

**Clean Clothes Campaign submission to the UN Working Group on Business
and Human Rights on Access and Provision of Remedy**

Introduction

The *UN Protect, Respect and Remedy framework* and its *Guiding Principles* ('Principles') recognize Access to Remedy as a pillar in its own right, and identify responsibilities of both governments and companies in providing so. Nevertheless, in the context of global and volatile supply chains, there is a risk that the actual provision of Remedy gets stuck in between both the obligations of companies and government. The *Principles* recommend that sourcing companies provide remedy to the victims of human rights violations, even if they have *not* caused or contributed to the actual adverse human rights. At the same time, there is a growing understanding that companies *do* contribute to violations in their supply chain -through their sourcing practices- by not factoring in the cost of worker safety, associational rights, wages etc.

The Clean Clothes Campaign network, through its urgent appeal system, has a track record of campaigning in order to provide remedy in specific instances of human rights violations in garment supply chains.¹ Typically, these violations occur in a context characterized by an absence of (effective) judicial and non-judicial grievance mechanisms. At the same time, and in line with the guidance of the *Principles*, numerous instances exist in which local trade unions, with the support of international labour rights advocacy networks have compelled lead companies (or brands) to make concrete commitments to i) uphold freedom of association at their supplier factories, ii) remediate wage theft, iii) intervene in factory closures and last but not least iv) provide compensation for industrial disasters in their supply chain. (See the annex for a list of relevant cases to consider)

While a comprehensive discussion of relevant cases is beyond the scope of this submission paper, the few cases highlighted in the annex illustrate that increasingly, lead companies are committing themselves not only to engage with their suppliers in order to provide remedy, but where needed also to step in concretely and materially contribute to the effective full provision of remedy themselves. Such contributions can range from a political agreement on the grievance itself, or a monetary contribution to the remedy up to the actual setting up of the logistics and parameters of providing remedy. Therefore, these cases highlight consistently a growing precedent for an emerging norm in which lead companies to make commitments on remedy in their supply chains. At the same time, beyond the cases mentioned in the annex, remedy remains often rare.

General considerations on the effective provision of remedy

- While both international norms and the established practice recognise the need for lead companies being involved, such interventions are almost often the result of international pressure, either through public campaigning or other means.² All single cases mentioned

¹Frank den Hond, Sjoerd Stolwijk, and Jeroen Merk (2014) A Strategic-Interaction Analysis of an Urgent Appeal System and Its Outcomes for Garment Workers. *Mobilization: An International Quarterly*: February 2014, Vol. 19, No. 1, pp. 83-112.

²An examination of three successful international brand campaigns taking place in Lesotho, Thailand and Honduras came to the conclusion that 'the workers could not have succeeded in achieving their goals without the support of national and international labour rights organizations'. Similar conclusions were found by Den Hond et al. (see supra) who found that out of 161 urgent appeals cases the CCC has worked on; 118 were successful or partly

in the Annex are of campaigning through international networks.³ This has led to numerous examples of the provision of remedy in cases of human rights violations in supply chains. This suggests that successful remedy is still highly reliant on public attention, and is not yet embedded into the internal processes of companies, nor does the legal environment in which they operate provide sufficient incentives to do so.

- The specific instances in annex underline the importance of operational involvement of lead companies in providing effective remedy for labour rights violations in their own supply chain. The role of these lead companies is crucial in providing satisfactory remedy. Although their involvement being critical, it is in stark contrast with the extent to which lead companies feel compelled to do so without outside pressure (see above).
- The fact that most, if not all successful remedy cases required international campaigns to support local workers and their organizations to access said remedy, has contributed significantly (and unnecessarily) delays in the process for access and provision of remedy. In the vast majority of grievances, this delay itself has exacerbated the initial harm. This additional harm is often identified by rights holders as a harm in its own right which needs to be made whole as well. In practice, the recognition and effective inclusion in the provision or remedy is mixed.
- The above points highlights clearly not only the need for new (binding) legislative machinery in strengthening remedy processes in garment and footwear supply chains, but also the inadequacy of the existing (state and non-state, judicial and non-judicial) frameworks, in which the *Principles* are rooted
- Notably, in cases whereAt the same time, the instances where branches of the government of a lead company'sthe host-state of a lead firm have intervened, such involvement has been recognized as an important if not crucial factor in providing remedy (either through the executive branch as in e.g. the involvement of KiK Textilien in the Ali Enterprises case under chapter IV of the Annex, as through the judiciary as in e.g. the involvement of Adidas in the PT Kizone case under chapter III of the Annex).
- Most cases where actual remedy was provided required the establishment of an ad-hoc institution to oversee, implement and/or monitor the effective remedy. In some cases, this entailed the creation of a joint monitoring committee, tasked to oversee implementation. In others, more significant institution building took place, including the set-up of a separate claims and intake process, the provision of medical services, the opening of bank accounts and a separate legal entity for final disbursement of payments, as demonstrated by the compensation cases of industrial disasters. (see section IV of the Annex). Especially the latter demonstrate strongly that even if lead companies are genuinely committed to providing remedy, by the accepting their duty to provide for remedy, they would need to involve other actors (rights-holders, unions, NGO's, other brands, government, InterGovernmental Organisations, ...) as equal parties in a joint single process to set the parameters and if necessary build institutions to effectively deliver remedy.
- The need for a single process is even more important when several lead companies are involved in providing remedy at the same supplier. It is clear that the focus of remedy should be on resolving the human rights violations and not on "apportioning

successful in achieving the demands formulated by workers.

