

2014

REPORT

LIVING WAGE IN ASIA



Clean Clothes Campaign

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CREDITS

Living wage in Asia 2014 | **Written by:** Jeroen Merk of the Clean Clothes Campaign on behalf of the Asia Floor Wage Alliance | **We would especially like to thank the following people for their contributions on which this report is based:** Arpan Ganguly, Anannya Bhattacharjee, Ashim Roy, Emma Harbour, Indica Prasanna, Irene Xavier, K. Shan, May Wong, Ravindra Hewakuruppu, Dr Sayema Haque and Sean Sheehan | **Special thanks** to the workers that participated in interviews for this research and those who testified at the Living Wage Tribunals in Sri Lanka, Cambodia and India | **Sincere thanks** to all the above, and anyone else whom we may have inadvertently missed out. | **Edited by:** Alexandra Dawe | **Art Direction + Design by:** Atomo Design.nl | **Contact:** Clean Clothes Campaign, PO Box 11584 1001 GN Amsterdam The Netherlands, *phone:* + 31 20 4122785, *fax:* + 31 20 4122786, *e-mail:* info@cleanclothes.org, *website:* www.cleanclothes.org | Asia Floor Wage Alliance, International Secretariat | Society for Labour and Development, C-23, (First Floor, Rear Portion), Hauz Khas, New Delhi - 110016, India, *e-mail:* asiafloorwage@gmail.com, info@sldindia.net, *phone:* +91.11.26525806, *fax:* +91.11.46179959 | © Asia Floor Wage Alliance/Clean Clothes Campaign 2014 | All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale



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“Work is central to people’s well-being. In addition to providing income, work can pave the way for broader social and economic advancement, strengthening individuals, their families and communities. Such progress, however, hinges on work that is decent. Decent work sums up the aspirations of people in their working lives.”¹

International Labour Organisation

INTRODUCTION

LIVING WAGE IN ASIA

The garment industry represents a great opportunity for a country’s economic development, and in turn that of its people, but only if the work it provides is decent as defined by the International Labour Organisation (ILO). Workers’ rights need to be respected in terms of safety and working conditions as well as the wages they are paid.

SINCE THE INVENTION of the sewing machine in the 19th Century the garment industry has been one of the driving forces behind economic development globally. Over the last 40 years large amounts of the industry has shifted from Europe and the USA to Asia. Today countries such as China, India, Bangladesh, Cambodia, Sri Lanka, Malaysia and Indonesia - which account for over 60% of the world’s garment production - are seeing both the benefits and the costs of this global industry.

In Asia alone, over 15 million people are employed in the garment industry and millions more are reliant on the industry for their wellbeing.

The Clean Clothes Campaign and the Asia Floor Wage Alliance believe that being paid less than a living wage is a violation of an individual’s

human rights. While low labour costs continue to be exploited by the global garment industry it remains impossible to argue that it is benefitting the people of Asia. Whilst decent pay is just one aspect of decent working conditions, it crucially impacts on the decisions workers make regarding health and safety, overtime and their ability to support their families.

This report looks at the low wages being paid across six of the major garment producing countries in Asia – Cambodia, China, Bangladesh, India, Malaysia and Sri Lanka. It also looks at the responsibilities of both state and global apparel brands and their suppliers in addressing poverty wages and the steps that must be taken immediately if the garment industry is to provide a decent life for those working within it.

THE UN GUIDING PRINCIPLES REST ON THREE PILLARS

01

GOVERNMENT: DUTY TO PROTECT

The state duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication.

02

COMPANIES: RESPONSIBILITY TO RESPECT

The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.

03

VICTIMS: ACCESS TO REMEDY

The need for greater access by victims to effective remedy, both juridical and non-judicial.

METHODOLOGY

This report draws on primary research carried out by Asia Floor Wage Alliance members in six of the largest garment producing countries in the world - China, India, Bangladesh, Cambodia, Sri Lanka, and Malaysia. Drawing on interviews with workers, trade union representatives and NGOs this research documented the following:

- wage practices and regulations
- current wage levels
- the gap with living wage estimations
- the lack of freedom of association
- wage theft
- excessive overtime
- gender biases
- wage violations happening in the respective countries

UN GUIDING PRINCIPLES

This report frames its analysis within the context of the UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UN Guiding Principles), which were unanimously endorsed by the UN Human Rights Council on 16 June 2011.²

When looking at a global industry such as the garment industry, where the race for low cost labour has been a driving force in both business practice and government implementation of labour laws, the UN Guiding Principles play an important role in establishing a clear distinction between the state duty to protect against human rights abuse and the business responsibility to respect human rights.

The UN Guiding Principles clearly establishes that governments must protect and corporations must respect the 'entire spectrum of internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights³ and the principles concerning fundamental rights set out in the ILO's Declaration on Fundamental Principles and Rights at Work'.⁴ This includes workers' rights to a living wage

Importantly the UN Guiding Principles also clearly state that remediation is a key responsibility of both government and business because even the most concerned effort cannot prevent all abuses.



PERMANENT PEOPLE'S TRIBUNALS

Finally, the report draws on the verdicts of three Permanent People's Tribunals, carried out under the name of Living Wage as a Fundamental Right, which were held in Sri Lanka (2011), Cambodia (2012) and India (2012). Hundreds of workers participated. The purpose and aims of these Tribunals can be summarized as follows:

- to document and to assess the existence and the extent of grave exploitation and human rights violations of garment workers in Asia;
- to explore and qualify the infringement of national and international labour laws by the different actors (government, brands, national suppliers, international agencies), who have the charge and duty to guarantee the human rights of the workers;
- to formulate recommendations for redressing the deficits which could be established, and which did not find a response in front of the existing judicial powers, in terms of prevention or judgement.⁵

The Permanent People's Tribunals give basic dignity and visibility to the victims of human rights violations. The opinions and recommendations of the Permanent People's Tribunal on the qualification of living wage as a human right were not binding, but aimed to give victims of violations a central place to voice their experiences.⁶

'When looking at a global industry such as the garment industry, where the race for low cost labour has been a driving force in both business practice and government implementation of labour laws, the UN Guiding Principles play an important role in establishing a clear distinction between the state duty to protect against human rights abuse and the business responsibility to respect human rights.'



CHAPTER ONE

THE GARMENT INDUSTRY IN ASIA

The growth in the garment industry in Asian countries over the past 40 years has also seen a change in its business model. While countries such as China, India, Bangladesh, Cambodia, Sri Lanka, Malaysia and Indonesia account for over 60% of the world's garment production, 60% of the consumption takes place in Europe and North America.

THE ASSOCIATION FOR Southeast Asian Nations (ASEAN) was the largest exporting region in 2012.⁷ Meanwhile, the second largest exporting nation of garments, Bangladesh, exported US\$19.09 billion in the 2011-2012 fiscal year.⁸

The industry accounts for millions of workers and often represents a main export industry and significant part of the GDP of the country it is situated in. Low labour costs, as we will discuss throughout this report, has given these countries their competitive advantage.

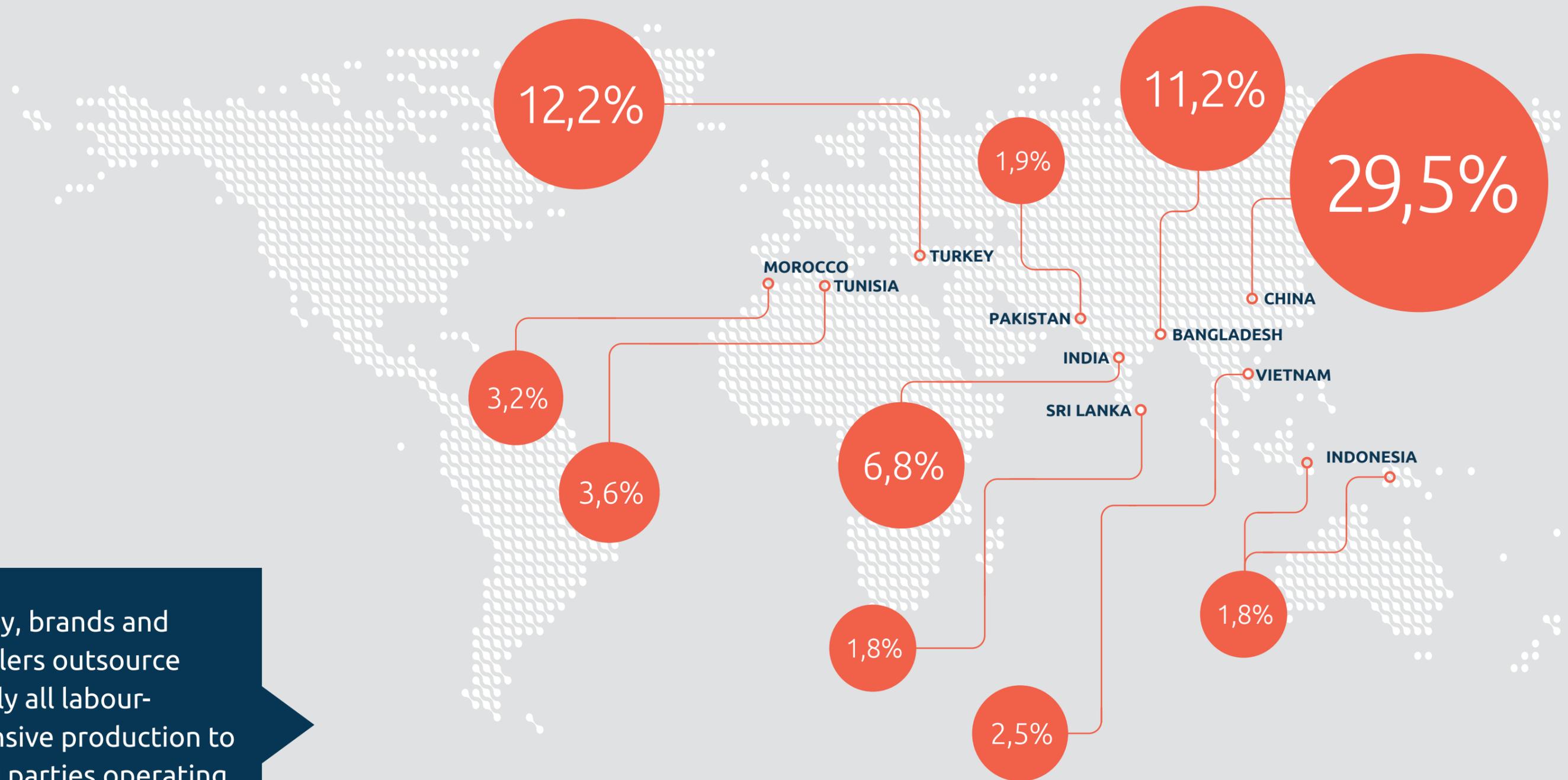
However, the garment industry can provide a great opportunity for economic development, and in turn provide a good life for the people that work in it, but only if the industry protects the workers' basic human rights. The International Labour Organisation (ILO), the specialised UN agency which seeks the promotion of social justice and

internationally recognized human and labour rights, states the following under their decent work agenda:

*'Work is central to people's well-being. In addition to providing income, work can pave the way for broader social and economic advancement, strengthening individuals, their families and communities. Such progress, however, hinges on work that is decent. Decent work sums up the aspirations of people in their working lives.'*⁹

These rights need to be respected, both in terms of safety and conditions but also crucially in the wages they are paid. Being paid less than a living wage is in violation of an individual's human rights. While low labour costs continue to be exploited it remains impossible to argue that the garment industry is benefitting the people of Asia.

TOP 10 SUPPLIER NATIONS (2011)



Today, brands and retailers outsource nearly all labour-intensive production to third parties operating in low wage countries.

*'Sub-contracting arrangements are used to increase the distance between workers and the legal entity which controls their wages and working conditions so that meaningful collective bargaining is not possible'*¹²

THE GLOBAL SUPPLY CHAIN

Today's garment industry is truly global: the chains connecting consumer to producer stretch around the world. The complexity of the supply chains is often used as an excuse by brands and suppliers for having no control over the payment of a living wage.

Over the last few decades, control over this production system has shifted away from 'manufacturers' and towards brands and retailers. They outsource nearly all labour-intensive production towards third parties operating in low-wage countries. With an ever-increasing focus on international 'fast fashion' brands, which respond to customer preferences by delivering new fashion trends in increasingly short cycles, gone are the days of seasonal collections. Fashion collections can change almost monthly.

This fast fashion means that the pressure brands exert on their suppliers increases as they want faster turnarounds on more orders. For many suppliers the reality is that one or two global brands will be the majority of their business and therefore the suppliers are extremely dependent on them. This means that the global brands have a strong influence and could take action on wages. With this influence, global buyers have a responsibility to ensure that workers receive a living wage. This will be discussed in more detail in chapter 6.

HUMAN RIGHTS VIOLATIONS

The UN Guiding Principles states all corporations – "regardless of their size, sector, operational context, ownership and structure"¹⁰ – should "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts where they occur". In addition, corporations should "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts"¹¹.

While the consequences of poverty are experienced by the workers and their families working in this supply chain at the local level; the causes of these poverty wages cannot be understood in isolation of global production relations wherein brands and retailers play a pivotal role.

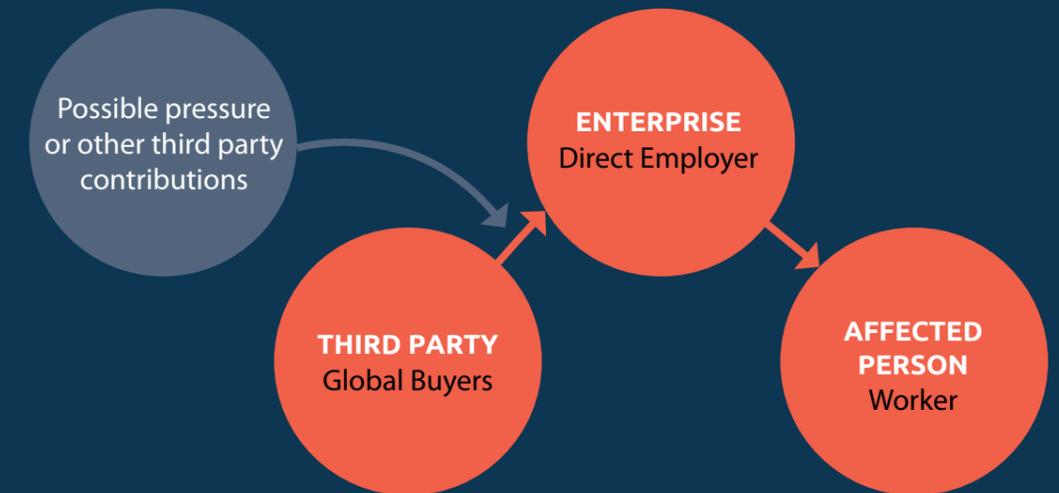
A company is responsible for the human rights impacts throughout its supply chain independent of where the adverse impact on human rights occurs. In other words, they need to respect human rights in their own facilities but also at their suppliers (ranging from tier 1 suppliers, suppliers of tier 1 suppliers, to homeworkers).

Within the UN Guiding Principles, a distinction is made between causing, contributing and being linked to adverse human rights impacts (see figures a., b. and c. right)¹³.

