly, while minimum wages were met, due to denial of legal overtime rates, workers routinely reported underpayment of total earned wages. Moreover, wages for workers producing Gap garments in these production hubs consistently fell far short of living wages.

### Cambodia

The Cambodian Labour Law 1997 guarantees a minimum wage that will ensure workers a decent standard of living compatible with human dignity (Article 104) and equal pay for equal work (Article 106).

At the time of writing, Cambodian minimum wages were USD 140 per month—short of the USD 160-177 per month demanded as a statutory minimum by garment workers and their unions (AFW-Cambodia 2015). While statutory minimum wages in Cambodia fell below workers demands, workers did earn concessions allowing them to increase their wages through addition of bonuses (McMullen 2016).

According to 2015 AFW annual PPP\$ wage figures, calculated based upon up to date national food basket research, a living wage sufficient for workers in Cambodia amounts to 1,630,045 Riel or USD 326—more than double the wages afforded a

*A living wage sufficient for workers in India amounts to INR 18,727 [USD 282.78] per month—more than double the wages afforded workers under the current Haryana minimum wage.*

worker under the current Cambodian minimum wage. This rate includes support for all family members, basic nutritional needs of a worker and other basic needs, including housing, healthcare, education and some basic savings.

Despite appeals to Gap from Cambodian labour unions and international allies to ensure living wages for Cambodian garment workers, Gap did not intervene to secure living wages for Cambodian workers. Instead, as discussed in detail in context of freedom of association, workers who mobilized to demand a living wage met with violent suppression, including deadly use of force.

## Indonesia

Under Indonesia's Manpower Act, 2003 and Government Regulation on Wages Protection, 1981, minimum wages are defined as the lowest minimum wages that consist of basic wage and fixed allowances. Within Indonesia, minimum wage rates differ across groups of workers, sectors of economic activity and by geographical location. The Manpower Act, 2003 also requires workers who are paid on piece rates to be paid at least minimum wage for ordinary hours of work (BWI 2012).

Provincial and District Wage Councils formulate regulations specifying minimum wages. While

organizations of workers and employers were previously represented on these councils, Government Regulation No. 78 of 2015 (PP78) eliminates worker opportunities to negotiate before the wage council. PP78 also introduces a new minimum wage formula that stipulates a measured annual wage increase that takes into account the current fiscal year inflation. As previously mentioned, labour unions in Indonesia have rejected PP78 on the grounds that it facilitates flexible employment, institutes a minimum wage formula that erases workers' needs and eliminates the opportunity to negotiate before the Minimum Wage Council (AFWA-I).

In December 2015, the minimum wage in Greater Jakarta—including Jakarta, Bogor, Depok, Tangerang and dan Bekasi—has been determined, on average, as three million rupiahs (AFWA-I). All workers in Indonesia interviewed for this study reported receiving minimum wages.

These wages, however, are far from adequate to meet the needs of a worker and their family. Minimum wages in Indonesia have been defined based upon the needs of an individual worker and not a family. According to 2015 AFW annual PPP\$ wage figures, calculated based upon up to date national food basket research, a living wage for workers in Indonesia is 4,684,570 Rupiah.

Consistent with these figures, in a hearing before the Permanent People's Tribunal held in Colombo, Sri Lanka in December 2015, workers from Indonesia reported that living needs in greater Jakarta for a single worker reaches four million rupiahs per month. For a worker with a family, this amount can reach five-six million rupiahs a month.

In the Tribunal on Living Wage as a Fundamental Right of Indonesian Garment Workers, held from held from June 21-24, 2014 in Jakarta, Indonesian

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

**Table 5:** Average minimum wage increase across sectors for selected provinces, 2010-2013

Note: Exchange rate: 1US\$ = Rp 11.000

workers reported that inadequate wages had a significant impact upon their health. Forced to work overtime to earn more, pressure to complete targets that prevent workers from taking breaks to even go to the toilet, and inability to afford health insurance together, take a long term toll on the health of workers and their families.

Garment production companies in Indonesia have strategically resisted increases in minimum wages. For instance, in response to a weeklong struggle by unions across industries, workers succeeded in winning significant minimum wage increases across sectors in 2013 (Table 5).

In response, employers across sectors sought relief from paying increased minimum wages. Under the Indonesia Manpower Ministerial Decree no. 231/2003, companies may apply to local, provincial or regional authorities for suspension of minimum wage increases on the grounds that their economic situation does not allow them to pay the increase. In 2013, 949 companies submitted applications for exemption and 669 companies, including garment-manufacturing companies, were accepted.

Companies responded to labour resistance against suspended wage increases with threats of retaliation, including threats of layoffs and relocation—both to other provinces and to other countries. When workers appealed to brands to call for enforcement of minimum wages, brands including Gap refused to intervene on their behalf (Barria 2014).

## Hours of work

The ILO prohibits excessive hours of work and inadequate periods of rest on the grounds that such conditions damage workers' health and increase the risk of workplace accidents. Long working hours also prohibit workers attending to family and participating in the community. ILO standards on working time provide a framework for regulating hours of work. Relevant standards include: the Hours of Work (Industry) Convention, 1919 (No.1); Weekly Rest (Industry) Convention, 1921 (No. 14); Holidays with Pay Convention (Revised), 1970 (No. 32); Night Work Convention, 1990 (No. 171); and Part-Time Work Convention, 1994 (No. 175).



The Gap Code of Vendor Conduct requires factories to follow either the national standards for work hours or the international standard of a 48 hour work week with overtime not exceeding 12 hours in a week, whichever is lesser. However the phrasing of this guideline is ambiguous, leaving space for subjective interpretation.