³However, the mention and the extend of the effective campaigning itself is not subject to this submission, and therefore is often not retained in the Annex for reasons of brevity.

responsibility” among the various stakeholders. Effective remedy should ensure the aggrieved party is made whole, and no remaining claims stay unresolved. Approaches to remedy in such cases should ensure the responsibility for restoring the full rights of those affected does not fall onto the rights holder, but remains the duty of the business. For example, where the required remedy concerns the payment of wages, overtime, benefits and severance pay, it is usually very clear what workers are entitled to. Lead companies and their supplier can agree amongst themselves on how both share the responsibility for remedy in these cases. However, when one of the parties fails to deliver their part of the remedy, this does not absolve the responsibility of the other parties to ensure full remedy is achieved. Likewise, when one of the parties (e.g. the lead firm) cannot provide the same quality of remedy (eg reinstatement at the supplier) as a supplier could have delivered, alternative equivalent remedy should be proposed to the complainant. Such an alternative should be based on the needs of the rights-holders to receive full remedy and not on business parameters (such as duration of business relationship or order volume).

- Finally, the ultimate criterions for effective remedy should on the one hand be the satisfaction of the ultimately the rights-holder(s) itself (which can be both individuals as well as groups), and on the other hand the material inclusion of the workers and his/her trade union or representative in ongoing due diligence processes in order to avoid similar harm and violations to occur.
- The rights-holder(s)’ assessment of effectiveness should be an integral part of any grievance process, where the rights holder is consulted throughout the process, including in the formulation of the required outcomes, the full information of the specific actions for remediation as well as at the final evaluation of any remedy should be based on the assessment of the rights-holder(s) on the outcome of the complaint.
- At the same time, in order to engage in effective due diligence, learning from grievances is essential to identify common patterns of human rights abuses, and to take preventive measures throughout the supply chain.

Considerations on the relation between Freedom of Association and the effective provision of remedy

- The particular characteristics of garment and footwear supply chains mean that most of the severe human rights risks identified are labour related. It is therefore opportune to formulate specific considerations about violations about the right of workers to join or form a union of their own choosing can be effectively remedied.
- The *Principles* rightly specify that grievance mechanisms should not be used to undermine the legitimate role of trade unions in addressing labour-related disputes. Indeed, in the global garment industry, it is well understood that the low number of independent and genuine trade unions at the factory level severely restrict workers’ ability to exercise their right to freely associate – a human rights violation on its own – and that this low level of unionization represents a direct and important root cause of broader labour rights violations, such as workers’ right to their legally owed wages, a safe and healthy workplace and other violations. It is therefore a matter of great importance, urgency and immediacy that companies take the steps necessary to ensure that their practices actively protect and promote workers’ right to freely associate and that, where trade unions exist or workers are organising, the actual provision of remedy and existing

grievance mechanisms ensure the remedy primarily supports the trade union in its negotiations with the supplier concerned.

- In particular when the violation of rights concerns retaliation against union members, union officers or union organisers, remedy should be sought both for the individuals concerned, and the union as entity whose rights have been violated.

Conclusion

The most common approach for remedying violations in the garment sector, in both “unilateral” or “multi-lateral” brand or lead firms efforts, are for lead firms to request or require suppliers to implement a corrective action plan. In the context of the garment and textile sector, most remedial action does include a pro-active attitude to the right of workers to join or form a union of their choosing. Although a number of cases does include financial commitments beyond associational rights.

In those cases, suppliers may not themselves be in a position to implement such remedial actions by themselves. In such cases, unions and NGOs are increasingly pressing the lead firms to use their own resources to redress labor violations.

Although the *Principles* rightly define remedy as a pillar in it’s own right, we do see that in practice, remedy remains rare. Although the *Principles* are the instrument on the matter, in the context of garment and textiles supply chains it often remains aspirational at best. This clearly highlights the need for more effective institutional machinery to fill existing gaps to provide for proper remedy in supply chains.

On the other hand, there is an encouraging growing practice in which lead firms have agreed to play an integral role in implementing remedy. As the annex shows, these include the contributions of funds to help make workers whole where the lead firm’s contractors are not or no longer in a position to do so. While brands have generally characterized these contributions as a gesture of a humanitarian character, we can reasonably argue that the recurrent nature of the practice are a testimony to a potentially new norm which is emerging whereby brands are expected to make such contributions.

Perhaps the strongest emanation of such clear norm has emerged under chapter IV of the Annex where lead companies have provided compensation when fires or other major disasters at their suppliers or former suppliers have claimed the lives of or injured workers. Although a result of public campaigning, these cases have involved some of the most significant financial contributions by brands on record, with the Rana Plaza Arrangement totaling \$30 million. The fact that the ILO has played an important in facilitating this work further anchors the provision of remedy into international standards and suggests that concrete practices are developing into an emerging norm. The cases of Rana Plaza, Tazreen (both in Bangladesh) and Ali Enterprises (in Pakistan) have served to develop a formula for determining the amount of appropriate compensation. Based on principles outlined in ILO Convention 121 (“Employment Injury Benefits Convention,” 1964), the approach calculates compensation to ensure payments are sufficient to provide an income for the lifetime of all beneficiaries of the victim taking into account individual needs and circumstances.

Annex I: compendium of relevant cases

I) upholding associational rights at supplier factories

(1) Mexmode (Mexico): In early 2001, the management of the Mexmode garment factory in Puebla, Mexico decided to install a so-called “protection union” and fired a group of workers in the process. Subsequently, the government used violence to disperse a worker strike and demonstration protesting the firings. At the time of events, the facility produced apparel for Nike and Reebok.

Ultimately, Nike and Reebok intervened to compel the factory to reinstate the terminated workers and ultimately recognize an independent union, SITEMEX.⁴ The union went on to negotiate the first collective bargaining agreement by an independent union in Mexico’s apparel sector. This was followed by a series of collective bargaining agreements providing for standards that far exceed industry norms. Following these breakthroughs, Nike maintained a sourcing relationship with the factory for approximately a decade.