UN GUIDING PRINCIPLES CAUSES, CONTRIBUTION & LINKAGE

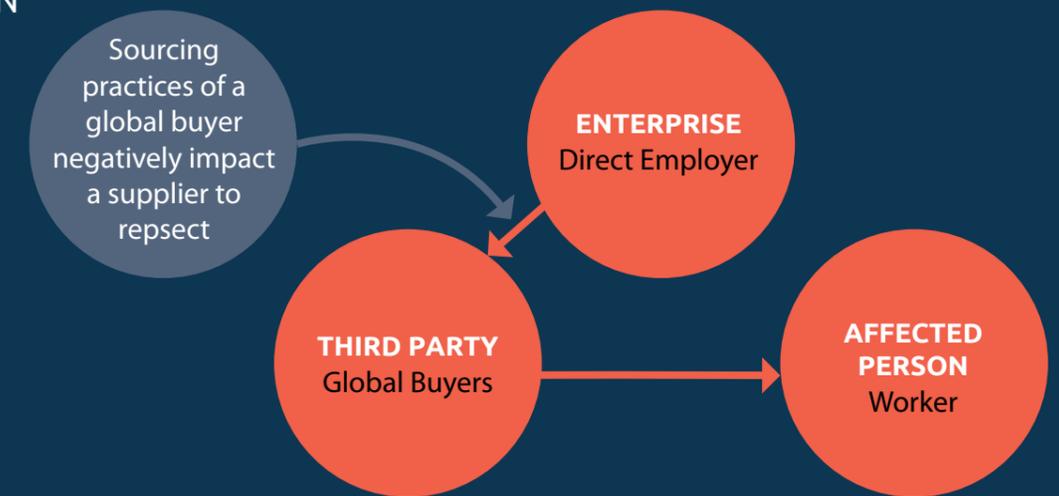
A. CAUSE

First, a company should not cause any harm to the human rights of others. This means that an employer that hires workers to stitch garments has a responsibility to respect their human rights. If management forces workers to stay longer to finish an order, or fires worker that refuse to do so, management violate worker rights. Here there is a direct, or causal relationship.



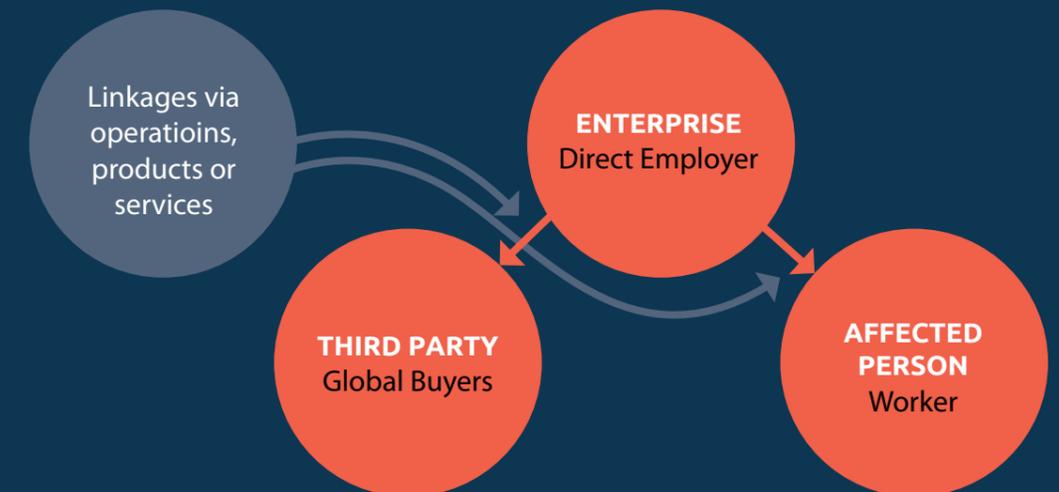
B. CONTRIBUTION

Second, there is also a possibility, especially relevant in globally organised industries, like garments, that a buyer, or indirect employer, organises its purchasing in such a way that it contributes to human rights violations at the supplier. For example, if the buyer requests orders to be finished in an unreasonable time-frame, it might contribute to forced overtime at the supplier. Likewise, if buyers pay too little to the supplier, it might contribute to poverty wages or to other wage violations.

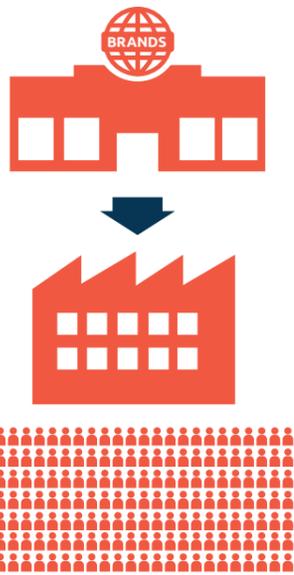


C. LINKAGE

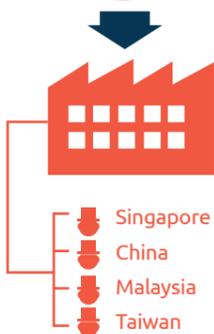
Third, even if the buyer does not contribute to an adverse human right impact (it pays a fair price, implemented sustainable sourcing practices etc.), but is nevertheless linked to the violation at one of its suppliers, it still has a responsibility to provide remedy.



TIER 1 COMPANIES
large manufacturers that supply Global brands



Tier 1 companies are often owned by overseas companies. In Cambodia for example, over 85% of garment factories are controlled overseas investors.



LARGE SCALE MANUFACTURERS: THE ROLE OF TIER 1 COMPANIES

Tier 1 companies are manufacturers that have *direct* supply relations with major brands and retailers. They bind the supply chains for brands such as Nike, Gap and H&M, and retailers such as Wal-Mart, Tesco and Carrefour, with whom they have built strong relations.

They may also play a key role in distributing work to smaller production units (tier 2 companies), to labour contractors, and to little-known subcontracted factories and workshops (tier 3 companies), which, in turn, may subcontract this work out again to hard-to-track, home-based workers¹⁴. Often they are owned by overseas companies – for example in Cambodia over 85% of garment factories are controlled by Chinese, Taiwanese, Singaporean and Malaysian investors.

These large tier 1 manufacturers have specialised in predominantly export-oriented, low-skill, low-wage, labour-intensive, and high-volume manufacturing for their branded customers. Within the transnational division of labour, these companies have “come to serve increasingly as the foremen, responsible for rounding up the workers and getting them to work”¹⁵.

It is this type of manufacturer that organises “the labour process on behalf of ‘absentee’ apparel firms”¹⁶. Except for a few well-known companies, such as Hong Kong’s Esprit Holding Ltd, most of these manufacturers produce garments for export that are distributed and sold under the contractor’s name. These Tier 1 companies are crucial in the struggle for better wages. They are the large employers that have a responsibility to respect labour rights. They also have a direct relationship with the brands that buy for them – meaning they can negotiate directly.



BOX 1 THE ROLE OF BUYING AGENTS

Li & Fung is a Hong Kong-based global trading group managing the supply chain for high volume consumer goods like garments, fashion accessories, stationary products, and toys. The group operates across Asia, North America, Europe, and South Africa. The group does not itself own any production facilities but instead manages a large number of producers.¹⁷ As a supply chain manager across many producers and countries, Li & Fung provides a range of services for customers including product design and development; production planning and management; quality assurance and export documentation and shipping consolidation.¹⁸ Li & Fung operates an extensive global sourcing network of over 70 offices covering about 40 countries and territories around the world. The group’s network extends outside Asia and into other markets like North America, Europe and South Africa. The group sources from around 10,000 international suppliers.



BOX 2 CHINA’S UNDERWEAR TOWNS

While manufacturers run very large factories in China, there are also areas where small workshops dominate the garment industry. For example, in Shantou City, in the Chendian province, located in the southeast of China is also known as “underwear town of China”. There are 65 factories which are “enterprises above designated size”, and 2,000 home-based workshops.

The population in Chendian is about 100,000. Over 50,000 are migrant workers from other provinces. Most of the families are engaged in bra production. There are 23 village units in Chendian. The local government encouraged each unit to develop a unique product, one village one product. The working environment of the home-based workshops is primitive owing to inadequate monitoring. Fire prevention and ventilation are not up to standard. Thus occupational safety is a big threat to workers.²⁰

SMALL FACTORIES, WORKSHOPS & HOME-WORKERS

Despite the increase in these larger factories, it is important to emphasise that the majority of the world’s garment workers are employed by small, locally-owned (tier 2 and tier 3) enterprises, as well as home-workers, which enjoy very little or often no legal protection at all. Many of these workers are employed in the informal economy, without an employment contract.

This means that along with the instability that comes with short-term contracts, they have no protection as homeworkers are notoriously hard to form into unions. This means that homeworkers and those in smaller factories are often the worst paid. These factories are often run with a minimum of management skill and thus find it difficult to compete internationally in terms of price, quality and delivery time, while their profit margins are typically very small. Meanwhile, social auditing systems set up by global buyers typically fail to detect and monitor these workplaces¹⁹. Nonetheless, as the UN Guiding Principles have established, if they supply global buyers and tier 1 companies, then they bear a responsibility to ensure that labour rights are also respected at these workplaces.

‘Despite the increase in these larger factories, it is important to emphasise that the majority of the world’s garment workers are employed by small, locally-owned (tier 2 and tier 3) enterprises, as well as home-workers, which enjoy very little or often no legal protection at all.’

The garment industry accounts for millions of workers and often represents a major export industry and significant part of the country's GDP.

ASIA GARMENT PRODUCTION

BANGLADESH

No of garment workers: 3.6 million
 Garment % of GDP: 7%
 Garment % of export: 76%
 Value garment export in US\$: US\$19.9 billion (2011)
 % of the world market: 6.5% (2011)
 Minimum wage: 5,300 taka (€50.50) Dec 2013
 Number of garment factories: 5000

INDIA

No of garment workers: 6 million
 Garment % of GDP: 4%
 Garment % of export: 14%
 Value garment export in US\$: 12.9 billion (2012)
 % of the world market: 3.6 (2008)
 Minimum wage: 6500 (€76.37) region: Gurgaon
 Number of factories: 36,175

CHINA

No of garment workers: 3-4 million
 Garment % of GDP: 7.1%²² (2011)
 Value garment export in US\$: 153.24 billion (2011)²³
 % of the world market: 38.8% (2008)²⁴
 Minimum wage: Yuan 1550 (€187.60)
 region: Guangdong 2013

INDONESIA

No of garment workers: 1 million
 Garment % of GDP: 9 %
 Garment % of export: 3%
 % of the world market: 1.6% (2013)²⁵
 Value of export in US\$: 6.5 billion
 Minimum wage: Rupiah 2.1 million
 region: Jakarta

SRI LANKA

No of garment workers: 283.000
 Garment % of GDP: 7%
 Garment % of export: 39.9%
 Value garment export in US\$: 4,1 billion
 % of the world market: 1.1%
 Minimum wage: Rs 9,325 (€52.30)
 Number of factories: 325

CAMBODIA

No of garment workers: 500.000
 Garment % of GDP: 13%
 Garment % of export: 95%
 Value garment export in US\$: US\$ 4.6 billion
 % of the world market: 1.2 (2008)²¹
 Minimum wage: US\$100 (€73.30) (2014)
 Number of garment factories: 450

MALAYSIA

No of garment workers: 63,520
 Garment % of GDP: 1.29%
 Garment % of export: 2.3%
 Value of export in US\$: 3.2 billion
 % of the world market: less than 1%
 Minimum wage: RM900 (€197.90)
 Number of factories: 73

CONCLUSION

The garment industry is crucial for the Asian economy, and an important part of the global apparel industry. It employs a considerable amount of workers, whether working in a factory of thousands, or in their own living rooms, they are the foundation of the supply chain. As such their pivotal role in the manufacturing process should be recognised by safe working conditions and a wage that allows them to live a decent life.

The next chapter will look into more detail exactly what is meant by a 'living wage' and why a minimum wage is often not enough to live on. It also explains in detail the international laws that exist to protect workers human rights and the role that the state has to help implement these and protect its workforce.

Sources: national wage research reports & various



CHAPTER TWO

STATE DUTY TO PROTECT

The UN Guiding Principles establishes a clear distinction between the state duty to protect against human rights abuse and the business responsibility to respect human rights.

This means that the state duty to ensure that businesses operating within their territory/ jurisdiction respect human rights cannot be avoided by transferring authority to businesses. It also means that states should carry out the duty to protect through effective policies, legislation, regulations and adjudication and that doing so provides greater clarity of expectations and consistency for business in relation to human rights.

The state duty to protect is not restricted just to businesses operating within its own territorial borders but also relates to business developing activities across borders. In the case of the garment industry this is important as it reflects the duty of states in Europe and North America where many brands are headquartered or are developing a sales network. In addition, European governments should commit to promoting a minimum living wage as an active diplomatic policy towards production countries.

This chapter argues that a living wage is one crucial constituent of decent working conditions. Hence, it is a state duty to set minimum wages at a level that meet living wage standards. This needs to be regularly adjusted in order to take into account inflation and the changing costs of living.

LIVING WAGE IS A HUMAN RIGHT

The importance of setting a minimum wage is to signal that not all conditions of work, or of life, are subject to negotiation or coercion. A living wage by definition means that a working person should never be unable to support themselves and their families. The notion of living wage is well embedded in the international human right discourse.

TABLE 1: TIME-LINE
LIVING WAGE-RELATED DESCRIPTIONS IN MAJOR ILO DOCUMENTS, DECLARATIONS,
AND CONVENTIONS AND RECOMMENDATIONS

DESCRIPTION OF A LIVING WAGE	
1919 ²⁷ Constitution, Preamble	Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the provision of an adequate living wage.
1921 Constitution and Rules, October	The payment to the employed of a wage adequate to maintain a reasonable standard of life that is understood in their time and country.
1928 Resolution No. 30 (minimum wage setting)	—III. For the purpose of determining the minimum rates of wages to be fixed, the wage-fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a suitable standard of living.
1944 Philadelphia Declaration concerning the Aims and Purposes of the International Labour Organisation	The solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: policies in regard to ... wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection.
1961 European Social Charter, revised in 1996, - Part I.4.	All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
1970 Convention No. 131, Article 3, (minimum wage setting)	The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include – (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.
1970 Resolution No. 135, (minimum wage setting)	Purpose of Minimum Wage Fixing. 1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.
1992 Committee of Experts on the Application of Conventions and Recommendations (concerned with minimum wage setting)	— The Committee wishes to recall again that the fundamental and ultimate objective of the instruments in question to ensure to workers a minimum wage that will provide a satisfactory standard of living to them and their families. — The best way of taking the various elements mentioned in the instruments into consideration and according them their due weight is no doubt by compiling the information and statistics referred to in the instruments themselves.
2006 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy	[Wages] should be at least adequate to satisfy basic needs of the workers and their families.
2008 Declaration on Social Justice for a Fair Globalization	[P]olicies in regard to wages and earnings, hours and other conditions of work designed to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection.

Source: Anker, 2011²⁸

The ILO’s constitution written in 1919 states that “universal and lasting peace [requires] the provision of an adequate living wage”.²⁷ Ever since, it has in different forms (declarations, resolutions, and conventions) reiterated the importance of a living wage. Table 1 provides an overview of the most important clauses in international law on the subject of a living wage.

