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**Empowering Women's Labor Mobilization in Cambodia:
The Role of Global Enterprise**

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ABSTRACT

Cambodian garment workers continue to suffer deplorable working conditions and face severe barriers to their meaningful labor organization. This study explores the unique opportunity and emerging responsibility of multinational apparel brands to actively shape and protect freedom of association (FOA) for women workers in the Cambodian garment industry. It examines the extent to which global brands sourcing from Cambodia's garment sector have taken positive action to protect FOA space for women labor organizers throughout their global supply chains. This research aims to contribute to the wider Business and Human Rights (BHR) discourse, building an argument that apparel brands should leverage their unique positions of political and economic influence, not only to passively respect but, to actively protect FOA rights of garment workers—especially in politically volatile and oppressive domestic contexts. This work goes on to reveal how such protective human rights advocacy measures on the part of multinational corporations are helping to drive the BHR discourse forward.

INTRODUCTION

“Cambodia has taken a huge step backwards in terms of freedom of association. They’ve arrested prominent trade union leaders and used lethal force to shoot and kill striking workers.”

—Community Legal Education Center of Cambodia¹

In January 2014, garment workers in Phnom Penh organized a peaceful demonstration demanding an increased living wage.² Cambodian government security forces summarily quashed the demonstration, killing four and arbitrarily arresting scores of other protesters in the first of what has become a swathe of violent crackdowns against women’s labor organization across the country.³

Unfortunately, Cambodian garment workers and women labor leaders have their share of unfulfilled rights to organize for. They suffer a wide range of egregious abuses in factories where popular western brands—such as H&M and Adidas—continue to source their apparel and footwear.⁴ Although the Cambodian government has enshrined robust de jure labor law in its constitution to ensure safe and healthy working environments in garment factories, inadequate

¹ E. Tammy Kim, “Cambodian Garment Workers Rise Up and Face a Crackdown,” *Al Jazeera America*, March 11, 2015, <http://america.aljazeera.com/articles/2015/3/11/cambodian-garment-workers-rise-up-and-face-a-crackdown.html> (accessed March 12, 2017).

² Business and Human Rights Resource Centre, “Cambodia: Crackdown on garment workers protesting for higher wages – Jan 2014,” January 29, 2014, <https://business-humanrights.org/en/documents/cambodia-crackdown-on-garment-workers-protesting-for-higher-wages-jan-2014> (accessed December 15, 2016).

³ Prak Chan Thul, “Woman shot dead in police crackdown on Cambodian labor protest,” *Reuters*, November 12, 2013, <http://www.reuters.com/article/us-cambodia-protest-idUSBRE9AB0HF20131112> (accessed December 15, 2016).

⁴ Human Rights Watch, *Cambodia — “Work Faster or Get Out:” Abuses in Cambodia’s Garment Industry*, March 2015, https://www.hrw.org/sites/default/files/reports/cambodia0315_ForUpload.pdf, p.29.

implementation and poor monitoring of factory working conditions is causing the industry to fall alarmingly short of international labor standards.⁵

The failure of both government and International Labour Organization (ILO) efforts to effectively regulate Cambodia's garment industry paints a grim picture for the meaningful advancement of garment workers' labor rights.⁶ As barriers to human rights at work persist and the space for women to freely organize becomes increasingly vital, the grave efficacy gap on the part of domestic and intergovernmental institutions to ensure freedom of association (FOA) begs an important question: *what role should multinational enterprise play in supporting women's labor organization?*

The emerging global business and human rights (BHR) framework—which sets out universal standards to help guide the normative behavior of multinational corporations—has rapidly evolved in the past decade.⁷ But should global apparel brands be doing more to protect FOA for women labor movements on the ground—particularly in politically volatile domestic contexts where barriers to labor organization are deeply pronounced?

Scholars argue that it is time for corporate actors to move beyond the limited “do no harm” approach set out in John Ruggie's Guiding Principles for Business and Human Rights. They build a case for the need of MNCs to take a positive approach—not just passively

⁵ Clean Clothes Campaign, “Cambodia Factsheet: Facts on Cambodia's Garment Industry,” February 2015, <https://cleanclothes.org/resources/publications/factsheets/cambodia-factsheet-february-2015.pdf> (accessed January 5, 2017), p.7.

⁶ Human Rights Watch, *Cambodia — “Work Faster or Get Out,”* p.118.

⁷ United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” New York and Geneva, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed December 15, 2016) p.1; Organization for Economic Co-Operation and Development, “OECD Guidelines for Multinational Enterprises,” 2011, <http://www.oecd.org/corporate/mne/48004323.pdf> (accessed December 20, 2016), p.17; United Nations Global Compact, International Labour Organization, “The Labour Principles of the United Nations Global Compact: A Guide for Business,” Geneva, 2008, http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@multi/documents/instructionalmaterial/wcms_101246.pdf (accessed Dec 20, 2016), p.6.

respecting, but actively protecting rights—rooted in an ethos of corporate-centered human rights advocacy to help accelerate transformative change.⁸

This research contributes to the discourse around the proper role of MNCs in the realization of basic human rights. It aims to fill a gap in the current body of BHR scholarship by advancing an argument that gender-conscious global apparel brands should work to actively empower the mobilization of women’s labor organizers on the ground through concrete initiatives that protect FOA. Through an examination of how global brands have taken positive action to protect FOA space for women labor organizers throughout their global supply chains, this study builds an argument that MNCs should leverage their unique positions of political and economic influence to actively empower women’s labor movements—actively partnering with stakeholders to foster space in which women labor leaders can organize more freely.

It uses the Cambodian garment industry as its primary case study to bring into focus the urgent political circumstances that justify MNC action to support and protect FOA, and provides recommendations to four global brands currently sourcing from the Cambodian garment sector. If there was ever a time for positive corporate intervention to protect the vital but rapidly dissolving space for the labor mobilization of Cambodian garment workers, that time is now.

⁸ Florian Wettstein, “The Duty to Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy,” *Journal of Business Ethics*, vol. 96, no. 1 (September 2010), p. 34; United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” New York and Geneva, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed December 15, 2016) p.1.

Research Question

This study is guided by the following primary questions:

- To what extent have four multinational apparel brands that currently source from the Cambodian garment sector (H&M, Nike, Marks & Spencer, and Adidas) taken positive action to protect women workers' freedom of association throughout their global supply chains?
- Should global apparel brands be obligated to not only *respect*—but work to actively *protect*—FOA space for women's labor movements in the countries from which they source their apparel?

Methodology

After a brief discussion of the current discourses on global economic justice, business and human rights, and women's economic empowerment, this work will explore Cambodia's obligations to secure FOA rights for its garment workers, and expose how government and ILO efforts are leading to profound gaps in FOA protection that ought to be filled by positive corporate action.

It goes on to explore the FOA-protective activities of four global apparel brands (H&M, Nike, Marks & Spencer, Adidas) that source products from a series of garment factories and sub-contracting factories in the city of Phnom Penh and the surrounding provinces of Kandal, Kampong Speu, Kampong Cham, and Prey Veng, Cambodia. The four specific brands explored in this study were chosen primarily because they currently source from the Cambodian garment sector and are incorporated in four separate western countries (H&M: Sweden, Nike: United States, Marks & Spencer: United Kingdom, Adidas: Germany), aiming to reflect an international

breadth of corporate behavior while revealing trends and variances across these companies' culture and internal management style. As of 2016, three out of four of the global brands examined (Nike, H&M, and Adidas) were ranked among the top five of the largest apparel and footwear companies in the world.⁹

This study is based on secondary research conducted between October 2016 and February 2017, and telephone interviews and email correspondence with international non-governmental organizations (INGOs) and global brand representatives conducted between February and April 2017. Original testimony was collected from researchers and advocates from Human Rights Watch (HRW) and corporate representatives from Nike. Information about brand, trade union, advocacy, and other labor mobilization activity was collected from publicly available information on websites and reports from a range of federations, companies, and organizations, including:

- IndustriALL Global Trade Union;
- Charities Aid Foundation (CAF);
- Ethical Trading Initiative (ETI);
- Better Factories Cambodia (BFC);
- Transparency International (TI);
- The Community Legal Education Center (CLEC);
- The Cambodian League for the Promotion and Defense of Human Rights (LICADHO);
- Clean Clothes Campaign (CCC);
- Play Fair;
- H&M Group;
- Marks & Spencer;
- Adidas Group.

⁹ Maggie McGrath, "The World's Largest Apparel Companies 2016: Christian Dior, Nike, and Inditex Top the List," *Forbes*, May 26, 2016, <https://www.forbes.com/sites/maggiemcgrath/2016/05/26/the-worlds-largest-apparel-companies-2016-christian-dior-nike-and-inditex-top-the-list/#51a11e831fc3> (accessed April 28, 2017).

Frameworks & Literature

Universalistic Feminist Approach

This work is rooted primarily in a universalistic feminist approach, guided by the normative framework of the United Nations (UN) human rights regime.¹⁰ It accepts International ILO principles promoting universal conceptions of FOA.¹¹ The particular FOA rights explored include Cambodia's legal obligations to respect, protect, and fulfill women workers' rights to unionize, assemble, and bargain collectively.

Here the conceptual groundwork of global economic justice is enhanced by the scholarship of liberal feminism to frame the myriad gender-discriminatory practices that deny Cambodian women garment workers their full, meaningful, and equal access to FOA. Applying a liberal feminist lens will help reveal how gender-related barriers amount to violations of the Cambodian government's legal obligations under the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and demonstrate why it is in the best interest of global apparel brands to be aware and respond vigorously to such gender-specific vulnerabilities when taking concrete action to protect.¹²

¹⁰ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948); International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

¹¹ International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and Its Follow Up, adopted by the International Labour Conference at its Eighty-Sixth Session, Geneva, June 18, 1998 (annex revised June 15, 2010), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_467653.pdf (accessed Jan 5, 2017), p.7.

¹² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981; Cambodia ratified CEDAW in 1992. A comprehensive review of Cambodia's other international legal obligations is discussed in part one of this study, p. 16.

From Respect to Protect

To what extent multinational corporations should not only *respect* but actively *protect* human rights in countries where they operate is a topic of heated debate. “Conceptually ... it is anything but crystal clear how and to what degree [the] extension of human rights responsibility into the private sphere can and should take place.... States were and commonly still are seen as the sole entities with international legal personality and thus as the exclusive addressees of international law.”¹³ However, it is the aim of this study to advance the argument that it is the independent and influential nature of corporate actors—choosing to operate in politically coercive states—that make them, in partnership with local and international stakeholders, potential conduits for more effective and transformative change. It explores and interprets the protective interventions of MNCs as an expression of global economic justice, and aims to bring that expression of corporate influence into focus through a gender lens. This work links the ideas of global apparel brand power to the needs of women labor organizers to leverage influential allies to help mobilize for their enhanced agency and human rights.

Rawls’ Duty of Assistance

John Rawls is one of the foremost scholars of normative political thought. In his *Theory of Justice*, Rawls articulates a “difference principle” arguing that “any systematic differences in the basic structure of a particular society should work to advance the position of its worst off members.”¹⁴ In his later work, *The Law of Peoples*, Rawls articulates an important “duty of assistance” principle for global citizens to help particularly “burdened societies,” or “societies

¹³ Florian Wettstein, “CSR and the Debate on Business and Human Rights: Bridging the Great Divide,” *Business Ethics Quarterly*, vol. 22, no. 4 (October 1, 2012), p. 742-743.

