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“Paying for a Bus Ticket and Expecting to Fly”

How Apparel Brand Purchasing Practices Drive Labor Abuses



“Paying for a Bus Ticket and Expecting to Fly”

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Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.



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Summary

Soon after the Rana Plaza collapsed in 2013 in the outskirts of Dhaka, Bangladesh, killing over a thousand workers, a top official from a global brand flew into Pakistan.¹ His sudden trip was sparked by the desperation to make up for orders his company had placed, and lost, with a factory destroyed in the Rana Plaza disaster. He concluded a business deal with a new Pakistani garment supplier and flew out within hours. Usual factory onboarding procedures were discarded. The fact that the global brand had previously rejected the supplier for “failing” social audits (inspections to check working conditions) did not matter. The brand’s business needs trumped workers’ rights. Lamenting the duplicity of the brand, a Pakistani garment supplier who followed this transaction and narrated its details to Human Rights Watch, said, “All this because he [the global brand representative] had to make up the order placed at Rana Plaza—and all ethics went out of the window. Everybody is like that.”²

The Rana Plaza disaster was a wake-up call to the world—1,138 workers died and over 2,000 were injured. It shone a light on the problem of death trap factories and poor government oversight. It also revealed much about how apparel brands do business and about their commitments to workers’ rights.

The nature of the apparel business is such that brands need to pay attention to market trends and consumer preferences that can change with dizzying speed. With the tremendous growth of online shopping, experts say global brands’ ability to churn out products quickly is key to success.

A maze of decisions underpins the development of each product before it hits the shelves. From forecasting consumer demand and planning; sales and marketing; designing products; selecting factories for manufacturing, monitoring them for social and labor compliance; and placing orders with and paying suppliers, numerous departments within a brand are involved in decision-making. Alternatively, some parts of these decisions may

¹ This report uses the word “brand” to describe apparel and footwear companies that own brands, and retailers. The term “buyer” has been used interchangeably with “brand.”

² Human Rights Watch interview with supplier 6 who requested anonymity, Pakistan, June 2018.

be made through agents. This complex web of decisions is generally referred to as a brand's sourcing and purchasing practices.

This report is based largely on interviews with garment suppliers, social compliance auditors, and garment industry experts, including those with at least a decade's experience sourcing for numerous global brands; hundreds of interviews with workers; and trade export data analysis for key producing markets from Asia. The report argues that brands' poor sourcing and purchasing practices can be a huge part of the root cause for rampant labor abuses in apparel factories, undercutting efforts to hold suppliers accountable for their abusive practices. Because brands typically have more business clout in a brand-supplier relationship, how brands do business with suppliers has a profound influence on working conditions.

Brands can and should balance the twin goals of responding to consumer demands and protecting workers rights in factories that produce for them. This can only happen if they invest in a variety of human rights due diligence tools also needed to monitor and rectify their sourcing and purchasing and adopt key industry good practices. These steps will go a long way in discharging brands' responsibilities articulated in the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) and the Organisation for Economic Co-operation and Development Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (OECD Due Diligence Guidance on Garments).

Poor Sourcing and Purchasing Practices

Low purchase prices and shorter times for manufacturing products, coupled with poor forecasting, unfair penalties, and poor payment terms, exacerbate risks for labor abuses in factories. Often, bad purchasing practices directly undermine efforts brands are making to try to ensure rights-respecting conditions in the factories that produce their wares. They squeeze suppliers so hard financially that the suppliers face powerful incentives to cut costs in ways that exacerbate workplace abuses and heighten brands' exposure to human rights risks. Many brands demand their suppliers maintain rights-respecting workplaces, but then incentivize them to do the opposite.

Prices brands pay suppliers can undercut factories' ability to ensure decent working conditions. In 2016, an International Labour Organization (ILO) global survey of 1,454

suppliers across different sectors revealed that 52 percent of apparel suppliers said brands paid prices lower than production costs. An industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for multiple brands, told Human Rights Watch: “The pressure on sourcing teams and buyers is always about finding a better [lower] price [for production at a factory]. There are few times when the question is asked, ‘Well, if we do this, will we have compliant production?’” Suppliers who spoke to Human Rights Watch felt brands did not negotiate costs. Some raised concerns that brands do not even cost for increases in legal minimum wages. Suppliers and industry experts also raised concerns about heightened pressures where brands used agents to place orders.

The amount of time a brand gives a factory to produce its goods impacts the factory and its workers. One supplier told Human Rights Watch:

We are getting pushed more and more to reduce our lead times. Sometimes we have to confirm some short lead times without any security [buffer] in sight or any tolerance by the brand. If we don’t agree to the lead times, we might lose the order.

The 2016 ILO supplier survey revealed that only 17 percent of respondents across different sectors (not just apparel) believed they had enough lead time to produce goods.

Brands can exacerbate time pressures with poor forecasting, delays in providing necessary order specifications or approvals, and sudden changes to order volumes, throwing off a factory’s ability to plan regular and overtime work for its workers. The Better Buying Purchasing Practices Index for 2018, a third-party index developed based on anonymous supplier surveys, revealed that many delays occurred in the pre-production phases; respondents said that only about 16 percent of buyers (brands) met all agreed-upon deadlines in the product development and pre-production stages.

Brands can and should take fair responsibility for delays they cause. If they do not, and suppliers are left to absorb these costs on their own, it is often the workers who lose out and suffer most. Examples of brands that take fair responsibility for delays include those that have flexible delivery schedules, pay for air freight to transport products faster, or

waive financial penalties. A combination of a brand's manufacturing terms and management decisions influence how its representatives identify and take responsibility for brand mistakes. Detailed, written manufacturing contracts are not an industry norm. Where they do exist, they are often one-sided—many brands assume no written responsibility for delays or other mistakes made by them. Experts say that in some cases, unscrupulous brands unfairly charge discounts and penalties to suppliers as a way of cutting their own costs, knowing that suppliers do not have much leverage to push back.

Finally, brands often unreasonably delay payment to suppliers for the work that they do. The United Kingdom Prompt Payment Code, a set of voluntary standards and payment best practices, is a good example of the kind of approach businesses and regulators can take to stamp out such practices.

Key Labor Abuses

Brand approaches to sourcing and purchasing are not merely a threat to a factory's financial bottom line. They incentivize suppliers to engage in abusive labor practices and in risky contracting with unauthorized suppliers as a way of cutting costs. This means that brand practices in these areas directly undercut their own efforts to insist on rights-respecting working conditions across their supply chains. Human Rights Watch spoke with seven auditors, each of whom had between five and twenty years of experience conducting social audits. Almost all said they felt they were not witnessing enough improvements in working conditions in factories, in part because the prices paid by brands for garments were too low, let alone supporting factories to remediate non-compliant practices.

It bears emphasis that the primary responsibility for abusive workplace conditions lies with suppliers themselves. But if apparel brands are genuinely committed to rooting abuses out of their own supply chains, they need to do everything within their power to ensure that their own business practices prevent and discourage, rather than incentivize, supplier abuses.

Even though some brands appear to be moving in the right direction, overall brand purchasing practices have proved to be intractable problems and continue to impact labor rights adversely, especially in relation to workers' wages and working hours, and their contracts. Many factories are often hostile to unions and collective bargaining—key

vehicles for improving workers' wages and benefits—and this hostility is further deepened in an environment where brands do not use costing tools to account for the financial implications of labor and social compliance.

Overtime-related violations are an open industry secret. Factories hide the number of hours workers actually work to pass compliance audits and find innovative ways of bypassing overtime wage regulations. In Myanmar, for example, workers described how factories had “stolen minutes” from them. To avoid paying overtime wages, their “hourly” production targets were recalibrated where each “hour” was 45 or 50 minutes. In India, workers from a factory described how the factory compelled them to use up some of their paid leave during the factory's low production season instead of paying overtime wages.

Similarly, factories often resort to casual contracts for workers to cut costs or in response to variations in brand orders. In Pakistan, for example, suppliers that Human Rights Watch spoke with said they were under tremendous price pressures and that many brands followed a price-bidding system. This intense price pressure creates an environment that allows abusive cost-cutting practices to thrive, rather than firmly arresting them. Factories hired workers through contractors to avoid making social security and pension contributions that would otherwise be legally required—a key cost-cutting strategy. In Cambodia, factories repeatedly use short-term contracts in excess of legally permissible limits, citing seasonal variations in brand orders.

In order to cut overtime costs, factories try to extract more work from workers using fewer minutes or hours. Human Rights Watch has consistently heard accounts of workers from different countries—Cambodia, Bangladesh, India, Myanmar, and Pakistan—about the pressure to work faster and without breaks. Some common methods of getting workers to produce more include restricting workers' toilet breaks; trimming their meal breaks; squeezing “trainings” into lunch or other rest breaks so the “production time” is not lost; disallowing drinking water breaks and other rest breaks. The pressure to work faster has a gendered impact, especially given women workers' needs for additional toilet or rest breaks during menstruation. Pregnant workers from different countries have told Human Rights Watch that they have found themselves targeted as “unproductive.” Workers have also recounted how line supervisors or other managers hurl verbal abuses at them to humiliate them and make them work faster.

Outsourcing production to smaller, low-cost units without brand permission is another method used by factories to cut production costs or meet production deadlines. Industry experts privy to unauthorized subcontracts told Human Rights Watch that brands purchasing practices can drive such outsourcing. They identified poor forecasting, brands' failure to monitor factory capacity, the use of buying agents, absence of ordering time tables, last minute design changes, and poor prices among the purchasing practices deficits that catalyzed factories' use of unauthorized subcontractors.

A prime example of growing unauthorized subcontracting is Cambodia. Even though statutory minimum wages went up, EU and US trade data shows that nominal apparel prices paid by international apparel brands for the top five products manufactured in Cambodia (by value) mostly dropped between 2014 and 2017 whereas in the same period, the government raised the monthly basic wage (that is without adding mandatory allowances) from US\$100 to \$153. Between 2014 and 2016, the ILO documented a spurt in the number of subcontractor factories from 82 to 244.

In 2016, Human Rights Watch physically mapped 45 subcontractor factories in Cambodia's Kandal province with the help of workers. This was in addition to a few other subcontractor factories Human Rights Watch saw in Phnom Penh. Most of these factories were unmarked, making it difficult to even detect that the building housed a factory. In the few factories from where Human Rights Watch was able to interview workers from these subcontractor factories, Human Rights Watch found that the working conditions were worse: workers were hired on a casual basis on piece-rate wages, did not receive other legal benefits, and worked in factories without any health clinics.

Sourcing experts that Human Rights Watch spoke with, as well as suppliers, identified a combination of purchasing practices that further drove such factory practices. These include prices that do not adequately factor in labor costs, poor forecasting, huge departures from the projected volume of orders, delays in brands' technical packs (documentation that provides complete information needed to make a product, including construction graphics and measurements, materials, sizing information) and approvals needed to begin bulk production.

Factories under price pressure also do not invest enough in making fire and building safety improvements. How brands do business with them influences their loan eligibility even

where they want to make improvements. A study by the International Finance Corporation in Bangladesh underscored the links between brand purchasing practices and fire and building safety. Factories' loan eligibility to make these financial investments was influenced by their ability to show strong business relationships and good cash flow, which directly depended on brand purchasing practices. The Bangladesh Accord on Fire and Building Safety specifically stipulated that brands have the responsibility to facilitate financing for remediation. Experts believe this resulted in a few brands using their purchasing practices to support financing factory repairs, but otherwise, did not bring about significant reforms on the purchasing practices front for all member brands.

Moreover, a range of other occupational health and safety concerns, including factories installing sufficient cooling mechanisms to maintain ambient working conditions, also depends on factories' ability to make the necessary financial investments. Workers have described to Human Rights Watch the challenging circumstances under which they work, which hints at the cost-cutting methods used by factories. For example, workers have described dripping in sweat and working in unbearable heat levels, and with inadequate air circulation because of fewer fans or fans that just circulate hot air in a closed space.

Key Features of Effective Human Rights Due Diligence on Purchasing Practices

Brands have a responsibility to take measures to identify and stop, prevent, and mitigate risks that cause or contribute to human rights problems in their supply chains.

Brands—large and small—truly committed to workers' rights should adopt and publish a policy on responsible purchasing practices and embed this across all internal departments through standard operating procedures, trainings, key performance indicators, and incentives tied to measures on social and labor compliance in factories.

Internal integration of policy should be combined with comprehensive contractual reform. Such reforms should ensure that contracts with suppliers accurately outline brand responsibilities to factor in labor and social compliance costs and production times. Contracts should outline brand responsibility to provide the supplier with complete and accurate technical details, brand approvals, consequences of brand delays, and business incentives for factories that comply with labor laws and collective bargaining agreements.

This kind of contractual reform will help mitigate the power imbalance between brands and suppliers by transposing brand commitments into contracts. It will also help mitigate brands' exposure to heightened human rights risks arising from brand actions and omissions, and allow a brand to demonstrate through legal certainty for its suppliers that it is committed to assuming a fair share of its responsibility to prevent or mitigate human rights risks in factories.

Brands should combine such policy and contractual reform with participation in emerging human rights due diligence initiatives. At time of writing, there are three promising initiatives that can aid brands' human rights due diligence on purchasing practices.

One is Better Buying's anonymous supplier surveys of brands' purchasing practices. Better Buying provides industry-wide information while allowing brands to seek tailored reports to help them track their progress using key indicators on purchasing practices. Brands should participate in third-party surveys like Better Buying and publish a summary of the tailored results they receive.

The second are initiatives that seek to combine collective brand action on reforming purchasing practices with sectoral collective bargaining like the Action, Collaboration, and Transformation (ACT) on Living Wages, which is focusing its work in a few key priority countries. Such collective initiatives hold the promise of enhancing brand leverage in shared factories and undercutting supplier competition. Brands should join collective initiatives like ACT. While waiting for initiatives like ACT to successfully conclude sectoral collective bargaining agreements, brands should take measures to at least track, and bolster through business incentives, their suppliers' respect for workers' freedom of association and collective bargaining.

The third is a set of labor costing tools developed by the Fair Wear Foundation for all 11 countries they operate in. Brands that do not have sophisticated costing tools that allow them to delineate the labor and social compliance costs at the factory level, should use costing tools like the ones developed by the Fair Wear Foundation.

Finally, brands should regularly publicly report on how their purchasing practices are improving and working to support social and labor compliance in factories using specific indicators. These indicators on sourcing and purchasing practices should be developed

along the lines of those suggested in the OECD Due Diligence Guidance on Garments and build on indicators developed by organizations, including the Fair Wear Foundation and the New York University (NYU) Stern Center for Business and Human Rights.

There is a growing movement of conscious consumers and investors who care not just about trends and profits, but also about the workers who make their clothes. Brands should show and explain how they are cleaning up their own house on sourcing and purchasing practices while calling for workers' rights to be protected in factories.

Methodology

This report is based largely on in-depth Human Rights Watch interviews—sometimes multiple interviews—with 35 garment suppliers, social compliance auditors, and apparel industry experts between April 2018 and January 2019. The apparel industry experts included those with at least a decade of experience overseeing sourcing and purchasing for global brands. The report also draws on previous Human Rights Watch research that entailed interviews with about 500 garment workers in Cambodia, Bangladesh, and Pakistan between 2013 and 2018, and an additional 46 garment worker interviews in Myanmar and India in 2018. It also draws upon a November 2018 workshop hosted by Human Rights Watch with 13 experts who have researched sourcing and purchasing practices, including specialists on labor costing. A review of relevant secondary literature, including export data analysis, also informed this report.

The report does not focus on any one country or brand. It speaks to industry-wide problems that impact labor and social compliance by factories.

When interviewing garment suppliers, Human Rights Watch did not seek any information about specific brands they were supplying or detailed information about product types. This was done in order to satisfy interviewees' need for anonymity, so they could participate in interviews without putting their business relationships at risk. In some instances, Human Rights Watch has chosen to withhold product details that interviewees provided to further guard against any possibility of reprisals. The suppliers who spoke to Human Rights Watch were mostly producing for international apparel brands.

Unless otherwise noted, events and stories described by suppliers are recent, that is, having occurred between 2016 and 2018. In cases where an example cited predates that range, this is noted in the report.

I. Background: The Perils of Fashion

In early February, the Chinese ushered in the Lunar New Year of the Pig. Peppa Pig, the protagonist of a British animated children’s TV cartoon show, joined the celebrations. She found her way on all kinds of merchandise, including adult t-shirts.³

Apparel brands face tremendous commercial pressure to make their product lines responsive to rapidly changing cultural trends, consumer preferences, holidays, and seasonal shifts.⁴ The work that goes into making that happen is multifaceted—choosing a sales and marketing strategy, designing a product, projecting consumer demand, setting prices, identifying factories that can manufacture the product, placing orders, and having them lined up and ready to sell before the moment passes.