MINIMUM WAGES SHOULD MEET BASIC NEEDS OF WORKERS AND THEIR FAMILIES

Governments play a crucial role in protecting their citizens through the adoption of minimum wage policies. The purpose of legal minimum wages should be to provide social protection to vulnerable and unorganised categories of workers. The ILO writes: “minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the needs of all workers and their families”.²⁹

The ultimate objective of the ILO minimum wage conventions, as the ILO Committee of Experts (1992) concluded “is to ensure to workers a minimum wage that will provide a satisfactory standard of living to them and their families”. This means, as one expert argues, that workers “should be able to live above the poverty level, and be able to participate in social and cultural life”.³⁰

Of course, what is considered an acceptable basic quality of life is time- and place-specific. As countries develop over time, the notion of what is considered a basic need shifts. The ILO minimum wage conventions (131) take account of this by referring to the need to consider “requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment” when minimum wages are set.

MINIMUM WAGE REGULATION

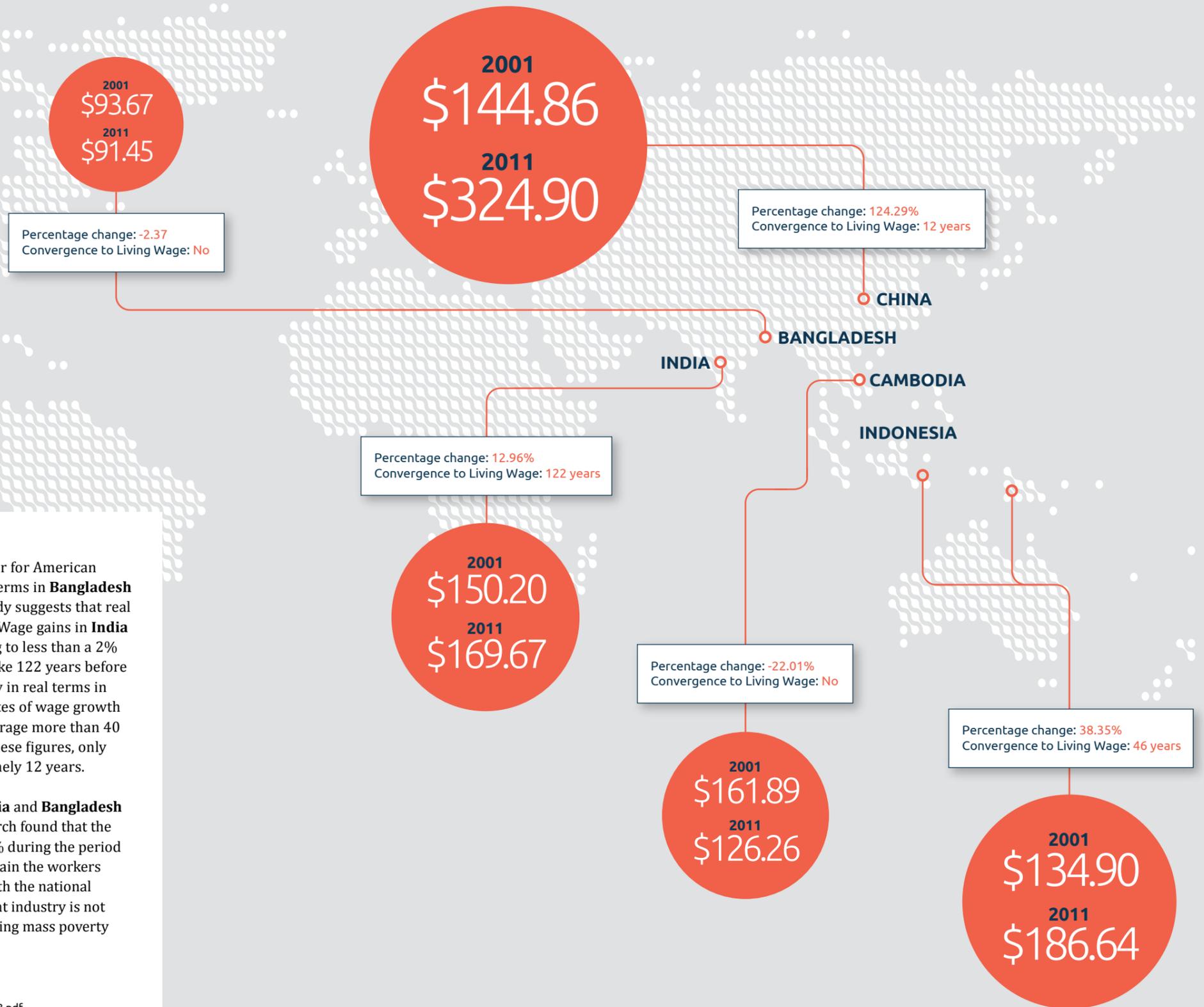
Minimum wages can be set in two ways: through collective bargaining and state regulation. The purpose of a state-sanctioned minimum wage is to create a floor of wages below which no worker can legally be paid. It should only cover payments for the time worked, or for piece rates. Bonuses or other benefits (in cash or in kind) payable directly or indirectly by the employer to the worker for work done should not be included. In essence, a minimum wage is the bare minimum an employer is allowed to legally pay his or her employees without violating the local nation’s labour laws. Thus the minimum wage has the force of law behind it and is enforceable, even if in practice this is often not the case (see chapter 3).

*“Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”*²⁶

The UN Universal Declaration of Human rights, Article 23 (3)

'When real wages fall, workers get poorer despite working long and exhausting working weeks.'

MONTHLY REAL WAGE ASIAN APPAREL EXPORTERS TO THE US (IN 2001 CURRENCY)



BOX 3 REAL WAGE IMPACTS

A study by the Workers' Rights Consortium (WRC) and Center for American Progress shows that wages for garment workers fell in real terms in **Bangladesh** and **Cambodia** in the period 2001-2011. In contrast, the study suggests that real wages rose during the same period in **India** and **Indonesia**. Wage gains in **India** however, were quite modest in real terms at 13%, amounting to less than a 2% annual gain between 2001 and 2011. At this rate, it would take 122 years before workers receive a living wage. Wages rose more substantially in real terms in **Indonesia** (38.4%) over the 10-year period. Even if these rates of wage growth were sustained in these three countries, it would take on average more than 40 years until workers achieved a living wage. On the basis of these figures, only China is moving towards a living wage relatively quickly, namely 12 years.

At the same time, this reports shows that workers in **Cambodia** and **Bangladesh** getting even poorer. This also counts for **Sri Lanka**. Our research found that the purchasing power of nominal minimum wage declined by 28% during the period of 1988 to 2013. This indicates that authorities failed to maintain the workers purchasing power by sufficiently adjusting minimum wage with the national inflation rate. It also shows that for most countries the garment industry is not contributing to the UN's Millennium Development goal of halving mass poverty and enhancing social welfare.

Source: Center for American Progress and Workers Rights Consortium (2013)
Global Wage Trends for Apparel Workers 2001-2011, report available at:
<http://www.americanprogress.org/wp-content/uploads/2013/07/RealWageStudy-3.pdf>

‘Women are overrepresented among low-paid workers and their mobility into higher paid jobs is much lower than men’s. Women are therefore concentrated in jobs and sectors where collective bargaining is more limited. By establishing comparable wages across dissimilar and often sex-segregated workplaces, minimum wages can help address gender biases in wage fixing.’³²

Minimum wages are also an important policy instrument of social protection, which should provide safety for the most vulnerable and unorganised categories of workers. A minimum wage is also a basic standard of living and economic objective. In addition, the ILO points out that minimum wages can contribute to the reduction of gender pay gaps³¹.

SETTING THE MINIMUM WAGE

Countries that ratify the minimum wage conventions should adopt or create a system to fix the minimum wage. There are a number of elements that need to be taken into account.

Firstly, the conventions do not stipulate the minimum wage level. Rather it sets a mechanism that countries should follow. Both the **Minimum Wage Setting Convention 131** (1970) and **Recommendation No. 135** (1970) provide guidelines; they argue that workers’ needs should:

- provide for more than subsistence needs as a minimum wage should be sufficient to overcome poverty and include social security benefits;
- be based in part on societal standards as a minimum wage should take into consideration living standards of other social groups and be appropriate in relation to national practices and conditions; and
- be sufficient to support a family and not just a worker.

All the main garment producing countries in Asia have minimum wages, although Malaysia implemented a nation-wide minimum wage only in 2013. However these minimum wages often fail to provide for a dignified, adequate livelihood for a worker and his or her family. In an attempt (and under intense competition with neighbouring countries), to attract foreign investment, governments in Asia adopted a cheap labour policy, often combined with incentives for foreign investors (tax incentives, tax holidays) and authoritarian measures to repress trade unions.

In setting legal minimum wage, many governments do not seriously consider worker needs. Instead, wages are set at a poverty level. Governments are failing to set minimum wages at a level to would meet living wage standards. There is often a huge gap between the minimum wage and the calculated living wage.

Secondly, it is important that minimum wage rates are adjusted frequently to maintain the purchasing power of workers in face of price increases. Article 4 of the Minimum Wage Fixing Convention 131 states that minimum wages need to be “adjusted from time to time” in order to maintain the workers’ purchasing power. Recommendation No. 134 suggests that countries should adjust minimum wages “to take account of changes in the cost of living and other economic conditions”, by regularly carrying out a review “of minimum wages in relations to the cost of living and other economic conditions” (article 11 & 12).

For low-wage, impoverished workers, the impact of higher food prices can be particularly dramatic because they spend a large percentage – typically over 50% – of their income on food. Some countries have fixed intervals for updating minimum wages others have not (see table 2). “Rapid inflation requires that that there should be annual indexation of the living wage” according to the verdict of the India People’s Tribunal.³⁴

Higher food prices have an immediate impact on workers’ health. This especially counts for women workers with children. As one Indian worker put it: “[p]rices are going up daily but not our wages. We are now buying lower quality grains from unlicensed local shops. This is going to affect our health in the long run but we have no choice”.³⁵



‘In a majority of countries, women’s wages represent between 70 percent and 90 percent of men’s wages. In the case of European countries, the ratio is known to be on average around 0.75, but it is not uncommon to find much higher ratios in other parts of the world, particularly in Asia.’³³

“Prices are going up daily but not our wages. We are now buying lower quality grains from unlicensed local shops. This is going to affect our health in the long run but we have no choice.”

Indian worker

TABLE 2: MINIMUM WAGE SETTING TIME-LINE

	WHEN	INTERVALS	NEXT MIN WAGE SETTING MOMENT
Bangladesh	2013 (autumn)	No fixed intervals	Unclear
Cambodia	2014 (winter/spring)	No fixed intervals	Unclear
China	2013	Fixed (Bi-annually)	January 2014 ³⁶
India	Depending on region	Fixed (five years)	Depending on region
Indonesia	2013	Fixed (Annually)	2014
Malaysia	2013	Fixed (two years)	2015
Sri Lanka	2013	Fixed (annually)	2014

Sources: various national research reports available on file.

Thirdly, social partners should be involved in the decision-making regarding both the coverage and the rates of minimum wages. Worker organisations can play an important role in ensuring observance of minimum wage laws. They can pressurise employers that are underpaying workers.

In Asia, governments typically set minimum wages after some consultations with social partners. In **China**, however, this process is compromised as there is only one official (state-controlled) union. In other countries too, questions have been raised by the independence of some of the organisation supposedly representing workers. For example, in **Cambodia**, “the government aligned, or ‘yellow unions’ hamper the bargaining stances held by the non-affiliated unions. This is due to the fact that the yellow unions hold significant membership of the garment and shoe factory workers”³⁷. Chapter 5 will discuss in more detail how trade union repression is undermining the role of workers in setting wages.

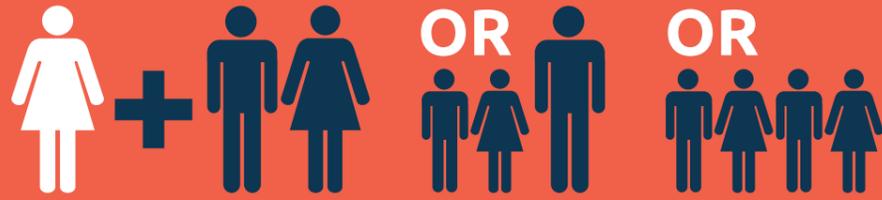
Lastly, minimum wages need to be enforced to be effective. This means that employers who violate minimum wage rules should be sanctioned. Unfortunately, minimum wage regulations are widely violated in many garment-producing countries because employers know it is not enforced. This will be further discussed in chapter four on wage theft.



‘To show a genuine commitment to workers rights it is imperative that all Governments should ratify and implement the ILO conventions related to wages.’

THE ASIA FLOOR WAGE ALLIANCE

(AFW) is calculated based on the following assumptions:

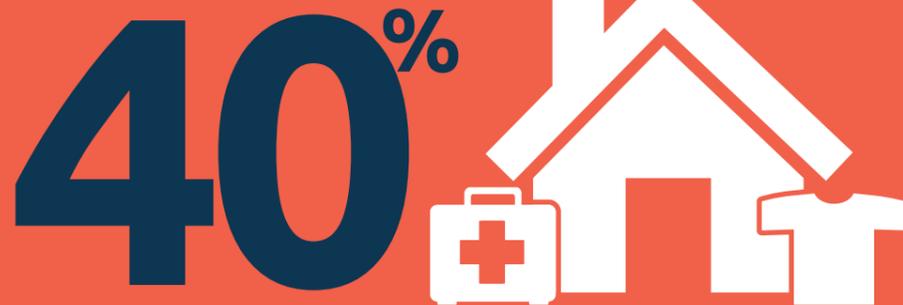


A worker needs to be able to support themselves and two other 'consumption units'.

50% of monthly salary goes towards food, based on 3,000 calories a day per adult.³⁹



40% of monthly salary goes on clothing, housing, travel costs, children's education and health costs.



10% goes towards discretionary income.

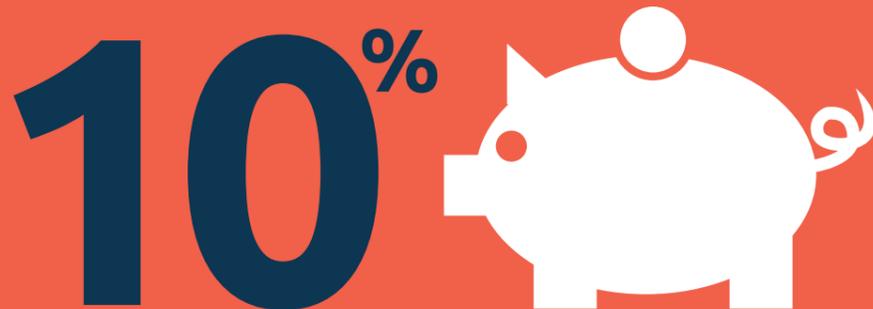


TABLE 3: MINIMUM WAGE OVERVIEW³⁸

COUNTRY	SEPARATE LEGISLATION OF MINIMUM WAGE	NUMBER OF MINIMUM WAGE RATES		LEVEL AT WHICH THE MINIMUM WAGE IS SET					
		Single	Multiple	National	Regional	Occupational	Industrial	Sectoral	other
Cambodia		■				■			
China			■						■
India	■		■	■	■	■		■	Skill
Indonesia	■		■		■	■			
Malaysia			■						
Sri Lanka			■			■	■	■	

'The Asia Floor Wage is calculated in PPP\$ - Purchasing Power Parity \$, which are an imaginary World Bank currency built on the consumption of goods and services by people, allowing standard of living between countries to be compared regardless of the national currency.'