¹⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 60.

where conditions are so dismal that just institutions are impossible” to achieve.¹⁵ Rawls argues that actors of societies with just background institutions have a responsibility to help promote and actively advance just institutions in societies that do not.¹⁶ “No people should have to live under unfavorable conditions that prevent their having a just or decent political and social regime.”¹⁷

Nien-he Hsieh uses Rawlsian theory as a starting point to advance an argument for MNC action to promote just institutions in domestic contexts where there are gaps to be filled. This research builds on Hsieh’s claims and interprets “just institutions” as the civic conditions necessary to meaningfully exercise FOA, linking Rawlsian conceptions of justice to garment worker’s rights to unionize, assemble, and bargain collectively. Building on Rawls’ emphasis on just institution-building, Hsieh asserts that the global economic order has a responsibility to foster the creation of just institutions where a vacuum exists. Hsieh’s ideas expose a prominent role for multinational enterprise to play in advancing just institutions—especially in deeply corrupt and authoritarian states, such as Cambodia.

Hsieh uses Rawls’ duty of assistance to argue that because MNCs occupy such unique positions in the global economic hierarchy, their influence should be leveraged to effectively promote justice within the specific political and economic contexts in which they operate.¹⁸ Hsieh posits that “the appropriate response on the part of business enterprises is to help establish robust, political, economic, legal and civic institutions in environments that lack them.”¹⁹ Hsieh interprets Rawls’ just institution-promotion as a unique opportunity for influential economic

¹⁵ John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), p. 119.

¹⁶ Nien-he Hsieh, “Does Global Business Have a Responsibility to Promote Just Institutions?” *Business Ethics Quarterly*, vol. 19, no. 2 (April 1, 2009), p. 251.

¹⁷ John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), pp. 67-68.

¹⁸ Nien-he Hsieh, “Does Global Business Have a Responsibility to Promote Just Institutions?” *Business Ethics Quarterly*, vol. 19, no. 2 (April 1, 2009), p. 267.

¹⁹ *Ibid.*, p. 251.

actors—such as global apparel brands—to take proactive steps to fortify justice where it is needed most, a concept that this study will further develop to advance justification for the corporate-led promotion of FOA for Cambodian women’s labor organizers.

Florian Wettstein furthers Hiseh’s claim of the positive duty of MNCs to take protective action in the name of the populations their economic activities affect. He makes vital contributions to the BHR discourse through his ideas around the implicit political authority assumed by MNCs. Wettstein argues that the powerful influence of multinational enterprise—particularly as they maneuver within and benefit from the economies of weaker states—often translates to a unique kind of political authority obligating corporate actors to assume more responsibility for human rights on par with governments currently bound by international law.²⁰ Wettstein goes on to helpfully address the gaps that occupy the intersection of corporate social responsibility (CSR) and BHR discourses more generally, revealing how the legally binding nature of human rights can help to regulate and keep in check future corporate behavior, historically guided by the more altruistic and philanthropic nature of CSR.²¹ Wettstein’s work exposes the varied levels of silent complicity in MNC activity, challenging what it means for a corporation to know and benefit from the unjust circumstances in which it operates, while laying bare the emerging responsibility of corporations to be a force for positive change.²²

²⁰ Florian Wettstein, “The Duty to Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy,” *Journal of Business Ethics*, vol. 96, no. 1 (September 2010), p. 34.

²¹ Florian Wettstein, “CSR and the Debate on Business and Human Rights: Bridging the Great Divide,” *Business Ethics Quarterly*, vol. 22, no. 4 (October 1, 2012), p. 760.

²² Florian Wettstein, “The Duty to Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy,” *Journal of Business Ethics*, vol. 96, no. 1 (September 2010), p. 36.

A Gendered Critique of Rawls

Both Hsieh and Wettstein explore the limits of Rawls' global economic justice theories to advance their own arguments for the need of corporations to assume greater responsibility for the protection of rights in the politically challenged contexts in which they operate. But as this work looks at women workers as the key partners and beneficiaries of corporate actors to protect FOA, how do the Rawlsian principles of global justice explored by Hsieh and Wettstein grapple with gender?

Formal political, economic, legal, and civic institutions of “justice” are historically patriarchal realms from which women’s voices are often excluded across the globe. Feminist scholar Susan Miller Okin criticizes Rawls’ theory of justice for altogether ignoring gender and failing to clarify “whether he endorse[s] substantive or merely formal equality for women.”²³ While de jure equality may be established in the legal frameworks of many states, these words on paper often fail to translate into de facto equality in the lives of women and girls—a truth that has particular resonance for women facing gendered barriers to empowerment and equal access to FOA in the workplace. Okin accuses Rawls of failing to take into account the structural political, economic, and social inequalities of women and the disenfranchised positions they occupy in relation to institutions of formal justice.²⁴

Okin does concede that “once applied to the social structures that perpetuate women’s inequality,” Rawls’ theory of justice can have “great potential for changing those structures.”²⁵ Catharine MacKinnon, however, disagrees with Okin’s redemption of Rawls and criticizes his entire ideology “whose promise of equal rights” she contends only “obscures the mechanisms of

²³ Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), p.89; Susan Moller Okin “Political Liberalism, Justice, and Gender,” *Ethics*, vol. 105, no. 1 (October 1, 1994), pp. 23-43.

²⁴ *Ibid.*

²⁵ Susan Moller Okin, “Political Liberalism, Justice, and Gender,” *Ethics*, vol. 105, no. 1 (October 1, 1994), pp. 42-43.

[women's] oppression."²⁶ From MacKinnon's perspective, any iteration of supposedly neutral and objective state institutions promoting justice are in fact "male," so no matter how sensitive Rawls' theory is made to gender, it will always "serve male power" and "obscure the extent of women's subordination."²⁷

Elizabeth Brake builds on the ideas of MacKinnon, arguing that "gender-structured social practices destroy the possibilities that would be available to women if they were fully equal members of society. The gendered division of labor within the family, the devaluing of women's work, and employment that penalizes [pregnancy and] those with small children close off alternatives that should be left open."²⁸ As this study examines in part two, pregnancy discrimination is a common occurrence in the Cambodian garment sector, exacerbated by the use of short-term contracts that give factory managers license to terminate pregnant workers at their will.

Although scholars such as Okin, MacKinnon, and Brake respond to Rawls' Theory of Justice, there is a noticeable gap of gender critiques on Rawls' Law of Peoples. If, as Hsieh contends, the Rawlsian "duty of assistance" legitimizes MNC protection to advance just institutions, it is important to discuss how women fare as the partners and beneficiaries of such protective corporate intervention. Applying a gender lens to Rawls' "duty of assistance" can help justice-promoting MNCs to more effectively respond to the gender-specific needs of grassroots women's labor movements, which this study argues global brands should take steps to actively protect.

²⁶ Catharine MacKinnon, *Feminism Unmodified; Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), p 157.

²⁷ Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), pp. 161-162; Catharine MacKinnon, *Feminism Unmodified; Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), p 157.

²⁸ Elizabeth Brake, "Rawls and Feminism: What Should Feminists Make of Liberal Neutrality?" *Journal of Moral Philosophy*, vol. 1, no. 3 (November 1, 2004), p. 309.

Gender in Global Supply Chains

Women and girls make up more than 90 percent of Cambodia’s garment sector. This research will demonstrate that women workers are disproportionately impacted and face unique barriers to realizing their FOA and other labor rights by virtue of their gender.²⁹ It is therefore crucial to apply a critical gender lens to the larger political and economic forces that shape Cambodian garment workers’ experiences so directly. Building on the gendered critiques of Rawls, this research applies additional ideas of feminist thought to help illuminate the deeper implications of the gender-specific vulnerabilities of the labor force in the Cambodian garment industry.

New Marxist thinkers like Anna Tsing are making important contributions to the gender approaches of global economic justice. Tsing responds directly to the gender-blindness of Marx and Engels’ capitalist theories, by introducing vital discussions around the challenges of labor organizing among women-led movements.³⁰ She asserts that forces of corporate supply chains often take advantage of the non-economic factors of worker populations, such as gender, patriarchy, and culture. Tsing illuminates the concepts of “super-exploitation” and argues how intersectionality and the unique identity and cultural barriers of local labor movements are leveraged by modern-day capitalism to maintain its dominant power structure, continuing the cyclical marginalization of disenfranchised labor movements.³¹

²⁹ Human Rights Watch, *Cambodia — “Work Faster or Get Out,”* p. 4.

³⁰ Twentieth century labor movements of the United Kingdom provided a promising breeding ground for Marxist ideas of human ingenuity, unleashing vast forces of production that led to radical change through proletarian revolution. But Marxist narratives do not consider the gender and cultural homogeneity of this era’s labor workforce within its union, factory, and corporate leadership. It is against this white, male dominated backdrop that Marx and Engels’ gender-myopic ideas were shaped. But modern-day capitalism has come a long way in today’s new era of globalization, most notably that labor movements around the world are rich in cultural and gender diversity.

³¹ Anna Tsing, “Supply Chains and the Human Condition,” *Rethinking Marxism*, vol. 1, no. 2 (April 1, 2009), pp. 152 - 158.

Gender scholars Elias, Woehl, and Griffin build on Tsing’s assertions and make their own convincing claims that economic markets are not gender neutral spaces, facts that this study argues should be taken into account when considering proportional corporate responses to the subjugation of women workers in global supply chains.³² Bexell builds on this line of thought by highlighting the important needs of local women’s rights movements. She explores ripe opportunities for meaningful partnership between local and global stakeholders—including trade unions, women civil society organizations, international non-governmental organizations, and multinational corporate actors—whose mutually reinforcing efforts have the potential to translate into greater mobilization of women’s labor movements on the ground.³³

The above discussions were introduced and explored to provide a firm basis for this study to further interrogate the links between MNC influence and the empowerment of women’s labor movements in global apparel brand supply chains. The discourses of global economic justice and liberal feminism will continue to guide this work’s analysis and help to reveal the unique opportunities and emerging responsibilities of global brands to partner with and empower the various stakeholders that make up women’s labor movements, in order to more effectively hold the Cambodian government to account for garment workers’ FOA rights.

³² Juanita Elias, “Women Workers and Labour Standards: The Problem of ‘Human Rights’”, *Review of International Studies*, vol. 33, no.1 (January 1, 2007), p. 45; Stefanie Woehl, “Global Governance as Neo-Liberal Governmentality: Gender Mainstreaming in the European Employment Strategy,” *Global Governance: Feminist Perspectives*, vol. 18, no. 17 (December 5, 2007), p. 83; Penny Griffin, “Gender, Governance and the Global Political Economy,” *Australian Journal of International Affairs*, vol. 64, no. 1 (February 1, 2010), p. 86.

³³ Magdalena Bexel, “Global Governance, Gains and Gender,” *International Feminist Journal of Politics*, vol. 14, no. 3 (September 1, 2012), p. 391.

