



Background document prepared for discussion groups at
the Clean Clothes Campaign workshop on:

**“Implementation of Codes of Conduct, with
Emphasis on Freedom of Association and
Collective Bargaining”**

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Introduction

This document was prepared for the discussion groups during the workshop “Implementation of Codes of Conduct, with Emphasis on Freedom of Association and Collective Bargaining,” held at the IG Metall headquarters in Frankfurt (Germany) on 19 September 2005. This workshop took a closer look at the relation between codes of labour practice and accompanying implementation schemes concerning Freedom of Association (FoA) and Collective Bargaining (CB). The workshop, funded by EU DG Employment and organised by the CCC International secretariat in co-operation with the German CCC, brought together European stakeholder representatives, as well as representatives from several Multistakeholder Initiatives for an in-depth discussion.

The three topics of discussion were:

1. What are genuine workers’ representation mechanisms
2. How to assess FoA compliance and investigate violations
3. How to respond to union repression and concrete strategies for remediation.

The background material is structured in the following way: Each topic consists of part (A) which briefly introduces the theme for discussion, followed by a number of questions for further discussion and; Part (B) which provides a case study that might stimulate discussion of the three aforementioned topics. We chose to use real-life experiences to ground our discussion. But please note that the information in the cases presented is neither intended to offer a complete overview of the case, nor solve any of the outstanding issues of these specific cases. Note also that a more in-depth discussion on the various aspects of freedom of association and collective bargaining can be found in the: ‘Freedom of Association and The Right to Collective Bargaining: A Clean Clothes Campaign Primer Focusing on the Global Apparel Industry, November 2005, available at www.cleanclothes.org/codes/05-foa_primer.htm.

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Discussion Group 1: What are Genuine Workers' Representation Mechanisms?

Part A.

Introduction

This discussion group dealt with the question of what constitutes a genuine workers' representation mechanism. The answer to this question depends first and foremost on the **legal context** with respect to the right to Freedom of Association. In places where this is legally restricted, many codes of conduct have called for the establishment of workers' representatives mechanisms as so called "**parallel means**" providing, according to some, a **loophole** which allows companies to operate in countries where human rights are violated. Others believe that it serves as a contribution to the realisation of preconditions for FoA (see also section VI.1 of the CCC background document on Freedom of Association).

Where FoA is **not** restricted by law, national laws often include requirements regarding workplace representation. Some national laws prescribe work councils or committees with a relatively wide scope and mandate regular meetings. Other countries have laws with a more limited scope, restricted, for example, to health and safety or welfare committees. The CCC has also identified other types of committees such as: factory councils, canteen committees, problem-solving committees, grievance handling committees, labour-management committee etc.

In other words, these activities may **co-exist** with formal trade union representation, but should not be a substitute for trade unions. In countries where both are common, trade unionists often participate in these committees. In workplaces with no formal union recognition, these councils or committees might offer workers a voice or establish a means for worker representation. For that reason, and in the context of the garment and sportswear industry where formal trade union representation is minimal, some consider these mechanisms as having the potential to **contribute** to the establishment of trade unions. See also the IO convention on worker representatives, C135.

Erosion of FoA

At the same time, many believe that worker representation mechanisms are used to **prevent** real trade unions from being established. There is a very real danger that codes of conduct inadvertently contribute to this by relying on monitoring schemes in which auditors conclude that a health and safety committee counts as compliance with FoA. In

Worker Councils and Trade Unions

These councils or committees should not 'include activities which are recognised as the exclusive prerogative of trade unions' or be 'used to undermine the position of the trade unions concerned or their representatives' (ILO Convention 135, article 3 and article 5).

Questions concerning committees

- Is there some other form of worker representation?
- Does it appear to function in the interest of the workers?
- Who chooses the representatives?
- Is there evidence of negotiations concerning working conditions?
- Are workers free to discuss work-related issues collectively?

Source: Vic Thorpe, PP presentation 23 May 2005

countries where workers are legally allowed to join and form their own trade unions, auditors should be careful not to treat any clearly undemocratic mechanism as “a step in the right direction”. One ILO report states that

a lot of brands look at the issue of freedom of association as a way to improve dialogue and communication between management and employees. They therefore check to see whether or not there are suggestion boxes, complaints mechanisms, and/or worker representatives in the factory. Although they realize that this is in no way similar to having union representation (for example, it does not allow for collective bargaining of free and fair elections), they nevertheless see it as a step in the right direction to giving employees a voice and having a more effective workplace¹

Another ILO document argues that

it is not clear exactly what qualifies as an effective non-union means of representation, or how independent of management these means might be. Often little guidance is provided by codes on this matter²

As a consequence, code compliance strategies might de facto support an employer strategy in preventing a union from being established instead of allowing for the creation of a space for workers to make their own decisions. This would be a violation of FoA. It has been observed that factories sometimes set up fake worker representation structures to give auditors the impression that they respect freedom of association.

Points for Discussion

- (i) what forms do worker representation mechanisms take;
- (ii) when are they genuinely representative;
- (iii) to what extent do they contribute to the right to organise; and
- (iv) what roles are there for brands and employers in establishing or facilitating such mechanisms?

It is increasingly argued that it would be helpful if companies or multistakeholder initiatives develop countryspecific guidance or plans with regard to FoA. What are the experiences in the addressing of these issues in the following contexts?

- a) When FoA is restricted by law;
- b) When FoA is not restricted but no union;
- c) When FoA is not restricted, union in place.

Recommendations

What are the possible strategies to prevent worker committees from becoming:

- a) a substitute for FoA
- b) a management driven (or top-down) instrument
- c) a substitute for unions.