*Except in extraordinary business circumstances, the maximum allowable working hours in any week shall be lesser of a) what is permitted by national law or b) a regular work week of 48 hours plus overtime hours not excess of 12 hours.*

### *The ambiguity in Gap's guidelines facilitates these abusive practices.*

The term extraordinary business circumstance provides significant room for interpretation by factory management. As explained in previous sections of this report, the garment global production network shifts uncertainty onto workers at the base of global value chains through seasonal production cycles and target-oriented work processes. The ambiguity in Gap's guidelines facilitates these abusive practices.

Use of production targets and piece rate wages create sustained pressure among workers to meet targets at the expense of taking breaks to rest, use restrooms and even drink water. Across Asian global value chains, workers in divisions ranging from sewing, trimming excess thread, quality checking and packaging are routinely assigned production targets.

Encouraging violation of international labour standards governing hours of work, production

targets and piece rate systems also incentivize excessive hours of work and inadequate periods of rest. These conditions damage workers' health, increase the risk of workplace accidents and infringe on freedom of association.

## Cambodia

The Cambodian Labour Law, 1997 defines overtime work as work beyond the regular eight-hour day. Regulations governing overtime require that it be limited to exceptional or urgent work and limited to twelve hours per week—or approximately two hours per day. Regulations also stipulate that overtime should be voluntary and employers should not penalize workers who refuse overtime work. Required overtime rates differ based upon whether overtime is performed during the week, a weekly day off (typically Sunday) or on a public holiday (Articles 137, 139, 146, 166).

Almost all garment workers in Cambodia exceed the 48-hour work week, often without taking paid evening breaks during overtime shifts. According to a 2015 survey of Consumption Expenditure of Garment and Footwear workers in Cambodia, prepared by the Cambodian Organization for Research and Development and the Solidarity Center, 87% of garment workers surveyed engaged in overtime work in order to meet their basic needs (Finster 2015).

In 2014, Human Rights Watch reported documenting extreme overtime abuses. For instance, in an unnamed Gap sourcing factory in Cambodia, Human Rights Watch spoke to workers who reported working continuously from 12:30 p.m. until closing time without a break. They were also forced into working overtime based upon threats of termination. Workers reported that these threats were very real since a colleague had been fired for refusing overtime work (Kashyap

2015).

While overtime work is sought out by many workers voluntarily, the financial imperative of working overtime due to the persistence of minimum wage standards below living wage standards can be viewed as a form of economic coercion that leads to involuntary or forced overtime.

## India

Under the Indian Factories Act, 1948, a worker that works in a factory for more than 9 hours a day or more than 48 hours a week is entitled to overtime pay at the rate of twice the ordinary wage rate.

Working conditions in the unorganized garment sector in the NCR frequently amount to sweatshop conditions. Workers engaged in tailoring operations are required to complete nearly 50-60 pieces per hour on an average while piece-rate workers need to process 100-150 pieces hourly (Achanta 2015). Failure to adhere to production targets engenders verbal abuse from managers or supervisors.

All casual and contract workers interviewed for this study worked between a minimum of 9 and a maximum of 17 hours per day. In 2 of the 4 factories surveyed, piece rate workers reported that their work was not measured in time but in pieces. Accordingly, they had no mechanisms to account for overtime.

Furthermore, compensation for overtime in the factories surveyed is not commensurate with legally required rates. Contract and casual workers in all four factories reported receiving double over time payment for the first two hours of overtime work but only single overtime payment

for additional overtime hours worked. Regular workers reported receiving 1.5 times payment—higher than contract and casual workers but still below the legal standard. In most cases, workers reported working significantly longer than two overtime hours a day.

In Tets N Rai, for instance, overtime hours for most workers amount to a minimum of 3 hours per day and are routinely stretched till late at night. If they are given Sunday off, workers report being made to work till 4 am on Saturday night. In the event of a working Sunday, workers are required to work till 2 a.m. on Saturday and then come to work at 9 a.m. the next day. While legal standards require workers to be given compensation for food during overtime work hours, Tets N Rai provides a mere Rs. 30 [USD .45] to workers who engaged in overtime late into the night.

In all four factories investigated for this study, workers reported that they are forced to do overtime—that they cannot refuse it. Reported penalties for refusing overtime include dismissal from work and physical and verbal abuse.

## Indonesia

Under Indonesia's Manpower Act, 2003, workers who work overtime—beyond 40 hours per week—are to be paid 1.5 times hourly for the first hour of overtime and 2 times the hourly pay for each additional hour worked. Workers paid by piece rate are also entitled to overtime pay rates. Forcing workers to work against their will under threat of penalty can indicate forced labour regardless of whether involuntary work is performed during regular hours or overtime. Accordingly, Indonesian law requires employees to provide written consent to all overtime work (BWI 2012).

In each of the four factories surveyed for this study, workers reported being required to work overtime hours beyond 40 hours per week. In each of these factories, workers reported that they could not refuse overtime hours.

## Unauthorized subcontracting

Tier 1 companies routinely engage subcontractors to complete orders from brands. Subcontracting funnels work from regulated facilities to unregulated contractors where employees typically work longer, for less and usually in worse conditions.

Subcontracting practices make chains of accountability more difficult to establish. Brands typically establish contracts with Tier 1 or parent companies and list these companies exclusively when disclosing production units. In instances where brand labels are sewn in by the parent company, workers in subcontracting facilities may not even know the brand they are producing for (Finster 2015).

As explained by C.CAWDU Vice President, Athit Kong, a former garment worker: “It is the multinational brands who extract by far the largest profits from the labour of Cambodian garment workers, yet they hide behind layers of outsourcing and subcontracting to avoid responsibility” (Finster 2015).

