

Human Rights and the Transnational Garment Industry in South and South-East Asia: a Focus on Labour Rights

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Contact details:

Jedrzej George Frynas
Coventry Business School
Coventry University
Coventry CV1 5FB, UK
Phone: (44) 24 7688 8437
E-mail: j.frynas@coventry.ac.uk

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Abstract

In the last several decades, labour-intensive industries such as garment production have increasingly been re-located from developed countries to developing countries with lower labour costs. In many of these developing countries, the standards of human rights are lower and the garment firms violate some of the key internationally accepted human rights. This paper examines the impact of transnational garment firms on human rights in South and South-East Asia by focusing on labour rights.

UN human rights standards and International Labour Organization (ILO) norms form the basis for the analysis of the impact of garment firms on human rights in this paper. Combining a number of core labour rights stipulated by the UN and the ILO, this paper focuses on the following ten rights and prohibitions: the right to form and join trade unions; the right to freedom from discrimination; the prohibition of forced or compulsory labour; the prohibition (or limitation) of child labour; the right to leisure and rest during work; the right to equality of treatment between home workers and other wage earners; the right to an 8-hour day or a 48-hour week; the right to a healthy and safe working environment; the right to a minimum wage and the prohibition of firing a worker without a valid reason related to the quality of his/her work.

This paper is predominantly based on primary sources and reports on garment production in Asia collated by the CleanClothesCampaign (CCC) and the Centre for Research on Multinational Corporations (SOMO) in Amsterdam as well as interviews with staff of CCC and SOMO. In addition, a questionnaire on the ethical policy of clothing retailers towards clothing suppliers was sent to 11 clothing retailers in the UK, although most firms failed to respond to the questionnaire.

The paper starts by describing the trade patterns in the international garment industry. This sets the background for the subsequent analysis of the human rights impact of transnational corporations (TNCs), the main part of the paper. This analysis is followed by a brief discussion of the indirect impact of TNCs on human rights, a discussion of the retailers' ethical policies towards their clothing suppliers and a conclusion.

* Jędrzej George Frynas is Senior Lecturer in International Business at Coventry Business School, Coventry University. He is the author of *Oil in Nigeria - Conflict and Litigation between Oil Companies and Village Communities* (Hamburg/Muenster: LIT) and articles in journals such as *Third World Quarterly*, *African Affairs* and *Review of African Political Economy*. The author is very grateful for the kind assistance rendered by CCC staff, especially Ineke Zeldenrust, in the course of this research. Many thanks also to Joris Oldenziel of SOMO and Martin Pepper of Littlewoods for their kind assistance. Last but not least, the author would like to thank the Coventry Business School for generous funding of this research.

I. INTRODUCTION

In the last few decades, labour-intensive industries such as garment production have increasingly been re-located from developed countries to developing countries with lower labour costs such as China, the Philippines and Indonesia (Dicken 1998, 290-291). In many of these developing countries, the human rights standards are lower and garment firms violate some of the key internationally accepted human rights. This paper examines the impact of transnational garment firms on human rights in South and South-East Asia by focusing on labour rights.

For the purpose of a systematic inquiry, the paper focuses explicitly on clothing production, which starts with the cutting of fabric and ends with the selling of products to intermediaries or retailers.¹ We exclude the earlier stages of production (e.g. cotton farming or textile weaving), as it would be difficult, if not impossible, to establish a link between these earlier production processes and the transnational corporations (TNCs). Therefore, we focus on the stages of the production process, over which TNCs have greater control. We also exclude (except for two references to Nike) the discussion of other related industries (e.g. footwear), as they involve somewhat different working environments and different concerns.

The paper focuses entirely on labour rights as opposed to, say, environmental rights. This is not to say that, for example, environmental rights are entirely unimportant in the clothing trade. But pressure groups in the clothing industry have found that labour rights are the main human rights concern in the garment industry. Environmental concerns play an important role in earlier phases of the production process including textile production (e.g. the dying of textiles) and agriculture (e.g. the use of pesticides in cotton farming).² Nonetheless, for the purpose of a systematic inquiry, we exclude those concerns here.

UN human rights standards and International Labour Organization (ILO) norms form the basis for the analysis of the impact garment firms have on human rights in this paper. Some basic labour rights have been incorporated into the foundational UN human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). All three of these instruments, for instance, guarantee the right to freedom of association, including the right to form and join trade unions, and the right to freedom from discrimination. In addition to these three UN instruments, this paper refers to the UN Convention on the Rights of the Child, which set out to protect the rights of the child. These UN standards form the basis for half of the criteria used in the analysis of the human rights impact of garment firms in this paper.

¹ The production process itself usually involves cutting, stitching, washing, ironing and packaging.

One of the key problems with the traditional UN standards, as Skogly (1999, 242) pointed out, is that the international community has traditionally focused on promoting civil and political rights rather than social and economic rights. However, this bias can be overcome by our reference to ILO norms, which explicitly recognize many social and economic rights such as the right to a minimum wage. In this paper, half of the criteria used in the analysis of the human rights impact of firms is provided by the 'fundamental human rights' identified by the ILO and set out in ILO Conventions such as the Hours of Work (Industry) Convention and the Minimum Wage Fixing Convention.

The major advantage in using these international standards as a guideline is that they are internationally accepted across the globe, being the result of an international consultation process. The wording of these standards was carefully formulated, rendering them relatively unambiguous, so that the possibilities for misinterpretation are relatively limited. The UN and ILO standards thus perhaps better mirror the accepted international human rights norms than, for instance, the Organization of Economic Co-operation and Development (OECD) guidelines for TNCs, which were devised in developed countries.³ These standards can also escape the charge of Western ethnocentrism as they were usually agreed upon in a consultation process with developing countries. In this context, using these international standards as a guideline for our research has important advantages, compared with using existing labour codes of conduct or other alternative sets of standards, which have usually been devised and implemented by pressure groups, trade unions or corporate head offices in developed countries.

Combining a number of core labour rights stipulated by the UN and the ILO, this paper focuses on the following ten rights and prohibitions:

- the right to form and join trade unions⁴
- the right to freedom from discrimination⁵
- the prohibition of forced or compulsory labour⁶
- the prohibition (or limitation) of child labour⁷
- the right to leisure and rest during work⁸

² See CleanClothesCampaign website at <http://www.cleanclothes.org/>

³ On the OECD guidelines, see e.g. Karl (1999).

⁴ Articles 20 and 23 of the Universal Declaration of Human Rights and article 8 of the International Covenant on Economic, Social and Cultural Rights.

⁵ Article 2 of the Universal Declaration of Human Rights, article 2(2) of the International Covenant on Economic, Social and Cultural Rights and articles 2(1) and 3 of the International Covenant on Civil and Political Rights. All of these instruments provide that there should be no discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁶ Article 8 of the International Covenant on Civil and Political Rights.

- the right to equality of treatment between home workers and other wage earners⁹
- the right to an 8-hour day or a 48-hour week¹⁰
- the right to a healthy and safe working environment¹¹
- the right to a minimum wage¹²
- the prohibition of firing a worker without a valid reason related to the quality of his/her work¹³

The selection of these ten rights is partly arbitrary, as certain rights could perhaps be included or excluded. However, it is hoped that a focus on a core number of accepted labour rights will allow a more systematic investigation of the performance of TNCs in the garment industry.

This paper is predominantly based on sources on garment production in Asia collated by the CleanClothesCampaign (CCC) and the Centre for Research on Multinational Corporations (SOMO) in Amsterdam between 1994 and 2000 as well as interviews with staff of CCC and SOMO. Sources have only been used where interviews were conducted with both factory managers and workers in a given locality and where a personal visit to the manufacturing site was made by SOMO, CCC or a CCC member organization. Using these sources, the evidence on 73 clothing manufacturers was analysed. However, in this paper, the majority of the names of the manufacturers are not disclosed in order to protect the individuals working there. In addition, a questionnaire on the ethical policy of clothing retailers towards suppliers was sent to 11 clothing retailers in the UK, although most firms failed to respond to the questionnaire.