Speed, increasingly, is key. E-commerce and the use of other technology has transformed the apparel industry, bringing into sharp focus “speed to market.”⁵ A 2018 report by McKinsey analyzed the reasons why top global apparel brands are profitable. McKinsey highlighted two key factors about these companies’ operations. First, they used data analytics and consumer feedback early on to develop products and second, they made speed to market a top priority and got “faster and faster.”⁶ According to McKinsey, high-performing companies delivered products to consumers within six to eight weeks, compared with the industry average of about 40 weeks.⁷

Brands looking to compete on these terms face many challenges. Among the most daunting is their need to manage their sprawling, complex global supply chains. Global apparel brands typically source from scores of factories they do not own or directly control,

³ Laurie Chen, “Lunar New Year puts seal on Peppa Pig’s Chinese comeback,” *South China Morning Post*, February 4, 2019, <https://www.scmp.com/news/china/society/article/2185004/lunar-new-year-puts-seal-peppa-pigs-chinese-comeback> (accessed April 8, 2019).

⁴ References to apparel in this report include apparel and footwear. The term “brands” includes retailers.

⁵ Imran Amed, Johanna Andersson, Achim Berg, Martine Drageset, Saskia Hedrich, and Sara Kappelmark, “The State of Fashion 2018: Renewed Optimism for the Fashion Industry,” McKinsey and Company, November 2017, <https://www.mckinsey.com/industries/retail/our-insights/renewed-optimism-for-the-fashion-industry> (accessed April 8, 2019).

⁶ Elizabeth Hunter, Sophie Marchessou, Jennifer Schmidt, “The Need for Speed: Capturing Today’s Fashion Consumer,” McKinsey and Company, March 2018, <https://www.mckinsey.com/industries/retail/our-insights/the-need-for-speed-capturing-todays-fashion-consumer> (accessed April 8, 2019).

⁷ *Ibid.*

in multiple countries, sometimes thousands of miles from their own headquarters or target markets.

Putting that machinery into motion requires a complex and coordinated effort—one that requires planning and forecasting, design and development, sourcing, costing and cost negotiation, the setting of payment terms with suppliers, and the alignment of all this to brands’ commitments on social and labor compliance in supplier factories.⁸ Together, this complex set of processes is usually known as “sourcing and purchasing practices” in the apparel industry.

Industry experts believe that going forward, apparel companies should be diversifying their risks by creating nimble supply chains.⁹ But the demand to be nimble, fast, and responsive to the consumer also creates pressures that carry serious risks.

As this report describes, brands’ sourcing and purchasing practices often undermine and stand in tension with their stated commitments to ensuring safe and dignified conditions for the workers who produce their wares. The ever-mounting pressure to work faster exacerbates those problems. Instead of holding suppliers accountable for their abuses, these tensions incentivize them and heighten brands’ exposure to serious human rights risks.

For more than a decade, labor advocates and industry experts have pointed to the skewed power relations between brands and suppliers, arguing that brands’ poor sourcing and purchasing practices contribute to negative impacts on labor compliance in their supplier factories.¹⁰

In global supply chains, international brands usually have more negotiating power than their suppliers.¹¹ Brands are often in a position to dictate the price they will pay to suppliers, the time within which suppliers should make products, and other purchasing terms.

⁸ “Better Buying,” <https://betterbuying.org> (accessed February April 10, 2019).

⁹ Leonie Barrie, “Outlook 2019 – Apparel Industry challenges and opportunities,” *Just-Style*, January 15, 2019, https://www.just-style.com/analysis/outlook-2019-apparel-industry-challenges-and-opportunities_id132645.aspx (accessed April 10, 2019).

¹⁰ For example, Jeroen Merk, “From Code Compliance to Fair Purchasing Practices: Some Issues for Discussion,” Paper written for the Clean Clothes Campaign Roundtable on Purchasing Practices, May 11, 2005, <https://cleanclothes.org/resources/publications/05-05-fair-purchasing-practices.pdf> (accessed April 8, 2019).

¹¹ Doug Miller and Klaus Hohenegger, “Redistributing value added towards labour in apparel supply chains: Tackling low wages through purchasing practices,” ILO Conditions of Work and Employment Series No. 83, 2017,

Brands make these decisions in an environment where not only they are competing, but suppliers too are competing to get brand orders. Unless all brands sourcing from the same factory assume a fair share of their human rights due diligence responsibility, there is not just a risk of free-riders, but also the additional human rights risk to a brand because it has limited leverage to sustainably influence factory working conditions. Brands that do not co-operate with other brands to assume their fair share of responsibility to reform sourcing and purchasing practices, expose themselves to continuing human rights risks instead of acting swiftly to help workers. Where brands simply cut their supplier relationship and quietly exit when labor abuses come to their attention, their sourcing and purchasing practices are not aligned with the principle of responsible exit.

At the supplier level, stiff price competition amongst each other means that suppliers committed to decent working conditions and accurately costing for them carry the risk of brands switching to other “cheaper” suppliers who slash social and labor compliance costs to stay competitive.

Against this backdrop, over the last few years, the momentum to reform brand purchasing practices has been slowly building. Supply chain experts, academics, labor advocates and global unions, the ILO (which runs a factory monitoring program called Better Work), multi-stakeholder initiatives (organizations comprising of brands and nongovernmental organizations (NGOs)), and brands themselves have increasingly spotlighted poor sourcing and purchasing practices and called for reform.

At the same time, though, the ever-increasing demands of the global marketplace are putting new pressures on brands that risk reinforcing bad practices and undercutting hard-won progress. In this sense, the industry stands at a real crossroads—one where there is both real momentum towards positive change, and a dangerous current of commercial pressure pushing in exactly the opposite direction.

https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_534536.pdf (accessed April 8, 2019); Mark Starmanns, “Purchasing practices and low wages in global supply chains: Empirical cases from the garment industry,” ILO Conditions of Work and Employment Series No. 86, 2017, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_561141.pdf (accessed April 8, 2019).

II. Key Brand Sourcing and Purchasing Practices That Contribute to Labor Abuses

Major apparel brands have adopted codes of conduct and other policies aimed at ensuring their suppliers guarantee safe conditions and rights-respecting terms of employment for the workers who produce their wares.¹² At the same time, though, many brands' purchasing practices are driven by a relentless focus on speed and cost. The net result of these countervailing practices is that while many brands are demanding better workplace conditions, at the same time they are squeezing suppliers in ways that not only undercut suppliers' ability to comply but incentivize workplace abuses.

Brand Price Negotiations

“The [number of] compliances [for factories] keep moving up and the prices keep going down.”

—An official from a group that owns apparel factories in several Asian countries supplying international apparel brands, Southeast Asia, May 2018.

The pressure on sourcing teams and buyers is always about finding a better [lower] price [for production at a factory]. There are few times when the question is asked, “Well, if we do this will we have compliant production?” ... What isn't done is the active connection of the risk of pushing in one place [price] and the result comes to bear in another place [factory working conditions]. That's about business model.

—Industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for multiple brands, London, January 15, 2019.

¹² See for example, Inditex, “Code of Conduct for Manufacturers and Suppliers Inditex Group,” undated, <https://www.inditex.com/documents/10279/241035/Inditex+Code+of+Conduct+for+Manufacturers+and+Suppliers/e23dde6a-4boe-4e16-a2aa-68911d3032e7> (accessed January 15, 2019); Nike, “Nike Code of Conduct,” September 2017, https://sbi-stg-s3-media-bucket.s3.amazonaws.com/wp-content/uploads/2018/05/14214943/Nike_Code_of_Conduct_2017_English.pdf (accessed April 10, 2019); Fast Retailing Group, “Code of Conduct for Production Partners,” undated, https://www.fastretailing.com/eng/sustainability/labor/pdf/coc_en.pdf (accessed April 10, 2019).

In 2016, the ILO published the results of a global survey that it conducted in collaboration with the Ethical Trading Initiatives of Denmark, Norway, and the United Kingdom. The survey results were based on responses of 1,454 suppliers across different sectors and revealed the following:

- 78 percent of apparel suppliers said price remained the “main criterion” brands used when placing orders, while just 47 percent said working conditions were factored into the decision;¹³
- 52 percent of apparel suppliers said prices paid were often lower than production costs;¹⁴ 81 percent said they agreed to such terms to secure future orders.¹⁵
- According to suppliers, 75 percent of buyers across different sectors (not just apparel) were unwilling to adjust prices when statutory minimum wages were raised. Suppliers said that even among willing buyers, there was on average a 12-week time-lag before they adjusted prices.¹⁶

The Better Buying Purchasing Practices Index, a new third-party index based on anonymous supplier ratings of brand sourcing and purchasing practices, revealed the following in 2018:

- 60 percent of suppliers said they did not receive any incentives for complying with their buyers’ codes of conduct;¹⁷
- 55 percent of suppliers reported “high pressure” negotiating strategies;¹⁸

¹³ International Labour Organization (ILO), “Purchasing practices and working conditions in global supply chains: Global Survey results,” INWORK Issue Brief No. 10, 2016, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf (accessed April 10, 2019), p. 10, Figure 18 (cited as “ILO Supplier Survey on Purchasing Practices, 2016”). While discussing the results of the ILO survey, Human Rights Watch uses the phrase “apparel suppliers” to include textile, clothing, and leather suppliers. More than a fifth of the 1,454 supplier-respondents were from the readymade garment industry.

¹⁴ *Ibid.*, p. 7. See also Better Buying, “Better Buying Index Report Spring 2018”, May 2018, https://betterbuying.org/wp-content/uploads/2018/05/4159_better_buying_report_final.pdf (accessed April 8, 2019), p. 24 (cited as “Better Buying Purchasing Practices Index Spring 2018”). The 2018 Spring Index was based on 218 supplier ratings of 65 apparel buyers. Better Buying found that 38.1 percent of suppliers indicated that the prices they received for all their products covered compliant production; another 40 percent of suppliers said about 80-99 percent of their orders covered compliant production costs; 20.6 percent of suppliers said they received orders that did not cover compliant production costs.

¹⁵ *Ibid.*, p. 8.

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 18.

¹⁸ Better Buying, “Better Buying Index Report Fall 2018,” October 2018, https://betterbuying.org/wp-content/uploads/2018/10/Better-Buying-Benchmark-Report_fall-2018.pdf (accessed April 8, 2019), p. 7 (cited as “Better Buying Purchasing Practices Index Fall 2018”).

- Just 38 percent of suppliers said the prices they received were adequate to support compliant production;¹⁹
- For 27 percent of suppliers, the buyers paid less than the amount finalized in the purchase order;²⁰
- Among buyers rated in late 2017, 31 buyers headquartered in Europe and the UK were ranked better for their costing practices than 31 based in North America.²¹

Human Rights Watch spoke with suppliers who echoed these complaints. They also said they had almost no ability to negotiate prices brands paid them because of the stiff competition they faced in the industry.²²

Suppliers interviewed by Human Rights Watch recounted intense pressure on pricing. One Pakistani supplier who supplies numerous global brands said that the brands “give us a target price and we have to meet it if we want to take the order.”²³ An official from another Pakistani group, with a vertically integrated business with multiple factories, about 70 percent of which supplied to international apparel brands, said he did not even think price discussions could be called “negotiations.” “There is no price negotiation. There are just too many options [other suppliers] for them.... It’s like buying eggs for them [brands].”²⁴ An Indian supplier described the pressure to reduce costs and contrasted them with brand demands regarding quality and compliance. He said: “There is a difference between the price of a bus ticket and a flight ticket. You can’t pay for a bus ticket and expect to feel like you are flying.”²⁵

¹⁹ “Better Buying Purchasing Practices Index Spring 2018,” p. 24.

²⁰ “Better Buying Purchasing Practices Index Fall 2018,” pp. 10-11. In the report, favorable payment terms include the following: Buyer paid for sampling costs at or before shipment; Buyer paid deposits on volume orders; Buyer issued letters of credit for volume orders; Buyer paid for volume orders in full on or before shipment; any others.

²¹ “Better Buying Purchasing Practices Index Spring 2018,” p. 25.

²² Human Rights Watch interviews with nine suppliers from South Asia and Southeast Asia, April, May, June, and September 2018.

²³ Human Rights Watch interview with supplier 2 who requested anonymity, supplier manufacturing for 6-8 international clothing brands, Pakistan, June 2018.

²⁴ Human Rights Watch interview with supplier 6 who requested anonymity, supplier with vertically integrated business supplying global brands, Pakistan, June 2018.

²⁵ Human Rights Watch interviews with supplier 7 who requested anonymity, supplier who also worked through buying agents, India, September 2018.

One Supplier's Perspective

An official from a supplier group who oversees the group's business and operations across its factories in several Asian countries, explained how international apparel brands he did business with had consistently sought to drive prices down over the last five years. Drawing upon his experience of negotiating business with 17-20 brands over several years, he said that "even with the same orders, repeat orders, even with smaller quantities, the prices go down—5 percent sometimes; maybe 2-5 percent. Even the same order, everything is same—this is a big issue for us."²⁶ He noted that over the same period, statutory minimum wages had risen in several countries where the group owns factories.

He said brands tried to negotiate the price down by pressuring them to reduce cut-and-make costs, which is the part that includes workers' wage bills. "Labor costs are under the CM price [cut and make price]. It's not separated out. But if they think the price is too high, it's always the CM—they want us to cut our CM price. It always happens."

He said that some buyers are themselves reluctant to take account of suppliers' cost breakdowns because they laid bare realities that they would prefer to remain ignorant of:

I have some friends who are big buyers for American brands and they know they will never get the target price if they use open costing [transparent costing]. They say for example \$10 [per piece]. If you make an open calculation sheet and use time measurements for work—you need \$12—you cannot get \$10. They start with open calculation and then suddenly say, "We don't want to see it [the costing sheet]."

In another example, where the same official was doing business with a global brand that was keen to pay workers a "living wage," he said, "I made a living wage calculation and showed one of our biggest customers [brands] how he should change the price for me to pay the living wage. They said it was unrealistic."

²⁶ Human Rights Watch interviews with supplier 1 who requested anonymity, group that operates garment factories in China, Southeast Asia, and South Asia supplying 17-20 international apparel brands, Southeast Asia, April and May 2018.

Not Factoring in Statutory Minimum Wages

A key concern that suppliers raised was that many brands do not factor increases to existing statutory minimum wages into their prices. One supplier from Pakistan who estimated that about 95 percent of their production is for US brands said that brand prices were not adjusted to accommodate the government's increase of statutory minimum wages. Reflecting on his experience of doing business with long-term buyers, he said, "The impact on my payroll because of wages and social security [contributions] was 10-15 million [Pakistani rupees, roughly \$70,609 to \$105,913]." ²⁷ Another large Pakistani supplier who manufactured for 12-15 American and European brands, said that some brands expected to be able to pay the same prices even when wages went up:

The problem arises when you have a similar or a repeat order. For instance, if ... they place the same order each time, there we have to have this conversation. The Europeans are friendlier to these changes. The Americans, they say, "as good as your last shipment."²⁸

Shelly Gottschamer, an expert with more than two decades of sourcing experience, said that brands should pay suppliers prices that weave in statutory minimum wages. She said most brands should be negotiating seasonal costs at least a few times a year and "if there are labor increases that are either happening [at that time] or imminent, then there should be a conversation and a discussion about an increase in the minute rate that you are paying your suppliers."²⁹ She further stated that fair increases to reflect impending minimum wage increases should be made by brands,

[U]nless a brand has its head in the sand, which comes down to the management practices and that really starts at the top. If you are a brand that says you care about social and labor conditions, most likely you are

²⁷ Human Rights Watch interview with supplier 5 who requested anonymity, supplier who estimated that about 90 percent of the products were made for US brands and the remaining for European brands, with a small percentage for the local market, Pakistan, June 2018.

²⁸ Human Rights Watch interview with supplier 8 who requested anonymity, supplier who produced for 12-15 global brands, Pakistan, June 2018.

²⁹ Human Rights Watch phone interviews with Shelly Gottschamer, expert with 20 years of experience sourcing for multiple large multinational corporations, December 13, 2018 and January 16, 2019.

paying attention to the labor markets where you are doing business. Some brands just don't and that's really the problem.³⁰

One former sourcing expert said that a brand's leadership should change how business decisions are made by enabling buying teams to adjust prices to reflect legal minimum wages:

It's entirely up to the leadership of the company. It is about enabling by the leaders and being thoughtfully connected to the implications of the business. Does anyone actually tell the CEOs, "By the way, boss, we buy 20 percent of our season from Bangladesh and the government has put its wage rates up. Strictly speaking we should be paying an extra \$100,000 for our garments from Bangladesh for this season. But we are not going to, and that just probably means there are a bunch of workers in our supply chain who are not being paid minimum wage."³¹

Buying Agents

Some global apparel brands use buying agents to source their products—essentially, middlemen who identify and negotiate with suppliers on a brand's behalf. Buying agents can play an important role for brands that do not have sourcing teams with the necessary language and geographical expertise to locate appropriate suppliers. Some buying agents may also provide additional services, such as warehousing, which allow suppliers to save costs.³² But brands risk having little visibility over buying agents' own business practices or those of the suppliers they work with unless they take specific measures to ensure transparency. For this reason, many industry experts say that global apparel brands' use of buying agents presents a higher risk for poor sourcing and purchasing practices and workplace abuses.³³ Some experts have argued that brands should move away from any use of buying agents, as the only practical way to address those problems. Where brands use buying agents, they should demonstrate that they have a robust human rights due

³⁰ Ibid.

³¹ Human Rights Watch phone interview with DN who requested anonymity, industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous global brands, London, January 15, 2019.