Gap has acknowledged the impact of subcontracting upon workers rights in global supply chains. When asked by Human Rights Watch to explain Gap policies on addressing unauthorized subcontracting, Gap responded:

If we find a case of unauthorized subcontracting (UAS), the Monitoring and Remediation Specialist (MRS) escalates the incident to the Vendor Engagement & Monitoring manager and director in accordance with our Issue Escalation Policy for High Risk Incidents. The local MRS advises the factory to immediately stop production and ensures all goods (finished or unfinished) are returned to an approved Gap Inc. factory, segregated and held until the issue is resolved. An investigation is conducted at the factory to determine whether there are any critical issues.

While Gap reported dealing with cases of unauthorized subcontracting on a case by case basis, Gap did not report any mechanisms to protect whistle blowers or ensure that reporting mechanisms were accessible to workers.

In recent years, however, researchers have identified cases in which Gap has not taken action to defend the rights of workers producing Gap products in facilities that subcontract from Tier 1 companies. While Gap has blacklisted unauthorized contractors, this approach does not constructively address the violations faced by workers.

Within India, for instance, production processes are routinely contracted from large suppliers to subcontractors commonly known as fabricators. Subcontracting to fabricators is frequently associated with rights violations that remain largely undocumented and unaddressed.

This study also found that management in large supplier factories uses the threat of available subcontracting to coerce workers into unfair working conditions. For instance, in the Udyog Vihar unit (Plot 446, Phase 5) of Pearl Global, a

Gap supplier, piece-rate workers were being paid Rs.1.20, lower than the prevailing rate of Rs. 1.50 per collar. Workers refusal to work at a lower rate was met with a threat of giving away the work entirely to a subcontractor.

## Workplace safety

The ILO addresses occupational health and safety in the Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol of 2002, as well as in more than 40 standards that deal with occupational safety and health. Convention No. 155 requires each member state, in consultation with workers and employers, to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. While neither Cambodia nor India has ratified Convention No. 155, this instrument provides meaningful guidance on international standards governing occupational health and safety.

Sexual harassment at work—including physical, verbal and non-verbal harassment—directly undermines workplace safety. Women garment workers engaged in employment relationships characterized by unequal power are particularly vulnerable to abuse.

The Gap Code of Vendor Conduct sets forth a 14-point standard for compliance by source factories. This includes rules on fire safety and accidents, sanitation, lighting and ventilation. The Code of Vendor Conduct also prohibits any form of abuse, whether physical or non physical, including threats of violence, sexual harassment and any other verbal abuse.

## Cambodia

### Health risks associated with unsafe working environments

The Cambodian Labour Law 1997 incorporates standards of workplace safety, hygiene and cleanliness, with criminal sanctions for failing to implement health and safety measures in the workplace (Articles 80, 229, 230).

Working conditions in garment factories and the impact on the health of garment workers is a pressing concern within the garment industry in Cambodia. The BFC Thirtieth synthesis report on working conditions in Cambodia’s garment sector (November 2012 to April 2013) reported significant health and safety concerns. 15% of the factories monitored kept emergency doors locked during work hours, putting workers at risk of death in the event of a fire. 45% failed to conduct emergency fire drills every six months and 53% had obstructed access paths (CCHR 2014)

In a February 2012 hearing before the Permanent People’s Tribunal held in Phnom Penh Cambodia, Asia Floor Wage Alliance-Cambodia (AFWA-C) reported health problems associated with poor working environments. Workers and their representatives testified to working conditions described as “humid and hot, noisy, poorly lit, with scarce if any ventilation, the uncontrolled and uninformed use of chemicals, excessive dust, lack of preventative education and little availability of personal protective equipment.” These conditions, they reported, are exacerbated by poverty-level wages:

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



*Cambodian garment workers were found to intake an average of 1598 calories per day, around half the recommended amount for a woman working in an industrial context.*

*Asia Floor Wage Alliance*

exposure to the harmful environment (Barria 2014).

Due to exposure to high temperatures and high levels of chemical substances, exacerbated by poor ventilation systems and nutrition among workers, episodes of mass fainting are a regular occurrence in Cambodian garment factories. According to reports by the Cambodian government, in 2015 1,806 workers fainted in garment and footwear factories—the same number as in 2014 (Kunthea 2016). These 2014

and 2015 numbers mark a 109% increase in the number of people who fainted in 2013 (David 2015).

As early as 2002, the Union of Needletrades, Industrial and Textile Employees (UNITE) released a study on working conditions in Gap factories, highlighting health and safety conditions and linking these to wages insufficient to make ends meet (Vance 2006). This initial report has been followed by numerous widely publicised reports, of fainting in Gap production units:

- In 2011, Gap began receiving reports of

workers fainting in their factories. In October 2011, 32 workers at Sangwoo Cambodia Co. Ltd.—a Gap supplier—fainted in quick succession. Then Provincial health director Or Vanthen confirmed that the 32 workers fainted because of a combination of factors including hunger, exhaustion, poor health and working in a building with poor ventilation (Yuthana 2011).

- In 2012, Clean Clothes Campaign highlighted the serious health impacts associated with inability to afford adequate nutrition. For instance, Rom Sokha, a 33-year old woman who, at the time, worked at Yung Wah Industrial Co.—a Singaporean-owned factory that manufactured shirts, jackets and pants for Gap, Old Navy and Banana Republic—reported that she suffers from serious stomach, colon and heart problems due to malnutrition (Zimmer 2012).
- In 2014, two workers employed at factories outside Phnom Penh died at the end of July in the Korean-owned Sangwoo factory where she had spent four years making clothes for Gap and Old Navy (Chua 2014).