(2) Codevi (Haiti): In early 2004, the Codevi free trade zone reportedly terminated a group of 33 workers who had made known their desire to unionize; the workers were allegedly subjected to threats of violence by factory security as they were removed from the facility. Several months later, in June 2004, factory management terminated approximately another 300 workers following a strike concerning working conditions. The facility, which at the time employed approximately 1,500 workers, is owned by the Haitian conglomerate Grupo M. Grupo M’s operation in the Codevi zone was financed with a loan from the International Finance Corporation, and labour rights provisions were included in the loan agreement.

Batay Ouvriye with the support of international labour rights groups pressed Levis and the IFC to ultimately agree to press the factory to reinstate the workers, recognize the union (called SOKOWA), and support a process of mediation by persons agreeable to the union and the company to facilitate negotiation of a collective bargaining agreement. This pressure succeeded in bringing Grupo M to the table, and, in December 2015, with the support of a two-person team of experienced attorneys (one Haitian and one Dominican) serving as mediators, Grupo M and SOKOWA agreed to a collective bargaining agreement with substantial wage increases and new benefits for employees.^{5 6}

(3) River Rich (Cambodia): In early November 2006, River Rich terminated a group of 19 union leaders and members, just three days after workers launched a unionization effort with the Cambodian Union C.CAWDU. The unionization was partially a result of workers grievances regarding the company’s use of “fixed duration” (short-term) contracts. The company shortly

⁴ Ginger Thomson, *Mexican labour Protest Gets Results*, available at

<http://www.nytimes.com/2001/10/08/world/mexican-labour-protest-gets-results.html>.

⁵ *Contract Signed at the CODEVI Free Trade Zone*, available at <https://archive.cleanclothes.org/urgent-actions/contract-signed-at-the-codevi-free-trade-zone.html>; See also spotlight interview with Yannick Etienne (Batay Ouvriye - Haiti), ITUC, available at <http://www.ituc-csi.org/spotlight-interview-with-yannick>.

⁶ Worker Rights Consortium, *Factory Assessment Update*, available at http://www.workersrights.org/Freports/Update_Feb2006.asp.

thereafter terminated approximately 100 workers, including numerous union members, allegedly because the short-fixed duration contracts on which they were hired had expired. C.CAWDU initially sought to challenge the terminations through the Cambodia labour ministry, but obtained an unfavorable ruling from the tripartite Arbitration Council to which the case was referred.

The unions engaged H&M and Inditex, both key buyers of the facility. While H&M declined to intervene, deferring to the Arbitration Council Award, Inditex agreed to engage with the factory and the union on the issue. A meeting between the ITGLWF, Inditex, factory management, the union, and the Cambodian arbitrators produced an initial agreement with River Rich management providing for the reinstatement of 30 trade unionists, the dismissal of legal claims the company brought against some workers, and recognition of the union and procedural commitments concerning engagement and negotiation with the union. Additionally, the agreement called for review by ITGLWF and Inditex of the use of fixed duration contracts.⁷

However, in the ensuing months, factory management failed to adhere to the agreement, and workers staged a series of four strikes, the final of which turned violent when approximately 1,000 participating workers were confronted by riot police. C.CAWDU sought the support of international labour groups in order to press Inditex and H&M to resolve the situation durably. Joint negotiations between the representatives of the ITGLWF, River Rich, Inditex, H&M, C.CAWDU and GMAC produced a second accord, affirming the elements of the first agreement, and committing the company to promptly reinstate 30 trade unionists and gradually phase out the use of fixed duration contracts. The company ultimately reinstated the workers with back pay and eliminated the use of short-term contracts, a major breakthrough in the Cambodian labour rights context.⁸

(4) SL Garments Processing (Cambodia): A longstanding labour dispute escalated in May 2013 after a new manager, who was also a shareholder and military general, deployed armed military police in the factory, a move union activists viewed as a calculated act of intimidation. The company terminated 19 trade unionists who had protested this practice and pursued criminal charges against them. Workers walked off the job and participated in what became a tense four-month strike, which was marked by violent clashes with riot police. During one protest, as reported by the Phnom Penh Post, “a street food vendor was killed and at least nine others injured by bullets after police opened fire on hundreds of demonstrators marching in support of the C.CAWDU-led strike.”⁹ Military police allegedly hired by the company attacked striking workers.¹⁰

The local unions and international groups engaged with Gap, H&M, Inditex, and C&A, to compel the factory to end the dispute. When the company failed to take steps to resolve the

⁷ Catia Gregoratti & Doug Miller, *International Framework Agreements for Workers' Rights? Insights from River Rich Cambodia*, available at <https://mulpress.mcmaster.ca/globallabour/article/view/1098/1154>

⁸ *Union-busting in Cambodia: River Rich Workers Win Victory*, available at https://archive.cleanclothes.org/documents/ccc_newsletter_24.pdf.

⁹ Sean Teehan & Mom Kunthear, *Jubilation as SL Strike Ends*, available at <http://www.phnompenhpost.com/national/jubilation-sl-strike-ends>.

¹⁰ *Cambodian Union Scores Victory at SL Garment*, available at <http://www.industriall-union.org/cambodian-union-scores-victory-at-sl-garment>.

conflict, several buyers, including H&M, reportedly withdrew production. In November 2013, the company agreed to reinstate the terminated employees and other key terms but the agreement was not implemented and the conflict and international campaign continued.¹¹

A resolution was ultimately reached in November 2014 following extensive engagement with Gap, whose principal jeans supplier in Cambodia subcontracted assembly work to the facility. SL Garments signed an agreement with C.CAWDU providing for the reinstatement of the nineteen union supporters, payment of partial backpay (totaling US\$ 300,00) to workers who participated in the strikes, withdrawal of the criminal charges against the workers and activists, and a commitment that the shareholder who brought in the military police not engage in day-to-day relations with employees.¹²