The paper starts by describing the trade patterns in the international garment industry. This sets the background for the subsequent analysis of the human rights impact of TNCs, the main part of the paper. This analysis is followed by a brief discussion of the indirect impact of TNCs on human rights, a discussion of the retailers' ethical policies towards their clothing suppliers and concluding remarks.

⁷ According to the 1989 UN Convention on the Rights of the Child, a child is defined as a person under the age of 18. In accordance with Article 32, children have the right to be protected from work that threatens their health, education or development.

⁸ Articles 23 and 24 of the Universal Declaration of Human Rights and articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

⁹ Article 4 of the ILO Home Work Convention, 1996 (No. 177).

¹⁰ Article 2 of the ILO Hours of Work (Industry) Convention, 1919 (No. 1).

¹¹ Articles 4 and 16 of the ILO Occupational Safety and Health Convention, 1981 (No. 155).

¹² Article 1 of the ILO Minimum Wage Fixing Convention, 1970 (No. 131) obliges states, which ratified the Convention, to establish a system of minimum wages for all groups of wage earners.

¹³ Article 4 of the ILO Termination of Employment Convention, 1982 (No. 158) stated: "The employment of a worker shall not be terminated without a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service." According to articles 5 and 6, valid reasons for termination exclude union membership, filing a complaint against the employer, acting as a worker representative, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin, absence from work during maternity leave or temporary absence from work because of illness.

II. TRADING PATTERNS IN THE GARMENT INDUSTRY

In order to fully understand the human rights implications of the activities of transnational corporations (TNCs), it is illuminating to outline the basic trading patterns in the international garment industry. Figure 1 presents three different trading patterns.

The most simple relationship occurs when a clothing retailer buys directly from the producer (see Figure 1A on page 8). For example, Marks & Spencer, which buys a large proportion of its clothes from several transnational manufacturers such as Coats Viyella, Courtaulds, William Baird and Dewhirst, may import clothes directly from a Courtaulds owned factory in Thailand. In such an instance, it is relatively unproblematic to establish a link between TNCs and the human rights implications of their activities.

Nonetheless, the simple relationship described above rarely occurs and clothing trade typically involves middlemen, local producers and sub-contractors. Some clothing retailers have their buying offices in Asia, which buy directly from local producers (see Figure 1B). For example, C&A France purchases clothes through Mondial, a 100% C&A-owned venture with offices in a number of countries such as Hong Kong, which in turn buys clothes from the local manufacturers in a country or in an entire geographic region.

In the majority of cases, the trading patterns are more complex than the two examples mentioned above. In many cases, a retailer employs an intermediary, which can range from a single local agent to an international trading company with wholly owned or controlled clothing factories (see Figure 1C). The intermediary can, at one extreme, merely facilitate a business deal between a buyer and a manufacturer or, at the other extreme, can offer a range of services including placing orders with the local producer as well as managing the quality control process. The services of an intermediary may reduce the profit margins for the retailer or the manufacturer but they offer a number of advantages, especially in terms of providing the retailer with local knowledge and contacts, for instance, the knowledge of where to buy high-quality fabrics locally. The intermediary may buy or facilitate a purchase from a manufacturer. In some cases, the manufacturer may sub-contract part or all of the output. All of the Indonesian clothing manufacturers visited by CCC in 1995, for example, sub-contracted part of their production. In the Philippines, manufacturers reportedly sub-contract as much as 75% of their garment production. Studies show that garments produced in the parent factory can be up to three times more expensive than those subcontracted out, although subcontracting decreases the reliability of quality and delivery (quoted in Green 1998).

The trading patterns can be even more complex than those described above. A TNC retailer may procure clothes through a buying office from an intermediary. The intermediary may buy from a local producer, who buys from a sub-contractor, who in turn sub-contracts the work. The TNC retailer may never learn the names of the sub-contractors

involved. In addition, an independent firm may be hired to manage the quality control process such as SGS, a Swiss firm specialising in quality control.

In view of the complex trade relationships between the retailer and the local producers, one may encounter specific difficulties in attributing the retailer's responsibility for human rights abuses committed by the local producers, especially if the same local manufacturer produces clothes for a large number of different clients, in which case the manufacturer's ethical conduct is affected by a greater variety of different influences.¹⁴

Nonetheless, TNC retailers have retained a certain measure of control over the manufacturing operations. This can be seen, above all, in relation to monitoring the quality of the clothes produced. While manufacturers usually have an internal system for monitoring the quality of clothes, the buyer tends to have an additional form of quality control. These additional controls may be carried out at different stages of the production process, either by the final buyer, an intermediary or a specialized firm. The manufacturer's failure to meet specified criteria can lead to financial penalties or, in an extreme case, to a withdrawal of orders. In general terms, the closely supervised quality control systems indicate that TNC retailers can have a large measure of control over the local manufacturers, even if they do not own the production sites or if intermediaries are involved.

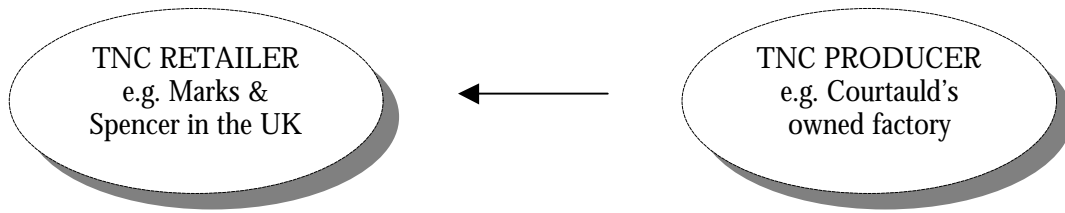
Indeed, most manufacturers visited by SOMO or CCC staff reported many visits by representatives of TNC retailers or intermediaries. Final buyers often dictate many conditions to the local manufacturer, including specifying the number of fire extinguishers in a factory. The manufacturers, who are dependent on orders from the buyers, have difficulty in rejecting these demands, especially if a substantial proportion of their orders comes from a single buyer. The buyers' main 'weapon' against suppliers is their ability to switch orders from one supplier to another and from one country to another. As mentioned in the next section, buyers sometimes switch suppliers where a trade union has been established or where the labour standards have been raised, or more recently, away from suppliers who violated a TNC's code of conduct. In this context, a TNC – which can exert influence upon dozens of manufacturers in different countries – is likely to have a greater impact upon the human rights situation in a given locality than a local manufacturer who competes against other local manufacturers on the basis of cost, which may include the cost of implementing social improvements in the workplace.

In conclusion, despite the complex trading patterns in the garment industry, there is some basis to argue that TNCs can have a direct, albeit sometimes unintended, impact on human rights standards.