THE ASIA FLOOR WAGE CAMPAIGN

The Asia Floor Wage Alliance has developed a clear definition and methodology that operationalises a minimum living wage demand. The Clean Clothes Campaign is a member of the Asia Floor Wage Alliance which began in 2005 when trade unions and labour rights activists from across Asia came together to agree a strategy for improving the lives of garment workers.

As an alliance led by unions in the key garment producing countries in the region, the Asia Floor Wage Alliance represents the concerns and needs of the workers themselves. Central to their demands is a call for a living wage to be paid to all garment workers. This led to the development of the Asia Floor Wage (AFW) calculation, as a way to calculate a living wage for payment across Asia.

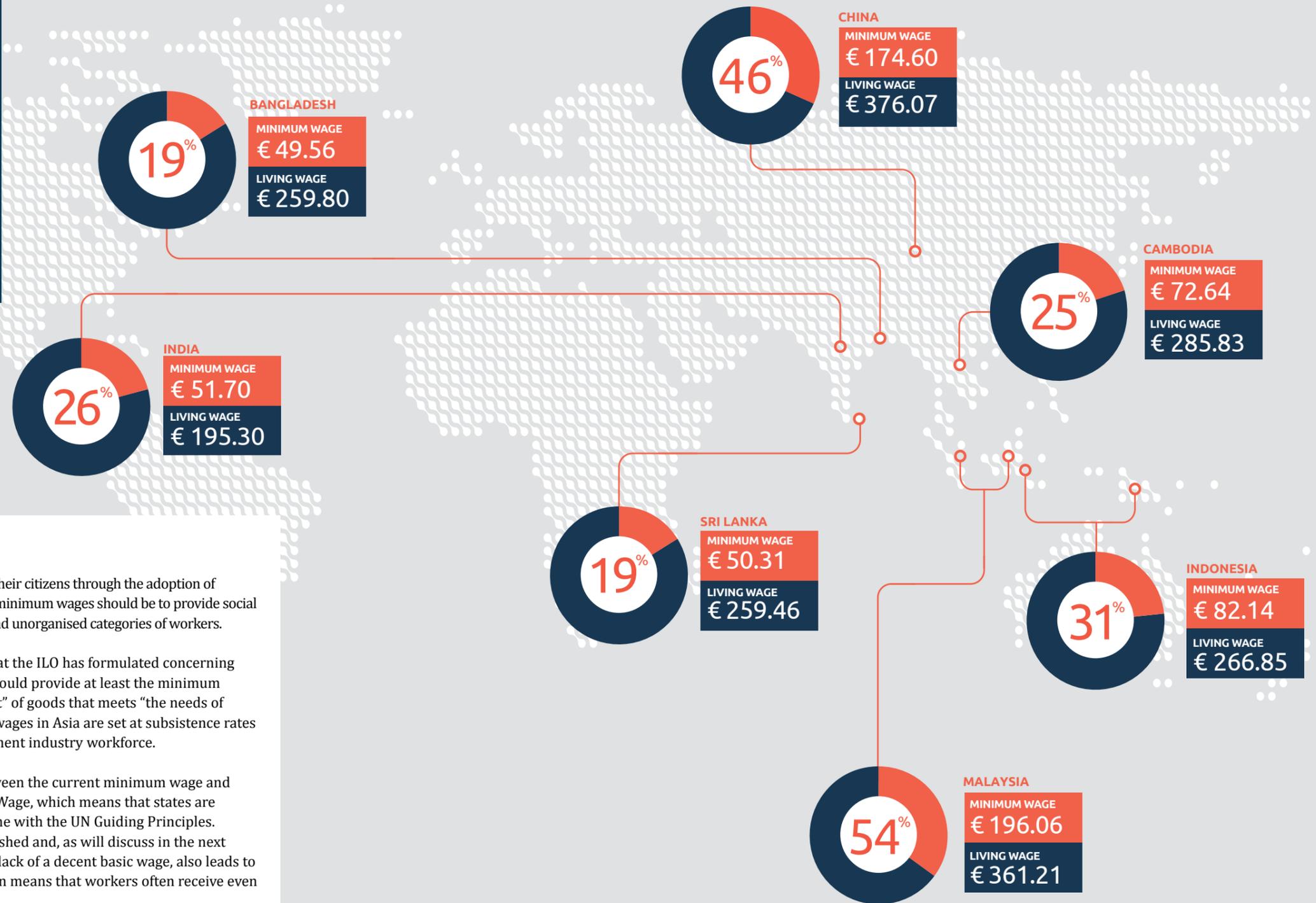
The AFW research estimates a minimum living wage floor across the garment industry in Asia, and is evidently one of the first efforts to establish an industry wide living wage across national borders. The standardised floor wage is not about setting the same wage in dollar terms, considering variable exchange rates, the diversity of currencies and standards of living across Asian economies. Rather, a common formula has been devised based on consumption needs.

The Asia Floor Wage is calculated in PPP\$ - Purchasing Power Parity \$, which are an imaginary World Bank currency built on the consumption of goods and services by people, allowing standard of living between countries to be compared regardless of the national currency. The Asia Floor Wage Alliance carry out regular food basket research in the region to calculate new Asia Floor Wage figures.

www.cleanclothes.org/livingwage/living-wage-versus-minimum-wage

'A living wage should allow a garment worker to be able to feed herself and her family, pay the rent, pay for healthcare, clothing, transportation and education and have a small amount of savings for when something unexpected happens.'

MINIMUM WAGE VS. LIVING WAGE



CONCLUSION

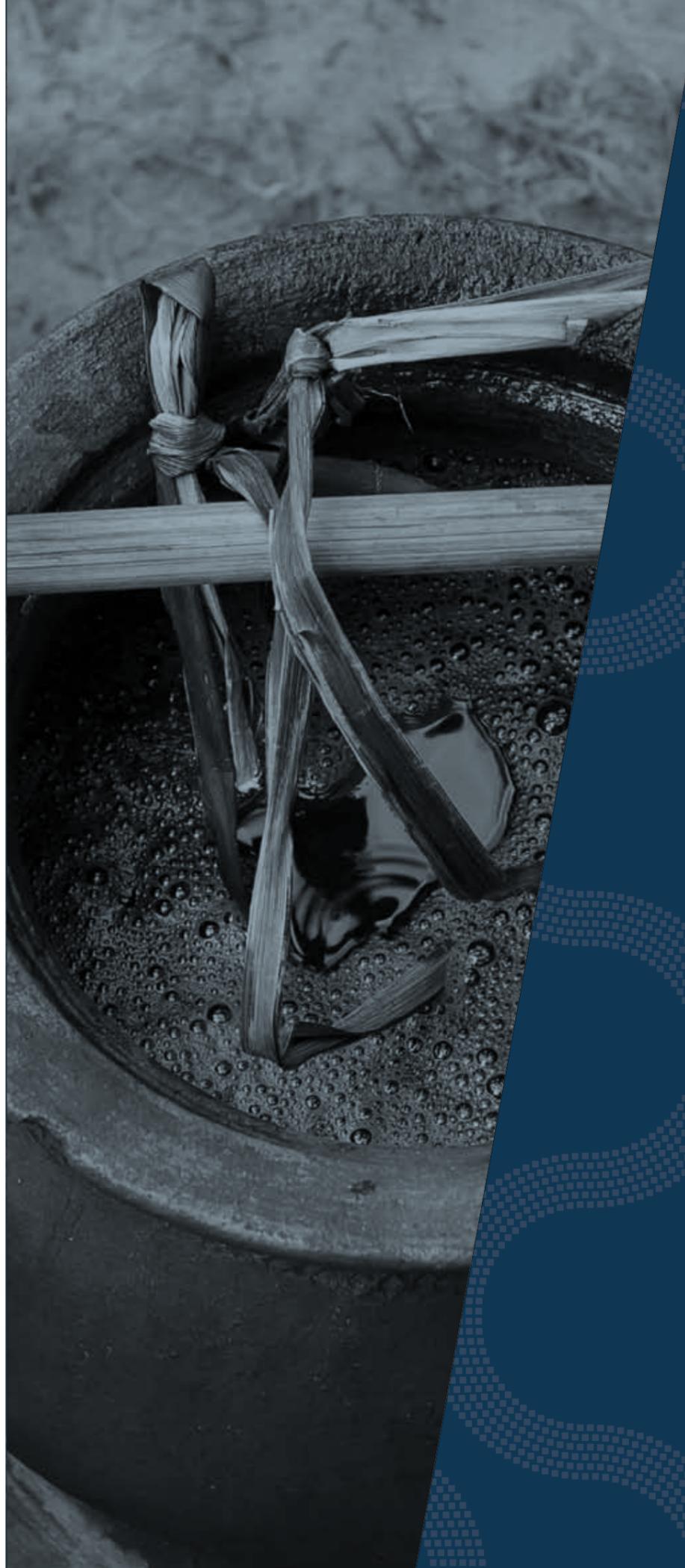
Governments play a crucial role in protecting their citizens through the adoption of minimum wage policies. The purpose of legal minimum wages should be to provide social protection to workers, especially vulnerable and unorganised categories of workers.

The Conventions and Recommendations that the ILO has formulated concerning minimum wages clearly state that wages should provide at least the minimum purchasing power required to buy a “basket” of goods that meets “the needs of workers and their families”. Yet, minimum wages in Asia are set at subsistence rates that lead to poverty for the substantial garment industry workforce.

For most countries there is a huge gap between the current minimum wage and living wage estimations like the Asia Floor Wage, which means that states are failing in their duty to protect workers in line with the UN Guiding Principles. Insufficient wages leaves workers impoverished and, as will discuss in the next chapter, in danger of malnourishment. The lack of a decent basic wage, also leads to excessive overtime. Lax enforcement, in turn means that workers often receive even less than they are legally entitled to.

While a living wage is one crucial constituent of decent working conditions; it should not be isolated from other legal and institutional frameworks necessary to ensure work takes place under decent conditions. In particular, this requires a legal framework that facilitates collective bargaining between workers and employers (see chapter 5).

Sources: national wage research reports & various



CHAPTER THREE

THE REALITY OF POVERTY WAGES

It has long been recognised that wages in the garment industry are structurally failing to meet the basic needs of workers. As the Verdict of the Cambodia Permanent People's Tribunal on Living Wages puts it:

"Workers who are paid wages which do not cover their basic needs cannot live with dignity. Human dignity requires the opportunity to live free of chronic stress which arises from the fear of not being able to meet the cost of maintaining a decent standard of living for self and family."⁴⁰

THIS IS WHY a living wage should not just cover adequate food for a worker and her family, but provide enough income to cover "all the elements of a life with dignity, namely, housing, medical care and education for children, rest and leisure time, including social and cultural opportunities."⁴¹

Many governments keep wages deliberately low in order to attract business. In many cases the legal minimum wages set for workers in the apparel industry fails to provide enough income to maintain a family of four above the nationally defined poverty level. There are two main consequences of poverty wages: the need to work **excessive overtime and malnutrition**.

Across Asia garment workers have come to regard overtime pay, bonuses, and attendance incentives as crucial factors in achieving a living wage and have little choice but to sacrifice spare time in order to earn enough to live. This particularly impacts female workers with young children who are unable to survive on the basic rate of pay and often forced to live separately from their children in order to accept overtime hours.

TABLE 4: COMPARISON IN OVERTIME COMPENSATION IN ASIA

COUNTRY	TOTAL HOURS IN NORMAL WORK WEEK	LIMIT ON TOTAL OVERTIME HOURS	COMPENSATION PREMIUM FOR OVERTIME HOURS	REST TIME/ HOLIDAY
Bangladesh	48 hours, eight hours per day	12 hours		One weekly holiday, 10 days with full pay
Cambodia	48 hours not more than 8 hours per day.	48 hours not more than 8 hours per day. 2 hours per day, or not more than a total of 10 hours in a day, making the maximum work week 60 hours. (Cambodian Labor Law (1997) Art. 137 & 103)	Time and a half for overtime and double time if overtime occurs at night, on Sunday or on a holiday.	9 public holidays, plus 1.25 days for every month of continuous employment. Compensatory day off for work on weekly rest day.
China	40 per week and 8 hours per day.	1 hour a day, or in special circumstances 3 hours a day totalling 36 hours in a month.	Time and a half on working days, double time at night, weekly rest day, and holidays.	7 public holidays. Two days rest per week.
India⁴²	9 hours in a day, or 48 hours in a week.	The working time cannot exceed 60 hours per week (48 hours of regular work hours and 12 hours of overtime), subject to a maximum of not more than 50 hours of overtime over a period of three months (FWF, 2012: 21)	Double time for work over 9 hours a day, or over 48 hours in a week.	One day in 7. No more than 5 hours without a half hour of rest.
Indonesia	7 per day, 40 per week.	2 hours per day, so maximum 54 hours per week.	150% for first hour, 200% thereafter. On non-working days, 150% up to 7 hours, 200% for 8th hour, 300% for the remainder.	One day in 7. 30 minutes rest after five hours in factories. 13 public holidays.
Malaysia	8 per day, 48 per week. (9 hours per days is allowed as long as the 48 hour working week is respected)	Maximum of 12 hours in a day and 104 in a month.	Time and a half during working days, double time on weekly rest days and holidays.	1 day a week, 30 hours for shift workers. Daily rest of 12 hours. 30 minute breaks after 5 hours and 45 minutes in 8 hours for a meal.
Sri Lanka	9 hours per day, maximum 45 hours a week.	Maximum of 60 hours in a month	Time and a half for working days and Saturday; double time on Sunday and public holidays	

Source: adjusted from JO-IN, Work Hours, Overtime, And Codes of Conduct

EXCESSIVE OVERTIME

Excessive overtime is a problem as old as industrial production itself. It was also one of the first tasks the international community set out to regulate. The Hours of Work (Industry) Convention, 1919 (No. 1) mandated a maximum on normal (pre-overtime) hours of 48 hours per week. More recent ILO Conventions instead promote a more decent working week of 40 hours.

Our research shows that overtime has turned into a structural phenomenon in Asia's garment industry. While much excessive overtime is often forced upon workers, it is also directly linked to inadequate remuneration. Workers often have no choice but to endure long working hours because the basic rate of pay within a normal working day of eight hours is insufficient to meet their needs to sustain a family.

BOX 4 CHINA: CASE STUDY OF A CHINESE H&M SUPPLIER

The Hop Lun Fashion Factory (Dongguan) is situated in Hexi Industrial Zone, Changan Town, Dongguan City, Guangdong Province, China. Business Weekly reported that China has over 70 percent of clothing produced from Dongguan.⁴⁴

In 2013 H&M published their list of suppliers which included the Hop Lun Fashion Factory (hereinafter Hop Lun) as a first tier suppliers. The factory also produces underwear and swimwear under its own brand named SixEight. Hop Lun is a subsidiary of the Swedish Sterling Group. Founded in 1993, Sterling set up Hong Kong based Hop Lung International Fashion Co., Ltd. in 2002. Since then, Sterling extended its business in Shenzhen, Dongguan and Heyuan of Guangdong Province and Ganzhou, Jiangxi Province. There are about 2000-3000 factory workers, the average age of workers in about 30 years old. Over 90 percent of the workforce are female workers.

Hop Lun's working hours are relatively stable. Workers have a six-day workweek and work 2 hours over time a day. On Saturdays, workers do not have overtime work at night. There is no distinctive peak season and low season in the factory.

The monthly overtime work is 75.5 hour, which is more than a double of the 36-hour legal overtime limit per month that the Chinese law set. Moreover, workers must work overtime to earn their guarantee wage, CNY 2,600 (€311.46)⁴⁵. Otherwise, they are not eligible for the attendance bonus. In addition, workers will also lose their overtime premium and housing allowance if they do not stay in the overtime shift as required by the company.