Investigation by the UK-based Labour Behind the Label and the Cambodian Community Legal Education Center (CLEC) proposed a more scientific explanation: malnutrition, prevalent among Cambodian garment workers makes them more susceptible to exposure to harmful environments. Data gathered by tracking monthly food purchases by 95 workers employed in a range of garment factories in Cambodia, compared with recommended amounts and workers' Body Mass Index (BMI), revealed that workers were found to intake an average of 1598 calories per day, around half the recommended amount for a woman working in an industrial context (McMullen 2013).

Despite these significant occupational health and safety concerns, Gap refused to attend the People's Tribunal on Living Wage as a fundamental right of Cambodian Garment Workers, held from February 5th-8th, 2012 in Phnom Penh.

### Sexual harassment in the workplace

Cambodia's Labour Law, 1997 prohibits sexual harassment (Article 172). Cambodia does not, however, have specific legal provisions outlining complaint procedures or promoting safe working environments.

Workers, union representatives and researchers report that sexual harassment in garment factories is common. According to some estimates, one in five garment workers experiences sexual harassment, leading to a threatening work environment. Forms of sexual harassment include sexual comments and advances, inappropriate touching, pinching and bodily contact initiated by both managers and male co-workers (Kashyap 2015).

In 2012, for instance, six workers in Ocean Garment Factory in Phnom Penh—a Gap supplier—accused their manager of sexual harassment. These allegations precipitated weeks of extended protests by more than 2,500 protestors, including workers. In response, Gap issued a statement that demanded an immediate investigation, declared “sexual harassment is absolutely unacceptable” and emphasized that sexual harassment was a serious violation of their vendor code of conduct.

Extensive follow up research, including newspaper articles and the Gap website, do not, however turn up reports of any further action taken by Gap to remedy the alleged violations.

## India

### Health risks associated with unsafe working environments

India's Factories Act, 1948 regulates conditions of work in manufacturing establishments to ensure adequate safety, sanitation, health, welfare measures, hours of work and leave parameters for workers employed in factories. The 1987 amendment to the Factories Act, 1948 gave workers the right to information about the nature and extent of workplace hazards and held directors of companies responsible for risks imposed by hazardous waste and other dangers.

Under proposed labour law changes, factories employing 10-40 workers will be governed by the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014. The 2014 Small Factories Bill suspends application of 14 labour laws to small units<sup>1</sup>. The Bill also reduces standards for health and safety established under the Factories Act, 1948. The Bill does not contain provisions relating to maintenance of cleanliness, adequate ventilation, suitable temperature, measures to contain dust and fumes, and the safety of persons working on machines. It also does not contain any provisions relating to provision of personal protective equipment,

<sup>1</sup> The following labour laws are not applicable to small factories under the 2014 Bill: Factories Act, 1947; Industrial Disputes Act, 1947; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965; Employees State Insurance Act, 1948; Employees Provident Funds and Miscellaneous Provisions Act, 1952; Maternity Benefit Act, 1961; Employees Compensation Act, 1923; Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; (State) Shops and Establishments Acts, Equal Remuneration Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986.

periodic medical testing of workers, reporting of work-related accidents and injuries and occupational diseases to the labour authorities. In short, these proposed provisions based upon health and safety are entirely inadequate.

Defining a factory as small based only upon the number of workers employed in the factory does not adequately account for variation in capital investment, turnover and volume of output. Further, size based classification provides incentives to employers to spread manufacturing work over more than one factory to seek exemptions under the Act. It is unclear what law will apply to industrial units with 1-9 workers (Bhattacharjee 2016).

### *Health consequences faced by workers in India's garment industry include respiratory illnesses—including silicosis from sand blasting, tuberculosis, ergonomic issues such as back pain, reproductive health issues (irregular period and excessive bleeding) and mental health problems including depression and anxiety.*

Health consequences faced by workers in India's garment industry include respiratory illnesses—including silicosis from sand blasting, tuberculosis, ergonomic issues such as back pain, reproductive health issues (irregular period and excessive bleeding) and mental health problems including

depression and anxiety. While major accidents are not common, minor incidents such as puncture wounds from needles are a daily occurrence. Other hazards include extended exposure to heat, noise, dust and chemicals; and biological vulnerability due to poor nutrition. For instance, exposure to cotton dust irritates the upper respiratory tract and bronchi. With prolonged exposure, this slowly progresses to chronic, obstructive pulmonary disease.

According to findings of a randomised survey conducted by the Employees State Insurance Corporation in 2014, 60.6% of garment workers surveyed were anemic and 80% of all tuberculosis cases registered in 2009 were from garment workers. Garment workers, largely internal migrants between the ages of 18 and 45 years with lower socioeconomic status, face particular disadvantages in dealing with health-related challenges, including difficulties in accessing medical attention and lack of employment mobility (Ceresna-Chaturvedi 2015).

None of the 50 workers interviewed in India had received any safety training, despite risks associated with their employment.

Discussions with workers and union organizers, verified through desk research, revealed occupational hazards, including a series of workers who faced electric shocks in Orient Craft production facilities—in one instance, even resulting in death. For instance:

- In 2012, in an Orient Craft production unit in Gurgaon<sup>2</sup> three workers were electrocuted. Their bodies were secretly removed from the factory premises by the management. Workers who gathered to receive their bodies were disburged with tear gas.
- In 2014, 35-year old Sunil Pushkar, also

employed by Orient Craft, died suddenly while working at his sewing machine. Workers alleged that he too had been electrocuted while management released post-mortem reports that he had died of cardiac failure (Yadav 2015).

- In 2015, Pawan Kumar who worked in Orient Craft, attaching price tags to garments, received severe electric shocks leading other workers to believe he had died (Yadav 2015). Kumar, however, survived the incident.