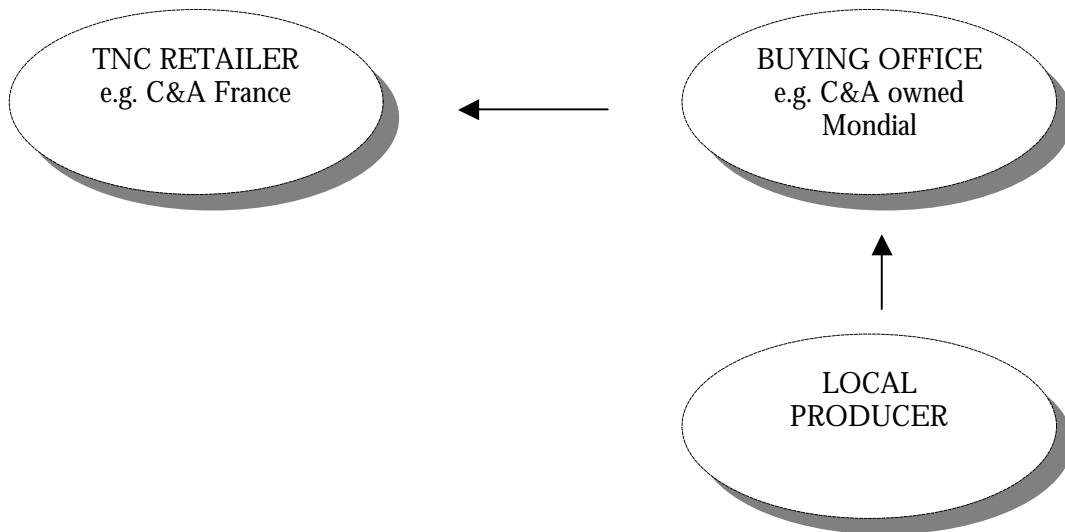
¹⁴ As a corollary, if the same local manufacturer produces clothing for a large number of different clients and the firm's size is relatively large, the firm is more likely to reject a client's demands for implementing any changes to ethical policies, as the bargaining power of a single client is smaller. Based on their research in Thailand, Yimprasert *et al.* (1999) found a contrast between the footwear and the clothing industry. In the footwear industry, which is more capital-intensive than the clothing industry, a local manufacturer tends to rely on a smaller number of buyers and the relationship between the TNCs and their local suppliers tend to be more stable. As a result, the effective implementation of TNC codes of conduct was less problematic in the footwear industry.

Figure 1: Trade Patterns in the Garment Industry

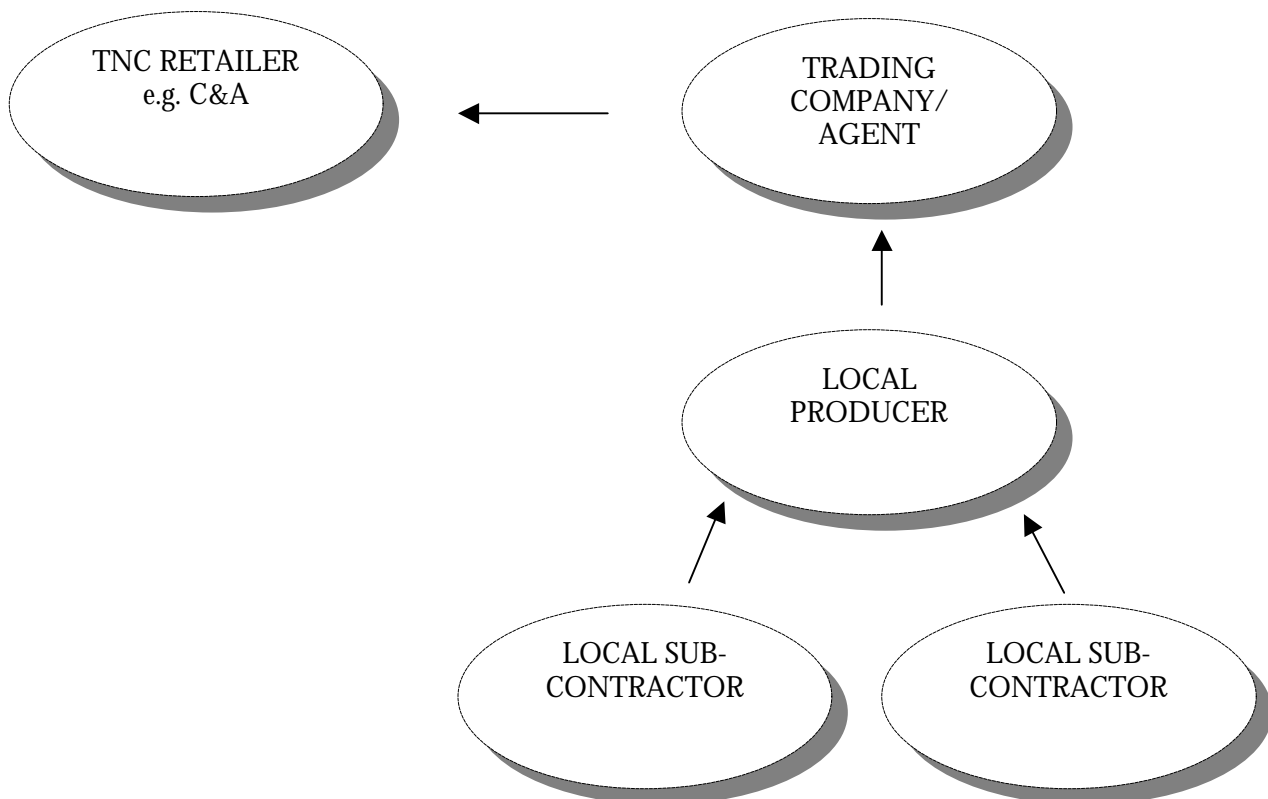
A. Direct trade between TNCs



B. Trade involving a buying office



C. Trade involving middlemen, local producers and sub-contractors



III. HUMAN RIGHTS AND THE GARMENT INDUSTRY

In this section, we attempt to confront the ten rights and prohibitions mentioned earlier with the reality of garment production on the ground. As a starting point, we have analysed the appeals received by CCC between January 1999 and July 2000 from the representatives of garment workers and CCC member organizations world-wide, with a view to identifying some of the key labour right related concerns of worker representatives.

Table 1: Nature of appeals received by CCC in 1999 and 2000

	1999	2000*
trade unions and collective bargaining	12	10
unjust dismissal	12	7
wages	10	6
healthy and safe working environment	5	3
working hours	5	2
workplace discrimination	4	2
leisure and rest during work	1	1
home workers	0	0
child labour	0	0
forced or compulsory labour	0	0

* January-July

If judged by these appeals, the main concern of workers appears to be related to trade unions and collective bargaining rights. Of the 25 and 17 appeals received in 1999 and 2000 respectively, 12 and 10 deal with these issues (see Table 1). These requests are likely to be biased in favour of organised workers as opposed to less organised groups such as child workers and home workers, who lack access or resources to seek external assistance from non-governmental organizations or other bodies. However, the right to form trade unions is often seen by workers as a vehicle or a precondition for obtaining other rights related to working conditions, so its importance to Asian workers cannot be overestimated.

The second and third main concerns of appeals relate to unjust dismissal and wages. Of the 25 and 17 appeals received in 1999 and 2000 respectively, 12 and 7 deal with unjust dismissal while 10 and 6 deal with wages (see Table 1). Working conditions are seen as less important, while no appeals were received with regards to child labour, home workers and forced labour.

These results suggest that, when external assistance is sought by worker representatives, the key issues raised are related to how they are represented, how they can avoid arbitrary dismissal and how much they earn. The conditions of work, albeit very important, are relatively less important if compared with the issue of bare survival. This could be due to the fact that workers are much more concerned about having a job rather than the nature of this job. This can help to explain why child labour and home workers are not identified as key issues in the sample analysed, as these workers are perhaps satisfied with just having a job.

Nonetheless, as the above hierarchy of problems is far from perfect, below we attempt to establish whether the ten rights and prohibitions mentioned earlier have been a matter of concern to workers by analysing the evidence on 73 clothing manufacturers and providing specific examples from factories in South and South-East Asia.

The right to form and join trade unions

Based on the analysis of clothing manufacturers, trade union activities are frequently hampered. Amongst the typical concerns voiced by union activists in the different countries are intimidation, physical violence, financial penalties at work, assignment to more strenuous jobs and the unfair dismissal of union members.