In a comment, H&M stresses that the guaranteed wage exceeds the minimum wage but confirms that the 'factory cannot provide evidence that the end of the year bonus is connected to involuntary overtime'. One worker comments: "The production target of the factory is high, quality requirements are very strict. I could only get the guaranteed wage last month. I am stressed." For our Chinese researchers it is obvious the factory has connected the attendance bonus with the guaranteed wages (RMB 2600) and if a worker does not work excessive overtime, he or she will not get the guaranteed wages.

Source: Globalization Monitor, 2013, China wage research, unpublished, on file.

'The idea of imposing legal limits of hours of work is primarily to ensure a safe and healthy working environment and adequate rest or leisure time between shifts.⁴³ Long working hours leave little time for household activities, for raising children or other social activities. Long working days prevent workers from recovering after their working day.'

*‘Narender, a Tailor working in Pearl Global (a Tier 1 garment manufacturer), remarked that during peak seasons “we work nearly 7-8 hours of overtime each day while during non-peak seasons the number of overtime hours is around 2-4 hours.”’*⁴⁹

LIVING WAGE TRIBUNALS

During the India Wage Tribunal, garment workers confirmed that their salaries are not sufficient to support themselves, and their families. Low wages mean many are compelled to work long hours of overtime.⁴⁶ “Overtime is an obligation both because most workers need it to supplement their wages and because it is compulsory anyway: Refusing to do overtime means risking to lose one’s job. Company treats us like slaves, complete slaves”, one worker testified. “If you refuse to do overtime you will be manhandled and kicked out of the company”.⁴⁷

In Sri Lanka workers reported working 24 hours at one stretch if there is an urgent shipment from the factory, which is a blatant breach of national law. Testimony of workers further revealed that all overtime hours worked were not adequately compensated by the factory management.⁴⁸

FALSIFYING WAGE SLIPS

Excessive overtime was confirmed again by the Indian field research undertaken specifically for this report. Overtime work has emerged as a survival strategy for garment industry workers. For example, the garment region Gurgaon, India, has been increasingly adhering to this trend to the extent that nearly five to six hours of overtime per day is considered to be normal. While the Indian law restricts overtime in the garment sector to maximum two hours a day, employers misled auditors by reporting a maximum of 10-12 hours on the pay slips received by workers while in practice workers end up working nearly 16 hours on a daily basis.

HEALTH IMPACTS OF EXCESS OVERTIME

Long working hours affects job satisfaction, and impacts worker’s health negatively as overtime work often leads to chronic exposure to a harmful working environment (i.e. humid and hot, noisy, poorly lit, with scarce ventilation, uncontrolled and uninformed use of chemicals, excessive dust etc). “Pregnant women especially are fainting because they are so weak,” says Chenda one of the workers interviewed for this research in **Cambodia**. “They have no strength.”⁵⁰

Excessive overtime is also likely to increase the economic insecurity of these low wage workers in future. As workers get exhausted because of the high intensity and long working days, workers tend to leave the industry after a few years of work. In **Sri Lanka** for example, “almost 83% and 89% of the workers in the FTZ and OFTZ respectively have less than 10 years of working experience. Therefore it is evident that long term reliance of workers on this industry was limited”.⁵¹

POVERTY WAGES AND IMPACT ON FAMILY LIFE

At the Tribunal on Minimum Living Wage and Decent Working Conditions as Fundamental Human Rights (held in **Sri Lanka**, 27-28 March 2011) workers testified that overtime is required to bring the basic wage to a viable rate. Wage receipts were tabled at the tribunal revealing overtime regularly amounts to an additional 40 – 65 hours per month⁵².

The jury concluded that: “Women with children appeared to be most affected by the wages and conditions of the industry. As few factories provided crèches, women were forced to pay for child care. The workers stated that the cost of private child care is between Rs 2500 and Rs3500 (€30.40 – €40.90) per child, amounting to one third of the basic wage. The prohibitive cost of childcare and the need to work daily overtime to make ends meet resulted in all the workers who testified reluctantly taking their children to live with grandparents. As a result they now see their children only twice a year.”

This, in the tribunal’s opinion, is a denial of the right to a family life. The tribunal also heard evidence that the pressure to work overtime and the lack of on-site childcare meant that women were rarely able to breastfeed babies even though the law allows for two breastfeeding breaks a day. In addition, one worker testified that the stress of living separately and financial insecurity led her husband to desert her when she was seven months pregnant. As a single parent she struggled to meet the work demands and she told the jury that she was dismissed because of her inability to undertake overtime hours demanded by the company.⁵³

With no access to childcare, workers have no other choice than to send their children to family living often hundreds of kilometres away. This is one reason why women with children are often most affected by the wages and conditions of the industry. The low basic wages are not only inadequate to afford child care, but leaves workers with little choice than to take as much overtime as possible. In turn, long working days make it impossible to run a family life.

One worker, identified as **Nadeeka**, testified at the Sri Lanka Tribunal on how her meagre salary forced her to leave the care of her daughter to others. “My basic salary was not enough. I needed to do overtime work to provide for my child as a single parent. If only my basic salary was enough I could have kept my child with me. So I sent my child to my mother in the village”.⁵⁴

The separation of families as a result of low wages is common phenomenon in the Asian garment industry. In **China** they are millions of “left-behind” children. While their parents toil in factories in the coastal areas, their children stay behind with their grandparents at the country-side. The All-**China** Women’s Federation estimates that about 58 million children are separated from their parents, which roughly translates into one in every four children in rural regions.⁵⁵ They further estimate that nearly 80% of them are cared for by their grandparents. From the remaining 20%, 13% stay with relatives or friends, while 7% live by themselves.

‘The prohibitive cost of childcare and the need to work daily overtime to make ends meet resulted in all the workers who testified reluctantly taking their children to live with grandparents. As a result they now see their children only twice a year.’

“I make a low wage,” said the 20-year-old, who has been working in the factory making clothing for H&M for three years, says. “I simply can’t spend money on good food. It’s too expensive.” “The whole time I have been a garment worker, not once did I have nice food to eat. All I could afford was 500 to 1,000 riel (9 to 18 euro cent) per meal. I ate to fill my stomach, but it was far from nutritious.”⁶²

MALNUTRITION

Malnutrition is a serious side effect of the lack of sufficient remuneration. Wages are simply not enough for buying healthy food for either the worker or their dependents. The **Asia Floor Wage** assumes that on average a worker needs 3,000 calories a day in order to be able to stay healthy and perform their duties, and yet for most garment workers this is not possible on their current wages.

The researchers in **Sri Lanka** found that food costs of low-income earners is very high relative to their income. For instance, poor households spent 63.1% of their income on food.⁵⁶ The apparel industry workers in **Sri Lanka** have generally been recognised as a low income, vulnerable group among the working classes where majority of them have previously had no income generating opportunities and hail from rural communities.

Female workers in **Sri Lanka’s** Free Trade Zones are vulnerable to health problems such as anaemia, malnutrition etc. due to poor nutrition. In view of such undesirable conditions, they will face problems as future mothers and their offspring too will be afflicted with severe health problems. Research by the **Sri Lankan** Department of Labour in 2009 found that “62% of women employees in the Katunayake Free Trade Zone are suffering from anaemia.”⁵⁷

The impact of poor nutrition has had a great effect in **Cambodia** where malnutrition has been regarded as one of the possible causes behind mass fainting, together with the poor working conditions (for instance, excessive overtime, stress, heat, inadequate ventilation). The district police chief Born Sam Ath stated after the fainting of 300 workers in 24 hours at King Fashion Garment factory in Cambodia, “workers’ health is not good. They don’t eat enough and the workplace is stuffy.”⁵⁸

Research carried out at 27 factories employing 35,000 Cambodian workers found that 67% of the factories believe that poor nutrition impacted negatively on productivity levels. The study also found that manufacturers are willing to provide meals as long as the associated expenses do not exceed 2,000 riel (0.36 euro cent)⁵⁹.

Research carried out by UK Clean Clothes Campaign, Labour Behind the Label, has found that factory workers consume an average of 1598 calories a day on average, around half the recommended amount⁶⁰. Body Mass Index figures indicated that 33% of Cambodian workers are medically underweight and at risk, and 25% seriously so, displaying figures that would be used to diagnose anorexia in the UK.⁶¹

The **Cambodian** Wage Tribunal concluded: “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 exposure to the harmful environment”.⁶³

CONCLUSION

Across Asia garment workers have come to regard overtime pay, bonuses, and attendance incentives as crucial factors in achieving a living wage and have little choice but to sacrifice spare time in order to earn enough to live.

This particularly impacts female workers with young children who are unable to survive on the basic rate of pay and often forced to live separately from their children in order to accept overtime hours.

It has also illustrated how factories exploit the low wages to enforce overtime workloads that further effect the health of the work force. All of these issues clearly illustrate that a lack of a living wage in Asia is a major obstacle in allowing people to live with dignity.

The issue of low wages can have serious social impacts including women being forced to abandon children, and people becoming weak and ill due to their inability to afford a decent diet. It has also illustrated how factories exploit the low wages to enforce overtime workloads that further effect the health of the work force. All of these issues clearly illustrate that a lack of a living wage in Asia is a major obstacle in allowing people with dignity.



‘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 exposure to the harmful environment.’⁶³



CHAPTER FOUR

WAGE THEFT

This report has clearly demonstrated that minimum wages are too low in the garment industry in Asia, added to that workers are often denied the little they are legally entitled to. Many manufacturers know that the probability of having a labour inspection is close to zero. Hence, they feel little pressure to comply with legal minimum wages.

State authorities fail in their duty to protect workers against corporate misbehaviour. This failure is not adequately covered by the private monitoring systems adopted by global buyers, which has been largely failing to address the problem.

These activities are tantamount to wage theft. It takes many different forms, including:

- 1 being cheated on overtime payments (underestimation, wrong estimation)
- 2 female workers being denied maternity leave (but are fired instead)
- 3 workers not getting their social security payments
- 4 illegal deductions
- 5 delay in payments
- 6 lack of severance payments after factories close down

- 7 non-recognition of wages according to the grade or skill
- 8 no transparency on how wages are calculated
- 9 sick leave not given (hence, workers end up losing that day's pay if they leave the factory premises to go home for rest).

Employers (manufacturers) directly profit from this malpractice. Indirectly brands and retailers profit from them as they get their merchandise for rock-bottom prices. They may even partly drive these practices, because their purchasing is based on low prices, which leave manufacturers little choice other than to cheat workers. Most countries will have a legal framework outlawing these practices. The problem is that these laws lack accompanying implementation machinery. Many garment producing countries have very few labour inspectors. Hence factory owners know that the probability of detection is low.

*“Sri Lanka has ratified all eight core Conventions of the ILO. But we also have in Sri Lanka very good sets of labour laws, fairly good in comparison to all other Asian countries. What we lack is the implementation part of it.”*⁶⁶

Mr. Leon Joseph

The Indian researcher writes that “...the functionality of the Minimum Wage machinery in India is more of a myth as the institutional structure in charge of implementing a decent wage structure across industrial segments is exclusionary, fragmentary, and inefficient.”⁶⁴

In other cases, factory owners don’t care about being detected because fines (sanctions) are small. Finally, there are categories of workers (migrant workers, informal workers) that are not covered by legal frameworks. They have little possibility to get legal redress in case of violations.

Despite this **wage theft** constitutes a gross violation of national laws and international labour standards and conventions. Article 4 of ILO Convention No. 26 says:

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

WAGE IRREGULARITIES

Wage irregularities are not isolated cases practiced by a few a criminal employers. There is much evidence that “wage theft” is a widespread practice. A survey drawing on audit data provided by the US based multi-stakeholder initiative – the Fair Labor Association – revealed that 58% of the supplier facilities audited were underpaying wages, and 68% reported difficulties in paying overtime.⁶⁵ Likewise, the UK Ethical Trading Initiative reported in 2009 that 48% of member’s manufacturing sites were non-compliant on the amount of due pay received by the workers.⁶⁷

In **India**, many garment workers are from the landless labour and poor peasant casts. Among this group there is predominance of socially deprived groups (Dalits and Adivasis) who are particularly vulnerable to underpayment and discrimination. As the India Wage Tribunal puts it: “This is seen in its most extreme form in the exploitation of adolescent girls who work virtually free for the employer on contract for a number of years with a lump sum payment at the end. Their effective payment (cost of their bare subsistence plus the discounted value of the lump sum payment) works out to half of the wage rate of adult workers.”⁶⁸

In **China** wage theft has been noted as a huge problem. Even though failure to pay out wages on time has been classified as a crime under Chinese Criminal Law since 2011, the court only convicted 120 employers (from 152 lawsuits) in 2012.⁶⁹ It is only a very small number given that more 220,000 wage disputes were reported nationwide in the same year. According to Yin Weimin, minister of human resources and social security, wage delays resulted into 190 mass incidents, defined as protests involving more than 100 people.⁷⁰

Nonetheless, legal experts think the interpretation by the Supreme Court is a step forward. “Now the interpretation gives a clearer definition of the pay and will help make the law more practical,” Jiang Ying, a labour law professor at the China Institute of Industrial Relation is cited in the press.⁷¹ Our Chinese researchers found that “wages in arrears are very common among garment factories.”⁷² Workers at Jin Hui Huang [infant apparel producer in Huizhou, Guangdong], which have been producing for Hong Kong-owned enterprises such as Walmart had not been paid for three months, and that situation hadn’t been redressed despite the workers’ repeated complaints.⁷³

In other cases, it is unclear to workers how their overtime is calculated. The **Bangladeshi** researchers for this report write that because many “female workers are not literate and are unaware about their overtime hours the management can easily deprive them from their fair overtime earning”.⁷⁴ Other employers find ways to reduce take-home wages that may not be illegal but cannot be called fair either. For example, a study on 334 **Bangladeshi** workers from 20 factories supplying members of the Fair Wear Foundation found that many employers had taken away bonuses after the minimum wage was increased. As a result: “[r]eal income has increased, but not as much as workers expected or believed was fair, based on previous bonuses. Such practices do not appear to be illegal, however they are widely considered to be unethical”.⁷⁵ The same study found that “24% of workers interviewed said they had been reassigned to a lower pay grade following the 2010 wage increases. While these workers received net pay increases, reassigning them to lower pay grades meant that they did not receive the full increase to which they were entitled.”⁷⁶

*‘24% of workers interviewed said they had been reassigned to a lower pay grade following the 2010 wage increases. While these workers received net pay increases, reassigning them to lower pay grades meant that they did not receive the full increase to which they were entitled.’*⁷⁶

‘Seven people are forced to share a two-bedroom and one-toilet flat.’

BOX 5 MIGRANT WORKS IN MALAYSIA

Migrant workers find themselves in an even worse position than local workers. Low pay is an issue, and they often face deductions made to cover accommodation, food, electricity and uniforms.⁷⁷ Their dependence on a worker permit makes them vulnerable for deportation and intimidation. Labour agencies are reported to fetch high prices for workers, which violates basic ILO principles prescribing that workers should not be charged for services provided by labour agents.⁷⁸

In some countries migrant workers are not allowed to form their own associations, while local worker organisations often pay little attention to their fate. Workers without a formal registration (i.e. illegal workers) are especially vulnerable to extreme forms of exploitation by employers who take advantage of them because of their illegal status. Employers often know that they can pay migrant workers below the legal minimum without any legal sanctions. When their rights are violated, their often illegal status makes it extremely difficult, if not impossible, to submit a formal complaint.