(5) Azim Group (Bangladesh): In late 2014 and early 2015, Brands intervened at the request of labour groups following two instances of serious violence against union activists and supporters. In the first instance, in August 2015, the female president of Azim Group's Global Trousers factory was beaten with an iron rod just outside of the factory, sustaining injuries requiring more than 20 stitches. Labour advocates charged that the assault was carried out by company-directed thugs. The company denied involvement. The second episode of violence occurred inside a sister Azim Group factory, Global Garment, in November 2015. As described by the New York Times, "a female union leader was swarmed by people, pushed to the ground and assaulted while a male union activist was chased away and punched." The events were partially captured by the factory's closed circuit video system.¹³

VF Corporation (which owns the North Face, Nautica, Wrangler and Timberland brands) and Li & Fung (a supply chain management company that oversees Kohls production in Bangladesh) both conducted investigations of the latter incident. In response to findings of management involvement of the attack on the union leaders, VF and Li & Fung announced that they would not place further orders at any Azim Group facility in Bangladesh until the company demonstrated that it respected workers' right to freedom of association. Gap, PVH, and El Corte Ingles followed suit with similar decisions to sever or threats to sever business with Azim Group.

Under this intense pressure, in early 2015, Azim Group reached an agreement with the Bangladesh Independent Garment Workers Federation (BIGUF), whose local affiliates represented or were seeking to represent the Azim Group factories' employees. Through the agreement and pledges to buyers, the company promised to recognize and bargain with the BIGUF affiliates at the two facilities in question, to stop efforts to oust the union, to pay the medical bills of the union leader who was attacked in August 2014, and to allow several worker leaders to return to work with back pay. In response to these commitments, VF, Gap, PVH, and El Corte Ingles agreed to resume business with the Azim Group.

¹¹ *Long-Running Dispute Settled?*, available at <https://cleanclothes.org/ua/2014/cases/sl-garments>.

¹² *Cambodian Union Scores Victory at SL Garment*, available at <http://www.industriall-union.org/cambodian-union-scores-victory-at-sl-garment>; Sek Odom, *Unions, Bosses Ink Deal to End SL Garment Factory Dispute*, available at <https://www.cambodiadaily.com/archives/unions-bosses-ink-deal-to-end-sl-garment-factory-dispute-72685>.

¹³ Steven Greenhouse, *Union Leaders Attacked at Bangladesh Garment Factories, Investigations Show*, available at <http://www.nytimes.com/2014/12/23/business/international/attacks-on-union-leaders-at-azim-factories-in-bangladesh-are-documented.html>.

(6) Texport (India): In 2006, the Bangalore-based Indian trade union GATWU obtained the intervention of Gap to resolve labour issues at Shalini Creations, a unit of Texport Overseas. Management reportedly sought an injunction order barring GATWU from publicly disclosing information concerning the factory's labour practices, and terminated the general secretary of GATWU's plant-level union affiliate. A Gap representative met with management and the union, contributing to a resolution in which the petition for an injunction was withdrawn and the union secretary general was paid by management to perform union work. A financial settlement was also arranged for a worker who lost a child while giving birth outside the facility after reportedly being denied permission to leave the factory, a circumstance that aggravated tensions at the workplace. The effort led to improved industrial relations going forward.¹⁴

(7) DESA (Turkey): In 2009, following interventions by Prada, Debenhams, M&S, Mulberry and others, the Turkish union Deri Is reached an agreement with the leather manufacturer DESA in which the company agreed to recognize Deri Is as the sole-authorized union at the workplace, reinstate terminated union supporters, maintain a neutral position with respect to unionization, and provide a document to all employees stating that unionization is a constitutional right.¹⁵

(8) PT Mulia Knitting (Indonesia): In 2010, following dialogue between the Indonesian union SBGTS-GSBI and the brand Tommy Hilfiger, the union reached an agreement with PT Mulia Knitting management committing the company to respect the right of workers to unionize and provide compensation for five former union supporters dismissed in 2007.¹⁶

(9) Goldfame (Cambodia): In 2011, an agreement was reached with the Cambodian garment manufacturer Goldfame providing for the reinstatement of approximately 160 workers who were terminated following their participation in a national strike calling for an increase to the minimum wage. The resolution was achieved after H&M and Inditex urged their supplier to reinstate the fired workers.¹⁷

(10) Orion Conmerx (Cambodia): In 2012, following engagement by factory clients H&M, Timberland and Inditex, Orion Conmerx management agreed to remediate alleged freedom of association violations by changing short-term contracts to indefinite duration contracts, providing compensation to terminated employees, and pledging to respect freedom of association through a verbal and written notice to employees.¹⁸

¹⁴ See Tandiwe Gros, *Raising the voice of workers in global supply chains: Global leverages in the organising strategies of three 'new' labour unions in the Indian garment*, available at

https://www.rosalux.de/fileadmin/rls_uploads/pdfs/engl/GROSS_Tandiwe_Raising-the-voice_160217.pdf

¹⁵ See *Victory for Workers in Turkey: DESA and Deri Is Union Sign Protocol*, available at

<https://archive.cleanclothes.org/urgent-actions/victory-for-workers-in-turkey.html> and *Clean Clothes Campaign Hails Victory for Workers in Turkey*, available at <https://archive.cleanclothes.org/media-inquiries/press-releases/clean-clothes-campaign-hails-victory-for-workers-in-turkey.html>.

¹⁶ *Supplier Sacks 19 Workers for Union Activities*, available at <https://cleanclothes.org/issues/archive/2007-2008-supplier-sacks-19-workers-for-union-activities>

¹⁷ *Reinstatement of 160 Workers in Cambodia*, available at <https://cleanclothes.org/about/annual-reports/2011-annual-report>.

¹⁸ *Conditions Improved*, available at <https://cleanclothes.org/ua/2012/cases/orion>.