The formation of a trade union is often hampered or forcefully prevented by employers. For instance, in the case of one clothing factory in Bogor/Java, the workers set up and registered an independent trade union in August 1998. The employers refused to acknowledge the union. As a reaction to this refusal and in protest against the firm's failure to provide a statutory pension scheme and to observe certain women's rights, the workers went on strike in May 1999. The company subsequently signed an agreement with the union, but later sacked the union's chairman and other union members. The union's complaint to the Manpower Department in Bogor did not lead to a resolution of the dispute. Indeed, there were indications that the Manpower Department was biased against the union. This was demonstrated when the Department organised a legal assistance programme for workers in Bogor, the union members were prohibited from taking part in the programme. In another case, when workers attempted to form a union in one factory in Bangladesh, the employer hired a group of men who visited the factory and made threats to workers. When the union finally went on strike, all 350 workers were fired.

In the most extreme cases, the formation of a trade union could lead to the closure of a factory and re-location of production elsewhere. In one case, Splendid - a German leather manufacturer - became involved in a labour dispute in a Thai manufacturing subsidiary producing leather jackets, which centred around the workers' demand for a wage increase and the firm's subsequent attempt to ban the factory's union. Under pressure from workers, the local trade unions and non-governmental organizations, the manufacturing subsidiary was forced to pay compensation to 130

unjustly dismissed workers. However, Splendid subsequently decided to close down the Thai subsidiary and re-locate production abroad.

Considering the above difficulties, it is perhaps not surprising that the majority of analysed firms did not have a trade union. Of ten clothing manufacturers visited by CCC staff in Bangladesh in 1995, only two had a trade union (in two cases, it was not clear from the sources whether a union existed).

However, even if an employer allows the formation of a trade union, the management may try to dominate the trade union. This was perhaps best illustrated in Indonesia where, until mid-1998, the only legal trade union was the government-approved SPSI, which had close links to the Indonesian military and did little to champion labour rights.¹⁵ In various analysed cases from Indonesia, SPSI collaborated with employers rather than representing its members. For instance, during a strike in a clothing factory in Java in 1999, workers sought the support of SPSI for their demands. Rather than supporting the workers' demands, SPSI officials agreed to sign a letter calling for the suspension of 42 workers. Perhaps not surprisingly, in a number of Indonesian firms analysed by the author, one of the workers' demands was indeed to abolish the SPSI branch in the factory.

In cases where the local SPSI branch attempted to genuinely represent the workers, its activities were often hampered by management as in the case of independent unions mentioned earlier. For instance, in the clothing factory of a GAP supplier in Jakarta, SPSI members who distributed leaflets were sent home with threats of dismissal. Union members were also intimidated by regularly moving them from one department to another. The chairman of the factory's SPSI branch and several other union officials, who opposed forced overtime, was unfairly dismissed. Subsequently, the Regional and the Central Industrial Dispute Resolution Committees ruled that the workers should be reinstated but the company refused to abide by the decision.

In general terms, the above discussion suggests that the right to form and join trade unions is frequently breached in the clothing industry.

The right to freedom from discrimination

Based on the analysis of clothing manufacturers, there exist a number of discernible forms of discrimination in the garment industry. The most pertinent form of discrimination in the garment industry is that against women, who make

¹⁵ Following General Suharto's fall from power in 1998, the Indonesian government under President Habibie ratified the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the formation of independent trade unions was legalised. However, despite the formal legalization of trade unions in Indonesia, union activity is still hampered by employers and state officials (Burns and Mather 1999, 12-13).

up the majority of workers in Asia's garment factories. For instance, it was reported that more than 80% of the workers in the Malaysian textile industry are female (Rudnick 1995).

Amongst the typical concerns voiced by female workers in different countries are lower pay or inferior contract terms than men, no provision for or difficulties in obtaining maternity leave, sexual harassment by supervisors, forced pregnancy tests and dismissal of pregnant women. In addition, there are specific concerns in some countries. For example, in Indonesia, an Islamic country where the menstruation period has a special significance, employers often refuse to grant women the statutory right to menstruation leave. In one analysed case, a clothing firm in Indonesia did not grant any women's rights such as maternity leave, menstruation leave and breast-feeding leave despite the fact that more than 97% of the factory staff were women.

The importance of women's rights such as maternity leave in the garment industry can be seen in their principal position in labour disputes. For example, when a dispute between workers and the management started in one Indonesian factory in 1998, workers named three reasons for the strike: the firm's refusal to acknowledge an independent trade union, the refusal to provide a statutory pension scheme and the refusal to grant a number of women's rights. Refusal to grant women's rights such as the failure to implement the statutory menstruation leave played an important part in the dispute.

Discrimination against women or other groups of workers may arise, if employers feel that they can gain advantages in terms of saving cost and increasing the number of working hours. For example, in one Indonesian factory, pregnant women were not granted maternity leave by the employer if they were unmarried, in order to keep production running. In an Indian factory in Bombay, the manager predominantly employed men (ca. 5% of the workers was female) because he felt that men could work longer hours, especially at night.

Apart from discrimination against women, there are other types of discrimination such as against foreign migrant workers.¹⁶ Rudnick (1995) reported that Bangladeshi workers in Malaysia worked longer hours than locals, were paid less money for the same job, received worse treatment in the workplace and were unrepresented or barely represented in the Malaysian trade union movement. Another type of discrimination may be on the grounds of age. During recessionary periods, a number of manufacturers visited by CCC and SOMO tended to dismiss older and more experienced workers, perhaps because they were entitled to greater social benefits than younger workers or had dependants and therefore required better wages than young workers without dependants.

¹⁶ The use of foreign migrant workers is primarily restricted to countries, which face internal labour shortages such as Malaysia where the garment industry competes for workers with other industries with better working conditions and better pay, especially the electronics industry. For instance, of 16 Malaysian textile and garment firms analysed by Rudnick (1995), at least 9 reported labour shortages, 11 employed foreign workers and a further three had applied for foreign workers who were expected to shortly arrive. Overall, foreign workers comprised 29% of the total labour force of those 16 firms. Well over 90% of these foreign workers were Bangladeshi.

The list of groups discriminated against is, of course, not exhausted here. Unfortunately, in the analysed firms, apart from frequent evidence of discrimination against women, there was relatively little evidence of discrimination against other groups of workers. Nonetheless, if we base our considerations solely on discrimination against women, a significant number of firms have systematically breached the right to freedom from discrimination.

The prohibition of forced or compulsory labour

In the analysed firms, there was no evidence of forced or compulsory labour, as stipulated in Article 8 of the International Covenant on Civil and Political Rights (ICCPR).

However, if we define 'forced labour' more widely as any work performed under duress, one finds many instances of such work in the analysed firms. One form of labour under duress refers to foreign migrant workers. Those workers are often attracted by promises of high wages and pay a fee to job agencies in return for finding work. Once they start work, the actual conditions can be considerably worse than previously promised, so many workers decide to leave. However, in a number of cases analysed, the employer refused to let a worker leave or tried to induce workers to stay by withholding payments. For instance, in a clothing factory in Macao, more than 60 workers decided to leave in July 1999, but the employers refused to pay them their due wages. Under pressure from a labour organization, the factory decided to repay the wages. Subsequently, all remaining workers were ordered by management to sign a guarantee stating that they would not apply to leave before February 2000 at the earliest. This example is indicative of the compulsion used against migrants in the clothing industry, which has also been reported elsewhere.¹⁷

Another form of labour under duress is forced overtime. In the clothing factory of a GAP supplier in Jakarta, workers who opposed overtime were intimidated and, in some cases, locked in a separate room as a disciplinary measure. In many clothing factories, there are specific procedures to ensure that workers cannot refuse overtime. For example, in a factory controlled by the William Baird Group in the Philippines, a worker who refuses overtime receives a verbal warning. After the second refusal, a worker receives a written warning. After the third refusal, a worker is suspended from work. These two examples, amongst many others, suggest that garment workers may often be forced to perform work beyond their regular duties.

Nonetheless, as there is no evidence of illegitimate practices such as forced prison labour or government schemes for compulsory labour in the clothing industry, the human right stipulated in the ICCPR Convention was not breached.