³² Human Rights Watch interview with supplier 8 who requested anonymity, supplier who produced for 12-15 international brands, Pakistan, June 2018; phone interview with supplier 10 who requested anonymity, India, January 2019.

³³ Human Rights Watch workshop on purchasing practices, London, November 13, 2018.

diligence mechanism specifically designed to address the additional risks presented by their use of buying agents, including any commissions and bribes that unscrupulous agents may charge factories, effectively reducing the total money the factory receives.

A former sourcing and compliance expert who worked for a North American retailer for over 10 years spoke about the challenges of using buying agents. When she began working for the company, she said that the company used the services of about 300 buying agents. They had very little visibility over their supply chain and estimated the agents used about 1,000 factories and potentially as many as 2,000 factories. “[The agents] had their network that was extensive and constantly changing. We were negotiating pricing without any visibility,” she said. She began a process of reducing the use of agents, cutting down from 300 to a handful of agents.³⁴

When asked whether the brand had any information about the final price that was paid to the factory for production, she said that she had no information about this.

That’s the biggest challenge—we had no idea about the end price paid to the factories. When we started working directly with factories, that’s when we realized how much the agent was making. It’s more important to push for transparent costing with agents.³⁵

Even though she did not have visibility over the actual price paid to factories producing for them via buying agents, she said that she did have some visibility over compliance in these factories because she was involved in social audits.³⁶ “The difference was night and day,” she said describing the labor conditions in factories that produced for the brand via a buying agent and factories that directly did business with the brand. “Through agents, that’s often when we find out they are producing on a rooftop, illegally, or there’s trash a meter-high blocking pathways. These factories also have transactional (casual) workers who come and go every day and they are paid cash.”³⁷

³⁴ Human Rights Watch phone interview with UM who requested anonymity, former sourcing and compliance expert, US, October 30, 2018.

³⁵ Ibid.

³⁶ Ibid. UM explained that the brand’s contract with the buying agent had legal terms where the brand could seek to also conduct unannounced visits of the factories the agent was sending the purchase orders to.

³⁷ Ibid.

Another expert with 20 years of experience sourcing for multiple multinational brands said that when she worked with buying agents, “ultimately knowing the supplier was very difficult.”³⁸ She explained further:

You lose control of not just compliance, you also lose control over visibility and pricing. If you get into a costing dialogue with the agent asking for [price] reduction, they can change the supply chain without telling you, to get the lowest price. And we won’t know about compliance and other things in those factories.... That’s why I tried to buy direct as much as possible.³⁹

In addition to buying agents trying to maximize their profits by driving down prices, she also said that there were “hidden costs between agent and the supplier,” referring to kickbacks that unscrupulous agents can demand. “That’s common knowledge. There is no way to catch it. It is under the table and it is a dirty little secret. These hidden costs also present conflict of interest issues for agents. The agent is supposed to represent the brand. So, if he’s taking kickbacks from the supplier, then who is he really representing?” she said.⁴⁰

Another industry expert who has worked closely with factories in Bangladesh and other parts of Asia, as well as South America, reflected on his experience of looking at labor conditions in factories:

Working conditions in factories chosen by buying agents are worse. I’ve been doing this for 30 years now. [I] noticed that brands are getting away from buying agents big time.... You don’t go to an agent unless you have no clue about the market. The thing about labor agents for brands is that they do get them a cheaper price—they have a much stronger portfolio of factories. An agent who knows many different buyers will keep the factory

³⁸ Human Rights Watch phone interview with former sourcing expert who worked for multiple multinational brands for more than 20 years, Canada, December 13, 2018.

³⁹ Ibid.

⁴⁰ Ibid.

busy all the time. [But] there's a double payment. The labor agent takes a cut from the price and the working conditions are worse.⁴¹

An Indian supplier who worked with a brand's buying agents described the "commissions" he had to pay: "One of the agents sets a flat 10 rupees (\$0.14) per piece. It doesn't matter whether the entire garment costs 50 rupees (\$0.72) or 500 rupees (\$7.20)."⁴²

Shortened Lead Times, Penalty Clauses, and Payment Delays

Lead times promised by factories play a critical role in determining whether brands place orders with them.⁴³ Lead time is usually understood as the time from the date an order is confirmed to the date the products are readied for shipment at the factory.⁴⁴ As is true with prices, suppliers complain that a combination of factors—shrinking lead times, a lack of brand awareness about when precisely bulk production can start, and unfair penalties for missing production deadlines—create severe pressures that are incompatible with brands' professed commitment to rights-respecting workplaces.

Shortening Lead Times

Overall, lead times are dramatically shrinking.⁴⁵ The 2019 McKinsey State of the Fashion Report revealed how "speed in production is critical to every fashion label and retailer—not just the purveyors of fast fashion" and that "reduced lead times will be key drivers of competitive advantage."⁴⁶ While a range of measures are being taken by companies to cut lead times including moving towards automation and near-shoring (shifting production to

⁴¹ Human Rights Watch phone interview with an industry expert with experience of working closely with factories in Bangladesh and other parts of Asia, US, and South America, who requested anonymity, location withheld, December 16, 2018.

⁴² Human Rights Watch interviews with supplier 7 who requested anonymity, supplier who worked through buying agents, India, September 2018.

⁴³ "ILO Supplier Survey on Purchasing Practices, 2016," p. 10, Figure 18.

⁴⁴ Human Rights Watch interview with supplier 3 who requested anonymity, Pakistan, June 2018. For example, one supplier said brands he did business with international buyers, who calculated lead times in other ways—for some it was the time from the date the order was confirmed to the date of delivering the goods to the port for shipment; others calculated the time till the date of delivering goods to the buyer's warehouse.

⁴⁵ Imran Amed, Anita Balchandani, Marco Beltrami, Achim Berg, Saskia Hedrich, and Felix Rölkens, "The State of Fashion 2019: A Year of Awakening," McKinsey and Company, November 2018, <https://www.mckinsey.com/industries/retail/our-insights/the-state-of-fashion-2019-a-year-of-awakening> (accessed April 8, 2019) (cited as "McKinsey State of Fashion 2019 report"). See also, Michelle Russell, "Rana Plaza five year on – A Time for Reflection," *Just-Style*, April 24, 2018, https://www.just-style.com/comment/rana-plaza-five-years-on-a-time-for-reflection_id133249.aspx (accessed April 8, 2019).

⁴⁶ "McKinsey State of Fashion 2019 report," pp. 37, 85.

locations that are geographically closer to the markets),⁴⁷ suppliers and sourcing experts said that the speed-to-market pressure is passed on to factories, which in turn impacts workers.⁴⁸

The 2016 ILO supplier survey revealed that only 17 percent of respondents across different sectors (not just apparel) believed they had sufficient lead time to produce goods.⁴⁹ The survey also revealed that 59 percent of suppliers across different sectors said that short lead times did not allow them to plan production effectively, leading to additional overtime.⁵⁰ Respondents said that shorter lead times resulted in suppliers' increased use of overtime work, subcontracting, or hiring casual labor to meet deadlines.⁵¹

One supplier told Human Rights Watch: “We are getting pushed more and more to reduce our lead times.... If we don’t agree to the lead times, we might lose the order.”⁵² A supplier from Pakistan also said that buyers were reducing lead times. On some products for which lead time was more than 60 days about five years ago, he said brands now expected them to be produced within a month.⁵³

A former compliance expert who worked for a leading European brand for a decade and across multiple countries, said:

These are competitive enterprises—the factories—so sometimes the factories will take on more production that can be done during reasonable working hours. So, if the brand actually cares about those things then it’s up to the brand to push back and ask the right questions. And there’s

⁴⁷ Ibid., p. 87.

⁴⁸ Human Rights Watch interviews with suppliers from India, Pakistan, and Southeast Asia, April-September 2018; phone interview with DN who requested anonymity, industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous global garment brands, London, January 15, 2019.

⁴⁹ “ILO Supplier Survey on Purchasing Practices, 2016,” p. 6, Figure 10. Of the 1454 respondents in the survey, 21 percent were from the readymade garment industry (the highest percent), another 5 percent from textiles, and 2-3 percent leather and footwear. The ILO report does not define what constitutes “sufficient” lead time.

⁵⁰ Ibid., p. 15.

⁵¹ Ibid., p. 6.

⁵² Human Rights Watch interviews with supplier 1 who requested anonymity, group that operates garment factories in China, Southeast Asia, and South Asia supplying 17-20 international apparel brands, Southeast Asia, April and May 2018.

⁵³ Human Rights Watch with supplier 4 who requested anonymity, Pakistan, June 2018.

definitely a big spread on the level to which brands take ownership of these issues, engage with the factories and have knowledge.⁵⁴

Use of buying agents can also squeeze the actual time available for bulk production, putting pressure on factories, and in turn, workers. For example, a former sourcing and compliance expert said that the brand had mapped out the time it needs from design to finalizing the purchase order. But eventually they realized that the buying agent was taking another three weeks to transmit the purchase order to the factories and place orders.⁵⁵

Brand Delays and Poor Forecasting

Brands that delay a factory's ability to start bulk production without readjusting delivery dates put additional pressure on the factory. Moreover, brands that suddenly modify orders without addressing how the factory's production capacity and workers will be impacted, also contribute to poor working conditions in factories.⁵⁶

The Better Buying Purchasing Practices Spring Index 2018 found that brand-driven delays were a significant problem. According to suppliers, only about 16 percent of buyers met all agreed-upon deadlines in the product development and pre-production stages; another 20 percent of buyers failed to meet these deadlines about 80 percent of the time.⁵⁷ Most delays were caused in the pre-production stage.⁵⁸

One Indian supplier, who until recently supplied international brands through a buying agent as well as indirectly through subcontracted work ("job work") for exporters, said, "Buyers do *badmashi* (play dirty)," when it comes to lead times. He explained how some buyers had set a delivery deadline for about 60 days from the date of the order, but

⁵⁴ Human Rights Watch phone interviews with GH who requested anonymity, former Corporate Social Responsibility (CSR) representative for a European brand with over 10 years of experience overseeing social and labor compliance across multiple countries, Europe, November 27, 2018 and January 16, 2019.

⁵⁵ Human Rights Watch phone interview with UM who requested anonymity, former sourcing and compliance expert, US, October 30, 2018.

⁵⁶ Human Rights Watch phone interviews with Klaus Hohenegger, LO who requested anonymity, and DN who requested anonymity, sourcing and supply chain experts, January 2019. For more information about how poor forecasting adversely impacts a factory, see Section III.

⁵⁷ "Better Buying Purchasing Practices Index Spring 2018," p. 26.

⁵⁸ "Better Buying Purchasing Practices Index Fall 2018," p. 13. Human Rights Watch interviews with nine suppliers in South and Southeast Asia. Human Rights Watch interviewed suppliers who said there were delays in brand approvals of material swatches, samples, and pre-production samples. Brands making last-minute changes to designs or specifications also caused delays and reduced the time available for the factory to begin bulk production and meet shipment deadlines.

subsequently took as long as one and half months for all approvals. “It leaves me with 15 days to produce. And when I can’t meet the deadline, they start to say ‘late delivery’ and demand discounts.”⁵⁹

Another supplier described how a brand wanted products manufactured within two weeks, but without providing complete details regarding size on time, delaying production. “It later led to air freight for me. But this was very stressful, and I had to fight a lot. Sometimes they push for delivery within two weeks—big huge misunderstanding regarding how it [production] really works.”⁶⁰ A common problem he experienced from some brands was the prevalence of delays in approving fabric and samples but without extending the time available for workers to produce:

Fabric and color swatches [are sent] to the customer and approval takes time. In our business we have lots of designer jokes, “The black is not black enough.” One Italian customer never confirms color. You send them six times, eight times—they just don’t confirm. And then finally when you tell them, “Your delivery will be delayed one month,” they say “No, no, it cannot be delayed. We confirm the second one.” We don’t understand this.⁶¹

Brand Penalties and Costs for Suppliers Missing Deadlines

Short lead times and hard delivery deadlines are often backed by the threat of penalty clauses. The 2016 ILO survey of suppliers found that 35 percent in the textile and clothing industry said they faced penalties from buyers for not meeting deadlines.⁶² Based on supplier survey data, the Better Buying Purchasing Practices Index Spring 2018 found that about 9 percent of the buyers were said to be inflexible about deadlines and prices even when they were responsible for delays.⁶³

⁵⁹ Human Rights Watch interviews with supplier 7 who requested anonymity, supplier who also worked through buying agents, India, September 2018.

⁶⁰ Human Rights Watch interviews with supplier 1 who requested anonymity, group that operates garment factories in China, Southeast Asia, and South Asia supplying 17-20 international apparel brands, Southeast Asia, April and May 2018.

⁶¹ Ibid.

⁶² “ILO Supplier Survey on Purchasing Practices, 2016,” p. 6.

⁶³ “Better Buying Purchasing Practices Index Spring 2018,” pp. 26-7.

During in-depth interviews, suppliers told Human Rights Watch that many brands demanded discounts on the invoiced price, unreasonably citing “production delays” or “defects.” Another cost that suppliers said they often solely bear was air freight if they missed the shipment date. Suppliers also drew Human Rights Watch’s attention to brands’ practice of unreasonably canceling orders altogether in reaction to even the slightest of delays.⁶⁴

For example, one Indian supplier, who has produced for foreign buyers, reflected on his experience of doing business with them. According to him, one category of foreign buyers “has good payment terms and don’t try to cheat you. They won’t demand discounts using small excuses or don’t stop or delay your payment.”⁶⁵ But these buyers cited their promptness in clearing payments as leverage to demand lower prices. A second category of foreign buyers he described as “the kind that doesn’t intend to pay at all.” He explained that these buyers demanded massive discounts on the invoice citing small excuses. “When they don’t intend to pay you at all, it’s easier for them to offer better rates per piece. The best buyers have given me an advance of 40 percent of the payment before production starts and then the remaining when I finish the goods,” he said.⁶⁶

⁶⁴ Human Rights Watch interviews with three suppliers, Pakistan, May and June 2018.

⁶⁵ Human Rights Watch interviews with supplier 7 who requested anonymity, supplier who also worked through buying agents, India, September 2018.

⁶⁶ Ibid.

Terms and Conditions in Contracts

Detailed, written manufacturing contracts are not common in the industry, though there is some momentum in that direction.⁶⁷ One Indian supplier said that detailed manufacturing contracts are typically developed only when a big company sources 100 percent from one factory for multiple years and considers it a significant investment.⁶⁸ Where brands do not have a detailed manufacturing contracts, the purchase orders carry terms and conditions to varying degrees.⁶⁹ Where purchase orders are silent about delivery delays and penalties, these are usually discussed before the orders are placed.⁷⁰

Irrespective of whether there are written terms or conditions, sourcing experts and suppliers Human Rights Watch interviewed said that whether brands charged penalties was ultimately left to the complete discretion of the brand.⁷¹ For example, one manufacturing contract said:

⁶⁷ Human Rights Watch phone interview with HU who requested anonymity, an industry expert with experience of conducting thousands of social audits and also working with brands and suppliers, US, January 31, 2019. HU said he had seen manufacturing contracts mostly used by big footwear companies and less so by others, but said there was a growing move toward such manufacturing contracts; Human Rights Watch phone interviews with Klaus Hohenegger, Sourcing Solutions GmbH, January 21, 2019. See also “ILO Supplier Survey on Purchasing Practices, 2016” pp. 3-4.

⁶⁸ Human Rights Watch phone interview with supplier 10, India, January 2019.

⁶⁹ Human Rights Watch interview with industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous international brands, London, January 15, 2019. Purchase orders on file with Human Rights Watch.

⁷⁰ Human Rights Watch phone interview with Klaus Hohenegger, January 21, 2019. Hohenegger explained that especially in the case of small and medium enterprise-brands, the purchase orders carried only basic terms—price, delivery date, and product types—and the rest was discussed.

⁷¹ Human Rights Watch interviews with 10 suppliers from India, Pakistan, and Southeast Asia, April 2018 to January 2019; phone interview with DN who requested anonymity, industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous international garment brands, London, January 15, 2019; phone interview with HU who requested anonymity, an industry expert with experience of conducting thousands of social audits and also working with brands and suppliers, US, January 31, 2019; phone interviews with LO who requested anonymity, sourcing expert with more than 30 years of industry experience, US, October 23, 2018 and January 21, 2019.

Delays and Penalties: TIME IS OF ESSENCE IN ANY PURCHASE ORDER. Shipments must be on-board Company's carrier (in the case of FOB purchases) or Manufacturer's carrier (in the case of DDP purchases) on next vessel close date after the ex-factory date specified in the Purchase Order and, in no event, more than seven days following the ex-factory date (the "On-Board Delivery Date"). If for any reason Manufacturer does not comply with Company's On-Board Delivery Date, Company may at its option either approve a revised delivery schedule, require air freight shipment at Manufacturer's expense, or cancel a Purchase Order without liability on the part of Company to Manufacturer.⁷²

Suppliers alleged that in some cases, brands misused these penalty clauses to pass on losses they faced if their products did not sell in the market.⁷³ A London-based sourcing expert said that brands' fair exercise of discretion to waive or invoke penalty clauses depended on brand leadership and messages that different departments received. She said that she was aware of brands that used penalty clauses to meet their profit margin goals. Another industry expert with nearly three decades experience sourcing for a multinational corporation that owns numerous brands said that penalties were decided on a case by case basis. He explained that financial penalties were an area where brands showed "who has the bigger baseball bat." He said he was aware of brand practices where brands cut 1 or 2 percent of the freight on board (FOB) costs from the supplier if the brand sales were bad.⁷⁴ He explained that suppliers did not have a choice but had to agree because "they won't get business anymore."⁷⁵

⁷² Extract of Manufacturing Contract, on file with Human Rights Watch.