(11) Busana Prima Global (Indonesia): In October 2013, the Shoe, Textile and Garment Labour Union reached an accord with the brand Jack Wolfskin whereby the brand agreed to directly compensate a group of seven workers whom its supplier, Busana Prima Global, allegedly terminated for their trade union activity. The agreement was reached after Jack Wolfskin unsuccessfully pressed the factory to reinstate the workers and otherwise improve conditions. The workers were not reinstated.¹⁹

(12) Bratex (Sri Lanka): In 2014, the Sri Lankan Free Trade Zone and General Services Employees Union, reached an agreement with Fruit of the Loom and the management of Bratex, a underwear supplier, to resolve alleged freedom of association violations.²⁰

(13) SF Leather (Turkey): In October 2015, following a nine-month international labour and NGO campaign targeting the brand Mulberry, workers at SF Leather, a Mulberry supplier of handbags and purses, reached an agreement with management to resolve a longstanding labour dispute. Under the agreement, management pledged to respect freedom of association going forward and provide compensation to terminated union supporters.²¹

II) Cases involving the Remediation of Wage Theft at Supplier Facilities

There are numerous cases involving the remediation of wage and hour violations, in which brands have either compelled compliance by their suppliers or—in a growing number of cases involving factory closures—used their own resources to make workers whole.

(1) Minimum Wage (India): In March 2009, the State of Karnataka, India issued a new minimum wage for apparel sector workers. Following several years of campaigning by the Garment and Textile Workers Union (GATWU), it was the first such increase in seven years.²² However, once enacted, apparel manufacturers in Bangalore refused, industry-wide, to pay the increase to employees in the “unskilled” category—a group that includes sewing machine operators estimated to comprise about a third of the sector’s workforce.

GATWU pressed individual manufacturers to comply with the law.²³ When factories did not comply, numerous brands were approached—including Adidas, Gap, H&M, Levi-Strauss, New

¹⁹*Buyer Compensates Fired Unionists*, available at <https://cleanclothes.org/ua/2012/cases/pt-busana?searchterm=buyer+compensates>.

²⁰*Victory: Settlement with Underwear Factory Bratex*, available at <https://cleanclothes.org/news/2014/07/29/victory-settlement-with-underwear-factory-bratex>.

²¹*Turkish workers win case targeting handbag producer Mulberry*, available at <https://cleanclothes.org/news/2015/10/19/turkish-workers-win-case-targeting-handbag-producer-mulberry>; and *IndustriALL campaign contributes to Mulberry supplier agreement but struggle continues*, available at <http://www.industriall-union.org/industriall-campaign-contributes-to-mulberry-supplier-agreement-but-struggle-continues>.

²²*Garment Workers’ Wages Revised After Seven Years*, available at <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/garment-workers-wages-revised-after-seven-years/article273231.ece>; *Workers Get 25% Pay Hike*, available at <http://timesofindia.indiatimes.com/city/bangalore/Workers-get-25-pay-hike/articleshow/4562093.cms>.

²³ Worker Rights Consortium, *Preliminary Report on Minimum Wage Violations in Bangalore, India (Mar. 4, 2010)*, available at http://www.workersrights.org/linkedddocs/Bangalore%20Minimum%20Wage_Preliminary%20Report.pdf.

Wave Group, and Phillips Van Heusen (“PVH”)— to force their suppliers to comply. GATWU and other groups subsequently engaged with manufactures to confirm they were paying the legally required wage and providing their employees with back pay. In December 2010, it was confirmed that “110,000 workers have received money owed to them as a result of the underpayment of wages in 2009 and 2010,” totaling more than \$6 million, and that as a result of the industry coming into compliance, workers in Bangalore earn, in the aggregate, an additional US \$7.2 million annually.²⁴

Following this breakthrough, GATWU, successfully pressed India’s largest garment manufacturer, Gokaldas Exports Ltd., to implement an April 2013 increase to a statutory benefit called the Dearness Allowance, which is meant to cover cost of living increases. The company reportedly failed to pay the increase at six of its factories in Bangalore, affecting an estimated 9,900 workers. When GATWU’s efforts to compel remediation with the company failed, the intervention by H&M and Adidas resulted in an agreement with the company in September 2013 to ensure payment of the benefit and back wages.²⁵

(2) Overtime Payment - PT Nikomas (Indonesia): In early 2012, an Indonesian shoe supplier for Nike called Gemilang IY paid employees approximately U.S. \$1,000,000 in back wages to compensate for unpaid overtime. The out-of-court agreement was the result of eleven months of negotiations between the Serikat Pekerja Nasional (SPN) union federation and Nike.²⁶ The agreement was also reached in the wake of the signing in 2011 of the Indonesian Freedom of Association protocol (see p. 17), of which both Nike and SPN are signatories.

The agreement provided for payment for 593,468 hours of unpaid overtime performed by about 4,500 employees over the prior two-year period, as well as the establishment of a grievance mechanism for addressing future disputes.

III) Selected Cases involving Factory Closures

An important development in recent years in the global apparel sector has been the emergence of new norms for brand responsibility to remediate violations of workers’ right to be paid severance and other due compensation when the factories employing them close. In a number of factory closure cases in recent years, unions or other representative worker bodies have succeeded in securing payment of most or all of the compensation owed to workers upon closure (and in some cases, additional compensation), as well as additional brand commitments, such as priority hiring at another factory supplying the brand. While typically specific to one factory, the accumulation

²⁴ *Worker Rights Consortium, Remediation of Minimum Wage Violations in Bangalore (Dec. 2, 2010)*, available at <http://www.workersrights.org/university/memo/120210.html>. and Worker Rights Consortium, Update on Minimum Wage Violations in Bangalore, Haiti (Apr. 29, 2010) available at <http://www.workersrights.org/linkedddocs/Bangalore%20Minimum%20Wage%20Update%20042710.pdf>; *Campaigns and Activities: Minimum Wage*, available at <https://gatwu.org.in/campaigns-activities/>

²⁵ *Factory Tries to Dodge Inflation Correction*, available at <https://cleanclothes.org/ua/2013/cases/gokaldas>.

