

Bringing human rights into fashion: issues, challenges and underused potentials in the transnational garment industry

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German Institute
for Human Rights

Analysis

Bringing Human Rights into Fashion

Issues, challenges and underused potentials in
the transnational garment industry

Jan-Christian Niebank

The Institute

The **German Institute for Human Rights** is the independent National Human Rights Institution in Germany. It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organizations. It is supported by the German Bundestag.

The Institute is additionally mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and has established Monitoring Bodies for these purposes.

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Foreword

A garment sector committed to upholding human rights standards has the potential to transform the lives of all those who contribute to it. It can help build a strong economic foundation for local communities and provide men and women with decent, rewarding work.

Companies and states have a responsibility to ensure that fundamental human rights are protected across all points of the industry supply chain. This means eradicating forced labour and child labour, providing safe and healthy workplaces, properly remunerating workers and suppliers and ensuring fair treatment for all.

However, gaps in governance standards, weak enforcement mechanisms and strong competition for the fashion dollar can create an environment where people are vulnerable to abuse and exploitation. An especially pressing issue is the discrimination and harassment experienced by women workers who toil long hours in the factories.

National Human Rights Institutions (NHRIs) can play a critical role in closing these “governance gaps” and using their unique mandate to prevent, address and remedy human rights violations.

NHRIs can advise governments and businesses on their responsibilities under the UN Guiding Principles on Business and Human Rights; they can monitor and document the operations of businesses; they can investigate complaints and deliver remedies for individuals whose rights are violated; and they can promote awareness of rights among workers and communities vulnerable to exploitation.

In the Edinburgh Declaration, adopted in 2010, NHRIs from around the globe pledged action to curb corporate abuse of human rights and provide greater support for victims of rights violations.

Since then, the 24 members of the Asia Pacific Forum of National Human Rights Institutions have initiated a range of practical projects to deliver on this commitment.

Across South Asia and South East Asia, our members have been working with stakeholders in the garment industry to build human rights awareness and bolster protections available to workers and communities. They have also sought reparations for victims of workplace tragedies, such as factory fires.

NHRIs can be valuable partners for international agencies and other actors working to strengthen human rights monitoring and protection across the fashion supply chain. In turn, NHRIs have much to gain from these partnerships, including drawing on research and good practice to improve their impact.

Industries such as the garment sector thrive when workers, suppliers and retailers have a shared interest and receive a shared benefit from their collective efforts. Respect for human rights, respect for each other, should underpin this shared endeavour. Rights should never be out of fashion.

The APF has been pleased to collaborate with the German Institute for Human Rights in the development of this research. We trust it will be a valuable tool for NHRIs, business and government alike in their efforts to make human rights a cornerstone of the garment sector.

Pip Dargan, Deputy Director, Asia Pacific Forum of National Human Rights Institutions

Preface

Almost inevitably, discussions about human rights and the garment industry begin with the Rana Plaza factory collapse, which killed 1,134 workers in Dhaka, Bangladesh on 24 April 2013. Rana Plaza has become a symbol of human rights abuses in the transnational garment industry and of the governance gap characterising our globalised economy. More than five years later, awareness of the problem has increased, and numerous initiatives have been undertaken by a variety of stakeholders. Yet, the situation of rights-holders is still far from satisfactory. Quite the contrary: human rights abuses, including discrimination against women, child labour, inadequate social protection and unsafe working conditions, are still common in the context of textile and garment production.

The Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011, aim to fill gaps in protection and accountability. Germany, a country in which many garment companies and retailers that manufacture their products in the Global South are domiciled, bears a special responsibility. In December 2016, Germany adopted its National Action Plan on Business and Human Rights (NAP). The NAP did not seize the opportunity to reduce the numerous barriers to access to judicial remedy in Germany for victims of corporate human rights abuses that occur abroad. The involvement of rights-holders from production countries in the NAP's

development was minimal, and the same may well be the case for the implementation and monitoring commencing in 2018.

National Human Rights Institutions (NHRIs) can take up some of the slack created by these deficits in governance and participation, both by supporting the initiatives of other stakeholders and by contributing new perspectives, momentum and initiatives of their own. As key national players with a mandate to promote the state duty to protect human rights, they can and should advise their governments on the human rights impacts in the garment industry. Moreover, most NHRIs have complaint handling mechanisms and investigative powers and are thus in a position to identify barriers to access to remedy. Lastly, NHRIs can monitor business activities and their human rights impacts through transnational cooperation, i. e. by working with their sister institutions at the opposite end of supply chains.

This is why the German Institute for Human Rights partnered with the Asia Pacific Forum of NHRIs to undertake this study. Clearly, much work remains to be done to make sure that Rana Plaza is one day seen as a turning point; but as this study shows, NHRIs are key allies for bringing human rights into fashion.

Michael Windfuhr, Deputy Director, German Institute for Human Rights

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Summary

The transnational garment industry has the potential to be an engine for socio-economic development in the Asia-Pacific region. It provides ample employment opportunities, particularly for women, enabling – at least in theory – their economic empowerment. However, there is a persistent governance gap in the garment sector, resulting in serious human rights impacts, which chiefly affect women, who make up the majority of garment workers both in the formal and informal sector. This poor human rights record hinders sustainable development. This analysis by the German Institute for Human Rights seeks answers to the question of what contributes to and perpetuates the governance gaps in the global garment sector and what needs to be done to close them. The normative framework for the analysis is provided by the United Nations Guiding Principles on Business and Human Rights and international human rights law. It is based on a desk study and interviews with National Human Rights Institutions from the Asia-Pacific region focussing on their initiatives in the garment sector.

The analysis shows, firstly, that producing countries do not adequately protect human rights, identifying abuses involving discrimination against women and core labour rights as the most widespread. Driven by intense economic competition to keep or boost their share in global garment exports, producing countries are entangled in a race to the bottom, particularly with respect to core labour rights. Secondly, corporations do not adequately respect human rights, again due to intense competition. They often prioritise efficiency and consider human rights an undesired cost factor. This leads to a systematic neglect of human rights due diligence processes. In most cases, retailers and garment companies, as the most influential actors in the supply chain, fail to make adequate use their leverage over factory owners or managers to enhance respect for human rights, e.g. through pricing policies. Thirdly, countries in which transnational corporations and

retailers have their headquarters do not protect human rights extra-territorially. They do not usually regulate the behaviour of their businesses abroad, either because they feel no responsibility to do so or because they see due diligence obligations along the garment supply chain as disproportionate burdens for their companies.

Companies operate within and exploit this governance vacuum. As a result, adverse human rights impacts exist at virtually all stages of garment production. Particularly affected are women and migrant workers, two groups who are already exposed to discrimination; children are especially vulnerable. The powerlessness of these groups exacerbates the negative impacts on human rights: when rights abuses occur, those affected have next to no access to effective remedies.

What has been done to close the governance gaps? The analysis describes exemplary initiatives undertaken by states and businesses, ranging from corporate self-regulation to legally binding measures introduced by states, to initiatives supported by German development cooperation. These initiatives have brought gradual improvement, notably in fire and building safety, and contain important aspects that future initiatives can tie in to. Several states in the global North have adopted National Action Plans (NAPs) to implement the UN Guiding Principles on Business and Human Rights (UNGPs). Overall, the process has been slow and ineffective due to a preference for voluntary arrangements over enforceable regulations governing corporations' behaviour. More significant achievements were reached through binding regulations outside the scope of the UNGPs implementation. For instance, the European Union (EU) as well as its member states have imposed requirements on some companies to disclose information relating to human rights due diligence. German development cooperation has increased its efforts with regard to the garment supply chain and rolled out social dialogues,

training and awareness programmes as well as a prominent multi-stakeholder initiative.

What can be done to improve the human rights situation in the garment industry? The analysis argues that what is needed is a coherent system of responsibilities and a densification of standards for what behaviour is expected or required from businesses in their operations. To achieve this, it is essential to recognise two points in this regard: firstly, corporate self-regulation alone will not bridge the governance gap in the garment industry, and secondly, no comprehensive legal regulation of transnational economic activities can be expected in the near future. For this reason, the largely ideology-driven rift between “voluntarism” and “regulation” needs to be overcome; existing voluntary and binding approaches must be intelligently linked together, and all policy channels be used. This linkage must be designed to target the root causes of adverse human rights impacts rather than just their symptoms.

In this sense, producing countries, home states and businesses should all use all of the leverage available to them to close the existing gaps in human rights protection. Removing the existing barriers to access to effective remedy through court decisions and other effective grievance mechanisms will require the combined efforts of all parties. The “home states”, countries in which garment brands and retailers are headquartered or registered, should legally require businesses to conduct human rights due diligence along the entire textile and garment supply chain. In producing countries, oversight over businesses and law enforcement mechanisms must be improved. Voluntary initiatives need to be rendered more effective, e.g. through the addition of more

independent monitoring and the integration of external human rights expertise.

Particularly with regard to these last two development policy can be a powerful leverage instrument, given strong allies in the partner countries. NHRIs can serve as such allies. They have a crucial role to play in closing the human rights governance gap. Through their unique mandate to promote and protect human rights, they can ensure that states and businesses discharge their respective duties and responsibilities. NHRIs have the potential to help coordinate state policies with instruments of corporate self-regulation, which otherwise tend to run along separate, non-intersecting tracks, and thus lack coherence. In many Asian countries, NHRIs are established players in the field of business and human rights. They have, for example, initiated or supported the development of NAPs, conducted the relevant baseline assessments or investigated the use of child labour in the garment industry. There are a number of opportunities for capacity-building of a kind that could be decisive in enabling NHRIs to make the best use of their powers, for example, in the coordination between state and civil society and in the use of innovative monitoring instruments in garment production facilities. Strengthening NHRIs is also of crucial importance to ensuring the presence of an independent voice in times of closing and closed spaces for civil society in many Asian countries. By supporting the capacity of NHRIs, development cooperation can contribute to addressing the different and disproportionate impacts on women, children and migrant workers in the sector and can tackle structural root causes. Building the capacities of NHRIs in all of these areas will not only enable them to gain clout, but also advance human rights protection in the global garment industry and beyond.

1 Introduction

States have a duty to protect human rights against abuse by third parties, including businesses. Yet, producing countries often fail to take sufficient protective measures in the garment industry. Vying with one another to attract businesses to their countries, producing countries are caught up in a race to the bottom. Placing high demands on companies will continue to be seen as a deterrent to investors as long as there is no level playing field with uniform human rights due diligence specifications across production countries. Voluntary approaches alone are not capable of solving this problem, but governments in the global North¹ remain, with a few exceptions, reluctant to take binding legal measures to regulate corporate respect for human rights in transnational supply chains.² Their reluctance is related to constraints posed by economic competition: the costs of compliance could reduce profits for brands and retailers in the short term. Home countries may also be concerned by the risk of disadvantaging national companies compared to foreign companies and a distortion of competition.

The garment industry is an important economic growth engine for the Asia-Pacific region. It is also an industry with a rather poor human rights track record. Employment opportunities are of limited value if structural forces systematically inhibit socio-economic development, female emancipation and empowerment. Personnel in production plants and farm workers in the cotton fields work under very difficult conditions and for low wages.

While global trade has certainly increased economic output at the macro level, individuals at the bottom of the production pyramid – such as those working in the garment industry in Asia-Pacific region – have still benefited too little from economic globalisation.

This study seeks to take stock of developments in the global garment industry. It does so by analysing structural market characteristics and pressing human rights issues as well as existing instruments and initiatives. Specific attention is paid to the role of NHRIs and to development policies in the global North. Analytically, the investigation is guided by the framework of the UNGPs. Important input for the study was obtained at a joint workshop held by the German Institute for Human Rights and the Asia Pacific Forum of National Human Rights Institutions (APF) in Bangkok in January 2017 at which NHRI representatives from Bangladesh, India, Malaysia, Mongolia, Myanmar, Pakistan, Philippines and Thailand shared their expertise on human rights issues in the garment industry and discussed the challenges their NHRIs are facing.³

This study argues that, in the absence of binding and effective international law, bridging the human rights governance gap in the global garment industry will require simultaneous efforts through all existing policy channels. These efforts should be interlocked and thus reinforce each other. Tackling root causes, such as discrimination

1 The terms “global North” and “global South” may obscure specific local features and dynamics resulting from different economic, social, socio-political and cultural contexts. Scholars caution against the idealisation of the “global North” as a uniform model of successful development and criticise that instruments of development cooperation are too strongly based on Eurocentric assumptions. See: Burchard (2017), S. 273–291.

2 To address the obligations of states at both ends of the garment supply chain, this analysis uses the terms “producing countries” or “production countries” and “home states” (of brands and retailers). Though aware of the pitfalls of the terminology, we have nonetheless chosen to use “global North” and “global South” to indicate that in the course of globalisation, labour-intensive parts of the supply and value chain have increasingly been outsourced from industrialised countries to developing and emerging countries.

3 APF (10.02.2017).

against women, and a stronger focus on using the leverage available to the relevant actors, will be crucial. Moreover, the competent authorities in the producing countries must be enabled to better fulfil their tasks of monitoring and enforcement vis-à-vis the companies. Complementary to this, voluntary initiatives can contribute towards achieving significant progress – provided they meet certain effectiveness criteria.

This study first delineates the economic relevance of the garment industry and the associated development opportunities. It then examines the aspects specific to the sector as well as the general root causes of the persistently poor human rights situation in the producing countries in Asia (Section 2). In Section 3, it takes a closer look at

the different human rights issues in the industry, ranging from discrimination against women to the lack of effective grievance mechanisms. Section 4 examines a variety of instruments with which states and businesses have tried to improve the industry's human rights track record. Taking Bangladesh, India, Pakistan and Myanmar as examples, the study shows that the instruments used have not yet succeeded in closing the garment governance gap. Moving forward will require not only the strengthening of efforts under the current approaches, but also coordination and interlocking. Making greater use of the potential of NHRIs is one of several ways to achieve this, and Section 5 sets out how this can be done. Section 6 addresses recommendations to German development policy.

2 A development engine prone to human rights abuses

2.1 The transnational garment industry's economic importance

The garment sector has great potential to foster economic development and inclusive growth. Globally speaking, the industry is worth USD 1.7 trillion.⁴ In 2014, the Asia-Pacific region accounted 59.5 per cent of global exports in the categories of garments, textiles and footwear.⁵ Of the around 75 million people (2000: 20 million) employed in the industry worldwide, most work in developing Asian economies.⁶ Many more people worldwide are said to earn their living through indirect employment opportunities created by the industry, around 300 million people from cotton production alone.⁷

The garment industry generates exports, economic output, foreign exchange and significant employment effects in production countries, and many Asian economies depend on it. From the perspective of persons working in the sector in producing countries, the garment industry provides households with an income. Its expansion has allowed many workers to move from the informal to the formal employment market,⁸ which is crucial because regulations and oversight can only be effective in the formal economy.

The garment industry is characterised by a global division of labour. Knowledge-based production steps – e.g. the design, logistics and sale of garments – are mostly situated in the global North, the more labour-intensive production processes take place in the global South. There is a strong competitive pressure which affects these production processes. Competition takes place at three levels: firstly, among transnational retailers and brands in the global North, which seek to attract customers through low prices and to secure market shares; secondly, among suppliers in the global South, which compete for purchasing agreements; and thirdly, among the garment producing countries, which compete for foreign business by maintaining low environmental and social standards and thus “favourable” production conditions.⁹

Definition: garment production

Garment production is the act or process of making clothes from fabric. Fabric is made from threads of cotton, nylon, silk or other fibres using one or more production techniques, e.g. weaving or knitting (textile production). The term “garment industry” or “garment sector” as used in this study has a twofold meaning: it can refer to the manufacturing process of converting fabric into an item of clothing, but it can also encompass all prior production stages. For the purposes of this study the term is to be understood in the latter sense, if not indicated otherwise or used differently by quoted sources.

4 Euromonitor International, as quoted in: The Industry (19.01.2017).

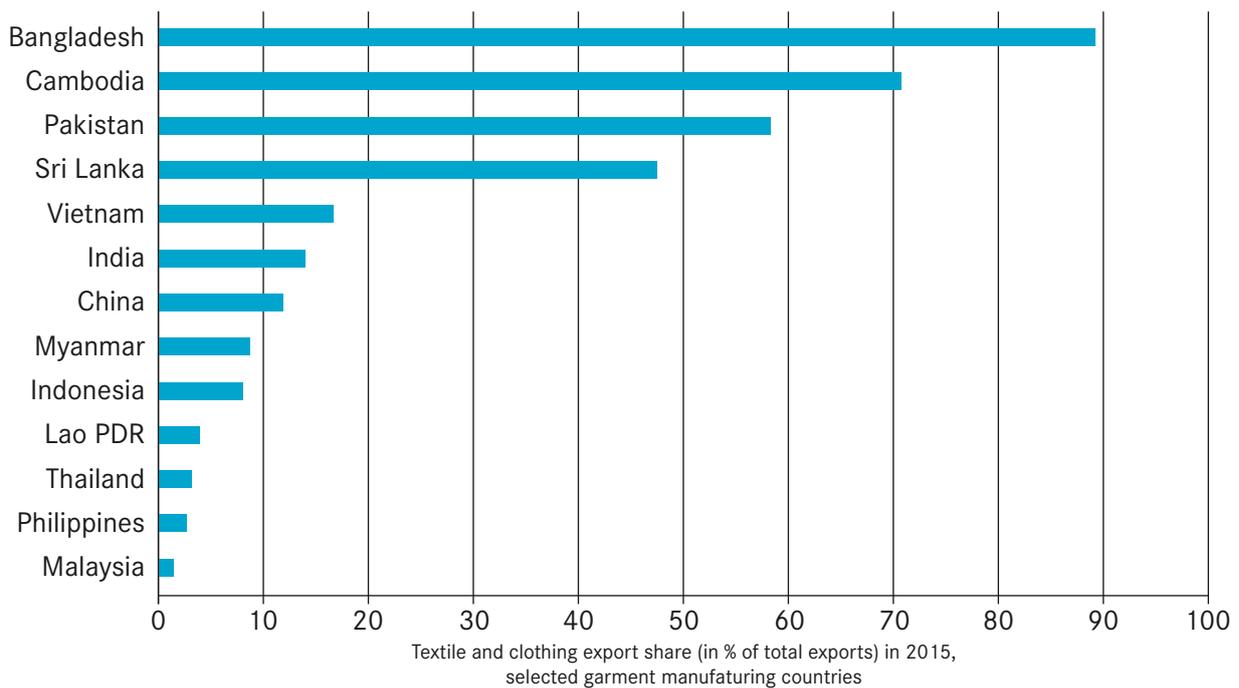
5 ILO Regional Office for Asia and the Pacific/ILO Regional Office for the Arab States (2016).

