THE CIRCLE

FASHION FOCUS : THE FUNDAMENTAL RIGHT TO A LIVING WAGE

MAY 2017

ABRIDGED REPORT

Find the 14 country reports contained within the full report at:
www.thecircle.ngo/project/a-living-wage/

The Circle is a registered NGO, founded by singer, songwriter and activist Annie Lennox to challenge and change the injustices faced by women and girls across the globe. The Circle is driven by its members who come together to inspire and inform each other and take action to affect change. Where members have a shared connection they come together in our individual Circles so that they can focus on particular issues and together utilise their skills, experiences and networks to best effect positive change for disempowered women. The Lawyers Circle is one such Circle and founded by Melanie Hall QC and Miriam Gonzalez compromises of women who work at all levels of the legal profession.

www.thecircle.ngo

We would like to acknowledge the following partners for their efforts in collaborating on this report:

Clean Clothes Campaign is a global alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries.

www.cleanclothes.org

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FOREWORD I

What struck me most profoundly when I first saw the film *The True Cost*, executive produced by Livia Firth and Lucy Siegle, was the unnecessary nature of the harm and suffering caused by the fast fashion industry. This was not an insurmountable problem analogous, for example, to climate change. It was essentially a simple problem concerning the conditions and price paid for the labour used to make our clothes, something that we have for decades now regulated without difficulty within our own countries.

Despite numerous conversations with individuals who related the seemingly unsolvable systemic issues involved, it is ultimately nothing more than a failure of will in the face of the promise of larger profits. It is something that law is there to tackle and there to solve. But whilst at an international level countries have co-operated to agree laws that prevent companies rigging the market so as to protect consumers from higher prices and have even been willing to impose criminal sanctions on directors, there has been no such drive to protect the rights of workers outside the jurisdiction of the consumer in the developed world. Poorer countries, where our clothes are produced, compete against each other for investment, selling the labour of their people at a price that cannot sustain decent lives, let alone create and grow individual wealth, the very purpose and function of work as a human endeavour. In the globalised fast fashion industry, human labour is being bought and sold as if it were a mere commodity.

But labour is not a commodity – it is not produced for sale, it cannot be stored or mobilised, it is "a name for human activity that goes with life itself".[1] The abolition of slavery involved a recognition of that fact; we accept as a moral imperative that no man, woman or child may be bought and sold, just as we must accept that their labour cannot be bought and sold at the lowest possible price irrespective of the consequences for the people affected. We expect and respect that in the European Union. And we would not contemplate it being lawful to make products within the EU using workers paid at rates insufficient to provide for even the most basic standard of living. But in the globalised economy of today, we have gone full circle to return to the times when cheap labour could be bought and shipped to the place of production. Today, instead of moving the labour, as producers used to do, the production is moved to where the labour is cheapest. And there is no possibility of regulating the labour rules in those places of production. In contrast to the position at the time of the abolition of slavery, when Britain had a vast empire and was able therefore to exert legal jurisdiction globally, no single country can now exert legal power beyond its borders in that way. The only means of exerting control is to take action in relation to those who sell within our jurisdiction. This, I predict, is how the change will come.

This Report is aimed essentially at that question, the payment of a living wage globally. It concludes that a living wage is a fundamental human right, which all States are obliged to guarantee. This report considers labour laws and minimum wages in producer states, in particular whether they provide that guarantee, and finds that very rarely does the minimum wage come anywhere close to a living wage. Companies that claim therefore to pay the minimum wage in those states are accepting that they are not paying a living wage. This in itself we consider is likely to be in breach of the UN Guiding Principles on Business and Human Rights.

Numerous people helped bring this project together. I am very grateful to them all. Particular thanks must go to the law firms and individuals from all the countries considered in this report for providing us with the necessary information, to Trust Law for giving us access to them and to the Clean Clothes Campaign and particularly Sam Maher for her advice and support. Thanks also to the lawyers at Milbank, Katherine Soanes and her team, those at Olswangs, Selina Potter, Rebecca Platt, Cathryn Hopkins as well as Joanne Cash and Alicia Vidon. Huge thanks to Sioned Jones and Clare Crosland, who made the report happen and finally, of course, to Lucy Siegle and Livia Firth for their inspirational energy and commitment to bringing an end to this cruelty.

Jessica Simor QC, The Lawyers Circle.

FOREWORD II

Back in 2011, the lectern at the UN climate change conference was given to a 21-year-old student from Maine University to speak on behalf of her nation's youth. She did not waste her opportunity. "You have been negotiating all my life!" said Anjali Appadurai with feeling, to an audience of world leaders who had failed to protect the most essential of human rights.

Anybody who has been involved in trying to secure the implementation of basic social and environmental justice tenets in the fashion industry will recognise Appadurai's frustration and final rousing call to "Get. It. Done!"

For over two decades the predominant fast fashion system of manufacturing, distributing and retailing clothing has reigned supreme. Even a disaster of the magnitude of the collapse of the Rana Plaza complex on 24 April 2013 failed to shift the dial on the fundamental injustices inherent in this system. Indeed, when it comes to a living wage–a vital component of real change–despite multiple reports, criticisms, pledges, voluntary actions on behalf of implicated multinational brands and impassioned civil society campaigns there has been little to no progress.

In effect, we have been left with a curriculum for change that is set by multinational fashion brands. This emphasis and purview has a tendency to lead fashion justice advocacy down dead-end alleys. A recent report from New York University's Stern Centre for Business & Human Rights concludes that too much emphasis is put on transparency (self-declared by brands) rather than outcomes.[2] Overall, as Sarah Labowitz (co-author of the above report who has researched the apparel supply chain) warns that current fashion advocacy and stakeholder programmes display undue deference to multinational companies, allowing them in effect to define the scope for human rights reforms (not least by relying on the industry data they supply).[3]

To return to the quote from Appudurai's speech, garment workers–like the climate change activists in 2011–would surely like to know, "what does it take to get a stake in this game?"

Well, in 2015 a group of over eight hundred Dutch citizens decided to find out. They sued their government on the grounds that it had knowingly contributed to a breach of the 2C maximum target for global warming. The Hague ruled in their favour, ordering the Dutch government to take action to cut greenhouse gas emissions by a quarter within five years. For the first time a court had ordered a state to protect its citizens from climate change.

Now that was quite some victory. At the time James Thornton, CEO of the environmental law organization ClientEarth described the use of the principles of tort law as "remarkable". "A major sophisticated European court has broken through a political and psychological threshold", he said.

Influenced by the successes achieved by climate change activists and mindful of the way they broadened the advocacy base, we have long been in search of a similar breakthrough around labour rights injustice in the global garment industry.

Suffice to say, as members of the The Circle (Livia is a founding member) when we had the opportunity to put this issue in front of The Lawyers Circle – our fellow members who use their skills from their legal professions to progress social justice – we grabbed it with both hands.

They did not disappoint. The Lawyers Circle member Jessica Simor QC, one of the UK's leading specialists in human rights and public law created a team to join the dots between international law, the fashion industry and human rights. Together they created a substantive research project taking evidence from 14 major garment producing states across the globe, via a network of legal professionals based in those countries. Using this evidence, and working with industry experts and committed campaign organisations they make the legal argument that the living wage is a fundamental right.

This report by highly experienced legal professionals is crucial in order to drive real, substantive change. It represents a clear-sighted and thorough contribution to this industry,

providing long-awaited legal framework to the living wage debate and delivers the type of ambitious advocacy we've been waiting for.

Livia Firth and Lucy Siegle, The Circle

FASHION FOCUS: THE FUNDAMENTAL RIGHT TO A LIVING WAGE

Context and Background to this Report

Almost every research project such as this, arises from the need to solve a problem. In this case, the issue of labour rights, and more specifically failure to ensure that employers pay no less than a living wage remains a stubborn and persistent problem for the global fashion industry. It impacts, of course, on the reputation of the industry; at this stage, there is no doubt that the global garment industry is known for exploitative practices. But our driving motivation here is not the reputation of the fashion industry; it is the fact that a failure to guarantee a living wage has resulted in millions of workers being condemned to work only to survive, without sufficient income to pay for a basic, decent life. And this, despite the fact that over the past century an international consensus has developed that abusing individuals in this way, namely as "workers" paid less than necessary to support a decent life, is impermissible.

Engineering a breakthrough and making this internationally accepted fundamental principle a reality is crucial within the garment industry. To date, efforts to prevent labour exploitation have tended to focus on non-binding measures, in other words voluntary codes and initiatives designed, implemented and monitored by the retail companies that control the supply chain, and normally developed in response to negative publicity generated by investigations carried out by NGOs or the media. To put it bluntly, this strategy is not working. It has had a limited impact on labour conditions in general and virtually zero success in improving wages.

Broader Advocacy and a Legal Perspective

Broader advocacy is a must. This initial report brings together information about living wages and co-ordinates with industry experts and established campaigners. The latter group in particular should be credited with creating advocacy that has continued to attract public attention. Thanks to them we know that citizens expect more and will not brook excuses indefinitely. But in this work we add a component: high profile legal firms and the input of experienced legal experts in order to set the debate on living wages in the garment industry within a clear legal framework.

This report, underpinned by a substantive research project, is based on bringing together campaigners and grassroots activists, supported by industry experts with high profile legal firms and well-respected legal professionals working across the world, including in so-called "hot spot" textile importing countries.

Participants in this Process

The Circle is an NGO founded by Annie Lennox, the acclaimed singer, songwriter, human rights and social justice campaigner and philanthropist. A women's rights organisation, it exists to empower the most marginalised women who are unable to realise their rights. Campaigners for fashion industry reform Livia Firth (founder member) and Lucy Siegle are members of The Circle.

Within The Circle is The Lawyers Circle, a collective of members who work within the legal profession, which was founded by Melanie Hall, QC and Miriam Gonzalez. Members of The Lawyers Circle lend their skills, network and resources to support and promote the rights of disempowered women worldwide.

Given the aims of The Circle, it was entirely fitting that The Lawyers Circle would lend its expertise in an effort to help clean up the industry. Because above all this story of a vast globalised workforce stretching through some of the lowest wage economies on earth, is a story about women and their status in the globalised economic system. Out of the 60-75 million people involved in the global garment industry, 85% are women.

The lion's share of the international market is occupied by brands and retailers producing clothing via a rapid-response system of outsourced production that has come to be known as "fast fashion". The social justice and environmental fallout of this system are well known. In the documentary *The True Cost*, these issues are explored in the aftermath of the horrific collapse of the Rana Plaza complex in Savar, Bangladesh. The film is produced by Livia Firth and Lucy Siegle and attracted the attention of fellow Circle member, Jessica Simor QC, one of the UK's leading specialists in human rights, EU and regulatory law.

The Clean Clothes Campaign (CCC) is a global alliance of organisations which campaigns to promote and protect the fundamental rights of garment workers worldwide. A key objective is to secure living wages for garment workers. Together with the CCC, Jessica Simor began to explore how The Lawyers Circle might strengthen advocacy for justice in the global garment industry, focusing on a living wage.

The Scope of the Research Project

The aim of this report is to set the debate on living wages in the garment industry within a clear, legal framework. To that end, the report sets out the legal basis for a living wage being recognised as a fundamental human right and describes the duties of actors along the supply chain to fulfil and uphold that right.

To arrive at this point, participants needed an accurate snapshot of the current state of law in jurisdictions important to the global garment supply chain (importing countries known as textile "hot spots"). The research project underpinning the findings of this report gathered detailed summaries from 14 countries where garment exports to the USA and to the EU create a major reliance on the industry for export earnings and employment.

In order to achieve these important summaries from each of our 14 countries, 14 law firms in each of the countries responded to a detailed questionnaire put out by the Lawyers Circle, with the assistance of CCC and Trust Law.