According to union leaders working in Gurgaon, it is common practice for factory management in collusion with private hospitals to conceal occupational injuries. India's Workmen's Compensation Act, 1923, requires employers to 2 Plot 7D, Sector 18, Sarhol compensate workers and their dependants for loss of earning capacity when a worker is injured or killed during the course of work. The Workmen's Compensation Act provides compensation for a worker injured in the course of employment even when there is no negligence on the part of the employer or anyone else. Accordingly, factories have incentive to conceal workplace injuries and deaths.

Disputes between workers and factory management regarding cause of death has led to violent outbreaks. For instance, in the 2015 Orient Craft incident mentioned above, more than 3,000 factory workers set fire to the fabric store inside the plant, as well as vehicles in and around the unit in response to rumour that four workers had been electrocuted in the plant that morning. It later became clear that Pawan Kumar had survived the electric shocks (Yadav 2015).

These incidents reveal deep distrust between workers and management based upon trends of management concealing worker injuries and deaths. Despite extensive knowledge of these

<sup>2</sup> Plot 7D, Sector 18, Sarhol

incidents, in each instance mentioned above, Gap failed to intervene and ensure that either Orient Craft or Gap, Inc. took responsibility for worker injuries. Instead, Gap has tacitly accepted and endorsed the practice of concealing occupational injuries and even deaths by continuing to contract production of Gap products to Orient Craft.

### Sexual harassment in the workplace

Women garment workers routinely face violence in the workplace, including sexual harassment and physical and sexual violence. India's Sexual Harassment of Work Place (Prevention, Prohibition and Redressal) Act, 2013, mandates employers institute sexual harassment committees to provide clear and accessible grievance mechanisms. Most committees, however, exist only in formal records and fall short of achieving their objective of safeguarding women workers.

According to Right To Information petitions filed by the Gurgaon-based Nari Shakti Manch—an organization of women workers in the Delhi-NCR—Pearl Global, Plots No. 208 and 274; Orient Fashion Exports, Plots No. 488/3 and 68; and Pyognam Plot No. 273 all report having sexual harassment committees as legally mandated.

However, according to Elizabeth Khumallambam, Programme Coordinator for Nari Shakti Manch—while most factories have established sexual harassment committees on paper these committees have not materialized in practice. “The names of committee members are not posted, positions are not elected, we don’t know if there is an external member and meetings are not held,” Khumallambam explained. “The composition of these committees is entirely unknown.”

## Indonesia

### Health risks associated with unsafe working environments

Under Indonesia's Manpower Act, 2003, enterprises that employ 100 people or more and have the potential for danger posed by material processes of production are required to apply an Occupational Safety and Health (OSH) Management System. The OSH Management system requires organizational structures, procedures and processes to address risks associated with production activities and establish safe workplaces.

In 2013, Greenpeace released Toxic Threads: Polluting Paradise, a report exposing the use of toxic chemicals in garment manufacturing processes in Indonesia by Gap Inc., including in production of Old Navy, Gap and Banana Republic clothing lines. In a 2013 letter from Greenpeace South Asia to Glenn Murphy, the Chief Executive Director of Gap, Inc. Greenpeace exposed the use of toxic chemicals in manufacturing processes and dumping of toxic waste into the Citarum River, West Java. Greenpeace researchers identified a wide range of hazardous substances, including nonylphenol and tributyl phosphate, in water samples taken from the PT Gistex facility—a producer for Gap Inc. According to Greenpeace investigations, these chemicals have also been found to be in use in Gap factories in China and Mexico (Greenpeace 2013).

Despite numerous calls for accountability, at the time of writing, Gap has taken no known significant action to address exposure of workers to toxic substances or contamination of local water supplies.



*Garment workers in Haryana, India, including Gap supply chain workers, demand implementation of minimum wages and an end to contract labour. Society for Labour and Development*

## Freedom of Association

The ILO Declaration on Fundamental Principles and Rights at Work recognizes the right to organize as one of four fundamental rights to be upheld by ILO member states. Together, the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No.98) outline the right to join a trade union and the right to organize.

The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) calls upon states to prevent discrimination against

trade unions; protect employers' and workers' organizations against mutual interference; and undertake measures to promote collective bargaining. The Right to Organize and Collective Bargaining Convention, 1949 (No. 98), protects workers who are exercising the right to organize; upholds the principle of non-interference between workers' and employers' organizations; and promotes voluntary collective bargaining. Freedom of association and collective bargaining are integral to the protection of other labour rights.

The Gap Code of Vendor Conduct explicitly upholds workers' rights to join associations and

platforms for collective bargaining. Wherever such associations are not legally permitted, the Code of Vendor Conduct contains parameters for allowing workers to form parallel associations towards the same end. Sourcing factories are prohibited from threatening or penalising workers for exercising their right to freedom of association and collective bargaining. Suppliers are also required to implement their own freedom of association policy and to communicate this policy to workers in their own language. Gap has also made public commitments to take swift and decisive action to ensure that rights to freedom of association and collective bargaining are protected.

## Cambodia

Cambodia's Constitution guarantees the right to strike and the right to non-violent demonstration. The 1997 Labour Law guarantees workers the right to form unions of their choice and protects workers against interference from employers and discrimination on the basis of union membership.

Although union membership is significantly higher in the garment industry than in other industries in Cambodia, with at least 37 garment union federations in existence as of 2014, many garment workers remain unrepresented. Union leaders are

*Police storm a building occupied by protesting garment workers. This image was taken on the night leading up to the fatal shooting of 4-6 protestors who were advocating for wage increases in the garment sectors.*

*By Luc Forsythe: <http://portfolio.lucforsyth.com/index>*



often targeted by factory owners, and violently beaten by law enforcement officials while striking outside the workplace. Many have faced dismissal or have been fired due to their activities (CCHR 2014).