6 Clean Clothes Campaign (2015); ILO Regional Office for Asia and the Pacific/ILO Regional Office for the Arab States (2016).

7 Brot für die Welt (2016), p. 22.

8 European Parliament (2017), p. 9.

9 Schultz/Scherrer (2017), p. 92.

Figure I: Garment manufacturing: where the growth engine is roaring

Data on textile and clothing export shares derived from WITS database (URL: <https://wits.worldbank.org/>).

WTO statistics show that the Asian countries among the world's top ten clothing and textile exporters accounted for 58.9 per cent of world exports in 2016.¹⁰ In the same year, more than 67 per cent of the EU's imports of textiles and 77 per cent of its clothing imports came from Asia.¹¹ In the case of Germany, for instance, China is the source of most of the ready-made garments sold, followed by Bangladesh, India, Vietnam, Cambodia and Pakistan.¹²

The garment industry is of enormous macro-economic significance for the economies of the Asia-Pacific region. For instance, the textile and clothing sector generated 82 per cent of all Bangladesh's exports in 2015.¹³ In Pakistan, the sector generated between 63 and 68 per cent of all exports in 2014.¹⁴

The garment industry is also an important provider of jobs. A 2016 International Labour Organization (ILO) study of ten Asian economies estimates that the industry employed a total of more than 40 million people there and that almost three-fifths of that total were employed in China (6.7 million) and India (16.8 million).

Within the industry in Asia, garment production accounts for the highest share of all employees, employing more than 60 per cent of workers in manufacturing wage employment in Bangladesh and more than 80 per cent in Cambodia. Within the textile, clothing, footwear and luggage sector the footwear and luggage subsector is relatively small.¹⁵

Women constitute the majority of employees in garment manufacturing. Cambodia has the largest percentage of women in its garment workforce, 80.8, followed by Vietnam with 76.3 per cent.

¹⁰ WTO (2017), p. 120.

¹¹ European Commission, Directorate General for Trade (2017), p. 4.

¹² Brot für die Welt (2016), p. 23.

¹³ ADB (2016), p. 3.

¹⁴ Clean Clothes Campaign (2015a), p. 1.

¹⁵ ILO (2016), p. 6.

By contrast, in India and Pakistan, men make up the majority of the workforce in the sector.¹⁶ Worldwide, education levels among workers are generally low, with men tending to have higher education levels than their female counterparts.¹⁷ Three quarters of the global garment industry workforce are low-skilled female workers.¹⁸

2.2 The industry's susceptibility to human rights abuses

Why does the garment industry have such a poor human rights record? Structural and economic factors, such as globalisation, international trade and competition, as well as not always clear-cut responsibilities of states and business complicate the effective implementation of human rights in the garment industry. The global garment supply chain itself has several characteristics that create severe human rights risks: minimisation of production costs tends to be the deciding factor for production location and production needs to be able to quickly adjust to ever changing market demands. In addition, the network of business entities involved is large and complex. Accordingly, it is not always possible to trace adverse human rights impacts directly to their causes and attributing specific impacts to a specific business behaviour can be difficult.

However, the causes of the existing gaps in human rights protection along the garment supply chain are fairly straightforward: firstly, businesses do not adequately respect human rights. Secondly, production countries, despite the many measures they have taken, are still not adequately discharging their duty to protect human rights. And thirdly, home states have also failed to take sufficient action to comply with their duty to protect human

rights from infringement by third parties. In what follows, these three causes are analysed in more detail before the analysis turns to flesh out the impacts on rights-holders.

2.2.1 Production countries do not adequately protect human rights

The countries in which the production facilities are located frequently lack governance structures to effectively enforce human rights and states compete with each other to keep business operations in the country. Overall, the lack of human rights protection in production countries is due to a combination of a lack of capacity and of political will.

As a result, local laws are inadequate, frequently falling short of the minimum level defined in international human rights treaties, the ILO core labour standards and the UNGPs. Consequently, companies benefit from weak local standards. In addition, most production states undertake only lax monitoring of compliance with their – however deficient – regulatory requirements. This, together with widespread corruption¹⁹ and extremely limited access to grievance mechanisms, diminishes the impact of legislation on the subject of environmental, economic, and social performance standards.²⁰

There are other reasons for the lack of political will to protect human rights as well: economic considerations take precedence vis-à-vis human rights obligations and impact considerations for many political decision-makers.²¹ They welcome foreign direct investment as a way to create jobs, upgrade infrastructure, and build new export-oriented industries capitalising on lower labour costs. Ahmed et al. (2014), for example, attribute the economic success of the apparel sector in Bangladesh to a general restraint on the part of the government to directly engage with

16 Ibid., p. 5.

17 Ibid., p. 6.

18 European Parliament (2017), p. 7.

19 Transparency International's Corruption Perception Index ranks countries by the perceived level of corruption among officials and politicians. Corruption is still strong in many countries in the Asia Pacific Region. See: Transparency International (2017). For a more detailed analysis of public sector, executive, legislative and judicial corruption, see: V-Dem (2017).

20 Thomas (2015), p. 16.

21 Ibid., p. 17.

the industry through central policies and other forms of intervention.²² One of the underlying factors here is lobbying activities by businesses: economic actors, both in garment producing countries as well home states, use their discursive power to frame and define public interest issues.²³ Another factor is the overlap between economic and political actors: it is not unusual for members of governments and parliaments to be factory owners themselves.²⁴ Decision-makers also take into account the risk that apparel sourcing markets may shift to a less regulatory environment in the face of tightened national regulations relating to human rights or more vigorous enforcement. High demands on companies, they reason, would hamper their country's socio-economic development. However, this assumption is not always correct: while the relocation of markets for this reason has often been observed,²⁵ not all companies prefer the lowest possible degree of state regulation.²⁶

Another area where a lack of political will is particularly prominent is the systematic discrimination of women, which is entrenched in most production countries. All of the Southeast Asian states have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and thus undertaken to eliminate all forms of discrimination against women, but their record in this area is poor (see below, Section 3.1), as the respective UN treaty body has pointed out more than once in recent Concluding Observations.²⁷ Discrimination against women occurs in the areas of education, health care, social relationships and

political decision-making. Across sectors, gender stereotypes result in job segregation and disparities in wages and benefits. Women's ability to organise collectively is impaired by stereotypes of women as being more docile, dexterous or making fewer demands of their employers and by their obligations to perform unpaid care work.²⁸ Sexual harassment and violence against women have reached endemic proportions in many production countries, whose governments have responded either ineffectively or not at all.

However, failure to protect of human rights in production countries is not always the result of a lack of political will. Even where regulatory frameworks and enforcement mechanisms are in place, states face difficulties in discharging their obligation to protect. One reason for this is the fact that the business enterprises involved are often legally separate entities domiciled in a different jurisdiction. The garment supply chain is made up of a complex network of subsidiaries, contractors, suppliers and joint ventures. Even when they operate as an economic unit, the centre of activity, registration or domicile can be located in one country (the home state), while it operates in another (the production country).²⁹ Regulating such complex structures requires capacities that may not exist in all production countries.

2.2.2 Corporations do not adequately respect human rights

International human rights treaties do not impose direct legal obligations on companies. Corporate respect for human rights thus depends on the

22 Ahmed/Greenleaf/Sacks (2014), p. 260.

23 Ruggie (2017), p. 5.

24 Transparency International reports that in Bangladesh "reform has been compromised by a craving for quick profits by factory owners and exporters who make up at least 10% of parliament." Transparency International Bangladesh (2014).

25 East African countries might emerge as important garment production countries. See McKinsey (2015): Emerging Garment Producing Countries. <https://www.mckinsey.com/industries/retail/our-insights/east-africa-the-next-hub-for-apparel-sourcing> (accessed 05.07.2018).

26 German retailer Tchibo believes that fair competition needs clear rules and sanctions for non-compliance: "A regulatory framework is important for creating a level playing field." See: <https://www.bundestag.de/dokumente/textarchiv/2016/kw48-pa-recht/481036>; <https://www.tchibo-nachhaltigkeit.de/servlet/cb/1255826/data/-/TchiboNachhaltigkeitsbericht2017.pdf> (accessed 05.07.2018).

27 UN, Committee on the Elimination of Discrimination against Women (2016b), para.10–12, 16–88, 22; UN, Committee on the Elimination of Discrimination against Women (2013), para.12–46; UN, Committee on the Elimination of Discrimination against Women (2016a), para.14–46.

28 ILO Regional Office for Asia and the Pacific (2012).

29 UN, Committee on the Rights of the Child (2013), Para. 40.

regulatory framework within which businesses operate.³⁰ Gaps in protection are created through the lack of effective frameworks, and these are exploited at the expense of human rights by many retailers, brands and manufacturers.

Transnational corporations benefit from locating the different segments of their operations in the most cost-effective location.³¹ Yet, retailers and brands, as the most influential actors in the garment supply chain, do not adequately use their leverage to improve the human rights situation in production countries. Often, even the risk management methods of more progressive retailers do not comply with human rights due diligence requirements. Instead of using their leverage to minimise the adverse human rights impacts associated with their business practices, they confine themselves to defining standards for production and processes, which are passed on down the supply chain. Suppliers in the global South produce according to the specifications of their buyers. They have to constantly adapt to new and sometimes very short-term requirements and at the same time comply with buyers' price expectations. As a result, they are often forced to keep production costs low; often done by not paying living wages for instance, and by disregarding environmental and social standards.³² Recent trends towards 'fast fashion'³³ have only exacerbated the social and environmental situation in production countries.³⁴

In particular, purchasing practices, pricing strategies and cost structures put pressure on suppliers and have a negative impact on wages and working conditions.³⁵ Business-model risk factors include the number of product lines sold and how often those product lines are changed (i. e. seasons per

year). Companies with numerous product cycles or seasons per year typically necessitate that the products be manufactured at shorter time intervals. Changes to orders or rushed orders may contribute to labour and human rights abuses, such as excessive or forced overtime and outsourcing to third parties where respect for human rights may be even lower. Likewise, the more product cycles there are, the higher the material and resource consumption in the manufacturing process, which in turn results in increased water consumption, higher carbon dioxide emissions and more waste. Similarly, a company's sourcing model can increase the risks of adverse human rights impacts in its supply chain. The risks vary depending on whether it sources from a large range of suppliers, the nature of its contractual relationships, and whether sourcing is direct or indirect. For example, it can be more difficult to control relationships with

Corporate social responsibility and human rights due diligence

In many Asian countries, corporate social responsibility (CSR) is understood to mean philanthropy, i. e. voluntary charity, and CSR is perceived to be in tune with the region's cultural and religious norms. Awareness of respect for human rights as a corporate responsibility is only gradually developing. As a consequence, philanthropy is often used to conceal or white-wash adverse impacts on human rights.³⁶ This understanding of CSR has resulted in a focus on companies' voluntary contributions to community development and other social and environmental efforts. The fundamental difference between this understanding of CSR and the UNGPs is that implementation of the latter is expected of all companies rather than a voluntary effort on the part a company.

30 The United Nations Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises contain standards of behaviour expected of business enterprise in relation to respect for human rights (human rights due diligence), but these are not binding and do not provide for the sanctions of business that fail to apply them.

31 Zhan (2013), p. 135.

32 Schultz/Scherrer (2017), p. 92; European Parliament (2017), Para. 21.

33 Fast fashion leads to frequent adjustments in the supply chain to allow mass-market retailers to design and produce the latest fashion trends quickly and cost-effectively.

34 There is an increasing demand for fashion items. The per capita consumption of cotton in Germany is about 10 kg per year, surpassed only by the USA (19 kg) and Japan (11 kg). See Brot für die Welt (2016), p. 21.

35 OECD (2017), pp. 45–47.

36 Thomas (2015), p. 17.

a large number of suppliers in relation to the size of the enterprise and the amount of its resources dedicated to supply chain due diligence. Short-term relationships with suppliers may mean that an enterprise does not have time to take adequate action to prevent or mitigate risks that were identified in supplier assessment processes. It may also mean that the enterprise lacks leverage over the supplier to prevent or mitigate any impacts that have been identified.³⁷

2.2.3 Home states do not adequately protect human rights

States that have jurisdiction over international brands and retailers (home states) often do not feel responsible for regulating the behaviours of their companies in their operations abroad. Although no consensus has been reached in international law on the extent of extra-territorial human rights obligations, home states do have obligations to respect, protect and fulfil human rights in the context of businesses' extraterritorial activities and operations, provided that there is a reasonable link between the state and the conduct concerned.³⁸ A

reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the state concerned.³⁹ Home state obligations include ensuring access to effective judicial and non-judicial mechanisms to provide remedy to those whose rights have been violated by business enterprises operating extraterritorially when there is a reasonable link between the state and the conduct concerned.⁴⁰

So far only a few legal initiatives relating to mandatory due diligence and corresponding disclosure requirements – although not specific to the garment supply chain – have been taken,⁴¹ notably at the EU level.⁴² Home states consider regulation a last resort, due to a reluctance to burden businesses disproportionately, as regulation is sometimes thought to do. Instead, they tend to restrict themselves to formulating expectations and favour providing incentives and guidance on human rights due diligence. The UNGPs, however, envisage a smart mix of voluntary and binding measures – which none of the NAPs on business and human rights have adopted so far (see Section 4.3.1).

³⁷ Ibid., pp. 69–70.

³⁸ UN, Committee on Economic, Social and Cultural Rights (2017).

³⁹ ETO Consortium (2013), principle 25c.

⁴⁰ UN, Committee on the Rights of the Child (2013), Para. 44.

⁴¹ France adopted a law on corporate human rights due diligence in 2017: LOI n° 2017–399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, see Legifrance (27.03.2017); in the Netherlands, a Child Labour Due Diligence Law is about to be enacted and is expected to enter into force in 2020. Other disclosure requirements were introduced by the UK Modern Slavery Act and the US California Transparency in Supply Chains Act.

⁴² Directive 2014/95/EU on the disclosure of non-financial information, including the respect for human rights; Regulation (EU) 2017/821 laying down supply chain due diligence obligations for Union importers of certain conflict minerals originating from conflict-affected and high-risk areas.

3 Human rights issues: garment manufacturing as a high-risk industry

Global garment manufacturing is a high-risk industry with respect to almost all human rights. Garment workers are often barred from joining or forming a trade union. The resulting absence of collective bargaining leads to a broad array of human rights abuses, ranging from forced and child labour, arbitrary dismissals, unsafe workplaces and unhealthy working conditions, to physical and sexual harassment and abuse of women.⁴³ Bribery and corruption enable and exacerbate abuses and hinder access to remedy. The environmental risks arising from manufacturing also adversely impact people's livelihood.

While some of these abuses are more difficult to eradicate than others – ending corruption and violence against women for example requires not only legislation and the stringent enforcement thereof but also profound social change – others are less so. The right to form trade unions, for example, requires mainly an act of omission, i. e. to refrain from forbidding them.

In what follows, the human rights risks that are prevalent and widespread within the industry are examined in an attempt to illustrate the effects of the described governance gap on rights-holders. Special attention is paid to issues that – unlike occupational health and safety (see Section 4.2.1) – have neither received sufficient attention in the debate nor seen significant progress in recent years.

3.1 Discrimination against women is rampant

Women make up the majority of the workforce in the garment industry in most countries and, accordingly, are the group most affected by its human rights impacts. The profound discrimination that women face in garment producing countries makes them particularly vulnerable to abuse and exploitation.

The depth and extent of sexual harassment and gender-based violence in the garment industry is rarely acknowledged.⁴⁴ A non-representative survey carried out by Sisters for Change found that roughly 14 per cent of women garment workers in Bangalore had been sexually harassed or raped. Sixty per cent reported having been intimidated or threatened with violence, while between 40 and 50 per cent had experienced humiliation and verbal abuse. More than one in seven women workers said they had left a job due to harassment.⁴⁵ The majority of harassment and violence in factories is committed by supervisors and “floor in-charge” managers acting within a widespread climate of impunity.⁴⁶ Management does not show ownership for the issues, let alone follow up on incidents of abuses reported to them.⁴⁷ Although required by law to do so, most factories around Bangalore do not have a functioning grievance or complaint mechanism. While the cited study's results are neither representative of India nor of the region as a whole, the problems they illustrate are emblematic of the entire industry: sexual

43 European Parliament (2017), p. 7.

44 Dovey (2014), p. 57.

45 Sisters for Change/Munnade (2016), p. 35.

46 Ibid. p. 5.

47 Ibid. p. 35.

harassment and gender-based violence add up to the widely known discrimination and labour right abuses in the industry.

Another key issue concerns the precarious work situation of many female workers. This applies to both the formal and informal sector. Women who are informally employed cannot enjoy any social security benefits and are also endangered by the temporary nature of their employment: they are hired during economic upturns and laid off when a recession hits.⁴⁸ Women who do have formal employee status tend to have particularly short careers in the sector, often of ten years or less. Around 40 per cent of female workers in Indonesia and around 60 per cent in Cambodia and Vietnam stay in the sector for one to five years. The limited possibilities for advancement constitute one of the reasons for this phenomenon.⁴⁹ Other reasons are the lack of appropriate childcare facilities provided by the state or at the factory level. Where such childcare is available, it is often not responsive to women's and children's needs. This helps explain why many women leave formal factory employment upon marriage and do not return once they have children, opting instead for informal, even more precarious forms of employment.⁵⁰ Women who do continue in employment beyond marriage face obstacles in access to maternity benefits, which various domestic laws provide for but are poorly implemented.⁵¹ Also, employers prefer to hire young and unmarried women (15 years is a common age to start), who can be paid low wages.⁵² As digitalisation increases in the industry, it is likely that unskilled women will be the first ones to lose whatever precarious livelihood their jobs in the garments sector provide.⁵³ In addition,

women are frequently paid significantly less than men (see Section 3.4). The gender pay gap in the sector is the result of pre-existing discriminatory societal structures, which are the reason that women only find employment in the lowest paid jobs that have very poor prospects for promotion.