¹⁷ For example, Rudnick (1995) reported that Malaysian employers frequently withhold the passports of migrant Bangladeshi workers in violation of Malaysian law in order to prevent them from leaving.

The right to a healthy and safe working environment

Of the ten rights and prohibitions discussed in this paper, the right to a healthy and safe working environment is perhaps the most difficult one to interpret in practice as there may be ambiguity with regards to certain expressions used by ILO Convention No. 155 such as 'safe' or 'without risk to health'. Nonetheless, using the Convention as a guideline and based on the analysis of clothing manufacturers, specific unhealthy and unsafe conditions in the garment industry could perhaps include, amongst others, lack of ventilation, inappropriate lighting, unsuitable seating, noise, insufficient protection from dangerous chemicals, insufficient safety measures for fire emergencies, lack of protective clothing or insufficient number of toilets.¹⁸

In many cases, an unsafe or unhealthy working environment can lead to occupational diseases. Amongst others, the use of chemicals in garment production - e.g. cleaning solvents - can lead to different illnesses ranging from a sore throat to cancer, while repetitive strenuous work in the garment industry - e.g. repeated use of scissors - can lead to muscular-skeletal strain. For instance, in one clothing factory in the Philippines, roughly 30% of the workforce suffered from TB in 1999, most probably as a result of overwork and exhaustion as well as high congestion in the workplace combined with high air humidity leading to the quick spread of this highly contagious illness. An unsafe or unhealthy working environment can also lead to preventable injuries such as those involving scissors or industrial sewing machines. Long working hours may aggravate some of these problems due to loss of concentration.

At the most extreme, an unsafe or unhealthy working environment can lead to the death of workers. For instance, during a fire in the Rose Knitting Garment Factory in Bangladesh in July 1999, five people died because the factory had no fire exits. Of ten clothing manufacturers visited by CCC staff in Bangladesh in 1995, at least five did not have a fire exit (in two cases, it was not clear from the sources whether a fire exit existed).

Workers are often aware of the negative effects of such working conditions and call for improvements. For example, in an Indonesian subsidiary of a Japanese clothing manufacturer, one section of the plant utilized old and rusty machinery. The workers in the section had to carefully arrange 200 layers of thread on the machine for each piece of cloth. They were not allowed to talk, take a break or even turn their head. Workers in that section complained of work-related illnesses including headaches, back pain and stiffness in their arms. The management transferred workers

¹⁸ Provision of protective clothing, for instance, was explicitly covered in Article 16, Section 3 of the ILO Occupational Safety and Health Convention, 1981 (No. 155). Certain other sources of unsafe or unhealthy conditions such as insufficient safety measures for fire emergencies or lack of ventilation could arguably be covered by Article 4 of the same ILO Convention which aims 'to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment' (where the term 'health' was defined by the Convention as 'not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work', Article 3, Section e) as well as Article 16 of the same ILO Convention.

to that section of the plant as punishment for union activities. During subsequent industrial action, the main demand of the workers was to shut down that specific section of the plant, demonstrating the workers' preoccupation with unhealthy working conditions.

In general terms, while the right to a healthy and safe working environment leaves room for a certain measure of ambiguity, the majority of analysed firms appeared to breach this right in at least one of the ways suggested above.

The right to an 8-hour day or a 48-hour week

Amongst the firms analysed, there are many examples of factories, which considerably exceeded the 48-hour week. In one Bangladeshi factory, the normal working hours were 8am until 9pm seven days a week with no overtime payments. This factory was unusual, as workers in clothing factories usually receive some form of overtime payment, although it must be remembered that overtime is often compulsory. For instance, in another Bangladeshi factory, the normal working hours were 8am until 4.30pm seven days a week. However, overtime lasted until 7.30pm every day. On busy days, workers were forced to work until 9.30pm and sometimes even until 3am, which would amount to a 19-hour working day. A worker who had to stay until 3am would still be expected to start at 8am the next working day. The number of hours worked were related to excessive production quotas set for individual workers in many factories, which could only be obtained with considerable strain and which were sometimes periodically raised, resulting in additional stress and physical exhaustion as well as even longer working hours.

In general terms, it appears that workers in the majority of the clothing factories work for considerably more than 48 hours a week. Of ten clothing manufacturers visited by CCC staff in Bangladesh in 1995, at least eight had a normal working week of more than 48 hours, while seven had a working week in excess of 60 hours (in two factories, the working hours were not clear). All nine manufacturers visited in the Philippines in 1995 had a normal working week of more than 48 hours, while six had a working week in excess of 60 hours. In some factories, the number of hours was much higher than 60 hours per week.

While workers in developing countries may sometimes prefer to work long hours in order to earn extra money, particularly if the basic wage is not sufficient for a living, there is evidence that workers on occasion opposed long working hours, for example, by resisting forced overtime. In any case, the above discussion suggests that the working hours in the clothing industry were excessive by any standards. The right to an 8-hour day or a 48-hour week was clearly breached.

The right to leisure and rest during work

Closely related to working hours is the right to leisure and rest during work. Amongst the typical concerns related to leisure and rest voiced by workers in different countries are: long working hours with few breaks; work on public holidays; restrictions regarding going to the toilet; and difficulties in obtaining sick leave. In extreme cases, workers may receive no proper rest during the working week. In one garment factory in the Philippines analysed by the author, for instance, the workers worked for two months seven days a week without a single day of rest.

In addition, there are specific concerns in some countries. In Indonesia, an Islamic country, workers may not be able to perform regular daily prayers due to work pressure and no allocated breaks for praying.

Rest during work is often highly restricted. For example, in one Bangladeshi factory, when a worker went to the toilet, the time was measured with a watch and restrictions on going to the toilet were imposed. As a result, workers would often decide not to go to the toilet.

In some cases, the lack of rest may contribute to illnesses. For example, in one clothing factory in the Philippines mentioned earlier, roughly 30% of the workforce suffered from TB in 1999. One of the contributing factors was the fact that most workers diagnosed with TB only received 30 days sick leave, while it can take 6 months or even several years of treatment to cure TB, which, if untreated or insufficiently treated, can be terminal. In various other analysed firms, workers faced difficulties in obtaining sick leave or their statutory annual holiday leave. This, combined with long working hours, may have had repercussions on their health.

If we base our considerations on 'the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay' stipulated by the UN Declaration of Human Rights¹⁹, the majority of firms analysed appear to breach this right in at least one of the ways suggested above.

The prohibition of firing a worker without a valid reason related to the quality of his/her work

From the evidence analysed, the most common ground for unjust dismissal was union activity or participation in a strike. Union members or other workers may be dismissed using fabricated excuses. For instance, in one factory in the Philippines, five workers were dismissed on charges of 'sabotage' when they tried to form a trade union. In the same factory, more workers including union officers were subsequently dismissed due to alleged cost cutting at a time when the factory was actually hiring extra workers to meet client orders.

¹⁹ Article 24 of the Universal Declaration of Human Rights.

In various clothing factories, unfair dismissal is also practiced systematically in order to circumvent various statutory labour provisions or other workers' entitlements. For instance, in one factory in Sri Lanka, the management tried to dismiss all workers before their fifth year of work because, after five years of work, workers would be entitled to one and a half times their monthly salary if dismissed. One factory in the Philippines even dismissed workers who were diagnosed with TB.

In order to avoid the charge of unfair dismissal, employers use a number of tactics. For instance, in one Thai clothing factory, workers were forced to sign letters of resignation in advance of commencing their employment. In one factory in Bangladesh, workers did not receive letters of appointment, even though some of them had been working for the company for more than a year. In this way, a company may attempt to ensure the legality of any potential unfair dismissals in advance.

In general terms, a significant number of the firms analysed practised unfair dismissal. This would suggest that the prohibition of firing a worker without a valid reason related to the quality of his/her work was frequently breached in the clothing industry.