²⁶ *Nike factory to pay \$1m to Indonesian workers for overtime*, available at <https://www.theguardian.com/world/2012/jan/12/nike-1m-indonesian-workers-overtime>; see also *Nike agrees \$1m overtime payment for Indonesian workers*, available at <http://www.bbc.com/news/business-16522992>; *Just Pay it: Wage compensation for Indonesian Nike workers*, available at <https://cleanclothes.org/news/2012/01/12/just-pay-it-wage-compensation-for-indonesian-nike-workers>.

of such cases has established an emerging norm that brands are expected to ensure workers are made whole—using their own resources if necessary—where their suppliers fail to provide due compensation.

(1) Hugger and Vision Tex (Honduras): In January 2009, Hugger and Vision Tex, both supplier factories located in the San Pedro Sula region of Honduras, shut down without warning and without paying workers legally- required wages and severance benefits. A large share of both factories’ production was reportedly for the apparel brand Nike. Although, Nike initially declined ensure workers receive the estimated \$2.2 million in legally due severance, in July 2010, Nike and the CGT negotiated a breakthrough agreement to resolve the case. Under the agreement Nike agreed to contribute \$1.54 million to a worker relief fund to be distributed to the factories’ former employees and to pay for the enrolment of all 1,500 eligible workers in in Honduras’ national health program for a year. These measures were estimated to have a combined financial value sufficient to fully compensate workers for compensation still due to them.²⁷

(2) PT Kizone (Indonesia) In early 2011, the PT Kizone factory, located in Tangerang, Indonesia, stopped production and its owner fled the country without paying its employees legally due compensation. Green Textile took over the factory’s operations for about nine weeks after which, in late March 2011, the factory ceased production permanently. The workforce of 2,686 employees was owed approximately USD \$3.4 million in severance obligations.²⁸

In the weeks following the closure, Green Textile, apparently at Nike’s urging, contributed \$1 million to a fund to compensate the workers; Nike directly contributed \$521,000, and the Dallas Cowboys pledged to contribute \$55,000. These amounts were calculated to reflect the share of production of each brand in the factory. After these contributions, \$1.8 million was still due.²⁹ Adidas, however, initially refused to contribute, asserting that it had no obligation under university codes of conduct or otherwise to contribute, and that it had left the factory before its closure.

Ultimately, in April 2013, about two years after the final closure, Adidas and the union resolved the dispute through an agreement in which Adidas reportedly contributed more than a million U.S. dollars and pledged to contribute further funds if bankruptcy proceedings in Indonesia did not yield sufficient funds to make the workers whole. Although the agreement itself was confidential, it was reported that the amounts workers had received were sufficient to conclude that Adidas had satisfied its obligations to provide remedy by paying an estimated \$1.02 million.³⁰

27 Worker Rights Consortium, *WRC Update: Positive Resolution of Nike/Honduras Case (July 26, 2010)*, available at <http://www.workersrights.org/university/memo/072610.html>

28 Worker Rights Consortium, *Assessment RE PT Kizone (Indonesia) 2 (Jan. 8, 2012)*, available at [http://www.workersrights.org/Freports/WRC%20Assessment%20re%20PT%20Kizone%20\(Indonesia\)%201-18-12.pdf](http://www.workersrights.org/Freports/WRC%20Assessment%20re%20PT%20Kizone%20(Indonesia)%201-18-12.pdf).

29 Ibid

30 Worker Rights Consortium, *Distribution of Funds to PT Kizone Workers as per the Union Agreement with Adidas (Aug, 9, 2013)*, available at <http://www.workersrights.org/Freports/PT%20Kizone%20Distribution%20Update%208.9.13.pdf>.

(3) Kingsland (Cambodia): In 2012, following what workers were informed was only a temporary closure, the Kingsland factory in Phnom Penh, Cambodia permanently shut its doors, abandoning its approximately 160 workers without paying them legally mandated severance. The facility had produced for Walmart and H&M among other buyers. Following the closure, workers organized a months-long 24-hour-a-day protest vigil in front of the facility to prevent the removal of machinery and materials; as noted, in many closure cases, workers are able to take control of such machinery and sell it to obtain part of the debts owed to them. The Cambodian Ministry of labour called for a conciliation process and set a hearing, but the owners failed to attend.

Unable to make progress with local management, the workers turned their attention to the brands that sourced from the factory. Both Walmart and H&M claimed that their suppliers had ended relationships with the factory in October 2011 and July 2012, although workers contested this view.³¹

In July 2012, the state attorney general of Wisconsin filed a lawsuit against Adidas on behalf the University of Wisconsin-Madison, the state's largest public university, which had a sponsorship agreement with the brand. The suit sought a declaratory judgment that Adidas' failure to compensate the workers to remedy the nonpayment of legally due severance amounted to a breach of its sponsorship with the university. The union successfully intervened in the suit as an intended beneficiary of the underlying contract.³²

Ultimately, after a hunger strike, in March 2013, the worker leaders negotiated a settlement with H&M, Walmart, and the factory's former owners providing for the payment of 200,000 USD.³³ The agreement was reached within four months of the closure, a relatively quick resolution to cases of this sort. The university dropped the suit with Adidas.

(4) Gina Form Bra (Thailand): In October 2006, the Hong Kong-based company that owned the Gina Form Bra Factory, announced it was closing the facility and relocating its production to other factories owned by the firm in China and Cambodia.³⁴ The factory-level union, Gina Relation Worker Union, initially sought to stop the closure, but once it appeared irreversible, focused their attention on ensuring that the workers received legally mandated compensation, as well as additional compensation.

Some of the clients of the Glover Group initially refused to get involved in the case, arguing that they no longer had orders with that specific factory. Ultimately brands including The Limited Brands, Warnaco and Gap pressed the company to negotiate a fair resolution with the union. Subsequently, the Clover Group entered into negotiations with the union, and an agreement was reached whereby the company paid the workforce all outstanding bonuses and legally required

31 *The Kingsland Case – Cambodia*, available at

<http://www.ohchr.org/Documents/Issues/Business/ForumSession4/KingslandCaseCambodia.pdf>.