Migrant women are particularly susceptible to exploitative working conditions. The informal sector of the garment industry, in particular, thrives on migrants.⁵⁴ While systematic data is not available, it is estimated that women outnumber men among migrant workers in the garment sector.⁵⁵ Those with an irregular status are particularly exposed to certain forms of forced labour; their passports may be withheld by employers, recruitment agencies or labour brokers.⁵⁶ In some countries, such as Thailand and Malaysia, migrant workers are prohibited by law from forming or taking up positions in trade unions, and in other cases their right to freedom of association is restricted through contracts.⁵⁷ Women migrant workers who lose their jobs at times of economic down-turn may also lose their visa status, and risk falling victim to trafficking in the sex industry.⁵⁸ The Clean Clothes Campaign reports that migrant women workers face particular difficulties in accessing social protection, for example, the right to paid maternity leave enshrined under Thailand's labour laws is practically never upheld for migrant workers.⁵⁹ A pregnant migrant worker is also at risk of being dismissed from work once her pregnancy advances, which – although a violation of Thailand's labour laws – is a common practice among employers. Furthermore, discriminatory measures targeting female migrant workers are supported by public authorities: pregnancy testing

48 ADB/ILO Regional Office for Asia and the Pacific (2011), pp. 16, 18.

49 ILO (2016), p. 6.

50 Business for Social Responsibility (2017), p. 22.

51 Business for Social Responsibility (2017), pp. 22–23.; Chowdhury (2017), pp. 122–123.

52 Beresford/Cucco/Prota (2017), p. 142.

53 Business for Social Responsibility (2017), p. 8.

54 Save the Children (2015), p. 42.

55 In some countries – like Thailand where approximately 80 per cent of the migrant workers are from Myanmar – women outnumber male migrant workers by at least 2:1, see Clean Clothes Campaign (2014), p. 29.

56 OECD (2017), p. 124.

57 SOMO (2016).

58 This risk is particularly prevalent in Malaysia and Thailand, see Clean Clothes Campaign (2009), p. 18.

59 Clean Clothes Campaign (2014), pp. 29–30.

is part of the process for obtaining a work permit, and the employer sees the results. These discriminatory policies often lead migrant women to seek out dangerous abortions, as documented in the case of migrants from Myanmar.⁶⁰

All these factors taken together limit the ability of female employees take action to improve their working conditions. For example, Thai and Malaysian unions have pointed out the difficulty they experience in recruiting women. Women may feel that male-led unions inadequately address women's specific concerns.⁶¹ Women also often lack knowledge about how to engage in debate in a manner targeted at advancing their working conditions, which may in part be the result of a cultural stigmatisation of outspoken women.⁶² Furthermore, many women spend the little time they have away from work doing unpaid care work, which

makes it even more difficult for them to organise at the workplace.⁶³ All these well documented impacts on women demonstrate that discrimination against women in society is not merely going unaddressed, but is actually being actively reproduced by the garment sector.⁶⁴

Gender inequality remains a serious issue in the global North as it does in the global South. Figure II shows the levels of gender inequality in 2005 and 2015 in selected garment manufacturing states and compares these countries with the European Union (EU-28, averaged values). India, Pakistan and Bangladesh rank at the bottom in this comparison, China is well in the lead. It is noteworthy that gender inequality in Vietnam and Thailand actually increased between 2005 and 2015. On balance, some progress can be seen, but challenges lie ahead.

Figure II: Two steps forward, one step back: gender inequality in selected garment manufacturing countries in 2005 and 2015



Data derived from the UN Gender Inequality Index (2015). URL: <http://hdr.undp.org/en/data#>. Figures for the EU-28 are based on our own calculations. Data for Myanmar was available only for 2010 and 2015.

60 Ibid.

61 Clean Clothes Campaign (2009), p. 17.

62 Chowdhury (2017), p. 126.

63 Hamm (2012), p. 225.

64 Schultze (2015).

3.2 Child labour remains widespread

Child labour remains a serious problem in the garment industry.⁶⁵ While governments and corporations tend to deny the existence of child labour in registered garment factories, research suggests otherwise.⁶⁶ Estimates suggest that about 16.7 million children between the age of 5 and 17 work in South Asia, and that approximately 10.3 million of them are under 15. The dire working conditions in the garment industry have a disproportionately higher impact on children's development and health.

The widespread existence of child labour in garment manufacturing is a consequence of economic drivers and lax monitoring and enforcement structures.⁶⁷ From the employer's point of view, child labour saves labour costs, because children are paid lower wages. From the parents' perspective, it may make more sense to send a child to work rather than to school, particularly if schooling is of poor quality and involves additional costs.⁶⁸ In fact, poverty is one of the main drivers for child labour, yet when children leave school early they are more likely to end up in occupations that limit their chances of contributing significantly to household income. Crucially, migrant populations with informal residency status are particularly vulnerable to child labour because they face even greater obstacles in accessing education.⁶⁹ Child labour is particularly widespread in the informal employment so common at most stages of the supply chain and is therefore difficult to document and measure.

3.3 Persisting problem of forced labour

Forced labour is yet another critical and persistent feature of the garment industry that stems from pressure to keep production costs low.⁷⁰ It permeates the entire supply chain, from raw material extraction to manufacturing, and is particularly pronounced at lower-tier suppliers. Issues of forced labour and human trafficking frequently arise early in the supply chain, at the raw materials level, such as in connection with cotton production in India or Pakistan, and they extend to the manufacturing stages of garment and textile production.

Those most affected are workers in the informal sector, female migrants and children, as these workers typically do not have employment contracts that specify conditions like working hours and wages.⁷¹ This includes both internal and foreign migrant workers from other countries in the region. In India, human trafficking mainly affects those from disadvantaged backgrounds, such as members from low castes or religious minorities, who are forced to work in spinning mills or embroidery factories due to debt bondage. In other countries, international migrants are most affected.⁷² Overall, informal sector workers, made up largely of women and many children, are particularly vulnerable to forced labour.

3.4 Wages are too low

For the most part, the wages paid to garment workers are not sufficient to live on. While there

65 Agriculture accounts for 52 per cent of all child labour. Of the remaining children in child labour, 3.8 million (35 per cent) are found in the services sector and 1.4 million (13 per cent) are found in industry. See: Alliance 8.7 (2017), p. 3.

66 The Centre for Research on Multinational Corporations (SOMO) has documented child labour in India, China, Bangladesh, Thailand and Pakistan; see SOMO (2014). Bangladesh, Myanmar and Timor-Leste have not ratified ILO Convention No. 138 on the minimum age for admission to employment and work.

67 See: ILO/International Programme on the Elimination of Child Labour (2015), pp. 9–10.

68 Jensen (2000), p. 13.

69 OECD (2017), p. 103. UNICEF has highlighted further impact areas for children related to the working conditions and living conditions of their parents in the garment industry. These include inadequate maternity protection, challenges for breastfeeding, limited childcare options, poor health and nutrition of working mothers, low wages and the lack of decent living conditions. See UNICEF (2015).

70 SOMO/Repórter Brasil (2015).

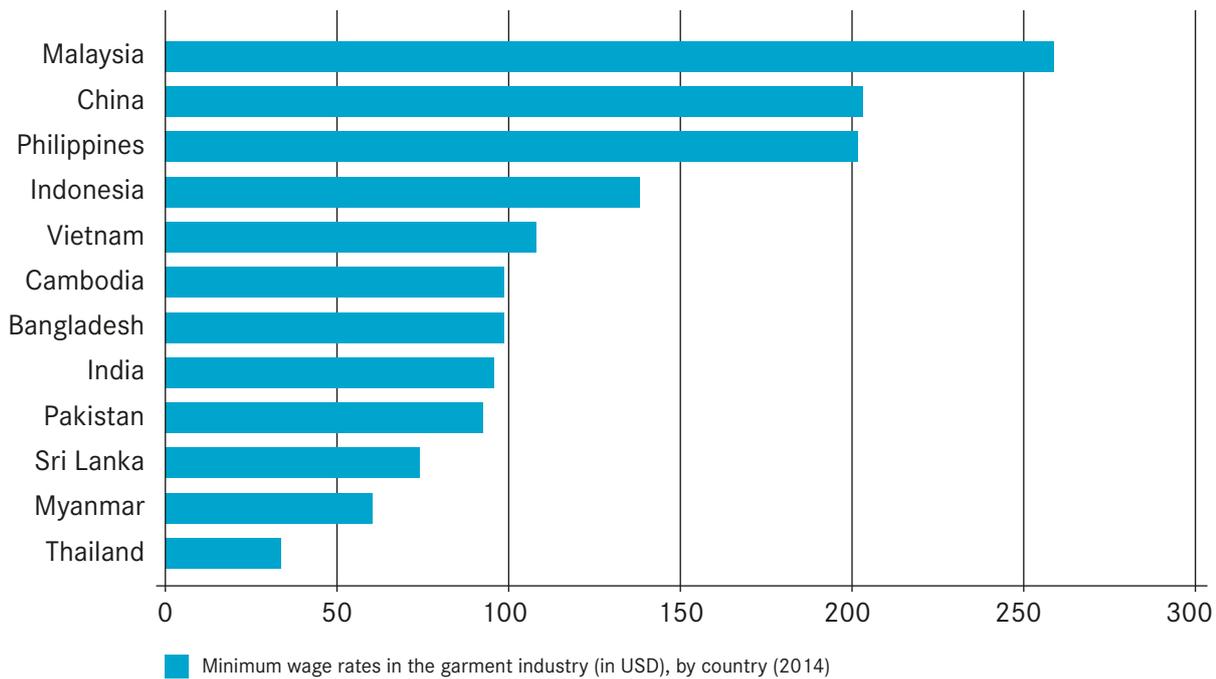
71 OECD (2017), p. 129.

72 Know The Chain (2016).

is no universal definition of a living wage, at the very minimum, wages are a means to satisfy basic needs, such as food, clean drinking water, and health care and to exercise the respective human rights (Art. 11, 12 International Covenant on Economic, Social and Cultural Rights). As an approach to quantifying a living wage, Labour Behind the Label suggested calculating basic living costs of a typical household comprising four or more people, taking into account whether a given country maintains a social security system and ensuring that the wage so derived enables a dignified life.⁷³ This resonates with the understanding of decent work in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which calls for employers to provide adequate conditions of work safety and an income allowing workers to support themselves and their families (Articles 6 and 7, ICESCR).

What is the current wage situation in the region? ILO evaluations of ten Asian garment producing countries (Bangladesh, Cambodia, China, India, Indonesia, Thailand, Lao People’s Democratic Republic, Pakistan, Philippines and Vietnam) found that the average monthly earnings of garments factory workers were less than USD 200. Notably, wages for men were consistently higher than those for women, although the extent of this gap varied from one country to another.⁷⁴ Asian floor wage figures for 2015 show that the minimum wages introduced in some garment producing countries do not amount to living wages. For instance, in Bangladesh the minimum wage was about EUR 50 in 2015, covering approximately 18 per cent of all expenses necessary to fulfil a person’s basic needs. The gap is 20 per cent in Sri Lanka, 34 per cent in Cambodia, 62 per cent in India and 66 per cent in Indonesia.⁷⁵

Figure III: Garment workers living on a shoestring



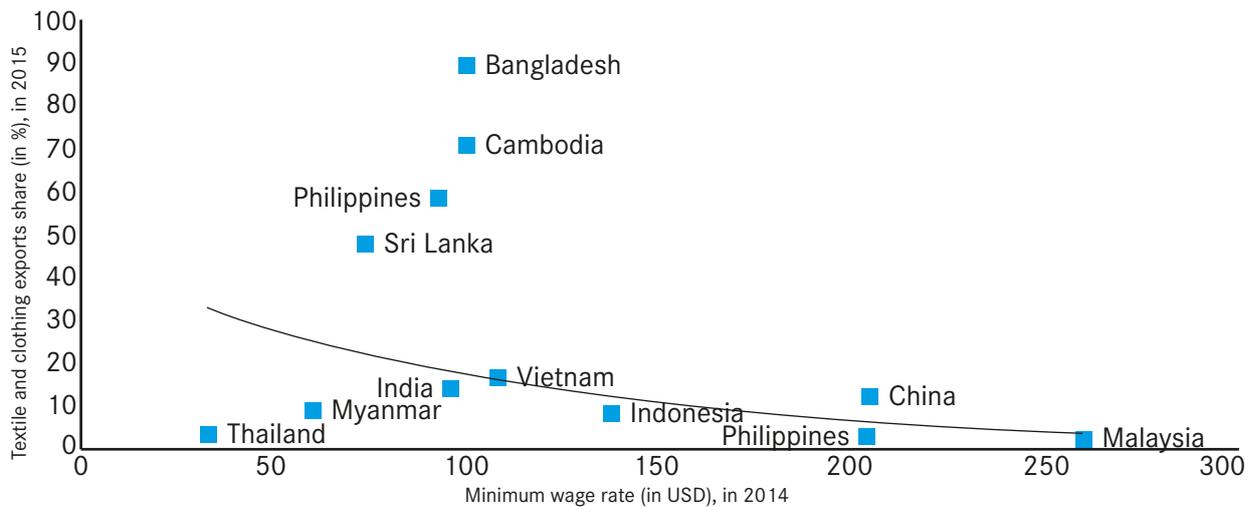
Data: ILO Factsheet 2014

73 Labour Behind The Label.

74 ILO Regional Office for Asia and the Pacific/ILO Regional Office for the Arab States (2016).

75 See Labour Behind The Label.

Figure IV: Racing to the bottom: textile and clothing export share (in %) in relation to minimum wage (in USD), selected countries



Data on textile and clothing export shares derived from WITS database (URL: <https://wits.worldbank.org/>). The minimum wage figures were put together based on: ILO regional office for Asia and the Pacific. Regional and Economic Social Analysis Unit (RESA). Research Note. November 2014 (URL: http://www.ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/documents/publication/wcms_317002.pdf). Additional calculations were done to aggregate the data to obtain single figures for each country. Due to data unavailability, the minimum wage figure for Myanmar was taken from a different source: ILO report on wages and productivity in the garment sector in Asia and the Arab States (URL: http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_300463.pdf).

Figure IV plots textile and clothing export shares against minimum wages for selected garment manufacturing countries. The higher the minimum wage in a given country is, the smaller is the textile and clothing industry's share in that country's total exports. With respect to labour rights, this correlation evokes the race to the bottom imagery: big garment producing countries are and remain important players in the global market to no small extent because they maintain comparatively low minimum wages for their largely female workforce.

As discussed above, the main reasons behind the low wages in the textile and garment sector are high competition among suppliers to position themselves as cost-effective business locations and the fragmented representation of employees. Wages are the most flexible in production costs and as such are particularly vulnerable to competitive pressures.⁷⁶ These structural obstacles for the enforcement of adequate wages are exacerbated

by the growing role of informal labour in global supply chains: informal work relationships do not fall within the scope of legislation or its enforcement by state authorities, and informal workers do not benefit from trade union engagement in the cause of living wages.⁷⁷ Where freedom of association is fully guaranteed, wage negotiations between representatives of employers and trade unions take place on an equal footing and can be an important tool to achieve living wages.

3.5 Social protection and work safety are inadequate

There has been little progress in improving the social protection and safety of workers. So far, none of the relevant garment producing countries in Asia has ratified the ILO's Social Security Convention No. 102. This convention contains provisions addressing various aspects of social

⁷⁶ See Vaughan-Whitehead (2011), p. 22.

⁷⁷ See Scheper/Menge (2013), pp. 37–38.

protection, such as sickness, employment-injury, old-age and maternity benefits.⁷⁸ Even where domestic laws matching the provisions of the Convention exist, workers' access to social protection and security rights is not properly respected nor enforced by employers or public authorities.

Among the most pressing issues are the rules governing sick leave,⁷⁹ discrimination against pregnant workers and the lack of remedies for work-related injuries. Pregnancy-based discrimination in the hiring and promotion process is prevalent at many production sites. Although pregnant workers are entitled by law to maternity benefits,⁸⁰ employers often force them to resign in order to avoid the cost of paid maternity leave⁸¹ (see above, Section 3.1). Work-related injury is another major problem in the area of social protection. As compensation for injuries suffered at work is tied to the existence of employment contracts, which are a rarity in this industry, many short-term and irregular workers who are injured at work do not receive any compensation.⁸²

Due to the rapid growth of the textile and garment industry as well as the lax enforcement of labour safety regulations, factories in many countries perform poorly in terms of safety standards. This includes, among other things, insufficient emergency escape routes.⁸³ According to fire department figures quoted by the Clean Clothes Campaign, factory fires alone killed almost 500 workers in Bangladesh between 2006 and 2010.⁸⁴ As their work typically takes place in closed environments, employees suffer from fine-dust pollution, which has well-documented negative health effects.⁸⁵

3.6 Biodiversity and human health are in danger

Environmental risks related to the garment industry are diverse and exist at different stages of the supply chain. They include the use of hazardous chemicals, excessive water consumption and pollution. These risks are not only inherent to the garment sector (for example the wet processing), but also arise during cotton cultivation:

- The Organic Consumers Association estimates that cotton production accounts for more than 25 per cent of all the insecticides used in the world and 12 per cent of all pesticides used.⁸⁶
- The World Wildlife Fund calculates that 20,000 litres of water are needed to produce one kilogram of cotton – the equivalent of a single T-shirt and a pair of jeans.⁸⁷
- Runoff from cotton fields containing pesticides, fertilisers, and minerals contaminate rivers, lakes, wetlands, and underground aquifers. These pollutants can affect biodiversity directly by immediate toxicity or indirectly through long-term accumulation. In Faisalabad, Punjab province, one of Pakistan's major cotton production sites, 67 per cent of drinking water samples collected by the Pakistan Environmental Protection Agency and the Japan International Cooperation Agency in 2014 were judged “not appropriate for human usage”.⁸⁸

78 See NORMLEX (Ratifications of C102). Neither has ratified ILO's Employment Injury Benefits Convention, see NORMLEX (Ratifications of C121).

79 See for Cambodia and Bangladesh: Human Rights Watch (2015a), p. 7; Human Rights Watch (2015b), p. 21.

80 For example according to Article 46 of the Constitution of the Kingdom of Cambodia (1993 (rev. 2008)); Sec. 46 of the Bangladesh Labour Code, Bangladesh Parliament (2013).

