



Clean Clothes Campaign



March 2016

Position paper
on human rights
due diligence

Introduction



A company's responsibility to carry out Human Rights Due Diligence (HRDD) is one of the corner stones of the United Nations Guiding Principles on Business and Human Rights (UNGP). The Clean Clothes Campaign (CCC) considers meaningful Human Rights Due Diligence a key component of a set of voluntary measures that every company should implement. However, it remains very clear that voluntary measures are not sufficient. Given the global scale of trade and the patterns of global supply chains, CCC calls for a binding international treaty that sets a regulatory base for decent work along the entire global supply chain, and that holds companies accountable with regards to respecting human and labour rights globally. This position paper therefore clarifies what the CCC understands as meaningful Human Rights Due Diligence for labour rights in the garment sector under the UNGPs, however it does not in any way lessen our conviction that a binding international treaty is necessary.

HOW HAS BUSINESS REACTED TO THE UN GUIDING PRINCIPLES OF HUMAN RIGHTS DUE DILIGENCE SO FAR?

The response from companies shows several trends:

- The three elements of the business responsibility to respect; policy commitment, human rights due diligence, remediation, are presented as separate tasks. In general, the focus is on human rights due diligence, more specifically on risk management, prevention and positive future plans. Remediation is marginalized.
- Existing CSR-rosters (e.g. social audits) are repackaged and renamed but remain the same content-wise
- Human rights due diligence is primarily interpreted as risk-management, whereas risk is largely also understood as reputational risk and thus centering the 'needs' of the business instead of the affected right holders
- Responsibility is passed on along the supply chain (e.g. contractual obligation), without sufficiently addressing the root causes (e.g. purchasing practices) and without initiating change from the headquarters
- The focus of reporting is on activities, aims, future plans and favored projects, instead of on transparent concrete proof of impact on the ground

These reactions from companies are problematic. The UNGP has to be understood as a coherent whole, and human rights as inseparable. Current CSR approaches fall short of what we understand as meaningful human rights due diligence. Remedying cannot be separated from the responsibility to respect human rights, especially not in an industry where labour and human rights violations occur systemically all over the world.

Colophon

Layout: Gevaert Graphics
Photo: Will Baxter

Published by

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CLEAN CLOTHES CAMPAIGN POSITION PAPER ON HUMAN RIGHTS DUE DILIGENCE

BOTH STATES AND COMPANIES HAVE A DEFINED RESPONSIBILITY

Companies have a responsibility, as buyers and employers, to implement a credible human rights due diligence process and thus respect human and workers' rights in their supply chains. This includes ensuring the payment of a living wage and enabling the right to a safe and healthy workplace.

HUMAN RIGHTS DUE DILIGENCE HAS TO BE A WORKERS-CENTERED APPROACH BECAUSE THEY ARE IMPORTANT RIGHT-HOLDERS.

States have a duty to protect human rights, which means that they have to adhere to and enforce international conventions, protocols, recommendations and resolutions set

out by the ILO. They have to ensure decent working conditions, living wages, and access to justice in cases where these rights were violated. The duty to protect human rights includes policy coherence of States, which implies that they have to hold companies accountable for their actions along the global supply chains.

On the following pages we specify what CCC considers be the cornerstones and prerequisites for meaningful human rights due diligence.

GENERAL UNDERSTANDING OF GLOBAL SUPPLY CHAIN

Business and governments often see supply chains simply as a system of contractual business links. This, however, misconceives the reality of trading and subcontracting: complex production chains are the rule and not the exception. All too often production happens in settings far away from formal contractual business links and workers find themselves in an unprotected working environment, where they produce products for brands who do not feel responsible for their working conditions.

Human Rights Due Diligence has to be a workers-centered approach because they are important right-holders. This means that the due diligent actions should be based on the actual places of production, and not be limited to the formal contractual business links.

CCC therefore stresses that global supply chains have to be understood as global systems of multiple production locations, which means the actual production place of a given product is the relevant parameter, and not just the formal contractual business link. Global supply chains in the understanding of CCC therefore include semi-formal and informal working schemes as well as unofficial subcontracting and home-based work.

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING ARE CRUCIAL ENABLING RIGHTS

A key component of any human rights due diligence has to be to work to contribute towards empowering workers so that they can get in a position to actually be able to defend their own rights.

Freedom of association (FoA) and collective bargaining are crucial for any progress in the garment and textile industry. Therefore the active support and facilitation of FoA has to get the utmost attention. We consider FoA a crosscutting issue and encourage an approach that systematically incorporates support for FoA, even if we do not state it explicitly in each point of this paper.