⁷³ Human Rights Watch interviews with supplier 10, supplier 7, supplier 1 who requested anonymity from South Asia and Southeast Asia, April–June 2018; with DN who requested anonymity, industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous international garment brands, London, January 15, 2019; phone interviews with LO who requested anonymity, sourcing expert with more than 30 years of industry experience, US, October 23, 2018 and January 21, 2019.

⁷⁴ Freight on board cost is the cost incurred by the supplier to make the product and deliver it to the nearest port. In this system of costing, the cost of shipping the goods, and all other associated fees are borne by the buyer.

⁷⁵ Human Rights Watch phone interviews with LO who requested anonymity, sourcing expert with more than 30 years of industry experience, US, October 23, 2018 and January 21, 2019.

For suppliers, it is far more expensive to ship finished goods by air. Design or other last-minute changes to an order often put factories in the position of having to choose between incurring steep air freight costs to meet agreed-upon delivery times—or finding ways to make their workers finish the order more quickly.⁷⁶ Because flights are prohibitively expensive compared to shipping finished products, one factory official explained how he stood to lose money on the order if he missed the shipping deadline. “It’s cheaper for me to get workers to do overtime work and try and meet the delivery date for shipment than be delayed and pay for flight costs.”⁷⁷ One supplier in Pakistan said:

Workers might have to do OT [overtime] because of orders. It could be that we accept orders with delivery dates but not have all the approvals for style, sample, etc. And in that process, our delivery date gets squeezed. Then we have to do what we can to meet the delivery date. Some companies [factories] are smarter and calculate what costs more—OT or air fare.⁷⁸

Delayed Payments

Unfair payment terms and delayed payments compound cash flow problems for suppliers. Extended payment windows require factories to take loans from banks to have money for operating costs, and interest rates vary from one production country to another. While brands’ payment terms vary widely, one industry expert said that most large brands and retailers that he had come across stipulated 90 or more days from the date of shipment, to pay the supplier.⁷⁹ Longer payment windows pose an unfair burden on suppliers, unless brands offset such delays through other favourable commercial terms for the supplier.⁸⁰

⁷⁶ Human Rights Watch interviews with supplier 1 who requested anonymity, group that operates garment factories in China, Southeast Asia, and South Asia supplying 17-20 international apparel brands, Southeast Asia, April and May 2018.

⁷⁷ Ibid.

⁷⁸ Human Rights Watch interview with supplier 5 who requested anonymity, supplier who estimated that about 90 percent of the products were made for US brands and the remaining for European brands, with a small percentage for the local market, Pakistan, June 2018.

⁷⁹ Human Rights Watch phone interview with HU who requested anonymity, an industry expert with experience of conducting thousands of social audits and also working with brands and suppliers, US, January 31, 2019.

⁸⁰ Ibid.

According to the Better Buying Purchasing Practices data in fall 2018, about 65 percent of buyers adhered to payment terms and cleared bulk invoices on time.⁸¹ Where they were delays, buyers took anywhere between 21 to 100 extra days from the actual agreed upon date, to make payments.⁸²

United Kingdom Prompt Payment Code

The Prompt Payment Code in the UK is a set of voluntary standards and payment best practices for UK businesses.⁸³ The Chartered Institute of Credit Management implements the code on behalf of the UK Department for Business, Energy and Industrial Strategy. Code signatories undertake three key commitments—to pay suppliers on time, give clear guidance to suppliers regarding payments, and encourage good practice where lead suppliers should encourage that the code is adopted throughout their supply chains. Code signatories undertake to make payments within 60 days and endeavour to pay within 30 days. As of early April 2019, the code had 2,258 signatories.⁸⁴

⁸¹ “Better Buying Purchasing Practices Index Fall 2018,” p. 11. In the report, favorable payment terms include the following: Buyer paid for sampling costs at or before shipment; Buyer paid deposits on volume orders; Buyer issued letters of credit for volume orders; Buyer paid for volume orders in full on or before shipment; any others.

⁸² *Ibid.*, p. 10

⁸³ Human Rights Watch workshop on purchasing practices, London, November 14-15, 2018. Department of Business, Energy, and Industrial Strategy and Chartered Institute of Credit Management, “Prompt Payment Code,” <http://www.promptpaymentcode.org.uk/> (accessed April 10, 2019).

⁸⁴ *Ibid.*, “Signatories,” http://212.36.126.249/ppc/ppc_signatory.a4d (accessed April 8, 2019).

III. Human Rights Abuses Fueled by Brand Purchasing Practices

Brand purchasing practices can be much more than just a headache for suppliers and a threat to their financial bottom line. Because they drive suppliers to work unreasonably fast while at the same time slashing costs, bad purchasing practices can incentivize abusive labor practices and risky contracting with unauthorized suppliers whose own labor practices may be abhorrent. This means that brand practices in these areas directly undercut their own efforts to insist on rights-respecting working conditions across their supply chains.

This report's emphasis on the need for better human rights due diligence of brands sourcing and purchasing practices does not lessen the responsibility of supplier factories, especially to respect workers' right to organize freely, prevent workplace abuses, or hold accountable staff who sexually harass or resort to verbal and physical abuse of garment workers. The reality, however, is that suppliers respond to the incentives brands create for them—so it is vital that brands are driving supplier practice in a more rights-respecting direction, rather than incentivizing abusive practices that might lower production costs.

Wages and Hiring Practices

Violations of laws governing minimum wages, overtime pay, and other aspects of compensation are a persistent industry challenge.⁸⁵ Problems are clearly widespread. The ILO's Better Work program found in a 2013 study (the latest available aggregate study) surveying five countries—Vietnam, Indonesia, Lesotho, Jordan, and Haiti—that all of them experienced widespread wage-related violations.⁸⁶

⁸⁵ Fair Labor Association, "Toward Fair Compensation in Global Supply Chains: Factory Pay Assessments in 21 Countries," August 2016, http://www.fairlabor.org/sites/default/files/documents/reports/toward_fair_compensation_in_global_supply_chains_2016_report_only_o.pdf (accessed April 10, 2019); Oxfam Australia, "What She Makes: Power and Poverty in the Fashion Industry," October 2017, https://whatshemakes.oxfam.org.au/wp-content/uploads/2017/10/Living-Wage-Media-Report_WEB.pdf (accessed April 8, 2019).

⁸⁶ ILO Better Work, "Better Work: Stage II: Global Synthesis Report 2009-2012," 2013, <https://betterwork.org/global/wp-content/uploads/Global-Synthesis-Report-final.pdf> (accessed April 8, 2019), p. 12. The Global Compliance report drew upon data from Vietnam, Indonesia, Jordan, Lesotho, and Haiti. Wage-related violations include non-payment of minimum wages, overtime wages, paid leave, social security and other benefits, and improper information about wages to workers and wage

Union leaders have protections under national laws and have the right to collectively bargain on behalf of workers with the factory management to improve wages and other working conditions. Where unions are independent and chosen freely by workers themselves, they can take steps to hold factories accountable labor abuses, including timely and accurate payment of wages and benefits, by assisting workers raise individual or collective disputes. Factories across different countries often do not allow workers to freely form or join unions.⁸⁷

Good collective bargaining agreements (CBAs) at the factory level carry negotiated wages and benefits that are better than those set out in national labor laws. For example, in a 2015 CBA negotiated by an independent union with a factory in Cambodia, the workers negotiated a wage increase and basic wages higher than the government notified minimum wage. Workers also negotiated other paid worker benefits and breaks. The agreement also sets out dispute resolution procedures.⁸⁸ In a 2019 CBA negotiated by an independent union with a factory in Bangladesh, the workers and factory management agreed to a 10 percent annual increase in workers' wages; a minimum number of annual promotions for women workers (which would increase their salary slab), other paid benefits, and a dispute resolution mechanism.⁸⁹ Brands that support workers' freedom of association and collective bargaining but seek to drive down prices without factoring in labor and social compliance costs aligned with CBAs, fail to pursue a pricing strategy that prevents and mitigates human rights risks.

Overtime-related violations have been an intractable industry problem, and double bookkeeping to hide overtime hours is widespread. The ILO's 2013 synthesis report stated that "a cross-cutting issue across all countries ... is the presence of double books and

deductions. The report did not incorporate findings from Better Factories Cambodia because the assessment tools were not yet harmonized between that program and Better Work in other parts of the world.

⁸⁷ See for example, Human Rights Watch, "*Work Faster or Get Out: Labor Abuses in Cambodia's Garment Industry*, March 2015, http://features.hrw.org/features/HRW_2015_reports/Cambodia_Garment_Workers/index.html; *Whoever Raises their Head Suffers the Most: Workers' Rights in Bangladesh's Garment Factories*, April 2015, http://features.hrw.org/features/HRW_2015_reports/Bangladesh_Garment_Factories/; *No Room to Bargain: Unfair and Abusive Labor Practices in Pakistan*, January 2019, <https://www.hrw.org/report/2019/01/23/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>.

⁸⁸ Collective Bargaining Agreement between Labour and Management, 2015, (names of parties withheld), on file with Human Rights Watch.

⁸⁹ "Bilateral Settlement as per Section - 210(3) of the Bangladesh Labour Act, 2006," 2019 (names of parties withheld), on file with Human Rights Watch.

inaccurate payroll records.... This is a widespread practice in the garment sector as suppliers are faced with pressures by buyers to produce quickly and at a low cost.”⁹⁰

Factories deploy myriad ways of avoiding overtime pay that may be difficult for brands to detect absent very robust compliance mechanisms. For example, in mid-2018, a group of workers in Myanmar described how their factories had “stolen minutes” from them. They elaborated that their managers had set “hourly” production targets for every 45 or 50 minutes.⁹¹ A labor rights advocate who routinely interacts with workers from scores of factories in Myanmar said that it was a common practice by factories, which sought to intensify work to avoid paying overtime wages.⁹²

Similarly, in India, workers from a factory described how they did overtime work during weekdays and on Sundays without overtime pay. The factory management told them they would adjust what was due as overtime pay as “earned leave,” subsequently forcing workers to take paid time off for 3-5 days during low season when the factory did not have sufficient business.⁹³ One of the workers said, “I did a lot of OT [overtime] dreaming of the extra money I would get and what I could do with that money. I was in tears when they said they wouldn’t give us any money for OT and [that] we would be given paid leave instead.”⁹⁴

Industry sourcing or compliance experts drew upon their experience, narrating how they had seen brand sourcing and purchasing practices helping to fuel such problems.⁹⁵ One sourcing expert with more than 30 years’ industry experience explained that excessive overtime or unauthorized subcontracting were driven by brands that did not forecast at all or forecasted poorly.⁹⁶ He reiterated the importance of brands monitoring the difference

⁹⁰ “ILO, Global Synthesis Report 2009-2012,” p. 13.

⁹¹ Human Rights Watch group interviews with 12 workers from 6 factories, Yangon, May 20, 2018.

⁹² Human Rights Watch interview with Yu Yu Aung (pseudonym), labor rights advocate, Myanmar, May 20, 2018.

⁹³ Human Rights Watch interview with six workers from three factories, India, May 11, 2018.

⁹⁴ Human Rights Watch interview with Sanjana S. (pseudonym), India, May 11, 2018. Under Indian labor law, “earned leave” is a category of paid time off that accrues to a worker depending on the number of days worked the previous year.

⁹⁵ Human Rights Watch phone interviews with GH who requested anonymity, former CSR representative for a European brand with over 10 years of experience overseeing social and labor compliance across multiple countries, Europe, November 27, 2018 and January 16, 2019; OE who requested anonymity, CSR head for a European brand, Europe, July 3, 2018.

⁹⁶ Human Rights Watch phone interviews with LO who requested anonymity, sourcing expert with more than 30 years of industry experience, US, October 23, 2018 and January 21, 2019. For more information about forecasting, see for example, P. Dhanpal and S. Anita, “Fashion Forecasting,” *Fibre2Fashion*, <https://www.fibre2fashion.com/industry-article/83/fashion-forecasting?page=1> (accessed April 8, 2019). Forecasting involves predicting consumer tastes and demands for particular styles.

between their projected and actual orders placed with factories. He said, “If a brand says [to a factory] they are going to order 150,000 pieces and then at the time of actually placing the order, turn around and ask for 250,000 pieces, then you are going to have OT [overtime] or subcontracting.” In 2018, while advising suppliers, he said he had found huge variations between brand projections versus actual orders, estimating that they were off about 80 percent of the time, causing problems for factories and their workers.⁹⁷

Shelly Gottschamer, a sourcing and compliance industry expert, reiterated the importance of brands paying attention, not just to excessive working hours during bulk production, but also when samples are being made. Speaking from her previous experience, she said that where brands added another style to the collection last minute and shortened the time for the samples to be produced, it resulted in excessive work hours for those making the samples.⁹⁸

A former social and labor compliance expert who had worked extensively in China and Southeast Asia recalled an egregious case he witnessed in 2009 in China. While this case is dated, he explained that this stood out for him because of the extreme and direct consequences a brand’s sourcing and purchasing practices had on the factory’s workers. He and his colleague visited a Chinese factory to conduct a social audit. The factory was one he was familiar with from several previous visits in an auditing capacity. He described that the day he visited the factory they “noticed that something was very wrong. There were many more people. There was a very bad atmosphere in the workshops.”⁹⁹

After speaking to the factory management, they learned that they had taken on a huge order for a North American buyer, putting all other buyers on hold for a period of six months or so, expecting to make a big profit. But the factory received poor quality fabric and was forced to send the fabric back to the dyeing mill. The factory approached the North American buyer explaining what had happened, seeking additional time to complete production, which was refused. He said, “[T]he direct consequences of that were that

⁹⁷ Human Rights Watch phone interviews with LO who requested anonymity, sourcing expert with more than 30 years of industry experience, US, October 23, 2018 and January 21, 2019.

⁹⁸ Human Rights Watch interviews with Shelly Gottschamer, December 13, 2018 and January 16, 2019.

⁹⁹ Human Rights Watch phone interview with GH who requested anonymity, former CSR representative for a European brand with over 10 years of experience overseeing social and labor compliance across multiple countries, Europe, November 27, 2018.

everyone had to work a lot more—more than 300 hours a month,” which resulted in excessive overtime for workers.

The second consequence was massive recruitment of temporary workers. He described how the factory “went on this recruiting spree in the northwest of China” and estimated that of about 90 people recruited from really poor areas of the Chinese country side, 25 were children. “This is a horrible example and is quite extreme.... But what it shows is that purchasing practices do affect working conditions,” he said.¹⁰⁰

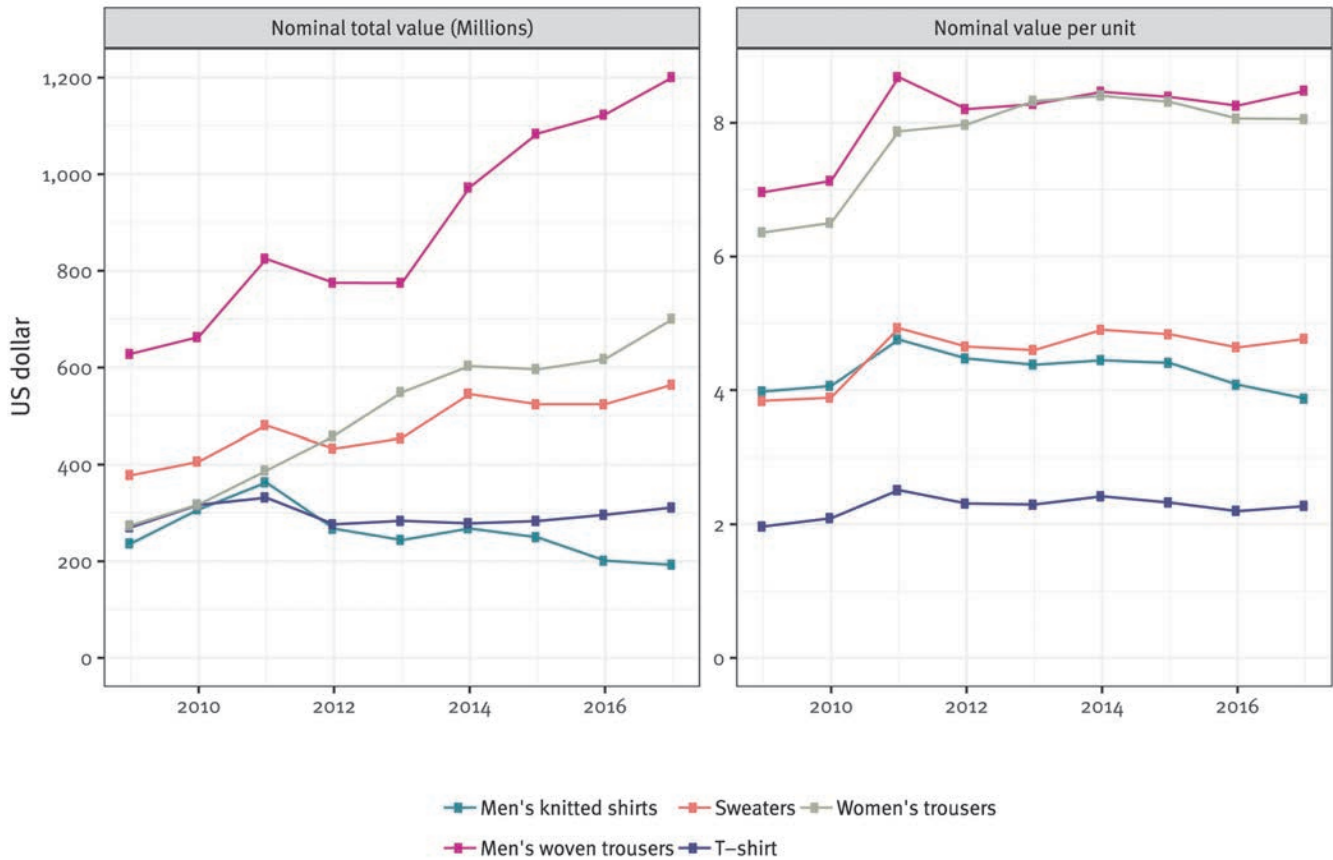
Pakistan Case Study: Factories Use Poor Worker Hiring Practices to Cut Costs

Human Rights Watch analysis of data of apparel exports from Pakistan to the EU and the US between 2011 and 2017 shows that for the top five product categories, the nominal US dollar price per garment was largely stagnant, even though the Pakistan government consistently raised the minimum wages.