Results from 14 Major Garment Producing Countries

The resulting country reports provide a summary of the current law on wages, benefits, social security (and other labour laws likely to impact on wages), look at wage setting mechanisms and the legal mechanisms available to workers to enforce the legal obligations of the state. In addition, trade zones within the jurisdictions have been examined to see how they might affect wage legislation.

Specifically, from each we collected country-specific data in order to determine whether the minimum wage legislation in those states provided for a living wage. The conclusions from each allow us to consider whether these states come anywhere close to guaranteeing the fundamental right to a minimum wage, meaning a "living wage"

(*Each of the 14 country reports can be found at the end of this report.*)

Outcomes and Next Steps

It is our intention that the report will inform advocacy at both a national and an international level. We are hopeful that its existence and content can provide an important tool in pushing for concrete and effective action, as well as a resource for those working in the fashion industry and using labour in the countries concerned.

We are aware of course that legislation to protect wages and labour rights is only half the story; ensuring that enforcement is adequate and effective is another significant hurdle (we

touch briefly on that question in relation to each country covered).[4] This report represents a first step.

But it should now be used to highlight best practices, to identify weakness in wage setting mechanisms, to lobby for stronger national laws and to define responsibilities for enabling living wages along the supply chain and to help develop policy for using international mechanisms, including potentially trade agreements, to ensure that states guarantee garment workers the right to receive a living wage and retailers and manufacturers themselves comply with that obligation.

A Timely Intervention

There are now strong grounds for arguing that countries which fail to ensure that workers within their jurisdiction are paid a minimum living wage and are legally protected from abuse and exploitation, act unlawfully as matter of international law. That illegality may have trade consequences; importing states may take protective measures (both for moral and competitive reasons; labour standards constituting "social dumping"). Indeed, it is increasingly likely that there will be legislative responses by importing countries with prejudicial consequences for a producer state's ability to attract investment. For example, recently the EU adopted a resolution put forward by Spanish MEP Lola Sánchez Caldentey asking for the EU to use its powers to set common rules that establish mandatory human rights obligations on partner countries in relation to the garment supply chain.[5]

It would be premature to suggest that the net is closing in comprehensively on those who fail to guarantee and implement labour rights. However, it is notable that the European Commission (EC) recently issued a letter to Bangladesh warning of the temporary withdrawal of GSP benefit should the country fail to demonstrate to the European Parliament, Council of Minister and to civil society that it is taking concrete and lasting measures to ensure the respect of labour rights.[6]

Another sign that legislators are increasingly willing to step in is the recent French corporate "duty of vigilance law", which, despite limitations, shows that respect for human rights and the environment can be legally mandated into business activities. Adopted by the French Parliament in February 2017, it establishes a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship.[7]

The Fashion Industry Cannot Be a Special Case

Some critics of such measures suggest that the fashion industry should be seen as a special case; one with an offering so popular with the consumer (and so profitable) that an exemption from labour rights might be seen as a trade-off. Similarly, it is sometimes said that the characteristics of the system, which conspire to create a so-called "race to the bottom," are built-in and unavoidable. We do not accept either of these two arguments. There is nothing inherent or "built-in" about paying wages insufficient to support a basic livelihood. And it is that payment of below basic living standard wages, which itself creates the race to the bottom, that is, the movement of capital in search of ever-cheaper labour. Labour is treated as equivalent to any other commodity; water, fuel, power. And it is that fundamental error in approach that needs to be recognised and corrected, in particular within this sector.

There can be no exemptions or deals to be done regarding wages and labour rights. There is an urgent need to develop proposals to ensure minimum international standards that set a floor on this race to the bottom.[8]

EXECUTIVE SUMMARY

A Moral Truth: Labour Is Not a Commodity

We shall soon mark the centenary of the end of WWI. Among one hundred years of memory, the fact that this marks an important international agreement regarding labour law might go unnoticed (perhaps understandably the ancestral sources of labour laws do not often get top billing).

But in 1919 the idea that there was a relationship between poverty and peace had major traction. Indeed when 32 countries met in Paris to broker the peace that delegates hoped (against hope, as it transpired) would "end all wars", the protection of wages and the status of labour represented a critical issue. Here we see the founding of the International Labour Organisation (ILO), advancing a just relationship between workers and employees and based on the moral principle that "labour should not be regarded merely as a commodity or as an article of commerce".

That same principal was incorporated in Article 427 of the Treaty of Versailles. And as the complex conference progressed, a delegation from Paraguay drew on this absolute rejection of labour commodification to propose the setting of minimum wages.

This backdrop is not just a historical footnote, it serves to remind us that for more than a century international law has recognised the right to wages sufficient to support the basic needs of a family. These are known as "living wages",[9] or, put another way, an "adequate minimum wage". Numerous states have recognised this right through their domestic legislation and in some instances, even by way of constitutional guarantees.[10]

Introducing the Race to the Bottom

How is it then that we find ourselves at a point where we are experiencing a revival of the sort of exploitation that those states participating in the 1919 peace conference agreed to consign to history? Indeed, at a point where this exploitation has become a part of the global economic model.

The ILO estimates that more than USD 150 billion of profits derive from slavery and forced labour and that more than 40% of the world's population lives on less than USD 2.50 a day.[11]

"In an increasingly globalised world, companies source goods from factories where people work in conditions and for wages that would be illegal, and likely criminal, in the main market places for those goods."

The Global Slavery Index defines "modern slavery" as referring to situations of exploitation that a person cannot leave because of threats, violence, coercion, abuse of power or deception. In the RMG (ready-made garment) industry, dominated by outsourced production for fast-fashion, modern slavery undoubtedly exists. Indeed, it is notable that guidance for consumer companies on the UK Modern Slavery Act from multinational asset management company Shroders warns "apparel firms are also susceptible to the risk of modern slavery through their sourcing of cotton, leather and ready-made garments", placing apparel alongside risk-laden sectors such as tobacco."[12]

But this report does not attempt to establish the "slavery footprint" of the RMG industry. Rather, we have concerned ourselves with the failure in the RMG industry to pay wages sufficient to guarantee a basic decent livelihood. Focusing in particular on employment protection legislation, we have looked specifically at the failure of states through legislation and enforcement to **guarantee a living wage**.

The Global Apparel Industry: Spectacular Profits and Low Wages

In many ways, the readymade garment industry stands as the poster child for this system. The industry is eye-wateringly remunerative with global revenues of USD 3000,000,000,000,000 (3,000 billion or three trillion).[13] It is an industry that has a tendency to dazzle, and later in this report we consider the dominant fast fashion system of garment production in more depth, but it is worth taking a quick look behind the curtain here too.

Our wardrobes, fashion-purchasing patterns and the industry that produces our garments are almost unrecognisable from 20 years ago. Add to this the vast global expansion of the garment industry that has occurred since the phasing out of quotas in 2005 and you can see we have undergone something akin to a fashion revolution. But the power is not distributed equally. Transnational fashion corporations hold most of the cards. They can quickly move their production to the lowest wage states. Meanwhile, the economies of producer countries have become highly dependent on the sector. In short, a mobility of capital and immobility of labour has created a so-called **race to the bottom.**

One of the key characteristics in offending value and supply chains is the payment of wages to workers for long hours of intense labour that come nowhere close to being sufficient for the most basic requirements of a decent life.

How intense is this work? Well, in the global garment industry the intensity of labour almost has to be felt at a gut level to be believed. (No wonder some of the most effective awareness-raising has come courtesy of experiential TV documentaries such as the *Sweatshop: Dead Cheap Fashion* series, commissioned by Norway's Aftenposten newspaper who sent teenagers to work in Cambodian RMG facilities).

Campaigning NGO the Clean Clothes Campaign reminds us that the rewards for this intense labour are, by and large, pitiful, and that the failure of the RMG industry to provide living wages for millions of workers has resulted in many developing “coping strategies, despite poverty wages”.[14] Reviewing the effect on “poverty wages” of garment workers in Eastern Europe and Turkey (acknowledging, as we do in this study, that wages aren’t just an issue in South Asia), the CCC found female garment workers employing a number of such survival strategies: taking out high-interest loans to pay for school books for children or utility bills and avoiding the expense of necessary medical treatment.[15]

However, some effects are harder to conceal than others, namely malnourishment. In surveying for the 2013 report *Shop ‘Til They Drop*, campaigning organisation Labour Behind the Label found that female garment workers could only afford to eat half of the calories needed to sustain 10 hours of industrial work[16, 17] and as a result would frequently faint at work. It is difficult for anyone to describe this as “decent work”.

The lack of implementation of anything approaching a living wage in the industry directly fuels long hours, another characteristic of the RMG industry. As the basic salary of most garment workers is not a living wage, they are obliged to accept as much overtime as possible, even avoiding mandated breaks (required by codes of conducts). According to a 2015 survey, again of Cambodian workers, “[n]early all (87 per cent) of the workers needed to do over-time job in order to get extra income to support their everyday living conditions”.[18]

The Truth about Women’s Work

As we have already acknowledged, this workforce is predominantly female. Between 60-75 million people work in the textile, clothing and footwear sector worldwide. Near to three quarters of them are female.19

In theory, this should constitute an opportunity and should represent a shift toward gender parity and the harnessing of women’s full potential. If that were the case, in South Asia alone–the site of some of the important RMG producer countries–it would result in an increase in GDP of more than half by 2025,[20] which is quite some prize!

But as academic Beth English puts it, **"**women's labour within the textile and garment industries is particularly suited to the dynamics of production along the global assembly line […]. It is cheap both in terms of prevailing wage levels and in terms of the unhealthy and unsafe conditions under which women often work".[21]

Plenty of Noise but Little Progress

When it comes to the implementation of a living wage by fashion brands, if success were measured by the number of reports, initiatives, roadmaps and pilot projects, then we would be substantially further along than we are today.

Campaign organisations advocating better conditions and wages are often unimpressed by pilot projects set up by brands to support factory owners in developing pay structures that enable a fair living wage.[22] Meanwhile, as we note in our conclusions below, living wage commitments by brands often contain a temporal disclaimer, implying that they are something that will be achieved "eventually", "in the future" or when various benchmarks or agreements have been reached or worked out; a lack of consensus on how to calculate or what actually constitutes living wage is often cited as a reason for these delays.[23]

It is widely accepted, that as stated by our NGO partners: poor labour conditions and wages well below that necessary for a decent life persist and we are not convinced that there is any sign of them diminishing without the right intervention.

A SUMMARY OF KEY FINDINGS

Against this backdrop, we have worked to produce this report and its conclusions. Part of our findings have been based on the surveying of 14 countries that have large garment manufacturing industries (using Trust Law's network of lawyers based in those host countries). In each we collected country-specific data in order to ask the question of whether minimum wage legislation in those states provides for a living wage. The conclusions from each allow us to consider whether, as a matter of international law, states comply with the obligation to guarantee the fundamental right to a minimum wage, meaning a living wage".

This report considers that a minimum wage, meaning a "living wage", now constitutes a fundamental right accepted at an international level, which states are accordingly obliged to guarantee. In the light of that, we consider that, as recognised by the second pillar of the UN Guiding Principles on Business and Human Rights (UNGPs),[24] where companies choose to produce or source their goods from states where that fundamental right is not guaranteed, as a matter of law or practice, they must, as a minimum, themselves take steps to ensure that the people who make those goods are guaranteed this right.[25] That is a responsibility that falls on the relevant company, it being aware that the state does not ensure the right.

If the commitment from fashion brands is real, the change can and must be made now. A large number of companies have already made a commitment to pay a living wage. However, they have generally done so only in relation to the future.[26] This report concludes that that is not enough.