81 Human Rights Watch (2015a), p. 72; Human Rights Watch (2015b), p. 25.

82 European Parliamentary Research Service (2014), p. 5.

83 Human Rights Watch (2015a), p. 72; Human Rights Watch (2015b), pp. 18, 25.

84 Clean Clothes Campaign (2012), p. 1.

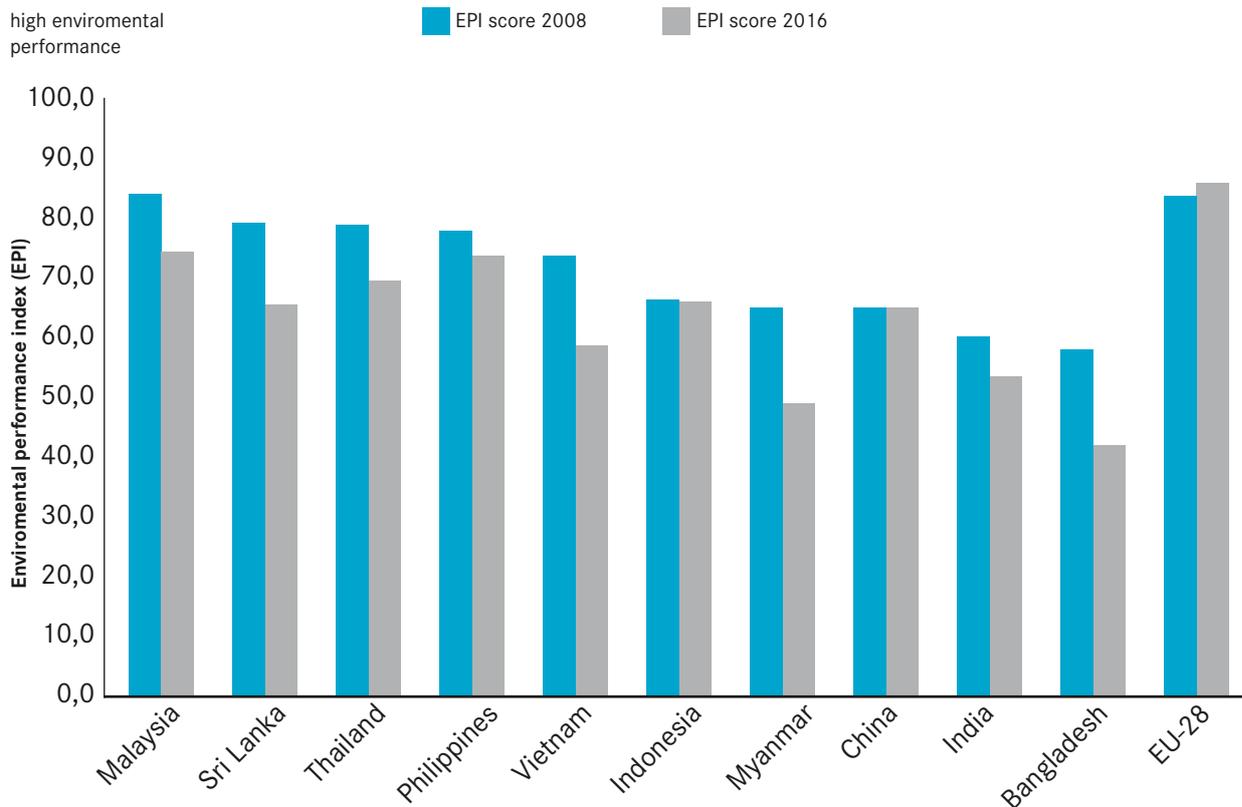
85 Typical health effects include headache, sleep deprivation, chest pain, fainting and fungal infections. See Tasnim et al. (2016), p. 6.

86 Allen (2004).

87 World Wild Life Fund (2018).

88 Business Recorder (07.07.2014).

**Figure V: Losing out on green:
environmental performance in selected garment manufacturing countries**



Data was derived from the Environmental Performance Indicator (EPI). Source: Environmental Performance Index, Yale Center for Environmental Law and Policy, Yale University Center for International Earth Science Information Network (CIESIN), Columbia University. Figures for the EU: the EPI score 2016 for the EU is based on 28 member states, the 2008 score excludes Malta and is thus based on 27 member states. The EU figures were computed by the author by averaging the member states' EPIs.

The industry is also responsible for substantial greenhouse gas emissions and other hazardous pollutants. These emissions occur during the production of fibres, textile and garment finishing, transportation, packaging and the use phase of the garment.⁸⁹ A 2014 World Bank report states that textile and leather tanneries were among the industries contributing most to air pollution in Pakistan.⁹⁰

Figure V depicts the change between 2008 and 2016 in the environmental performance of selected garment manufacturing countries – based on the environmental performance index

(EPI) – and compares them with those of the European Union (EU-28, averaged value). The countries differ rather markedly in their Environmental Performance Index (EPI) scores.

3.7 Access to remedy remains an exception

While international human rights law recognises the right to a fair trial and the right to an effective remedy,⁹¹ rights-holders face a variety of obstacles to access to judicial or non-judicial remedy

⁸⁹ OECD (2017), p. 170; Muthu (2015), pp. 93–102; for energy-related GHG emissions of the textile industry in China see Huang/Geng (2017).

⁹⁰ The World Bank (2014), p. 143. See p. 146 for more detailed data on typical emissions for textile processing units.

⁹¹ These include for instance: Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR), Articles 6 and 13 of the European Convention on Human Rights (ECHR).

mechanisms for human rights abuses in the garment industry.⁹²

- Rights-holders affected by corporate human rights abuses in the garment sector often live in production countries with weak governance structures that are unable or unwilling to protect human rights. To begin with, state entities often fail to properly investigate a case, and the civil and criminal codes are considered outdated and full of loopholes.⁹³ If a case reaches a court, rights-holders are often confronted with excessively long trials, high costs and a high degree of judicial corruption.⁹⁴
- Rights-holders seeking judicial remedy in home states of brands and retailers do not fare any better.⁹⁵ Transnational litigation against transnational corporations based on criminal or tort law faces jurisdictional and applicable law barriers as well as procedural and practical barriers.⁹⁶ In the garment sector, the problem is further exacerbated by the opaque supply chains and sourcing models.⁹⁷ As a consequence, transnational litigation is rare.
- Rights-holders also face barriers to access to non-judicial state-based grievance mechanisms, such as the Organisation for Economic Co-operation and Development's (OECD) National Contact Points. These are not able to provide effective remedy either as they are not easily accessible to rights-holders, are often not impartial and lack adequate transparency and predictability in their operations. In the

vast majority of cases they deal with, no compensatory remedy nor concrete improvements in the situation on the ground are achieved.⁹⁸

- Finally, company-developed operational-level grievance mechanisms rarely meet the core criteria for such mechanisms of legitimacy, accessibility, predictability, equitability and rights-compatibility. This is mainly due to the fact that these mechanisms tend to be designed without input from affected rights-holders.⁹⁹

As a result, rights-holders affected by human rights abuses in the garment industry are often *de facto* excluded from access to justice, even when they would have a legitimate claim against a company within the jurisdiction, say, of a German or European court. This leads to *de facto* impunity for companies in the global North that cause or contribute to human rights abuses.¹⁰⁰

What can be done to combat this lack of accountability?

Improving governance in production countries is an important part of the solution but is one that progresses rather slowly. It is therefore necessary to open up the possibility of bringing extra-territorial lawsuits before courts in the global North. Strategic litigation has an important role to play: it can make existing obstacles visible and thus highlight the need for legislative and procedural reform. The case against the German garment retailer KiK relating to its involvement in a factory fire in Pakistan¹⁰¹ is the first tort-based business

92 For non-judicial grievance mechanisms see for instance Delaney (2016); Delaney/Connor (2016); Delaney/Conor/Rennie (2016).

93 International Attorney (25.11.2011).

94 Public Radio International (03.02.2012).

95 Schrempf-Stirling/Wettstein (2015), p. 546. See pp. 550–554 for an overview of selected lawsuits.

96 For a comprehensive overview of the legal status quo in the EU see: Alvarez Rubio/Yiannibas (2017), chapters 1 and 2.

97 To improve access to remedy in the area of business and human rights at the EU level, the European Union Agency for Fundamental Rights has issued an opinion addressing the need to lower barriers to make judicial remedies more accessible and enhance the effectiveness of judicial remedies – especially in extraterritorial situations. See: European Union Agency for Fundamental Rights (2017).

98 For a criticism of the effectiveness of OECD National Contact Points (NCP) see OECD Watch (2015). Of the 18 NCP cases concluded worldwide in 2017, only one (5 %) resulted in a compensatory remedy and a concrete improvement in the situation of the complainants. See OECD Watch (2018), p. 2.

99 EarthRights International and SOMO advocate for community-driven grievance mechanisms, designed by affected communities and NGOs. See: https://earthrights.org/wp-content/uploads/ogm_discussion_paper.pdf (accessed 05.07.2018).

100 Wesche/Saage-Maaß (2016), p. 384.

101 Muhammad Jabir and Others v KiK Textilien und Non-Food GmbH – 7 O 95/15 (pending at District Court Dortmund).

and human rights litigation under German law. The court will need to assess whether the retailer effectively controlled the harmful operations of their subsidiaries and suppliers and whether KiK's management in Germany itself created a risk.¹⁰²

Overall, the case against KiK will show whether tort-based litigation against parent or buying companies for overseas human rights infringements before a German court is feasible.¹⁰³

¹⁰² Wesche/Saage-Maaß (2016), pp. 376–377.

¹⁰³ The four plaintiffs are demanding compensation from Kik. The court is to consider whether Kik, as the main buyer of the Ali Enterprises factory in Pakistan, bears co-responsibility for the working conditions there. Currently, an expert opinion is being sought on whether Pakistani law provides a legal basis for liability claims against Kik – which Kik denies.

4 Policy challenges: actors, instruments, activities

The analysis so far has shown that human rights abuses in the garment industry are systematic and widespread. In what follows, the numerous instruments used by different

actors to improve the human rights track record will be briefly assessed against UNGP requirements.

The UN Guiding Principles on Business and Human Rights

Pillar 1: the state duty to protect human rights

All states have a duty to protect everyone within their jurisdiction from human rights abuses committed by companies. The Guiding Principles affirm that the state duty to protect individuals from human rights abuses committed by companies requires the state to take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.¹⁰⁴

Furthermore, the UNGPs stipulate that states should clearly set out the expectation that all companies domiciled in their territory and/or jurisdiction respect human rights throughout their operations. They note that, at present, states are not generally required under international human rights law to regulate the extraterritorial activities of companies domiciled in their territory and/or jurisdiction, but are also not generally prohibited from doing so, as long as there is a recognised “jurisdictional basis” and the exercise of jurisdiction is reasonable (see Guiding Principle 2). The Guiding Principles recognise that there can be strong policy reasons for extraterritorial jurisdiction.

It should be noted that extra-territorial obligations are an evolving area of international law: between 2013 and 2018 treaty bodies issued 105 recommendations to states related to the field of business and human rights (compared to only 45 treaty body recommendations between 2000 to 2012);¹⁰⁵ a similar increase in the issue of recommendations in this area is found in connection with the Universal Periodic Review.

Pillar 2: the corporate responsibility to respect human rights

With regard to the responsibilities of businesses, the UNGPs represent a paradigm shift in that they go beyond the concept of corporate social responsibility, which can be understood as “international private business-self regulation”.¹⁰⁶ The UNGPs apply the concept of “due diligence” to “human rights risk” and thus introduce the concept of compliance to CSR.¹⁰⁷ The Guiding Principles make it clear that businesses have a responsibility to respect human rights, and they elaborate on the steps that companies must take to “know and show” that they do so. This comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context and size), in order to meet its responsibility. Responsibility for human rights due diligence

104 OHCHR (2014), p. 7.

105 Data Query at Universal Human Rights Index for “ThemeB6”; Date: “2018/12 to 2013/01”, Mechanism Type: “Treaty Bodies”, Annotation Type “Recommendation”: <http://uhri.ohchr.org/en/search/results#> (accessed 06.06.2018).

106 Sheehy (2015), p. 625.

107 Global Risk Affairs (03.05.2013).

means that companies must be aware of their impacts, avoid human rights infringements and address any potential or actual impact. If companies find that they have caused or contributed to harm, they must provide for or participate in effective remedy processes. The Guiding Principles clarify that the corporate responsibility to respect human rights is “independent of states’ ability or willingness to fulfil their duty to protect human rights.”¹⁰⁸

Pillar 3: access to remedy

When abuses occur, the duty to protect requires states to ensure that rights-holders have access to effective judicial and non-judicial state-based grievance mechanisms. Along with these mechanisms, non-state-based grievance mechanisms also have an important complementary role to play. They can exist at the operational level (meaning that companies are involved in implementing them), at a national level, or as part of multi-stakeholder initiatives or international institutions. All non-judicial grievance mechanisms have to meet key effectiveness criteria: they need to be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and (in the case of operational-level mechanisms) based on dialogue and engagement.

The role of National Human Rights Institutions (NHRIs)

Under Pillar 1, NHRIs “have an important role to play in helping states identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-state actors” (commentary on UNGP 3). They should also be involved both in the preparation of NAPs on business and human rights and in monitoring their implementation.¹⁰⁹

Under Pillar 2, NHRIs can provide guidance on human rights to businesses. Companies operating in complex contexts, such as conflict-affected areas, should consult with credible, independent experts including NHRIs (commentary on UNGP 23).

Under Pillar 3, NHRIs have a particularly important role to play in filling gaps in the provision of remedy for business-related human rights abuses where appropriate, “by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms” (commentary on UNGP 27).

4.1 Assessing corporate self-regulation

Over the past two decades, there have been numerous voluntary initiatives of corporate self-regulation, with the objective of improving the human rights situation in the supply chain of the garment industry. Such initiatives include certification schemes, labels, social audits and particularly multi-stakeholder initiatives.

Corporate self-regulation schemes serve two purposes. First, they provide a platform for exchange

on ethical trade between companies, non-governmental organisations (NGOs) and trade unions. Second, corporate self-regulation tries to address specific problems in the supply chain, based upon a code of conduct or set of standards stipulating rules on various aspects of garment production. Adherents of such schemes typically undertake to prevent environmental harm and/or respect labour rights. Often, the scope of the standards corresponds to that of internationally recognised guidelines, such as the ILO core conventions. But most voluntary standard systems in the garment sector do not cover all stages of the production

¹⁰⁸ OHCHR (2014), p. 8.

¹⁰⁹ UN Working Group on Business and Human Rights (2014), pp. 7, 9–10.

Alliance for Bangladesh Worker Safety

The Alliance for Bangladesh Worker Safety was founded in July 2013 and is made up of 29 North American apparel companies, retailers and brands. The Alliance has developed a standard for fire, structural and electrical safety to which factories are held by way of an independent inspection. The Alliance seeks to achieve substantial improvement in worker safety in participating factories by 2018. In 2014, the Alliance has launched a telephone helpline operated by independent third-parties, which enable workers to raise safety concerns anonymously. The helpline reports a cumulative total of 19,095 “substantive helpline issues” reported (in 1,259,004 calls received by June

2018).¹¹² In addition, 1,576,706 workers and 28,040 security guards received fire safety training.¹¹³ The process of eliminating safety defects is advancing at a slow pace. Out of 658 currently active factories, only 234 have completed their Corrective Action Plans (CAPs).¹¹⁴

As the Alliance’s membership is made up entirely of companies, workers are not represented in its decision making or verification of progress. It is also characterised by low levels of transparency. In particular, there is a lack of reports on progress made at individual factories that go beyond general categorisations such as “on track”.¹¹⁵

process, and many of them focus either on environmental or on social and labour issues.

Adherence to the code of conduct is either reviewed through external (“third-party”) audits alone or through a mix of internal and external audits, depending on the terms of the participants’ agreement. Usually, a review of the entire supply chain is intended, but this is not always specified in the initiatives’ guidelines. Some initiatives issue auditable certifications,¹¹⁰ while others rely on making data from their verification audits public.¹¹¹ Usually, initiatives also aim at establishing complaint mechanisms administered by each of these businesses involved or by an industry association with or without stakeholder participation.

Since the Rana Plaza collapse in 2013, more businesses have developed and adopted environmental and social standards and become parties to collective agreements between brands and retailers and trade unions to improve building

safety and fire prevention. Prominent examples include the Accord on Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety, portrayed in the boxes above and below.

NGOs in particular have asserted that forms of corporate self-regulation like the Alliance and similar voluntary initiatives have failed to eliminate adverse human rights impacts in the garment supply chain¹¹⁶ – though they do not deny the gradual improvements in key areas such as workplace safety. There are a number of factors involved in the failure of corporate self-regulation to comprehensively improve the overall situation garment workers:

- Initiatives often select specific important issues, rather than pursuing a comprehensive approach to human rights. For instance, the effectiveness of corporate codes of labour practice is impaired from the outset when they

110 Like Social Accountability International, SA8000, see: <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1689> (accessed 25.01.2018).

111 All of FWF’s brand performance checks are available online, see: <https://www.fairwear.org/resources/?type=brand-performance-checks> (accessed 25.01.2018).

112 Alliance for Bangladesh Worker Safety: Alliance Progress June 2018 (accessed 04.07.2018).

113 Alliance for Bangladesh Worker Safety (2017), p. 3.

114 Ibid.

115 International Labor Rights Forum, Worker Rights Consortium, Clean Clothes Campaign and Maquila Solidarity Network accuse the Alliance of “substantially overstating the success of its member brands’ safety efforts and understating the continuing risks to workers” as many of the factories listed as “on track” on the Alliance website still have major safety hazards. Clean Clothes Campaign (2016a), p.11, 12.