The right to a minimum wage

The evidence analysed suggests that clothing firms sometimes pay less than the statutory minimum wage, which in itself is often relatively low. For instance, in the Dhaka Export Processing Zone in Bangladesh, the minimum wage for unskilled and skilled workers was 1.200 tk and 3.360 tk respectively in early 1999. A Wal-Mart supplier in the Zone paid only 900 tk and 2.000 tk for unskilled and skilled workers respectively.

In other countries, clothing firms also pay less than the statutory minimum wage. A survey for the US trade union office AAFLI in Jakarta and the Indonesian official trade union SPSI in 1996 revealed that roughly 20% of workers in Java were paid less than the legal minimum (quoted in Burns and Mather 1999).

As jobs are scarce in many Asian countries, many workers are prepared to work for less than the statutory minimum wage. For example, the Friends of Women Foundation carried out an investigation of women dismissed from factories in Thailand and found that roughly half of the women surveyed stated that they would agree to work for less than the minimum wage under health-hazardous working conditions (Ekachai 1999).

Even if all workers were to receive a minimum wage, it could still be far below simple subsistence level in many of these countries. For example, while most workers in Jakarta and West Java received the minimum wage of 172,500 rupees in 1997, this was deemed to be below subsistence level and the SPSI recommended a figure of 300,000 rupees

per month (quoted in Burns and Mather 1999). Following the Asian financial crisis, the gap between minimum wages and the actual subsistence level has increased further. In this context, the inadequate level of minimum wages in countries such as Indonesia could perhaps be construed to contravene Article 3 of the ILO Convention No. 131 which stipulated that the minimum wage should include 'the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups'.²⁰

Even if the employer formally agrees to pay the minimum wage, he/she may arbitrarily delay or reduce payments so that effectively the employees earn less. Amongst the typical complaints voiced by garment industry workers in different countries are non-payment of bonuses, allowances and termination benefits and, in some cases, deferred wage payments lasting for weeks or months. For example, one Bangladeshi factory visited by CCC in 1995 was two months behind with paying the regular wages and nine months behind in terms of paying overtime. In another Bangladeshi factory, the payments for overtime work were nine months overdue.

Furthermore, wages may be kept low as the result of various deductions such as strict fines for mistakes made by workers or compulsory payments to a factory fund. For instance, in the clothing factory of a GAP supplier in Jakarta, loss of a tool resulted in a 25,000 rupee fine, a sewing mistake cost a worker 5,000 rupees and coming late to work was punished with a 5,000 rupee fine. In comparison, the minimum wage was 7,000 rupees per day in early 1999. As another example, in one Bangladeshi clothing factory, workers were forced to pay contributions to a provident fund, but actual claimants were usually prevented from benefiting from the fund.

Last but not least, irregular work as a result of fluctuations in company orders may keep the actual wages below the minimum wage. For instance, in one factory in the Philippines, a collective bargaining agreement (CBA) was in place in a factory and workers formally received a wage above the statutory minimum wage. However, as a result of falling orders, workers were asked to work only three days a week and actually received only half of the normal salary. Furthermore, wages were paid irregularly or payment was often delayed. In effect, the CBA was not effectively implemented and workers earned less than the minimum wage.

In general terms, the above discussion suggests that the right to a minimum wage has been violated in a significant number of clothing manufacturers.

²⁰ Article 3 of the ILO Minimum Wage Fixing Convention, 1970 (No. 131).

The right to equality of treatment between home workers and other wage earners

In a number of the clothing factories analysed, there is a striking difference between the conditions of regular workers and those who work from home. For instance, in a clothing factory in the Philippines, home workers were not entitled to any sick leave or holiday leave, and only a minority were entitled to social security, while regular workers received those benefits. In contrast to regular factory workers who received a bonus for fulfilling the production quota, home workers received disciplinary action for not fulfilling the quota.

Home workers may be disadvantaged in many other ways. For example, many home workers do not receive a regular wage but rather work on a piece rate, which means that they are paid per finished piece of clothing. As a result of inadequate rates and periodic drops in orders, their hourly earnings may, on average, be lower than those in factories.

Perhaps the home workers' main disadvantage is that they tend to have fewer legal rights than those workers employed in factories. For instance, one Indonesian factory, which used roughly a dozen sub-contractors with a total of roughly 200 home workers, did not have fixed contracts with any of its sub-contractors. If there was no work, the home workers were simply not paid, albeit this practice was also reported of factory workers elsewhere. These problems were compounded by the fact that unionisation of home workers is considerably more difficult, if compared with regular workers.

Unfortunately, in the firms analysed, there was relatively little evidence of the working conditions of home workers as external observers usually visit factories as opposed to home workers. Therefore, any general conclusions on the working conditions of home workers should be avoided here.

The prohibition (or limitation) of child labour

Based on the analysis of clothing manufacturers, there is some evidence of child labour. Of ten clothing manufacturers visited by CCC staff in Bangladesh in 1995, for example, two used child labour, although in some other cases, it was not entirely clear from the sources whether child workers were employed or not, partly because of practices such as hiding child workers during a visit by foreign observers to a factory or concealing the actual age of child workers. Where child workers were used, this was usually because they tended to be cheaper than adult workers and factories sometimes preferred children for certain types of jobs. For example, in one Bangladeshi factory, a child helper earned between 400 and 700 tk per month in 1995, while adult workers earned a minimum of 1.800 tk.

Nonetheless, the issue of prohibiting child labour is arguably very complex, particularly with regards to alternative occupations for children. A 1998 report on child labour in the garment industry in Bangladesh by a non-governmental

organization remarked that ‘The garment industry employs only a tiny fraction of the total number of child workers. The vast majority of children work in the informal sector where conditions are far worse’ (Bangladesh People Solidarity Centre 1998). Some of the alternative jobs for children in Bangladesh include child domestic servants, vendors and waste collectors. Some work is much more hazardous than that in the garment industry such as making brick or stone chips, working in plastic, rubber or glass factories and prostitution.

The above discussion of Bangladesh, where child labour is particularly pertinent, cannot necessarily be applied to every Asian country. In Malaysia, for instance, jobs in the garment industry compete with better-paid jobs in the computer industry and child labour appears to be less prevalent than in Bangladesh. However, even if jobs in the clothing industry are not as well paid as other employment opportunities, children may still prefer to work in clothing factories than to have alternative jobs or to have no occupation at all. As families may be too poor to send their children to school, the alternative of not having a clothing industry job for a child may simply be to stay at home and do nothing, which many would probably wish to avoid. Indeed, a report by the India Committee of the Netherlands, which advocated an elimination of child labour, found that ‘abolition of child labour was not favoured by the children for economic reasons and because they did not like to attend school’, albeit the majority of children would have preferred to receive education if circumstances permitted (Kruijtbosch 1996, 37 and 41). This is why certain organizations and firms advocated a limitation of child labour rather than an outright prohibition or a payment of children’s education by employers as opposed to an outright dismissal of child workers.

In conclusion, the available evidence suggests that a significant number of clothing manufacturers violated the prohibition of child labour, albeit the issue is very complex.

IV. INDIRECT IMPACT OF GARMENT FIRMS ON HUMAN RIGHTS

In addition to the above instances of the direct impact on human rights, garment firms may also have an indirect impact on human rights, albeit this is even more difficult to establish and usually impossible to quantify.

Whilst any analysis of the indirect impact of garment firms on human rights must remain speculative, the most likely impact of company activities is the influence on government policy in a given country. The activities of TNCs may persuade a government to change its policies with the aim of preventing the re-location of production activities to other countries and encouraging further investment in the local clothing industry. Many Asian countries have been able to attract foreign investment in labour-intensive industries such as clothing manufacturing thanks to low wages as well as little or poorly enforced legislation in the area of labour rights. In pursuit of further savings on operational

costs, many TNCs may re-locate some of their manufacturing plants from one developing country to another or shift to sourcing their supplies from a different country.