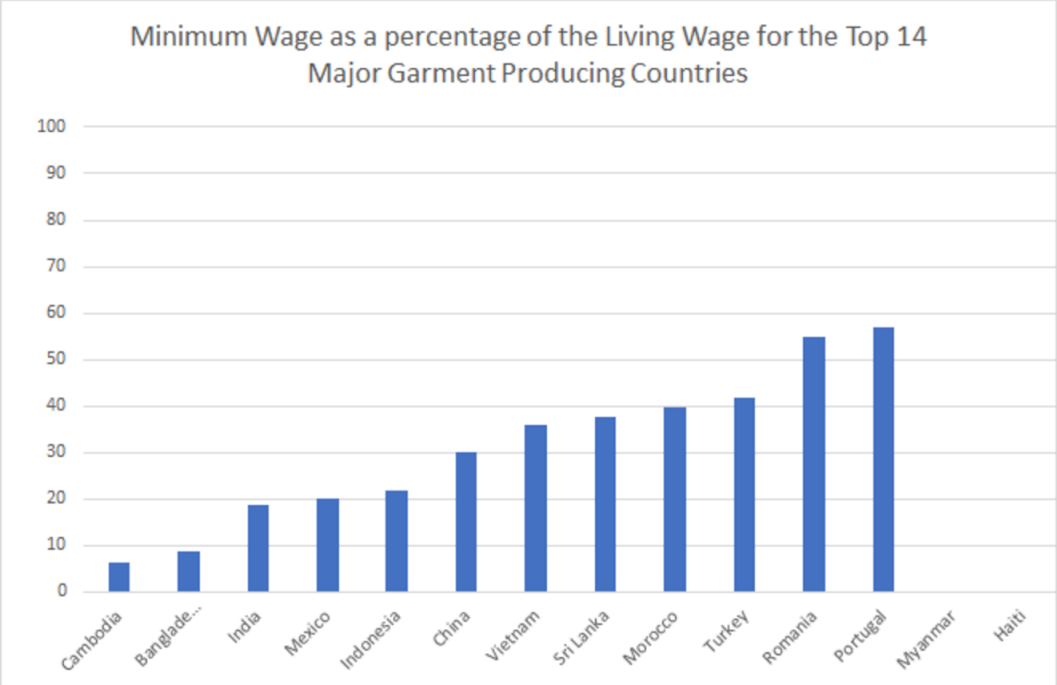
In that regard, we note that very large companies with enormous turnovers and profits frequently state in their published codes of conduct/due diligence and sustainability reporting that they pay the "national minimum wage". In the context of garment manufacturing in the main RGM countries, they do this knowing that that the minimum wage comes nowhere close to a living wage. Such companies are therefore fully aware that their goods are produced in breach of fundamental rights and established international labour standards; that they are the product of exploitation. Far, therefore, from the payment of minimum wage being an answer by companies to a claim that they do not comply with international standards, in relation to many RMG producer countries, it provides confirmation of non-compliance. Any company that claims it satisfies human rights and international labour standards by paying the minimum wage in a country where that wage comes nowhere close to a living wage has necessarily therefore failed in its duties to ensure such compliance. Put simply, it is aware of its non-compliance.

This report does not accept the argument by companies that it is not practically possible for them to ensure that a living wage is paid. P**aying the legal minimum wage cannot be a legitimate excuse for failure to ensure that such a wage is at least arguably a "living wage"**. It is clearly open to large companies either to source their goods only from states that ensure that their legal minimum wage is a living wage (and provide for enforcement), exercising sufficient due diligence to prevent sub-contracting. Or, alternatively, to open up their own production units in countries where the legislation provides inadequate protection, and thereby ensure that they are able to pay the people who make their goods a living wage.

It is also important to develop the policies and institutions that will place them in the best conditions to do so. On the garment producers' level, it is essential to promote pay systems that would better link wages to skills and performance, and also promote social dialogue mechanisms that will lead to regular wage adjustments negotiated/discussed with workers' representatives. On the companies' side, it is also essential to promote purchasing practices - including on prices - that will lead to a better redistribution of the value added along the global supply chains.

Lack of clarity or consensus on precisely how a living wage should be calculated cannot be a legitimate justification for paying wages that on no calculation could be said to constitute a living wage. We do not accept the arguments made that as it is not possible to agree precisely how a living wage should be calculated this is justification not to pay a living wage. We note that there are numerous studies that have dealt with this issue on a country by country basis and that these studies have been published for decades.[27] This study looks in particular at the vast difference between "minimum wages guaranteed in the domestic law of States and what on any

scale of measures could be said to constitute a "living wage". Of the countries analysed the lowest minimum wage[28] is just 6% of the living wage with the best, Portugal, at just 57%.



Accordingly, by highlighting the vast difference in most RGM countries between the legal minimum wage and a living wage, this Report concludes:

First, that it is not good enough for manufacturers or retailers simply to say that those who produce their products are paid "the minimum wage" guaranteed in the relevant country. Where the "minimum wage" does not come close to a "living wage", such a claim is an admission that the company's goods are produced in breach of fundamental rights and international labour standards.

Secondly, in the near future, some enforcement/control mechanism is needed to ensure that producers/retailers who choose to use labour in countries where the minimum wage is in no sense a living wage take all reasonable steps to ensure that the workers who produce the goods that they sell are paid a living wage. While self-regulation should be enough, in reality it has manifestly proved ineffective.

Ending the Race to the Bottom

As we have acknowledged here, one of the reasons that the right to a living wage has never become a reality for millions of garment workers across the globe is that states compete for inward investment, that is, the use of production capacity by foreign companies. This competition for cheap labour currently disincentives states from ensuring proper labour standards and regulating wages effectively; states are aware that by legislating for higher minimum wages they potentially lose investment from producers and retailers who move to other (less regulated, lower wage) countries for their supplies. This defines the so-called race to the bottom.

We consider that requiring companies to take responsibility for a decision to make or source their goods from states where the legal minimum wage is not a living wage has the potential to change state conduct.

If companies are themselves obliged to act to ensure that the people who produce the goods they sell are paid a living wage, this will in turn incentivise states to ensure that their minimum wage legislation provides for a minimum "living wage".

If companies are themselves obliged to act to ensure that the people who produce the goods they sell are paid a living wage, this will in turn incentivise states to ensure that their minimum wage legislation provides for a minimum "living wage".

A new architecture is needed for the global garment industry. Compliance with the UN Guiding Principles, by reference to the fundamental right to a living wage and principles of international labour law established nearly a century ago can put an end to the race to the bottom, stopping states from selling their people's labour at less than the price of a decent life.

CHAPTER 1

Fast Fashion

The Rise and Rise of Fast Fashion

Over the last 25 years there has been nothing short of a revolution in our wardrobes. As many commentators have observed, the way we get dressed today has little in common with the way previous generations acquired clothing. Global clothing production doubled between 2000 and 2014[29] and at the same time we have experienced extraordinary deflation in clothing prices. Between 2003 and 2007, for UK consumers the retail cost of clothing fell by an average of 10% in real terms.[30]

Since then, there has a slight uplift in price–typically caused by fluctuation in currency valuation and an increase in raw material prices–and the era of super cheap clothing is widely thought to be over. However low cost, high trend apparel–responsive to an increasing consumer appetite for Instagram-ready fashion–continues to dominate. As many commentators have stressed, it is now completely possible to buy on-trend fashion pieces at the same price you would purchase a coffee and a panini.

Behind the scenes, there has been an immense re-ordering of manufacturing to facilitate this shift.[31] This adds up to **fast fashion**, a business strategy that is hyper-globalised and focused on logistics. A particularly concise and pointed definition is provided by the Chairman of retail analysts Chainge Capital, John Thornbeck, “Fast fashion is the rapid translation of design trends into multi-channel volume”.[32]

Although fast fashion is only a subset of the fashion industry, it is the pre-eminent force. As the name suggests, speed to market is everything and so the entire supply chain is engineered to ensure as small a time lapse as possible between the design stage and final production. Fast fashion supply chains are not only more complex than traditional apparel retail chains, but they rely on “postponement strategy”, where raw materials are only transformed into final garments at the last possible minute.[33]

This flexibility allows multinational brands to be hyper-responsive to fashion trends and other factors such as weather. No retailers want to be left holding unsellable stock. The fast fashion system in effect shifts risk on to other parts of the supply chain, primarily on to the “cut, make and trim” (CMT) phase of assembly.

In short, a process that once took months is now condensed into a matter of days. Among all the fast fashion corporations, Inditex, owner of the Zara brand, is famed for contracting this process into 10-15 days,[34] setting the industry standard that other multinational brands must increasingly compete with.

Where Did it All Begin?

As fashion knows too well, all trends originate somewhere. The shift towards faster and more flexible production and lower prices (now commonly known as “fast fashion”) was accelerated by the phase-out of the Multifibre Arrangement (MFA) and then the Agreement on Textiles and Clothing (ATC), which ended all quotas in this sector in 2005, [35] bringing the retail garment sector under the normal WTO regime.[36] The end of the quota system that had governed trade since 1974 exposed the industry to global competition, and to greater rivalry for foreign investment and employment generation opportunities among production countries.[37]

The Age of Outsourcing

Some 60-75 million people now work in the global garment supply chain[38] and the cut, make and trim phase (CMT) of production in the readymade garment industry (RMG) commands the majority of this workforce. For the fast fashion business model to work, this RMG workforce must be similarly low cost, flexible and reactive.

To achieve this the RMG industry has been aggressively outsourced. Indeed, vertically integrated factories–where all or most of the processes are kept within the company–have become increasingly rare. Instead they have been replaced by a decentralised network of production, comprising thousands of independent factories (contract manufacturers), spun out across the globe. Despite diverse geographical locations, they have something in common: they offer some of the lowest wage rates and worst labour conditions on earth.

It is at this point in the fashion supply chain that the pressures of huge volume orders (on the part of western brands) and the demand for speed and low cost conflate to produce working conditions that are frequently described as "dismal" and, in some circumstances, have become downright unsafe. It cannot be forgotten that the worst industrial accident happened in this industry: on 24 April 2013, the Rana Plaza complex collapsed in Savar, the garment district of Dhaka, Bangladesh, killing 1,334 garment workers. Many commentators saw this catastrophe, and similarly the Tazreen fire disaster of 2012, which killed 117 workers, as inevitable given failures inherent in these supply chains.[39]

Women's Work

It is notable that sometimes the fast fashion supply chain is talked of in language reminiscent of the development and NGO sectors, particularly in terms of increasing female participation. And it is true: young women comprise a high share of employees in the clothing industry, which is often one of the few accepted forms of contractual labour for women in many developing countries.[40] Taking major RMG producing hotspot Bangladesh as an example, Dr Maximilian Martin, founder of Impact Economy, who has researched the global garment industry notes:[41]

[…] there are 4 million garment workers in Bangladesh alone (out of a total labor force of 47.3 million), representing more than 90 percent of the country's labor force in manufacturing. Women constitute over 3.2 million or 80 percent of this labor force. […] The average household size in Bangladesh is 4.8 people. This means that the livelihood of 15.5 million people depends substantially on women working in the garment sector, or roughly 10 percent of the country's population.

But as Martin also notes, while the work could potentially provide a source of female empowerment, it fails to deliver:

[…] women remain easy targets for exploitation and discrimination. Often unmarried and with poor education or training, women enter urban employment with a comparative disadvantage in terms of pay, working conditions and the possibilities of promotion.