116 Clean Clothes Campaign (2016b) p. 2; The Transnational Institute (2016); Human Rights Watch (2017).

make no allowance for workers' rights to organise and bargain collectively.¹¹⁷

- More often than not, voluntary schemes lack adequate monitoring.¹¹⁸ Credible baseline assessments are missing, and reporting requirements for participating companies lack robustness, making it virtually impossible to prevent selective disclosure. In the case of many initiatives the results of their review processes are not documented,¹¹⁹ thus these processes lack transparency.¹²⁰ Company compliance with an agreed set of rules is often reviewed by way of audits¹²¹ that are plagued by conflicts of interest and validity issues.¹²² Ticking off items on a standardised checklist provides only a snapshot of a garment factory on the day of the audit.¹²³ A general lack of transparency, participation and accountability in combination with high corruption rates in many garment producing countries makes audits prone to error. The German certification company TÜV Rheinland, for instance, was accused of making false statements concerning labour rights compliance and safe working conditions in its audit of the Rana Plaza factory in Bangladesh.
- Many corporate initiatives, multi-stakeholder approaches among them, proceed on the assumption that human rights impacts along complex supply chains are caused exclusively by wrongdoing on the part of suppliers. Accordingly, their audits focus on compliance at the lower tiers of the supply chain.¹²⁴ It thus remains common for buyers and retailers to deny or obscure their own responsibilities:

responsibility is conveniently attributed to the garment factories, the least influential business entities in the supply chain, and/or to governments, which are known for prioritising trade over human rights concerns.¹²⁵ The suppliers' failure to comply is presented as regrettable, but as outside the brand's own sphere of influence. H&M, for instance, acknowledges the need to promote freedom of association, and ensure that workers' representatives have a voice and trade unions can negotiate and bargain collectively. Therefore, they have launched projects in several countries, including in Bangladesh, aimed at improving social dialogue and industrial relations through awareness raising and capacity building.¹²⁶ This is a positive step, but the focus should be the brand's own actions and their repercussions at the production site level. Retail companies do not do enough to reduce pressure on their business partners in producing countries. In particular, most of them do not sufficiently consider pricing policies and contract design, including provisions on the termination of contracts, as instruments with which they can exercise their influence to prevent adverse human rights impacts.

Given the current record of corporate self-regulation, it seems clear that a solution to human rights problems in the garment supply chain will not be achieved solely through voluntary initiatives. Rather, their value is to be found in their potential to complement binding approaches. For instance, multi-stakeholder initiatives may improve policy design and build more collaborative relationships between government, industry, and civil

117 See Barrientos/Smith (2007), p. 715.

118 See Royal Society for the Protection of Birds (2015), p. 12.

119 There are exceptions, e.g. FWF publishes its performance checks on its website, see above.

120 Royal Society for the Protection of Birds (2015), p. 12.

121 On the shortcomings of audits see SOMO/Repórter Brasil Brazil (2015); Know The Chain (2016).

122 See Hamm (2012), pp. 228, 230. On the liability of auditors in the textile industry see: Terwindt/Saage-Maaß (2017).

123 Barrientos/Smith (2007), p. 717.

124 On the shortcomings of audits see SOMO and Clean Clothes Campaign (2013), p. 22–28, 49–50, 66–67; SOMO (2014), p. 2; Know the Chain (2016), p. 5.

125 For example: C&A has encouraged the Government of Bangladesh to adopt a regular wage review mechanism, which ought to help foster stability in the Bangladeshi garment sector, and requested steps to ensure the protection of workers' rights, with special attention to the legitimate representatives of workers who have been arrested. See: C&A (2017).

126 Ibid; H&M (2016).

Accord on Fire and Building Safety in Bangladesh

The Accord on Fire and Building Safety in Bangladesh is a legally binding agreement between global companies and retailers and trade unions, established after the Rana Plaza building collapse in 2013. It has been signed by over 200 apparel brands, two global trade unions, eight Bangladeshi trade unions and four NGOs, acting as witnesses.¹²⁷ It aims to implement a program of reasonable health and safety measures in the Bangladeshi ready-made garment industry within five years.¹²⁸ All factories producing for companies that have signed the Accord are subject to independent inspections on fire, electrical and structural safety on the basis of the Accord's Building Standards. Inspection reports are publicly available on the Accord's website. Companies contribute money, the amount of which is

based on shipment values, with an annual maximum of USD 500,000, to fund the inspection and training programs.

Although promising, the Accord could improve in three areas. Firstly, the Accord (like the Bangladesh Alliance) would need to upscale considerably to include more factories that are part of the garment supply chain.¹³⁰ Secondly, while the Accord's terms include a provision under which signatory firms must arrange the necessary funds for remediation measures, the Accord does not monitor the implementation of this clause.¹³¹ It is thus easy for signatory firms to shy away from their responsibility to adequately compensate their suppliers. Thirdly, more efforts are necessary to strengthen union rights, so that workers can voice safety concerns without fear of reprisals.

society. In the long term they can thus prepare the ground for a broader acceptance of regulatory initiatives.¹²⁹

Voluntary initiatives can only play this complementary role if they meet certain minimum requirements, e.g. by making more use of existing levers, such as independent reviews of human rights objectives by trade unions, civil society organisations and NRHIs. In addition, voluntary initiatives need to address root causes for human rights abuses more vigorously rather than only their symptoms. To achieve this, companies must recognise and use their own sphere of influence. Many large apparel and footwear companies have

established supplier-monitoring systems, and apparel brands, retailers, manufacturers, and trade unions are collaborating to implement living wages through initiatives such as ACT (Action, Collaboration, Transformation).¹³² A small but growing number of businesses are demonstrating an awareness that some of the root causes for human rights abuses lie in their own decisions.¹³³ Nike, for example, found that excessive overtime had been caused by its own decision-making in 68 per cent of cases.¹³⁴ Accordingly, some companies have already committed themselves to binding agreements, as the example above shows.

127 The four NGOs are Worker Rights Consortium, International Labor Rights Forum, Clean Clothes Campaign and Maquila Solidarity Network, see: <http://bangladeshaccord.org/signatories/#witness-box> (accessed 25.01.2018).

128 See Website: Accord on Fire and Building Safety in Bangladesh: Frequently Asked Questions. <http://bangladeshaccord.org/about/faqs/> (accessed 05.07.2018).

129 The Royal Society for the Protection of Birds (2015), p. 39.

130 Taken together the Bangladesh Accord and the Bangladesh Alliance only cover around 2,300 out of the approximately 7,000 garment facilities in the country. This means that most rights-holders do not benefit from the progress in building and fire safety. See: Labowitz/Baumann-Pauly (2015), p. 4, 19.

131 Khan/Wichterich (2015), p. 17.

132 Know The Chain (2016), p. 5. ACT members include seventeen global brands and retailers and IndustrialALL Global Union.

133 Mares (2016), p. 192.

134 Mares (2016), p. 192. Nike wrote that it "continued to assess root causes of excessive overtime [...] [It was able to establish that 68 per cent of incidents analysed] were attributable to factors within Nike's control, primarily forecasting or capacity planning issues, shortened production timelines and seasonal spikes.", see NIKE (2012), p. 20.

4.2 States in the global South: too little enforcement and monitoring

The analysis will now turn to production states and actions their governments have taken to reduce adverse impacts on human rights. Four countries, Bangladesh, India, Pakistan and Myanmar, were chosen for the stocktaking. Their selection was based on the importance of the sector for the countries, including its share in export earnings, on the existence of human rights protection gaps typical of the sector there, and on their status as partner countries of German development cooperation. Myanmar was also chosen due to the special dynamics connected to the process of transformation to a market-economy there. Without claiming to be exhaustive, the following subsections discuss achievements made in the four countries and point out remaining challenges.

4.2.1 Bangladesh: improvements in fire and safety, gridlock with respect to trade unions

The Bangladesh Labour Act was revised in 2013 in the wake of the Rana Plaza collapse. The revised legislation introduced new safety measures, and almost three-quarters of export-oriented garment factories nationwide have been inspected for structural and fire safety, many of which have undertaken remediation efforts. The capacities of regulatory authorities, such as the Labour Inspectorate and the Fire Service, were increased in order to improve monitoring and oversight. Awareness of the conditions under which clothes are produced has improved among all stakeholders, including relevant officials.¹³⁵ While child labour continues to be a serious problem in the

ready-made garments sector, it has declined considerably in export-oriented garment factories, partly due to the zero-tolerance policy on the part of purchasing companies.¹³⁶

Multi-stakeholder initiatives have contributed significantly to the described improvements. The three most prominent examples are briefly presented in the insert below.

The progress in safety and fire prevention demonstrates the potential of multi-stakeholder initiatives; such initiatives tend to prioritise the improvement of health and safety provisions, something which – though resource intensive – can be measured and counted and does not require political or economic restructuring.

Similar improvements in other workers' rights have yet to be achieved.¹³⁷ While the 2013 labour legislation made it slightly easier to form trade unions, Bangladesh has seen recurring crack-downs on protests and restrictions on labour union activities. One example is the detention of individuals with union affiliation and workers' rights advocates in late 2016.¹³⁸ The country's labour law still does not permit workers in export processing zones to form trade unions; and unions' access to foreign funding remains subject to approval by the Labour and Employment Ministry.¹³⁹ The 30 per cent minimum membership requirement to form a union has yet to be reduced.¹⁴⁰ Also, while technically responsible for dealing with trade unions, the Bangladesh Department of Labour (DOL) is hesitant to properly investigate allegations of rights violations due to a lack of political will and enforcement powers.¹⁴¹ Following up on complaints filed at the DOL by unionists lies entirely within the discretion of the DOL, as there are no provisions in the law obliging

135 ILO (2015), p. 12, 13; Human Rights Watch (2015b), pp. 19–20. For 2013 amendment see Bangladesh Parliament (2013).

136 Indirectly brands continue to contribute to child labour outside their supply chains and sometimes in entirely different sectors. See: SOMO (2017), p. 8.

137 ILO (2015), p.3.

138 The New York Times (22.01.2017).

139 Human Rights Watch (2015b), p. 76.

140 Human Rights Watch (21.04.2016); European Commission (2017a), p. 9.

141 Human Rights Watch (2015b), p. 52. European Commission (2017a), p. 3, 19.

Positive results from three multi-stakeholder initiatives in Bangladesh

The National Tripartite Plan of Action on Fire Safety and Structural Integrity in the Garment Sector (NTPA) is a national agreement between the Government of Bangladesh and representatives of Bangladesh employers' and workers' organisations.¹⁴² To date, it has developed and implemented several key measures, including the submission of a labour law reform package, the upgrading of the Bangladesh labour inspectorate and factory safety assessments in cooperation with international multi-stakeholder initiatives such as the Bangladesh Accord and the Alliance for Bangladesh.¹⁴³ One of its greatest successes has been the compensation scheme for the victims of the Rana Plaza building collapse, which was funded by international brands and buyers.¹⁴⁴

The ILO Programme on Improving Working Conditions in the Ready-Made Garment Sector in Bangladesh supports the implementation

of the objectives laid out in the NTPA. One of the most essential parts of the programme is "Better Work Bangladesh", a collaboration between the ILO and the International Finance Corporation. It conducts assessments on the working conditions in 167 affiliated factories and aims to have more than 500 factories in the programme by 2021. As of January 2018, 229 assessments have been completed. It also provides labour rights training to workers and management staff.¹⁴⁸

The EU Sustainability Compact is a tripartite agreement between the EU, the government of Bangladesh and the ILO to promote continuous improvements in labour rights and factory safety.¹⁴⁹ The Compact has reported considerable progress, such as the amendments of labour law, which facilitate the establishment of trade unions, enhanced capacities of the Department of Inspection for Factories and Establishment, as well as the formation of a Remediation Coordination Cell (RCC).¹⁵⁰

the DOL to investigate allegations of unfair labour practices.¹⁴⁵

As a result, only a very small percentage of factories in Bangladesh have registered unions, and the minimum wage for entry-level garment workers (USD 68/BDT 5,300 per month, set in 2013) remains well below a living wage.¹⁴⁶ No employment injury insurance scheme (EII) has yet been established.¹⁴⁷ In sum, the many direct and

indirect adverse impacts of the garment industry on human rights persist.

4.2.2 India: legislative improvements not met by enforcement

Progress in India's garment industry was achieved mainly by new legislation, specifically statutes protecting children and women and setting minimum wages. In practice, however, many companies are not complying with the new legal requirements.

142 ILO News (25.07.2013).

143 Khan/Wichterich (2015). See for steps taken by the Bangladesh Ministry of Labor and Employment and other related stakeholders: Bangladesh Ministry of Labour and Employment (2015).

144 Bangladesh Ministry of Labour and Employment (2015).

145 Human Rights Watch (2015b).

146 As of September 2017 there were 644 registered trade unions in the Bangladeshi garment industry, see: European Commission (2017a), p. 3. With estimates on the number of garment factories ranging from 5000 to 7000 factories this equals a percentage of unionisation between 9 and 13 %. For minimum wage and demands to increase it see: Cowgill/Luebker/Xia (2015), pp. 1–2; IndustriALL Global Union (05.03.2018).

147 Clean Clothes Campaign (2018), pp. 3–4. The pertinent ILO Convention 121 has not yet been ratified by Bangladesh, but GIZ und ILO support the Bangladeshi Government in developing an EII, see GIZ: Employment Injury Protection Scheme; ILO: Developing a National Employment Injury Insurance (EII) Scheme.

148 ILO (2018), p. 7.

149 Government of Bangladesh/European Commission/ILO (2013).

150 Government of Bangladesh/European Commission/ILO (2014); European Commission (2017a), p. 7, 26.

An amendment to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (“CLPR Act”) was enacted in 2016, setting the minimum age for work at 14 and raising the minimum age for hazardous work to 18. UNICEF has criticised the amendment for allowing children under the age of 14 to be employed in a family enterprise, which, in UNICEF’s view, may make some child labour invisible, as it creates incentives for child labour to take place in home-based and informal settings. Further, it fails to protect children from trafficking and prevent children from dropping out of school due to long hours of work.¹⁵¹

The Indian government has also passed legislation on violence against women. The Prevention of Sexual Harassment Act (2013) requires every workplace with more than ten workers to set up an internal complaint committee for female workers who face sexual harassment.¹⁵² To date, regulatory authorities have not devoted significant resources or effective sanction mechanisms to ensure an effective implementation of the Sexual Harassment Prevention Act or to monitor compliance by factories.¹⁵³ About 3,000 textile mills have allegedly failed to establish complaint committees. In one non-representative survey of workers conducted in 2015, 75 per cent of respondents said that there was no such committee in their place of work.¹⁵⁴

Enforcement of existing legislation on minimum wages remains equally lax. Despite a decision by the Madras High Court in 2016 upholding a government order to raise the minimum and ordering the compensation of workers who had been paid below minimum wage in the past, many employers

have refused to do so, leaving workers to face lengthy court battles.¹⁵⁵ In addition, remuneration to be paid within the framework of apprentice schemes is very low and not sufficient to live on, while post-apprenticeship employment is uncertain. In particular, the *Sumangali* practice remains a problem.¹⁵⁶ Despite its banning in 1961, local textile and garment producers still hire young rural girls to work under miserable conditions by promising them a lump sum payable at the end of a three-year period of employment, which can then be used as a dowry.¹⁵⁷

Overall, the legal framework for protection against human rights abuses in the sector remains incomplete and is insufficiently enforced. The informal sector must be addressed in order for legislative action to have more influence on the conditions in the garment industry: a large part of India’s garment industry operates in the informal sector, where there is limited or no legal protection for workers, no trade union protection or collective bargaining, denial of work-related benefits and few functioning complaint mechanisms. These problems are exacerbated by the exclusionary social structures of caste and gender.

4.2.3 Pakistan: progress on the provincial level, but no federal strategy

Pakistan has agreed to fulfil certain labour standards in order to maintain its GSP+ status in the EU trading system.¹⁵⁸ Three out of four Pakistani provinces have enacted laws banning child labour, mostly in conformity with ILO standards. The governments of Punjab and Sindh have also raised the minimum wages for unskilled workers and apprentices.¹⁵⁹ The Punjab Integrated Project

151 UNICEF (25.07.2016).

152 See: The Sexual Harassment of Women at Workplace Act (2013), sections 4 and 6. <http://www.iitbbs.ac.in/notice/sexual-harrasment-of-women-act-and-rules-2013.pdf> (accessed 05.07.2018).

153 Sisters for Change/Munnade (2016), p. 6.

154 Thomson Reuters Foundation (02.02.2017); Sisters for Change/Munnade (2016), p. 37.

155 See Thomson Reuters Foundation (17.07.2017).

156 Government of Tamil Nadu; SOMO/ICN (2011), p. 12.

157 For detailed information on Sumangali schemes see SOMO/ICN (2011); Solidaridad/Fair Labor Association (2012).

158 The Generalised Scheme of Preferences (GSP+) allows developing countries to pay fewer or no duties on exports on the condition that certain international human rights standards are implemented by the beneficiary government. The effectiveness of GSP+ to stimulate respect for human rights is disputed. A recent case study on Pakistan notes that concrete improvements in the implementation of the required reforms and regulations are still missing, see FES/SPDC (2017), p. 30.

159 Provincial Assembly of Khyber Pakhtunkhwa (2015); Labour Watch Pakistan (25.10.2016); Labour Watch Pakistan (26.01.2017).

on Child and Bonded Labour (June 2015) aims to prevent labour exploitation by focusing on the social mobilisation and the social development of vulnerable and marginalised families. In order to improve safety and health at work and prevent accidents, the Punjab government has begun reforming the system of inspections and is trying to register all workplaces and identify those that are particularly hazardous. In Sindh province, a joint action plan for promoting workplace safety and health was drawn up by the Government of Sindh, the Employers Federation of Pakistan, Pakistan Workers Federation and ILO. Improvements are expected to be achieved through a more effective labour inspection system and a compensation system for work-related injuries and accidents.¹⁶⁰

On the downside, there is no homogeneous domestic framework for the regulation of labour relations.¹⁶¹ Following the adoption of the 18th Amendment to Pakistan's Constitution in 2010, which, *inter alia*, devolved authority to regulate labour to the provinces, some provincial governments enacted new labour laws while others formally adopted earlier federal laws. A lack of clarity about the applicability of federal laws caused some courts to delay decisions on labour-law cases.¹⁶² In addition, the provincial governments responsible for implementing labour laws do not have enough labour inspectors, and the training and resources of those they have are inadequate. These conditions render systematic and regular monitoring of workplaces difficult, with the result that the prohibition of child labour, for example, is not properly enforced.¹⁶³ Other human rights abuses go unpunished too, as was documented in a 2016 study of conditions in the leather industry.¹⁶⁴

Other persistent problems include bonded labour, gender inequality, a lack of occupational safety

and health protections and also a failure to respect the workplace rights of minorities and persons with disabilities.¹⁶⁵ Pakistan has no federal strategy to tackle problems that are widespread in the context of employment, such as blatant discrimination against women and the lack of union representation. The degree of union organisation is rather low; trade union density (union membership rate) was only 5.6 per cent in 2008 according to the ILO, which has no more recent figure.¹⁶⁶ Although employment opportunities for women in the garment industry are growing, women's wages are not rising. Poor compliance with minimum wage requirements remains widespread. Women in particular face considerable disadvantages when it comes to education and training, wages and access to better jobs in larger companies. Men, on the other hand, are particularly affected by the long and excessive working hours that are common throughout the industry. The ILO has called for the government to do more to "reduce occupational segregation, bolster maternity support, enhance access to safe transport and strengthen labour inspection systems with the aim of better wage compliance."¹⁶⁷

Overall, Pakistan faces major challenges in the area of labour rights. The fact that labour legislation and its enforcement lie within the provinces' area of responsibility hinders the development of a uniform and effective approach. Far-reaching progress will not be possible without consistent promotion of the right to freedom of association and collective bargaining. Equally important are the empowerment of women, e.g. to take an active role in formal employment and union structures, as well as targeted measures to improve the situation in the informal sector.