Indeed, clothing firms have already re-located part of their production activities away from countries such as Hong Kong and Taiwan towards countries with lower wages where trade unions have less of an influence such as Vietnam and mainland China (FHKI 1990; Khanna 1993). There may also be regional differences within countries in terms of pay and working conditions, which is why clothing manufacturers may choose to avoid certain areas such as Kerala in India in favour of low-wage and less union organised regions elsewhere in those countries. As the clothing industry does not require major fixed investment or sophisticated technology and the required manpower is abundant in many developing countries, re-location of production activities is relatively unproblematic and therefore a constant threat.

Faced with this threat, governments may perceive the need to hamper the functioning of trade unions, to prevent a rise in wages and an improvement in working conditions in order to keep operational costs to a minimum, as a means of attracting foreign investors. As a result, the minimum wage may be set at a relatively low level, labour legislation may be weak or remain unenforced. The state apparatus may also be actively used to suppress workers' protests. For instance, Indonesian legislation provided the military with an active role in labour matters including a role in settling disputes between management and workers (SÜDWIND 2000, 15). In practice, the security forces (both the military and police) suppressed labour strikes, intimidated workers, placed secret agents in factories to monitor union activities, arrested workers or forced workers to resign, a situation which has changed little since the start of Indonesia's transition to civilian rule in 1998 (SÜDWIND 2000, 15-17 and 48; Burns and Mather 1999, 12-13). The government may also hamper the functioning of organizations which in some way sympathise or support workers. For instance, a human rights activist in Malaysia who campaigned on behalf of migrant workers in the country was arrested and charged with publishing 'false news' about the conditions at detention centres for foreign workers without documents.²¹

While the responsibility for the above mentioned repressive and anti-labour measures must rest primarily with governments, there is evidence of linkages between TNCs, their local business partners and state policy. Indeed, in the case of Indonesia, there are indications that manufacturers actively encouraged the repression of workers' protests by making payments to the Indonesian police and the military. Amongst others, manufacturers reportedly make payments to 'Koramil' (local military commands) for 'protection' during labour strikes, which could cost the company US\$ 1000 per day for even a small strike, while a large strike could reportedly cost up to US\$ 1 million (SÜDWIND 2000, 17;

²¹ Source: CCC documentation.

Burns and Mather 1999, 13). Yet Nike, for instance, claimed that the presence of Indonesian ‘Koramil’ at their Indonesian manufacturing sites was benign and was indeed welcomed by the workers.²²

The brief discussion above indicated that TNC involvement in the clothing industry may have a considerable indirect impact on human rights, albeit much more research is needed on this issue.

V. ETHICAL POLICIES OF TNCS

In order to assist our discussion of TNCs’ ethical policies with regards to labour standards in clothing manufacturing in South and South-East Asia, a questionnaire was designed (see Appendix A) and was intended to be sent to the top 15 clothing retailers in the UK.²³ As a first step, the author attempted to establish contact with the firm’s representative, which succeeded in 11 out of 15 cases. The representatives of those 11 firms were sent a questionnaire accompanied by a cover letter. If no reply was received within one month, a second copy of the questionnaire and another cover letter were sent. However, only four firms sent details of their ethical policies, of which only two firms – Littlewoods and C&A – returned a completed questionnaire (see Table 2). This disappointing response rate precludes any meaningful analysis of the survey.

Most of the largest UK clothing retailers appear to have developed some sort of an ethical policy related to their suppliers, in the form of a code of conduct or written ethical statements, frequently as a response to pressure from non-governmental organizations such as CCC, trade unions and other organizations.²⁴

Table 2: Responses from 11 UK clothing retailers

	Replied	Sent Details on Ethical Policies	Returned Questionnaire
Arcadia	NO	NO	NO
Benetton	YES	NO	NO
BhS	NO	NO	NO
C&A	YES	YES	YES
Debenhams	NO	NO	NO
House of Fraser	NO	NO	NO

²² Source: CCC documentation.

²³ In determining the top 15 UK retailers, the rankings of the UK Clothing & Footwear 1999 Market Review were used (Griffiths 1999).

²⁴ On codes of conduct and their effectiveness, see e.g. Blanpain (2000) and Seyfang (1999).

John Lewis	YES	YES	NO
Littlewoods	YES	YES	YES
Mackay's	YES	NO	NO
Marks & Spencer	YES	YES	NO
Next	YES	NO	NO

While TNC codes of conduct do not have the power of law, it was found that clothing suppliers often paid considerably more attention to their transnational clients' codes of conduct than to national labour laws, despite the fact that they tended to be more familiar with national laws (Musiolek 1999, 167). This further underlined the influence of TNCs over their clothing suppliers.

There are a large variety of codes of conduct and social label systems. These can range from codes designed solely by one large TNC to agreements negotiated between non-governmental organizations, trade unions, governments and the clothing firms. The contents of the codes of conduct also differ significantly between firms. For example, Littlewoods' ethical policy covers nine out of the ten rights and prohibitions discussed in this paper, while Storehouse Group's (which includes BhS) ethical code only covers six out of the ten rights and prohibitions. In general terms, an ILO survey of over 200 codes of conduct and social label systems in November 1998 found that well over 60% of these referred to the issue of discrimination and roughly 50% referred to child labour, but only less than 20% included the right to freedom of association and bargaining (European Commission 1999).

The use of codes of conduct is not without difficulties. Amongst others, stakeholders may not be properly consulted or there may be implementation problems (e.g. poor communication or lack of involvement of employees). Based on research on UK companies in Indonesia, Burns and Mather (1999, 37) found that a great majority of workers interviewed were unaware that the firms they worked for, or supplied goods to, had a code of conduct or written ethical statements. Last but not least, codes of conducts often do not involve any effective penalties for non-compliance in the form of fines or withdrawal of orders.²⁵

As a result of the above limitations, some of the best codes of conduct may not be enforced in practice. For instance, while Levi Strauss pioneered the use of the code of conduct in the clothing industry, a number of its suppliers visited by SOMO and CCC failed to meet many, if not most, of the ten rights and prohibitions discussed in this paper. A Levi Strauss supplier in Jakarta, Indonesia visited in 1998 did not respect women's rights or the right to form and join trade unions, the wage was below the legal minimum wage, workers worked 75 hours per week and had little if no time to

²⁵ For instance, Emmelhainz and Adams (1999) conducted an analysis of 27 out of 34 codes of conduct of a leading group of US clothing firms – including prominent TNCs such as Gap and Levi's - called 'Trendsetters' which pledged to work together to eliminate sweatshops.

rest. Although the factory was founded around 1990, none of the workers interviewed knew about the existence of Levi's code of conduct. According to interviews with workers, when Levi's representatives visited the factory, they only checked the cleanliness and pleasantness of the workplace as well as examining the quality of production. If they asked to talk to workers, the management selected those most loyal to the enterprise. Despite the violation of many sections of Levi's own code of conduct, the firm continued to order its clothes from the factory. If judged by this example, even the best code of conduct may remain a dead letter unless it is communicated to all workers and its implementation is properly monitored. In a paper on the Thai footwear and garment industries, Yimprasert *et al.* (1999) concluded in general terms that the 'enforcement of codes of conduct in the apparel industry is very weak and performed only on a voluntary basis'.

The above-mentioned limitations and the instances of breaches of the codes of conduct in Asia would point to the conclusion that a code of conduct on its own is of limited value, unless it is effectively implemented and monitored. As with the written ethical codes, there are a large variety of implementation and monitoring procedures in the clothing industry, ranging from 'in-house' monitoring systems to independent monitoring by external bodies such as non-governmental organizations. As an example of the former, C&A founded a wholly-C&A owned monitoring subsidiary called SOCAM (Service Organization for Compliance Audit Management) in 1996 and, by May 1999, it had already made roughly 3,700 visits to suppliers and their sub-contractors (European Commission 1999). As an example of the latter, the Fair Trade Charter in the Netherlands – a body comprising of clothing sector employers, trade unions, non-governmental organizations and the state introduced independent monitoring systems. Monitoring can have a major impact on a supplier. As Musiolek (1999, 167) found, suppliers attached considerably more importance to a code of conduct as a result of a monitoring visit and a threatened cancellation of orders by a client.