Part B

Case: Yue Yuen Industrial (Holdings) Limited

Yue Yuen is a Taiwanese-owned industrial conglomerate which controls an estimated 16% of the world branded footwear market. The company operates huge factories in China, Vietnam, and Indonesia. Their headquarters is located in Taiwan.³ Yue Yuen employs a total of more than 250,000 workers, with an overwhelming majority of them being female.⁴

As the world's largest footwear manufacturer it supplies over 30 branded corporations and deals with at least seven different of codes on conduct.⁵ Since the mid-1990s, Yue Yuen and its buyers have been frequently criticised for substandard labour conditions in its factories.⁶ After a number of public relations disasters in Vietnam, the company started to co-operate with various brands on the improvement of workplace conditions. Yue Yuen has strictly assigned different production lines to different buyers in order to comply with the various codes of conduct and, on top of this, it has also developed its own CSR policies. This has reportedly resulted in some improvements in areas such as terms and conditions, particularly in relation to 'levels of overtime and dormitory accommodations for migrant labour'.⁷ However, one CSR manager of one of Yue Yuen's buyers has observed that raising labour issues at Yue Yuen remains difficult.⁸

Yue Yuen's Code of Conduct

In 2001, Yue Yuen developed its own code which includes the following set of standards: (i) forced labour, (ii) child labour, (iii) discrimination, (iv) compensation and welfare, (v) working hours, (vi) rewards, disciplinary practices & complaints systems, (vii) freedom of association and, (viii) environmental protection and occupational safety.⁹ This company document also states that 'the relationship among the employees becomes closer as the whole factory is perceived as a *big family* where the warmth of family can be felt'.¹⁰ But, on the other hand, critics have accused Yue Yuen of having a harsh (or militaristic) labour regime in which workers are forced to march to their positions, chanting company slogans or are required to line up three times a day to receive orders.¹¹ It has further been observed that Yue Yuen workers are very obedient and are afraid to speak out.

Yue Yuen and FoA

The right to FoA is described by Yue Yuen as follows:

Based on the right of personal freedom, the company complies with free association policies [when] permitted by the local government. The company can neither prohibit labourers from joining free associations by any excuses, nor inhibit them from participating in any assembly permitted by the local government.¹²

In other words, the company allows FoA if permitted by national law. The document does not elaborate on Yue Yuen's policy in cases where FoA is restricted by law. It appears that Yue Yuen has some type of trade union in all of its operations, even though

collective bargaining is allowed only at its Indonesian and Vietnamese sites.¹³ It is notable that the independence of the Taiwanese union operating at the company's headquarters has been called into question because some managers serve as senior representatives.¹⁴

Trade Union Activities at Yue Yuen Facilities¹⁵

China

The Yue Yuen General Trade Union has been registered in its Chinese facilities. It has established sub-unions in all of the individual factories. This union is affiliated with the All China Federation of Trade Unions (ACFTU), and union representatives are appointed or approved by management. It has been observed that the main objective of the union is to manage employee activities such as sporting events and entertainment. Most union activities are introduced through the monthly factory newspaper and bulletin boards, and are subsidised by management. Few of the union representatives are actual production line workers, and few workers are actually union members, relative to the total employee population of Yue Yuen.¹⁶ Wildcat strikes have been reported at some of these factories.¹⁷

Vietnam

In Vietnam, workers are not free to join or form unions of their own choosing. The unions registered at Yue Yuen's Vietnamese facilities are affiliated with the Vietnam General Confederation of Labour (VGCL), which is controlled by the communist party. Puma notes that while most workers are aware of the union, the majority of the workers do not actively participate. According to worker interviews conducted by Puma, most union activities were welfare-related (New Years gifts, parties, etc.).¹⁸ From sources at other Yue Yuen factories it is known that the union in the past has raised issues concerning wages, safe transport, and the rude treatment of workers by (foreign) managers and supervisors. One collective bargaining agreement for 2000–2002 also covered maternity rights.¹⁹

Indonesia

The right to free association is respected by Indonesian law. SPN has organised labour at Yue Yuen's Indonesian production site – the Nikomas Gemilang factory – since 1993. It was initiated under the SPSI, which evolved into the SPTSK and eventually the SPN.²⁰ Of a total workforce of 30,000 workers, 19,000 are members of the SPN, which is affiliated with the ITGLWF. An SPN representative recently stated that Nikomas does not comply with all of its codes of conduct and that female employees often experience both verbal and non-verbal sexual harassment from supervisors and management.²¹ Meanwhile, some union representatives have also reported improvements in the factory's working conditions.

A few years ago, an attempt was made to establish an alternative trade union. It was reported that members of this labour organisation kept their membership secret from factory managers because they feared discrimination and intimidation. The same research

indicated that workers who filed complaints with the union about ongoing problems experienced harassment by factory supervisors.²²

Bringing the Different Unions Together?

In 2002, the ITGLWF organised a workshop to bring union representatives from Yue Yuen's Indonesian, Vietnamese, and Taiwanese operations together. The workshop's aim was, among other things, to establish an international trade union organisation within the company and consider the feasibility of an international framework agreement. However, a major obstacle for the ITGLWF in this regard is its failure to establish its legitimacy on behalf of the workers within Yue Yuen's operations, particularly its Chinese workers.²³

Worker Committees at Yue Yuen Facilities²⁴

A number of Yue Yuen's key customers – Nike, Reebok, Adidas, and Puma – have been involved in facilitating worker training sessions and/or establishing worker representation mechanisms. While these are welcome steps, the question remains – given the enormous size of Yue Yuen's workforce and its hierarchical management structure – whether these efforts are enough for workers to acquire confidence, skills, and opportunity to address rights-related issues on their own.