Indeed, study upon study confirms that, far from empowering women, the fast fashion supply chain conspires to exploit them. Concentrated in the lowest stages of production, there is a significant wage and opportunity gap between women and men in the RMG industry. Women might be preferable hires but that is often because they are considered more expendable (and cheaper) than male counterparts. They are considered less likely to agitate for their rights (including being paid on time and in full) and less likely to organise and join a union. They are often subjected to humiliation, intimidation, sexual assault and violence.[42] Despite making up just between two to three per cent of the population of Dhaka, the capital of Bangladesh, 11% of rape cases involved female garment workers.[43]

In reality, a "career" in fast fashion for a young woman in Bangladesh will probably last no longer than a five-year stint in Dhaka (often being forced to leave children behind in the village of origin to be looked after by relatives). After five years toiling in dismal working conditions a woman will be let go and replaced by a younger, more compliant, less exhausted model.

Amplified Risk

Although this report is primarily concerned with wages in the RMG sector, the making of garments is a complex business not least because fashion is a full spectrum industry, taking in all parts of the production chain from the growing of the cotton boll (one-third of the world's textile fibre use is cotton[44]). Therefore, the industry involves intrinsic risks at all subcontracting levels: child labour in cotton fields and workshops (Uzbekistan), forced labour, hidden labour, non-compliance with the principle of decent wages, prohibition or restriction of trade union

freedom and freedom of association, over-exploitation of workers, non-payment of overtime, endangering workers' health (use of banned chemicals in dyeing textiles).

The reality of those risks is unacceptable both legally and morally. Developed countries have long prohibited such labour conditions in their own territories. There can be no justification then for companies being allowed to exploit foreign labour in a way that would be criminal in their home states and to be able to sell those goods to consumers at home.

Moreover, countries that do provide proper protection for workers, increasingly see states that do not protect their population from labour exploitation as unfair competition, resulting in jobs being moved away from their population. Countries should not be put in a position where they have to choose between "economic growth" and decent labour standards; competition between countries for the lowest standards of labour protection and the lowest wages must be brought to an end.

The Spoils of Fast Fashion

At the retail end of the global garment industry, concentrated into the hands of the transnational retail brands and sourcing groups, the numbers are eye-popping for different reasons. Overall the fashion industry enjoys global revenues of USD 3000,000,000,000,000 (3 thousand billion or 3 trillion).[45]

Unsurprisingly, fast fashion brands make up a large slice of this profit pie. By the end of January 2017, H&M operated 4,351 stores in 64 markets and Inditex (owner of Zara) operated 7,292 stores across 93 markets worldwide**.** The latter recorded same-store sales growth of 10% in FY16 (ended Jan 2017), representing the fastest rate in 14 years, with total sales reaching EUR 23.3 billion over the same period.

Fast fashion, a compelling proposition for consumers, is also the powerhouse for the retail economies of developed countries. In terms of consumption, more than half the world's clothing retail is concentrated in North America and Europe. North America represents 25%; Western Europe, 27%; Eastern Europe and Turkey, 10%, and Japan and the Republic of Korea 13%. The rest of the world represents 25% of the total.[46]

And yet, despite this wealth, the industry is dogged by an inability to provide decent working conditions and living wages. According to Bangladesh activist Nazma Akter (a former child garment worker) prices offered by buyers placing orders for western brands in Bangladesh have dropped by 20% over the last decade.[47] Unsurprisingly this has lead campaigners and activists to call for these immense profits to be disgorged for the benefit of garment workers.

Where Will Fashion Go Next?

It is notable that the global garment industry shows no signs of slowing down. Multinational fashion brands must necessarily jostle for market share given that their business models are predicated on expansion. Recent industry-analysis from BMI Research suggests that "**fast-fashion** retailers will continue to be the major source of growth in the global apparel market, stealing market share from department stores and traditional mid-market rivals".[48]

Since the opening up of Myanmar, many top international apparel brands including Adidas Group (Germany), Gap (USA), H&M (Sweden), Marks & Spencer (UK) and Primark (UK) now source their products from factories there.[49] This should also be instructive: lower labour costs act as an inducement to producers to move their production.

However, it is not easy to predict where fast fashion will go next. In search of Inditex's "double-digit growth",[50] there is also pressure on other major fast fashion brands to follow suit and switch to a "dual sourcing" model to ensure even greater speed–Inditex produces around 50% of its inventory close to Spanish distribution points, utilising bases closer to Europe.[51] This could prompt a copy-cat shift from brands who predominantly source in Asia looking for bases closer to retail markets.

While location is difficult to predict, labour competition (brought about by the vast expansion in trade in this sector since 2005) has resulted in a reduction in clothing prices. For instance, in China prices were reduced by 30% from the period prior to the end of the MFA, and the average price of garments imported by the United States from China in 2013 was lower than in 2008.

Garment prices in Bangladesh decreased by 40% in mid-2000. Similar price reductions have also been reported in other countries.[52]

The Urgent Need for Change

The revolution in fashion consumerism and manufacturing has not been matched by a revolution in standards on wages and working conditions. While a few individuals continue to argue that the current human suffering is a necessary phase in development and that it would be economically harmful to end it (just as was argued by the anti-abolitionists), it is generally recognised that there is no need for it; neither cheap clothes nor corporate profits provide a reason for it or a justification. So why isn't there a huge shift? As the ILO notes, the fact that the textile, clothes, leather and footwear (TCLF) sector is shaped predominantly by large companies that decide what is produced, where and by whom, with production moved quickly from one country or region to another, means that public policies are important; governments can create an environment conducive to TCLF growth, while ensuring a social framework that combines appropriate regulation, law enforcement and capacity building for local companies.[53]

But what are the Current Obligations by Stakeholders in the Fast Fashion Industry?

The ILO estimates that more than USD 150 billion of profits derive from slavery and forced labour. In 2016, the Global Slavery Index estimated that 45.8 million people were trapped in modern slavery; subject to forced labour, poor working conditions and other bonded forms of labour. Substantial parts of the clothing industry are implicated in the use of such labour, and, in particular, the fast fashion industry. However, a vastly larger number of people within the RMG sector are paid wages well below that necessary to pay for a basic decent life and deprived of essential labour rights, including collective bargaining and safe working conditions.

The UK Parliament enacted the Modern Slavery Act of 2015 which provides for a requirement that companies over a certain threshold (GBP 36 milllion) produce a "slavery and human trafficking statement", setting out the steps it has taken during the financial year to ensure that slavery and human trafficking is not taking place (i) in any of its supply chains, and (ii) in any part of its own business, or (b) a statement that the organisation has taken no such steps, which must be published on its website.[54] Such legislation puts the onus on companies to check and inform the public about their supply chains. The potential benefit of this is that consumers will at the very least be able to see what a company claims to have done to check its supply chain. Any false information or claims will give rise to breaches of the Unfair Consumer practices legislation, which in the UK could amount to a criminal offence.

On 21 February 2017, the French Parliament (the Assemblée Nationale) adopted a more rigorous piece of legislation defining a duty of vigilance for parent companies and their subcontractors. It was passed by the Constitutional Court and came into force in March 2017. The law, which applies to large companies operating in France, requires them to establish mechanisms to prevent human rights violations and environmental damages throughout their supply chain. Companies subject to the legislation must establish and effectively implement a vigilance plan, which shall include reasonable vigilance measures seeking to identify and prevent human rights violations, breaches of fundamental freedoms, violations of health and safety rights of people, as well as environmental damages. The plan should cover the parent company, companies under its control, as well as the suppliers and subcontractors with whom the parent company or any of its subsidiaries have established a commercial relationship. The content of this plan may also be specified by a judicial decree. If the company does not prepare the vigilance plan and fails to comply with the formal judicial notice, it may be sanctioned with a civil fine of up to EUR 10 million. The amount of this fine may reach up to EUR 30 million if failure to develop a plan leads to injuries that could have otherwise be prevented.

At the EU level, by a 2011 Communication, the Commission set out the EU strategy for corporate social responsibility.[55] This led to Directive 2014/95/EU amending Directive 2013/34/EU regarding the disclosure of non-financial and diversity information by certain large undertakings and groups, which imposes reporting requirements on enterprises having more than 500 staff. On 26 April 2017, the Commission published a *Staff Working Document on Sustainable Garment Value Chains* through EU Development Action, which sets out its ongoing interrelated strategies.[56]

In the US, supply chain responsibility is largely imposed through trade rules. In February 2015 President Obama signed in the Trade Facilitation and Trade Enforcement Act (H.R. 644), section 910 of which strengthened restrictions on the import of goods into the United States produced with forced labour, closing a loophole that existed in the Tariff Act of 1930 which allowed import of such goods if the product was not made in high enough quantities domestically to meet the US demand. Under the Trade Enforcement Act, the US Customs authority can issue "withhold release" orders, which prevent goods from entering the country because of suspicions that they were made using forced labour.[57] According to Customs and Border Protection Commissioner Kerlikowske: "CBP will do its part to ensure that products entering the United States were not made by exploiting those forced to work against their will, and to ensure that American businesses and workers do not have to compete with businesses profiting from forced labour." Effective enforcement of this provision potentially provides incentives to business to protect their supply chains from forced labour to guarantee all of their imports are cleared for entry into the United States.[58]

The OECD is in the process of adopting Guidelines addressed specifically at due diligence requirements in garment sector.[59]

Nevertheless, despite the obligations of companies contained in the UK, French and US legislation, the legal position remains insufficient to ensure that clothes sold in the EU and US are made by workers paid at a minimum living wage and provided with decent working conditions. Laws on supply chain transparency alone cannot counter companies' interests in maximizing profits through squeezing labour costs. In the absence of clear prohibitions backed by sanctions for labour exploitation, these measures will remain inadequate. Therefore, while a useful first step, supply chain accountability is insufficient; it does not and could not discharge both companies and states from their obligations to ensure protection of individual fundamental rights.

CHAPTER 2

The International Obligation to Ensure a Minimum Living Wage and Decent Labour Conditions

As long ago as 28 June 1919, Article 427 of the Treaty of Versailles (the Covenant of the League of Nations) provided not only for the fundamental right of association but also for the "the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country"; a "living wage". Indeed, in accordance with the Treaty of Versailles, the preamble to the 1919 Constitution of the **International Labour Office** (**ILO**) specifically referred to such an obligation:

"Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures […]"

In 1944, the **Declaration concerning the aims and purposes of the International Labour Organisation** (the Declaration of Philadelphia), which forms an integral part of the ILO constitution, referred to the importance of "a minimum living wage to all employed and in need of such protection" (Part III(d)). In its **1945 Resolution**, the International Labour Conference recommended "the establishment of appropriate minimum wage standards, adequate for satisfying reasonable human needs" in order to "assist the progressive raising of the standard of living of all workers".[60] In the same year, it adopted a Resolution concerning the protection of children and young workers, which provided that all necessary measures be taken "to assure the material well-being of children and young persons by[…] the provision of a living wage for all persons sufficient to maintain the family at an adequate standard of living" (paragraph 5(b)).

That fundamental principle of a right to an adequate living wage applies to all signatory states to the United Nations (of which the ILO forms a part), irrespective of whether they are signatories to the later additional ILO Conventions and Recommendations that further expound the right to an adequate wage and which are considered further below. The Covenant of the League of Nations provided for the creation of a Permanent International Labour Office as part of the League of Nations[61] to adopt Conventions governing labour conditions, which the signatory states were obliged to apply to their colonies and protectorates–at that time a very large part of the globe.[62]

The ILO Declaration on Fundamental Principles and Rights at Work and its follow up[63] adopted on 18 June 1998 (Annex revised 15 June 2010) reiterated the obligations of member states in relation to the guarantee of fundamental principles and rights at work so as to enable "persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential." The Declaration committed Member States to respect and promote principles and rights in four categories, whether or not they had ratified the relevant Conventions: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

The ILO Declaration on Social Justice for a Fair Globalization, 2008[64] was unanimously adopted on 10 June 2008 as the third major statement of principles and policies adopted by the International Labour Conference since the ILO's Constitution of 1919, and builds on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998. The preamble provides that the International Labour Conference:

"affirms that labour is not a commodity and that poverty anywhere constitutes a danger to prosperity everywhere [and] recognizes that the ILO has the solemn obligation to further among the nations of the world programmes which will achieve the objectives of full employment and the raising of standards of living, a minimum living wage …along with all the other objectives set out in the Declaration of Philadelphia…

"In a world of growing interdependence and complexity and the internationalization of production:

> – the fundamental values of freedom, human dignity, social justice, security and non-discrimination are essential for sustainable economic and social development and efficiency;
>
> – social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards."