PART I:

Normative Definitions & Cambodia's Obligations

Freedom of Association

There exists a comprehensive international legal framework that obligates states to secure human rights to freedom of association (FOA), rooted in the provisions of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁴ Language covering FOA and other “rights at work” is uniquely provided for in not just one, but both, human rights covenants—emphasizing the centrality and universality of FOA to the wider human rights project.³⁵ Cambodia is a ratified state party to both ICCPR and ICESCR, which make its government legally obligated to protect a range of rights at work.³⁶ For example, under the ICESCR, the Cambodian government has a duty to respect, protect, and fulfill workers’ rights to “safe and healthy conditions” without discrimination and with “rest, leisure...reasonable limitation on working hours,” and “to form trade unions and join the trade union” of their choice.³⁷

³⁴ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 20; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 8.3; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 22.1, 22.3.

³⁵ The human rights principles enshrined in the aspirational UDHR had to be split into two separate legally binding covenants to encourage wider adoption and to accommodate the polarized interests of states falling on opposite ideological lines after the Cold War. Western states were more inclined to ratify the ICCPR, whose rights were already aligned with their domestic laws, while the socialist ideologies of eastern states better aligned with the rights of the ICESCR.

³⁶ The Cambodian government signed both ICESCR and ICCPR in 1980 and ratified these instruments in 1992.

³⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 8.3.

Women's Rights

Cambodia is also a ratified state party of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its optional protocol, which obligate its government to eliminate gender-based discrimination at work and remove barriers to women's access to realizing FOA. CEDAW obligates state parties to promote gender equality at the workplace and to prohibit all forms of discrimination on the basis of sex or pregnancy.³⁸

CEDAW Committee General Recommendation No. 23 elaborates on women's equal access to political and public life including rights to FOA, requiring that "States Parties shall take all appropriate measures to eliminate discrimination against women in ... political and public life ... and, in particular, shall ensure to women, on equal terms with men, the right ... to participate in non-governmental organizations and *associations* concerned with the public and political life of the country [emphasis added]."³⁹

Notably, CEDAW article 4 refers to ratified states' obligations to secure "positive action, preferential treatment, or quota systems to advance women's integration into education, the economy, politics, and employment."⁴⁰ Such positive "special measures" to combat gender discrimination and foment de jure and de facto equality could go so far as to support the argument for a similar variety of positive action on the part of MNCs. If international human rights law provides that governments should leverage positive special measures in political realms to help combat structural and historical gender inequality, it is undeniably worth

³⁸ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, art. 11; Optional Protocol to the Convention on the Elimination of Discrimination against Women, adopted October 6, 1999, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), entered into force December 22, 2000.

³⁹ United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 23: Political and Public Life*, 1997, A/52/38, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed March 1, 2017), art. 7.

⁴⁰ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 4.

questioning whether similar special measures—in the form of positive corporate-led action to protect FOA—should be leveraged by influential actors of global enterprise in economic realms to fill the vacuum of government failure.

Labor Rights

The International Labour Organization (ILO), one of the world’s oldest multilateral institutions, has established a strong normative framework emphasizing the centrality of FOA. The ILO has defined FOA as one of its four core principles, covering workers’ rights to unionize, assemble, and bargain collectively.⁴¹ The ILO has established two legally binding labor conventions specifically protecting FOA, including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98)—which have both enjoyed wide ratification.⁴² In addition to being parties to these two treaties, the Cambodian government has ratified 11 other ILO conventions establishing global standards to protect labor rights, including the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).⁴³ Although

⁴¹ International Labour Office (ILO), “Rules of the Game: A brief introduction to International Labour Standards,” January 1, 2014, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_318141.pdf (accessed Feb 3, 2017), p. 28.

⁴² International Labour Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted July 9, 1948, entered into force July 4, 1950; International Labour Organization (ILO) Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, adopted July 1, 1949, entered into force July 18, 1951; It is worth noting that countries in the Asia region with large garment industries, such as Cambodia and Bangladesh, have ratified ILO conventions 87 and 98, while others, such as China and Vietnam, have not.

⁴³ International Labour Organization (ILO), “Ratifications for Cambodia,” 2016, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055 (accessed March 5, 2017); International Labour Organization (ILO) Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, adopted June 25, 1958, 362 U.N.T.S. 31, entered into force June 15, 1960; International Labour Organization (ILO) Convention No. 138 concerning the Minimum Age for Admission to Employment (Minimum Age Convention), adopted June 26, 1973, 1015 U.N.T.S. 297, entered into force June 19, 1976; International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate

the Cambodian government has ratified the ICCPR, the ICESCR, CEDAW, and 13 ILO labor conventions—as later chapters will further explore—its legal obligations to secure human rights are not translating into effective implementation, exposing a vital gap to be filled.

Business and Human Rights & Corporate Social Responsibility

Although a substantial amount of normative progress has been achieved to incorporate FOA rights into the principles and practices of multinational corporations, all instruments that encourage the international standardization of human rights responsibilities on the part of business entities are currently non-binding. These aspirational standards include The United Nations Guiding Principles on Business and Human Rights, the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, and the UN Global Compact.⁴⁴ To be sure, civil society groups are working to strengthen the toothless, aspirational nature that dominates today’s business and human rights regime.

Ahead of the 2016 International Labour Conference (ILC), Human Rights Watch (HRW) publicly called on governments, employers, and workers represented by the tripartite structure of the ILO to initiate the process for the creation of a new “international, legally-binding standard” on human rights in global supply chains in order to more effectively regulate the behavior of

Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention), adopted June 17, 1999, 38 I.L.M. 1207 (entered into force November 19, 2000).

⁴⁴ United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” New York and Geneva, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed December 15, 2016) p.1; Organization for Economic Co-Operation and Development, “OECD Guidelines for Multinational Enterprises,” 2011, <http://www.oecd.org/corporate/mne/48004323.pdf> (accessed December 20, 2016), p.17; United Nations Global Compact, International Labour Organization, “The Labour Principles of the United Nations Global Compact: A Guide for Business,” Geneva, 2008, http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@multi/documents/instructionalmaterial/wcms_101246.pdf (accessed Dec 20, 2016), p.6.

multinational corporations.⁴⁵ Such a legally-binding instrument would for the first time “oblige governments to require businesses to conduct human rights due diligence across the entirety of their global supply chains.”⁴⁶

After two weeks of contentious debate at the 2016 ILC negotiations, the ILO agreed “to open the door for the possibility of a treaty,” but unfortunately failed to make any conclusive decisions.⁴⁷ As a next step, the ILO will set up a “technical tripartite meeting, or a meeting of experts, to: (a) Assess the failures which lead to decent work deficits in global supply chains; (b) Identify the salient challenges of governance to achieving decent work in global supply chains; and (c) Consider what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains.”⁴⁸ Unfortunately this technical meeting will not take place until 2019, however, related meetings on global supply chains are planned for each annual conference in the interim.

“While it is all very slow and bureaucratic, so far it [the potential for a binding treaty] is going in the right direction.”

—Human Rights Watch⁴⁹

⁴⁵ Human Rights Watch, *Global — Human Rights in Supply Chains: A Call for a Binding Global Standard on Due Diligence*, May 2016, https://www.hrw.org/sites/default/files/report_pdf/human_rights_in_supply_chains_brochure_lowres_final.pdf, p. 4.

⁴⁶ *Ibid.*, p. 1.

⁴⁷ Excerpt from email correspondence with Human Rights Watch children’s rights researcher and advocate who observed the International Labour Conference (ILC) negotiations, April 7, 2017.

⁴⁸ International Labour Organization (ILO), International Labour Conference Provisional Record, 105 Session, Geneva, May-June 2016, Fourth item on the agenda: Decent work in global supply chains, Reports of the Committee on Decent Work in Global Supply Chains: Resolution and conclusions submitted for adoption by the Conference, art. 25.

⁴⁹ Excerpt from email correspondence with Human Rights Watch children’s rights researcher and advocate who observed the International Labour Conference (ILC) negotiations, April 7, 2017.

The prospect of a binding international treaty that would obligate governments to hold corporations accountable is an exciting and revolutionary project that would provide advocates with new leverage, reenergizing efforts to effectively fight for labor advances with an expanded set of legal tools. However, a new ILO treaty would constitute but one force to help drive the BHR discourse forward. There is much work to do in the interim. Multinational corporations—particularly global apparel brands with their vast political and economic influence—should not wait until they are bound by international law to leverage their profound capacity to be forces for transformative change.

Human Rights Defenders

Freedom of association—especially of labor organizers—is inextricably linked to the work of human rights defenders (HRDs), whose recognition and legitimacy are gaining traction in the discourses of the global human rights regime. Adopted by the UN General Assembly in December 1998, the UN Declaration of Human Rights Defenders (UNDHRD) defines HRDs as people who work peacefully on behalf of others to promote and defend internationally recognized human rights. HRDs are defined by their actions rather than by their profession, job title or organization, and they can work individually or collectively, as part of a group.⁵⁰

The UNDHRD set the stage for a new normative framework providing activists of all types—including actors in women’s labor rights movements—the freedom “to conduct human rights work individually and in association with others; and to form associations and non-

⁵⁰ United Nations General Assembly Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, December 9, 1998, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (accessed March 5, 2017); Office of the United Nations High Commissioner for Human Rights, “Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet no. 29,” April 1, 2004, <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> (accessed March 30, 2017), p. 2.

governmental organizations,” such as trade unions.⁵¹ A 2015 UN Special Rapporteur report on the situation of human rights defenders recommended that both states and businesses should play an active role in supporting and promoting the vital role of HRDs such as local labor activists, stating that “multinational corporations should be held morally and legally liable for their actions and omissions that deprive men and women of their fundamental rights.”⁵² Women labor organizers and union leaders in the garment industry are poised to enjoy the evolving protection and international attention increasingly afforded to HRDs, which can be leveraged to build pressure on MNCs to positively support and protect their efforts to organize.

⁵¹ United Nations General Assembly Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, December 9, 1998, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx> (accessed March 5, 2017).

⁵² United Nations Human Rights Council Report of the Special Rapporteur on the Situations of Human Rights Defenders, Michel Forst, 2014, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx> (accessed March 5, 2017), art. 56. p. 10.

A Primer on Cambodian Women’s Status

In order to better illuminate the unique experiences of Cambodia’s women garment workers and the gender-specific barriers to freedom of association that they face, it is important to understand the structural gender inequality that pervades the country.

Although the Cambodian government ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1992, it is failing to effectively implement CEDAW’s provisions.⁵³ While the country’s constitutional framework guarantees women equal access to political participation, free primary and secondary education, employment rights, equal access to property and inheritance, protection from violence, and equal value for unremunerated work, these legal obligations remain words on paper and starkly contrast the reality of Cambodian women and girls’ experiences.

Today, Cambodian women suffer from routine gender discrimination and inequality at all levels of society.⁵⁴ Their labor is exploited, their property is coopted for government use, and they continue to suffer from systemic sexual and domestic violence. Women’s political representation at all levels has stagnated, and women who operate at higher levels of political power are perceived as corrupt or mere extensions of their male relatives. Gender stereotypes often place the heavy burden of safeguarding traditional cultural heritage on the backs of Cambodian women, at the expense of their realization of gender equality and greater social and economic independence.⁵⁵

⁵³ Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Combined initial, second and third periodic reports of states parties, Cambodia, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/241/21/PDF/N0424121.pdf?OpenElement> (accessed March 15, 2017).