China

In the period 2001–2002, Yue Yuen was one of the three Chinese footwear factories that agreed to participate in the China Capacity Building Project – Occupational Health and Safety, the goal of which was to establish plant-wide health and safety committees which would involve production workers as full, active committee members.²⁵ Since the completion of this project, various brands have conducted various H&S training sessions in Yue Yuen factories. Adidas notes that the health, safety, and environment (HSE) Committee has been operating very effectively, providing benefits to factory management and their production workers.

Most of the committee members were elected directly via factory elections by production line workers. The committee has provided a good mechanism for the training of workers in basic HSE, and for the promotion of effective communications between management and workers with regard to health and safety management, control of workplace hazards, and the promotion of safe work practices.

In 2004, the 'factory broadened the role of committee members to include responsibility for managing labour disputes and related employment practices. Now the workers are able to raise a wider variety of issues relating to their workplace concerns'.²⁶ This committee, together with the welfare committee, began to 'develop a more serious agenda addressing workplace concerns'.²⁷

Adidas also notes that all Yue Yuen facilities have welfare committees, but that these typically do not deal with social activities and support services for workers in the factory (canteen, postal, entertainment, counselling etc.). These committees act more 'as a bridge between management and production line workers'.²⁸ It is, however, the intention that more committees 'will follow such a pattern and to the point where industrial relations

issues – both HSE and employment matters – are being discussed between factory management and elected worker representatives’.²⁹

Nike: Yue Yuen China

Nike also participated in the aforementioned project to establish H&S committees.

A brief overview of the grievance system:

- **Current structure** : Specially assigned counselling room in each production building; eight full-time staff members; grievance boxes covering production buildings, dorms, and dining rooms; co-ordinated activities among all of the buildings.
- **Function**: Build mutual trust with workers, handle problems in time and highlight potential issues and risks; co-ordinate with workers to solve work difficulties and life troubles; counselling service channel; Help organise workers entertainment activities; help factory to daily monitoring.
- **Communication Mechanism**: In-person interviews with workers who have grievance case; hotline, special mail box for all employees; periodic survey of workers; periodic round table discussion; proactive chats with workers; bulletin, magazine or posters.
- **Capacity Building for Full-time Staff**: Systematic quarterly training including communication skills; psychology; early notification of abnormal atmosphere for workers.
- **Monthly Internal Training of Factory CR team**: case studies; experience sharing; CR staff conduct training sessions for personnel who interact with workers; round table discussion with line supervisors, dorm staff.
- **Full-time Staff and CR Team Conduct Training for Workers** : Stress-release; new-hires orientation training to avail them of the grievance system and who to address concerning problems.³⁰

Vietnam

At one Yue Yuen factory producing for Puma the worker training sessions are conducted in-house through the central Compliance Department, which manages the individual factory level compliance teams. Recently the Pou Yuen factory participated in a brand-initiated training session for workers and supervisors along with their compliance officers.

A trade union document observed that the H&S committee, which meets quarterly, consists of:

- 1 company representative
- 2 trade union representatives
- 1 upper shoe workshop rep
- 1 work clinic rep
- 1 sole workshop.

Puma on Worker Training Sessions in Yue Yuen Vietnam

Aside from a 7-day new worker training programme that is regularly scheduled every month, they also have regular training scheduled quarterly on health & safety, labor law, machinery operations, etc. This new worker training is conducted with all new workers before they are sent to the different brand factories. They also use training as a part of their discipline process, for example those [who] were found [to] not [be] wearing PPE during unannounced audits by central Compliance Department on the factories are scheduled for remedial training on the use of PPE. After 2 remedial trainings with no improvement, the worker will then go through the process of written warnings, possible demotion/transfer, suspension, etc. For serious grievance cases, one of the alternatives to termination used is transfer from one factory to another (hence, from one brand to another).³¹

Indonesia

Besides the trade union, the Nikomas factory, Yue Yuen's Indonesian facility– also has H&S committees. Nikomas also has a CR department called Standards of Engagement (based on the Adidas one) and a counselling centre. More recently, Adidas initiated labour rights training sessions in Nikomas. Nike has similar activities.

Discussion Group 2: How to Assess Freedom of Association Compliance and Investigate Violations

Part A

Introduction

This workshop focuses on how to determine if workers are able to exercise their right to join the union of their choice? Freedom of Association and collective bargaining are generally seen as difficult standards to monitor compared to other code of conduct (CoC) obligations. The qualitative character of these standards, plus the variations in legal, political, and cultural circumstances, makes it difficult to develop a standardised set of benchmarks against which to measure supplier compliance concerning FoA and CB. The question thus arises of how to evaluate whether workers are able to exercise their Freedom of Association. The Kahatex case study in part B, for example, shows very different results when it comes to determining whether a strike is illegal or legal. The right to strike is generally considered an essential component of collective bargaining. The comparison between the two audit reports might help to answer some of the questions above, but people are of course encouraged to draw on their own experiences. Please note that the information in the example case is by no means complete or up-to-date and is only presented here to stimulate discussion.

The existence of a representative and democratic union is of course the best evidence that workers can exercise these rights. If such a union does not exist, it becomes much more difficult to evaluate whether workers face obstacles in exercising their rights. Social auditors must somehow investigate whether the non-existence of a union is or is not caused by management interference, which is very difficult to verify. While some companies openly admit that they do not have a ‘complete picture of the actual situation due to the challenges of discovering these practices through monitoring’ (Nike, 2005: 39), other companies seem to place almost no importance on the discovery of FoA or CB violations. One recent ILO research report on social auditing in Bulgaria, Romania, and Turkey (2005: 31) noted that ‘only about 10-15% of brands give real attention to this topic in social auditing’. The report concludes that FoA is neither ‘a priority for most auditors ... [or] a major factor in passing the audit’ (ILO, 2005: 32). Another ILO research report notes that even among the more pioneering branded corporations, the crude criterion of “good labour management communication” is used as a proxy to measure freedom of association which local auditors are free to interpret in their own ways (Mamic, 2004: 309).