The Director General describes it in its introduction as "the most important renewal of the Organization since the Declaration of Philadelphia" and as being an opportunity to "forge an effective convergence of national and international policies that lead to a fair globalization and to greater access to decent work for women and men everywhere." He notes that the Declaration "builds on the values and principles embodied in the ILO Constitution and reinforces them to meet the challenges of the 21st century." In this regard, the Declaration makes clear that one of the four strategic objectives of the ILO is the "developing and enhancing measures of labour protection" specifically including "policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection".[65] The 2008 Declaration is said to express "the contemporary vision of the ILO's mandate in the era of globalization", in the wake of the Report of the World Commission on the Social Dimension of Globalization. The Director General states that:

"By adopting this text, the representatives of governments, employers' and workers' organizations from 182 member States emphasize the key role of our tripartite Organization in helping to achieve progress and social justice in the context of globalization. Together, they commit to enhance the ILO's capacity to advance these goals, through the Decent Work Agenda. The Declaration institutionalizes the Decent Work concept developed by the ILO since 1999, placing it at the core of the Organization's policies to reach its constitutional objectives. The Declaration comes at a crucial political moment, reflecting the wide consensus on the need for a strong social dimension to globalization in achieving improved and fair outcomes for all. It constitutes a compass for the promotion of a fair globalization based on Decent Work, as well as a practical tool to accelerate progress in the implementation of the Decent Work Agenda at the country level."[66]

The Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217(III)A as a common standard of achievements for all peoples and all nations, set out, for the first time, fundamental human rights to be universally protected. These rights include the right to decent wages and decent labour conditions: Article 23 stating that everyone who works has the right "to just and favourable conditions of work" and "to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection".[67] Further, social security and an adequate standard of living are human rights recognized in the UDHR, particularly in Articles 22 and 25.

The United Nations **International Covenant on Economic, Social and Cultural Rights** (**ICCPR**) of 19 December 1966 guarantees the right of everyone "to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind […]; (ii) A decent living for themselves and their families in

accordance with the provisions of the present Covenant": Article 7. In its monitoring of the implementation of the Covenant, the Committee on Economic, Social and Cultural Rights has commented on the minimum wages in force in the States parties under examination and has noted that the minimum wage in force does not allow workers and their families to live in dignity.[68]

In addition to the international Conventions referred to above, regional human rights instruments also guarantee adequate wages.

The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of America States in 1948, provides in Article XIV for every person who works to have "the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family". Article 7(a) of the **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the San Salvador Protocol)**, adopted in 1988 and entering into force in 199, provides that everyone shall enjoy the right to work under just and equitable conditions, which State parties undertake to provide for by way of internal legislation that ensures remuneration sufficient to guarantee "as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work without distinction".

The European Social Charter, adopted in 1961 (and as revised in 1996), provides at Article 4 for the right of workers to fair remuneration, specifically, to remuneration sufficient to ensure for them and their families a decent standard of living. The European Committee of Social Rights has stated that for wages to be "fair" they must in any event be above the poverty line, that is, between 50-50% of the national average wage. Where the minimum wage does not meet this requirement, States are asked to demonstrate that the minimum wage is sufficient for a decent standard of living, for example by providing details of the cost of living.[69]

The Community Charter of the Fundamental Social Rights of Workers (9 December 1989), which applies specifically to the workforce in the European Union,[70] provides at Article 5 that "[a]ll employment shall be fairly remunerated" and that "in accordance with arrangements applying in each country: workers shall be […] a wage sufficient to enable them to have a decent standard of living". This includes for "workers subject to terms of employment other than an open-ended full-time contract...an equitable reference wage".

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter), which entered into force in 1986, provides that every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work: Article 15. This comprises the right of: "access to equitable and decent work, which respects the fundamental rights of the human person and the rights of workers in terms of […] remuneration" and the obligation of the State to ensure the right of everyone to equitable and satisfactory conditions of work, including, among others, fair remuneration. [71]

In Asia, the **South Asian Association for Regional Cooperation (SAARC)**, with a view to developing a regional platform of action, in 2004 adopted a **SAARC Social Charter**. This provides that the States parties agree to promote the equitable distribution of income and greater access to resources through equity and equality of opportunity for all: Article II, paragraph 2(viii). Under the provisions of Article X, States parties must formulate a national plan of action or modify the existing one to give effect to the provisions of the Social Charter.

Within the framework of the Association of Southeast Asian Nations (ASEAN), on 18 November 2012 member States adopted the **ASEAN Human Rights Declaration,** paragraph 27(1) of which provides that every person has the right to enjoy just, decent and favourable conditions of work, and paragraph 28, that every person has the right to an adequate standard of living for himself or herself and his or her family.

The **Arab Charter on Human Rights**, adopted in 2004[72] and which entered into force in 2008, provides in Article 34 that every worker has, among others, the right to enjoy just and favourable conditions of work which ensure appropriate remuneration to meet his or her essential needs and those of his or her family. In addition, Article 8 of the **Arab Labour Charter** 1965 approves joint studies to set standards on minimum wages and reduce, to the extent possible, the differences between them, thus making implicit reference to combating the unfair competition that is often associated with minimum wage policies. Moreover, **Arab Convention No. 15 concerning the determination and protection of wages**, adopted by the Arab Labour

Conference in 1983, provides for States Members of the Arab Labour Organization to adopt a minimum wage system, which must be applied to all categories of workers.

The ILO,[73] in addition to the core constitutional obligations set out above, which apply to all members, has drawn up further explanatory ILO Conventions, specifically applicable to those states that have ratified them.[74] Recommendation No. 135 ("the Minimum Wage Fixing Recommendation 1970")[75] specifically provides that the purpose of a minimum wage is to serve as: "one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families."[76] And the criteria for determining a living wage, set out in Article 2, crucially include "the needs of workers and their families" and "the cost of living and changes therein". Further, Article 11 provides that minimum wage rates shall be adjusted from time to time to take account of changes in the cost of living and other economic conditions". ILO Convention No. 131 of 29 April 1972 provides for minimum wage fixing, with special reference to developing countries and has been ratified by 52 states. Article 3 provides that in determining the level of minimum wage "the needs of workers and their families shall be taken into account". Among the first ILO minimum wage fixing instruments, Recommendation No. 30 and Recommendation No. 89 make reference to the criteria to be used in this respect, both mentioning "the necessity of enabling the workers concerned to maintain a suitable standard of living".

The Employment Policy Convention, 1964 (No. 122), refers in its preamble to the policies of preventing of unemployment and the provision of an adequate living wage. **The Social Policy (Basic Aims and Standards) Convention, 1962** (No. 117), calls for the fixing of minimum wages by freely negotiated collective agreements, or by other suitable arrangements based on consultations with employers' and workers' representatives, and also requires that workers be kept informed on the minimum wage rates applicable to them and be given the means to recover any amounts by which they have been underpaid.

In 2010, following the recurrent discussion on employment, the Conference concluded that governments of member States should design and promote policies in regard to wages and earnings, hours and other conditions of work that ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection, and consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability. Convention No. 131 can provide guidance in this respect.[77]

Principles and Guidelines that Apply Directly to Private Enterprises

The UN Guiding Principles on Business and Human Rights[78, 79] provide as their first pillar that the State has a duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication. This includes taking steps to prevent abuse abroad by business enterprises operating within their jurisdiction. Perhaps the most obvious and fundamental is the exploitation of workers used to supply the businesses concerned. The second pillar relates to the obligations of businesses themselves; the corporate responsibility to avoid infringing human rights and address the adverse impact on human rights that their business might involve. Whilst not strictly legally binding, in many cases they reflect existing international legal obligations, many of which are increasingly being reflected and referred to in domestic law, regulations, contracts and dispute resolution. Further, in so far as companies are subject to transparency obligations within the EU and under specific national legal regimes, compliance with the UNGP are increasingly relevant. Indeed, the UNGPs provide for their reporting framework,[80] which many large companies have adopted as a way of measuring their own compliance levels.

The OECD guidelines for multinational enterprises,[81] recommend at paragraph 4. b) of Chapter V ("Employment and Industrial Relations") that, "when multinational enterprises operate in developing countries, where comparable employers may not exist, [they should] provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy the basic needs of the workers and their families. On 8 February 2017, the OECD launched the *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector*.[82] This Guidance, developed through a multi-stakeholder process, supports a common understanding of due diligence and responsible supply chain management in the sector. The Guidance is a global instrument, contributing towards a level playing field for responsible business conduct. The OECD Guidelines apply to all companies operating in or

sourcing from the 46 adhering countries, but are also relevant for any company operating in their global supply chains. Thus, they are relevant for a Bangladeshi factory that sells to companies in the US, even while Bangladesh itself is not an Adherent, just as they are relevant for cotton producers in Pakistan exporting to EU markets.

The UN Global Compact[83] provides Ten Principles for doing business that constitute the minimum fundamental responsibilities of companies in the areas of human rights, labour, environment and anti-corruption. These Ten Principles are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption. The first two are particularly relevant to the obligation to pay a living minimum wage: Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and Principle 2: make sure that they are not complicit in human rights abuses.

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the ILO on 16 November 1977, during its 204th Session, sets out principles in the fields of employment, training, conditions of work and life and industrial relations which multinational enterprises, as well as governments, and employers' and workers' organizations are recommended to observe. The text of the Declaration was revised in November 2000 by the Governing Body (see GB.279/12).

ILO Recommendation (No. 116) concerning Reduction of Hours of Work provides that if multinational enterprises operate in developing countries, where comparable employers may not exist, they must provide the best possible wages, benefits and conditions of work, within the framework of government policies, which should be at least adequate to satisfy basic needs of the workers and their families. On 1 January 2016, the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development—adopted by world leaders in September 2015 at an historic UN Summit— officially came into force. Over the next fifteen years, with these new Goals that universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind.

CHAPTER 3

Trade Rules

As labour becomes increasingly globalised, industrialised nations are seeing the impact of wage differentials on their own competitiveness and their ability to maintain jobs within their territories. This has led to social considerations being included in their discussions with trade partners.[84, 85, 86]

Within the EU, human rights clauses have been included in all new general cooperation and trade agreements negotiated since 1995 and, from 2008, have included sustainable development chapters. These contain obligations to respect labour and environmental standards, with a clear reference to core labour standards as defined by ILO conventions.

