

Clean Clothes Campaign

International Secretariat 

CCC Submission for Working Group on UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises December 8, 2011

The Clean Clothes Campaign appreciates the opportunity to provide input on how the Guiding Principles can effectively be implemented. Below we provide some concrete suggestions on steps companies active in global value chains should take prevent or mitigate causing or contributing to adverse human rights impact on four key issues for (women) workers: freedom of association, security of employment, wages, and protection of migrant worker rights. Suggestions are also made regarding transforming purchasing practices and buyer-supplier relations.

All of the suggestions have been taken up on a case-by-case basis by one or several companies, usually as a result of sustained public campaigning, but the effect has been limited. We believe the working group is in position to scale up these initiatives and will be crucial in transforming the principles from a useful set of guidelines into a mechanism that can have real impact on the lives of millions of workers worldwide.

Interpretation of the Guiding Principles

The issue of interpreting the principles is of course key to how effective ultimately their implementation will be. We believe the framing of the responsibility of the various corporate entities making up global value chains needs further study, and that direct experiences from the field should guide such study. Some of the concepts and notions introduced in the Guiding Principles and the various accompanying documents are interesting but fairly theoretical, and open to multiple interpretations. For example, the GP and Framework are quite clear that when a company (brand or retailer) is sourcing garments through an international value chain this is part of its 'own activities' and as such adverse human rights impacts at supplier level is part of its responsibility. The interpretative guide then gives a confusing example where a company can be outsourcing to children, but since the contractor did not request authorization the company would merely be linked to the adverse impact, rather than be considered to have caused or contributed to this. Failure of contractors to provide information, or to comply with CSR related instructions from buyers, is such a common occurrence though that this can never be ground for limiting responsibility. Instead measures can and should be taken as part of the due diligence of the company to reduce this risk.

Similarly, all suppliers producing garments can be determined as 'crucial' for the company since they by definition provide a product or service that is essential to the enterprise's business. We fully agree that the key question here is leverage, and that when leverage is insufficient it is the company's responsibility to increase this. Leverage is actually linked to the business relationship: ultimately the company's leverage depends on its willingness to end the business relationship if the supplier refuses to mitigate. However, ending the business relationship does not end the responsibility of the company towards the victims to repair the harm done, and this is not made consistently clear in the documents. For example, workers are injured in factory fire in Bangladesh. The brand failed ignored reports of locked exits and lack of safety training and failed in its due diligence. The supplier refuses to meet the medical costs. The brand may end the relationship, but still should ensure that the workers receive medical treatment. Who will ultimately shoulder the bill is at the heart of the majority of supply chain human rights conflicts today. We encourage the working group to examine this in much greater depth, and provide clear and detailed guidance.

1. Freedom of Association and the Right to Collective Bargaining

CCC believes Freedom of Association is key. Freedom of Association and the Right to Collective Bargaining have long been acknowledged as an enabling rights - in the absence of these rights being respected other rights are unlikely to be fulfilled since workers will not be in a position to defend their own interests or negotiate on their own behalf. The experience of the last 10 years with code of conduct implementation confirms this exactly: auditing and monitoring fail when workers themselves are not centrally involved, and remediation efforts have limited impact unless workers effectively participate in their design and implementation. Corporate due diligence risks failing in the same fashion, and companies need to urgently take proactive and positive measures to combat the pervasive anti-union climate in most workplaces and to ensure that that chronic anti-union behaviour on the part of management is no longer permitted. Such measures can include:

a. Require suppliers to issue ‘Right to Organize Guarantees’ to workers.

The International Textile, Garment and Leather Workers' Federation (ITGLWF) is calling on brands and retailers to require their suppliers to proactively adopt a “Freedom of Association Policy” and communicate this policy to workers in their own languages in the form of a ‘Right to Organize Guarantee’. The Guarantee is an agreement signed by the employer to respect the right of all employees to form or join a trade union of their free choice and to bargain collectively without employer interference. The Guarantee offers workers a commitment that their employer will not retaliate in any way if they choose to exercise their right to freely association and bargain collectively. Copies of the signed Guarantee must be provided to all current and new employees.

b. Require the signing of access agreements between factory management and local unions at supply factories

Brands and retailers can help create a positive climate for trade unions by requiring their suppliers to sign union access agreements between factory management and local unions in the sector. Union representatives have the right to access workplaces to talk to workers about the union and the advantages of joining. Access agreements are an important tool since they formalize this.

2. Short-term contracts

In recent years, unions and labour rights organizations have reported an increasing use of successive short-term employment contracts – or in many cases, no written contracts whatsoever. The use of successive short-term contracts has been used to deny workers statutory benefits and bonuses, and to undermine worker organization. Not only are contract workers always in danger of losing their jobs, while they are employed contract workers don’t have the same rights as permanent workers, such as maternity leave, annual leave, or wage increases that would accrue with seniority at the factory. Brands and retailers should ensure that workers engaged in the company’s core business are employed under open-ended or undetermined duration contracts. They should also make sure that any use of fixed duration contracts is in response to a clearly defined plan justifying their use; and that any workers on fixed duration contracts are provided the same salary and benefits accorded to permanent workers performing the same work.

Where the excessive use of short-term contracts has been legally restricted, some employers have responded by hiring workers through a third-party contracting agency that acts as the legal employer of the worker (known as “dispatched” or “outsourced” labour) – even though the workers are still, for all intents and purposes, performing regular duties at the factory. The use of dispatched labour creates additional insecurity for workers who have few protections under the arrangement, and such third-party employment schemes should be eliminated for any workers engaged in the company's core business.