In late December 2013 and early January 2014, more than 200,000 Cambodian garment workers took to the streets to demand a new minimum wage of \$160/month. The strike closed the industry for one week and cost manufacturers more than USD 200 million. In response, armed soldiers chased and attacked workers with slingshots, batons, and metal pipes in front of a garment factory in Phnom Penh. During the violence, the soldiers detained ten union leaders and protesters, severely beating some and holding them all overnight at a military base without access to adequate medical treatment.

*38 people were hospitalized during the attack, 25 suffering from bullet wounds, and 13 more were arrested.*

The following day, on January 3, 2014, police and military personnel shot and killed at least five striking workers during a renewed mobilization using live ammunition at the Canadia Industrial Park, in southwest Phnom Penh. Those killed by the Cambodian security forces were employed at factories producing clothing for several major multinational corporations, including Puma and Adidas. An additional 38 people were hospitalized during the attack, 25 suffering from bullet wounds, and 13 more were arrested.

In response to this use of deadly force, on January 7, Gap together with a number of brands including Puma, H&M, Adidas, Inditex, Levi Strauss and Columbia signed a letter to the Cambodian

government, the union federations and GMAC on January 7, 2014, "calling on all parties to exercise maximum restraint and refrain from the use of force or violence." The letter, however, did not condemn the Cambodian governments violation of workers' human rights. Rather, it referenced two causes for concern: "widespread civil unrest" and "government use of deadly force"—suggesting a shared responsibility for the death of the four garment workers between protestors and military personnel that used excessive force in response to demonstrations (WRC 2014).

Also on January 7, the South Korean Embassy called upon the Cambodian government to protect South Korean investments in garment manufacturing factories. Korean factories, including Yakjin, a producer that supplies to American Eagle, Gap and Walmart, received special protection as a result of these efforts.

Subsequently, ten days later, on January 17, Gap joined numerous brands, along with three international labour bodies—ITUC, Global Union Federation and IndustriALL—in sending a stronger letter condemning excessive use of force in response to demonstration. This letter expressed "grave concern at the killing and wounding of workers and bystanders by security forces" and called on the Cambodian government to respect the rights of detainees and freedom of association (WRC 2014).

On February 19, the ITUC, IndustriALL and UNI, along with Gap and other brands, met with Cambodian government representatives concerning setting minimum wages, developing legislation regulating trade unions and the status of the 21 detainees. In a subsequent letter on March 14, the same group of global unions and brands called on the government to respect the rights of the 21 detainees (WRC 2014).

After a five-month campaign spanning more than 20 countries, and 40 major cities around the world, the 23 were released from prison.

The government has failed to thoroughly and transparently investigate the deaths, injuries and disappearances that resulted from this violent suppression. Three weeks after the shooting, the government announced that an investigation into the violence had been completed. The report, however, has not yet been made public and high-ranking officials stated that the focus of investigation was to determine responsibility for initiating the violence and not to determine responsibility for causing the death and injury of protesters.

Immediately following the strike, the government instituted an interim ban on freedom of assembly prohibiting gatherings of 10 people or more which lasted around three months. Further, the government instituted an interim ban on union registration that lasted for most of 2014.

## India

The regulatory framework undergirding industrial relations in present-day India was introduced during the 1920's. Significant legislation included the Trade Unions Act, 1926 and Trade Disputes Act, 1929. The Trade Unions Act, 1926, provided for registration of trade unions, gave unions legal status and extended some protection against civil and criminal liability in the course of industrial disputes. However, both the Trade Unions Act, 1926 and Trade Disputes Act, 1929 remained limited in their protection of freedom of association and collective bargaining. Unregistered unions were excluded from protection and the legislation did not obligate employers to bargain with registered unions. The Trade Disputes Act, 1929, severely limited the right to strike and required referral of industrial disputes to a

conciliation board or court of enquiry—although the outcomes of a referral were not binding upon the parties.

The Industrial Disputes Act, 1947 applied conditions under which workers were allowed to strike and distinguished between legal and illegal strikes. The Act also designated no procedures to determine the representative union in a particular bargaining unit. Since employers were under no legal obligation to bargain with unions, there was no incentive for collective bargaining. Instead, privileging strong state intervention in industrial disputes, compulsory arbitration lies at the core of the Industrial Disputes Act, 1947, permitting the state to force any conflict into compulsory arbitration and to declare any strike or lockout illegal. These provisions allowed the state to intervene in industrial disputes and direct industrial relationships through civil dispute mechanisms. For the most part, under these provisions, disputes were referred to conciliation, then to the labour commissioner—and if these mechanisms failed, disputes were settled in industrial courts, labour courts or through binding arbitration.

In context of global marketization, India's labour laws have been critiqued for facilitating the rising power of unions and protecting rights at work. In particular, criticism was leveled against inefficiency in India's state machinery for adjudicating industrial disputes and the 1982 amendments to the Industrial Disputes Act, 1947 that were seen as curtailing employers' rights and enhancing bargaining power of unions.

Such critiques have been mobilized to advocate for labour law reforms that increase workforce flexibility, decrease the bargaining authority of trade unions and diminish the reach of India's state labour regulatory apparatus.

While de jure labour law reforms have been slower to materialize, over the last twenty-five years, industrial relations have been de facto restructured along these lines.

The 1991 reform climate prompted systematic downsizing of the organized workforce. Micro-level studies of this period have documented large-scale employment adjustments in response to adverse demand shocks. For instance, due to the collapse of Ahmedabad's textile factories in the 1980s and 1990s, 36,000 workers lost their jobs between 1983 and 1984. Other systematic measures to achieve labour flexibility during this period have included illegal closures, increased use of contract labour, outsourcing and subcontracting. As a result of such systematic downsizing of the organized sector, workers were increasingly channeled into delivering flexible, labour intensive production activities at low cost and without wage, job or social security.