Year	Monthly Minimum Wages in Pakistan (in Pakistani Rupees)
2008	6000 (US\$43)
2010	7000 (\$50.5) 8000 (\$57.7) in Punjab
2012	8000 (\$57.7) 9000 (\$65) in Punjab
2013	10,000 (\$72)
2014	12,000 (\$ 86.6)
2015	13,000 (\$93.9)
2016	14,000 (\$101)
2017	15,000 (\$108)

¹⁰⁰ Ibid.

Pakistan – Top Garment Items Exported to US and EU
Nominal value in US dollar



Sources: US International Trade Commission, Eurostat, and US Federal Reserve Bank of St. Louis.

Source: Clean Clothes Campaign and Labour Education Foundation, nongovernmental organizations

Six Pakistani suppliers interviewed by Human Rights Watch said that there were no meaningful price negotiations between them and the brands they worked with. Against this backdrop of intense price pressures, a range of workplace abuses are tied to suppliers' desire to cut costs. One official with over seven years' experience working for two apparel factories (different from the suppliers we spoke with) producing for global apparel brands described measures factories take to cut costs. He said that hiring workers through contractors and showing fewer workers as "permanent" on the payroll allowed factories to minimize costs, in large part because it obviated the need to pay the statutory benefits an employer would have to pay a regular worker:

A lot of factories hire workers through contractors. Let's say I am a supplier or an owner. I have a factory and have to produce 200,000 jackets every month. I will talk to a few *thekedars* (contractors) and they will come to me and the rates are set. I will set a lump sum amount for the job. The factories don't want any headaches [paying wages and benefits]. They will hand over the amount to the contractor and the contractor will distribute the salary to workers. These workers will not get any benefits because the contractors will not pay any benefits.¹⁰¹

Second, factories also paid lower social security contributions than they should: "A factory that has 1,000 workers pays pension and social security contributions for about 50 to 100 workers."¹⁰² He said it was easy to generate fake vouchers showing that contributions were paid for everyone and it was a well-oiled system of keeping costs low because government's regulatory mechanisms are weak.¹⁰³

When asked about poor social security contributions, one Pakistani supplier said, "There are people [factories] who don't pay EOB [Employees' Old-Age Benefits], it's a cost-cutting method. They do it because their costs are too high and when they factor it all in they are unable to compete."¹⁰⁴

¹⁰¹ Human Rights Watch phone interview with factory official in Pakistan who requested anonymity, July 24, 2018.

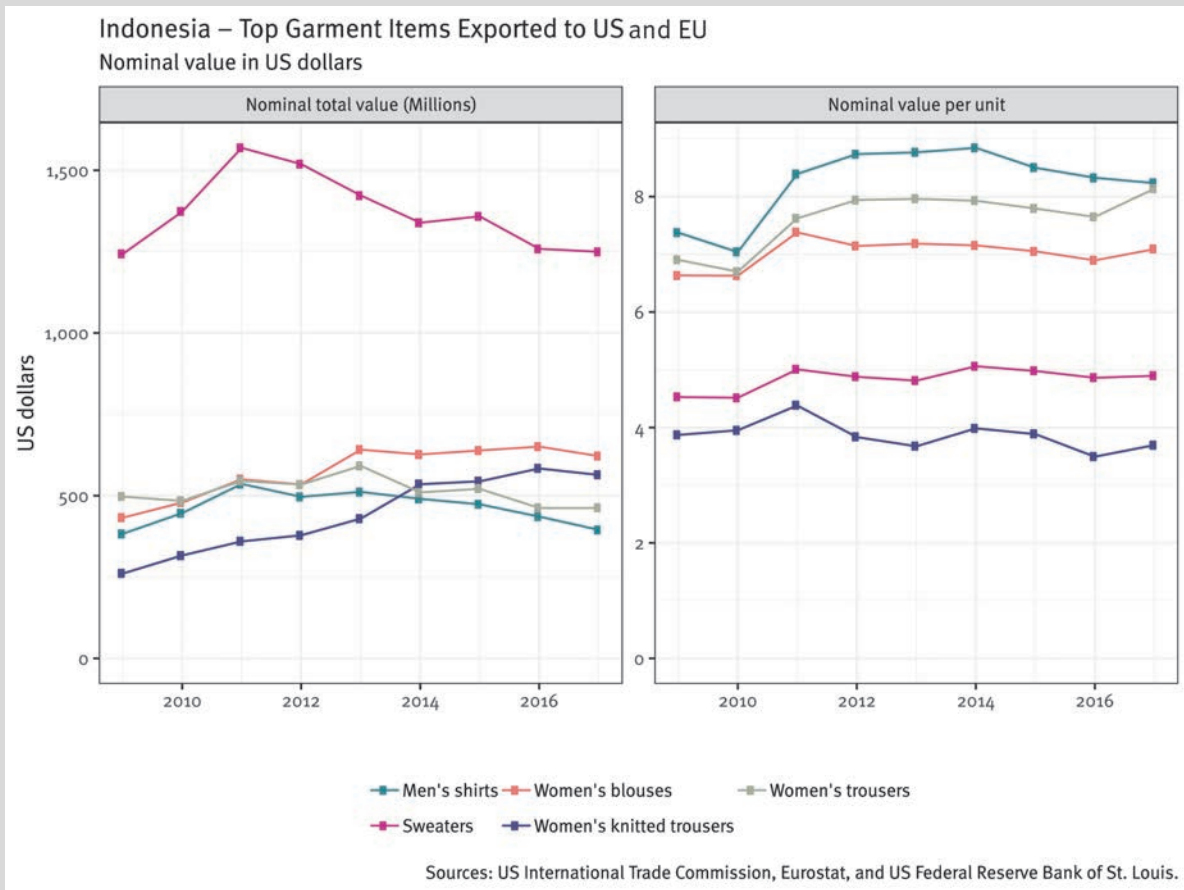
¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Human Rights Watch second interview with supplier 2 who requested anonymity, supplier manufacturing for 6-8 international clothing brands, Pakistan, July 2018.

Spotlight on Indonesia

Human Rights Watch analysis of EU and US trade data for apparel exported from Indonesia shows that since 2011 the nominal price per garment for the top five products (by value) produced in Indonesia has largely remained stagnant.



The ILO's Better Work program reported in 2018 that 35 percent of the factories it monitored did not comply with minimum wage rules;¹⁰⁵ 76 percent of the factories did not pay social security and pension contributions as required under the law.¹⁰⁶ Excessive overtime is a huge

¹⁰⁵ ILO Better Work, "Annual Report 2018: An Industry and Compliance Review, Indonesia," 2018, <https://betterwork.org/blog/portfolio/better-work-indonesia-annual-report-2018-an-industry-and-compliance-review/> (accessed April 15, 2019), p. 17.

¹⁰⁶ Ibid.

problem in Indonesia—66 percent of surveyed factories violated daily and weekly overtime limits, and about 49 percent of factories did not make accurate overtime wage payments.¹⁰⁷

An auditor from Indonesia, who has more than a decade’s experience conducting social compliance audits, felt unfair purchase prices contributed to factories trying to cut costs by resorting to abusive labor practices. Despite significant minimum wage differences amongst provinces, he learned while conducting social audits that the prices brands paid did not reflect these minimum wage differences, leading factories to take cost-cutting measures that impacted workers:

In Indonesia, every district has a different minimum wage. Jakarta has about 3.5 million rupiah (\$247) for a month. In other provinces like West Java, the minimum wages—the lowest minimum [wage] is 1.5 million rupiah (\$106). But the price for the garment is the same whether brands produce in factories in West Java or East Java. How can this be?¹⁰⁸

Work Intensification

Shorter lead times combined with low buying prices drive factories to reduce costs, especially in the context of increasing minimum wages. This can result in work intensification, where factory managers revise workers’ hourly production targets upwards.¹⁰⁹

Over the years, there has been a common thread running through most of the interviews Human Rights Watch carried out with garment workers in Cambodia,¹¹⁰ Bangladesh,¹¹¹ India,¹¹² Myanmar,¹¹³ and Pakistan¹¹⁴: relentless, ever-mounting pressure to work nonstop.

¹⁰⁷ Ibid.

¹⁰⁸ Human Rights Watch phone interview with A2 who requested anonymity, auditor, Indonesia, April 24, 2018.

¹⁰⁹ Human Rights Watch workshop on purchasing practices, London, November 14-15, 2018.

¹¹⁰ Ibid.

¹¹¹ Human Rights Watch, *Whoever Raises their Head Suffers the Most*.

¹¹² Human Rights Watch interviews with 20 workers from six factories in Bangalore and Mysore, and three union federation leaders, May 2018.

¹¹³ Human Rights Watch interviews with 25 workers from 8 factories in Myanmar in May 2018.

¹¹⁴ Human Rights Watch, *No Room to Bargain*.

Some common methods of getting workers to produce more include restricting workers' toilet breaks; trimming their meal breaks; squeezing "trainings" into lunch or other rest breaks so the "production time" is not lost; and disallowing drinking water breaks and other rest breaks.

Nay San Lin, a 19-year-old male worker, said that his factory in Myanmar suddenly increased the hourly production targets over the course of one month in mid-2018, from 100 pieces to 120 pieces, and then 200 pieces.¹¹⁵ Myanmar had increased its minimum wage earlier that year. Similarly, workers in Cambodia complained that factories had increased their targets after the minimum wages were raised, mounting intense pressure on them to meet these targets and undermining their ability to take breaks.¹¹⁶

Panh Ei Cho, a garment worker from Myanmar, recalled being publicly humiliated in her factory in early 2018. As she was using the factory's toilet, she heard her name reverberating through the public announcement system. Her line supervisor was unhappy with her "frequent" toilet breaks and decided some public shaming was in order. The factory management's expectation was that Panh Ei Cho should be sewing, oblivious to her bodily needs. She had diarrhea that day.¹¹⁷

Fawzia Khan, a 24-year-old unmarried woman worker who was working for over a year in the sewing department of a Pakistani factory producing for international brands said:

I hate the jail-like atmosphere at the workplace, the ban on going to the bathroom, the ban on getting up to drink water, the ban on getting up at all during work hours.... And the one hour that we are supposed to get off during the day is actually only half an hour in practice. I don't remember the last time I got a full one hour break.¹¹⁸

¹¹⁵ Human Rights Watch interview with Nay San Lin (pseudonym), Myanmar, May 10, 2018.

¹¹⁶ Human Rights Watch, "*Work Faster or Get Out: Labor Abuses in Cambodia's Garment Industry*," pp. 55-58; Center for Alliance of Labor and Human Rights, "Rising Production Targets Undermining Minimum Wage Increases," December 10, 2018, <https://www.central-cambodia.org/archives/2460> (accessed April 8, 2019).

¹¹⁷ Human Rights Watch interview with Panh Ei Cho (pseudonym), Myanmar, May 20, 2018.

¹¹⁸ Human Rights Watch interview with Fawzia Khan (pseudonym), Lahore, May 2018.

A Gender Lens: The Differential Impact of Work Intensification on Women Workers

The pressure to work faster and without breaks takes a different toll on women workers. The majority of workers in the apparel industry are women of reproductive age.

Sexual Harassment and Verbal Abuse

Women workers have recounted examples of male line supervisors asking for sexual favors in exchange for lighter workloads or approving leave.¹¹⁹ Alternatively, they have described putting up with sexual harassment at the hands of male mechanics, who they depend on for properly maintained machines to be able to work fast.¹²⁰

Workers from different countries have described enduring verbal abuse, including sexualized humiliation of women workers, at the hands of line supervisors or managers, especially to goad them into working faster.¹²¹ That underlying pressure is only increased when suppliers respond to brand purchasing practices by trying to push production forward at an unreasonable pace.

In many cases, workers themselves work without taking breaks, explaining that they do so to avoid having verbal abuses being hurled at them by line or floor supervisors.¹²² Kanthi K., a 48-year-old married worker in an Indian factory producing for international brands described how the floor in-charge supervisor pressured workers to do more work by humiliating them: “You’ve done only so many pieces? And why have you passed this [for quality check]—don’t you see it needs alteration? You’re as old as a donkey. Why do you come to work? Go die somewhere else.”¹²³

Jina Reza, a 34-year-old married worker from a Pakistani factory producing for an international brand described that the supervisors—all men—hurled verbal abuses at the

¹¹⁹ Human Rights Watch, *Combating Sexual Harassment in the Garment Industry*, February 12, 2019, <https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry>.

¹²⁰ Human Rights Watch group interview with workers from a factory in Phnom Penh (names withheld), Phnom Penh, December 5, 2013.

¹²¹ Human Rights Watch, “*Work Faster or Get Out: Labor Abuses in Cambodia’s Garment Industry, Whoever Raises their Head Suffers the Most*,” Human Rights Watch interviews with 40 workers in Myanmar and India, May 2018.

¹²² Ibid.

¹²³ Human Rights Watch interview with Kanthi K. (pseudonym), India, May 10, 2018.

workers to make them work faster, and that the abuses increased in the months of November and December, which she said were peak production seasons.¹²⁴

In 2014, an ILO Better Work discussion paper drawing upon survey data on verbal abuse by supervisors in garment factories in Vietnam, Indonesia, and Jordan, found that factories were more likely to foster an abusive environment for workers when wages were low, supervisors' pay was tied to productivity, or factories had too many "rush orders."¹²⁵

The Toll on Women's Reproductive and Sexual Health, Pregnant Workers

Menstrual cycles—a natural part of all women's reproductive health—increases women's needs for toilet and other breaks.¹²⁶

Menstrual hygiene challenges at the workplace are multiple. These include managers not understanding women's need for additional time in the toilet to manage menstruation; managers not being familiar with how women may use "checking" to prevent staining their clothes; difficulty raising menstrual hygiene issues with male staff; a lack of facilities for disposing of sanitary pads or menstrual cloths; and a lack of facilities to provide workers with sanitation products.¹²⁷

Anecdotal evidence through group discussions with women workers in Myanmar and India revealed that women are seldom able to raise concerns about the need for more frequent toilet breaks or small breaks to relieve them of menstrual cramps. This is partly due to cultural taboos or diffidence. But even where workers used euphemisms about "hip pain" and "that time of the month" to try and get their line supervisor to allow them a break, or where there were female line supervisors, they said that they were not successful. They recounted instances of being humiliated for "disrupting" the production line when they

¹²⁴ Human Rights Watch interview with Jina Reza (pseudonym), Lahore, May 2018.

¹²⁵ Emily L. Rourke, "Is there a Business Case Against Verbal Abuse? Incentive Structure, Verbal Abuse, Productivity and Profits in Garment Factories," ILO Better Work Discussion Paper Series No. 15, September 2014, <https://betterwork.org/global/wp-content/uploads/2014/09/DP-15-web.pdf> (accessed April 8, 2019).

¹²⁶ Sarah House et al., "Menstrual Hygiene Matters: A Resource for Improving Menstrual Hygiene Around the World," WaterAid, 2012, <https://washmatters.wateraid.org/sites/g/files/jkxooof256/files/Menstrual%20hygiene%20matters%20low%20resolution.pdf> (accessed April 10, 2019), p. 172. According to a WaterAid resource, Menstrual Hygiene Matters, research shows that menstrual cramps affect at least 50 percent of women in their reproductive age, with a direct impact on their ability to work and workplace absenteeism. Menstrual cramps may be accompanied by other symptoms such as nausea, vomiting, diarrhea, headaches, weakness, and/or fainting.