However, within the framework of the Generalised Scheme of Preferences (GSP), only the Special Incentive Arrangement for Sustainable Development and Good Governance, or "GSP+", provided for by Regulation (EU) No 978/2012, sets ratification and implementation of 15 core human and labour rights UN/ILO Conventions (plus 12 related to the environment and to governance principles) as a precondition for enjoying GSP+ advantages.[87] This is in any event of limited relevance to countries with large RGM sectors since, from 2012, tariff preferences available under Article 7 in relation to textiles and articles of apparel and clothing accessories were suspended on the basis that no such preferential treatment was required in light of how competitive those products had become.[88]

When applying for GSP+, a country is required to have already ratified these 27 core international conventions (listed in Annex VIII of the GSP Regulation).[89] And to attain GSP+ status, the most recent available conclusions and recommendations of the conventions' monitoring bodies must have not identified a serious failure to effectively implement any convention. Moreover, to be eligible at all for GSP+, GSP beneficiaries must be considered "vulnerable" due to a low level of economic diversification, and a low level of integration within the international economy. Annex VII to the GSP Regulation provides two numerical criteria to determine "vulnerability". Firstly, the seven largest sections of a country's GSP imports into the EU must represent more than 75% of the value of all sections of a country's GSP imports. Secondly, that country's GSP imports into the EU must represent less than 6.5% of the value of the EU's total GSP imports from all GSP beneficiaries. GSP+ applies to a limited number of countries–at present Pakistan and the Philippines are the only ones in Asia.[90]

For the purposes of the RMG sector a more important part of the EU GSP regime is the EU's "Everything but Arms" arrangement (EBA). This commenced in 2001 to give all less developed countries (LDCs) full duty free and quota-free access to the EU for all their exports with the exception of arms and armaments. By contrast with GSP+, however, it does not require beneficiary states to ensure compliance with human rights and labour standards. Of the 14 countries covered in this report, Bangladesh, Myanmar, Cambodia and Haiti all benefit from the EBA arrangement. Despite the lack of human rights and labour standards conditions, there is scope for using this hugely important trade concession as a means of putting pressure on beneficiary states. For example, in March 2017 the European Commission warned Bangladesh that it could suspend the trade preference arrangement unless it made progress with the implementation of workers' rights.[91, 92] It is difficult to know how serious the threat is, having regard to the fact that the same threats were made in 2013 after the collapse of Rana Plaza.[93]

The US has for many years linked trade rules to foreign labour conditions. This first occurred in the McKinley Act of 1890, which restricted imports produced by prison labour. The Tariff Act of 1930 prohibited convict-made goods. The Article XX(e) of the General Agreement on Tariffs and Trade (GATT) acknowledged the right of nations to restrict items produced by forced labour. Since then, labour standards have been incorporated into virtually every part of US trade law: the Tariff Act of 1930; the Generalized System of Preferences (GSP) in 1974; Section 301 of the Trade Act of 1974; the Caribbean Basin Economic Recovery Act (CBERA) in1983; the Andean Trade Preference Act (ATPA) in 1992; the Overseas Private Investment Corporation (OPIC), the

Multilateral Investment Guarantee Agency (MIGA); the North American Free Trade Act (NAFTA) in 1994; and the Trade Act of 2002.

The Trade Act of 1974 created the Generalized System of Preferences (GSP) program to promote growth in developing countries. The Trade and Tariff Act 1984, which renewed the Generalized System of Preferences, encouraged developing countries that enjoy the benefit of preferential trade treatment under the GSP "to afford workers internationally recognized worker rights", including acceptable working conditions with regard to minimum wages, working hours, and occupational health and safety.[94] For example, in 1984, Congress added a requirement that GSP participation be conditional on taking steps to afford basic labour standards (19 U.S.C. 2411(d)(3)(B)(iii)). The possibility of trade benefits being dependent on worker rights under the GSP has since 1984 resulted in 15 GSP beneficiaries being sanctioned for worker rights violations. Seven have not had their status restored. Many more have corrected problems to avoid suspension.

However, textile and apparel products are excluded from the 1,400 products that obtain duty-free treatment under the GSP program. Thus, the requirements of GSP participation that are potentially beneficial to labour standards do not apply in the apparel sector. Nevertheless, the following GSP labour requirements have set a precedent for subsequent "fast track" authority, and failure to take steps to afford these five rights can jeopardize a country's GSP status for some or all of its products: 1. the right of association; 2. the right to organize and to bargain collectively; 3. a prohibition on the use of any form of forced or compulsory labour; 4. a minimum age for the employment of children and a prohibition on the worst forms of child labour; and 5. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The legislation providing the "fast track" authority under which the Uruguay Round and North American Free Trade Agreement (NAFTA) were negotiated and adopted, promote labour-related objectives. Thus, a social clause was introduced into the North American Agreement on Labor Cooperation (NAALC), concluded in 1993 between the United States, Canada and Mexico, in parallel with the adoption of the North American Free Trade Agreement. Annex 1 to the NAALC lists 11 labour principles that parties to the Agreement are committed to promoting, including the establishment of minimum employment standards, such as minimum wages and overtime pay for wage earners, including those not covered by collective agreements (sixth principle).[95] While the Agreement indicates that these principles are not intended to "establish common minimum standards for their domestic law" (Annex 1, Introduction), each party undertakes to "promote compliance with and effectively enforce its labor law through appropriate government action" (Article 3(1)). A dispute settlement mechanism is provided for in the event that one party considers that another has systematically failed to effectively enforce labour standards. This can lead to the setting up of an evaluation committee of experts and eventually to the establishment of a special arbitral panel, and, where necessary, a monetary enforcement assessment may be imposed in respect of three of the principles, including the minimum wage.[96]

Since the conclusion of the NAALC, labour standards, including those on acceptable working conditions with regard to minimum wages, have been systematically included in the trade agreements negotiated by the United States.[97] The bilateral agreement concluded between the United States and Cambodia on trade in textile products linked the increase in Cambodia's export quotas with an improvement in working conditions through the effective implementation of national legislation (including on minimum wages) and fundamental rights at work.

The framework for US trade negotiations as part of Bipartisan Trade Promotion Authority (TPA)—renewal of "fast track" authority—was established under the Trade Act of 2002. The TPA includes labour provisions in both the principal and overall trade-negotiating objectives for trade agreements, including FTAs. "Core labor standards," as defined by the TPA, are the same workers' rights identified in the US preferential trade programs. The specific labour provisions included within the overall negotiating objectives are as follows:

1. **To promote respect for worker rights and the rights of children consistent with core labour standards of the ILO** (as defined in the TPA (§ 2113(6)), and an understanding of the relationship between trade and worker rights (19 U.S.C. 3802(a)(6)). The core ILO standards defined in the statute (19 U.S.C.3813(6)), track the GSP program.

2. To seek provisions in FTAs in which the parties strive to ensure that they do not weaken or reduce the protections afforded in domestic labour laws as an encouragement for trade (§ 2102(a)(7)).
3. To promote universal ratification and full compliance with ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the worst forms of child labour (§ 2102(a)(9)).

Since the enactment of TPA legislation, the United States has negotiated and entered into FTAs containing workers' rights provisions with the following countries: Singapore; Chile; Australia; Morocco; Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua; Bahrain; Oman; Peru and Korea. Labour issues are also a component of ongoing US FTA negotiations with Colombia; Ecuador; the United Arab Emirates (UAE); Thailand; Botswana, Lesotho, Namibia, South Africa, and Swaziland (SACU).

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[1] Karl Polanyi, 1944. *The Great Transformation: The Political and Economic Origins of Our Time.*
[2] Labowitz, S.; O'Connor C., March 2017. *Putting the 'S' in ESG*. NYU Stern. Available at: https://qzprod.files.wordpress.com/2017/03/0a5ac-metrics-report-final-1.pdf

[3] Labowitz, S., 16 March 2017. *So Long for now: Reflections on the business and human rights field*, NYU Stern. Available at: http://bhr.stern.nyu.edu/blogs/so-long-for-now
[4] ILO, August 2016. *Cambodian Garment and Footwear Sector Bulletin*.
[5] Sánchez Caldentey's report also asserts "responsibility for unethical practices lies equally with producers, their affiliates and subsidiaries in the downstream, and distributors and retailers in the upstream". She also demands a "legally binding institutional framework". (European Parliament News, 21 March 2017. *Textile Imports: Development MEPs Call for Rules to Curb Worker Exploitation*. Available at: http://www.europarl.europa.eu/news/en/news-room/20170321IPR67908/textile-imports-development-meps-call-for-rules-to-curb-worker-exploitation)
[6] The letter is signed by EC directors and managing director Sandra Gallina, Jordi Curell and Lotte Knudsen, and warns of the need to give "a convincing roadmap/plan of action on how the issues flagged up by ILO will be meaningfully resolved". The timeline given is the follow-up meeting of the Sustainability Compact in May in Dhaka and the ILO conference in June in Geneva. This plan, the EC letter warns, is imperative so that Bangladesh remains eligible for the EBA regime.
(Ibrahim Hossain Ori, 24 March 2017. *EU Warns Bangladesh of GSP Suspension over Labour Rights*, Dhaka Tribune.)
[7] European Coalition for Corporate Justice (ECCJ), 21 February 2017. *France adopts corporate duty of vigilance law: a first historic step towards better human rights and environmental protection*. Available at: http://corporatejustice.org/news/405-french-corporate-duty-of-vigilance-law-frequently-asked-questions

[8] Just as the ILO adopted Convention 188 for the Fisheries Sector in 2006, so some equivalent global standard may well provide a means within this sector of tackling its inherent risks and countering the potentially negative consequences for states of ensuring adequate labour standards, namely the loss of investment and jobs.
[9] For example, Australia, France, New Zealand, Norway and the USA: for history of minimum wage legislation, see: Gerald Star, ILO, 1981. *Minimum Wage Fixing*, p1-13. Available at: http://www.ilo.org/public/libdoc/ilo/1981/81B09_266_engl_1993.pdf
[10] Federal Constitution of Mexico adopted in 1917. Article 123, VI, of that instrument states that—
"The minimum wage to be received by a worker shall be that which is considered sufficient, according to the conditions of each region, to satisfy the normal needs of his living, education and honest pleasures, considering him as the head of a family". See also, Constitution of Costa Rica, 1949, which, apart from requiring equal pay for equal work, declares that every worker is entitled to a minimum wage that will ensure his wellbeing and a dignified existence.
[11] ILO, 2015. *Building Social Protection Floors for All*. Available at: http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=51737
[12] Irving, E, Schroders, August 2016. *Modern Slavery: Consumer Companies exposed to increasing regulation*. Available at: http://www.schroders.com/en/sysglobalassets/digital/global/modern-slavery.pdf

[13] Fashion United, 2016. *Global Fashion Industry Statistics: International Apparel*. Available at: https://fashionunited.com/global-fashion-industry-statistics
[14] Luginbühl, C, Musiolek, B, Berne Declaration, Clean Clothes Campaign Switzerland, 2014. *Stitched Up: Poverty Wages for Garment Workers in Eastern Europe and Turkey*. Available at: https://cleanclothes.org/resources/publications/stitched-up-1
[15] ibid.
[16] McMullen, A. Labour Behind the Label, 18 September 2013. *Shop 'Til They Drop*.
[17] The Asia Floor Wage (AFW) Alliance describes garment factory work as requiring moderate to heavy physical work. The Indian Labour Conference in 1957 made 2,700 calories the norm for minimum wage for an adult worker (performing moderate to heavy physical work). The Indonesian government most recently defined 3,000 calories as the intake figure for a living wage for a manufacturing worker (performing moderate to heavy physical work). The AFW Alliance has therefore adopted the Indonesian norm of 3,000 calories as its standard. (Bhattacharjee, Anannya; Roy, Ashim, International Journal of Labour Research, *Asia Floor Wage and global industrial collective bargaining*, p67.)