GLOBAL SUPPLY CHAINS HAVE TO BE UNDERSTOOD AS GLOBAL SYSTEMS OF PRODUCTION PLACES, WHICH MEANS THE ACTUAL PRODUCTION PLACE OF A GIVEN PRODUCT IS THE RELEVANT PARAMETER, AND NOT JUST THE FORMAL CONTRACTUAL BUSINESS LINK



HUMAN RIGHTS DUE DILIGENCE SHOULD BE ALL-ENCOMPASSING AND IMPACTFUL

Human rights due diligence goes beyond simple risk-analysis. Within any company, HRDD should be seen as

SINCE THE GARMENT INDUSTRY IS CHARACTERIZED WORLDWIDE BY SYSTEMATIC HUMAN AND LABOUR RIGHTS VIOLATIONS, "MITIGATION" IN PRACTICE OFTEN ALSO MEANS ENGAGING IN REMEDIATION.

an ongoing duty that has to be anchored across all relevant departments, but especially purchasing. The departments need to be equipped with sufficient human and financial resources as

well as be granted with executive power. Human rights due diligence includes identifying, preventing, mitigating and accounting for both potential and actual adverse human rights impacts. Human rights due diligence primarily aims to prevent and to mitigate adverse human rights impacts, while remediation reacts to human rights violations that have already happened. HRDD should be pro-active and seek to prevent violations from occurring. Since the garment industry is characterized worldwide by systematic human and labour rights violations, "mitigation" in practice often also means engaging in remediation. Both processes are interrelated, and grievance mechanisms are especial important for both. Human rights due diligence has to happen in a comprehensive, ongoing and transparent manner, it has to be centered around affected right holders, in particular workers, and include publicly available accounts of the work done.

SIZE MATTERS - BUT THE INDIVIDUAL SUPPLY CHAIN MATTERS MORE

MEANINGFUL HUMAN RIGHTS DUE DILIGENCE IS MUCH MORE A QUESTION OF THE INDIVIDUAL SET-UP OF THE SUPPLY CHAINS THAN OF THE SIZE OF A COMPANY.

One thing is clear: with size comes additional responsibility. But: this does not diminish the responsibility of small and medium-sized enterprises (SMEs). Any company with global

supply chain activities has the responsibility to carry out thorough human rights due diligence. When it comes

to aspects like the quality of a product or consumer safety, nobody questions that SMEs are able to manage those parts in their global supply chains and everybody agrees that they can be held accountable for it. When it comes to concrete action taken by companies to improve working conditions in their global supply chains, the CCC expects that all companies, including SMEs, engage and work towards an improvement of the situation in their own supply chains. Meaningful human rights due diligence is much more a question of the individual set-up of the supply chains than of the size of a company. SMEs that have suppliers that match in size can easily become main buyers at any given factory, and therefore have leverage over that specific supply chain. Whether human rights due diligence can be effective and meaningful has therefore much to do with how trade is organized. Innovation in overcoming adverse human rights impacts is not limited to large companies; on the contrary, it often comes from SMEs.

GEOGRAPHICAL DIFFERENCES EXIST - BUT ISSUES NEED TO BE TACKLED IN A SYSTEMIC WAY ACROSS ALL BUSINESS OPERATIONS AS LABOUR AND HUMAN RIGHTS VIOLATIONS OCCUR WORLDWIDE

Core issues that affect workers occur under various circumstances and with different degrees of impact, but they occur worldwide. Human rights due diligence that centers on geographically based risk analyses risks never engaging fully and therefore systemically improving core issues. The payment of a living wage, excessive overtime, precarious employment schemes and dangerous workplaces are directly linked with purchasing practices, price calculations and price escalation along global supply chains, and therefore also with trade operations managed at the headquarter of the brands. It is key that companies do not limit their human rights due diligence to priority geographical areas, but rather priority issues and tackle these issues in a systemic way and across their entire operation.

IT IS KEY THAT COMPANIES DO NOT LIMIT THEIR HUMAN RIGHTS DUE DILIGENCE TO A GEOGRAPHICAL PRIORITIZATION OF LOCATIONS, BUT RATHER MAKE A PRIORITIZATION OF ISSUES AND TACKLE THEM IN A SYSTEMIC WAY AND ACROSS THEIR ENTIRE OPERATIONS.