3. Living wages

Base wages in the garment sector rarely exceed the statutory minimum wage. Minimum wages in Asia and other major garment producing regions in the developing world are usually totally inadequate to meet basic needs. The recent global rise in food prices means that for many garment workers, wages for a standard working week fall below the UN threshold for absolute poverty. Poverty reduction is considered to be the most important UN Millennium Development Goal, and the UN recognizes the right to a living wage as key to achieve this. The ILO includes this right at the core of its agenda for decent work. Garment workers identify the need for a living wage as their most urgent concern.

As a first step, buyers should incorporate a living wage standard in the Code of Conduct, and align with existing initiatives such as the [Asia Floor Wage](#) (AFW) Alliance that sets a benchmark and outlines a process for a minimum living wage in the

Asian Garment industry. Secondly, they should ensure ensure prices are sufficient to pay a living wage and evaluate how purchasing practices need to be adjusted to make the payment of the living wage/ AFW possible.

One of the arguments companies use against adopting living wage standards is that an individual buyer does not have the ability to ensure improvements in wages in a factory producing for a number of buyers. For this very reason, buyers must collaborate to improve wages. Buyers could begin to implement a living wage standard by identifying supply factories in which they, individually and/or collectively, account for a substantial majority of production. It is also important that the brands present in the factory have a long-standing business relationship with the supplier and the factory, which will allow for more sustainable improvements and cooperation from the supplier and factory management.

Buyers should commit to a target for wages that substantially increases workers' wages and other compensation over time (for the Asian Garment industry this must be at least the Asia Floor Wage benchmark). Then, as individual buyers, each company would negotiate with the supplier on measures needed to meet the targets, proportional to each buyer's share in production. In parallel to this they should facilitate the establishment of negotiating structures to enable factory management and trade union(s) to consolidate the living wage element into the existing pay structure at those factories.

4. Purchasing practices

The garment industry is addicted to flexibility. In the current business model, retailers, brands, and transnational suppliers seek to maximize their ability to change not only the styles and products being produced, but the factories and/or countries in which the goods are being made, all in pursuit of the quickest, most reliable, best quality and, of course, cheapest production. The industry must come to terms with the instability in orders that encourages factories to seek an increasingly flexible workforce, and for corporations to fulfill their duty to respect buyers will have to make efforts to adjust their purchasing practices to develop long-term, stable and predictable supply contracts with supply factories. Global buyers should provide measurable incentives for factories that do actually respect trade union rights and enter into faithful negotiations. This includes for example, preferential order placement or a CBA premium in unit prices.

The industry needs to better measure and report on its sourcing practices. Companies should be disclosing information to make it possible to measure to what degree labour standards compliance factors into their regional and global sourcing decisions. Companies should for example be reporting on the length of business relationships with supplier factories, their location, pricing policies and incentives that encourage and reward labour standards compliance, and overall integration of company social responsibility policies with sourcing decisions.

Instable buyer-supplier relationships and the constant relocation of production leads to frequent factory closures. In most factory closures, workers are cheated out of severance pay, back wages, social security benefits and/or other legal entitlements. There have been positive efforts to develop a catalogue of best practices, outlining a series of concrete steps buyers, suppliers, governments and others should take to minimize the possibility of closures and reduce the negative impacts where they cannot be avoided. One example, which companies should adhere to, is the MFA Forum's [Guidelines for Managing Responsible Transitions](#). These guidance documents emphasize the need for collaborative efforts among buyers and with suppliers, trade union organizations and NGOs throughout the sourcing and manufacturing cycle. In practice the large majority of companies including MFA Forum members do not implement the guidelines.

5. Migrant workers

Migrant (women) workers increasingly make up part of the workforce in manufacturing industries, including the garment industry. As migrant workers are predominantly working under short-term, outsourced and piece-rate employment schemes, get lower pay and work/live under worse conditions, are often confronted with debt bondage and forced labour, and face particular forms of gender-based violence and discrimination, they find themselves in a particularly vulnerable position related to their rights. In addition, migrant workers face significant problems in joining and forming trade unions. To address the specific issues related to their employment conditions, specific actions to their protection need to be taken. There is a need for greater recognition of the motivations of people to migrate, and the benefits migration brings for countries of origin and destination, to ensure migrant workers are treated on equal terms with citizens, particularly when it comes to exercising fundamental human rights.

Companies should take concrete action to protect migrant workers and:

- Demand the abolition, reform, or regulation of labour agencies and ensure direct employment of workers;
- Provide pre-departure training for migrant workers;
- Publicly disclose the location of both production sites using migrant workers and the details of labour agents being used to supply workers to these sites;
- Ensure suppliers pay all recruitment fees, government levies, etc.;
- Ensure there is no compulsory medical testing.
- Ensure that migrant workers are explicitly mentioned in codes and implementation policies,
- Ensure that references to migrant workers are focused on rights and not legal status,
- Take a positive attitude to migrant work and avoid policies that aim to exclude the use of migrant workers,
- Promote and support dialogue between company and migrant workers and their representatives.

Yours sincerely,

For the Clean Clothes Campaign International Secretariat

Ineke Zeldenrust

A handwritten signature in blue ink, appearing to read 'Ineke Zeldenrust', with a long, sweeping flourish extending to the right.