How to Discover FoA Violations

There are many factors that complicate assessments of FoA compliance. The table below summarises some of these difficulties.

(1) The overall low quality of monitoring	Many monitors seem inadequately trained to make qualitative judgements concerning FoA and CB.
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	<p>The overall low quality of social audits and in-house monitoring means that the workplace reality on FoA and CB issues remains obscured. The majority of social audits and in-house monitoring is based on a one- or two-day visit by inadequately trained monitors. These audits rely predominantly on management resources and interviews; there is no serious attempt to collect reliable information from workers, local unions, and/or NGOs. The lack of quality obviously limits the usefulness of these instruments in assessing FoA and CB compliance.</p>
<p>(2) The non-quantifiable or subjective character of FoA</p>	<p>Unlike violations regarding wages, hours, or health and safety issues, which are quantifiable or measurable, violations concerning rights-based issues like FoA and discrimination or harassment related to FoA must be determined by qualitative methods. Such methods include observation and interviews and require a relationship between the workers and the monitor/auditor.</p>
<p>(3) The large variation in political, legal, institutional, and cultural circumstances</p>	<p>Monitors (auditors) must be familiar with differences in political, legal, institutional, and cultural circumstances to understand the specific situation and what particular problems workers face when they try to organise. In other cases, state authorities often fail to protect workers in their attempts to organise.</p> <p>Many of the cases the CCC investigates relate to whether or not a supplier has actually breached local FoA laws (for example the Kahatex case discussed below). Thus, one of the questions is to what extent national labour laws are in line with international labour standards. Many buyers' codes include requirements that exceed local legal requirements, for example with regard to working hours, minimum age, or the use of personal safety equipment etc. Legal shortcomings at the local level are presented as an obstacle to FoA compliance. , Many buyers seem to have narrower policies regarding FoA than other standards, and use such phrases as 'where permitted by local law'.</p> <p>This includes an investigation of the legal discrepancies between local laws and international labour standards. For example, in some countries employers can legally challenge union recognition requests and any studies of the various non-legal barriers that restrict formal rights to FoA. For example, this may take the form of a study of how to deal with bureaucratic and regulatory hurdles that impede the establishment of unions..</p>
<p>(4) The existence of yellow, white, or sweetheart, tame unions</p>	<p>Not all unions are legitimate, representative, or democratic. Some unions only exist on paper; others are run by factory management (yellow unions, sweetheart unions, Solidarismo). Neither have any legitimacy to negotiate on behalf of workers.</p> <p>In many cases, manufacturers promote the creation of rival unions to challenge existing and legitimate unions, or to pre-empt their establishment. Employers favour the rival unions, for example, by denying legitimate unions access to the workplace or refusing to negotiate with</p>

	them.
(5) Management ambivalence	<p>Manufacturers (suppliers) are often ambivalent about implementing FoA and CB. Paternalistic managers typically argue that workers do not need a union since they have an ‘open door’ policy, or operate like ‘one family’ etc.</p> <p>Suppliers might not be willing to recognise the union</p> <p>Sourcing companies often formally recognise FoA and CB but do not go beyond that. Many do not make it a priority to ensure compliance of these rights.</p>
(6) Problems with evidence	<p>Many auditors are ill equipped to access compliance with FoA and CB (see also 1).</p> <p>Auditors have to deal with conflicting and contradictory information when they make their assessments.</p> <p>Workers are often briefed, coached, or intimidated by management. As a consequence, workers may be afraid to speak openly to social auditors out of fear of retaliation from management, or because they do not trust the social auditors.</p> <p>Workers may also have different interpretations of what happened. Or be unaware of what happened to union workers because they work in other departments or because they were just recently hired.</p> <p>Dismissed or suspended workers may no longer be available to tell their side of the story.</p> <p>Management may enforce blacklists to prevent potential organisers from joining their workforce.</p> <p>Worker may be unfamiliar with FoA and CB and therefore unable to report on these violations (e.g., they are untrained, uneducated, or unempowered).</p>

Points for Discussion:

- How would you investigate whether a supplier has a pro-active or positive approach regarding FoA?
- Based on your own experience, which of the aspects mentioned in the table above are the most common?
- What do you think should be the priorities in the improvement of the quality of the monitoring and investigations in this respect?

Recommendations:

➤ What suggestions do you have in overcoming these difficulties?

Part B

Kahatex Case Study

In May 2003, 537 workers at PT Kahatex Sweater, in their attempt to establish an independent trade union, went on strike and subsequently were illegally locked out by management for demanding a minimum wage. The workers demands were simple: reinstatement at their former permanent employee status, proper payment of the minimum wage, and company compliance with all other Indonesian laws (regarding leave, health insurance, overtime, etc.).

Upon a request by the locked-out workers, an international solidarity campaign began in July 2003, spearheaded by the CCC in Europe and USAS in the United States. World-wide, many letters were written and actions were organised to put pressure on the various buyers at PT Kahatex Sweater.

Two of Kahatex Sweater's customers, H&M and Nike, agreed at an early stage, to cooperate with the Workers Rights Consortium (WRC) and local Indonesian groups to investigate the situation. H&M went so far as to refuse to place new orders until the lockout was ended. Nike, meanwhile, put pressure on the parent company, PT Kahatex, requesting that it use its influence to reinstate the fired employees or to find them jobs somewhere else within its network of factories.

More campaigning was necessary, however, to convince other sourcing companies such as Olsen, Lerros, Tom Tailor, Mustang jeans and s.Oliver to take action. One company, s.Oliver, responded by hiring the Systain audit company to investigate the case. It conducted an audit on 16 September 2003. Then a second audit was conducted by an individual living in Indonesia and with connections to the garment industry. Tom Tailor, meanwhile, carried out an audit on 8 August 2003..