⁵⁴ UN Women, “Global Gender Equality Constitutional Database,” Cambodia, <http://constitutions.unwomen.org/en/search?keywords=Cambodia> (accessed February 12, 2017).

⁵⁵ Cambodian League for the Promotion and Defense of Human Rights (LICADHO), “The Situation of Women in Cambodia,” July 2004, https://www.fidh.org/IMG/pdf/kh2004_women-en.pdf (accessed Jan 5, 2017), p. 9.

Cambodian women's rights have been continually sacrificed throughout history by the prioritization of political regimes for the concentration of their own patriarchal power. Women's interests have been universally undermined over the last century and continue to be sidelined today.

Prime Minister Hun Sen repeatedly pays lip service to his devotion to the advancement of Cambodian women, but does so only in the context of prioritizing women as the arbiters of Cambodia's unique (i.e. patriarchal) culture—a sentiment that understandably, however unfortunately—drums up popular support among a people whose cultural heritage was almost completely decimated under the genocidal Khmer Rouge regime less than four decades ago. Jacobson convincingly argues that “the powerlessness and subservience taken to be ‘traditional’ for Cambodian women is based upon a false premise. Yet it is this traditional role that has become identified as ‘correct behavior’ in the minds of generations of Cambodians and which has constrained women from accessing a greater share of positions in public life,” not to preclude their access to leadership roles in public organizations such as labor unions.⁵⁶

Although Cambodian civil society is growing stronger with the establishment of a new generation of local non-governmental organizations (NGOs) genuinely fighting for the labor rights and wider interests of Cambodian women, little international pressure is placed on the Cambodian government to implement meaningful guarantees for the advancement of women's rights. The complicity of international aid organizations and multinational corporations with the Hun Sen regime—including influential donor governments such as the US, China, Japan, Germany, and France—merely lends legitimacy to Hun Sen's extended hold on power and

⁵⁶ Trudy Jacobson, *Lost Goddesses: The Denial of Female Power in Cambodian History*, (Copenhagen: NIAS Press, 2008), p. 285-286.

unwarranted credence to his government's agenda to prioritize its own economic interests at the expense of the rights of Cambodian people in general, and women in particular.

In the face of such stark power imbalance, political coercion, and blatant authoritarianism, a new generation of burgeoning rights movements comprised of strategic and effective local activists could use a new ally. The question is whether they can find a champion in the global apparel brands that continue to profit from their subjugation.

Rights Violations & Barriers to FOA in the Cambodian Garment Industry

Although the Cambodian garment industry has grown over time to be the most profitable industrial sector in the country, contributing US\$4.5 billion—or 80 percent—of the state’s Gross Domestic Product (GDP),⁵⁷ garment workers face a range of labor rights abuses that violate the government’s human rights obligations explored in the above sections.⁵⁸ Rights groups have exposed how garment workers often experience discriminatory and exploitative labor conditions, including hazardous working environments, low wages, and forced overtime with little to no compensation.⁵⁹

The vast majority of the garment sector is comprised of women and girls, who account for over 90 percent of the estimated total of 700,000 workers.⁶⁰ Women garment workers are ubiquitously overworked, underpaid, and discriminated against. Those workers who organize for increased wages are threatened with violence and often denied their freedom of association rights to unionize, assemble, and bargain collectively.⁶¹ It is important to recognize discriminatory practices that disproportionately impact workers by virtue of their gender, such as sexual harassment and pregnancy discrimination. These egregious forms of gender discrimination violate the central provisions of CEDAW, as well as its General Recommendation 19 on Violence Against Women.⁶²

⁵⁷ International Labour Organization (ILO) Better Factories Cambodia (BFC), “The Garment Industry,” 2017, http://betterfactories.org/?page_id=25 (accessed March 15, 2017).

⁵⁸ International Labour Organization (ILO), “Ratifications for Cambodia,” 2016, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055 (accessed March 5, 2017).

⁵⁹ Human Rights Watch, *Cambodia — “Work Faster or Get Out,”* p. 4.

⁶⁰ International Labour Organization (ILO) Better Factories Cambodia (BFC), “Twentieth Synthesis Report Working Conditions in Cambodia’s Garment Sector,” April 30, 2008, <http://betterfactories.org/?p=2974> (accessed March 15, 2017), p. 5.

⁶¹ Human Rights Watch, *Cambodia — “Work Faster or Get Out,”* p. 4.

⁶² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981; CEDAW Committee General Recommendation No. 19, 1992, 11th session,

For decades, activists in the global labor movement have successfully sought to secure protections against such abuses. However, the requisite FOA rights that foster space for workers to mobilize for advanced labor standards are routinely denied to workers in the Cambodian garment industry.

Regardless of its binding international human rights commitments, the Cambodian government's administered and controlled union system is deeply flawed with corruption, collusion between labor ministry officials and factory owners, and other forms of government interference. Aggressive tactics are commonly used by government labor officials, private factory owners, and sub-factory managers against garment workers attempting to organize through unions, making garment factories a difficult, if not impossible, place for garment workers to mobilize for increased labor protections. Coercive tactics—referred to as “union busting”—include unfair treatment of union members, coercion against garment workers taking union leadership positions, and unnecessary bureaucratic hurdles for unions to become established entities and formally recognized by the Cambodian Ministry of Labor.⁶³

Adding insult to injury, a controversial trade union bill was signed into Cambodian domestic law in April 2016, exacerbating many barriers to freedom of association that garment workers already face. The new law counters labor provisions enshrined in Cambodia's constitution and undermines the country's FOA obligations under ICCPR, ICESCR, and ILO Conventions 87 and 98.⁶⁴

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed October 9, 2016), pp. 17, 18, 24.

⁶³ Michelle Chen, “Cambodia's Garment Workers Aren't Backing Down,” *The Nation*, January 23, 2015, <http://www.thenation.com/blog/195817/cambodias-garment-workers-arent-backing-down> (accessed January 15, 2017).

⁶⁴ Palatino Mong, “The Trouble with Cambodia's New Law on Trade Unions: A new law fails to address old concerns,” *The Diplomat*, April 18, 2016, <http://thediplomat.com/2016/04/the-trouble-with-cambodias-new-law-on-trade-unions/> (accessed January 10, 2017).

PART II:

Exposing the Gap: Cambodian Government and ILO Failures

Efforts of both the Cambodian government and the United Nations International Labor Organization (ILO) are failing to protect the basic rights of workers in the Cambodian garment industry.

Cambodian Government

Over the course of its burgeoning venture into free-market capitalism starting in the early 1990s, the Cambodian government has established a comprehensive legal framework governing labor policy, including a wide array of domestic laws, ministerial declarations (*Prakas*), executive regulations, and arbitration council decisions.⁶⁵ The latest iteration of the Cambodian Labour Code was established in 1997, and includes provisions for employment regulation, hiring processes, wages, overtime, benefits, leave, dismissal, dispute resolution, accidents, and safety precautions.⁶⁶

Detailed labor law even protects the highly-contested area of union membership: Under Cambodian Labor Law Article 263; *Prakas* 185/97, employers, including garment factories, “may not consider the employee’s political association or union membership” for the uses of “hiring, promotions, remuneration, benefits, and termination or discipline of an employee.”

Cambodia’s robust domestic labor legislation, in addition to the litany of international human rights treaties to which Cambodia is a ratified state party, would lead many to believe that

⁶⁵ BNG Legal, “Guide to Cambodian Labor Law for NGOs,” 2010, <https://bnlegal.com/sys-content/uploads/2013/04/Labor-Law-Guide-for-NGOs.pdf> (accessed October 8, 2016), p. 2.

⁶⁶ Cambodian Labour Code, “Kram 1997 Labor Law,” 1997, http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_150856.pdf (accessed November 15, 2016), art. 263. *Prakas*. 185/97.

the rights of factory workers would be effectively upheld across the country. However—as is a common and frustrating reality—the government’s public commitment to international legal standards through the ratification of international treaties is not translating into effective compliance on the ground.⁶⁷ Although the adoption of laws and treaties are important first steps to provide a firm legal basis on which rights advocates can stand, the rights of workers for whom these steps are taken are falling through the cracks of flawed implementation.

It can be argued that the interests of elite members of the Cambodian government are self-serving based on the long history of deep-seated corruption and collusion that has plagued the country’s ruling party.⁶⁸ Over the course of three decades, Prime Minister Hun Sen’s government has and continues to restrict freedom of association and peaceful assembly, quash non-violent demonstrations of labor activists and oppositional parties, impede access to independent union organizing, and brutally challenge any form of political dissent to maintain his tight grip on power.

Local news reports have exposed episodes of brutal government suppression of free speech and severe backlash against peaceful demonstrations of garment workers attempting to organize for increased wages and enhanced labor protections. These incidents are emblematic of a deeply flawed and politically charged domestic context in which political and economic power is stacked squarely against the disenfranchised workers of the Cambodian garment industry.

What is more, perceptions of public sector corruption in Cambodia are also extremely high. Transparency International (TI) ranked Cambodia just behind North Korea, Afghanistan,

⁶⁷ Thomas Risse, Stephen C. Ropp, Kathryn Sikkink, *The Persistent Power of Human Rights: From Commitment to Compliance*, (Cambridge: Cambridge University Press, 2013), p. 43.

⁶⁸ Human Rights Watch, *Cambodia — “30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia,”* January 2015, https://www.hrw.org/sites/default/files/reports/cambodia0115_ForUpload.pdf (accessed October 15, 2016), p. 1.

and Burma in its corruption perception index.⁶⁹ TI also found that Cambodia was the most corrupt among top exporters of clothing.⁷⁰ Allegations of corruption and collusion between government labor inspectors and factory management have stained the credibility of the governmental labor inspectorate and its local factory-monitoring authorities, painting a grim picture for the prospect of any meaningful and effective enforcement of labor standards on the part of the Cambodian government.⁷¹

International Labor Organization: Better Factories Cambodia (BFC)

The International Labor Organization (ILO) established the Better Factories Cambodia (BFC) program in 2001. BFC reports on working conditions and labor practices in over 400 “registered, export-oriented” garment factories across the country.⁷² BFC produces factory reports, provides technical guidance, and support for remediation of labor rights violations for factories that purchase its advisory services.⁷³ BFC grew out of an innovative trade agreement between Cambodia and the United States (US) that uniquely granted the Cambodian garment sector greater access to US markets in exchange for the steady improvement of labor standards in its garment factories.⁷⁴ Although the trade agreement expired in 2004, BFC lives on.

⁶⁹ Transparency International, “Corruption Perceptions Index 2014: Asia Pacific,” 2014, <http://www.transparency.org/cpi2014/results> (accessed October 15, 2016).

⁷⁰ Transparency International, “Call on Clothing Companies to Tackle Corruption, Factory Safety,” 2013, http://www.transparency.org/news/pressrelease/clothing_companies_to_tackle_corruption (accessed October 15, 2016).

⁷¹ Human Rights Watch, *Cambodia — “Work Faster or Get Out,”* p. 111.