¹²⁷ Ibid.

ask around for sanitary products, or demand clean facilities, or ask permission to use the toilet frequently when they are menstruating.¹²⁸ A few also reported being asked inappropriate questions about their sex lives.¹²⁹

Pregnant workers, in particular, often become casualties in this increasing pressure to work faster. Many factories often perceive them as “unproductive” because of their needs for more breaks and rest and either fire them or do not renew their contracts.¹³⁰

Unauthorized Subcontracting to Abusive Factories

Outsourcing production to smaller, low-cost units without brand permission is another method used by factories to cut production costs or meet production deadlines.¹³¹ Typically, brands forbid unauthorized subcontracting—in part because it leaves them in the dark about the conditions facing workers who produce their goods.¹³² But brands often struggle to detect these unauthorized arrangements, and their own sourcing and purchasing practices often create the pressures that lead suppliers to turn to them.

Sourcing or compliance experts identified poor forecasting, brands’ lack of monitoring factory’s capacities, the use of buying agents, absence of ordering time tables, last minute design changes, and low prices as among the brand purchasing practices that contribute to the use of unauthorized subcontractors by factories.¹³³ One sourcing expert estimated that in the mid-1990s, it took about a year for a company to produce clothes that reflected the style or design of an outfit worn by a celebrity. But “[n]ow, Kim Kardashian wears

¹²⁸ Human Rights Watch group discussions with 11 workers from different factories in Myanmar, and three and five workers from the same factory in Bangalore, May 2018.

¹²⁹ Human Rights Watch group interviews with three and five workers from the same factory in Bangalore, *ibid.*

¹³⁰ Human Rights Watch, “*Work Faster or Get Out: Labor Abuses in Cambodia’s Garment Industry, “No Room to Bargain”: Unfair and Abusive Labor Practices in Pakistan.*”

¹³¹ “ILO Supplier Survey on Purchasing Practices, 2016,” pp. 19-20.

¹³² See for example, C&A, “Ensuring Adherence to the Code of Conduct,” *Code of Conduct for the Supply of Merchandise*, April 2015, http://sustainability.c-and-a.com/fileadmin/user_upload/materialimpacts/C_A_Code_of_Conduct_2015_-_English.pdf (accessed April 8, 2019), ; Inditex, “Code of Conduct for Manufacturers and Suppliers: Inditex Group,” <https://www.inditex.com/documents/10279/241035/Inditex+Code+of+Conduct+for+Manufacturers+and+Suppliers/e23dde6a-4boe-4e16-a2aa-68911d3032e7> (accessed April 8, 2019), clause 10, p. 6.

¹³³ Human Rights Watch phone interviews with Shelly Gottschamer; HU, GH, LO, DN who requested anonymity, sourcing experts.

something and I expect to be able to go online and buy it within four or five weeks.”¹³⁴ She described how sourcing managers typically work:

We’ve got this style, we’ve designed it, and got all the raw materials in order. And I need 10,000 units made and I need them in stores in a month. There just aren’t factories sitting around waiting for me to rock up with 10,000 units—where they have nothing to do and they just happened to be free and available and they have all the right quality, skill set—it just doesn’t happen. So what happens as a sourcing or buying person you go to a factory that you know well and you know they can execute this thing [order] and say, “Is there any way you can execute this quantity in this time frame?” And guess what? They [the factory] will always say yes. How are they doing that? They are going out and finding someone in their network who can do it—and that’s unauthorized subcontracting.¹³⁵

Cambodia Case Study: Growing Subcontracted Factories

Human Rights Watch has documented growing unauthorized subcontracting in Cambodia since 2012. The subcontractor factories Human Rights Watch saw in 2012, 2013, 2014, and 2016 were mostly operating out of large sheds or what looked like rural homes. Between 2014 and 2016, the number of subcontractor factories producing mostly for the export market nearly trebled—from 82 to 244.¹³⁶

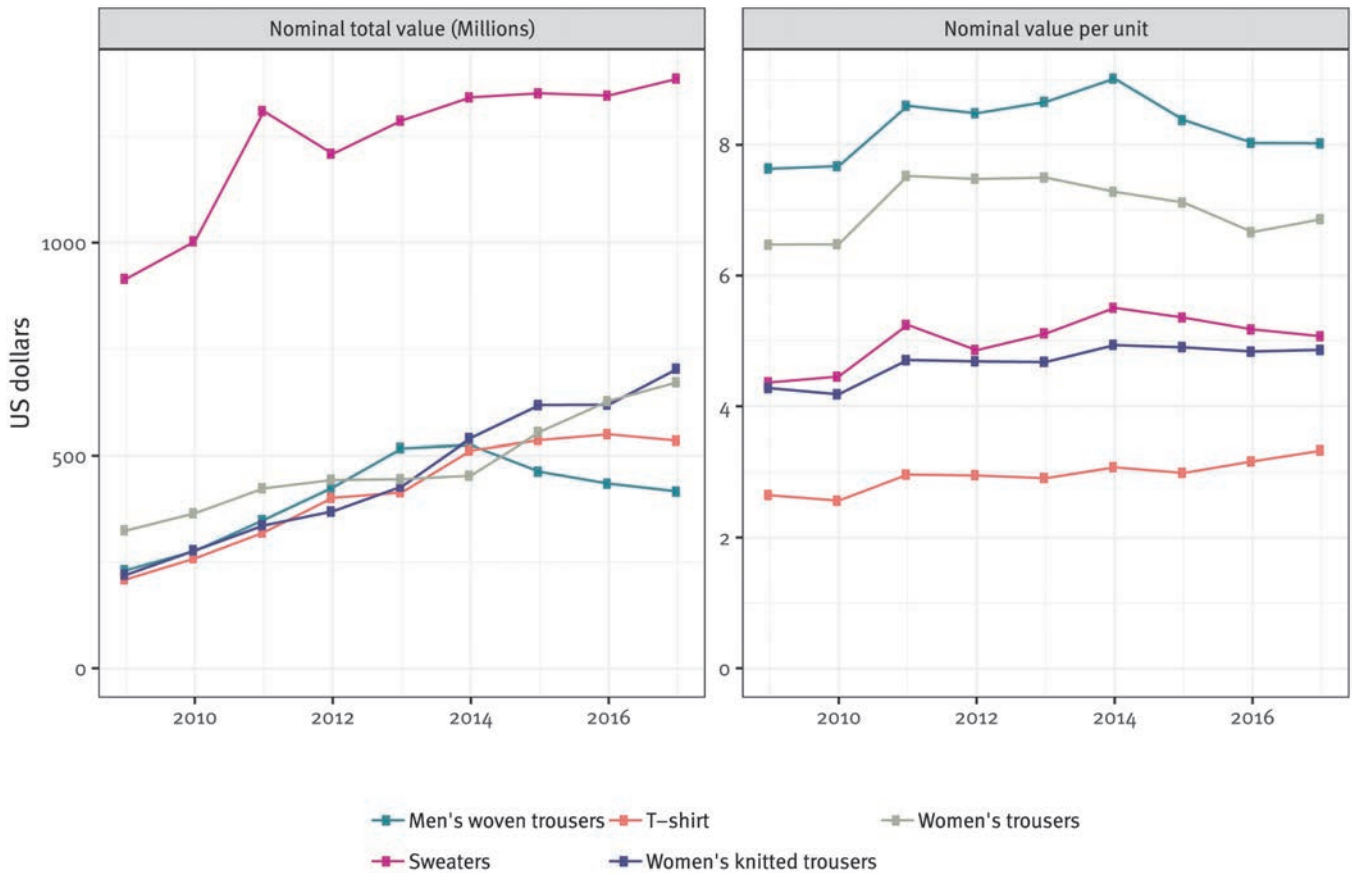
Even though the government raised the monthly basic wage (that is without adding mandatory allowances) from \$100 to \$153 between 2014 and 2017, EU and US trade data shows that nominal apparel prices per unit paid by international apparel brands for top five products (by value) manufactured in Cambodia mostly dropped during the same period.

¹³⁴ Human Rights Watch phone interview with DN who requested anonymity, industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous international garment brands, London, January 15, 2019.

¹³⁵ Ibid.

¹³⁶ ILO, “Cambodian Garment and Footwear Section Bulletin,” Issue 6, May 2017, http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_555290.pdf (accessed April 8, 2019), p. 4.

Cambodia – Top Garment Items Exported to US and EU
 Nominal value in US dollars



Sources: US International Trade Commission, Eurostat, and US Federal Reserve Bank of St. Louis.

Source: ILO, “How is Cambodia’s Minimum Wage Adjusted,” Cambodian Garment and Footwear Sector Bulletin, Issue 3, March 2016, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_463849.pdf (accessed April 8, 2019); Worker Rights Consortium and Clean Clothes Campaign. *All the rates indicated are basic wages. These are supplemented by mandatory transport and accommodation allowance of \$7.

In 2016, Human Rights Watch physically mapped 45 subcontractor factories in Kandal province with the help of workers. This was in addition to a few other subcontractor factories Human Rights Watch discovered in Phnom Penh. Most of these factories were unmarked, making it difficult to even detect that the building housed a factory.

Year	Monthly Minimum Wages in Cambodia (in US\$)
2008	56
2010	61
January 2012	61 (the government supplemented this basic wage with a mandatory health care allowance of \$5)
September 2012	61 (the government supplemented this basic wage with mandatory allowances—\$5 for health and \$7 for transport and accommodation)
May 2013	80*
February 2014	100*
2015	128*
2016	140*
2017	153*
2018	170*
2019	182*

In three factories where Human Rights Watch interviewed workers from export-oriented factories in Phnom Penh, the workers said that the managers from their factories had organized transport and encouraged workers to go to the subcontractor factories in Kandal and work after a full day’s work in the main factory, or alternatively on Sundays. This allowed these factories to employ their workers at another site without paying them overtime wages, special rates for night work or Sunday work, while violating weekly rest day standards for workers.¹³⁷

Human Rights Watch found that workers in subcontractor factories had worse working conditions compared to larger factories producing directly for global brands. Workers working in subcontractor factories whom we interviewed said they did not have health clinics and they did not receive paid sick leave or other paid benefits even though workers were legally entitled to these benefits.¹³⁸ Workers also found it more difficult to form unions in subcontractor factories.¹³⁹

¹³⁷ Human Rights Watch interviews with workers in three factories, Phnom Penh, April 2014.

¹³⁸ Human Rights Watch interviews with workers from six subcontractor factories, Phnom Penh and Kandal, April 2014 and June 2016.

¹³⁹ Human Rights Watch interviews with two union leaders from the Coalition of Cambodian Apparel Workers' Democratic Union, Kandal, June 27, 2016.

Poor Occupational Health and Safety

The primary responsibility to create and maintain safe working premises rests with factory owners. But it is important to recognize that brands' sourcing and purchasing practices are critical in the context of occupational health and safety because of the significant financial investments that are often needed to improve factory conditions. While some big suppliers, who are conglomerates, have the resources to make such investments, other smaller suppliers' ability to carry out remediation is more influenced by brand purchasing practices.

Case Study: Fire and Building Safety in Bangladesh

In April 2013, the Rana Plaza building collapsed in Bangladesh, killing 1,138 workers and injuring over 2,000 workers. The Rana Plaza disaster—the largest in the apparel industry—came after a spate of other factory disasters.¹⁴⁰ The disaster revealed the ineffectiveness of the government fire and building safety inspections. It also showed how brands were doing business with unsafe supplier factories.

Following the disaster, two private fire and building safety initiatives were created in Bangladesh. The first, the Bangladesh Accord on Fire and Building Safety (Accord), is a binding agreement between mostly European brands and global union IndustriALL with strong business consequences for brands that do not carry out remediation to meet the Accord's safety standards.¹⁴¹ The second, the Alliance for Bangladesh Worker Safety (Alliance), is a non-binding initiative led by American brands, which put in place mechanisms for inspection and remediation.¹⁴² A third initiative led by the Bangladesh government—the National Tripartite Plan of Action on Fire Safety and Structural Integrity (NTPA)—covered factories which for the most part supply smaller international brands and that did not fall under the Accord or Alliance.¹⁴³

¹⁴⁰ For example, see List of Garment Factory Accidents in Bangladesh, 2013-2017, <https://static1.squarespace.com/static/547df270e4boba184dfc490e/t/5ac5594eaa4a99455407da07/1522882894077/List+of+Garment+Factory+Accidents+in+Bangladesh+2013-2017.pdf> (accessed April 8, 2019);

¹⁴¹ "Accord on Fire and Building Safety in Bangladesh," <http://bangladeshaccord.org/> (accessed April 8, 2019).

¹⁴² "Alliance for Bangladesh Worker Safety," April 2013, <http://www.bangladeshworkersafety.org/> (accessed April 8, 2019).

¹⁴³ International Finance Corporation (IFC) and International Labour Organization, "Remediation Financing in Bangladesh's Ready Made Garment Industry: An Overview," June 2016, https://www.ifc.org/wps/wcm/connect/650e70d9-3744-41ff-875a-a790840b23b8/Report_Remediation+Financing_Bangladesh.pdf?MOD=AJPERES (accessed April 8, 2019), p.2. An IFC report described the National Tripartite Plan of Action on Fire Safety and Structural Integrity (NTPA) as working with "smaller international brands that exhibit comparatively less concern for safety and labor law compliance."

The Accord dramatically altered status quo. Brands could not quietly cut and run from factories that were unsafe. Brands collectively ended business with factories that did not carry out remediations even after receiving a series of warnings. For the first time, brands were required, within a legally binding framework, to facilitate financing of remediation.¹⁴⁴ The Accord secretariat issued guidance for financing, which also touches on sourcing and purchasing practices.¹⁴⁵ Brands are encouraged to reduce payment windows and prepay orders to improve factories' cash flow, and to guarantee orders for longer periods and higher volumes, and increase the price per unit to improve overall factory revenues.¹⁴⁶ Arbitration disputes involving two Accord brands arose, and were settled with the brands paying more than \$2.3 million towards remediating unsafe conditions in its supplier factories.¹⁴⁷

Some Accord member brands reportedly supported remediation by making a few improvements to their purchasing practices in Bangladesh. For example, an industry expert who was closely involved with monitoring the functioning of the Accord and privy to discussions on financing for remediation for fire and building safety, said that he witnessed a few dozen cases where some form of financial assistance was provided to complete remediation. He said that in most of these cases, the assistance was in the form of advance payments for future orders, facilitation of bank loans at an advantageous interest rate, better payment terms, longer-term order commitments, or larger order volumes. A smaller number of brands made direct payments for remediation or increased prices to cover increased production costs.¹⁴⁸

But unlike other areas where the Accord provided aggregate figures on progress, the Accord has not been able to generate aggregate figures on specific measures brands initiated to support financing. It is widely believed that this is because suppliers are reluctant to meaningfully disclose precisely which brands are not providing adequate

¹⁴⁴ Bangladesh Accord on Fire and Building Safety, Art. 22 (on file with Human Rights Watch).

¹⁴⁵ Bangladesh Accord on Fire and Building Safety, "Finance for Remediation to Accord Standards" (on file with Human Rights Watch).

¹⁴⁶ *Ibid.*

¹⁴⁷ IndustriALL, "Bangladesh Accord arbitration cases - resulting in millions-of-dollars in settlements - officially closed," July 18, 2018, <http://www.industriall-union.org/bangladesh-accord-arbitration-cases-resulting-in-millions-of-dollars-in-settlements-officially> (accessed April 8, 2019).

¹⁴⁸ Human Rights Watch interview with NN who requested anonymity, an expert who is closely involved in monitoring the functioning of the Bangladesh Accord, December 11, 2018.

financial assistance because of the fear that the brands will quietly terminate business with the factory.

Despite the significant progress made in Bangladesh on fire and building safety, much remains to be done for all of Bangladesh's factories to be safe for workers.¹⁴⁹ In June 2016, the International Finance Corporation (IFC) projected that costs of factory repairs would be a significant roadblock for timely remediation—structural repairs being the most expensive.¹⁵⁰ Remediation costs for garment factories vary hugely from one factory to another depending on the nature of repairs. According to the IFC, a vast majority of garment factories needed between \$120,000 and \$320,000 and in some cases, up to \$1.5 million.¹⁵¹

Brands' poor sourcing and purchasing practices not only impact the funds available to factories willing to conduct repairs but also influence their bank loan eligibility. Numerous credit facilities were created to enable banks to disburse loans to finance fire and building safety repairs. But according to the IFC, "banks are naturally inclined to select only the least risky clients, avoiding financing factories with high cash flow volatility, or factories with weaker business relationships to their buyers (and therefore less regular purchase orders)."¹⁵² A mapping of banks' "risk appetite" shows that suppliers who have long strategic relationships to brands with no cash flow struggles are most likely to get loans needed to effect improvements.¹⁵³

Overall, however, purchasing price trends in Bangladesh show that the nominal price per unit has dropped or stagnated since 2014, the year after the Rana Plaza collapse.¹⁵⁴ Further,

¹⁴⁹ For example, see Clean Clothes Campaign et al., "The Bangladesh government attempts to paralyze Accord and strip its independence," December 10, 2018, <https://cleanclothes.org/news/2018/12/10/bangladesh-government-attempts-to-paralyze-accord-and-strip-its-independence> (accessed April 8, 2019). "The Accord has been instrumental in radically improving the safety of garment factories in Bangladesh since it was established in the wake of the Rana Plaza factory collapse in 2013 that claimed over a thousand lives. The Accord has identified more than 100,000 fire, building, and electrical hazards and the large majority have been rectified... Despite this progress, dangers remain and workers' lives are still at risk. Over 50% of the factories still lack adequate fire alarm and detection systems and 40% are still completing structural renovations."