32 University of Wisconsin versus Adidas America, available at <http://www.prwatch.org/files/ADiDAS.pdf>

33 Historic Win for Cambodian Workers, available at <https://cleanclothes.org/news/2013/03/04/historic-win-for-cambodian-workers>.

34 Maquila Solidarity Network, *Factory Closures Case Studies 2*, available at

http://en.archive.maquilasolidarity.org/sites/maquilasolidarity.org/files/ClosuresCasesEnglish_1.pdf.

severance pay, as well as approximately three-and-a-half months of additional salary above this legally required compensation. The total package was worth approximately 1.8 million CAD.³⁵

(5) Seoul International (Bangladesh): This facility, located in Dhaka, Bangladesh, closed in late 2003 without paying its employees severance and several months of wages. Being pressed by labour advocates Reebok required its agent to contribute 36,000 USD to a fund for the workers. University licensee Top of the World contributed an additional 10,000 USD. These sums amounted to about 15% of the total owed to the workers, and were characterized by the companies as a humanitarian gesture.³⁶

(6) Evergreen (El Salvador): The Evergreen factory in San Salvador, El Salvador closed in 2006, a development precipitated by the withdrawal of orders from its major client, Columbia Sportswear. The factory was unable to pay legally due severance and back pay to the workforce. Ultimately, Columbia contributed \$120,000 to a fund for the workers, an amount that included funds owed by Columbia to the factory for goods already delivered and redirected to the workers. This amount, together with funds obtained by workers through the liquidation of the factory's assets, made workers whole for about three-quarters of the amounts owed to them (not including funds owed to government administered pension funds).³⁷

(7) Rising Sun (Kenya): In June 2006, the Rising Sun factory, located in the Athi River export processing zone outside of Nairobi, Kenya, carried out a mass termination of some 1,270 employees. The firings were unlawfully motivated in retaliation for workers' associational activity and the workers were terminated without substantial legally due compensation. Despite an order by the Industrial Court to reinstate the workers, and interventions by an indirect buyer, Steve and Barry's University Sportswear, the company refused to remedy the firings. Ultimately, Steve and Barry's contributed \$10,000 to the workers and secured an additional \$10,000 by an intermediary that placed its orders at the facility.³⁸

(8) Hermosa Manufacturing (El Salvador): The Hermosa Manufacturing facility, located in Apopa, El Salvador closed without paying its employees approximately \$825,000 in unpaid benefits, unpaid salaries, and severance. After more than 18 months of campaigning, several brands that sourced from Hermosa, including Adidas, contributed to an Emergency Fund for the Hermosa workers arranged by the Fair labour Association totaling \$36,000. An organized group of Hermosa workers and labour advocates proposed that brands arrange for them to be hired on a priority basis at other facilities in the area that supplied Hermosa, including a facility accused of

35 *Ibid*

36 Maquila Solidarity Network, Emergency Assistance, Redress and Prevention in the Hermosa Manufacturing Case 28 (June 2007) available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1772&context=globaldocs>.

37 Worker Rights Consortium, *Factory Assessment Update (Dec. 19, 2006)*, available at http://www.workersrights.org/Freports/Update_Dec2006.asp#Evergreen.

38 Worker Rights consortium, *Update on Rising Sun (Jan. 11, 2007)*, available at <http://www.workersrights.org/university/memo/011107.html>.

blacklisting the workers, but brands opposed this proposal.³⁹

IV) Cases involving Compensation for Victims of Workplace Disasters

(a) Rana Plaza Arrangement (Bangladesh); The collapse of the Rana Plaza factory complex in Dhaka, Bangladesh in April 2013 was the deadliest industrial disaster in the history of the global apparel industry, claiming the lives of 1,129 workers and leaving many hundreds severely injured. The Rana Plaza Arrangement was organized in its wake to provide compensation for victims of the disaster and their dependents.

The framework for the agreement was reached in November 2013 with the signing of a document titled “Understanding for a Practical Arrangement on Payments to the Victims of the Rana Plaza Accident and their Families and Dependents for their Losses.” This framework—signed by the government of Bangladesh, the Bangladesh Garment Manufacturers and Exporters Association, IndustriALL and the IndustriALL Bangladesh Council, Clean Clothes Campaign, and the Bangladesh Institute of Labour Studies—envisioned a single process overseen by a Coordinating Committee comprised of the signatories’ representatives and chaired by the ILO. Among other steps, the Committee was tasked with defining a formula for victim compensation and administering the collection and disbursement of funds.⁴⁰

Based upon principles outlined in ILO Convention 121 (“Employment Injury Benefits Convention” ratified in 1964), the Committee established a compensation formula calculated to ensure payments were sufficient to provide an income for the lifetime of all beneficiaries taking into account individuals’ needs and circumstances. Persons who lost earnings as a result of the injuries sustained in the disaster or dependents of persons killed or missing are eligible to claim contributions. The Rana Plaza Trust Fund was formally established in January 2014 to accept contributions, which could be made by anyone (including on an anonymous basis), and claims processing and payouts began in installments shortly thereafter.⁴¹

After an initial assessment of 40 million USD, it was finally determined that 30 million USD would be needed to satisfy all expected claims. In June 2015, the ILO announced that, following a significant anonymous contribution, the Rana Plaza Trust Fund had met its \$30 million target and thus had gathered the funds required to enable full payments to all victims.⁴² Final disbursements were carried out in the ensuing months.

39 Maquila Solidarity Network, *Emergency Assistance, Redress and Prevention in the Hermosa Manufacturing Case 28 (June 2007)* and also Worker Rights Consortium, *Hermosa Manufacturing and Chi Fung*, , <http://www.workersrights.org/Freports/Hermosa.asp>.