160 Ethical Trading Initiative: Pakistan, labour rights initiatives. <https://www.ethicaltrade.org/issues/due-diligence/etis-work-human-rights-due-diligence/pakistan-labour-rights-initiatives> (accessed 25.01.2018).

161 Pakistan Institute of Labour Education & Research (2015), pp. 13–18; ILO (29.03.2013).

162 See Tribune (20.08.2014).

163 US Department of Labor – Bureau of International Affairs.

164 SOMO/NOW Communities (2016).

165 UN, Human Rights Council (2017).

166 ILO, Industrial Relations, Trade union density rate (%). www.ilo.org/ilostat (accessed 05.07.2018).

167 ILO (2017), p. 5.

4.2.4 Myanmar: transition process with opportunities, but only gradual development of human rights safeguards

Western governments lifted most of their economic sanctions against Myanmar in response to the reform process begun there in 2011 and many foreign companies have taken advantage of the new business environment, and especially the cheap labour force. As a result, foreign direct investment in the country has risen enormously.¹⁶⁸ This transition needs to be accompanied by a solid human rights framework to protect rights-holders in the garment industry.

Myanmar is only bound by three of the fundamental ILO conventions (C29, C87 and C182) and has ratified neither the ICCPR nor the ICESCR.¹⁶⁹ Despite that, several positive steps have been taken: in 2014, the government launched its Initiative to Promote Fundamental Labor Rights and Practices in Myanmar in corporation with the United States, Japan, Denmark, the EU and the ILO. The program aims to support Myanmar's efforts to comply with international labour standards and strengthen implementation capacities. It is also intended to strengthen dialogue between the government, business, labour and civil society.¹⁷⁰ The government committed itself to develop a National Action Plan on business and human rights in February 2015,¹⁷¹ but it has not done so. A local NGO, with support from ICAR, has released a National Baseline Assessment. It notes a lack of support or involvement in relevant standards and initiatives such as the ILO's Better Work programme.¹⁷² It further finds that the low level of wages exacerbates the wage "race to the bottom" in the region and that the new minimum wage fixed in 2015 is not sufficient to lift garment workers and their families out of poverty.¹⁷³

The government has enacted a series of national laws relating to labour rights since 2011.¹⁷⁴ They include:

- the Labour Organisation Law (2011), which legalises unions;
- the Settlement of Labour Dispute Law (2012), which provides for a progressive mechanism to resolve conflicts between employees and employers;
- the Employment and Skill Development Law (2013), which makes it obligatory for employers to have employment agreements in place with all employees;
- the Minimum Wage Law (2013), which established a daily minimum wage of MMK 3,600 (approximately EUR 3); and
- the Factories Act (2016), which raised the minimum age for employment from 13 to 14.

However, the impact of these laws remains weak. For instance, the Minimum Wage Law grants exemptions to some employers,¹⁷⁵ and the Labour Organisation Law limits union activities by requiring workers to announce a strike in advance, stipulating the exact date, time, duration and number of participants.¹⁷⁶ As a result, the existing legal framework does not effectively protect the labour rights of garment workers.

Likewise, enforcement mechanisms are weak. For instance, when minimum wages were introduced, employers resorted to a number of schemes and successfully avoided paying their workers more, for example by ceasing to pay bonuses for meals and transportation.¹⁷⁷ As a result of slack

168 International Trade Union Confederation (2015), p. 10.

169 CEDAW and CRC have been ratified.

170 ILO (14.11.2014); ILO: ILO in Myanmar. <http://www.ilo.org/yangon/country/lang-en/index.htm> (accessed 25.01.2018).

171 Business & Human Rights Resource Centre (06.02.2015); International Corporate Accountability Roundtable (28.03.2016).

172 ALTSEAN-Burma/ICAR (2017), p. 27.

173 Ibid., p. 38.

174 Where not noted otherwise, the information on Myanmar labour legislation below was taken from SOMO/ALR/LRDP (2017).

175 SOMO/ALR/LRDP (2017), p. 48.

176 International Trade Union Confederation (02.04.2014).

177 Myanmar Times (01.10.2015).

enforcement, as of 2017 many employers still did not pay the minimum wage,¹⁷⁸ and in fact demand excessive and unpaid overtime.¹⁷⁹ Dispute settlement mechanisms do not function as effective grievance mechanisms. Many factories have no coordinating committees or collective bargaining agreements in place. Instead, trade union leaders and activists are discriminated against in terms of payment, promotion, overtime payment and often find their contracts terminated arbitrarily.¹⁸⁰ Only very few workers are unionised.

Laws on child labour are inconsistent and enforcement is limited.¹⁸¹ Women face discrimination, and there are numerous obstacles impeding their empowerment, relating to women's health, child-care and active participation and representation, as well as other areas.

On the whole, Myanmar is lagging behind in the implementation of instruments intended to ensure respect for human rights in the garment industry. Widespread corruption and a weak rule of law, arbitrary arrests of persons who demand their rights and the lack of an independent judiciary remain key governance problems. At the same time, a large influx of foreign money has resulted in pressure to keep wages low while increasing productivity levels. This carries the risk that abuses of labour and trade union rights will worsen and become as entrenched as they are elsewhere.

4.3 States in the global North: greater depth and alignment needed

Most countries in the global North are linked via the supply chain to human rights abuses in the transnational garment sector. Some have begun to implement the UNGPs through National Action Plans (NAPs), others have introduced regulations – although not specific to the garment sector – anchoring companies' human rights due diligence obligations in the global supply and value chains. At the level of international law, the governments of the global North are often accused of blocking an international treaty on business and human rights.¹⁸² Each of these three approaches to tackling the human rights impact in the garment sector is discussed briefly in a sub-section below.

4.3.1 National Action Plans, legal regulation and the UN treaty process

As of July 2018, 19 countries have developed NAPs on business and human rights, 17 of them in the global North. As pointed out above (see Section 2.2.3), thus far NAPs lack the smart mix of voluntary and binding measures envisaged by the UNGPs; instead governments have opted for measures like multi-stakeholder initiatives.

The limited purview of many NAPs, including the German NAP, is unfortunate as the UNGPs envisage more comprehensive steps, on the part of both states and businesses. In spite of these shortcomings, the NAPs are an important

178 At nine out of the twelve factories investigated, the study cited found workers who earned significantly less than the set daily minimum wage. See SOMO/ALR/LRDP (2017), p. 66.

179 Ibid. p. 77.

180 Action Labor Rights (2016), p. 24. Note that the study only assesses the working conditions in garment factories which are either Korean owned or in a joint venture with Korean companies. Since Korean-owned companies "have the largest-share by employee numbers" (36 per cent), the findings are relevant for the sector as a whole, see p. 7.

181 Business for Social Responsibility (2016), p. 8.

182 Catholic Agency for Overseas Development (23 October 2017): EU accused of attempting to block talks on treaty to tackle unethical corporations. <https://cafod.org.uk/News/Press-centre/Press-releases/Talks-on-business-human-rights> (accessed 05.07.2018); European Coalition for Corporate Justice (8 July 2015): UN Treaty on Business & Human Rights negotiations Day 2 – EU disengagement & Lack of consensus on scope. <http://corporatejustice.org/news/174-un-treaty-on-business-human-rights-negotiations-day-2-eu-disengagement-lack-of-consensus-on-scope> (accessed 05.07.2018); FIDH, Worldwide Movement for Human Rights (14 March 2018): The EU and the UN Treaty on Business and Human Rights: Time to Change Course. <http://corporatejustice.org/news/174-un-treaty-on-business-human-rights-negotiations-day-2-eu-disengagement-lack-of-consensus-on-scope> (accessed 05.07.2018).

The German NAP 2016 – 2020

The German NAP of December 2016 describes the government's expectations in relation to human rights due diligence and seeks to support and incentivise compliance with those expectations on the part of businesses. It expects that at least 50 per cent of German companies with more than 500 employees will have put in place policies and processes for conducting human rights due diligence in their operations by 2020. If this target is not

met, the government will consider introducing mandatory due diligence.¹⁸⁴ In the coalition agreement of the current Government, signed in March 2018, the formulation of this aim is more ambitious: "If the effective and comprehensive review of the NAP 2020 comes to the conclusion that companies' voluntary commitment is not sufficient, we will pass legislation at the national level and advocate EU-wide regulation."¹⁸⁵

contribution: they bring the relevant stakeholders together and cause them to tackle human rights due diligence seriously. Ultimately, they will contribute to creating a denser global network of corporate and state responsibilities in relation to human rights.

Outside of the scope of UNGP implementation, a number of ground-breaking initiatives have appeared, particularly at the EU level and in some member states. The former relate mainly to the type and extent of information concerning processes and measures to ensure compliance with human rights due diligence that companies are required to disclose. For instance, the EU's Non-financial Reporting Directive (Directive 2014/95/EU)¹⁸³ entails obligations for companies operating abroad to disclose information relating to their compliance with human rights norms, among others. The directive incorporates the concept of due diligence in EU legislation (Article 19a (b)) and defines human rights as an issue for inclusion in due diligence reporting obligations. Another example is the EU's Conflict Minerals Regulation, which will enter into force in 2021. Under this regulation, businesses that import any of four minerals (tin, tantalum, tungsten and gold) will be obliged to

check the likelihood that the money from their purchase of raw materials could be funding armed conflict or have been extracted using forced labour.

Similarly, three EU member states have concretised corporate human rights due diligence in legislation introducing new requirements for businesses of a particular type and size.¹⁸⁶

- In 2017, France adopted a law on the duty of vigilance of parent and subcontracting companies. It requires these companies to assess and prevent negative impacts on the environment or human rights from arising from their own business activities or those of their subsidiaries, suppliers and subcontractors (provided that an established commercial relationship exists). Businesses that fail to comply will be required to pay compensation.¹⁸⁷
- The parliament of the Netherlands is in the process of adopting a Child Labour Due Diligence Law which, if approved by the Senate, will enter into force in 2020. The legislation would oblige companies to determine not only whether a "reasonable suspicion" exists that

183 Under the directive, certain large companies are required to disclose in their management report information on their policies, main risks and outcomes relating to environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors. Companies may rely on international, European or national guidelines (such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises and ISO 26000).

184 See German Federal Government (2016), p. 12.

185 See German Federal Government (2018), p. 156.

186 The French law covers business enterprises registered in France with headquarters in France (500 employees) and outside France (10.000 employees including direct and indirect subsidiaries). The Dutch law targets business enterprises delivering products or services to the Dutch market twice a year. The UK Modern Slavery Act affects business enterprises doing any part of their business in the UK with a global turnover of 36 million GBP and above.

187 Legifrance (27.03.2017).

a direct supplier used child labour but also – where possible – whether child labour occurs further down the production chain.¹⁸⁸

- In 2015, the UK enacted its Modern Slavery Act. This legislation requires certain large businesses to produce a slavery and human trafficking statement for each financial year. The statement must contain details of the steps taken to identify and eradicate modern slavery from both its own business and its supply chain.¹⁸⁹

In parallel to these legal measures, the Human Rights Council established a working group on transnational corporations and other business enterprises with respect to human rights in 2014. This working group's mandate is to elaborate an international legally binding human rights instrument to regulate the activities of transnational corporations and other business enterprises. Its mandate also includes the systematic integration of a gender perspective¹⁹⁰ – which is crucial for the garment industry due to the high proportion of women in the workforce. The resolution establishing this group and its mandate was introduced by Ecuador and South Africa. Germany, all EU member states and the USA voted against it, with reference to the priority of implementing the UNGPs. Three rounds of negotiations at sessions of the working group have taken place so far, and it has become clear that the conflict between the advocates and opponents of a legally binding instrument is largely a conflict between the home and host states of transnational business enterprises. In July 2018, the working group issued a zero draft for a “legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”.¹⁹¹ The proposed overarching international legal framework is needed to clarify the state duty to protect in connection

with the activities of companies and to bring about significant improvements for rights-holders, particularly in the area of effective remedies. For the process to succeed, the negotiations should focus on issues that are particularly urgent and on issues that are likely to gain the necessary support among states.¹⁹²

While it is uncertain what the outcome of the inter-governmental negotiations will be, a number of lessons have emerged since this working group first met in 2014: support for a binding treaty on business and human rights has been growing due to dissatisfaction with the overall slow and deficient implementation of the UNGPs.¹⁹³ If a treaty draft that successfully takes up and builds on the substance of the UNGPs emerges, it will be hard for governments in the global North to argue against ratification. Additionally, the implementation of NAPs worldwide and the enactment of laws have triggered important processes that are already leading to a de facto densification of business responsibilities on the national and regional level.

4.3.2 German development policy

Development policy is another powerful lever that can be used to bring about human rights improvements in supply chains. German development cooperation, for instance, has considerably increased its efforts to establish human rights due diligence in garment supply chains. Policy-makers have rolled out social dialogues, training and awareness programmes or multi-stakeholder initiatives. These initiatives vary in scope and coverage, there are both regional initiatives in Asia and country-specific approaches. In what follows, a set of exemplary “flagship” initiatives are described as a way of providing an overview of the contemporary landscape of German development cooperation in the area of garment manufacturing.

188 ICN (08.02.2017).

189 Government of the United Kingdom (10.06.2014).

190 UN, Human Rights Council (2011).

191 OHCHR (2018).

192 German Institute for Human Rights (2018), pp. 3–4.

193 See Business & Human Rights Resource Centre: Binding treaty. <https://business-humanrights.org/en/binding-treaty> (accessed 25.01.2018).

Regional flagship initiatives: impact through social dialogue in Asia-Pacific

Social dialogue is a grass-roots instrument tailored to reach as many individuals as possible. Taking this as its point of departure, the BMZ initiated a regional project in Asia (Bangladesh, Cambodia, Myanmar and Pakistan) entitled “Social and Labour Standards in the Textile and Garment Sector in Asia (SLSG)”. Implemented by the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), the project is aimed at supporting the efforts of private and state actors to improve sustainability standards in the textile and garment sector. China, as the most important garment producing country and important outward investor in all four countries, is a crucial partner for the project. Despite shortcomings, especially with regard to labour unions, China has gained considerable experience in reforming social and labour standards in its own industry.¹⁹⁴ The project thus hopes that the dialogue with China will be a driver for change regarding the implementation of international standards in the whole region.

SLSG works with a multilevel approach: within the political arena, the project engages both with factories, national ministries in the four countries named and China; in particular, the relevant ministries receive support aimed at improving their capacities to protect rights-holders from human rights abuses caused by companies.

At the factory level, SLSG’s focus is on improving compliance with labour rights. Through so-called dialogue trainings with female workers and factory management – usually men –, the project seeks to foster female workers’ empowerment and participation in decisions that will affect their working and living conditions. At the heart of the dialogue trainings is the promotion of core human rights principles. On a more practical level, the trainings are aimed at strengthening the communication skills and self-confidence of the female work force, as a means to improve their ability to

claim core labour rights. Since its start in 2015, the dialogue programme has reached around 6,000 workers, mostly women, at six participating factories.

Regional dialogue between the participating countries and mutual learning facilitated by the project are intended to motivate both suppliers and international brands and retailers to take up their human rights responsibilities for compliance with international labour standards.

The project was conceived with a human rights-based approach, and thus needs to interlink the changes brought about by social dialogue at factory level with changes at the ministerial level – this will take time and positive impact will be hard to depict in numbers. In addition, sustainable success will require workers’ representation through trade unions, which may prove difficult given the generally union-hostile environment.

Bilateral flagship initiatives: impact through training and awareness raising

Social and ecological issues are at the heart of the project “Promotion of social and environmental standards in the garment sector of Bangladesh (PSES)”. Commissioned by the BMZ in 2010 and implemented by GIZ, the project aims to make the garment sector in Bangladesh more sustainable by improving the social and safety conditions for workers at garment factories as well as reducing their environmental impact.¹⁹⁵ Methodologically, the project promotes multi-stakeholder cooperation in a ‘shared responsibilities’ model, whereby the public and private sector, along with civil society, share responsibilities for improving and guaranteeing the sustainable future of the garment sector. Three examples illustrate this approach:

- Due to lack of occupational health and safety protections, a considerable number of workers are disabled by work-related injuries. PSES aims to motivate factories to implement

¹⁹⁴ China’s accession to the WTO in 2001 triggered some reforms: these include the 2008 Labour Contract Law, a corporate social responsibility strategy of the Ministry of Commerce and the Corporate Sustainability Compact 9000 for the textile and apparel industry (CSC9000T). For an overview of China’s CSR policies in the garment industry see Cooke/He (2010); Yu (2015).

¹⁹⁵ GIZ: Promotion of Social and Environmental Standards in the Industry (PSES).

measures to rehabilitate and create employment opportunities for these workers (as well as other persons with disabilities); it has also set up a centre that matches persons with disabilities with training opportunities in the garment industry.¹⁹⁶

- PSES piloted the establishment of a small fire station located in a dense cluster of factories. The station is able to respond to fire alerts rapidly, before a fire becomes dangerous to the workers and facilities. The costs are shared between the government and the factories.
- A third “shared responsibilities” pilot sub-project aims to develop a system for the safe treatment of industrial wastewater and solid residuals.