Reducing the bargaining power of what remains of the organized industrial sector, 2001 amendments to the Trade Unions Act, 1926 required unions to have at least 100 members or to represent at least 10 percent of the workforce in order to register under the Act—making the formation and registration of unions far more challenging than had previously been the case (Bhattacharjee 2016).

Consistent with the systematic attack on freedom of association, all 50 workers interviewed stated that trade unions did not exist in their factories. However they were all aware of the existence of trade unions.

Union busting mechanisms are common in all garment producing factories in Haryana. In all of the four suppliers studied, workers and trade union representatives reported hostility from

management toward trade unions. Tactics include use of short-term contracts as a mechanism of maintaining employment instability and discouraging workers from joining unions.

For instance, in Pyoginam production units, No. 268 and 262, workers and union organizers explained that high turnover prevents workers from forming a union. Within these production units, no worker is allowed to hold continuous employment for more than a year. Workers report being terminated for a period of one month before being rehired. The constant threat of termination, trade union leaders explained, creates a significant barrier to organizing.

Another tactic to prevent workers from interacting with union leaders or participating in union activities include preventing workers from engaging with anyone outside the factory during breaks in the workday. For example in the Manesar unit of Tets N Rai, workers are not allowed to leave factory premises—even during their tea and lunch breaks—and are required instead to eat at the canteen inside the unit. Prohibitions on leaving the factory for breaks during working hours, combined with extended working hours—at times up to 17 hours a day—functionally eclipses the potential for workers to exercise their fundamental rights to freedom of association and collective bargaining.

## Maternity benefits

Recognizing that pregnancy and maternity can be an especially vulnerable time for working women and their families, the ILO Maternity Protection Convention, 2000 (No. 183) calls for benefits including 14 weeks of maternity leave and cash benefits to ensure that a woman can maintain herself and her child. In order to ensure that a

woman can maintain proper conditions of health and a suitable standard of living, Convention No. 183 specifies that earnings shall be no less than two-thirds or her previous earnings or a comparable amount. The convention also requires states to protect women and nursing mothers from work that has been determined to be harmful to her health or the health of her child. Finally, under this convention, employers are prohibited from discriminating against women on the basis of maternity and prevented from terminating a woman's employment during pregnancy or absence on maternity leave or during a period following her return to work—except on grounds unrelated to pregnancy, childbirth and related consequences. The Code of Vendor Conduct drawn up by Gap does not mention any standards on Maternity Benefits. However it does include prohibition on discrimination with regard to maternity in both hiring and termination of workers.

## Cambodia

Cambodia's Labour Law 1997 guarantees 90 calendar days of paid maternity leave that can be taken either before or after delivery (Article 182). Women are also guaranteed 50% wages during maternity leave (Article 183). However, these benefits are only applicable for women who have worked continuously for a minimum of one year at the factory. The requirement of uninterrupted service disadvantages women hired under FDCs who are unlikely to have continuous employment. (CCHR 2014).

Since garment factory workers in Cambodia are predominantly women, lack of access to adequate reproductive and maternal health services is a significant issue. As early as 2012, workers organizations began reporting that pregnant women were regularly threatened with dismissal

from garment manufacturing jobs. This led many women to terminate pregnancies in order to keep their jobs, Women also force themselves to work until the very last day before the delivery, putting their own lives at risk. Most women on FDCs do not get their contracts renewed after they go on maternity leave (CCHR 2014; Nuon 2011).

In a 2015 report, "Work Faster or Get Out": Labour Rights Abuses in Cambodia's Garment Industry, Human Rights Watch documented reports of discrimination in hiring based on maternity and denial of maternity benefits to workers—even though they had been employed for more than one year—within a Gap sourcing factory in Cambodia. In order to protect the identity of workers, identifying information for the factory was not disclosed (Kashyap 2015).

Factories employing more than 100 female workers are also required by law to set up a nursing room and day care center (Article 186). Women are also legally allowed one hour off a day, in addition to regular breaks, for breastfeeding during the first year following delivery (Article 184). However, according to BFC, 67% of factories monitored do not comply with this provision. Many women are required to choose between leaving their jobs in order to breastfeed—thereby losing their only income; or to take them to private day-care centers where they are fed with low-quality formula milk.

## India

India's Maternity Benefits Act, 1961 protects employment of women in establishments and provides for maternity and other related benefits. Female workers are entitled to a maximum of 12 weeks of maternity leave. Out of these 12 weeks, six weeks leave is post-natal leave. In case of miscarriage or medical termination of

pregnancy, a worker is entitled to six weeks of paid maternity leave. Employees are also entitled to one additional month of paid leave in case of complications arising due to pregnancy, delivery, premature birth, miscarriage, medical termination or a tubectomy operation (two weeks in this case) (Sections 6-10).

The maternity leave is awarded with full pay on completion of at least 80 days in an establishment in the 12 months prior to her expected date of delivery. The maternity benefit is awarded at the rate of the average daily wage for the period of a worker's actual absence from work. Apart from 12 weeks of salary, a female worker is entitled to a medical bonus of 3,500 Indian rupees (Section 5).

A pregnant woman worker is entitled to a maternity benefit (in the form of medical bonus) of one thousand rupees if no prenatal confinement and post-natal care is provided by the employer free of charge. It can be increased to a maximum limit of twenty thousand rupees. The Central Government is authorized to increase the basic amount every three years. In August 2008, the amount of medical bonus was 2500 Indian rupees which has been later raised in 2011 to 3500 Indian rupees (Section 8).