¹⁵⁰ ILO and IFC, "Remediation Financing in Bangladesh's Ready Made Garment Industry: An Overview," p. 2.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, p. 37.

¹⁵³ *Ibid.*, p. 42.

¹⁵⁴ Center for Global Workers' Rights, "Binding Power: The Sourcing Squeeze, Workers' Rights, and Building Safety in Bangladesh Since Rana Plaza," March 22, 2018, <http://lser.la.psu.edu/gwr/documents/CGWR2017ResearchReportBindingPower.pdf> (accessed April 8, 2019), pp. 5-7. The

a 2016 ILO global survey of suppliers revealed that the highest proportion of suppliers accepting orders below production costs owing to pressure from buyers are from Bangladesh.¹⁵⁵

Speaking about how purchasing practices influenced factories' ability to carry out remediation, an industry expert who worked closely with factories, buyers, and workers, said:

I've spoken to numerous Accord and Alliance factory owners. The remediation is running into hundreds of thousands of dollars and many of them say, "I don't have a single buyer who will guarantee me business for more than six months." This uncertainty and low prices do not help factories make financial investments. A loan will take them five to ten years to pay off—even with low interest rates. There are some exceptions—some big buyers who have strong relationships with a few factories and stay for a prolonged period of time.¹⁵⁶

These problems are not unique to Bangladesh. For example, an industry expert said that in May 2018 he visited a factory in another country in the region, which had been supplying a European brand for more than a decade. The European brand used a Taiwanese agent to place orders. Reflecting on some of his discussions with the factory owner, he said: "The factory owner liked the loyalty. But she's frustrated about the price. Up until recently they were paying \$1.20 for the CM [cut-and-make] rate by the Taiwanese agent. And the same pair of trousers sell for 20 euro—she puts the price tags."¹⁵⁷

Center for Global Workers' Rights documented a 13 percent decline in the prices paid by buyers in Bangladesh to produce trousers exported to the US. Based on a supplier survey of 211 Bangladesh suppliers of international apparel brands, the center concluded that "in all major product categories we find a decline in nominal prices paid per unit [garment]." Between 2011 and 2016, the price drop for garments exported to the US was about 11 percent, in comparison to a 9 percent decline for EU apparel exports.

¹⁵⁵ ILO Survey, 2016, p. 8. 52 percent of suppliers from Bangladesh (across different sectors) reported that they accepted orders below production costs because of buyer pressure.

¹⁵⁶ Human Rights Watch phone interview with industry expert who has worked in Bangladesh and other countries (name withheld on interviewee's request), Hong Kong, December 16, 2018.

¹⁵⁷ Human Rights Watch interviews with supplier 1 who requested anonymity, group that operates garment factories in China, Southeast Asia, and South Asia supplying 17-20 international apparel brands, Southeast Asia, April and May 2018.

The expert observed a number of labor and safety concerns for workers: “She has 200 workers and it’s a small factory. She has a dormitory next to the warehouse, next to the wood pile, next to the rice boiler. There is a giant wood pile, and anything could catch fire in any number of ways,” he said. “The owner wants to make improvements to her factory. But the prices she receives is too low. So, she says she’s kind of stuck. One of her friends who was also producing for the same brand recently went out of business. The minimum wages are also increasing.”¹⁵⁸

Other Occupational Health Concerns

In interviews with Human Rights Watch, garment workers from numerous factories across Myanmar, Bangladesh, India, and Cambodia have complained about how they work in stuffy environments without proper ventilation. Workers have described additional fans or lights being switched on before “visitors” came to factories, or masks and other personal protection equipment being distributed to them only before such visitors arrive.¹⁵⁹

For example, Vinutha V., a woman working in the cutting department of a garment factory in Mysore city in southern India supplying two European brands in May 2018, described how uncomfortable it is especially during the summers:

There is no AC [air-conditioner]. There’s an AC in the PM [production manager] cabin. In the heat, the fan only circulates hot air. We can feel the sweat dripping on our backs—that’s how hot it is. The chair is so heated—we can’t even sit on it properly. And I have so much white bleeding [vaginal discharge]—I can’t even tell anyone at home. I’ve gone to the doctor and the doctor says I’m working with too much heat and I need to reduce that work. But, how can I? All these machines—the machines in the cutting section and the power machines in the sewing section—give out too much heat. We all suffer from white bleeding.¹⁶⁰

¹⁵⁸ Ibid.

¹⁵⁹ Human Rights Watch, “*Work Faster or Get Out: Labor Rights Abuses in Cambodia’s Garment Industry*,” p. 120; Human Rights Watch interviews with A1, auditor who has conducted social audits of factories in Pakistan, India, and Vietnam, April 2018.

¹⁶⁰ Human Rights Watch group interview with Vinutha V. (pseudonym) and two other workers from a factory in India, Bangalore, May 13, 2018.

A group of workers in Myanmar working for six factories described how little ventilation their factories have. For example, one worker said of her workplace: “There are 10 fans on the floor. But they keep only five switched on. And the fans that are switched on are not near my [production] line so it’s very hot where I am.”¹⁶¹ Workers from ironing departments especially complained that it was very hot and described how they were soaked in sweat.¹⁶² Some workers said that they had witnessed others fainting in their factories.¹⁶³

Auditors and industry experts that Human Rights Watch has spoken with said that factories cut costs on maintaining ambient working conditions as well as providing quality personal protection equipment when they are squeezed on prices.¹⁶⁴

¹⁶¹ Human Rights Watch group interview with 12 workers from six factories in Myanmar, May 19, 2018.

¹⁶² Ibid.

¹⁶³ Human Rights Watch group interview with six workers from two factories in Myanmar, May 20, 2018.

¹⁶⁴ Human Rights Watch phone interview with HU who requested anonymity, an industry expert with experience of conducting thousands of social audits and also working with brands and suppliers, US, January 31, 2019.

IV. Effective Human Rights Due Diligence on Sourcing and Purchasing Practices

This report has shown how brands' poor sourcing and purchasing practices are a prevalent root cause that incentivizes workplace abuses in supplier factories and heighten brands' exposure to human rights risks. For that reason, brands' efforts to improve human rights and labor compliance in their supply chains should include a range of targeted measures to identify and fix poor sourcing and purchasing practices, as outlined below.

The United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles), along with the OECD Guidance on Due Diligence for Responsible Supply Chains in the Garment and Footwear Sector (OECD Due Diligence Guidance on Garments), articulate an expectation that brands should undertake human rights due diligence to identify and mitigate risks that may cause or contribute to human rights problems in their supply chains.¹⁶⁵ A human rights due diligence process should include “assessing” actual and potential human rights impacts, “integrating and acting upon the findings,” “tracking responses,” and “communicating how impacts are addressed.”¹⁶⁶ They also urge brands to engage externally to “know and show” that they are taking effective measures to tackle poor sourcing and purchasing practices.¹⁶⁷

Responsible Sourcing and Purchasing Policy and its Horizontal Integration

The UN Guiding Principles state that a company's human rights policies should be horizontally integrated into “all relevant business functions.”¹⁶⁸ In reality, though, many brands' human rights due diligence efforts are largely divorced from their approach to sourcing and purchasing. Addressing that problem requires top-level buy-in and leadership. A company's leadership should show, both internally and externally, that its

¹⁶⁵ Office of the United Nations High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights,” New York and Geneva: 2011, principle 15, https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf (accessed April 10, 2019), p. 15.

¹⁶⁶ *Ibid.*, principle 17, p. 17.

¹⁶⁷ *Ibid.*, principle 21, p. 24.

¹⁶⁸ “Guiding Principles on Business and Human Rights,” principle 19 commentary, p. 21.

sourcing and purchasing practices, and all relevant teams, are aligned with the goals of respecting workers' rights.

One important step in this direction is for companies to develop a clearly articulated policy on responsible sourcing and purchasing practices, aligned with the OECD Due Diligence Guidance on Garments, that is adopted by its leadership and embedded within each department's actions.¹⁶⁹ Some experts reiterated the importance of developing key performance indicators (KPIs) and job descriptions for sourcing and buying team personnel that are aligned with human rights and labor compliance, especially with respect to freedom of association and collective bargaining; training; and standard operating procedures for all departments on responsible sourcing and purchasing.¹⁷⁰

For example, brands participating in the Action, Collaboration, and Transformation (ACT) initiative on living wages, have publicized their commitments to purchasing practices reform in five key areas.¹⁷¹ Adidas has a publicly articulated policy titled the "Global Policy Manual: Responsible Sourcing & Purchasing Policy," and has adopted other policies and procedures.¹⁷² One of the objectives of this policy is that "[r]esponsible sourcing and purchasing practices are to be embedded in all relevant sourcing and purchasing policies and procedures" that are aligned with "[c]ontractual and financial terms that do not adversely impact compliance with the adidas Workplace Standards, including the safeguarding of legally mandated wages, benefits & compensation."¹⁷³ These examples are not comprehensive. Numerous other brands have made inroads into integrating responsible sourcing and purchasing practices. These efforts are described in detailed public reports issued by the Fair Labor Association and the Fair Wear Foundation as part of

¹⁶⁹ The Joint Ethical Trading Initiatives, "Guide to Buying Responsibly," 2017, Section 2, https://www.ethicaltrade.org/sites/default/files/shared_resources/guide_to_buying_responsibly.pdf (accessed April 8, 2019).

¹⁷⁰ Human Rights Watch phone interview with DN who requested anonymity, industry expert with more than 25 years of experience sourcing apparel, footwear, and non-apparel products for numerous international garment brands, London, January 15, 2019.

¹⁷¹ For more information about the ACT Initiative and their commitments, see subsection "Participating in Collective Brand Initiatives Developed with Worker Representatives."

¹⁷² Fair Labor Association, "Adidas Group: Reassessment for Accreditation," October 2017, http://www.fairlabor.org/sites/default/files/documents/reports/adidas_reaccreditation_assessment_october_2017.pdf (accessed April 8, 2019).

¹⁷³ adidas, "Global Policy Manual Responsible Sourcing and Purchasing Policy," July 1, 2017, https://www.adidas-group.com/media/filer_public/ca/ba/caba936a-7da7-4710-9d88-d437bac87923/adidas_responsible_sourcing___purchasing_policy_en.pdf (accessed April 8, 2019).

their member-brand accreditation or reaccreditation and brand performance checks respectively.¹⁷⁴

Contractual Reform

Brands have a responsibility to initiate “human rights due diligence as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements.”¹⁷⁵ Comprehensive contractual reform should be part of human rights due diligence and risk mitigation so that brands are developing standard terms and conditions that account for the inevitable financial costs human rights compliance creates for suppliers. In Human Rights Watch’s view, this need overlaps with supplier demands that contractual arrangements be made fairer and more transparent to a significant degree.

Key illustrative areas for reform include:

- a. Introducing written contracts: this will improve predictability and clarity on terms and conditions.
- b. Introducing contractual clauses that address the following:
 - i. Brand responsibility to develop a time-and-action calendar in agreement with the supplier and in accordance with labor laws, especially taking into account national public holidays and weekly rest days for workers;
 - ii. Brand responsibility to provide complete and accurate technical specifications and approvals needed before bulk production can start;
 - iii. Brand responsibility to alter delivery dates in consultation with the supplier when the brand, its agents, or its nominated materials suppliers contribute to delays from an agreed-upon time and action calendar; or alternatively, brand responsibility to waive penalties for delayed delivery and to pay for air freight;
 - iv. Brand responsibility to fully negotiate prices for orders, whether repeat or otherwise, where minimum wages are increased either by the government or through workers’ collective bargaining, factory or sectoral;

¹⁷⁴ Fair Labor Association, “Current FLA participating companies and suppliers,” <http://www.fairlabor.org/affiliates/participating-companies> (accessed April 8, 2019). Each affiliate’s reports are available on this page; “Resources: Performance Checks,” Fair Wear Foundation, <https://www.fairwear.org/resources/?type=brand-performance-checks> (accessed April 8, 2019).

¹⁷⁵ “Guiding Principles on Business and Human Rights,” principle 17 commentary, p. 18.

- v. Integrating business incentives for factories that comply with labor laws, especially workers' freedom of association and complying with factory- or industry-level collective bargaining agreements.

External Assessment of Sourcing and Purchasing Practices

The process used to assess the actual and potential human rights impacts of a brand's purchasing practices should “draw on international and/or independent external human rights expertise” and “involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”¹⁷⁶ The UN Guiding Principles also say that for assessments to be accurate, businesses should “seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.”¹⁷⁷ A key barrier to engagement is the fear of suppliers that if they provide an honest assessment to the brand about its purchasing practices, it will adversely impact the business relationship.¹⁷⁸ Therefore, the chances of getting accurate information are higher when brands allow their suppliers to anonymously give information through a neutral third party.

The OECD Due Diligence Guidance on Garments urges buyers to “engage” with suppliers to understand how their purchasing practices contribute to harm. In particular, “the enterprise may seek to collect information from its suppliers anonymously (e.g. annual survey) or partner with a third party that aggregates the data and presents findings.”¹⁷⁹

Third-party run surveys like Better Buying provide suppliers an opportunity to participate in surveys and publish aggregate information about brand purchasing practices. Brands that have been ranked by Better Buying can also request a private, tailor-made copy of survey results. In 2018, 20 buyers invited their suppliers to anonymously rank their purchasing

¹⁷⁶ “Guiding Principles on Business and Human Rights,” principle 18, p. 19.

¹⁷⁷ Ibid., principle 18 commentary, p. 20.

¹⁷⁸ Human Rights Watch interviews with nine suppliers in Southeast Asia and South Asia, 2018. These suppliers were willing to give us information only after we assured them that we would not seek any specific brand information in order to ensure that nothing they said would affect their business relationships.

¹⁷⁹ Organisation for Economic Co-operation and Development (OECD), “OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector,” 2017, <https://mneguidelines.oecd.org/oecd-due-diligence-guidance-garment-footwear.pdf> (accessed April 8, 2019), p. 73.

practices through Better Buying.¹⁸⁰ While the survey is new and has scope for improvement, it is the first detailed third-party survey of its kind in the apparel industry.

Participating in Collective Brand Initiatives Developed with Worker Representatives

Brands have the power to structure their supply chain, that is, to make decisions about how many suppliers and countries they source from, the production volumes in each factory, the length of business relationships, and whether and to what extent they use buying agents. The practical implication of this is that some suppliers have strategic long-term relationships with one brand that books full capacity. But a vast majority of suppliers often do business with several different brands, and any one brand's leverage and control over those suppliers is limited. As a result, typically, a single brand's due diligence on sourcing and purchasing practices is usually unlikely to meaningfully and sustainably influence conditions in the factories it sources from unless other brands sourcing from the same factory assume their fair share of responsibility too.¹⁸¹

Suppliers, too, face stiff competition on prices. Therefore, ensuring that all suppliers in a country are equally committed to accurately costing for labor and social compliance, without slashing them to stay competitive is important.

Initiatives that combine collective brand action on sourcing and purchasing practices with industry-wide collective bargaining seek to cut through these complex supply chain dynamics and help reduce brand exposure to human rights risks. A sectoral collective bargaining agreement with an industry association means that all factories that are members of the industry association would have to abide by the agreement. Such an

¹⁸⁰ Better Buying Purchasing Practices Index Fall 2018, p. 23. These are: Bestseller A/S; G-Star Raw C.V.; Mountain Equipment Co-op; New Balance Athletics, Inc.; Nike Inc.; O'Neill Europe BV; Outerstuff LLC; Reformation; Rohan Designs Ltd.; Schijvens Confectiefabriek Hilvarenbeek B.V.; Whistles Ltd.; Bonmarché Ltd.; Frankonia Handels GmbH & CO. KG; JP Boden & Co Ltd.; N Brown Group; We Europe BV; White Stuff; Kmart Australia Ltd.; Target Corporation; The White Company (UK) Ltd.

¹⁸¹ Doug Miller and Klaus Hohenegger, "Redistributing value added towards labour in apparel supply chains: Tackling low wages through purchasing practices," International Labour Organization, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, 2016, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_534536.pdf (accessed April 8, 2019), p. 19. Human Rights Watch interviews with supplier 1, Southeast Asia, May 2018, and human resources official from supplier 9 who requested anonymity, Pakistan, September 2018. "ACT Cambodia: The link between national collective bargaining and international purchasing practices," and "Monitoring Purchasing Practices," sessions at the OECD Forum on Due Diligence in the Garment and Footwear Sector, February 13-14, 2019.

approach reduces the risk of factories slashing social and labor compliance costs to stay competitive. When such sectoral collective bargaining is combined with collective brand action, it improves brand leverage over factories, reduces the risk of free-rider brands, and also sets a basic framework for social and labor compliance costs that brands participating in such initiatives should factor into their costing.

Such collective initiatives would be far more effective where they have dispute resolution mechanisms at two levels: first, to hold brands accountable if they renege on their commitments and second, to hold suppliers accountable if they do not comply with the sectoral CBA. These initiatives will also be more credible if they transparently report on the program's impact on brand purchasing practices and factory working conditions, and also monitor whether brands' responsible purchasing commitments are transposed into legal contracts with suppliers.