⁷² International Labour Organization (ILO) Better Factories Cambodia (BFC), “Monitoring,” 2015, http://betterfactories.org/?page_id=90 (accessed December 5, 2016).

⁷³ Clean Clothes Campaign (CCC), Community Legal Education Centre (CLEC), “10 Years of the Better Factories Cambodia Project: A Critical Evaluation,” 2012, <https://cleanclothes.org/resources/publications/ccc-clec-betterfactories-29-8.pdf> (accessed March 12, 2017), pp. 7-8; ILO BFC, “Advisory Services,” 2017, http://betterfactories.org/?page_id=246 (accessed October 15, 2016).

⁷⁴ Office of the United States Trade Representative, “US – Cambodian Textile Agreement Links Increasing Trade with Improving Workers’ Rights,” January 7, 2002, https://ustr.gov/archive/Document_Library/Press_Releases/2002/January/US-

Scholars have praised the Cambodian textile model monitored by the BFC program as a resounding success: “The government and factory owners now agree that the [BFC] system should continue indefinitely. Inspectors have found ... only rare cases of gender discrimination, and few problems with the rights of free association (unionization and collective bargaining).”⁷⁵

However—based on the lived experiences of Cambodian garment workers reported by civil society groups—it could be argued that the BFC program is inadvertently contributing to ongoing labor abuses in the Cambodian garment sector. INGOs have documented concerns voiced about the program’s “poor factory monitoring methods, inconsistent coverage of factories, and lack of transparency concerning the brands whose factories it monitors.”⁷⁶

“...People don’t speak out in the meeting with the BFC team – everyone is scared that someone will leak what we say in the meeting to the management. What will happen to us after that? BFC won’t protect us.”

—Union leader⁷⁷

BFC earns 70 percent of its budget through contributions from the Cambodian government, income from paid services such as the sale of factory assessment reports to global brands, and training programs and advisory services to local factories. The remaining 30 percent of BFC’s budget comes from international donor governments and organizations, such as

Cambodian_Textile_Agreement_Links_Increasing_Trade_with_Improving_Workers'_Rights.html (accessed March 29, 2017).

⁷⁵ William H. Meyer, “Testing Theories of Labor Rights and Development,” 2015, *Human Rights Quarterly*, vol. 37, no. 2 (May 1, 2015), p. 436.

⁷⁶ Human Rights Watch, *Cambodia — “Work Faster or Get Out,”* p. 118.

⁷⁷ *Ibid.*, p. 121.

Australia (AusAid), the US Department of Labor (USDOL), and the International Finance Corporation (IFC).⁷⁸

One of the most glaring omissions in the BFC mandate is their monitoring of factories exclusively with export licenses, ignoring the common practice of larger factories subcontracting labor to smaller factories where there is no independent monitoring in place and labor abuses have been documented to be severely widespread.⁷⁹ Although it saves valuable time and resources for BFC's overworked, under-resourced staff, the exclusive monitoring of factories with export licenses barely skims the surface of the Cambodian factories where the worst labor abuses occur. This problem is emblematic of a program whose mere existence is used by the Cambodian government as a pretext to outwardly reflect a healthy, vibrant, and well-regulated garment industry, contributing to the ongoing violation of Cambodian garment workers' labor rights.

⁷⁸ International Labour Organization (ILO) Better Factories Cambodia (BFC), "How We're Funded," 2015, http://betterfactories.org/?page_id=71 (accessed October 25, 2016).

⁷⁹ Human Rights Watch, *Cambodia — "Work Faster or Get Out,"* p. 118.

Filling the Gap: Building the Case for Corporate Action

The combined failure of the Cambodian government and the International Labour Organization to effectively monitor and implement labor protections accentuates an alarming deficit in the realization of FOA and other human rights for Cambodian garment workers.

“All of these governments where brands are sourcing from—Cambodia, Bangladesh, Vietnam, China, Burma—are really ineffective. Their labor inspection systems are broken. There is no incentive to provide accurate assessments in a country.”

—*Human Rights Watch*⁸⁰

In the face of such evident government and ILO failure, the central question is from where else could the effective realization of fundamental labor rights be derived? This study argues that the glaring deficit should be supplemented by the protective action of a third key player that has the potential to wield significant influence over governments, factories, and garment workers’ experiences: global apparel brands. And voices from within the rapidly evolving business and human rights (BHR) discourse are beginning to suggest just that.

The United Nations Guiding Principles (GPs) on Business and Human Rights already lay a firm groundwork for the normative behavior of multinational corporations. Ruggie’s GPs detail a three-pronged approach providing for government responsibility to *protect* rights, corporate responsibility to *respect* rights, and combined state and corporate responsibility to *remedy* business-related rights abuses.⁸¹ The Ruggie discourse explicitly states that “the responsibility of business enterprises to respect human rights refers to ... those expressed in the International Bill

⁸⁰ Interview with Human Rights Watch researcher, April 9, 2017.

⁸¹ United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” New York and Geneva, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed December 15, 2016), p. 1.

of Human Rights” as well as “the principles concerning fundamental human rights set out in the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work.”⁸² While Ruggie’s GPs provide a helpful starting point, this study argues that the Ruggie framework does not go far enough, and that corporations should evolve from their current responsibility to respect, to a more proactive responsibility to protect human rights throughout their global supply chains—especially while operating in politically volatile domestic contexts such as Cambodia.

Other groups are also attempting to fill the grave gaps left by government and ILO negligence. A practical guide for corporations to more effectively secure FOA in company supply chains, published by the Ethical Trading Initiative (ETI), elaborates on the responsibility of corporations to secure civil and political freedoms worldwide. ETI argues that “freedom of association, freedom to form and join trade unions, and the right to bargain collectively are core elements of these documents [the Guiding Principles],” and corporations should be obliged to take net-positive steps to protect them.⁸³

But what is the added incentive for global corporations to take positive steps to intervene? Beyond softer philanthropic and altruistic motives, what would convince corporate leadership, board members, and stockholders that MNCs should take positive action to protect FOA and human rights where governments and monitoring programs are so obviously failing? A 2009 causal analysis posits that “both civil liberties and political rights foment economic

⁸² United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” New York and Geneva, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed December 15, 2016), p. 1.

⁸³ Ethical Trading Initiative, “Freedom of Association in Company Supply Chains: A Practical Guide,” 2013, http://s3-eu-west-1.amazonaws.com/www.ethicaltrade.org/files/shared_resources/foa_in_company_supply_chains.pdf?jI1porNelxmYq49FHPmB3IMLySLe54k8 (accessed November 2, 2016), p. 3.

freedom,” which can contribute to increased growth and capital for multinational corporations.⁸⁴ By way of a “virtuous circle: economic freedom generates growth, [which] foments the expansion of civil liberties, which, in turn, promotes economic freedom.”⁸⁵ In other words, it is in the best—not only social and moral, but financial—interests of global apparel brands for the factory workers throughout their supply chains to enjoy the space to organize freely. “Freedom of association is good for people, good for society, good for business, and good for morale.”⁸⁶

⁸⁴ Jose Aixala and Gema Fabro, “Economic freedom, civil liberties, political rights and growth: a causality analysis,” *Spanish Economic Review*, vol. 11, no. 3, (September 1, 2009) pp. 176-177.

⁸⁵ Ibid.

⁸⁶ Ethical Trading Initiative (ETI), “Freedom of Association in Company Supply Chains: A Practical Guide,” January 2013, http://s3-eu-west-1.amazonaws.com/www.ethicaltrade.org/files/shared_resources/foa_in_company_supply_chains.pdf?jI1porNelxmYq49FHPmB3IMLySLe54k8 (accessed November 2, 2016), p. 4.

PART III:

Apparel Brand Action to Protect Space for Labor Mobilization

Although much research and energy is focused on exposing the failures of multinational enterprise to align its due diligence procedures with the developing standards of today's rapidly evolving business and human rights discourse, some global apparel leaders are taking concrete steps that are starting to positively impact the rights of workers on factory floors.

This section explores to what extent four apparel brands that currently source from the Cambodian garment sector have taken action to protect and actively establish conditions for meaningful labor organization for garment workers in other politically-volatile domestic contexts from which they source their products, such as Bangladesh, Burma, and Indonesia.

The following four case studies examine H&M Group of Sweden, Nike of the United States, Marks & Spencer of the United Kingdom, and Adidas Group of Germany. As this section will show, each company has demonstrated varying degrees of commitment to the principles of gender equality and women's empowerment as demonstrated in their corporate codes of conduct and global marketing campaigns. However, whether this prima facie commitment to gender egalitarian values is translating into the design of special corporate measures working for the empowerment of women workers on the ground is a central question.

Although none of the international brands explored in this section are without their faults, it is the aim of this study to acknowledge and reveal positive corporate action that is going above and beyond today's normative guidelines. Revealing such corporate behavior could help upend the status quo of MNC negligence and complicity, encourage more brands to act as forces for transformative change, and help to accelerate the normative evolution of the wider business and human rights discourse.

H&M (Sweden)

H&M Group (H&M) of Sweden owns the following apparel brands: H&M, Cos, Monki, Weekday, Cheap Monday, and Other Stories. H&M has approximately 1.6 million workers in its global supply chain.⁸⁷ Out of 785 first-tier supplier factories and 1,013 subcontracted factories worldwide, H&M sources apparel from 79 first-tier and 33 subcontracted factories in Cambodia.⁸⁸

H&M has taken proactive steps to protect labor organization throughout its operations around the world. One initial but critical move was its decision to publicly disclose the list of names and addresses of its supplier factories in March 2013.⁸⁹ “When apparel brands are transparent about their supplier factories,” it not only lets socially conscious consumers know where a brand’s clothing is made, but “helps workers and advocates” hold MNCs to account for abuses within its supply chains—including violations of FOA.⁹⁰ When MNCs publicly disclose supplier lists, they’re providing critical information to help mobilize labor movements, empowering garment workers, trade unions, and civil society networks to alert MNCs to labor abuses and the dissolution of FAO space on the factory floor. Brands that make their factory information available to the public are arming local stakeholders with the tools necessary to assert pressure from the ground up, creating conditions for global brands to rapidly respond and more effectively intervene with positive action.

⁸⁷ Know the Chain, “Apparel and Footwear Benchmark Findings Report: How are 20 of the largest companies addressing forced labour in their supply chains?” December 2016, https://knowthechain.org/wp-content/plugins/ktc-benchmark/app/public/images/benchmark_reports/KTC_A&F_ExternalReport_Final.pdf (accessed December 28, 2016), p. 17.

⁸⁸ H&M Group, “Our Supplier Factory List: Cambodia,” <http://sustainability.hm.com/en/sustainability/downloads-resources/resources/supplier-list.html#> (accessed February 5, 2017); Clean Clothes Campaign (CCC), “H&M Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/handm-profile.pdf/view> (accessed February 5, 2017), p. 55.

⁸⁹ H&M Group, “Our Supplier Factory List: Cambodia,” <http://sustainability.hm.com/en/sustainability/downloads-resources/resources/supplier-list.html#> (accessed February 5, 2017).

⁹⁰ Human Rights Watch, “Gap Inc. Joins Global Brands that Publish Factory List,” September 8, 2016, <https://www.hrw.org/news/2016/09/08/gap-inc-joins-global-brands-publish-factory-list> (accessed October 10, 2016).