*In all 4 factories surveyed for this study, all 50 workers reported that women are fired from their jobs during their pregnancy.*

In all 4 factories surveyed for this study, all 50 workers reported that women are fired from their jobs during their pregnancy. Permanent workers report being forced to take leaves without pay for the period of their pregnancy. Contract, piece rate

and casual workers reported that although most of the time they are reinstated in their jobs after pregnancy, they receive completely new contracts that cause them to lose seniority.

## Indonesia

Indonesian law prevents employers from terminating or forcing employees to resign because they are pregnant, on maternity leave, or based upon their marital status. Under the Labour Social Security Act, 1992 and Manpower Act, 2003, women are entitled to compensation on the basis of reduced earnings during pregnancy (BWI 2012).

All 100 workers interviewed in Indonesia reported that only permanent workers receive maternity leave. The trend toward precarious work in the Indonesia garment sector, facilitated by PP78, leaves an increasing number of women garment workers vulnerable to discrimination and reduced earnings during pregnancy and refusal of maternity benefits.

## Recommendations for the ILO at the International Labour Conference, 2016

As detailed in this report on the Gap supply chains in Cambodia and India, there is an urgent need for global mechanisms to monitor and regulate GVCs and GPNs. The ILO—the only global tripartite institution—has a unique role to play in setting standards for all of the actors that impact fundamental principles and rights at work.



The ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration), 2006 provides a good starting point. However, within the MNE Declaration, MNE refers only to subsidiaries or franchises. Accordingly, GVCs and GPNs in their current form are not covered by this Declaration. The need of the hour is for the ILO to clarify and update its standards and mechanisms to protect workers employed by transnational corporations (TNCs) across vast GPNs.

TNCs and their suppliers have a duty to obey national laws and respect international standards—especially those pertaining to realization of the fundamental principles and rights at work. A number of ILO core labor standards, such as the Forced Labour Convention, 1930 (No. 29), 2014 Protocol to the Forced Labour Convention 1930 and accompanying Recommendation, already protect workers in value chains. However, as this report details, changes in the modern workplace and globalization of value chains has opened up new gaps in the protection of fundamental principles and rights at work. In addition to clarifying the application of existing standards in global value chains, the ILO should set new standards and enforcement mechanisms and encourage national governments to do the same.

The following recommendations emerge from our experience promoting the rights of workers in global value chains.

**1. Given the well-documented and rampant exploitation of workers and resources by MNEs operating through GVCs, and noting the limits on regulation under national legal regimes, the ILO should move towards a binding legal convention regulating GVCs.**

- 1.1. Standards under this convention must

be at least as effective and comprehensive as the UN Guiding Principle on Business and Human Rights and existing OECD mechanisms, including the 2011 OECD Guidelines for Multinational Enterprises.

**1.2. The Convention should include the following components, among others:**

- 1.2.1. Imposition of liability and sustainable contracting, capitalization and/or other requirements on lead firms to ensure accountability throughout the GVC.
- 1.2.2. Establishment of a Global Labour Inspectorate with monitoring and enforcement powers.
- 1.2.3. Publicly accessible transparency and traceability provisions.
- 1.2.4. Specific provisions that address the special vulnerability of migrant workers on GVCs.
- 1.2.5. Specific provisions that address the special vulnerability of women workers on GVCs.
- 1.2.6. Limits on the use of temporary, outsourced, self-employed, or other forms of contract labor that limit employer liability for worker protections.

**2. Pursue a Recommendation on human rights due diligence that takes into account and builds upon existing due diligence provisions that are evolving under the United Nations Guiding Principles on Business and Human Rights and the 2011 OECD Guidelines for Multinational Enterprises.**

**3. Take the following complementary measures to protect workers employed in global value chains:**

- 3.1. Recognize the right to living wage as a human right and establish living wage criteria and mechanisms.

3.2. Promote sector-based and transnational collective bargaining and urge countries to remove national legal barriers to these forms of collective action.

3.3. Expand work towards the elimination of forced labour, including promoting ratification and implementation of the Forced Labour Convention, 1930 (No. 29), 2014 Protocol to the Forced Labour Convention 1930 and accompanying Recommendation.

3.4. Continue programs to ensure social protection, fair wages and health and safety at every level of GVCs.

**4. Convene research to inform ILO global supply chain programming, including:**

4.1. Research on adverse impacts of TNC purchasing practices upon

- 4.1.1. Core labour standards for all categories of workers across value chains.
- 4.1.2. Wages and benefits for all categories of value chain workers. This research should aim to satisfy basic needs of workers and their families.
- 4.1.3. Access to fundamental rights to food, housing, and education for all categories of value chain workers and their families.

4.2. Research into the range of global actors that may have leverage over GVCs including investors, hedge funds, pension funds and GVC networks that define industry standards such as Free on Board (FOB) prices.

4.3. Research into the types of technical advice needed by OECD government participants taking a multi-stakeholder approach to address risks of adverse impacts associated with products.

4.4. Research into mechanisms deployed

by authoritative actors within GVCs that contribute to violations of fundamental principles and rights at work, including but not limited to attacks on freedom of association, collective bargaining, forced overtime, wage theft and forced labour.

4.5. Since women represent the greatest majority of garment workers, the situation of women should be urgently included in monitoring programmes to assess the spectrum of their clinical, social and personal risks.

4.6. Require an urgent, epidemiological study into deaths and disabilities resulting from conditions of work and life of garment workers. This information should be made available publicly and to international agencies.

**5. Organize a Tripartite Conference on the adverse impact of contracting and purchasing practices upon migrant workers rights. This conference should focus on:**

- 5.1. Protection of migrants rights as conferred under the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- 5.2. The intersection of migrant rights and ILO initiatives to promote Decent Work in Global Supply Chains.

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