Migrant workers are particularly vulnerable to wage malpractices. Take the Yee Wan Manufacturing Sdn. Bhd., which is a **Malaysian** company producing traditional cloth and school uniform for the Malaysian market. The company has 200 workers and 150 of them are **Burmese** 70% of them are women. They are piece-rate workers, whose rate varies depending on parts that they sewed and fluctuated according to market demands.

No allowance or overtime payment is provided. They normally work around 10 to 14 hours a day. Seven people are forced to share a two-bedroom and one-toilet flat. They do not have a signed contract with the company. On 12th March 2013, the employer informed workers that they would no longer be able to pay the legal minimum wage, which had only been implemented a few months earlier. Instead the company told the workers that if they wanted to receive the minimum wage, the company would deduct the transportation, levy and others costs which were previously absorbed by the company. At the same time, the company threatened not to renew the permits of the migrant workers if they demanded their salary be paid based on the legal minimum wage. Two workers who complained about this with a local union found their contracts terminated. They had to go back to **Burma**.

Source: Malaysian wage research, unpublished, on file.

MATERNITY LEAVE

Maternity leave, while granted in theory, is often denied in practice. In **Bangladesh** and elsewhere, manufacturers often prefer to recruit young and unmarried female workers ‘so that they can avoid the burden of maternity leave.’⁷⁹ **Bangladeshi** female workers are often discriminated in terms of maternity leave. ‘If a female worker works more than six months under the same employer, she is entitled to maternity leave with full salary. But they are deprived of this leave as well as salary in many cases which poses serious implications for their health. It is often argued that, if the management knew about pregnancy of a worker at an early stage, they often attempt to fire them to avoid paying maternity leave. If they know it later, the worker is often compelled to work even till the final days of pregnancy. In most of the cases, she is given leave for a week or two before her delivery.’⁸⁰

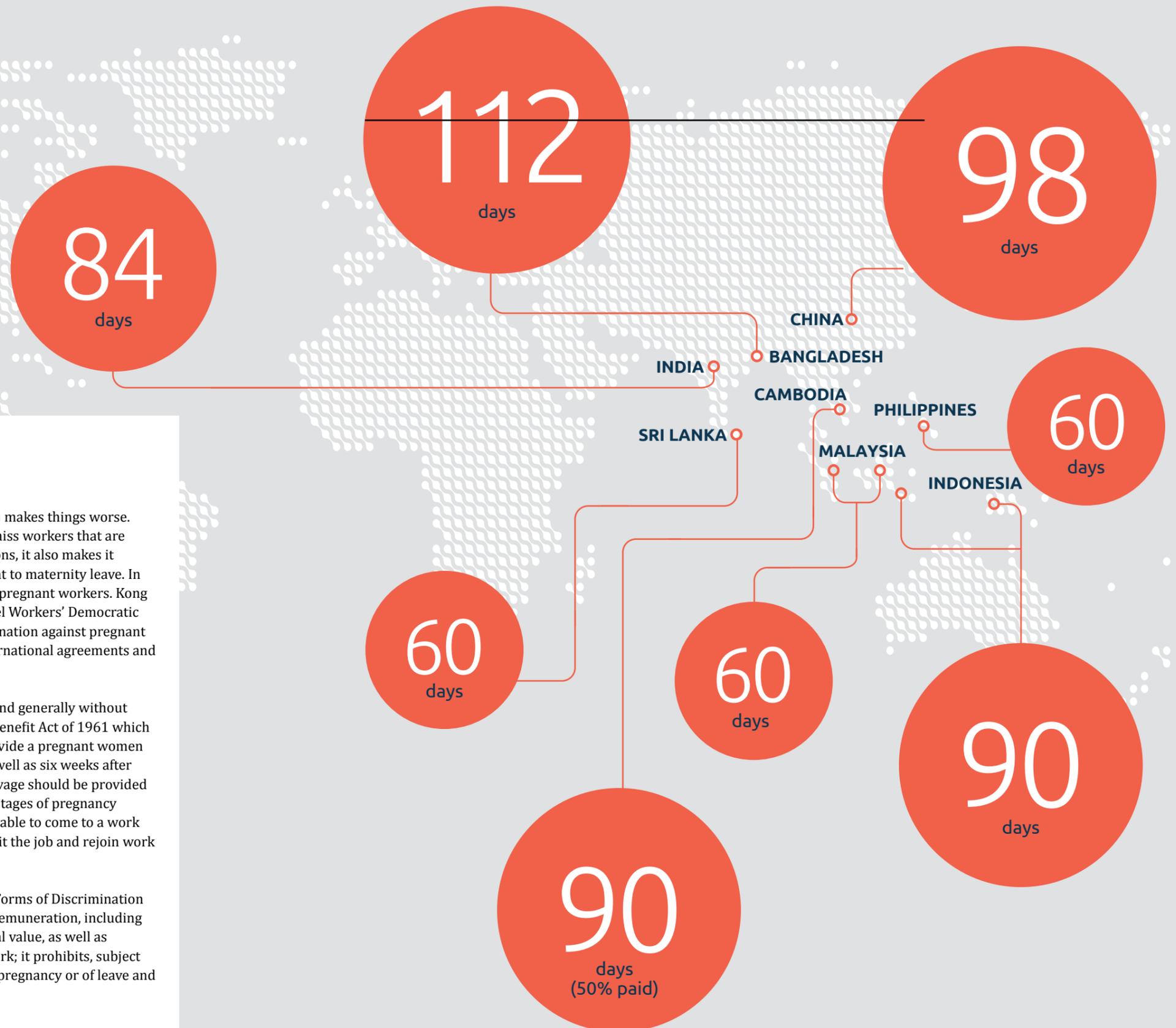
In **Sri Lanka** the maximum period for which any woman is entitled to the payment of maternity benefit is 12 weeks. In addition, larger factories employing women workers are by law obliged to establish and maintain a crèche for children under five years of age. These are important in-kind benefits because childcare can take up to 15% of a workers’ income. The employer of a woman worker who is nursing a child under one year of age should allow her two nursing intervals of not less than 60 minutes in addition to her normal breaks during a 9 hour shift. However in some instances women were unable to take their required nursing breaks because of heavy shipments that demanded intense labour from the factory.⁸¹

In **Cambodia** official ILO monitoring found that only 54% of garment factories were paying women some or all of their **maternity** benefits. The situation is worsening, as this represents an 11% drop from the previous 6-month period and a 20% fall in just a year.⁸²

‘In Sri Lanka it is estimated that childcare can take up to 15% of a workers income.’

If a workers pregnancy is known at an early stage, they often attempt to fire them to avoid paying maternity leave. Those who do stay are often compelled to work until the final days of pregnancy.

MATERNITY LEAVE



SHORT-TERM CONTRACTS AND MATERNITY LEAVE

The widespread use of the Fixed Duration Contracts (FDC) makes things worse. It does not only make it much easier for employers to dismiss workers that are active in the defence of rights to improve working conditions, it also makes it much more difficult for women workers to claim their right to maternity leave. In **Cambodia** strikes have broken out to defend the rights of pregnant workers. Kong Athit, vice-president of the Coalition of Cambodian Apparel Workers' Democratic Union commented that "the most worrisome was discrimination against pregnant workers and forced overtime. Both were violations of international agreements and Cambodian law".⁸³

In Gurgaon, **India**, women are allowed leave for a month and generally without pay. Such a practice is in gross violation to the Maternity Benefit Act of 1961 which mandates that all factories and establishments should provide a pregnant women leave one month prior to the expected date of delivery as well as six weeks after her delivery date. It also mandates that the average daily wage should be provided to them.⁸⁴ Female workers recounted that during the last stages of pregnancy (usually during the last three months) they feel uncomfortable to come to a work environment dominated by men, often causing them to quit the job and rejoin work again post-delivery.⁸⁵

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

‘Overtime work has indeed emerged as an unchallenged norm within the industry.’

CASE STUDY WAGE THEFT PRACTICES IN THE INDIAN GARMENT INDUSTRY

This case study conducted in the garment clusters of Gurgaon, Bangalore and Tirupur, suggests that firms have resorted to a variety of wage theft practices via actively engaging in institutional violations.

■ **DENIAL OF MINIMUM WAGES** Theft of wages via violation of minimum wage norms is amply prevalent throughout the industry. Monthly minimum wage for skilled labourers like Tailors should be around Rs. 6600 (€77.20) in adherence with Haryana state government’s minimum wage notification. However, most tailors in the Gurgaon region receive on average Rs. 5600 (€65.51) as their basic pay.

■ **NON PAYMENT OF WAGES** according to Skill or Employment Grade: A glaringly visible trend in the garment industry is the non-payment of wages to workers according to their skill capabilities or grade of employment. Shakeel, who works as a Tailor in Sargam, earns a basic wage of Rs. 5300 (€62) while Ajay, also a Tailor at Orient Craft, earns a basic wage of Rs.7500 (€87.77). Though both have been working in their respective firms for 3 years in a high skilled job category, one receives a helper category of wage while the other receives a wage equivalent to a skilled worker.

■ **THEFT OF SOCIAL SECURITY BENEFITS** Firms practice theft in the name of social security benefits that the garment workforce is legally entitled to. Yashodama, employed as a Tailor at Texport Creations in Bangalore, says that ‘we don’t get attendance bonus that is promised to us to the extent that several new employees do not even know that they are entitled to such fringe benefits’.

■ **NON PAYMENT OF LEGAL OVERTIME RATES** Overtime work has indeed emerged as an unchallenged norm within the industry. Garment workers, especially in Bangalore and Gurgaon, depend on overtime work as a means to supplement their meagre basic wages. Though the hours of overtime work mentioned on the wage slip is in tune with the legal mandate (that is 10 hours inclusive of OT), in practice workers are made to engage in over 12 to 13 hours of OT work on a regular basis.

■ **LATE PAYMENT OF BASIC AND OVERTIME WAGE** The field study in Gurgaon revealed that the basic wage and the overtime wage are not given to the worker at the same time. In other words, while the basic wages are allotted to workers by the 6th or 7th of the month, the overtime wages are only given to workers by the 20th or 25th of the month.

Source: Society for Labour and Development (2013) ‘Wage Structures in the Indian Garment Industry’, research on file, pp. 66-7

CONCLUSION

Public authorities often weakly enforce their own minimum wage policies, which deprives workers of their legal entitlements and further reduces take-home pay. They invest too little into labour inspection to meet their state responsibility to protect human rights. The spread of informal and precarious labour practices has further eroded workers’ access to legally mandated monetary and social benefits. Migrant- and women workers are particularly vulnerable to these illegal employer practices. The Indian Wage Tribunal concluded that Asian governments need ‘to recognise this violation beyond the offense of the non-payment of minimum wages. Brands cannot leave this to the suppliers as an internal matter, whatever their ‘sensitivity’ to the issue. There is a clear lack of will in tackling this problem and even in recognising its extent.’⁸⁶



“Asian governments need to recognise this violation beyond the offense of the non-payment of minimum wages. Brands cannot leave this to the suppliers as an internal matter, whatever their ‘sensitivity’ to the issue. There is a clear lack of will in tackling this problem and even in recognising its extent.”⁸⁶

Indian Wage Tribunal



CHAPTER FIVE

FREEDOM OF ASSOCIATION

Freedom of association is the assertion of the right to equal participation in social life and in the project of human development, ensuring the “the continuous improvement of living conditions” as envisioned in the Universal Declaration. The protection of the right to freedom of association within the UN Guiding Principles falls under both the states duty to protect – by ensuring legislation is in place to allow the forming of unions and protecting the rights of workers within unions - and business responsibility to respect, by allowing a place for unions to collectively bargain within workplaces.

This right to organise is often described as an “enabling right” or “process rights” that “underpins many other rights”.⁸⁷ In practice this means providing mechanisms through which trade unions can ensure that other labour standards are respected,⁸⁸ including issues related to health and safety, working hours, overtime, grievance mechanisms and wages.

Trade union rights thus give workers an opportunity to influence the establishment of workplace rules and thereby gain some control over their work. Collective bargaining is not simply a means to get a better wage for workers, but also process by which they assert and realise their rights.

On the factory floor, trade unions can monitor the national labour law and can seek to improve terms and conditions by utilising a collective bargaining

process between management and workers. Through unions, workers could negotiate a living wage. In practice, however, the right to organise is often denied to workers.

Very few garment factories are covered by collective bargaining agreements. The legally sanctioned minimum wage represents a ceiling not a floor. And while a growing number of brand- and retailer-initiated CSR programmes recognise international standards on freedom of association and collective bargaining, most garment manufacturers remain “anti-trade union”.⁸⁹

The way garment production is organised, through complex supply chains (see chapter 1) makes it very difficult for workers to bargain with the real power-holders that determine working conditions.

“They have their own informers. That’s why we do not even talk about [trade unions].”

Bangladeshi garment worker.

BARRIERS TO TRADE UNIONS IN THE GARMENT INDUSTRY

Despite international recognition of trade union rights being essential for sustained improvements in working conditions, union repression remains rife within the garment industry. In practice, they are typically refused access to factory premises, which forces union organisers to meet workers outside during lunch breaks and after working hours. In the factory, acts of discrimination against union members or workers suspected of engaging in organising activities are commonplace. This includes denial of promotion, transfer to another section of the factory, intimidation, suspension, firing, and criminalisation.

Cambodian workers state that if they complained about working conditions they would be moved to cleaning toilets rather than their current job of cutting fabric.⁹⁰ Similarly, a female worker from **Bangladesh** explained, “If they [management] see any activities related to any union, you can be sure that you would be terminated within a few days for sure. They have their own informer. That’s why we do not even talk about this.”⁹¹

During recent years, thousands of workers have been fired in ways similar to those described above. This, in turn, sends a strong, discouraging message to non-unionised workers. This is especially so for the thousands of workers on short-term contracts which are easily terminated by factory management. The **India** Wage Tribunal concluded: “Bargaining power of workers has also reduced owing to the deliberate attempts to replace regular workers more and more with contract workers and casual workers especially migrant workers who are the most insecure, thereby breaking up existing unions.”⁹² More extreme forms of anti-union harassment are also commonplace.