CCC CONSIDERS THE FOLLOWING POINTS AS KEY FACTORS AND PREREQUISITES FOR MEANINGFUL HUMAN RIGHTS DUE DILIGENCE ¹

A POLICY COMMITMENT TO MEETING THE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

- **The political will of a company is crucial:** Meaningful human rights due diligence is not just about audits or a one-off exercise but rather about acknowledging corporate responsibility and incorporated engagement, which will often mean in practice that business operations need to be adapted.
- **High priority - speed up:** Respect for human rights cannot be delayed, it is time-sensitive – especially large companies that are the drivers of the industry and that have the power to lead the way towards lasting changes in the industry need to do so.
- **Integrated process:** Human rights due diligence is not static but rather an ongoing obligation that has to be continuously acknowledged as a corporate responsibility and incorporated throughout the company.
- **Be specific:** The policy commitment should not only include aspirational language, but also specific commitments on core issues to give it some weight and lay a foundation for concrete actions that the company will take.

A HUMAN RIGHTS DUE DILIGENCE PROCESS; IDENTIFY, PREVENT, MITIGATE AND TRANSPARENTLY ADDRESS NEGATIVE IMPACTS ON HUMAN RIGHTS

Prerequisites for meeting the responsibility to “identify” negative impacts on human rights

- **Supply chain structure must allow for meaningful actions:** Supply chains have to be transparent and fully traceable, the number of suppliers needs to be limited, relationship with

suppliers should be long-term, orders need to be stable, reliable and predictable, sourcing should occur directly and not through intermediaries.

- **Systematic support of freedom of association (FoA) throughout the global supply chain:** Strong, democratic trade unions are key to improving the labour situation on the ground. FoA and collective bargaining are enabling rights and therefore central elements of any human rights due diligence process, including in the case of remediation. FoA must be supported and strengthened by various means, including instructions for buying departments².
- **Grievance mechanism³ to identify human rights violations:** It is crucial that workers are able to report violations of their human and labour rights without having to fear disciplinary action. Good grievance mechanisms provide workers, trade unions, and NGOs with the tools to address breaches of labour standards in the supply chain with buyers.

Actions to meet the responsibility to “prevent” negative impacts on human rights

- **Opt for a business model with less hurdles:** Certain business models are incompatible with comprehensive human rights due diligence because they put systemic barriers in the way of carrying out human rights due diligence (e.g. fast fashion that leads to short-term employment schemes). If such

¹ Human Rights Due Diligence is a process not limited to, but comprising at least the following steps and actions to operationalize the UN Guiding Principles 15 to 31

² CCC together with the International Trade Union Confederation, and IndustriALL Global Union has issued a more in-depth analyses This paper sets out what it means for a business enterprise to respect the rights of workers to join or form a trade union and the right to bargain collectively: <http://www.cleanclothes.org/resources/publications/2012-11-22-ituc-industriall-ccc.pdf/view>

³ Overview of grievance mechanisms and challenges (SOMO): <http://grievancemechanisms.org/>



business models are not adapted, human rights due diligence will always be very limited.

- **Center production sites at the core of HRDD actions:** Companies need to look their value chains up and down and start adapting them in order to give sites where the actual production takes place the attention they need - rather than thinking of supply systems as contractual business links only.
- **Pricing structures need to be adapted:** Cost-distribution and margins need to be adapted throughout the global supply chains – redistribution is a core ingredient for real change. Additional costs to top-up workers' low wages to reach a living wage need to be absorbed in the price calculation. Hurdles to increase workers wages, such as fix margins along the chain that escalate the costs of the end price need to be eliminated⁴.
- **Purchasing practices need to be adapted:** The endemic problems we are seeing in the industry today (poverty wages, overtime, precarious employment schemes etc.) are primarily due to how the industry is organized. Purchasing practices have to be included at the core of human rights due diligence approaches; lead times and cost-calculations have to be adapted in order to not violate human rights.
- **Cooperation is needed:** Cross-sectoral and collective approaches along with multi-stakeholder engagement are needed. Binding and transparent agreements between brands and trade unions need to be in place. Enforceable brand agreements (EBAs) are a means to formalize this approach. (EBAs: see annex)
- **Consultations with potentially affected rights holders as core-activity:** Companies should make sure that assessment of the situation on the ground is rooted in strong and meaningful consultations with potentially affected actors (trade unions, workers, civil society organizations).

Actions to meet the responsibility to “mitigate” negative impacts on human rights

- **Mitigation often means remediation:** Since the garment industry is characterized by worldwide and systematic human and labour rights violations, in practice “mitigation” will also often mean engaging in

remediation. Both processes are interrelated.