In 2014, H&M piloted a social dialogue project in five garment factories in Bangladesh with the aim to cover 100 percent of its supplier factories in that country by 2018. According to the independent labor rights advocacy group Clean Clothes Campaign (CCC), this project helped to achieve the free election of three “Worker Participant Committees” to facilitate dialogue between workers and factory management, covering issues such as compensation and wage-payment dates.⁹¹ Such factory worker representation programs help improve factory-level communication across organizing actors, and are particularly instrumental in states where trade union rights are prohibited. However, as CCC argues, such parallel means of worker empowerment should not be used to preclude the engagement of independent trade unions in factory processes, which are the true arbiters of meaningful freedom of association.⁹²

Another example of H&M’s concrete protection of FOA is its groundbreaking partnership with IndustriALL, a global union representing over 50 million workers across the mining, energy, and manufacturing sectors.⁹³ H&M signed a Global Framework Agreement (GFA) with IndustriALL in November 2015, which was instrumental in protecting trade unionists at the Jiale Fashion factory in Yangon, Burma just two months after the agreement came into force. The GFA is based on a number of ILO conventions covering FOA rights, including collective bargaining. After eight union leaders were fired for their organizing activities in October 2015, which led to a month-long strike, H&M Sustainability offices in Yangon worked in partnership with IndustriALL’s Burma trade union affiliates to advance social dialogue between garment workers in Yangon and the factory owners in Hong Kong. This

⁹¹ Clean Clothes Campaign (CCC), “H&M Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/handm-profile.pdf/view> (accessed February 5, 2017), p. 55.

⁹² *Ibid.*, p. 57.

⁹³ IndustriALL Global Union, “About Us,” January 1, 2015, <http://www.industrialall-union.org/about-us> (accessed March 1, 2017).

sustained multi-stakeholder dialogue—including actors at both country and global levels—led to the eventual reinstatement of the dismissed labor leaders and official recognition of their factory trade union.⁹⁴

After a series of wage strikes erupted throughout garment factories in Dhaka, Bangladesh in December 2016, dozens of garment factory labor leaders were arbitrarily arrested by police and now face criminal cases. Human Rights Watch (HRW) recently called on Bangladeshi authorities to “immediately release those still in detention and drop all politically motivated charges.”⁹⁵ H&M partnered with 20 other brands sourcing from Bangladesh in the writing of a letter to Bangladeshi Prime Minister Sheikh Hasina, supporting “a [regular] wage review [mechanism] and expressing their concerns that union leaders and worker advocates were [being] targeted.”⁹⁶ H&M said that “while it does not support any *illegal* strikes or *violent* protest, it does recognize that the root cause of the unrest must be addressed through social dialogue [emphasis added].”

In the aftermath of Bangladesh’s oppression of labor organizers, H&M recently took action to withdraw its participation in the Dhaka Apparel Summit in February 2017.⁹⁷

IndustriALL confirmed and applauded H&M’s decision to pull out of the summit citing “the

⁹⁴ IndustriALL Global Union, “Agreement with H&M proves instrumental in resolving conflicts,” July 1, 2016, <http://www.industriall-union.org/agreement-with-hm-proves-instrumental-in-resolving-conflicts-0> (accessed July 15, 2016).

⁹⁵ Human Rights Watch, “Bangladesh—Stop Persecuting Unions, Garment Workers: Brands Should Make Binding Commitments to Protect Freedom of Association,” February 15, 2017, <https://www.hrw.org/news/2017/02/15/bangladesh-stop-persecuting-unions-garment-workers> (accessed February 16, 2017).

⁹⁶ Human Rights Watch, “Bangladesh—Stop Persecuting Unions, Garment Workers: Brands Should Make Binding Commitments to Protect Freedom of Association,” February 15, 2017, <https://www.hrw.org/news/2017/02/15/bangladesh-stop-persecuting-unions-garment-workers> (accessed February 16, 2017); Just Style, “Apparel brands urge Bangladesh PM to address wages,” January 17, 2017, http://www.just-style.com/news/apparel-brands-urge-bangladesh-pm-to-address-wages_id129775.aspx (accessed January 20, 2017).

⁹⁷ Human Rights Watch, “Big Clothing Brands Hint at Battle with Bangladesh: International Brands Reject ‘Climate of Repression’ for Garment Workers,” February 21, 2017, <https://www.hrw.org/news/2017/02/21/big-clothing-brands-hint-battle-bangladesh> (accessed February 28, 2017); Dhaka Apparel Summit, “Together for a Better Tomorrow,” January 1, 2017, <http://www.dhakaapparelsummit.com/> (accessed February 28, 2017).

current climate of repression against unions as incompatible with activities to promote the industry.”⁹⁸ This important act of public resistance has helped to focus international attention on the plight of persecuted Bangladeshi labor activists, and asserted pressure on the Bangladeshi government to respond to the demands of labor activists and advocacy groups.

H&M also participated in the drafting and signing of public and private letters to Cambodian government labor officials in January 2014. After the Cambodian government’s brutal crackdown on garment workers who organized and peacefully demonstrated for improved labor conditions and increased minimum wages, H&M was one of six brands that partnered with civil society stakeholders—including the Ethical Trading Initiative (ETI), IndustriALL Global Trade Union, and Better Factories Cambodia (BFC)—to lodge their concerns with the brutality of the crackdowns, demand release of labor leaders imprisoned, and advocate for an increased national minimum wage. H&M’s participation in this “extremely formal cross-sectoral network was instrumental in organizing collective action within Cambodia.”⁹⁹

H&M promotes gender equality and women’s empowerment throughout its internal policies and public advertising campaigns. The corporation has a company-wide discrimination and equality policy, purportedly based on ILO Convention Concerning Discrimination in Respect of Employment and Occupation (ILO C111).¹⁰⁰ “At H&M all employees are of equal

⁹⁸ IndustriALL Global Union, “Global protests grow over Bangladesh crackdown against trade unions,” February 16, 2017, <http://www.industriall-union.org/global-protests-grow-over-bangladesh-crackdown-against-trade-unions> (accessed February 28, 2017).

⁹⁹ Charities Aid Foundation (CAF), London School of Economics (LSW), “Beyond Integrity: Exploring the role of business in preserving civil society space,” September 1, 2016, <https://www.cafonline.org/about-us/publications/2016-publications/beyond-integrity-report> (accessed September 15, 2016), p. 46.

¹⁰⁰ H&M Group, “Discrimination and Equality Policy,” <http://sustainability.hm.com/en/sustainability/downloads-resources/policies/policies/discrimination-and-equality.html> (accessed March 10, 2017); International Labour Organization (ILO) Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, adopted June 25, 1958, entered into force June 15, 1960.

value ... [and] are entitled to be treated with respect, therefore, discriminatory, bias, offensive or abusive treatment, harassment or retaliation by managers or employees is never tolerated.”¹⁰¹

The brand has received global acclaim for “defying gender norms” with its new gender-neutral denim line, and launched an advertising campaign in September 2016 lauded for empowering women, depicting “normal women doing normal things.”¹⁰² Promoting women’s empowerment in company policies and advertising campaigns is one thing, but how is H&M promoting the empowerment of women workers on the ground?

Although H&M has taken a series of positive actions to protect the FOA of garment workers throughout its supply chain—most of whom are women—there is a noticeable deficit in targeted interventions that particularly address the gendered-barriers to FOA for women workers. This gender-blindness is further illuminated by its current corporate strategy to promote a fair living wage, an area that is inextricably linked to labor organization. Clean Clothes Campaign is disappointed with the failure of H&M to “clearly state a living-wage benchmark” that accounts for the needs of all workers.¹⁰³ “H&M says that as part of the worker assessments of perceived living wage, which will be carried out to calculate wage levels in its new model factories, the following parameters will be assessed: ‘Food, Accommodation, Health, Education, Clothing and Vacation/leisure.’ We are concerned that this limited list – which omits family care, transport, and discretionary income – will give an inaccurate picture of what a real living wage is.”¹⁰⁴

¹⁰¹ H&M Group, “Discrimination and Equality Policy,” <http://sustainability.hm.com/en/sustainability/downloads-resources/policies/policies/discrimination-and-equality.html> (accessed March 10, 2017).

¹⁰² J’na Jefferson, “H&M is Defying Gender Norms with their New Unisex Denim Line,” *Vibe*, March 10, 2017, <http://www.vibe.com/2017/03/hm-unisex-denim-line/> (accessed March 12, 2017); Arwa Mahdawi, “H&M’s diverse advert mirrors the real world. Shame the ad industry doesn’t,” *The Guardian*, September 28, 2016, <https://www.theguardian.com/commentisfree/2016/sep/28/hm-advert-diversity-ad-women> (accessed October 30, 2016).

¹⁰³ Clean Clothes Campaign (CCC), “H&M Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/handm-profile.pdf/view> (accessed February 5, 2017), p. 57.

¹⁰⁴ *Ibid.*

The real needs of women workers are not being accurately reflected in H&M’s corporate strategies to determine a suitable living wage, a far cry from the empowerment of women the corporation promotes in its company policies and its global advertising campaigns. Researchers from HRW who have directly engaged with H&M are also not convinced that the company’s policies are adequately implemented to address gender barriers:

“Following our report, H&M revised its code of conduct to improve parameters on gender. But the problem is not as much as what the policies say as how they are implemented. The structure of implementation is two-fold. You have third party monitors picking up on it and you have unions alerting people to the problems, and then there is redress. That structure hasn’t fundamentally changed.”

—*Human Rights Watch*¹⁰⁵

It is not enough to set a policy from above and hope that implementation follows course. In-country brand representatives must be directly engaged with factory management on the ground to ensure that policies are enforced.

Nike (United States)

Nike of the United States owns the following apparel and footwear brands: Nike, Nike Golf, Jordan, Hurley, and Converse. Nike has approximately 1,041,000 workers in its global supply chain. Out of its 774 first-tier factory suppliers worldwide, Nike sources apparel from seven factories in Cambodia.¹⁰⁶

¹⁰⁵ Interview with Human Rights Watch researcher, April 9, 2017.

¹⁰⁶ Clean Clothes Campaign (CCC), “Nike Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/nike-profile.pdf/view> (accessed October

Nike has taken concrete steps to protect the labor organization of garment workers in its global supply chain. Nine years before H&M, Nike was the first major brand to publish its list of supplier factories in April 2005 in order to push for greater transparency and collaboration to improve labor conditions.¹⁰⁷

In June 2011, an historic protocol on FOA was signed by Indonesian trade unions, employers and multinational brands including Nike. Nike participated in the protocol negotiations and has committed to implementing the FOA provisions across its Indonesian factories.¹⁰⁸ “The Freedom of Association Protocol supports the rights of women and men producing for global brands in Indonesia to join unions and bargain collectively for better working conditions. The FOA protocol gives companies a practical set of guidelines on how to uphold and respect the rights of workers to join together to achieve decent pay and better working conditions.” Unfortunately, according to the Play Fair Global Worker’s Rights Campaign, Nike has yet to make the implementation of the protocol a requirement in its supplier contracts.¹⁰⁹

Nike has also facilitated a human resources management program in factories, which includes training on freedom of association. This program has been implemented in 76 factories

15, 2016), p. 85; Nike, “Nike Manufacturing Map: Cambodia,” February 1, 2017, <http://manufacturingmap.nikeinc.com/#> (accessed March 5, 2017).