INADEQUATE LEGAL FRAMEWORKS

The repression of political rights and trade unions in important garment-producing countries undermines the workers’ capacity to freely organise. The All China Federation of Trade Unions (ACFTU) is the only recognised trade union body in **China**. The electoral mechanism that it chose to adopt is not only cumbersome but is also easily manipulated. In many cases, the representative is actually appointed by management. Hence, there are doubts from all around on ACFTU’s proclaimed support for workers. The **Chinese** researchers of this report write that most of the interviewed workers were adamant that they “would in no way look for help from a trade union.”⁹³

In **Malaysia**, migrant workers are intimidated to not join trade unions: Notices on work permits state that workers who are not **Malaysian** nationals are not allowed to join associations. Employers often intimidate migrant workers not to join unions by threatening them to revoke their work permit. As a result, the **Malaysian** researchers write that workers are silenced and launched into “a circle of victimisation.”⁹⁴

However, even when these rights are formally recognised by law, enforcement is often lacking. Bureaucratic delays and legal manoeuvres make it difficult for unions to register and claim their rights. In **Bangladesh** it is extremely difficult to form and register unions at the plant level. Out of an estimated 5000 factories, only 149 have registered trade unions, the majority of which were created decades ago. Despite attempts by trade unions to get registration the Directorate of Labour (DoL) simply refuses to recognise them. The global union IndustriALL reports that in “the Dhaka region out of 26 unions fulfilling the condition of majority representation at the enterprises only one has so far received official registration enabling them to bargain collectively.”⁹⁵ Hundreds of worker leaders from factories who submitted an application to the authorities have lost their jobs.⁹⁶

The spread of short-term contracts (or fixed duration contracts) makes it easier for companies to refuse active trade unionists secure employment. Hence it decreases the potential for collective bargaining. As the **Cambodia** Wage Tribunal concludes fixed duration contracts “... allows the easier and unjustified dismissal of workers (with the easier selection of those who are more active in the defence of rights to more sustainable working conditions)”⁹⁷ In addition, as a result of job insecurity, there exist little or no prospects of promotion or labour mobility within the enterprises. Instead workers are constantly shifting jobs from one firm to another, which further makes it difficult to establish unions at the plant level.⁹⁸

BARRIERS ON THE FACTORY FLOOR

For a union to operate, it requires a space at the factory, access to workers, to carry out consultation and support members in workplace matters. They must also be able to do training (on worker rights, health and safety measures, etc.), organise discussion and elections, and collect union dues. However, management often seeks to restrict the scope for unions to carry out such trade union duties.

In **Sri Lanka**, for instance, a leader of a labour union mentioned that: “All gates of factories are closed to us. There is no permission for us to enter into their premises. We have no chance to address workers and workers also do not have chance to meet us. It is like an open prison.”⁹⁹

Another tactic used by factory management is to set up fake worker committees to give auditors the impression that they respect freedom of association. As one **Sri Lankan** unionist describes it: “They are trying to prevent trade union[s] by establishing worker councils, while repressing the emergence of plant-level unions.”¹⁰⁰ This anti-union strategy has been very successful; after nearly two decades of organising efforts, the total number of unionised workplaces with a collective bargaining agreement in the **Sri Lankan** Free Trade Zones can still be counted on two hands.

“The Chinese researchers of this report write that most of the interviewed workers were adamant that they would in no way look for help from a trade union.”⁹³

‘Despite their absolute numerical majority, they rarely reach leading union positions, because of the low education levels, lack of time, skills and experience, which add to the general discriminatory causes which have been mentioned above, and which are reflected in the attitude of factory owners.’¹⁰⁷

HARASSMENT AND VIOLENCE

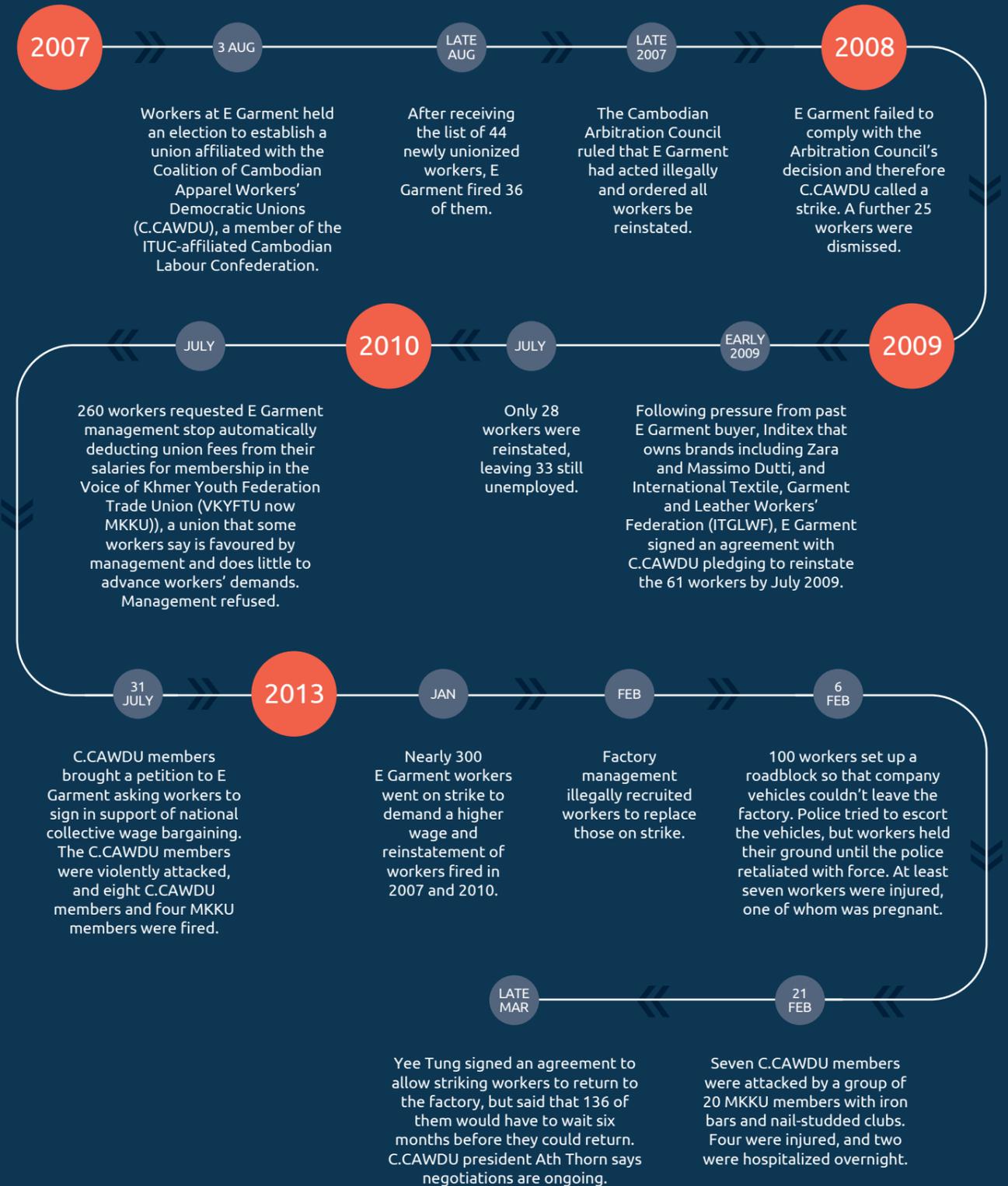
At the same time, fear of demotion, job loss, factory closure, blacklisting, (state) violence and arrest creates an environment that discourages collective participation. In **India**, firms have resisted unionisation within their factory premises vehemently by incessant lobbying with government regulatory agencies as well as by using coercive tactics like hiring local goons to break workers organisations or independent trade unions attempting to unionise the garment workforce. This has led to a fear among the workers that they might lose their jobs or their families lives might be at risk if they attempt to organise themselves. To quote the **India** Wage Tribunal once more: “Most extreme is the presence and posting of criminal elements in and around factories as a warning to workers not to raise their voices. It is clear that under these conditions the right to organise is reduced to a farce.”¹⁰¹

In **Bangladesh**, unionists are also confronted with violence when management mobilises local thugs to intimidate workers refusing to resign from the union, as was the case with Sadia Garments, where management started an aggressive campaign to destroy the union after it registered. Management not only “used abusive language and threatened physical harm towards the union officers”, but the manager, “Mr Majumer told the workers that he would not allow a union and personally threatened to kill the BFWS lead organiser Smrity Akter and pay off her family.”¹⁰² A few days later, “a supervisor attacked the Sadia Garments Union General Secretary, Maksuda, with scissors on her back, chest and hands. Some management representatives and pro-management workers also attacked her and beat her. She was then dragged downstairs by management, who forced her and the other union committee members to announce their immediate resignation.”¹⁰³

There are also issues that the trade union movement must tackle. For example, even though over 90% of the workers in the **Cambodian** garment industry are women the union leaders nearly all tend to be men.¹⁰⁴ As the **Cambodian** Wage Tribunal writes: “Despite their absolute numerical majority, they rarely reach leading union positions, because of the low education levels, lack of time, skills and experience, which add to the general discriminatory causes which have been mentioned above, and which are reflected in the attitude of factory owners.”¹⁰⁵ Unfortunately, this also counts for many other countries. To encourage female workers to form and join organisations of their own choosing requires that female workers can readily identify with their leadership. Hence the **Cambodian** Wage Tribunal recommended: “Unions and Federations need to increase the proportion of women garment workers holding positions within their leadership and representative roles.”¹⁰⁶

CASE STUDY CAMBODIA THE HISTORY OF A STRUGGLE

E Garment factory in Kandal Province, Cambodia employs nearly 2900 workers. It is owned by the Hong Kong-based Yee Tung Garment Company, Ltd, and supplies a variety of global brands including Marks & Spencer, C&A, and Bon-Ton Stores. The factory is the scene of a long running struggle for the freedom of association and better working conditions that has seen workers repeatedly face threats and violence.



Source: Cambodia Wage Research, unpublished, on file.

'Independent trade unions working among the garment workers (like GAWU in Gurgaon) face many hurdles in ensuring the rights of the workforce to the unorganised garment workers in the region.'

BOX 6 UNION REPRESSION IN GURGAON, INDIA

The Indian Constitution asserts freedom of association as a fundamental right of the citizens of India. Article 19 of the Constitution states that all citizens have the right to (a) freedom of speech and expression, (b) assemble peacefully and without arms, (c) form associations or unions, (d) move freely throughout the Indian territory, (e) reside and settle in any part of the Indian territory, and (f) practice any profession or to carry any occupation, trade or business.¹⁰⁸

Despite this, the actions of the garment industry of **Gurgaon** clearly ignore the fundamental constitutional right to form worker associations or unions. This is well illustrated by the efforts of the Modelama workers to form a union.

Around 28 workers in late January 2013 went on a strike demanding the management to instate a union within the factory. The management instantly fired these 28 workers. The workers sat outside the premises for over a month supported by GAWU (Garment and Allied Workers Union), a Gurgaon based union working among the garment workers. Eventually, after a long struggle and negotiation process between the workers, trade unions like GAWU, management and state authorities, Modelama management yielded to the workers' demands.

The management promised to reinstate all 28 workers who had been fired from 1 April, 2013. However, after reinstating them the Modelama management adopted strategies to restrict or curtail these workers from organising other workers within the factory. They assigned the workers into different units so that they are unable to interact and organise themselves regularly. Also, the Union has not yet been registered with the relevant state authorities.

This example depicts the considerable hurdles that unorganised workers face in asserting their right to freedom of association and unionisation in the **Indian** garment industry. Moreover, independent trade unions working among the garment workers (like GAWU in Gurgaon) face many hurdles in ensuring the rights of the workforce to the unorganised garment workers in the region. This is illustrated by the fact that GAWU's attempts to register itself as an unorganised sector union have been denied three times by the Labour Department of Gurgaon. Moreover, the Union activists have received several threats from company hired local goons and their phone numbers are regularly tapped by the police.

Source: India Wage Research



'In the Asian garment industry hardly any bargaining takes place due to barriers workers face when they seek to organise.'

CONCLUSION

Collective bargaining represents a principle avenue to set living wages. Freedom of association¹⁰⁹ and the right to collective bargaining are fundamental rights for workers which allow them to create and sustain positive changes in their working environment. These rights are enshrined in various International Labour Organization (ILO) conventions (nos. 87, 98, and 135, respectively), the Universal Declaration of Human Rights (Article 23), and the International Covenant on Economic, Social and Cultural Rights (Article 8).

It is thus fundamental that all workers are allowed to have access to trade unions that ensure workers' rights. Trade union rights are closely related to other civil and political rights, including freedom of expression, freedom of the media, and universal suffrage.¹¹⁰ Freedom of association is therefore indispensable to the enjoyment of other human rights.¹¹¹

However, in the Asian garment industry hardly any bargaining takes place due to barriers workers face when they seek to organise. In many cases the necessary legal and institutional framework is either absent or functions poorly. At the factory level, many employers seek to avoid unions or actively repress the unions.

CHAPTER SIX

THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Throughout the report we have seen how national and international law and regulations with regards to setting minimum wages have been flouted time and again in the garment factories of Asia. Governments fail to set minimum wages at a rate that equals a living wage. Meanwhile, unions lack power to negotiate a living wage at the factory level.

So who is really responsible for the welfare of the employees, the state or the employer? According to the UN Guiding Principles whilst a clear distinction between the state duty to protect against human rights abuse and the business responsibility to respect human rights is made, both state and business have crucial roles to play in ensuring workers get a living wage.

As explained in chapter 2 the state duty to protect its workers against human rights abuses by third parties is of crucial importance, and the implementation of minimum wage laws and laws protecting freedom of association are crucial in enabling workers to be able to claim a living wage.

However, regardless of whether a state has lived up to its duty, businesses must still uphold their responsibilities with respect to human rights.

The UN Guiding Principles establish *supply chain responsibility*, which means that a company is responsible for the human rights impacts throughout its supply chain independent of where the adverse impact occurs (their own facilities, tier 1 suppliers, suppliers of tier 1 suppliers, or homeworkers). So while production of garments is often outsourced, the responsibilities remain with each corporation and cannot be delegated and outsourced down the supply chain.

‘Outsourcing production benefits global buyers in terms of price, risk reduction and flexibility, but came at a great human cost for workers, who endure poverty wages, extremely long working weeks, unsafe workplaces, insecure contracts and many other violations of human rights.’

Here we focus predominantly on the responsibility of buyers (brands and retailers) because they are often the more powerful companies in the global supply chain. While supply chains can be very complex, business enterprises cannot use this as a valid excuse to distance themselves from adverse human right impacts.

Outsourcing production benefits global buyers in terms of price, risk reduction and flexibility, but came at a great human cost for workers, who endure poverty wages, extremely long working weeks, unsafe workplaces, insecure contracts and many other violations of human rights.

The UN Guiding Principles state that companies must *know* the impact of their business and *show* the steps they are taking to prevent adverse human rights impacts.

This chapter will discuss what this means for the right to a living wage.

BOX 7 UN GUIDING PRINCIPLES

To meet their responsibility to respect human rights, the UN Guiding Principles expect corporations to have a (a) **policy commitment**, (b) a human right **due-diligence process**, and, (c) processes that enable **remediation** in case of adverse human rights impacts.

Once a potential or actual negative human rights impact has been identified, businesses should collaborate with suppliers and other relevant stakeholders to agree upon measures to:

- Prevent a potential negative impact from occurring
- Reduce the likeliness and/or consequence of a potential negative impact
- Repair damage done or compensate for actual negative impacts.

THE 5 STEPS TO A LIVING WAGE

The UN Guiding Principles layout five clear steps that companies should follow in order to protect the human rights of those working in their supply chain.¹¹²

In this chapter we look at how these steps can be used to ensure the payment of a living wage. These are not steps that can be taken in isolation, in order to respect the human rights of all workers in impacted in a supply chain, all must be implemented.

1. COMMIT TO A LIVING WAGE

As demonstrated in chapter 2, a living wage is the cornerstone of decent working conditions and a well-established human right. That means a living wage policy must be an inherent and inextricable core element of any truly sustainable corporate accountability framework. No company can claim to respect human rights as long as wages fail to meet the basic needs of workers and their families.

In order for companies to show they have committed to a living wage they must, as a minimum, create a policy to define their responsibilities with regards to living wages.

The policy should:

- Refer to relevant human rights standards; (see table in chapter 2 on ILO standards)
- Be approved at the most senior level of the company;
- Be informed by relevant internal and/or external expertise;
- Stipulate the enterprise’s human rights expectations of its own personnel, as well as other business enterprises directly linked to its business operations, products or services;
- Be both publicly available and communicated internally and externally.