[18] Cambodian Organization for Research & Development, Amerian Center for International Labor Solidarity, 2015. *Consumption Expenditure of Garment and Footwear workers in Cambodia*.
[19] In Export Processing Zones (EPZs) the concentration of women workers is traditionally even higher; a 2009 study found that women made up 90% of the EPZ workforce in Nicaragua, 80% in Bangladesh, and 75% in Honduras, the Philippines, and Sri Lanka. Lina Stotz & Gillian Kane, *Facts on the Global Garment Industry*, Campaign for Clean Clothes. Available at:
https://cleanclothes.org/resources/publications/factsheets/general-factsheet-garment-industry-february-2015.pdf ;
[20] McKinsey Global Institute, September 2015. *How Advancing Women's Equality Can add $12 trillion to Global Growth.* Available at:
http://www.mckinsey.com/global-themes/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth

[21] English, Beth, 2013. "Global Women's Work: Historical Perspectives on the textile and garment industries", *Journal of International Affairs*.
[22] For instance, a September 2016 review of four of H&M's best-in-class suppliers in Cambodia found that "despite H&M's Fair Wage method project, that was initiated in 2013, and since then has been rolled out to 20 of the brand's strategic suppliers in Cambodia, the platinum suppliers are below the industry median in terms of wages". (Center for Alliance of Labor & Human Rights (CENTRAL) and Future in Our Hands, 23 September 2016. *H&M's Platinum and gold suppliers in Cambodia*. Available at: http://www.central-cambodia.org/archives/1250

[23] A review of three brands' CSR policies on wages by the NGO SACOM finds each "vague and unclear". It finds that GAP does not mention a living wage, Inditex has committed to pay a living wage (in its annual report of 2014) but does not give a clear benchmark for the living wage, nor a strategy or schedule, and H&M, despite promising to pay 850,000 garment workers a "fair living wage in 2018", does not give a clear figure of living wage, instead claiming that the definition depends on the opinion of workers. (SACOM, 2016. *Reality Behind Brands' CSR Hypocrisy*.)
[24] United Nations Human Rights, 2011. *Guiding Principles on Business and Human Rights*. Available at:
http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
[25] ibid. principles 11-15.
[26] See for example ASN bank's report *Garment companies and living wage*, where all garment companies in the ASN Investment Universe to have introduced a living wage by 2030. The fourteen garment companies included in the ASN Investment Universe on 1 April 2016 were: Adidas, Amer, Sports, ASICS, Asos, Esprit, Gap, Gildan Activewear, H&M, Inditex, KappAhl, Lojas Renner, Marks & Spencer, Nike and Puma. (ASN bank and Impact Centre Erasmus, November 2016. *Garment companies and living wage*.)

[27] This study uses "living wage" thresholds provided by the Fair Wage Network which has set up a global database on minimum wage and living wage thresholds all over the world. It has systematically collected all reliable living wage thresholds in more than 150 countries and calculated an adjusted mean after having harmonized such exisiting thresholds to a number of common criteria (like the year of reference and the size of households). For information on the Fair Wage Network see www.fair-wage.com . We refer also to the ASN Bank Erasmus study, which shows the manifest disparity between minimum wages and living wages (ASN bank and Impact Centre Erasmus, November 2016. *Garment companies and living wage*.) We have used the lowest minimum wage data as outlined in the country reports when comparing and benchmarking.

[28] Using the lowest minimum wage from www.wageindicator.org
[29] The Economist, 11 April 2017. *The environmental costs of creating clothes*. Available at:
http://www.economist.com/blogs/economist-explains/2017/04/economist-explains-6

[30] Verdict Consulting (now Globaldata plc) figures on apparel from 2008/9 attributed this deflation to the emergence of value players, e.g. Primark.
Statistics taken from:
Felstead, A., 6 September 2009. "A heftier toll at the till", *The Financial Times*. Available at:
https://www.ft.com/content/72320f58-9b0f-11de-a3a1-00144feabdc0

[31] The writer M.J. Deschamps reminds us of the old system of fashion production: "*Manufacturers and suppliers in the fashion production chain used to have a fairly cut and dry job: procure a certain amount of fabrics and materials at the beginning of the season to be manufactured into a predetermined number of apparel items in specific styles, colours and sizes".*

Deschamps, M.J., 2 July 2012. *Fast fashion shifts supply chain focus*.
[32] John Thornbeck, Chair Chainge Capital, 2015. *Fast Fashion Decoded*. Available at:
http://www.lesouk.co/articles/tex-style-news/fast-fashion-decoded-what-makes-zara-different

[33] Analysis from Warren Hausman, professor of management science and engineering at California's Stanford University as quoted by:

Deschamps, M.J., 2 July 2012. *Fast fashion shifts supply chain focus*.
[34] BMI research. Business Monitor Online, 23 March 2017. *Inditex Winning The Fast-Fashion Battle*.
[35] World Trade Organisation, (n.d.). *Textiles Monitoring Body (TMB) The Agreement on Textiles and Clothing.* Available at: https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm
[36] World Trade Organisation, (n.d.). *Textiles: back in the mainstream.* Available at:
https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm

[37] See further: European Parliament, August 2014. *Workers' conditions in the textile and clothing sector: just an Asian affair? Issues at stake after the Rana Plaza tragedy.* Available at: http://www.europarl.europa.eu/EPRS/140841REV1-Workers-conditions-in-the-textile-and-clothing-sector-just-an-Asian-affair-FINAL.pdf
[38] Lina Stotz & Gillian Kane, *Facts on the Global Garment Industry*, Campaign for Clean Clothes, CCC. https://cleanclothes.org/resources/publications/factsheets/general-factsheet-garment-industry-february-2015.pdf
[39] Industry expert and academic Doug Miller has investigated different characteristics of the fast fashion production line to identify particular stress points. In particular, he has found that buyers from major fashion brands basing high volume orders using "Standard Minute Value" calculations severely overestimate the capacity of first tier factories because these calculations are out of date and often based on 100% factory efficiency. This error alone makes subcontracting likely and at that point the CMT process becomes an unknown quantity. (Siegle, L., *We are what we wear: Unravelling fast fashion and the collapse of Rana Plaza*, Guardian e-books, 2013.)
[40] According to the UNIDO statistics for 2013, women represent on average 68% of the workforce in the clothing industry, 45% in textiles, and 46% in the leather and footwear industries. UNIDO: International Yearbook of Industrial Statistics, Vienna, 2013, CD-ROM. (Note: Data does not include important producers, such as Bangladesh, Pakistan, Viet Nam, Cambodia and Thailand).
[41] Martin, M., 1 December 2013. *Creating Sustainable Apparel Value Chains: A Primer on Industry Transformation*, Impact Economy. Available at: http://www.impacteconomy.com/papers/IE_PRIMER_DECEMBER2013_EN.pdf

[42] King, H, 13 July 2013. T*he Worth of Women and of Workers in the Bangladesh Garment Industry, Labor Rights blog*. Available at: http://laborrightsblog.typepad.com/international_labor_right/2013/07/the-worth-of-women-and-of-workers-in-the-bangladesh-garment-industry.html

[43] Paul-Majumder, Pratima, Anwara Begum, June 2000. *The Gender Imbalances in the Export Oriented Garment Industry in Bangladesh*. Working paper no. 12. The World Bank Development Research Group/ Poverty Reduction and Economic Management Network.
[44] Cotton incorporated stat quoted by:
Chhbra, E, 3 August 2016. "The Fabric of our lives or the planet's latest threat? Fashion startups look into cotton alternatives", *Vogue*. Available at: http://www.vogue.com/article/fashion-startups-cotton-alternatives

[45] Fashion United, (n.d.). *Global Fashion Industry Statistics – International Apparel*. Available at: https://fashionunited.com/global-fashion-industry-statistics
[46] ILO, September 2014. *Wages and working hours in the textiles, clothing, leather and footwear industries.* Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf
[47] Siegle, L, *We are what we wear, unravelling fast fashion and the collapse of Rana Plaza*, Guardian e-books, 2013.
[48] BMI research. Business Monitor Online, 23 March 2017. *Inditex Winning The Fast-Fashion Battle*.
[49] ITUC, October 2015. *Foreign Direct Investment in Myanmar*. Available at: http://www.ituc-csi.org/IMG/pdf/ituc-burma.pdf
[50] ibid.
[51] BMI research, 23 March 2017. Business Monitor Online*, Inditex Winning The Fast-Fashion Battle*.

[52] ILO, September 2014. *Wages and working hours in the textiles, clothing, leather and footwear industries.*
[53] ibid.
[54] Section 54. The definitions of 'slavery and human trafficking' are provided in sections 1, 2 and 4 of the Act. It is unclear the extent to which grossly inadequate working conditions or wages incompatible with a decent life would be covered.
[55] The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2011. *A renewed EU strategy 2011-14 for Corporate Social Responsibility*. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0681&from=EN

[56] European Commission, 24 April 2017. *Commission Staff Working Document: Sustainable Garment Value Chains through EU Development Action*. Available at: https://ec.europa.eu/europeaid/sites/devco/files/garment-swd-2017-147_en.pdf
[57] The first order came on 29 March against imported soda ash, calcium chloride, caustic soda, and viscose/rayon fiber that was manufactured or mined by Chinese company Tangshan Sunfar Silicon. US Customs and Border Protection (US CBP) believes that these products were made by forced convict labor. The second order, on 13 April, was against imported potassium, potassium hydroxide, and potassium nitrate that is believed to be mined and manufactured by the same company using convict labor.

[58] Recently Turkmenistan News (ATN) and International Labor Rights Forum (ILRF), partners in the Cotton Campaign, filed a complaint with the US CBP concerning the import of cotton goods made using forced labor from Turkmenistan by companies, including retail giant IKEA. The government of Turkmenistan engages in a practice where annually farmers are forced to deliver cotton production quotas and thousands of citizens are required to pick cotton or are faced with a penalty. The complaint calls on US Customs to classify cotton goods, such as the IKEA products, from Turkmenistan as illicit, issue a detention order on all imports of them, and direct port managers to block their release into the United States. CBP has yet to respond.
59 OECD, (n.d.). Responsible Supply Chains in the Garment and Footwear Sector. Available at: https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm
[60] ILO, 31 May 2016. *Resolutions Adopted by the International Labour Conference.* Available at: http://www.ilo.org/public/libdoc/ilo/P/09734/
[61] The Covenant of the League of Nations, 1919. Articles 388-392.
[62] ibid. Article 421.
[63] ILO, 18 June 1998. *Declaration on Fundamental Principles and Rights at Work*. Available at: http://www.ilo.org/declaration/lang--en/index.htm