¹⁰⁷ CRS Wire, “Nike Publishes List of Global Contract Factories in Push for Greater Transparency and Collaboration to Improve Footwear and Apparel Industry Labor Conditions,” April 13, 2005, http://www.csrwire.com/press_releases/24956-Nike-Publishes-List-of-Global-Contract-Factories-in-Push-for-Greater-Transparency-and-Collaboration-to-Improve-Footwear-and-Apparel-Industry-Labor-Conditions (accessed March 30, 2017).

¹⁰⁸ International Trade Union Confederation (ITUC), “Indonesia Freedom of Association Protocol,” May 1, 2011, https://www.ituc-csi.org/IMG/pdf/FOA_Protocol_English_translation_May_2011.pdf (accessed March 15, 2017).

¹⁰⁹ Play Fair, “Freedom of Association Protocol (Promoting Workers’ Rights) Correspondence,” January 1, 2017, <http://www.play-fair.org/media/index.php/workers-rights/brand-performance/> (accessed March 15, 2017).

in Vietnam, China, Indonesia, Sri Lanka, India, and Thailand representing 422,000 garment workers.¹¹⁰

Nike is a self-proclaimed leader in promoting gender equality and women's empowerment within its company culture: "NIKE is committed to maintaining a work environment free from unlawful discrimination, including harassment based on sex, sexual orientation, gender identity, gender expression, race, age, religion, disability, ethnic group or any other protected class status."¹¹¹ Personal testimony from employees at company headquarters confirm an internal culture of women's empowerment and that opportunity for women's leadership among employees abound:

"I feel like women at Nike are given a lot of resources to develop themselves as leaders if they choose. There is opportunity for women to become leaders. There are people in management who are advocates for women and foster environments for them to become successful. Every single manager I've had has been amazing, and has helped me to continue to grow and expand my capacity. I find that to be really empowering. There is a lot of opportunity for women at Nike."

—Employee at Nike Headquarters¹¹²

Nike has been at the forefront of promoting women's empowerment in its marketing campaigns for over 40 years.¹¹³ Its hugely popular public outreach campaigns commonly depict

¹¹⁰ Clean Clothes Campaign (CCC), "Nike Profile: Tailored Wages Report," March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/nike-profile.pdf/view> (accessed October 15, 2016), p. 85.

¹¹¹ Nike, "Inside the Lines—The Nike Code of Ethics: Defining the Nike Playing Field and the Rules of the Game," http://media.corporate-ir.net/media_files/irol/10/100529/cg/codeofethics.pdf (accessed March 5, 2017), p. 6.

¹¹² Telephone interview with female employee at Nike Headquarters, March 30, 2017.

powerful women athletes breaking through gender barriers, helping to closely align its brand identity with global movements for women’s empowerment and gender equality.

Nike has instituted a corporate policy on short-term contracts that cap their use at 15 percent of its factory workforce. Short-term contracts often provide barriers to accessing benefits and rights to FOA, and have particularly egregious impacts on women who face maternity discrimination. Clean Clothes Campaign noted that “a strong message about caps on the number of these contracts used is important for many of the unions we work alongside. We hope Nike will continue to work on implementing this policy in its supplier base and will share learnings from the findings.”¹¹⁴

A Human Rights Watch expert expanded on the egregious impacts that short-term contracts have on women workers and labor leaders in the garment sector, emphasizing the importance of corporate policies calling for their elimination:

“What happens is they keep people on short-term contracts, and if there is a pregnant worker they just fire her or don’t renew her contract. Short-term contracts are also used to harass union leaders. If you find a worker on a short-term contract who is signing up to be a union leader, or standing for elections, they effectively dismiss the union leader. The government has no interest in protecting any of these union leaders.... If you look at structurally at whether there has been an impact on short term contracts, the answer is no.”

—Human Rights Watch¹¹⁵

¹¹³ EMGN, “Nike Has Empowered Women for Over 40 Years: Here are some of their most inspirational campaigns,” <http://emgn.com/entertainment/nike-has-empowered-women-for-40-years-here-are-their-most-inspirational-campaigns/> (accessed March 30, 2017).

¹¹⁴ Clean Clothes Campaign (CCC), “Nike Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/nike-profile.pdf/view> (accessed October 15, 2016), p. 85.

¹¹⁵ Interview with Human Rights Watch researcher, April 7, 2014

Similar to H&M, Nike has taken positive action to protect the FOA rights of garment workers throughout its supply chains, but it can do more to empower women's access to meaningful participation in FOA activities. Clean Clothes Campaign (CCC) has documented how Nike has failed to adopt internal living-wage benchmarks and responsibly set pricing to allow suppliers to pay an adequate living wage to workers.¹¹⁶ "Gone are the days when it was appropriate to just give a code of conduct to a supplier factory and expect anything in it to happen."¹¹⁷ Suppliers cannot be asked to lead on long-term plans to increase wages for its workers. It is global apparel brands that should.

Marks & Spencer (United Kingdom)

Marks & Spencer of the United Kingdom owns the following brands: M&S Collection, Limited Collection, Per Una, North Coast, Portfolio, Indigo Collection, Autograph, Classic, Blue Harbour, Collezione, Savile Row Inspired, and Big & Tall. It has approximately 787,300 workers in its global supply chain.¹¹⁸ Out of its 1,229 first-tier factory supplier factories worldwide, Marks & Spencer sources apparel and footwear from 33 factories in Cambodia.¹¹⁹

Marks and Spencer has progressive company policies on gender equality enshrined in its internal code of ethics. "We are committed to an active Equal Opportunities Policy, from recruitment and selection, through training and development, appraisal and promotion, right up

¹¹⁶ Clean Clothes Campaign (CCC), "Nike Profile: Tailored Wages Report," March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/nike-profile.pdf/view> (accessed October 15, 2016), p. 85.

¹¹⁷ Clean Clothes Campaign (CCC), "Nike Profile: Tailored Wages Report," March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/nike-profile.pdf/view> (accessed October 15, 2016), p. 85.

¹¹⁸ M&S, "M&S Supplier Map: Cambodia," September 1, 2016, <https://interactivemap.marksandspencer.com/?parentFolderPiD=56c35ae972529b0698191b2f> (accessed March 15, 2017).

¹¹⁹ Ibid.

to retirement. We treat everyone equally regardless of age, gender, gender reassignment, colour, ethnic or national origin, disability, hours of work, nationality, religion or belief, marital or civil partner status, disfigurement, political opinions or sexual orientation.”¹²⁰ The company’s executive director of marketing and business development described its 2014 “Leading Ladies” advertising campaign as a vision of the “ unique and diverse women of a modern Britain,” promoting Marks & Spencer as “a democratic brand which is relevant to women of all ages and strands of life.”¹²¹

Marks & Spencer has taken concrete steps to protect the labor organization of garment workers in its global supply chain, some of which have direct impacts on women. It published its list of supplier factories in June 2016 in order to push for greater transparency and collaboration to improve labor conditions.¹²²

Marks & Spencer also instituted a company method for calculating a living wage—proof that work is being done to verify internal definitions of living wages, and that a process is in place to update and monitor whether this is enough for garment workers to live on.¹²³ Living wages are intrinsically linked to freedom of association, as higher wages are the primary demand for which labor activists organize. When companies are supportive of sustainable living wages that support the lives of their workers—especially the needs of women workers to afford health insurance, social security, and maternity leave—they are providing workers with a valuable tool

¹²⁰ M&S, “Code of Ethics and Behaviors,” February 1, 2016, <https://corporate.marksandspencer.com/documents/policy-documents/code-of-ethics.pdf> (accessed March 15, 2017), p. 5.

¹²¹ Hannah Marriott, “Marks & Spencer’s 2014 ‘Leading Ladies’ Campaign: who’s who?” *The Guardian*, March 24, 2014, <https://www.theguardian.com/fashion/fashion-blog/2014/mar/24/marks-spencers-2014-leading-ladies-campaign-whos-who> (accessed March 5, 2017).

¹²² M&S, “M&S Supplier Map,” September 1, 2016, <https://interactivemap.marksandspencer.com/> (accessed March 15, 2017), p. 5.

¹²³ Clean Clothes Campaign (CCC), “M&S Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/mands-profile.pdf/view> (accessed March 15, 2017), p. 73.

of empowerment to live fully, while reinforcing their empowerment to organize for other labor advances.

In India and Bangladesh, Marks & Spencer developed the Effective Worker Management (EWM) Program, which includes an FOA module and focuses on creating a conducive environment for exercising rights to organize. They have also instituted the Benefits for Business and Workers (BBW) Project focusing on the importance of worker-management dialogue.

However, although the promotion and facilitation of dialogue through factory training programs can be useful tools for the empowerment of garment workers, such worker committees and employer-led dialogue programs should not replace the meaningful partnership and support of independent trade unions that enable more legitimate means of freedom of association.¹²⁴

MNCs should be particularly wary of employer-led organizing efforts that supplant and compete with the vital activity of independent trade unions, which would no doubt undermine and weaken truer and more meaningful access to FOA.

Adidas (Germany)

The Adidas Group of Germany owns the following brands: Adidas, Reebok, TaylorMade, and Rockport. Out of its 785 first-tier supplier factories and 249 subcontractor factory suppliers worldwide, Adidas sources apparel from 24 first-tier factories and one subcontractor factory in Cambodia.

Adidas has made its commitment to the promotion of women in leadership roles clear throughout its internal policies: “To achieve our goal to increase women in management globally from 29% today to 32% by 2017, we have increased the percentage share of women participating

¹²⁴ Clean Clothes Campaign (CCC), “M&S Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/mands-profile.pdf/view> (accessed March 15, 2017), p. 73.

in our leadership development programmes by 35% in recent years. Since the 2014 Annual General Meeting, we can proudly report that 30% of all Supervisory Board members are women—easily meeting the target set by German law two years early.”¹²⁵ In addition to promoting women in leadership roles in its company-wide policies, Adidas promotes its brand through marketing campaigns that center around values of women’s empowerment.¹²⁶

Adidas disclosed its supplier factory lists in February 2008 and is one of the only companies found to have a corporate policy guiding their interactions with Human Rights Defenders.¹²⁷ “We petition governments, alone or in concert with other actors, where we feel the rights and freedoms of human rights defenders with whom we are engaged have been impinged by the activities of the state, or its agents.... We will also take direct action where there is clear evidence that a business partner has breached the rights of HRDs.”¹²⁸ Adidas also has a Third Party Complaint Mechanism through which it invites HRDs to lodge formal complaints if they feel that Adidas or its supplier factories have directly impacted their human rights.¹²⁹

In 2016, labor rights advocates were detained by local government officials after organizing a peaceful labor demonstration in response to a factory fire in Yupoong Vietnam. Adidas wrote directly to the Vietnamese Chairman of the Dong Nai People Committee and

¹²⁵ Adidas Group, “Employees: Diversity and Inclusion,” <http://www.adidas-group.com/en/sustainability/people/employees/#/diversity-and-inclusion/> (accessed February 1, 2017).