The PSES project aims to foster a shift towards a more cooperative form of factory management. One key target group is female workers.¹⁹⁷ To this end, women’s cafés were set up to help individuals obtain information about their rights and how to exercise them at work. Legal advice concerning labour issues and family disputes is regularly provided by visiting legal advisors. According to GIZ, the women’s cafés have educated more than 250,000 women about the key elements of labour law and have contributed to the peaceful settlement of more than 9,600 labour disputes. To sustain and upscale these awareness-raising measures, the project educated women as peer trainers and aims to turn at least a number of the cafés into social enterprises, which would run, for example, the urgently needed childcare centres.¹⁹⁸

International flagship initiatives: impact through a multi-stakeholder initiative

The Partnership for Sustainable Textiles (hereinafter: Textiles Partnership) was established in October 2014, upon the initiative of the German Development Minister. With around 130 members – including organisations from the textile and retail sector, trade unions, civil society organisations, standard-setting organisations, the Federal German government and the Federal Environment Agency¹⁹⁹ – this multi-stakeholder initiative covered 50 per cent of Germany’s garment retail market as of 2017 and aims at increasing its coverage to as high as 75 per cent by the end of 2018.²⁰⁰

The Textiles Partnership follows the UNGPs, the OECD Guidelines for Multinational Enterprises and other internationally recognised standards. The overall aims are

- for brands and retailers to know and prioritise their risks and potential negative impacts and to systematically identify their business partners and producers;
- to establish a system to continuously monitor the implementation of their standards in the supply chain; and
- to introduce a procedure to deal with violations of their standards by business partners and producers.²⁰¹

Since November 2017, the Textiles Partnership has introduced binding targets to be met by all members by a fixed date, recommended other targets that all members should meet and targets that members can set for themselves based on the content and structure of the Textiles

196 Disability organisations promote the garment industry as a way out of poverty for persons with disability, see ADD International.

197 PSES also trains factory compliance officers and factory management to improve working conditions.

198 GIZ (2015).

199 Partnership for Sustainable Textiles: Who we are. Members. There has been a decrease in membership from almost 190 in 2016. See: BMZ (2016).

200 Data from BMZ: German activities aimed at improving environmental and social standards in the textile industry. https://www.bmz.de/en/issues/textilwirtschaft/deutsches_engagement/index.html (accessed 25.01.2018); Textiles Partnership: <https://www.textilbuendnis.com/en/who-we-are/the-partnership/> (accessed 25.01.2018).

201 Textiles Partnership. <https://www.textilbuendnis.com/wp-content/uploads/2017/12/Ziele-im-Überblick.pdf>, p. 2 (accessed 25.01.2018).

Partnership's indicator grid.²⁰² To review progress towards the achievement of these targets, each member audits its own status annually and reports on measures it has taken. In addition, members are required to commit themselves to an independent third-party review process.²⁰³ The Textiles Partnership's 2017 approach is a large improvement over earlier approaches; three issues, however, stand out as deserving more efforts.

– Living wages for workers²⁰⁴

Brands and retailers must support their producers' efforts to achieve the Textile Partnership's social goals. As of 2019, the Partnership's targets require them to "participate in an initiative designed to ensure that employees in producer countries are paid a living wage."²⁰⁵ However, nowhere in the Partnership's standards do these members explicitly commit themselves to promoting the implementation of the Standards by paying higher prices to their suppliers.²⁰⁶ It is unclear how lower-tier suppliers will be able to adhere to the Standards if they are not properly compensated.

– Discrimination against women

While prohibiting any form of discrimination based on gender and physical, psychological and sexual abuse, neither the binding nor the recommended targets tackle the widespread and deeply embedded discrimination faced by women in the garment sector (see Section 3.1). Moreover, the current indicator sets do not specifically inquire whether participants have adopted measures to combat discrimination of women. The Textiles Partnership has started an initiative to improve working conditions in southern India that targets women working in spinning and weaving

companies. It is hoped that this initiative will yield results suggesting ways to tackle discrimination of women effectively.²⁰⁷

– The level of goal setting

While the Textiles Partnership has made some overarching targets and specific targets in the areas of chemical and environmental management, social standards and natural fibres mandatory, further measures are left to the discretion of the members. Members commit to develop "individual roadmaps" with a set of specific objectives tailored to each business' capacities. By August 2018, 60 members had published their roadmaps, which reveal varying levels of ambition.²⁰⁸ While some brands have detailed implementation plans involving concrete initiatives, others have simply committed themselves to review various aspects of production. Moreover, none of the roadmaps released make reference to indicators relating to the promotion of living wages through businesses' buying practices. Thus the sets of benchmarks against which the members measure their performance differ considerably. For the 2018 roadmaps, this has changed to some extent due to the introduction of mandatory targets which make the roadmaps more comparable.

This has led to unresolved tensions, including among members: some smaller "pioneer" businesses are already complying with more ambitious standards, among them the International Association of Natural Textile Industry and the Global Organic Textile Standard. These businesses use certified natural fibres, know their suppliers personally and are members of the Fair Wear Foundation with the aim of improving working conditions in their supply chains. Others – typically more

202 Textiles Partnership. <https://www.textilbuendnis.com/en/decision-on-binding-deadline-and-volume-targets/> (accessed 25.01.2018).

203 Textiles Partnership. <https://www.textilbuendnis.com/en/who-we-are/the-partnership/>; <https://www.textilbuendnis.com/wp-content/uploads/2018/03/Guidance-Review-Process-2018.pdf> (accessed 25.01.2018).

204 See Section 3.4, above. While there is no universally accepted definition of a living wage, attempts have been made to set out methodologies for calculating living wages, see: Global Living Wage Coalition (2013). Social Accountability International also issued a range of proposals for living wages in different countries, regions, and industries, SAI: Living Wage Reports. <http://www.sa-intl.org/index.cfm?function=Page.ViewPage&pageId=1848> (accessed 25.05.2018).

205 <https://www.textilbuendnis.com/wp-content/uploads/2018/02/targets-overview-2017.pdf>, p. 2. (accessed 25.01.2018).

206 The Partnership Standards do not oblige companies to use purchasing practices to assist their suppliers with the implementation of the Standards, they simply recommend it for the stages of textile processing, see 2.3.1.3.

207 Textiles Partnership. <https://www.textilbuendnis.com/en/what-we-do/collective-commitment/> (accessed 25.01.2018).

208 Textiles Partnership: Who we are. Members. <https://www.textilbuendnis.com/en/who-we-are/members/> (accessed 25.01.2018).

conventional corporations – are starting from a lower baseline and have committed to targets that are comparatively less ambitious. Moreover, businesses which already showed considerable social and environmental commitment prior to joining tend to feel overburdened by the organisational requirements of the Textiles Partnership. They have requested that they be treated in a way which takes into account both their smaller financial resources and the possibility that they might have less room for improvement as they have already stretched their limits.²⁰⁹ Taken together, experiences within the Textiles Partnership offer important lessons:

- Any such initiative requires an adequate sanction mechanism in order to function properly. To date, most multi-stakeholder initiatives apply sanctions if members fail to meet reporting requirements. While reporting, and even self-reporting, is an important ingredient of transparency, it is not related to the question of whether the substantive targets of a multi-stakeholder initiative have been met. Targets can legitimately be defined as binding or mandatory only if failure to meet them is sanctionable.
 - Progress achieved by multi-stakeholder initiatives will only be as sustainable as the breadth of the stakeholder base supporting them permits. In particular for labour-intensive industries, the participatory base needs to be expanded to include representatives of the workforce at both company and country levels.
 - Although verifying the effectiveness of measures taken is a difficult endeavour, commissioning external experts, such as consulting firms specialising in sustainability, to check the plausibility of planned measures is not an adequate substitution. Instead, monitoring of measure implementation needs to be strengthened and be rendered more participatory. Cooperative monitoring arrangements, encompassing retailers and suppliers who work alongside
- local trade unions and civil society, may be a good avenue to explore.
 - Operational-level grievance mechanisms should be underpinned by cooperation with workers representatives in the production countries. A corollary of this is that indicators to measure progress should be developed in close cooperation with workers across production stages.
 - Discrimination against women should be addressed more clearly by each and every initiative in the garment sector, preferably through explicit inclusion both in written standards and in any set of indicators used.
 - Finally, in order to promote living wages throughout the whole supply chain, initiative members will also have to subject their own procurement practices to scrutiny. Otherwise, the wage *problématique* will be merely passed on to a different supplier-tier. In the case of the Textiles Partnership, the revised indicator grid for brands and retailers for the 2018 review process – structured along the steps of the human rights due diligence process – could help to make progress in this respect.

In sum, the Textiles Partnership deserves credit, at the very least, for raising awareness for human rights risks within the garment industry – among both businesses and governmental actors. In the past, non-governmental organisations have repeatedly criticised the Textiles Partnership's work for being too lengthy and ineffective.²¹⁰ The changes adopted in late 2017 have the potential to change this. Whether these pay off can only be assessed once the progress towards targets has been evaluated and publicly disclosed.

Financial flagship initiatives: impact through development partnerships with the private sector

Through its develoPPP.de programme, German development cooperation seeks to mobilise

209 Deutsche Welle (03.08.2017).

210 FEMNET (07.09.2016); Handelsblatt (01.08.2017).

private sector knowledge and capital for development in developing and emerging countries.²¹¹ To achieve this, the programme needs to consider the actual and potential adverse impacts on human rights of the companies they lend support to or cooperate with (“State-business nexus”, UNGP 4). To comply with the state duty to protect, the German NAP has formulated specific measures for development cooperation, among them the screening of the develoPPP programme with respect to human rights due diligence.²¹²

This screening was part of a 2017 evaluation by the German Institute for Development Evaluation (Deval). The final report of this evaluation finds that the develoPPP program lacks a systematic examination of human rights risks, both in the planning and implementation phase.²¹³ The report recommends that the BMZ, as the main source of funding, should

- provide a distinct set of instructions in line with Germany’s NAP regarding how to ensure respect for human rights within develoPPP projects;
- publish selected project data, such as the name of the company and the project, the industry and the type of the project, to increase transparency of develoPPP,
- establish a human rights risk analysis for all implementing organisations and forms of development partnership with the private sector within develoPPP, as required by BMZ’s Guidelines on Incorporating Human Rights

Standards and Principles, including Gender, in Programme Proposals for Bilateral German Technical and Financial Operations.²¹⁴

How BMZ will implement those recommendations remains to be seen. The large amounts of funds allocated to the programme make it all the more important that effective action be taken swiftly.²¹⁵

4.4 Challenges ahead

The governance gap, coupled with economic globalisation, has been accurately described as an “institutional misalignment” between business actors’ influence and the capacity of governments or other institutions to hold them accountable for the harm they do.²¹⁶ Therefore, neither corporate self-regulation nor legal instruments alone will suffice to close the governance gap.

What is needed instead is a multi-level system of human rights compliance that uses the influence of all relevant actors to the fullest extent possible.²¹⁷ To achieve this, Mares suggests action through five “policy channels”: international trade law, international human rights law, development aid (“state-state channels”); home-state regulation and corporate voluntarism (“intrafirm channel”).²¹⁸ He rightly highlights the necessity for “alignment, interaction, and complementarity among international policy channels where strength can be achieved by creating a ‘rope’ from weaker strands”.²¹⁹ This resonates well with Ruggie, who calls for more attention to be paid to the dynamic interplay between different actors and spheres of action and their potential cumulative effects.²²⁰

211 Garment companies are also among the companies supported, see, e.g.: BMZ: Garment industry pioneers. <https://www.developpp.de/en/project/garment-industry-pioneers> (accessed 25.01.2018).

212 German Federal Government (2016), p. 20. Background: the UNGPs stipulate that development agencies consider the actual and potential adverse impacts on human rights of companies they lend support or cooperate with (“State-business nexus”, UNGP 4).

213 German Institute for Development Evaluation (2017), p. 35.

214 Ibid. p. 83.

215 In 2015, BMZ provided the develoPPP.de programme with almost EUR 35 million, or 38 per cent of the funds of the unit ‘Development Partnership with the Private Sector’ (EUR 91.8 million). Since 2009, programme funds have grown slightly by an average of 1.4 per cent. See: German Institute for Development Evaluation (2017), p. 43.

216 UN, General Assembly (2007), para.3.

217 Pegram (2017).

218 Mares (2016), p. 181.

219 Ibid. p. 171.

220 Ruggie (2017), p. 13.

Indeed, it is imperative that we move beyond the gridlocked debate on corporate voluntarism versus imposing binding legal obligations on transnational corporations. To make full use of all available leverage, the complementarity of the two kinds of policy instruments needs to be explored. From a human rights perspective, states opting for voluntary approaches, such as industry self-regulation and co-regulatory negotiated agreements or multi-stakeholder initiatives, should ensure that voluntary schemes fulfil certain effectiveness criteria.²²¹ They should explore ways to align and interlock state measures and private initiatives in the global garment value chain.

Justifications for inaction or for approaches “policing the direct suppliers”²²² need to be replaced by a new focus on the root causes described above (see Section 2.2). This requires businesses to assess their own contributions and exercise their

leverage over others. While the state remains the primary duty bearer with respect to human rights, the fact that buyers are the actors who have the most leverage to promote human rights improvements cannot be overlooked. This leverage needs to be translated into measurable progress which is the subject of regular and transparent monitoring. If voluntary initiatives begin to pay more attention to these aspects, they can play an important role in narrowing the governance gap in the global garment supply chain.

The role for development cooperation is both to strengthen state regulatory capacities, and to explore ways to engage businesses, government, trade unions and civil society in a fruitful dialogue that will bring about real improvement. The next section outlines the ways in which NHRIs can be an important ally in such endeavours.

221 The Royal Society for the Protection of Birds (2015), p. 13.

222 Mares (2016), p. 193.

5 Underused potentials: National Human Rights Institutions and development cooperation

Endorsing the idea of exploiting the leverage of all relevant actors and combining different policy channels, this analysis now turns the spotlight onto NHRIs as national and transnational actors. Specifically, NHRIs can function as an important ally for actors involved in development cooperation. Joining forces is one way to increase cumulative effects in order to “bring human rights into fashion”. The following sections discuss what NHRIs need in order to take part in this endeavour.

5.1 National Human Rights Institutions – what they are

NHRIs are tasked with the promotion and protection of human rights, with monitoring the state’s fulfilment of its human rights obligations and closely observing the exercise of governmental authority at all levels. They are founded and financed by the state, and yet act independently from it. They work closely with non-governmental organisations, but are institutions of a different nature, being anchored in a national law or constitution and funded by the state. The Paris Principles, adopted by the UN General Assembly

in 1993, frame and guide the work of NHRIs all over the world.²²³ Despite this common basis, NHRIs are organised and equipped in very different ways, with respect to their mandates, structures and competences.²²⁴ NHRIs protect and promote human rights in the country in which they are established, an increasing number also work on extraterritorial human rights obligations.²²⁵ The UN treaty bodies regularly call on states either to establish NHRIs or to better guarantee their independence, functioning and funding.²²⁶

NHRIs regularly review the laws in force in their countries, and whether and how they need to be amended in order to be in line with international obligations. NHRIs also help improve the protection of individual rights; almost all of them accept and investigate individual complaints and are thus an important avenue for remedy. What all NHRIs have in common is their “soft power”²²⁷: they do not have the power to enforce their views or recommendations but instead must use the power of arguments to convince governments or private actors to revise their practices.²²⁸

NHRIs form a link between state and non-state actors. They advocate for improved protection

223 UN, General Assembly (1993).

224 See German Institute for Human Rights (2010), p. 16; Aichele (2003) p. 110; GANHRI itself adds two categories (hybrid institutions and multiple institutions), see GANHRI: Roles and types of NHRIs. <http://nhri.ohchr.org/EN/AboutUs/Pages/RolesTypesNHRIs.aspx> (accessed 26.01.2017). In March 2017, GANHRI added two further types (civil rights protectors, public defenders, and parliamentary advocates) which were previously subsumed under “multiple institutions”, see GANHRI (2017a), p. 2 para 7.

225 These include among others, the NHRIs of the Commonwealth which adopted a declaration for NHRI common action in 2015, see Commonwealth Forum of National Human Rights Institutions (2015); the NHRI of the Philippines, which works on a case of transnational climate justice, the German and the Colombian NHRI, partnering to address business and human rights issues.

226 A query at the Universal Human Rights Index: Text “National Human Rights Institution”, Annotation Type “Recommendation”, Mechanism Type “Treaty Bodies”, Time 1/2015–12/2018 yields 74 recommendations; for the time between 2014–1999 231 recommendations.

227 See Nye (2004).

228 Pegram (2017).

of human rights vis-à-vis governmental agencies and private actors and advise them on the implementation of the recommended improvements. The UNGPs envision an active role for NHRIs in shaping the business and human rights agenda, particularly in the areas of legal review, monitoring of state obligations to protect human rights, and providing guidance to businesses and other stakeholders.²²⁹

NHRIs in the Asia-Pacific region operate within a challenging political environment.²³⁰ Their “power of persuasion” is difficult to wield with governments focussed on short-to-medium term economic growth policies, foreign investment, and commercialisation.²³¹ Some NHRIs are thus confronted with the government’s reluctance, sometimes also active resistance, to address adverse impacts on human rights by business activities. For example, the governments of Malaysia, Myanmar and Thailand have committed to develop a NAP, but have taken no substantial steps. The Indonesian NHRI has reacted to its government’s reluctance by taking the lead in developing a NAP; similarly, in India, civil society has started to take steps towards a NAP – with the government as a bystander.²³² While the fate of NAPs that do not have government ownership is uncertain (but perhaps not promising), NHRI and civil society engagement for such processes nevertheless advances the business and human rights agenda, if only by providing the necessary baseline for UNGP implementation.