Two Different Assessments

Find below a summary of an audit report commissioned by a German buyer and the CCC's response to this audit. The report deals with the strike and with the union situation at the factory. The two conflicting assessments can be seen as typical for urgent appeal cases.

Auditor commissioned by German Customer

Before I went to Indonesia to conduct the audit, I received the

CCC Response

During my recent stay in Indonesia in September 2003, I met with the dismissed workers for more than three hours as well

audit report conducted [on] 8 August, 2003 by TMS Indonesia. With this report I received all of the copies of the documents originally procured by the auditor.

I updated the Guidance Document and my knowledge regarding Indonesian Labour Law.

Methodology

The audit information given in this report is based on a random check of the documents, a visit to the factory and interviews with:

- management
- worker representatives (no management present)
- Workers (no management present)
- Union officials from Serikat Pekerja Seluruh Indonesia (SPSI).

Payroll payslips

To understand what happened in the past it was necessary to start at the beginning of the year. In the quarter the factory faced an order

as one buyer to discuss the case of the 537 illegally dismissed workers.

Methodology

With regard to the independent social audit, the report appears to be incomplete and misleading.

A number of things are unclear about the methodology of the audit:

- Did the worker interviews conducted by the auditor take place inside or outside the factory?
- Did management know who the auditor interviewed?
- How did the auditor choose the workers to interview?
- Who did the translations of the interviews?
- Did the auditor interview any of the illegally dismissed workers or workers who participated in the strike and who have not been reinstated to get both sides of the story?

It is crucial for us to know whether the auditor spoke to participants in the strike, who were illegally dismissed and have not been reinstated. According to the auditor's oral statement to –one source, she only spoke to one dismissed worker who was later reinstated.

Payroll-payslips

If the auditor has indeed examined the actual payslips and not just the payroll we would like to know from whom she got these payslips. According to our

shortage . This meant workers only had to show up in the morning, sign in and were afterwards allowed to go home. Nevertheless, the workers were paid full-time wages for those three months. Testimony was provided by documents and was confirmed during workers' interviews.

In April, the company was again receiving sufficient orders and by the end of April the workers were demanding wage increases. It seems that the conflict was abused by the PPB, a small, new NGO, which specialises in industrial actions. The PPB, however, offered incorrect advice to the workers concerning their labour rights and duties.

Illegal strike

The Kahatex workers went on an illegal unannounced strike and they refused to negotiate. The evidence includes a list passed on to the Kahatex management stating that 'no harmony exists and there is no further relationship between management and the workers'.

This could already be interpreted as a sign that the workers had resigned. Afterwards, the workers did not return to work. According to the documents we have inspected and the interviews, it appears that the workers were only interested in receiving their severance pay. If this is true, there was no chance that if management

information, PT Kahatex Sweater management does not keep copies of payslips. H&M also conducted an audit some 14 days prior to this auditor and was unable to secure payslips from factory management . Our impression is that the payroll and payslips do not correspond.

The workers are paid on a piece-rate basis, thus it is unlikely that they received any set wage and, in any case, not the minimum wage they are entitled to receive during the above period mentioned. If there were no orders for some three months, why didn't Mrs. Chen, the factory owner,] lay off some of the workers?

Illegal strike

The strike was *not* illegal because the workers had already participated in negotiations with management about their normative rights. These negotiations failed and thus the workers had the right to go on strike.

The references in Indonesian law are the following:

UU 13, 2003 Article 146(2): Cannot lock out employees that are striking over violations of their normative rights (such as the minimum wage).

Also Article 145 of UU13/2003: Legal strikers must be paid their base wages while they are on strike, (for many of the Kahatex workers, the 'severance' package didn't even amount to the unpaid wages accrued during the lock-out/strike period).

asked the workers to return to work they would. After the strike, the workers indeed did not return. According to Indonesian Law, a company is allowed to dismiss a worker who has failed to show up for work for 5 days. Before any dismissal, the company is still obliged to issue two requests that the workers return and this is what the company did.

Evidence exists that Kahatex requested the return of striking workers on several occasions.

Trade union

At this point it is important to understand that the company has already been unionised by SPSI for over two years. SPSI is active all over Indonesia ... Regular meetings are organised by Kahatex with worker representatives. This was confirmed by various workers' representatives during the interviews. In fact, during our audit, elections for new representatives took place and two union officials were present. So we were able to interview the union officials as well.

The union officials told us that they were always welcome to visit the workplace and meet with worker representatives. They also appreciated the training regarding labour rights and duties offered by management to workers' representatives. on

Approximately 440 Kahatex employees are members of SPSI. During the strike, 250 more

The workers could not return to work because they had been locked out and denied entry to the factory. The company further engaged in brutal tactics during the lock-out, bribing workers and hiring thugs to force workers to resign and accept illegally low severance pay instead of reinstatement and their legal back wages.

Trade union

The SPSI status quo consists of remnants of the yellow or management union installed under Suharto. Internationally, this union is no longer integrated into any global union federations (GUF) or any other kind of union movement.

Nationally, the union is still considered a yellow or management union. SPSI has no membership records . Just recently the Indonesian national social security programme, Jamostek, which undertakes membership verification among unions to verify actual membership figures and how many are covered by Jamsostek, discontinued its Memorandum of Understanding (MOU) with SPSI because they could no longer fulfil their task. The Minister of Manpower, Jacob Nuawea, meanwhile, also personally intervened in the MOU affair. Jamsostek's director refused to allow SPSI to return to the verification programme. The interesting point here is that Nuawea is not only the Minister of Manpower but also the President of SPSI.

Therefore, we note that the auditor did not speak with the representatives of the locked-out workers! The auditor only

workers joined the SBSI union. This union now also has representatives at Kahatex as well. However, less than 50% of the workforce is currently organised.