[64] Adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008.
[65] In accordance with article III(d) of the Declaration of Philadelphia adopted by the International Labour Conference in 1944.
[66] It further refers to: "widespread international backing at the highest political, regional and global levels, culminating with the 2005 United Nations World Summit". On that occasion, Heads of State and Government stated: "We strongly support fair globalization and resolve to make the goals of full and productive employment and decent work for all, including for women and young people, a central objective of our relevant national and international policies as well as our national development strategies." This statement also builds on the commitments of the World Summit for Social Development of 1995.
[67] The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948, is drafted in similar terms to the Universal Declaration of Human Rights. In Article XIV, the American Declaration provides that every person who works "has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family". The Conference [ILO] also adopted the Inter-American Charter of Social Guarantees, which enshrines the minimum rights that workers must enjoy in the American States, Article 8 providing that "every worker has the right to earn a minimum wage, fixed periodically with the participation of the state and of workers and employers, which shall be sufficient to cover his normal home need, material, moral and cultural, taking into account the characteristics of each type of work, the special conditions of each region and each job, the cost of living, the worker's relative aptitude, and the wage systems prevalent in the enterprises. A minimum occupational wage shall also be set up for those activities in which this matter is not regulated by a collective contract or agreement". However, the impact of this Charter has been limited in view of the low level of support that it enjoyed. (ILO, 2014. *Minimum Wage Systems*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf)
In Article 7(a) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the "San Salvador Protocol"), adopted in 1988 and which entered into force in 1999, the States parties recognize that the right to work presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States parties undertake to guarantee in their internal legislation, particularly with respect to remuneration "which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction".
[68] Over the course of the past decade, the Committee has adopted this conclusion in respect of the following states parties: Afghanistan (E/C.12/AFG/CO/2-4, para. 23); Algeria (E/C.12/DZA/CO/4, para. 10); Angola (E/C.12/AGO/CO/3, para. 21); Plurinational State of Bolivia (E/C.12/BOL/CO/2, paras 14 (b) and 27 (b)); Bulgaria (E/C.12/BGR/CO/R.4-5, para. 12); Cameroon (E/C.12/CMR/CO/2-3, para. 15); Canada (E/C.12/CAN/CO/4 – E/C.12/CAN/CO/5, paras 11(f), 18 and 47); Chile (E/C.12/1/Add.105, paras 17 and 38); Cyprus (E./C.12/CYP/CO/5, para. 17); Dominican Republic (E/C.12/DOM/CO/3, para. 16); El Salvador (E./C.12/SLV/CO/2, paras 12 and 30); Estonia (E./C.12/EST/CO/2, para. 16); Hungary (E/C.12/HUN/CO/3, paras 14 and 37); India (E/C.12/IND/CO/5, paras 22 and 62); Kenya (E/C.12/KEN/CO/1, para. 18); Latvia (E/C.12/LVA/CO/1, paras 19 and 44); Republic of Moldova (E/C.12/MDA/CO/2, para. 11); Nepal (E/C.12/NPL/CO/2, paras 11, 20 and 39); Nicaragua (E/C.12/NIC/CO/4, para. 16); Philippines (E/C.12/PHL/CO/4, para. 22); Russian Federation (E/C.12/RUS/CO/5, para. 18); Slovakia (E/C.12/SVK/CO/2, para. 15); Tajikistan (E/C.12/TJK/CO/1, paras 22 and 53); Turkey (E/C.12/TUR/CO/1, para. 17); Ukraine (E/C.12/UKR/CO/5, paras 15 and 38); Uruguay (E/C.12/URY/CO/3-4, para. 12); Uzbekistan (E/C.12/UZB/CO/1, paras 19 and 49) and Zambia (E/C.12/1/Add.106, paras 18 and 41). Furthermore, in the specific context of the global economic crisis, the Committee expressed its concern in the case of Spain that the minimum wage has been frozen since 2011 at a level that does not guarantee an acceptable standard of living (E/C.12/ESP/CO/5, para. 18).
[69] Council of Europe, 1 September 2008. *Digest of the case law of the European Committee of Social Rights*, p43.
[70] This principles-based charter is used as an interpretative aid by the Court of Justice of the European Union in construing the meaning of legislation and developing case law. It was initially drafted in 1989. All member states have adopted the text.
[71] See "Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights", paragraphs 57 and 59, adopted by the African Commission on Human and People's Rights in 2010. In addition to the Principles and Guidelines, in 1989 the African Commission also adopted guidelines for national periodic reports under the African Charter. The 1989 guidelines indicate that among the elements to be reported should be the principal methods used for fixing wages (minimum wage fixing machinery, collective bargaining, statutory regulations, etc.) in the various sectors, and numbers of workers involved, and information on the categories and numbers of workers for whom wages are not set by such methods.
[72] This was preceded by the 1994 Charter, which, however, never entered into force.
[73] Minimum Wage Fixing Machinery Convention, 1928 (No. 26)
In 1928, the ILO adopted the Minimum Wage Fixing Machinery Convention, 1928 (No. 26) . In line with the prevailing philosophy of the time, this Convention encouraged member States to implement minimum wages "for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low". Agriculture was excluded.

With more than 100 ratifications, Convention No. 26 remains to this day one of the most widely ratified ILO Conventions . It is complemented by Recommendation No. 30 , which calls for the participation of women in wage-fixing bodies and for strong enforcement measures to protect law-abiding employers from unfair competition.

Agricultural workers and seafarers
In the second half of the twentieth century, the ILO participated in the extension of minimum wage protection to previously excluded categories of workers.

In 1951, the ILO adopted the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) . By the end of 2015, Convention No. 99 had 54 ratifications . It is complemented by Recommendation No. 89 .

In 1946, a minimum wage was negotiated for the first time for seafarers at the ILO – a tradition that continues to this day. The Maritime Labour Convention, 2006 , provides that seafarers' wages should be no less than the amount periodically set by the joint Maritime Commission, which meets at the ILO.

Minimum Wage Fixing Convention, 1970 (No. 131)
In 1970, ILO adopted the Minimum Wage Fixing Convention, 1971 (No. 131) , which is considered to offer broader protection than that envisaged by ILO Convention No. 26.

Convention No. 131 encourages member States which ratify to establish a *system* of minimum wages which:

- offers a broad scope of application and where exclusions made are kept to a minimum;
- establishes a machinery to fix and adjust minimum wages from time to time;
- is based on the principle of full consultation with social partners;
- involves social partners, on an equal footing, as well as independent experts in the design and operation of the system;
- sets minimum wage levels that take into account the needs of workers and their families, as well as economic factors;
- includes appropriate measures to ensure the effective application of minimum wages.

The objective of a generally applicable lower limit under which wages are not permitted to fall reflects the view that all workers–as a matter of right–should receive protection against "unduly low wages". However, Convention No. 131 does not prescribe a single national minimum wage. The Minimum Wage Fixing Recommendation, 1970 (No. 135) , which accompanies the Convention, makes clear that broad coverage can be achieved "either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers". By not seeking to impose a single model on all ILO member States, Convention No. 131 allows for the existence of different national circumstances and different levels of economic and social development. By the end of 2015, Convention No. 131 had been ratified by 52 member States , including by 11 countries since 2000.

[74] See also: ILO; March 2017. *Tripartite Declaration of Principles concerning multi-national enterprises and social policy*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf

[75] ILO, 1970. R135 - Minimum Wage Fixing Recommendation, 1970 (No. 135). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R135

[76] Recommendation No. 135 ("the Minimum Wage Fixing Recommendation 1970". Article 1.

[77] ILO, 2014. *Minimum Wage Systems*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf

[78] Business and Human Rights Resource Centre, (n.d.). *UN Guiding Principles*. http://business-humanrights.org/en/un-guiding-principles

[79] See also interpretative guidance: UN Human Rights, 2012. *The Corporate Responsibility to Respect Human Rights*. Available at: http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf

[80] UN Guiding Principles Reporting Framework, 2017. Home page. Available at: http://www.ungpreporting.org/

[81] OECD, (n.d.). *Responsible Business Conduct*. Available at: http://mneguidelines.oecd.org/

[82] OECD, (n.d.). *Responsible Supply Chains in the Garment and Footwear Sector*. Available at: https://mneguidelines.oecd.org/responsible-supply-chains-textile-garment-sector.htm

[83] United Nations Global Compact, (n.d.). *The Ten Principles of the UN Global Compact*. Available at: https://www.unglobalcompact.org/what-is-gc/mission/principles

[84] See, for instance, S. Polaski: "Protecting labor rights through trade agreements: An analytical guide", in Journal of International Law and Policy (Vol. 10, No. 1, July 2004), pp. 13–25.

[85] C. Doumbia-Henry and E. Gravel: "Free trade agreements and labour rights: Recent developments", in International Labour Review (2006, Vol. 145, No. 3), pp. 211–234.

[86] C. Deblock: Les Etats-Unis, le commerce et les normes du travail: Une perspective historique (Montreal Institute of International Studies, July 2008) ; Emily Reid, Balancing human rights, environmental protection and international trade, lessons from EU experience (Hart, studies in international Trade Law); James Harrison, the Human Rights Impact of the World Trade Organisation (Hart, studies in International Trade Law).

[87] While the general GSP arrangement ("Standard GSP") generally grants tariff reductions or suspensions to developing countries on about 66% of EU tariff lines, the GSP+ offers complete duty suspensions. (For summary of position see: European Commission, January 2017. *European Union's GSP+ Scheme*. Available at: http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155235.pdf)

[88] Commission implementing Regulation No. 1213/2012.

[89] These are the core human and labour rights UN/ILO Conventions: 1. Convention on the Prevention and Punishment of the Crime of Genocide (1948); 2. International Convention on the Elimination of All Forms of Racial Discrimination (1965); 3. International Covenant on Civil and Political Rights (1966); 4. International Covenant on Economic Social and Cultural Rights (1966); 5. Convention on the Elimination of All Forms of Discrimination Against Women (1979); 6. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); 7. Convention on the Rights of the Child (1989); 8. Convention concerning Forced or Compulsory Labour, No 29 (1930); 9. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948); 10. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98; (1949); 11. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951); 12. Convention concerning the Abolition of Forced Labour, No 105 (1957); 13. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958); 14. Convention concerning Minimum Age for Admission to Employment, No 138 (1973); 15. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999)

[90] Currently the following countries have GSP+ status: Armenia, Bolivia, Cape Verde, Kyrgyzstan, Mongolia, Pakistan, Paraguay and the Philippines. Sri Lanka applied for GSP+ beneficiary status in July 2016 and on 11 January 2017 the Commission adopted a delegated act proposing to grant that status to Sri Lanka. The act is currently being considered by the European Parliament and the Council.

[91] Ibrahim Hossain Ovi, 24 March 2017. "EU Warns Bangladesh of GSP Suspension over Labour Rights", *Dhaka Tribune*. Available at: http://www.dhakatribune.com/bangladesh/2017/03/24/eu-warns-bangladesh-gsp-suspension-labour-rights/

[92] For significance of trade with EU to Bangladesh, particularly in textiles see: European Commission, 2017. *Trade: Bangladesh*. Available at: http://ec.europa.eu/trade/policy/countries-and-regions/countries/bangladesh/index_en.htm
[93] Ethan Bilby, 1 May 2013. "Europe Trade Action against Bangladesh Would Have Big Impact", *Reuters*. Available at: http://www.reuters.com/article/us-eu-bangladesh-trade-idUSBRE9400JQ20130501
[94] Generalized System of Preferences Renewal Act 1984, section 2467, Article 503. The GSP established by the European Union provides for more favourable measures (GSP plus) for some countries that have ratified 27 international instruments on human rights and workers' rights. See Article 9 and Annex I of Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No. 732/2008. 58 A cooperation.
[95] 11 labor rights (NAALC, annex 1): 1. The freedom of association and protection of the right to organize; 2. The right to bargain collectively; 3. The right to strike; 4. The prohibition of forced labor; 5. Labor protections for children and young people; 6. Minimum employment standards, including minimum wage; 7. The elimination of employment discrimination; 8. Equal pay for women and men; 9. The prevention of occupational injuries and illnesses; 10. Compensation for occupational injuries and illnesses; and 11. Protection of migrant workers.
Only three of these principles were made enforceable by sanctions if a country does not self-enforce: labor protections for children; minimum employment standards; and the prevention of occupational injuries and illnesses. The agreement (part II, article 3) required each party to "promote compliance and effectively enforce its labor law through appropriate government action." The NAALC further outlined procedures for consultation, the resolution of disputes and penalties for violation of the agreement.
To date, 34 complaints have been submitted through the NAALC. Twenty-one were filed with the U.S. administrative system, of which 19 involved allegations against Mexico and two against Canada. Eight were filed with the Mexican National Administrative Office (NAO) within the Labor Ministry. These eight involved allegations against the United States while another five submissions have been filed in Canada, three raising allegations against Mexico and two against the United States. Nineteen of these submissions have undergone complete review, and 14 have resulted in Ministerial-level consultation (Bureau of International Labor Affairs).
[96] Articles 27–41 of the NAALC; in total, 41 complaints have so far been filed under the NAALC. As of June 2013, no case had reached the stage of an evaluation committee of experts; see IILS: Social dimensions of free trade agreements, Geneva, ILO, 2013, pp. 42–45.
[97] For a list of these agreements, see the website of the United States Department of Labor. The scope of obligations of the parties to these agreements is, however, limited, as shown by Article 18.8 of the free trade agreement with Chile, which provides that the setting of standards and levels in respect of minimum wages by each party shall not be subject to obligations under that chapter. Each party's obligations pertain to enforcing the level of the general minimum wage established by that party.

COUNTRY REPORTS

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