- **Grievance mechanisms are of a special importance for mitigation and remediation:** Workers and other stakeholders should have access to secure, anonymous, confidential, and an independent grievance mechanism to register complaints when they believe their rights are being violated. Companies should respond to all legitimate grievances in a timely manner, collecting further related information and ensuring that an effective remediation plan is developed and put into action to address the remaining rights' violations in collaboration with the affected rights holders.
- **Progress and impact oriented action plan:** Brands should, in cooperation with trade unions and other stakeholders, develop action plans that include clear commitments of the brand, time-bound milestones, and that are made public. EBAs that translate root-causes into locally enforceable actions can be a concrete means of committing to progress and putting said commitment into action

Actions to meet the responsibility to “account” for how negative impacts on human rights have been addressed

- **Transparency on steps taken in human rights due diligence is needed:** This includes: disclosure of the supplier list and production sites; audit reports per supplier; a detailed analysis of the identification of adverse human rights impacts; an explanation of prioritisation of work; an action plan with concrete goals and milestones; an overview of interaction with rights holders affected by adverse human rights impacts; a review of the human rights due diligence analyses and the work plan by affected rights holders. Accounting publically is key, so all of the above mentioned information should be easily accessible to the public.

4 “The practice of compounding price escalation is common in garment production. (...) The large majority of the additional funds laid out by consumers in the name of living wages would actually get directed to others in the supply chain. (...) Even if a consumer were willing to pay significantly more to ensure living wages were paid, the reality is that he or she would be paying many times more than the worker receives.” http://www.fairwear.org/ul/cms/fck-uploaded/documents/fwfpublishations_reports/LivingWageEngineering20141.pdf, p.20



PROCESSES TO ENABLE THE REMEDIATION OF ANY ADVERSE HUMAN RIGHTS IMPACTS THEY CAUSE OR TO WHICH THEY CONTRIBUTE

- **Remediation as an integral part of the company responsibility of respect human rights:** Remediation must be seen as an integral part of meaningful human rights due diligence and must be focused on the workers' right to have issues remedied and the will to provide remedy. Remediation efforts by companies should not hinder the work of trade unions nor hinder the access to other remediation mechanisms that workers may have. In order to ensure their effectiveness, both state-based and non-state-based non-judicial grievance mechanisms should be: legitimate; accessible; predictable; equitable; transparent; rights-compatible; and a source of continuous learning; while operational-level mechanisms should also be based on engagement and dialogue⁵.
- **Remediation as an urgent and time-sensitive issue:** In order not to cause more harm to the affected victims and their families, companies involved in remediation processes have to immediately allocate sufficient time and financial resources to resolve the issues and make sure that remediation takes place at the earliest possible date.
- **Remediation as a core responsibility:** Given the nature of the industry, companies will often find themselves in a multi-buyer and multi-actor setting. It is therefore key that companies demonstrate the will and openness to work together and lead, rather than waiting for others to make the first move.
- **Remediation beyond termination of business relation:** "Cut & run" is never an option. The responsibility of brands does not end with the termination of the business contract. Brands have to adopt a phase out plan to make sure workers get their salaries and benefits they are entitled to. Brands also have to compensate job losses by prioritising the hiring of affected workers to other suppliers. In general, the termination of business relationships should only be used as a last resort.
- **Meaningful engagement with affected right holders:** Victims of human rights violations need to be actively involved in deciding appropriate remediation. It is part of the responsibility of buyers (brands) to make

sure that involvement happens. Depending on the situation, remedy measures may include e.g.:

- > **Compensation:** Remediation has to enable the victims and their families to either truly overcome the damage, or at least to be adequately compensated for the damage suffered. In practice, remediation will therefore often include financial compensation and non-financial assistance. All too often charity actions are falsely called "compensation". Real compensation must however go beyond a one-time payment and include the long-term perspectives of the affected rights holders. The Rana Plaza Arrangement and the Tazreen Trust funds demonstrate how such compensation schemes can be implemented.
- > **Facilitation of reinstatement:** Often workers are confronted with dismissals because of their trade union activities. Remediation in such circumstances includes the full and swift action of sourcing brands in order to clarify the allegations together with all involved parties; the facilitation of the reinstatement of workers (if they wish to be reinstated), and the full back pay back of wages that the dismissed workers missed.
- > **Responsibility for social security:** Brands should ensure that workers receive social security benefits even if the supplier has failed to register them with the national social security program or to keep social security contributions up to date. Brands should be monitoring on a regular basis whether their suppliers are putting aside funds for severance pay, are registering new workers for social security, and are up to date with their employer and worker contributions to the government social security system.
- > **Responsibility for severance pay:** Brands have the responsibility to provide financial remediation in cases where their supplier fails to pay full severance when factories close down. A situation where workers are left alone without their full wage and severance packages must not occur.
- **Transparency is a must:** Remediation often entails significant sums of money, in order to make sure that this money is invested in the right measures and that the compensation reaches the affected rights holders, remediation schemes must be made transparent and must be negotiated with affected rights holders or their representatives.