Future orders

It is important for Kahatex Sweater to return to a stable situation and win back their clients' trust. If future orders are not forthcoming as a result of the unstable situation, the company's future and those of 1100 workers are in danger.

Pay estimates

According to our random inspections, we can verify that the results of the earlier audit that all figures were properly. This also includes the calculation of overtime hours based on the minimum wage and on the piece rate. Paid leave, maternity leave, and menstruation leave were all given to the workers.

interviewed yellow union members!

The auditor's report concerning the lack of communication between workers and their representatives — Pak Parhito — does not make it as to why the auditor assumes that workers *should* be communicating with this man? He does not represent the striking workers as they do not belong to his union. He cannot speak on the behalf of the entire workforce, he only represents SPSI members.

Future orders

The owner, in our view, must still have plenty of orders, otherwise why would the remaining workers be working overtime? Until 6 September 2003 the workers were still working overtime to reach daily production targets. According to interviews with various workers, the remaining workers were pressured to say that they did not want the dismissed workers back.

Pay estimates

We still have our doubts regarding the payment of minimum wages at Kahatex because we know for a fact that management does not keep copies of payslips. Therefore, we have requested that they send us copies of relevant payslips so that we can have them confirmed as valid by our colleagues in Indonesia

Discussion Group 3: Responding to Union Repression and Concrete Strategies for Remediation

Part A

Introduction

This break-out session dealt with the question of how to respond to employer's interference in various organising efforts: e.g., how to prevent these situations and how to resolve them. An internal **CCC evaluation** of 192 urgent appeals cases during the period 1999–2003 showed that the majority (107) were related to violations of International Labour Organisation (ILO) convention number 87 on freedom of association and the right to organise and number 98 on collective bargaining.³² Examples of violations under these two conventions include: repression, discrimination, harassment and violence against union members, dismissal due to union activities, denying workers the right to form a trade union and to collectively bargain an agreement (see table 1). Addressing union repression clearly needs to be a **top priority** for those claiming to take workers' rights seriously. This would imply supporting an environment in which workers and management understand workers' rights and how to exercise them plus creating a set of policies and procedures to protect those rights. This includes, for example, the establishment of non-retaliation, anonymous grievance procedures and complaints mechanisms. Buyers can further pressure suppliers to establish a system that allows dialogue and communication between management and worker representatives. Manufacturers should thus recognise the trade union and establish appropriate policies, attitudes, and procedures that can further facilitate structures for consultation and negotiation.

Table: 1 Key violation	Total cases
Denial of the right to form a union	22
Denial of the right to organise, union busting, repression including discrimination and harassment against union members	27
Firing or dismissal due to union activities (including strike)	31
Violence, arrest, jail due to union activities (including strike)	19
Denial of the right to bargain collectively	8
<i>Total</i>	107

(Adjusted from Dent, 2005: 24)³⁵

Different Instants of Remediation

It is the experience of the CCC that cases of union repression follow a similar pattern: It often starts with long drawn out **acts of discrimination** against union members or workers suspected of engaging in organising activity. This spirals into more active forms of harassment.³⁴ This is followed by more direct **industrial actions**, at which point complaints are often filed with local authorities.

Cases of union repression usually escalate (i.e., workers being locked out) before companies or MSIs can even mount an attempt at resolution (see examples in part B). In many cases, earlier constructive intervention efforts could prevent these sorts of serious problems.

Some CCC Observations in Union Repression Cases

- The early phase usually includes extensive discrimination or harassment which is not acted upon, even if this is noticed by the monitor or communicated to the sourcing company via the union. The employer tends to deny the accusations, and sourcing companies then often argue that these conflicting stories make it impossible to take appropriate action because “all information needs to be in” first and that “allegations need to be proven”. Too often sourcing companies themselves deny the accusations, for example they may claim that workers were fired or disciplined legitimately. Other sourcing companies are slow to act and or will only follow up once other companies have acted.
- The employer (management) is an active party in the conflict and is thus far more likely to resist an investigation or remediation than in cases concerning other code elements. This makes the issue of leverage or coercion capacity on the buyers’ side even more crucial. Sourcing companies tend to make only limited efforts to bring other sourcing companies on board.
- The case is often simultaneously going through the legal system at the national level and the code compliance system. This implies an entire extra set of issues. Unfortunately, these processes often lead to a situation where the brands sit back to await the outcomes. In other words, management interference may very well be conducted within the letter of national laws, while simultaneously violating international labour standards.
- On the positive side, CCC has witnessed successful or partially successful resolutions in cases where buyers contributed to the positive outcome. In these cases, the buyers successfully forced suppliers to re-hire dismissed union members or recognise a union and start negotiations. Multistakeholder initiatives have played an important role in these cases.

Questions for Discussion:

- In your experience, what are the most successful strategies for responding to union repression?
- What signals or indicators of union repression can be detected before the conflict erupts?

Recommendation

- What concrete interventions can buyers and MSIs engage in to prevent union repression from taking place?

Part B

The Codevi and MSP Case Studies

Below we describe two cases. For each we list details from the period prior to the workers' decision to make a public appeal, some details during the conflict period, and some of the investigation and remediation efforts that have taken place since.

Codevi³⁵

The Dominican investor Grupo M has 12,000 employees, making it the largest employer in the Dominican Republic. The World Bank's International Finance Corporation provided a \$20 million loan to Grupo M to establish a factory in a newly created free-trade zone in Quanamithe, Haiti. In August 2003, Grupo M opened two facilities that employed a total of approximately 1,000 workers. The Codevi factory produced Levi's 505s and 555s jeans, while the other factory produced T-shirts.