By adopting a policy companies demonstrate that they recognise the importance of a living wage, as well as the fact that current industry wages are often grossly insufficient.

A simple statement of intent is not sufficient and the UN Frameworks expects companies to express their aspirations, timelines and concrete plans regarding the achievement of the minimum living wage clearly and show what steps they have taken to prevent adverse impacts. Each global buyer should come up publicly with its own plan, strategy, or road map to achieve the minimum living wage within a certain time period.

‘No company can claim to respect human rights as long as wages fail to meet the basic needs of workers and their families.’



*‘The UN Guiding Principles establish that ‘good intentions’ alone are not enough. Companies must respect human rights, and ensure through human rights due diligence processes that their pricing and procurement policies are not causing any harm. Brands should go beyond codes of conduct and other ‘standards’ and commit to the application of a mandatory living wage at all levels and sectors of the supply chain.’*¹¹³

2. IDENTIFY & ASSESS

The UN Guiding Principles establish that companies need “to know and show” that they respect human rights. This means that companies need to identify and assess actual and potential adverse human rights impacts related to their activities. This requires a mapping of the company structure, its supply chain and business relationships and the risks to human rights that might occur.

For global garment manufacturers, brands and retailers, this can be a complex exercise because their supply chains typically consist of many layers of suppliers, including tier 1 companies, subcontractors, as well as independent home-workers (see chapter 1).

However this cannot be a valid excuse for global buyers to distance themselves from the impact their business model has on the workers in their supply chain. In the identification and assessment of actual and potential adverse human rights impacts with regards to a living wage companies must:

- Assess if and to what extent current wage levels at suppliers fail to meet the basic needs of workers and their families. By collecting information on the minimum wages paid by suppliers, prevailing industry wages, negotiated wages, and any gender differential in wage levels, all vis-à-vis minimum living wage benchmarks;
- Identify a living wage standard by working closely with trade unions, suppliers and NGOs to develop a wage ladder, including a living wage figure for workers in each country or region;
- Adopt a calculation for a living wage – based on regular food basket research across the region the Asia Floor Wage provides a good base line for calculating a living wage.

The underlying problem is that brands and retailers neglect to factor in the compliance costs associated with decent working conditions when they negotiate the pricing structures with their suppliers.¹¹⁴ Hence, the buying company should assess whether prices paid to a supplier are sufficient to allow compliance with international labour standards and a living wage.

3. ADAPT BUSINESS PRACTICES

Companies should thoroughly investigate how their business models cause or contribute to adverse impacts on human rights throughout the supply chain. Brands and retailers are often powerful companies that exercise a lot of influence on how production is organised throughout the global supply chain. For example, they set prices, select suppliers and set delivery times for orders.

Purchasing practices refers to the way sourcing companies (such as brand-named corporations, retailers and agents) organise the purchasing of their products from manufacturers (or suppliers/ vendors). They are designed to maximise profits and transfer risk down the supply-chain to the manufacturers and subcontractors.

Many of these practices might have an adverse impact on working conditions and wages. The purchasing strategies of global buyers and the pressure to reduce costs contribute to trends toward lower wages, wage violations, abuses by management, and excessive overtime, as demonstrated in chapter 3.

The India Wage Tribunal said in its conclusion: “The extremely high production targets demanded by manufacturers mainly caused by increasingly tight ‘lead time’ demands by brands are the main causes for excessive working hours. Where workers have no option but to comply with overtime demands, the practice can evolve into an element of forced labour.”¹¹⁵

Price pressure on suppliers is intense, which makes it increasingly difficult to demand and facilitate wage gains even where trade unions already exist because employers will argue for a freeze on any wage demands because any increase in labour costs will ultimately undermine their competitiveness.

With regards to living wages, a garment company should:

- Create incentives for the purchasing department as well as for suppliers to achieve the living wage;
- Make the payment of a living wage a key criterion when selecting suppliers – along with the price, time and quality indicators;
- Establish stable, enduring relations with suppliers;
- Commit time and resources to calculate the labour costs of buyer’s’ merchandise to ensure that prices facilitate payment of living wage at the very least.

*‘The Brands have a responsibility to take a small reduction in their high profits and pay better prices to suppliers while ensuring that there is compliance by them particularly as regards overtime payments which at present does not exist.’*¹¹⁶

‘Companies should take steps to ensure that workers are not subject to dismissal, discrimination, harassment, intimidation, or retaliation when they join a trade union or participate in trade union activities.’

4. COLLABORATE AND NEGOTIATE

Chapter 5 clearly demonstrated that the right to freedom of association and the importance of workers representation is vital in achieving a living wage. As such to identify and assess actual or potential adverse human rights impacts related to living wages companies must involve workers and their representatives.

This implies that workers and their organisations should be involved in any discussions involving the achievement of a living wage and should have an active role in the design, implementation, and evaluation of programs that aim to improve wages. This level of dialogue and consultation can be organised in various ways, at factory level, national level or regional level.

However, it is important to stress here that consultation alone is not sufficient; it should be based on a collective bargaining process, thus ensuring active participation of workers and their representatives and allowing for local circumstances to be taken into account in negotiations. Currently, the marginalisation of workers in both workplace-level monitoring processes and governance structures of most code of conduct initiatives restricts such interaction and trustful dialogue.

Companies should take steps to ensure that workers are not subject to dismissal, discrimination, harassment, intimidation, or retaliation when they join a trade union or participate in trade union activities. However continued patterns of abuse at garment and sportswear factories suggest that more proactive and positive measures are needed to ensure that these abuses first of all stop occurring and that the chronic anti-union activities engaged in by management are prohibited.

For a company to ensure active participation of workers and their representatives they must:

- Adopt a positive and proactive freedom of association policy and communicate this to workers in their own languages in the form of a ‘Right to Organise Guarantee’;
- Ensure that all workers are aware of the freedom of association provisions through training and communication;
- Ensure that suppliers respect the workers’ right to collective bargaining;
- Provide access and opportunities for unions to disseminate information to workers regarding freedom of association. This can be achieved by signing access agreements that would give local unions access to production sites;

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- Assure workers, their representatives and factory management that they will not relocate as a response to higher wage initiatives;
 - Ensure that workers, unions and manufacturers that any collective bargaining agreements must enhance their businesses, not harm them;
 - Set measurable incentives – for example, preferential orders, long-term, stable supply contracts, measurable collective bargaining agreement premiums in unit prices – for factories that have a collective bargaining agreement with an independent trade union;
 - Provide information (confidentially) about the unit price the buyer is paying for goods to workers’ representatives engaged in collective bargaining negotiations with suppliers;
 - Accept that it has a duty to enter into (good faith) collective bargaining.

5. MEASURE, REPORT & ACCOUNT

Companies should have processes in place to verify the effectiveness of their human rights policies based on quantitative and qualitative indicators drawing on feedback from both internal and external sources, including affected stakeholders. This needs to be regularly revisited. A living wage cannot be a static figure simply because prices are not.

The UN Guiding Principles also expect companies to report on progress being made in respecting the rights of others. It is not enough for a company to claim that it respects human rights, it must also show this to the public. Showing here means communication, transparency and accountability to relevant stakeholders.

Garment manufacturers should report on their programs, objectives, efforts, timelines and progress toward achieving the minimum living wage. Transparency also applies to the sourcing locations and names of suppliers and supplier facilities. In summary they need to publicly report and account for their programs and efforts toward achieving a minimum living wage by:

- Publicly reporting on the impact these programs have on achieving minimum living wage and on any differential impacts experienced by male and female workers;
- Publicly disclose their supplier facility lists on an annual basis.

‘The Guiding Principles also expect companies to report on progress being made in respecting the rights of others.’

‘Change has to happen across the entire industry for positive benefits to be felt by all workers.’

CONCLUSION

The United Nations Guiding Principles provide a structure and process for companies to follow to ensure that a living wage is paid throughout their supply chain. By referring to the five steps they can take meaningful steps that will ensure that their purchasing practices do not prevent the payment of a living wage and the negative effects of poverty wages as seen in earlier chapters do not occur.

The actions as outlined above are not exhaustive. Companies should for example look to collaborate with other brands and buyers. Change has to happen across the entire industry for positive benefits to be felt by all workers.

Even when steps have been taken to ensure a living wage is paid it is not always possible to avoid workers’ rights being violated. The UN Guiding Principles are very clear that when this happens companies and states have a responsibility **to remedy** the abuses.

This requires that workers are provided access to complaint or grievance mechanism to bring wage violations to the attention of global buyers. Such a grievance mechanism should fulfill certain characteristics – for example, concerning legitimacy, accessibility, predictability, and transparency – in order to function well. Given the risks involved, this requires a careful mechanism through which workers can safely (i.e., confidentially) report violations.

IN SUMMARY

This report has clearly demonstrated how certain governments’ keep wages deliberately low in order to attract business, while brands continue to squeeze the already small profit margins which have a direct effect on the payment of workers. Across Asia garment workers have come to regard overtime pay, bonuses, and attendance incentives as crucial factors in achieving a living wage and have little choice but to sacrifice spare time in order to earn enough to live. We have also shown that the real cost this is having is on the lives of the women and men at the end of the supply chain who are reliant on the industry.

Despite these human right’s infractions, the garment industry can still provide a great opportunity for a country’s economic development, and in turn that of its people, but only if the work it provides is decent. Workers’ rights need to be respected, both in terms of safety but also crucially in the wages they are paid.

The UN Guiding Principles are a critical tool when looking at how best to protect workers and work with business and governments to ensure that the global garment industry provides the opportunity for decent work for all those involved in it. They clearly state that governments must protect, business must respect and both must acknowledge and remedy when things have gone wrong.

It is crucial to see governments and brands working together to allow space for workers and their representatives to be able to form unions, and collectively bargain in order to negotiate appropriate levels of pay that allow workers and their families to be able to live a decent life. Governments must not allow brands to exert undue influence over the setting of minimum wages, as it is their first duty to protect their citizens.

Most of all this report has demonstrated the devastating impact these practices have on the very workers that are the industry’s most important asset. The Clean Clothes Campaign and Asia Floor Wage Alliance are calling for:

- **Fashion brands and companies** to take action by setting concrete and measurable steps throughout their supply chain to ensure garment workers get paid a living wage. Brands should take every step to prevent workers from losing their wages and enter into meaningful dialogue with labour groups in production countries to see how best to end these practices.
- **National governments in garment producing countries** to make sure minimum wages are set at living wage standards. Wage theft must be taken note of seriously by national labour departments who need to find ways of remediating the situation, and more factory inspectors should be employed.
- **European governments** to implement regulation that make sure companies are responsible for the impact they have on the lives of workers in their supply chain, including their right to earn a living wage

‘Workers’ rights need to be respected, both in terms of safety but also crucially in the wages they are paid.’

APPENDIX 1: RATIFICATION OF ILO CONVENTIONS ON WAGE

	Bangladesh	Cambodia	China	India	Indonesia	Malaysia	Myanmar	Philippines	Sri Lanka	Thailand	Vietnam
MINIMUM WAGE: CONVENTION 26 AND 131 (1970)			1930	1955					1971		
									1975		
REGULAR PAY & WAGE PROTECTION: CONVENTIONS 95 (1949) AND 117 (1962)						1961		1958	1983		
COMPENSATION OVERTIME: CONVENTION 01 (1919)	1972			1921			1921				
CONVENTION 132 (1970) ON HOLIDAYS WITH PAY CONVENTION											
CONVENTIONS 14 (1921), 47 (1935) AND 106 (1957) FOR WEEKLY REST DAYS	1972		1934	1923			1923			1968	1994
	1972								1983		

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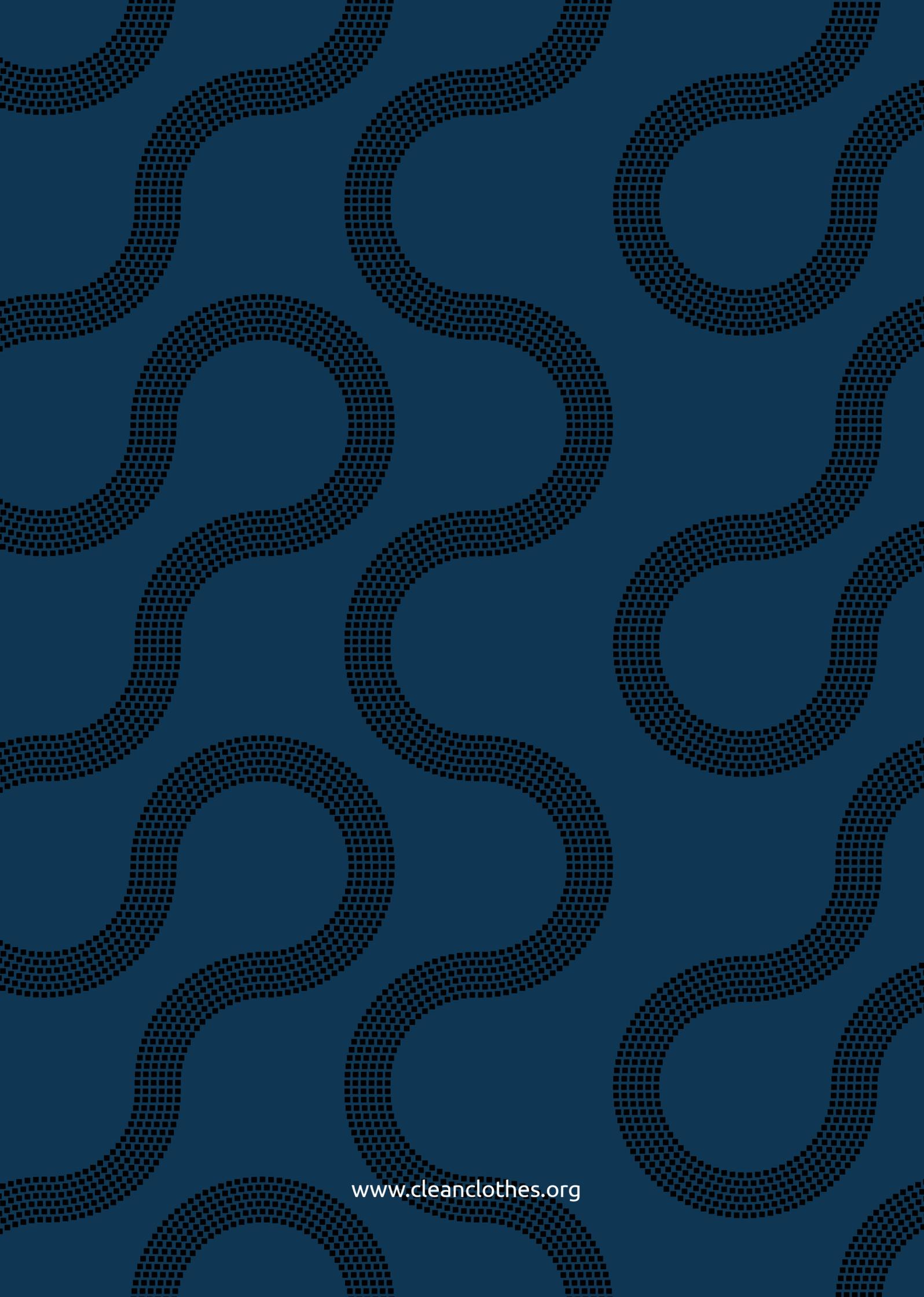
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