The monitoring of clothing suppliers is not without difficulties. Even the companies themselves may face some difficulties in terms of monitoring the manufacturers. For instance, in one analysed case, SOCAM investigated the situation at a factory in Indonesia. Despite the fact that the factory was a C&A supplier, SOCAM was initially refused entry to the premises and a delay of several hours ensued. Much more importantly, unless there is independent and transparent external monitoring, the audit reports of bodies such as SOCAM and external auditors selected single-handedly by the firms themselves can be questioned, as reports are usually kept secret and are not available to outsiders, so it is impossible to check on the validity of the methodology utilised and the findings of inspections.

The secrecy surrounding the human rights situation in the clothing industry could perhaps suggest that TNCs may attempt to conceal certain facts regarding their suppliers. This speculation on the secrecy of firms finds some evidence in a confidential Ernst & Young audit of labour and environmental conditions inside Tae Kwang Vina Company, a

In spite of the fact that these were supposedly more progressive codes of conduct, it was found that only 17 out of the 27 codes included any reference to sanctions for non-compliance, some of which were very weak with one code including the simple term 'strongly object'.

Nike sub-contractor in Vietnam, leaked to the Transnational Resource & Action Centre (TRAC). This was the first time that an accounting firm's labour and environmental audit of the clothing and footwear industries was made public. The audit observed widespread violations of labour law on issues such as working hours, unprotected chemical exposures and trade union rights. This was despite the fact that Tae Kwang Vina Company was reportedly the most technically advanced of Nike's sub-contractors in Vietnam and it largely complied with Nike's own code of conduct. Furthermore, the audit report had methodological shortcomings, amongst others, by failing to provide information on important labour issues such as health and safety and by relying mainly on data provided by management.²⁶ In essence, the audit report indicated that TNCs may have reasons to conceal the nature and content of their monitoring reports.

This secrecy renders any inter-firm comparisons of the actual ethical performance of TNCs (as opposed to their formal policies such as codes of conduct) very difficult. However, perhaps one indication of the firms' performance is their relative openness to external scrutiny. Two of the four surveyed firms, which sent details of their ethical policies to the author – Marks & Spencer and Littlewoods – are regarded as being amongst the above-average UK performers in terms of their ethical stance on clothing suppliers. Above all, both firms are members of the Ethical Trading Initiative (ETI), a multi-sector coalition of companies, non-governmental organisations and trade union organisations backed by the UK government.²⁷ Both firms were more open with regards to answering questions on their performance than most other firms surveyed. In contrast, several firms regarded as average or under performers appeared secretive about their ethical policies. The press office of Next refused to send out a code of conduct claiming that this was confidential information.²⁸ The above discussion could perhaps indicate that there is a correlation between a firm's openness to external scrutiny and its actual ethical performance.

As a conclusion, the above discussion indicated that the ethical policies and monitoring techniques of clothing firms are not sufficient in themselves in raising the actual ethical performance. Indeed, the gap between formal policy measures and the actual situation on the ground could perhaps explain the secrecy of clothing retailers with regards to their suppliers in Asia.

²⁶ Source: CCC documentation.

²⁷ ETI members are committed to the adoption of the ETI code of conduct based on core ILO conventions for all or part of their business, which must be defined from the outset. Furthermore, they are committed to participation in pilot studies with other members designed to test monitoring and verification systems, and to providing an annual report of their progress. The ETI claims it is unique 'because it is an ongoing collaboration between industry, non-governmental organisations, Trades Unions and Government which will develop practical tools for developing best practice in the field of ethical trading' (ETI website at <http://www.eti.org.uk>, 30 July 2000).

²⁸ Phone conversation with Natalie Pead, Next Press Office (8 June 2000).

VI. CONCLUDING REMARKS

This paper investigated the impact of transnational garment firms on human rights in South and South-East Asia by focusing on labour rights. Our findings suggested that with at least eight out of the ten rights and prohibitions analysed, there was evidence of serious violations.

Amongst the arguments defending TNCs and questioning our findings there may be suggestions that there is a weak link between the local human rights situation and a TNC's own policy or that a TNC cannot influence the human rights situation in a local clothing factory, especially if a supplier has many other buyers. However, despite the complexity of trading networks in the clothing trade, suppliers are highly dependent on their transnational clients. As Dicken (1998, 306) stated: 'Major international retail chains and buying groups exert enormous purchasing power and leverage over clothing manufacturers. Although the production and retailing of clothing may be fragmented in individual markets, international buying operations are highly concentrated'. By implication, TNCs have considerable influence over the local human rights situation in clothing manufacturing. Indeed, as mentioned earlier, transnational buyers are able to dictate many conditions regarding working practices to the local manufacturer; and suppliers appear to be even more likely to abide by the TNCs' codes of conduct than their national labour laws.

In addition, there are indications that there is a large measure of variation in terms of observing human rights between manufacturers of the same country and between different countries. The position of the clothing industry in relation to other local industries also varies. For example, in Bangladesh, the working conditions in the clothing industry are said to be better than in other national industries (Bangladesh People Solidarity Centre 1998), while in Malaysia, the opposite seems to be the case (Rudnick 1995). These variations suggest that individual TNCs have a choice in terms of selecting countries or specific suppliers, who are above-average performers in terms of respecting human rights. In practice, the opposite frequently appears to be the case. Our research indicates that, in pursuit of profit, some firms intentionally re-located their operations towards countries or specific plants with lower wages, lower labour rights standards and a lesser degree of unionisation.

Many clothing TNCs have developed some sort of an ethical policy related to their suppliers, although there are still few common standards and many implementation problems remain. As a result of corporate secrecy, it is difficult to make any inter-firm comparisons, albeit it was suggested that there are differences in the human rights impact of different companies. Littlewoods and Marks & Spencer, for instance, which helped to found the ETI in the UK, appear to have a better ethical policy than a number of rival firms. In this context, while methodology for measuring the human rights impact of firms requires further refinement and more research is needed on the clothing industry, our paper indicates the different ways in which TNCs have adapted to the world of international sourcing strategies.

Nonetheless, even if effective codes of conduct and monitoring systems can be put in place, such measures cannot prevent TNCs from shifting their supplies to countries or regions where the wages are lower, the working conditions are less employee-friendly and the work force is less organised. This basic dilemma will only be satisfactorily resolved through state regulation and international co-operation between states, by creating common labour standards, sanctions and implementing procedures and for non-compliance across national boundaries which will reduce the pressure on national governments to lower wages and labour standards with the aim of attracting investment. In this context, while many improvements in the human rights situation can be made through the use of codes of conduct and monitoring systems, some human rights concerns in the garment industry are likely to remain until effective international co-operation develops.

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APPENDIX A: QUESTIONNAIRE SENT TO 11 UK CLOTHING RETAILERS

ONE OF THE CHIEF CONCERNS OF UNIONS IS THAT OF COLLECTIVE BARGAINING (CBA). FOR INSTANCE, IN ONE FACTORY IN THE PHILIPPINES, WHEN A CBA EXPIRED IN 1999, THE FACTORY MANAGEMENT DELAYED RE-NEGOTIATIONS OF THE CBA FOR AT LEAST SEVERAL MONTHS UNTIL THE UNION REQUESTED EXTERNAL HELP FROM CCC AND OTHER ORGANIZATIONS IN ORDER TO EXERT PRESSURE ON THE MANAGEMENT .