Prior to Public Appeal

It is relevant to know that Grupo M was no stranger to labour rights activists, being, as mentioned earlier, the largest employer in the Dominican Republic and a known union-rights violator. At the new Codevi factory, workers experienced long hours, low pay, and poor working conditions. On **13 October 2003**, the Codevi workers union (SOKOWA) was created. On **16 February 2004**, the new trade union handed management a letter in which they informed them of the union's existence and requested a meeting to discuss factory matters. On Wednesday, **25 February**, a few workers were informally discussing matters with management, when, according to a complaint by one of the union members, one of them was informed that he was fired. When he protested he was violently beaten up with rifle butts and forced to give up his work badge. On **26 February**, the entire workforce stopped working in protest. No response by management was forthcoming. Instead, management informed the workers that Levi Strauss was cancelling its orders and thus they would be forced to dismiss the entire workforce. They fired 34 union members. The workers engaged in a work stoppage on Tuesday to protest. These dismissals were further accompanied by many threats at gunpoint, as well as physical abuse. Since these incidents, an agreement has been reached regarding the reinstatement of all of the dismissed workers and a team of observers was present at the factory for one month.

Elements of the Conflict Itself

Following an international campaign in support of the workers, negotiations in April, led to an agreement between management and the workers. In **mid-May** all workers were back to work but the SOKOWA union was still legally recognised by the Haitian government. After **8 June**, public appeals began coming in urging Grupo M to reinstate its workers. The company, however, decided instead to move part of its production from Codevi to their factories in the Dominican Republic. The company used the excuse of

“low productivity” which forced a temporary transfer of the Levi’s orders to their Dominican factory. The workers were informed that the layoffs was permanent. Since this layoff, workers still employed at Codevi (under difficult conditions) have been informed that the 254 were fired “to punish the m” for their participation in union activities.

Investigation and Remediation Efforts

Although Levi’s did urge the reinstatement of the workers who had been unjustly dismissed from Codevi, various US groups and the CCC felt that Levi’s was not doing enough to ensure that the Codevi workers would get their jobs back and that their rights were being respected. Instead, they have shown that they prefer to allow Grupo M to produce their jeans elsewhere and go unpunished for dismissing the workers who tried to exercise their rights. Many protests followed, including in Belgium and France.

Grupo M began hiring back some of the involved workers (approximately 100) but did so on an individual basis, without any union negotiations, without any compensation for the period of their dismissals, and under much higher (doubled) production quotas. Also, a number of the workers, after so many months of trying to get reinstated, moved away from the area or found employment elsewhere. However, the majority of the dismissed worked continued seeking their reinstatement.

On **5 February 2005**, after prolonged negotiations, the SOKOWA union and Codevi management representatives signed an **agreement**.

- Codevi agreed to **reinstate five union** leaders before February 12, with back pay for the period since their dismissal and no loss of seniority benefits.
- Another 151 dismissed workers were to be **progressively rehired** as the US firms Levi Strauss and Co. and Sara Lee Corporation began placing orders again; a support and solidarity fund will be created and funded by a variety of sources to cover the back pay of these workers.
- Codevi promised to guarantee **full union rights** for all SOKOWA members and to respect the human rights of all employees.
- Codevi and SOKOWA agreed to establish a **permanent dialogue** in the form of a joint commission composed of three representatives from each party. They plan to draft, discuss and sign a collective agreement establishing workers’ rights and conditions within six months.³⁶

MSP

Prior to the Conflict

Due to constantly increasing quotas with no pay increase, compulsory overtime, the poor quality of drinking water, verbal abuse from supervisors, and daily body searches that at times amounted to sexual harassment, five workers met on **9 November 2003** to form a union at the MSP factory [**in where, Thailand??**]. One union leader was dismissed by

management due to a 'reduction in orders' but she was later rehired. On **24 November 2003**, one union leader and one member were dismissed for submitting worker's demands to management. Nike monitors were also contacted by local organisations as was the National Human Rights Commission with positive results. The National Human Rights Commission intervened and managed to get the dismissed workers reinstated in **February 2004**. There were some company improvements including the provision of lockers, clean drinking water, and a food allowance of 5 Bath per day. However, workers have continued in their efforts to form a union, which will address the other issues. On **12 October 2004**, the union was registered. When the union launched a membership campaign on **29 October 2004**, three union executives were dismissed.

During the conflict

The remaining union leaders have reported a state of constant harassment. For example, management hired transport to transport workers to anti-union protest rallies. The owner, one Mr. Peter Krautler, stated in a letter that he had no intention of reinstating the dismissed workers. Instead, he offered them compensation amounting to some 10 months salary in an attempt to induce them to drop their demands. All three workers refused to accept this money and stated they would continue fighting for their rights. A new union was formed with the support of management

Nike reported on **15 December 2004** that they were discussing with factory management on how to follow-up on the conciliator's recommendation that the workers be reinstated. In subsequent E-mail exchanges, the company stated that the Austrian management strongly opposed this effort, and that Nike wanted to ultimately follow the government's ruling in the case.

A period of extensive protests followed, as CCC and other activists attempted to urge Nike and Decathlon, the other major buyer, to reinstate the workers and ensure the union that it could operate freely, in effect, circumventing the slow legal process that had yet to run its course. A complaint was also filed with the FLA (Fair Labor Association).

Remediation Measures

On **16 March**, the Thai Labour Relations Committee voted in favour of the re-instatement of the two workers who were pursuing their case in court, but did not grant them back pay. Subsequently, the involved parties agreed to the development of 'Terms of Engagement', with input from all of the parties concerned: workers, management, buyers, and Thai labour officials. The FLA conducted the process of these Terms of Engagement. As of July 2005:

- All three workers have been reinstated, and two of them received full back pay to the date of dismissal (the third one accepted settlement money which came to a higher amount);
- The re-integration plan was agreed upon, which includes management communication to the workers on the re-instatement of union members and on the rights of workers to freely join the union;
- Training in labour rights issues for both workers and management;
- Recognition agreement signed by both management and the union;

- An ombudsperson selected by the two parties will be available for one year

1 Vegt, S. B. A., van der, 2005, "Social Auditing in Bulgaria, Romania and Turkey; Results from Survey and Case Study Research", Ankara, Turkey. International Labour Office, 2005, p. 32.