The "Action, Collaboration, and Transformation (ACT) on Living Wages" initiative seeks to combine workers' freedom of association and industry-wide collective bargaining to improve workers' wages with collective brand commitments to reform purchasing practices.¹⁸² While the initiative is non-binding¹⁸³ and yet to develop a robust monitoring and public reporting framework in consultation with a range of stakeholders, it is the first attempt of its kind.¹⁸⁴ So far, it has brought together about 20 apparel companies.¹⁸⁵

In November 2018, brand members agreed on a set of five actions regarding purchasing practices. These are brand commitments to include workers' wages as itemized costs; fair terms of payment; better planning and forecasting; undertaking training on responsible sourcing and buying; and responsible exit strategies.¹⁸⁶ ACT brands are also required to conduct a "self-assessment" of their purchasing practices based on an evaluation tool.¹⁸⁷

¹⁸² "Action, Collaboration, Transformation (ACT)," <https://actonlivingwages.com/> (accessed April 8, 2019).

¹⁸³ It includes memorandums of understanding between brands and worker representatives (global union IndustriALL) that do not have legally binding dispute resolution mechanism such as arbitration should a brand renege on its commitments.

¹⁸⁴ "ACT Brand Commitments: What do they mean in practice?" ACT, <https://actonlivingwages.com/act-brand-commitments-what-do-they-mean-in-practice/> (accessed April 8, 2019). ACT says: "A comprehensive and transparent monitoring and accountability mechanism for both sets of commitments is currently being developed." These include country-specific commitments and global commitments.

¹⁸⁵ These are Arcadia, ASOS, Bestseller, C&A, Cotton On Group, Debenhams, Esprit, H&M, Inditex, K-Mart Australia, N Brown Group, New Look, Next, Pentland Brands, Primark, PVH, Target, Tchibo, Tesco, Topshop and Topman, zLabels.

¹⁸⁶ "ACT Member Brands Adopt Global Purchasing Practices Commitments," ACT, December 2018, <https://actonlivingwages.com/news-on-global-purchasing-practices-commitments/> (accessed April 8, 2019).

¹⁸⁷ *Ibid.*

At time of writing, however, ACT has yet to publish a summary of the scores for each area where brands were self-assessed.

ACT brands have further undertaken to develop country-specific sourcing commitments for countries where there are collective bargaining agreements that carry three key criteria—wage growth and a negotiated collective bargaining commitment, full respect for freedom of association, and a robust monitoring and enforcement mechanism.¹⁸⁸ For Cambodia, where unions are negotiating a collective bargaining agreement with the Garment Manufacturers Association of Cambodia, ACT brands have committed to maintaining their sourcing volumes. At time of writing, the collective bargaining agreement has yet to be concluded in Cambodia or other priority country. The other priority countries are Bangladesh, Myanmar, and Turkey.¹⁸⁹

Apparel companies that have invited their suppliers to rank them anonymously through Better Buying, and have also joined the ACT Initiative: Bestseller, K-Mart Australia, and N Brown Group.

Using Labor Costing Tools to Help Improve Purchasing Prices

Initiatives like ACT and Fair Wear Foundation’s Living Wage program are supporting the development of models to calculate labor costs to help ensure that brands assume their fair share of responsibility for social and labor compliance costs at the factory level.

The ACT initiative seeks to isolate labor costs. This is being done to assist brands in adjusting their purchasing practices in support of negotiated sectoral wage increases through collective bargaining. The Fair Wear Foundation’s program seeks to assist suppliers in negotiating better prices from brands, especially in the context of rising minimum wages.

¹⁸⁸ “Country Support Commitments,” ACT, https://actonlivingwages.com/wp-content/uploads/2018/11/Country_Support_Commitments.pdf (accessed April 8, 2019).

¹⁸⁹ “About Us,” ACT, <https://actonlivingwages.com/about-us/> (accessed April 8, 2019).

Given the recent increase in statutory minimum wages in Bangladesh, for example, the Fair Wear Foundation worked closely with knitwear suppliers in Bangladesh and developed a labor costing tool.¹⁹⁰ It is the process of developing similar labor costing tools in 10 other countries.¹⁹¹ It also allows buyers to assess how they should increase their purchase prices to account for an increased wage bill. Tailored costing models for each country, experts believe, will begin to assist suppliers work out a labor cost as a distinct form of the product cost. Experts also believe that such costing models could become the basis for agreements between unions and industry associations, allowing them to join forces in demonstrating to brands the cost of labor in a country.

Transparency: Tracking and Externally Communicating Progress

Brands should map out and publish the names and other details of their supplier factories in accordance with the Transparency Pledge.¹⁹² In addition, brands should track the effectiveness of the measures they take.¹⁹³ Tracking should be based on “appropriate quantitative and qualitative indicators” and draw on feedback from both “internal and external sources, including affected stakeholders.”¹⁹⁴ The OECD Due Diligence Guidance on Garments recommends that a company track its purchasing practices using indicators that include, for example, “percentage of orders placed late, percentage of orders changed after order is placed, number of days between the last change and shipment.”¹⁹⁵ In June 2018, the NYU Stern Center for Business and Human Rights published a set of 13 indicators on purchasing practices, which it is currently pilot testing.¹⁹⁶ These indicators are aimed at influencing how investors track the social impacts of businesses.¹⁹⁷

¹⁹⁰ “Using Due Diligence in Labour Costing To Meet Wage Compliance,” Fair Wear Foundation, 2018, <https://www.fairwear.org/resource/using-due-diligence-in-labour-costing-to-meet-wage-compliance/> (accessed April 8, 2019).

¹⁹¹ “Countries,” Fair Wear Foundation, <https://www.fairwear.org/countries/> (accessed April 8, 2019). These are Bangladesh, Bulgaria, China, India, Indonesia, Macedonia, Myanmar, Romania, Tunisia, Turkey, and Vietnam.

¹⁹² See Human Rights Watch et al., *Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry*, April 2017, <https://www.hrw.org/report/2017/04/20/follow-thread/need-supply-chain-transparency-garment-and-footwear-industry> for a description of the Transparency Pledge.

¹⁹³ “Guiding Principles on Business and Human Rights,” principle 20, p. 22.

¹⁹⁴ *Ibid.*

¹⁹⁵ OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, p.73.

¹⁹⁶ New York University (NYU) Stern Center for Business and Human Rights, “A new approach to evaluating company social performance,” June 14, 2018, <https://bhr.stern.nyu.edu/blogs/2018/6/14/a-new-approach-to-evaluating-company-social-performance> (accessed April 8, 2019).

¹⁹⁷ *Ibid.*

Finally, brands should hold themselves accountable by externally communicating information about their efforts and its impact. In general, companies have a responsibility to communicate in “a form and frequency that reflects the enterprise’s human rights impacts,” make that communication “accessible to its intended audience,” and provide information that is “sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved.”¹⁹⁸

Almost no company communicates its progress on reforming purchasing practices to affected stakeholders in a way that is accessible to them and is based on a set of indicators. Individual companies provide some information about their purchasing practices but to what extent their efforts are effective in preventing or reducing workplace abuses is not known.¹⁹⁹

This gap is filled to some extent by at least two multi-stakeholder initiatives—the Fair Labor Association and the Fair Wear Foundation.²⁰⁰ The Fair Labor Association, a multi-stakeholder initiative comprising of brands, suppliers, and NGOs, publishes all its brand accreditation or re-accreditation reports, which provide information about its member-brands’ purchasing practices.²⁰¹ While the information contained in these reports is useful, a uniform set of indicators is not used to track progress and publicly score-card member-brands.²⁰² As a result, it is difficult for workers and advocates to gauge whether the policies

¹⁹⁸ “Guiding Principles on Business and Human Rights,” principle 21, p. 23.

¹⁹⁹ See for example, “KnowtheChain,” <https://knowthechain.org/themes/38/> (accessed April 8, 2019) which gives an overview of companies that have disclosed some information about their purchasing practices.

²⁰⁰ Fair Labor Association (FLA), <http://www.fairlabor.org/> (accessed April 10, 2019). The FLA is a US-based multi-stakeholder organization. It has about 40 US apparel companies as its members. These companies produce in 4,000 factories globally that employ over 4.5 million workers. The Fair Wear Foundation (FWF), <https://www.fairwear.org/>. The FWF is a Netherlands-based multi-stakeholder organization which has more than 100 apparel companies as its members. Many of them are small and medium enterprises.

²⁰¹ See for example, Fair Labor Association, “Adidas Assessment for Reaccreditation, October 2017,” <http://www.fairlabor.org/report/adidas-assessment-reaccreditation-october-2017> (accessed April 10, 2019); “Patagonia Assessment for Reaccreditation, October 2017,” <http://www.fairlabor.org/report/patagonia-assessment-reaccreditation-october-2017> (accessed April 10, 2019), “Accreditation Assessment of Hugo Boss’s Social Compliance Program, February 2018,” <http://www.fairlabor.org/report/accreditation-assessment-hugo-bosss-social-compliance-program> (accessed April 8, 2019); “Nike Inc., “Assessment for Reaccreditation, February 2019,” http://www.fairlabor.org/sites/default/files/documents/reports/nike_reaccreditation_report_final.pdf (accessed April 8, 2019); “Under Armour, Inc. Assessment for Accreditation, February 2019,” http://www.fairlabor.org/sites/default/files/documents/reports/under_armour_accreditation_report_final_public.pdf (accessed April 8, 2019).

²⁰² For example, the assessment report for New Balance states that “New Balance is the sole or primary buyer in its contract footwear facilities and therefore has more leverage as well as more responsibility to ensure reliability of orders to maintain a steady workforce.” How much leverage a brand has vis-à-vis a factory enhances the brand’s ability to influence factory working conditions. But this information is not consistently presented across all FLA apparel and footwear brands. Fair Labor

and processes described in these reports have had an impact on mitigating labor rights risks in the company's supply chain and how the company has made progress over time.

The Fair Wear Foundation (FWF) publicly scorecards its members on their purchasing practices based on 12 indicators.²⁰³ The scorecard method is useful and more accessible. Among other things, the indicators track and report progress on how member-brands structure their supply chains to improve leverage;²⁰⁴ whether their pricing supports the payment of at least legal minimum wages;²⁰⁵ steps they take to reduce excessive overtime in the factories that produce for them;²⁰⁶ and whether they made any late payments to suppliers. However, these indicators are not fully aligned with those recommended by the OECD Due Diligence Guidance on Garments.²⁰⁷

Better Buying, a third party, produces aggregate results for all the brands and retailers on a range of topics based on supplier surveys.²⁰⁸ While these supplier surveys are relatively new and can be improved, this is the only publicly available information in the industry that names brands and provides aggregate results based on important aspects of purchasing practices. Brands can purchase a detailed in-depth report tailored to the company and are free to disclose or summarize the results. Doing so would make a significant contribution to the larger effort to develop and replicate effective policies in this area. As of April 2019, however, no brand has published a summary of rankings they have received through Better Buying, let alone the full report.

Association, "New Balance Athletics, Inc. Assessment for Reaccreditation," October 2018, http://www.fairlabor.org/sites/default/files/documents/reports/new_balance_reaccreditation_report_public_edits_final.docx.pdf (accessed April 10, 2019), p. 14.

²⁰³ "Brand Performance Check Guide," Fair Wear Foundation, 2015, <https://www.fairwear.org/wp-content/uploads/2011/12/online-brand-performance-check-guide-2016.pdf> (accessed April 8, 2019), pp. 27-46. The Fair Wear Foundation produces the full report for each brand on its website: <https://www.fairwear.org/resources/?type=brand-performance-checks>.

²⁰⁴ Ibid. "Percentage of production volume from production locations where member company buys at least 10 percent of production capacity; Percentage of production volume from production locations where member company buys less than 2 percent of its total FOB; Percentage of production volume from production locations where a business relationship has existed for at least five years."

²⁰⁵ Ibid. "Member company's pricing policy allows for payment of at least the legal minimum wages in production countries."

²⁰⁶ Ibid. "The member company's production planning systems support reasonable working hours; Degree to which member company mitigates root causes of excessive overtime; Degree to which member company assesses root causes of wages lower than living wages with suppliers and takes steps towards the implementation of living wages."

²⁰⁷ For example, the OECD Due Diligence Guidance for Responsible Supply Chains in Garment and Footwear recommends that brands also track the extent to which the actual orders diverge from the projected orders and the development of a responsible exit strategy.

²⁰⁸ "Better Buying."

Recommendations

To All Apparel Brands

Carry out human rights due diligence of purchasing practices that includes the following components:

- Take steps to map out the supply chain, consolidate the tail end of the supply chain, ensure full visibility over supplier factories, and publish a list of these in accordance with the Transparency Pledge.
- Evaluate the use of buying agents and put in place additional due diligence mechanisms tailored to monitoring buying agents.
- Create and publish a policy on responsible purchasing practices in consultation with relevant stakeholders and aligned with UN Guiding Principles on Business and Human Rights and the OECD Guidance on Due Diligence on Responsible Supply Chains in the Garment and Footwear Sector. Embed the policy within all departments of the brand through job descriptions, performance assessments, incentives, training programs, and periodically report progress on adherence. In particular, integrate key performance indicators (KPIs) regarding social and labor compliance, especially adherence to workers' freedom of association and collective bargaining agreements, into the overall assessment framework of sourcing teams.
- Institute contractual reform to develop fair purchasing agreements as part of company's efforts to prevent and mitigate labor rights risks to workers from unfair purchasing practices. These agreements should explicitly account for the costs of labor and of broader human rights compliance.
- Integrate suppliers' anonymous feedback on purchasing practices through third party surveys like Better Buying to improve accuracy of data by mitigating suppliers' fear of providing feedback; seek customized individual brand reports to monitor and rectify purchasing practices; and disclose periodic progress by summarizing the rankings received through Better Buying Purchasing Practices Index scores over time.
- Join initiatives that combine collective brand reform on purchasing practices with sectoral collective bargaining like the Action, Collaboration, and Transformation (ACT). Until such initiatives conclude collective bargaining agreements and costing models, supplement joining them with at least the following measures:

- Ensure that prices explicitly factor in labor costs and encourage suppliers to use country-specific labor costing tools like those being developed by the Fair Wear Foundation.
- Publicly report on the number of collective bargaining agreements in supplier factories (especially where there are no sectoral agreements), the impact of such agreements on factory working conditions, and how brand purchasing practices incentivize adherence to such collective bargaining agreements.

To Multi-Stakeholder and Industry Initiatives, including amfori BSCI, Dutch Covenant, the Ethical Trading Initiatives of Denmark, Norway, and UK, Fair Labor Association, Fair Wear Foundation, German Partnership for Sustainable Textiles, and Sustainable Apparel Coalition

- Make publishing supplier factories in accordance with the Transparency Pledge a mandatory condition of membership.
- Encourage member brands to seek anonymous feedback through supplier surveys like Better Buying survey reports tailored to them and disclose the summary of the scores publicly.
- Encourage member brands to join collective initiatives like the ACT Initiative in its priority countries and take other interim measures until ACT Initiative’s industry-wide collective bargaining agreements are negotiated and have demonstrable impact.
- Develop a set of key indicators on purchasing practices that informs monitoring efforts to assess brand purchasing practices and publicly report progress using these indicators. These indicators should be developed in consultation with industry experts, unions, labor advocates, and draw on the OECD Due Diligence Guidance on Garments and indicators developed by the NYU Stern Center for Business and Human Rights and the Fair Wear Foundation.

To Governments

- Develop legislation requiring mandatory global supply chain human rights due diligence by companies, including their sourcing and purchasing practices.

- Ensure that all public procurement integrates mandatory human rights due diligence measures, including on sourcing and purchasing practices.
- Ratify all ILO core labor conventions and reform labor laws to fully comply with these international labor standards.
- Governments of apparel producing countries should publicly and regularly disclose (e.g. every four months) the number of factories inspected, key labor rights violations found, and enforcement actions taken. The terms of disclosure should be finalized in consultation with various actors, including labor rights advocates, independent unions, and the ILO.

To the International Labour Organization and its Better Work Program

- Research and develop in consultation with unions and labor advocates, a compendium of good clauses negotiated in factory-level collective bargaining agreements drawn from different production countries.
- Research and develop training programs to improve understanding of costing and its impact on labor compliance among factory and federation-level union representatives, and other worker committees.
- Commission special studies that evaluate how brand purchasing practices have influenced the adherence to collective bargaining agreements.

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“Paying for a Bus Ticket and Expecting to Fly”

How Apparel Brand Purchasing Practices Drive Labor Abuses

Major apparel brands have adopted policies aimed at ensuring their suppliers guarantee safe conditions and rights-respecting terms of employment for the workers who produce their clothes. However, as *“Paying for a Bus Ticket and Expecting to Fly”: How Apparel Brand Purchasing Practices Drive Labor Abuses* shows, many of these same brands are also squeezing their suppliers with unfair purchasing practices—in ways that directly fuel workplace abuses.

The report, based on interviews with garment suppliers, brand representatives, labor advocates, and workers, shows how all brands need to alter their purchasing practices if they are serious about ensuring respect for garment workers’ rights and reducing their exposure to human rights risks in their supplier factories.



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