5 UNGP Principle 31



ANNEX: ENFORCEABLE BRAND AGREEMENTS KEY ELEMENTS

1. The agreement is negotiated, implemented and signed by at least one brand or retailer and local trade unions, preferably involving global union federations (where trade unions are associated with GUFs).

What distinguishes EBAs from regular worker-management or workplace collective bargaining agreements is that they are negotiated with companies (brands and retailers) that order goods from the involved factory, but do not directly employ the workers concerned. As buyers, these companies have a responsibility for working conditions under which their products are made, and thus for workers' rights along their entire supply chains. Employers can be a party to an EBA as well. (For example, in the FoAP they are, in the Accord they are not.)

Trade union representation is essential to ensure the needs of workers can be democratically represented, but which level of trade union (e.g. workplace, sector, national, global) should represent workers in negotiating, implementing and overseeing the agreement will differ depending on the national context, including possible legal restrictions.

2. The agreement has workplace level application in one or more workplace(s) within the existing supplier base of the signatory brand or retailer to address the root causes of workers' rights violations, relevant to the local context.

What distinguishes these forms of agreements from other agreements (including international framework agreements or IFAs) is that whilst they may include 'frameworks of principle', they articulate a detailed negotiated and time-bound agreement for tackling a particular issue at specific workplaces within the supplier base of the signatory brand(s).

The agreements deal with a 'root-cause' issue that is relevant for the local context. The agreement tries to solve a major existing problem by addressing

root causes, rather than dealing with a whole host of different (albeit interrelated) issues. For example, the Accord deals with worker safety and health and the FoAP in Indonesia with FoA.

3. The agreement is transparent, enforceable and implementable with mechanisms to ensure the signatories take action.

The agreements must be enforceable in the sense that they support the ability of local trade unions to move signatory brands more quickly and/or effectively to take action than if the agreement did not exist. There must be clauses that make the agreement a binding contract that gives the possibility for legal redress. Enforcement mechanisms can include: monitoring and arbitration within the scope of the agreement or include a neutral third party, different types of dispute settlement can be outlined including binding arbitration or other forms legal redress (national or extra-territorial). To be both enforceable and implementable the agreement must detail the role and responsibilities of signatories.

Effective enforcement of agreement is greatly helped by continued campaigning (see point 5). Periodic reporting of compliance within the public domain is a pre-condition for effective implementation. High levels of transparency increase the possibility of both workers and the public applying scrutiny, and raising complaints where the agreement's provisions are being violated.

4. The agreement empowers workers and their organisations.

The agreement should promote the empowerment of worker-led organisations. Worker and local trade union ownership over the agreement is necessary for it to be empowering, and both should have a crucial role in implementing and enforcing the agreement. Therefore, the agreement should ideally



also contribute to increasing the political space of the local trade unions.

5. The agreements are supported by a broad alliance of global trade unions and other workers' rights organisations across multiple countries, which prioritizes and assigns capacity to negotiate, campaign, implement and enforce EBAs.

The experience of the The Bangladesh Accord on Fire and Building Safety⁶ and the Freedom of Association Protocol Indonesia (FoAP)⁷ shows that cohesion of the labour movement is a crucial element to getting the brands to sign the agreements. These agreements were bargained by

trade unions, and supported by a broad alliance of both trade unions and workers' rights groups across multiple countries. They were ultimately signed by local and/or global trade unions, following a major campaign effort that provided the necessary leverage. In the case of the FoAP, this was the PlayFair campaign; in the case of the Accord, it was the campaign work following Rana Plaza. These agreements won't be concluded, but also won't work in practice, unless there is very active, focused and continuous work by the workers' rights movement. If insufficient resources are invested to build up capacity, any power gained through the agreements could become meaningless and risk becoming co-opted by brands.

⁶ <http://bangladeshaccord.org/>

⁷ http://www.ituc-csi.org/IMG/pdf/FOA_Protocol_English_translation_May_2011.pdf