² Mamic, Ivanka (2003) 'Business and code of conduct implementation: how firms use management systems for social performance' New York and Geneva, International Labour Organisation, p. 50.

³ For a company portrait of Yue Yuen see Clean Clothes Campaign, 1 march 2004, 'Sportswear Industry Data and Company Profiles Background information for the Play Fair at the Olympics Campaign', <http://www.cleanclothes.org/publications/olympic-profiles.htm>.

⁴ Yue Yuen is used as an example because it

- (i) supplies several brands;
- (ii) operates in countries that restrict FoA as well as in countries that recognise FoA; and
- (iii) has been involved in various worker training programmes.

⁵ In autumn 2003, when I interviewed a few Yue Yuen managers, the company had seven different codes.

⁶ See for example:

- Chan, Anita, November 3, 1996, 'Boot Camp at the Shoe Factory: Where Taiwanese Bosses Drill Chinese Workers to Make Sneakers for American Joggers', *Washington Post*
- AMRC and HKCIC, September 1997, 'Blood, Sweat & Shears; Working Conditions in Sports Shoe Factories In China Making Shoes for Nike and Reebok';
- Connor, Tim., (2002). 'We are not Machines: Despite some small steps forward, poverty and fear still dominate the lives of Nike and Adidas Workers in Indonesia', available at: <http://www.caa.org.au/campaigns/nike/reports/machines/>;
- Kwan, Alice, April (2000). 'Producing for Nike and Reebok', Hong Kong Christian Industrial Committee;
- Li, Q., (2002) 'Nike, Adidas, Reebok, and New Balance Made in China', China Labor Watch, Hong Kong, <http://www.chinalaborwatch.org/>.

⁷ Miller, Doug, (2004) 'Preparing for the long haul: Negotiating International Framework Agreements in the Global Textile, Garment and Footwear Sector', *Global Social Policy*, vol. 4(2): 215-239;

⁸ Interview with one CSR staff member who prefers to remain anonymous, HK[???], Autumn 2003.

⁹ Yue Yuen, 2001: 'CSR', (on file). There is a newer version of this document that I have not seen yet.

¹⁰ Yue Yuen, 2001: 'CSR', (on file) [Italics added].

¹¹ The following quote from Thomas Shih, deputy Yue Yuen manager speaks volumes: 'In the past it was all about whether you could hit the workers or slap them. Now we talk about how we celebrate their birthday' (*Financial Times*, 4 February 2003).

¹² Yue Yuen, 2001: 'CSR', (on file).

¹³ ITGLWF, (15-17 January 2002), 'First Global Workshop for Worker Representatives within the Pou Chen Group' Pasir Ris, Singapore, (on file).

¹⁴ Miller, Doug, (2004) 'Preparing for the Long Haul: Negotiating International Framework Agreements in the Global Textile, Garment and Footwear Sector', *Global Social Policy*, vol. 4(2): 215-239.

¹⁵ This section does not intend to offer a comprehensive overview. It is based on limited information and, sometimes, dated information. Additions and complements are welcome.

¹⁶ E-mail Henke, Frank., August 30, 2005 (on file).

¹⁷ Kwan, Alice, (25 April 2000) 'Report from China: Producing for Adidas and Nike HKCIC', see also The National Labor Committee and China Labor Watch, (August 2004), 'Puma's Workers in China Facing an Olympian Struggle to Survive', (on file).

¹⁸ E-mail Hengstmann, Reiner, 23 August 2005 (on file).

¹⁹ ITGLWF (15-17 January 2002), 'First Global Workshop for Worker Representatives within the Pou Chen Group' Pasir Ris, Singapore, (on file).

²⁰ Information from the SPN submission presented at the meeting in Hanoi, July 2005.

²¹ Ibid.

²² Connor, T. (2002a) 'We are not Machines: Despite some small steps forward, poverty and fear still dominate the lives of Nike and Adidas Workers in Indonesia', www.cleanclothes.org, accessed 16 July, 2003.

²³ See for an evaluation: Miller, Doug, (2004) 'Preparing for the Long Haul: Negotiating International Framework Agreements in the Global Textile, Garment and Footwear Sector', *Global Social Policy*, vol. 4(2): 215-239.

²⁴ This section does not intend to provide a complete overview. It is based on limited information and, sometimes, dated information. Additions and complements are welcome.

²⁵ For an evaluation of this project: China Capacity Building Project — Occupational Health and Safety, March 2001 — March 2002, Final Report of the Project Coordinating Committee (29 May 2002), available at <http://mhssn.igc.org/China3.htm>.

²⁶ E-mail Henke, Frank, August 30, 2005 (on file).

²⁷ Ibid.

Ibid.

²⁹ Ibid.

³⁰ Durkin-Jones, Sonya, 24 August 2005 (on file).

³¹ Source: E-mail Hengstmann, Reiner 23 August 2005 (on file)

³² Dent, Kelly, May 2005, 'Urgent Appeals Impact Assessment Study', CCC International Secretariat, Amsterdam (internal study).

³³ Ibid.

³⁴ There are of course many situations in which employers successfully interfere in workers attempts to organise that never evolve into an urgent appeal or active complaint.

³⁵ The information in this case comes from various CCC webpages on Codevi, particularly:

<http://www.cleanclothes.org/urgent/04-06-08.htm#bg>

³⁶ Research Center of the Americas, http://www.americas.org/item_17978 (last assessed 8 September 2005).