40 *Understanding for a Practical Arrangement on Payments to the Victims of the Rana Plaza Accident and their Families and Dependents for their Losses (as amended Nov. 20, 2013)*, available at http://ranaplaza-arrangement.org/mou/full-text/MOU_Practical_Arrangement_FINAL-RanaPlaza.pdf.

41 *The Rana Plaza Donors Trust Fund*, available at <http://ranaplaza-arrangement.org/fund>

42 *Rana Plaza victims’ compensation scheme secures funds needed to make final payments*, available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_374239/lang--en/index.htm; Tansy Hoskins, *After two years, the Rana Plaza fund finally reaches its \$30m target*, available at <https://www.theguardian.com/sustainable-business/2015/jun/10/rana-plaza-fund-reaches-target-compensate-victims>.

(b) Tazreen Factory (Bangladesh) Just six months before the Rana Plaza collapse, in November 2012, a massive fire broke out at the Tazreen Fashions factory in Ashulia, Bangladesh, killing 113 workers and injured nearly 200. Though this disaster occurred before Rana Plaza, the Tazreen compensation effort was adapted from the Rana Plaza Arrangement. The Tazreen Claims Administration Trust was established in September 2015 to calculate and administer loss of income payments to the families of those who died in the fire and to workers who survived but experienced injuries.⁴³ The Trust was formed pursuant to an initial agreement signed in November 2014 by C&A, C&A Foundation, IndustriALL, and the Clean Clothes Campaign. Major contributions of \$1 million were made by C&A Foundation and the Fung Foundation (Li & Fung had placed orders at Tazreen on behalf of Sean John's Enyce brand). Smaller contributions were made by KiK, El Corte Ingles, and Walmart, with the latter contributing \$250,000.⁴⁴

In July 2016, the Fund has completed its work of providing payments to all injured workers and to the dependents of those who were killed. Recipients included 482 family members of 103 deceased workers and 10 missing workers, and 174 survivors who suffered continuing injuries from the fire. These payments, totaling \$2.17 million, in combination with payments made in the immediate aftermath of the fire by the Bangladesh government, were sufficient to satisfy the awards for all eligible claimants. An additional \$350,000 was set to be transferred to separate fund to provide ongoing medical treatment for victims of Tazreen and Rana Plaza still suffering injuries.⁴⁵

(c) Ali Enterprise (Pakistan): In September 2016, an agreement was reached to provide compensation for income lost by victims of the September 2012 fire at the Ali Enterprises factory in Baldia, Karachi, Pakistan. The deadliest apparel factory fire on record, the tragedy claimed the lives of 225 workers and left at least 57 workers injured.

Under the agreement, which was signed with ILO facilitation by the Germany brand Kik, IndustriALL Global Union, and the Clean Clothes Campaign, Kik agreed to contribute \$5.15 million to fund the compensation scheme. Kik, which was the factory's largest customer, previously provided \$1 million in emergency funding in December 2012. Pakistan's Sindh Employees' Social Security Institution, which also previously contributed funds to employees for loss of income and medical care, committed to provide an additional \$0.7 million as part of the agreement. These funds, totaling \$6.6 million, were determined to be sufficient to meet the requirements for loss of income and medical care for victims and dependents under ILO Convention 121, using a proxy wage proposed by the ILO in the absence of direct records of wage rates.^{46 47}

⁴³ *About the Tazreen Claims Administration Trust*, available at <http://tazreenclaimstrust.org/about> .

⁴⁴ *Payment on claims from survivors of Tazreen factory fire completed*, available at <http://www.labourrights.org/releases/payment-claims-survivors-tazreen-factory-fire-completed>.

⁴⁵ *Ibid*

⁴⁶ *Compensation arrangement agreed for victims of the Ali Enterprise factory fire in Pakistan*, available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_521510/lang--en/index.htm; *Compensation arrangement agreed for victims of the Ali Enterprise factory fire in Pakistan*, available at <https://cleanclothes.org/news/2016/09/12/statement-ali-enterprises>.

⁴⁷ *Landmark compensation arrangement reached on 4th anniversary of deadly Pakistan factory fire*, available at <https://cleanclothes.org/news/press-releases/2016/09/10/press-release-on-ali-enterprises>.

The ILO played a facilitating role at the request of the German Federal Ministry of Economic Cooperation and Development and the Pakistani Ministry of Overseas Pakistanis and Human Resource Development. Procedures for the implementation, administration and governance will continue to be developed with ILO facilitation.⁴⁸

(d) Spectrum Sweater (Bangladesh) In April 2005, the Spectrum Sweater factory in Savar, Bangladesh collapsed killing at least 64 workers and injuring many others. The ITGLWF and Inditex reached an agreement to create the Spectrum Relief Scheme.⁴⁹

The Scheme was initially envisioned to be 533,000 Euros, which would provide monthly pensions for the survivors of the disaster and families of workers who died, although the total amount given was not ascertained. Final payouts were made in September 2011.⁵⁰ The Clean Clothes Campaign, along with the ITGLWF and multiple Bangladeshi unions including the National Garment Workers Federation, organized a public campaign to establish the agreement and ensure its eventual implementation.⁵¹

48 *Compensation arrangement agreed for victims of the Ali Enterprise factory fire in Pakistan*, available at http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_521510/lang--en/index.htm

49 For a detailed case study of the disaster and its root causes, as well as the domestic and international efforts to establish the relief fund, see Doug Miller, *Last Nightshift in Savar: The Story of The Spectrum Sweater Factory Collapse* (2013).

50 *Spectrum Relief Scheme Finally Completed*, available at <https://cleanclothes.org/news/2011/05/01/spectrum-relief-scheme-finally-completed>.

51 *Action for safe factories in Bangladesh on 5th anniversary of Spectrum disaster*, available at <https://cleanclothes.org/news/2010/04/11/action-for-safe-factories-in-bangladesh-on-5th-anniversary-of-spectrum-disaster>.