¹²⁶ Mallory Schlossberg, “Adidas is working to fix a huge mistake it's been making for decades,” *Business Insider*, February 18, 2016, <http://www.businessinsider.com/adidas-is-now-selling-to-women-2016-2> (accessed February 28, 2017).

¹²⁷ Ethical Performance, “Adidas opens its supplier list to public scrutiny,” February 1, 2008, <http://www.ethicalperformance.com/news/article/4906> (accessed February 28, 2017).

¹²⁸ Adidas Group, “The Adidas Group and Human Rights Defenders,” January 1, 2016, http://www.adidas-group.com/media/filer_public/f0/c5/f0c582a9-506d-4b12-85cf-bd4584f68574/adidas_group_and_human_rights_defenders_2016.pdf (accessed February 28, 2017).

¹²⁹ Adidas Group, “Third Party Complaint Process for Breaches to the Adidas Group Workplace Standards or Violations of International Human Rights Norms: Version 2,” October 1, 2014, http://www.adidas-group.com/media/filer_public/3a/a8/3aa87bcf-9af9-477b-a2a5-100530e46b19/adidas_group_complaint_process_october_2014.pdf (accessed March 1, 2017), p. 1.

called on the provincial government and the local police “to show maximum restraint in dealing with protests, and not to interfere where individuals are acting peacefully and within the law.”¹³⁰

Similar to Nike, Adidas also signed the Indonesian Freedom of Association Protocol, participated in protocol negotiations, and has committed to implementing the protocol across their Indonesian suppliers.¹³¹ “Adidas worked collaboratively with unions and NGOs in Indonesia to develop and sign a protocol on freedom of association with factory managers and unions, which allows for certain very practical rights to be delivered to workers in its supplier factories.”¹³² Unfortunately, similar to Nike, Adidas has also failed to achieve implementation of the protocol as a requirement for its supplier contracts thus far.¹³³

Adidas has taken steps to establish a worker hotline complaints mechanism that is advertised in posters in its supplier factories. “Hotlines are managed independently by NGOs and complaints are followed up by Adidas regional staff.... Adidas is in the process of rolling out an SMS-based complaint service.”¹³⁴

Unfortunately, Adidas has yet to commit to a company living-wage strategy and “continues to monitor across its suppliers only that factories pay a minimum wage.”¹³⁵ Clean Clothes Campaign argues that “Adidas must use its significant buying power and influence to encourage change among its suppliers by choosing to work with suppliers who pay better wages,

¹³⁰ Adidas Group, “The Adidas Group and Human Rights Defenders,” January 1, 2016, http://www.adidas-group.com/media/filer_public/f0/c5/f0c582a9-506d-4b12-85cf-bd4584f68574/adidas_group_and_human_rights_defenders_2016.pdf (accessed February 28, 2017), p. 3.

¹³¹ Play Fair, “Freedom of Association Protocol: Promoting Workers’ Rights in Indonesia,” January 1, 2017, <http://www.play-fair.org/media/index.php/workers-rights/foa-protocol/> (accessed March 15, 2017).

¹³² Clean Clothes Campaign (CCC), “Adidas Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/adidas-profile.pdf/view> (accessed March 15, 2017), p. 25.

¹³³ Play Fair, “Freedom of Association Protocol (Promoting Workers’ Rights) Correspondence,” January 1, 2017, <http://www.play-fair.org/media/index.php/workers-rights/brand-performance/> (accessed March 15, 2017).

¹³⁴ Clean Clothes Campaign (CCC), “Adidas Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/adidas-profile.pdf/view> (accessed March 15, 2017), p. 25.

¹³⁵ Ibid.

and also by addressing its own internal costing to ensure a living wage is set aside for all workers who make its products.... It is vital that companies adopt clear benchmarks so that wages meeting workers' basic needs can be measured, and [that] these aims [are] built into product costing.”¹³⁶

To be sure, global brands like H&M, Nike, Marks & Spencer, and Adidas are taking concrete steps forward to improve access of garments workers to FOA and other related rights, but labor rights advocates argue that they must do more to hold supplier factories and governments to account:

“Factories only care about business. So corporate brands’ social compliance staff in the field should threaten to withdraw business if they [factories] don’t get their ducks in order. Brands don’t use their clout. And that’s where the real challenges are.”

—Human Rights Watch¹³⁷

There is no doubt that MNCs are well positioned to use their leverage to effectively ensure the realization of FOA rights for workers throughout their supply chains. They must continue to exert their enormous economic influence over supplier factories whose primary priorities don’t extend past their own financial bottom lines. Indeed, the most effective incentives for factories and governments to clean up their acts are financial ones—a realm that the most valuable global brands in the world have both the resources and capability to manipulate.

This section reveals that global apparel brands have taken a range of concrete steps to actively foster and create space for labor mobilization throughout their global supply chains,

¹³⁶ Clean Clothes Campaign (CCC), “Adidas Profile: Tailored Wages Report,” March 31, 2014, <https://cleanclothes.org/livingwage/tailoredwages/tailored-wages-position/adidas-profile.pdf/view> (accessed March 15, 2017), p. 25.

¹³⁷ Interview with Human Rights Watch researcher, April 9, 2017.

such as incorporating transparency in their operations by publishing supplier factory lists, working in coalition with civil society groups to seize key opportunities to engage with government officials on behalf of oppressed labor activists and human rights defenders, and supporting the activities of independent global and federal trade unions.

Although the above corporate-led protective measures to foster FOA are welcome steps, this section's analysis exposes a profound deficit in global apparel brand intervention specifically designed to effectively empower women garment workers and address their myriad gender-related barriers to labor mobilization. As women make up the majority of the garment labor workforce in Cambodia and beyond, MNCs must begin to take more meaningful steps to acknowledge women as the key partners and beneficiaries of their corporate initiatives to protect FOA, and implement special measures to increase the agency of women labor leaders in the politically-fraught domestic contexts in which they operate.

CONCLUSION

Discussion

It is clear that global apparel brands are increasingly leveraging their unique positions of political, economic, and social influence to constitute active forces of transformative change. This study reveals that brands sourcing from Cambodia have taken important action in other politically volatile domestic contexts to create conditions that better support the meaningful labor organization of garment workers.

Although women workers make up the majority of the global garment sector workforce—most of the brand initiatives explored here do not adequately respond to the particular needs of women workers, nor are they intentionally designed to target the very real gender-specific barriers to freedom of association that women garment workers regularly face.

Drawing on and confirming the previously explored feminist arguments of Okin, MacKinnon, and Tsing, this work demonstrates that women garment workers are attempting to organize within political and economic contexts where patriarchal attitudes continue to negatively shape their experiences—contributing to grave barriers to their access to positions of leadership in labor organizing. Global apparel brand action that particularly empowers women's agency by fostering their access to union leadership positions and space for labor mobilization would be a welcome and transformative component to help fill the political vacuum of justice that both Wettstein and Hsieh argue MNCs should play a more pronounced role to address.

Additionally, if CEDAW and other instruments of international human rights law provide that governments should leverage positive special measures in political realms to combat the forces of structural and historical gender inequality, this study argues that special measures of a similar spirit—in the form of positive corporate-led action to protect FOA—should

correspondingly be leveraged by actors of global enterprise within economic realms to fill the vacuum of government failure, especially when governments demonstrate oppressive and authoritarian behavior.

Gone are the days when popular global brands can ignore the egregious repercussions of their choices to operate in politically challenging contexts. A unique alchemy of forces is needed to spark action among global apparel brands to intervene in politically charged issues to pressure governments to comply with their FOA rights obligations. This perfect storm of conditions is not only possible, but as proven here, is increasingly becoming a reality.

To be sure, what is driving global brands to take action to protect human rights is not as important as that fact that they are acting, and by doing so, incrementally carving out new normative standards while advancing industry-wide expectations. With every positive action, global apparel brands are changing the status quo of what it means to operate in politically challenging contexts. The “wild west” of corporate negligence and blind complicity is rapidly eroding, and it is the positive action of corporate players—in partnership with local and global civil society stakeholders and independent trade unions—that is bringing about its welcome demise.

Global brands that are the most susceptible to public and INGO advocacy pressure to actively protect the interests of women’s labor movements at the bottom of their supply chains are those with gender empowerment platforms imbedded in their corporate culture and public outreach campaigns. Apparel brands that promote values of women’s empowerment and gender equality are uniquely vulnerable to external pressure to apply the same standards for women workers at the bottom of their supply chains. MNCs should not ingenuously prioritize women’s empowerment exclusively for public relations and employees at corporate headquarters, but

ought to apply the same gender egalitarian principles for the women manufacturing their apparel, while organizing for their rights to do so within healthy, safe, and gender-equal environments. It is this ever-strengthening partnership of local women's labor movements with global apparel brands—supported by trade unions and other agents of civil society—that is constituting a new and welcome force helping to shift the larger BHR discourse forward.

This work reveals that a range of global brands are already going above and beyond Ruggie's principle of corporate respect for human rights, seizing more opportunities to take positive action to protect. It is the central argument of this study that protective measures that global apparel brands take to create conditions for meaningful labor organization of women garment workers will constitute an effective driving force to move the larger business and human rights discourse beyond its current normative guidelines. With every proactive corporate intervention to protect space for labor mobilization in politically volatile countries where MNCs operate, global brands are upending the status quo, raising the bar for their peers, and forging a new normal with higher expectations from the global community and women-led labor movements on the ground.

Primary Recommendations to Global Apparel Brands

- Global apparel brands sourcing from the Cambodian garment sector should acknowledge the unique political challenges of this country, and work to apply the same protective action to support space for labor organization that they have in other politically volatile states.
- Global apparel brands that place women’s empowerment and gender equality at the center of internal corporate culture and public outreach campaigns should be equally concerned with providing empowerment for the women workers at the lowest levels of their supply chains. They can do this by designing more gender-sensitive interventions to tackle women workers’ barriers to organization, such as implementing policies that eliminate short-term contracts and advocating for fair and comprehensive working wages that take into account women’s particular needs.
- Global apparel brands should acknowledge the politically challenging contexts in which they choose to operate, and publicly disclose positive efforts to advance justice and FOA in those environments, sharing best practices and knowledge across the industry.
- Global apparel brands should publish complete information about direct and subcontractor supplier factories—including names and addresses—in order to provide the relevant stakeholders with information they need to notify brands of abuses and organize for FOA and other labor rights from the ground up.
- Global apparel brands should help to advocate forcefully at the 2019 International Labour Conference (ILC) for the establishment of a binding ILO convention on due diligence in corporate supply chains.

Looking Forward

One cannot ignore the variance in conceptions of freedom of association among diverse stakeholders in the global garment industry. From the highest levels of company management—to corporate social responsibility teams; government representatives, global and local civil society groups; factory owners, unions leaders, and garment workers on the ground—FOA has a wide range of applied meanings contingent on subjective perspectives and individual experiences. It is far from adequate to set normative definitions while only an exclusive set of actors understand the meanings—and corresponding legal obligations and protections—that these rights are meant to secure. A further study measuring the difference in individual conceptions of FOA could help bring into focus the challenge of realizing this profoundly crucial—yet evidently vulnerable—set of human rights, and how to more meaningfully realize their effective and universal implementation.

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