Independence is a critical factor for a NHRI to effectively pursue its mandate. This applies to the

topics a NHRI chooses to work on, to sufficient and stable finances, and the ability of the NHRI to recruit its own staff. Since NHRIs are publicly funded, there is an inherent tension how NHRIs can maintain the conceptual space from which to critique “the hand that feeds you”.²³³ If a NHRI has no independent budget line over which it has control, this may damage the de facto independence of the NHRI and its autonomous setting of priorities. For example, budgetary cuts as recently evidenced in Malaysia²³⁴ or insufficient levels of funding as in the Philippines²³⁵ make it hard for NHRIs to conduct their work on issues unpopular with government entities. In some countries, NHRIs have faced budget cuts after criticising the government, and the global financial crisis has provided a convenient veil for such action.²³⁶ According to the Paris Principles, NHRIs should be able to recruit their own staff and the governing bodies and the staff of a NHRI should be representative of the society it operates in. However, some NHRIs in Asia are staffed by seconded civil servants²³⁷ and many NHRIs in Asia-Pacific have significantly more ethnic majority members and more men than women.²³⁸ Members of the senior judiciary – often homogenous in ethnicity and gender – are often overrepresented at the leadership of Asian NHRIs.²³⁹

5.2 National Human Rights Institutions in Asia – what they are doing

Despite all obstacles facing Asian NHRIs in the field of business and human rights, they have

229 The crucial role of NHRIs is also confirmed by the UN Committee on Economic, Social and Cultural Rights, see UN, Committee on Economic, Social and Cultural Rights (2017), Para. 54, 59. For a detailed overview on possible actions of NHRIs, see International Coordinating Committee of National Human Rights Institutions/Danish Institute for Human Rights (2013).

230 The same holds true, of course for human rights defenders in the region, see GANHRI (2016), p. 13; GANHRI (2017c), p. 19.

231 See OHCHR et al. (2010), p. 26.

232 See Ethical Trading Initiative (2016).

233 Eldridge (2002), p. 209.

234 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2015), p. 30; Malaysia (2016).

235 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2017), p. 31.

236 The Asian NGO Network on National Human Rights Institutions (2011), p. 181.

237 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2017), pp. 26, 47.

238 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2016), p. 24; International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2015), p. 12.

239 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2016), p. 24.

tackled adverse human rights impacts related to business activities, including in the garment sector, through a wide spectrum of activities. These activities, some long-standing, others quite recent, illustrate their potential as key actors in their countries and as partners for development cooperation.

India: beyond handling complaints

Much of the work of India's National Human Rights Commission, the Indian NHRI, is dominated by the handling of individual complaints and orders for the payment of compensations. In May 2017, it had a case load of more than 30,000.²⁴⁰ Often, complaints relate to the failure of state authorities to comply with their duty to protect, be it in the garment or other sectors.²⁴¹ Currently, the Indian NHRI seeks to sharpen its focus amid rapid industrialisation and increased economic activity.²⁴² Among its activities are

- Development of a Code of Ethics for Indian Industries, including the textile sector, based on international norms and drawn from a review of companies' employee policies and procedures. Among other topics, the code addresses gender policy, purchasing policy, employee compensation and benefits, and promotion policy. Data was collected from ten sectors, including the textile sector.²⁴³
- Research on the right to education of children of migrant labourers in Kerala.
- Focussing attention on the silk industry and the carpet-weaving industries, due to the high incidence of child labour. The Commission has established Special Rapporteurs on this area

and conducts sensitisation programmes and workshops. It interacts with industry associations and coordinates with the state governments and NGOs to ensure that adequate steps are taken to eradicate child labour. The Commission has involved NGOs in the non-formal education of child labourers, supporting various schools and training centres in the districts of the carpet belt.²⁴⁴

- Combating sexual harassment of women at the work place. The Commission regularly requests reports from states and union territories on this issue.²⁴⁵ An ongoing study on violence against women is investigating the perceptions of male perpetrators accused of crimes against women and girls.²⁴⁶ The research findings might be a useful resource to curb sexual violence and harassment in the garment sector.

Bangladesh: engaging with stakeholders

The National Human Rights Commission of Bangladesh, Bangladesh's NHRI, has initiated a consultation program entitled "Human Rights Up Front: Exploring Collaborations to Promote Human Rights in Bangladesh" with the aim of benefiting from the knowledge and resources of different civil society actors.²⁴⁷ As part of the initiative, ten thematic committees have been formed; these are made up of representatives of civil society and human rights organisations, state institutions, academia, development and intergovernmental agencies. The thematic areas include business and human rights and CSR, as well as child rights, child labour and child protection.²⁴⁸

The garment sector has been identified as one of the NHRI's strategic priorities for the coming

240 NHRC India (2017), p. 8.

241 Silicosis report on health impact of stone cutting and mining: NHRC India (2012b).

242 APF (02.08.2015).

243 NHRC India (2012a).

244 NHRC India: Human Rights Issues. <http://nhrc.nic.in/hrissues.htm#no13> (accessed 26.01.2018).

245 Ibid.

246 NHRC India started to undertake the study 'Interrogating Violence against Women from the other Side: An Exploratory Study into the World of Perpetrators' in August 2014 along with Centre for Women's Development (CWDS), New Delhi, see http://nhrc.nic.in/research_ongoing.htm (accessed 26.01.2018).

247 See APF (31.08.2017).

248 The Daily Star (16.05.2017).

years.²⁴⁹ In 2017, it inspected a factory making packaging materials which was the site of a fire that killed 34 workers. The Commission has formed an inquiry committee and will forward its findings to the relevant government entities to ensure the safety of the workers and compliance with the labour laws.²⁵⁰ The NHRI has started to cooperate with the industrial police, to gain access to sites of production and thus first-hand information as well as a better understanding of how sanctions may or may not be working.

Indonesia: pushing for a National Action Plan

Since 2012, the NHRI has increasingly focused on economic, cultural and social rights, especially those of marginalised groups.²⁵¹ The National Human Rights Commission of Indonesia (Komnas HAM) received more than 1,300 complaints in 2016 involving both state-owned and private corporations; every year business-related complaints, including those related to the garment sector, constitute about 15 % of its case load – making that the second most frequent subject of complaints, after police behaviour.²⁵² The NHRI conducts issue-based inquiries, and has done so in the area of indigenous land rights.²⁵³ Analogous in-depth inquiries into the garment sector could be conducted.

In June 2017, together with the Indonesian Institute for Policy Research and Advocacy, the NHRI launched a NAP on Business and Human Rights,²⁵⁴ and conducted several workshops and consultations with corporations and civil society organisations. The role foreseen for Komnas HAM in the NAP is that of engaging with corporations on a regular basis to help them meet their responsibility to respect human rights.²⁵⁵ While

whether the government will take ownership of the NAP remains to be seen, its added value lies in building consensus among the involved stakeholders regarding what application of the UNGPs should look like. The NAP can be used to provide guidance as to how a corporation can conduct its activities without infringing against human rights. Most importantly, the NAP is based on the identification and analysis of existing legislation and policies, and thus provides advice to the Government regarding the necessary policy framework. Komnas HAM plans to assess the integration of human rights due diligence into the operations of large companies.²⁵⁶ This could be an important step towards assisting business communities to integrate human rights into corporate practice.

While the above examples focussed predominantly on the garment sector, Asian NHRIs have undertaken a range of activities in other business and human rights fields. The examples given below illustrate these activities, and their potential for up-scaling and for sectoral replication.

Malaysia: partnering with businesses

The Human Rights Commission of Malaysia (SUHAKAM) has partnered with Felda Global Ventures Holdings Berhad (FGV) and the Federal Land Development Authority (FELDA) to move forward with the implementation of the UNGPs and address business-related human rights impacts. FGV is the world's third largest palm oil producer, which counts German corporation BASF among its most important customers. In a memorandum of understanding signed with SUHAKAM in March 2017, FGV and FELDA committed to revisit their operations from a human rights perspective. SUHAKAM will be providing guidance on the

249 NHRC Bangladesh (year unknown), pp. 8, 10, 23 ff.

250 APF (26.09.2016).

251 Unpublished information from the Indonesian NHRI, on file with author.

252 Komnas HAM, ELSAM (2017), p. 20; Human Rights Resource Centre (2015), pp. 8–9.

253 The Jakarta Post (17.03.2016).

254 Unlike other NAPs, the Indonesian NAP has not been adopted by the government as an Action Plan, although the government was consulted in the drafting process of the policy paper the NAP is based on. Whether the Indonesian government moves forward with the plan remains to be seen. See: Komnas HAM, ELSAM (2017), p. 22.

255 Komnas HAM, ELSAM (2017), p. 64.

256 The information is taken from discussions during a business and human rights regional blended learning course facilitated by the APF and the Danish Institute for Human Rights in Bangkok, 5–7 June 2017. See: <http://www.asiapacificforum.net/events/business-and-human-rights-blended-learning-course/> (accessed 03.07.2018).

interpretation of the UNGPs, including on human rights risk assessments and operational-level grievance mechanisms. Among other things, issues of child labour and forced labour, the prevention of free association, and fair wages will be assessed. SUHAKAM is also planning to conduct an inquiry into the situation of migrant workers, using one of the crucial instruments NHRI have at their disposal.

Mongolia: inquiries as a form of targeted research on human rights violations in the mining sector

The mandate of the Mongolia's NHRI, the National Human Rights Commission of Mongolia, includes the authority to conduct inquiries on the basis of complaints lodged with the Commission regarding human rights violations.²⁵⁷ In cooperation with the Swiss Development Agency and its "Sustainable Artisanal Mining" (SAM) project team, the NHRI conducted a study on the rights of persons working in the artisanal mining sector. The SAM project forms the core of the NHRI's business-related activities. In 2013, it launched further inquiries into human rights in artisanal mining. As an outcome, it released a number of recommendations detailing ways to improve national regulations and policies on employees in the mining sector.²⁵⁸ Mongolia's NHRI is one of the few in Asia to have received support within the framework of bilateral development cooperation for an activity related to business and human rights.

Thailand: pilot project in the tourism sector

The Thai NHRI has the power to investigate cases of human rights violations and abuses by state or non-state actors, including businesses.²⁵⁹ It has created an individual complaints mechanism to investigate abuses of labour or community rights committed in the course of business activities.²⁶⁰ It has conducted research on private-sector standards relating to the protection of human rights and to identify good practice on the part of multiple NHRIs in the field of business and human rights.²⁶¹ It also trains governmental organisations, public enterprises and private companies on the implementation of UNGPs.²⁶² As a pilot project, the NHRI has started to promote the UNGPs in the hotel and tourism business: it met with representatives of five hotel chains to raise their awareness about the implementation of the UNGPs and plans to develop a human rights due diligence handbook and checklist for the hotel business.²⁶³ As the project is still new, there is no information about its impacts. The NHRI also plans to conduct a National Baseline Assessment in preparation for a NAP on Business and Human Rights.²⁶⁴ In 2015, the Thai NHRI partnered with UN Women and women rights organisations to build capacities among its staff on the working with CEDAW and the UNGPs, to promote women's human rights within the context of business.²⁶⁵ The Thai NHRI has made transboundary human rights promotion and protection – in connection with Thai investments abroad – one of its priorities.²⁶⁶

257 Article 16 of the National Human Rights Commission of Mongolia Act, see: Asia-Pacific Human Rights Information Center: The National Human Rights Commission of Mongolia Act. <https://www.hurights.or.jp/archives/database/nhri-law-mongolia.html> (accessed 26.01.2018).

258 The Garment Industry and Business and Human Rights – Closing the Gap, APF-DIMR Workshop, Bangkok, 30.–31.01.2017.

259 See section 18 of the National Human Rights Commission Act B. E. 2542 (1999). <https://www.hurights.or.jp/archives/database/nhri-law-thailand.html> (accessed 06.07.2018). Vis-à-vis the government the Commission advocates for a more clearly defined mandate which clarifies its power to investigate and monitor human rights violations, see NHRC Thailand (2012b).

260 Section 23 of the National Human Rights Commission Act B. E. 2542 (1999).

261 The information is taken from discussions during the joint APF-DIMR Workshop "The Garment Industry and Business and Human Rights – Closing the Gap," Bangkok, 30.-31.01.2017. <http://www.asiapacificforum.net/news/partnerships-progress-garment-industry/> (accessed 03.07.2018).

262 Ibid.

263 Ibid.

264 Ibid.

265 NHRC Thailand (17.09.2015).

266 NHRC Thailand (05.11.2017).

5.3 Cooperation among National Human Rights Institutions: what has been achieved so far

Sections 2 and 3 of this report highlighted the features of the global garment industry, which is characterised by an international division of labour, the increasingly transnational nature of value and supply chains and severe gaps in human rights protection. Since the reasons for these gaps are both transnational and national in nature, national responses aimed at closing these gaps will not be sufficient, transnational responses will be required as well.²⁶⁷

In a workshop hosted by German Institute for Human Rights and the Asia-Pacific Forum (APF) in 2017, NHRI representatives agreed that responses aimed at closing the existing gaps in human rights protection and accountability should involve bilateral, regional and transnational cooperation among NHRIs across the three pillars of the UNGPs. All NHRIs voiced a need for more exchange to take place, to enable them to learn from each other and share good practices. This concerns in particular the following topics:

- lobbying the respective governments to comply with the duty to protect, especially with regard to law enforcement and monitoring of business compliance;
- providing guidance to companies on the implementation of human rights due diligence;

- improving access to remedy, in particular, strategies aiming at lowering barriers to effective remedy faced by rights-holders;
- interaction with rights-holders to inform and empower them with respect to their rights;
- facilitating constructive stakeholder dialogues.

We now turn to describe some cases of successful bilateral cooperation in Asia which could serve as a model for other NHRIs or the regional network APF to build on:

- In 2015, the NHRIs of Nepal and Qatar signed a ten-point agreement with the aim of bringing about better protection of Nepali migrant workers and their families in Qatar.²⁶⁸ Its key elements are the appointment of a contact person within the NHRI of each country who will be responsible for the exchange of information, the provision of training for private foreign employment agencies and the provision of legal support to Nepali workers in Qatar at the Qatari NHRI.
- The NHRIs of Thailand and Malaysia have worked together to address complaints of transboundary human rights abuses by private and state-owned companies in the context of cross-border investments within the Association of Southeast Asian Nations (ASEAN). The Thai NHRI addressed complaints by local communities whose rights were adversely affected by the Dawei Deep Sea Port and Special Economic Zone in Myanmar, the Heinda Mine in Myanmar, and land concessions for sugarcane plantations and processing factories in the Cambodian provinces of Koh Kong and Oddar Meanchey.²⁶⁹ The Malaysian NHRI

²⁶⁷ The German Institute for Human Rights and the Colombian Defensoría del Pueblo have cooperated on the energy supply chain, see: German Institute for Human Rights (2017).

²⁶⁸ APF (26.11.2015); The Qatari NHRI has established offices for migrant workers communities, where they migrant workers can turn to for advice and help, following their long-term research and engagement in improving migrant workers' rights in Qatar. See NHRC Qatar (24.05.2015).

²⁶⁹ For the case of the Dawei Deep Sea Port and Special Economic Zone in Myanmar see NHRC Thailand (2015a); for the findings in the case of the Kho Kong sugarcane plantation see NHRC Thailand (2012a); for the investigation report on the situation in Oddar Meanchey province see NHRC Thailand (2015b).

highlighted the lack of accountability in the Don Sahong Dam Project in Lao PDR²⁷⁰ and urged developers to consider the serious human rights implications of the Xayaburi Dam project in Lao PDR.²⁷¹ As a result of the Thai NHRIs' recommendations, the Thai Government, in its capacity as co-founder and key financier, is considering adopting the UNGPs as the operating framework for the Dawei Deep Sea Port Project and Special Economic Zone in Myanmar and has expressed its readiness to increase knowledge and understanding of the UNGPs and provide support for businesses to respect human rights.²⁷² The two NHRIs concur that this regional approach is an asset, especially with regard to monitoring corporations abroad in the absence of domestic protection mechanisms and remedy.

This is an exemplary approach to increase accountability and access to justice for communities affected, either as migrant workers or by cross-border investments. The cases also illustrate the fact that NHRI cooperation between a country with stronger human rights and environmental safeguards and one lacking in such protection can lead to joint investigations and, on that basis, recommendations in transboundary cases. A similar approach could be applied to the transnational garment sector.

The regional network of NHRIs, the **Asia-Pacific Forum of National Human Rights Institutions**, plays a crucial role in this regard. It promotes mutual support and learning, cooperation and joint activity among member commissions through:

- information exchanges and sharing expertise;
- training and development for NHRI members and staff, including in the area of business and human rights;

- capacity assessments on a range of functions, with the aim of helping institutions to run more effectively, and in accordance with the Paris Principles; as well as
- development of joint positions on issues of common concern.

Sub-regional cooperation takes place within the **South East Asia National Human Rights Institutions Forum (SEANF)**, which is comprised of the NHRIs of Indonesia, Malaysia, Myanmar, the Philippines, Thailand and Timor-Leste. Working under a cooperative framework, SEANF members undertake joint projects or activities to address issues of common concern including business and human rights.

5.4 National Human Rights Institutions – opportunities for capacity-building

While many Asian NHRIs are active in the area of business and human rights, many need to build their staff and organisational capacity to work with the normative content of the UNGPs and translate this into strategic action. Capacity-building measures focusing on review of legislation, monitoring and transnational cooperation for more business accountability may be most fruitful when they target the following issues:

- Many NHRIs are understaffed and do not have a department dedicated to business and human rights, though they may have a department for women's rights or children's rights and perhaps departments for social and economic rights and one for civil and political rights. Given resource constraints, rather than establishing a dedicated unit, it may be more effective to mainstream business and human rights into existing units, but doing so requires a coordinated strategy. An institutional

270 Earth Rights International: Human Rights Commission Report Highlights Lack of Accountability in Don Sahong Dam Project. <https://www.earthrights.org/media/human-rights-commission-report-highlights-lack-accountability-don-sahong-dam-project> (accessed 26.01.2018).

271 International Rivers (18.11.2016).

272 NHRC Thailand (05.11.2017).

strategy for business-related human rights violations may establish priorities and minimum requirements for fulfilling the mandate to protect human rights. It may also define the tasks that the NHRI intends to perform in the areas of prevention, monitoring and access to remedy. These standards should be integrated into internal work processes, particularly at regional offices, through standardised procedures and guidelines and methodological training for staff. Such intra-institutional harmonisation can ensure greater effectiveness, as each staff member follows the same conceptual framework and action plan.

- Complaint handling dominates the work of most Asian NHRIs, many of which operate in countries with ineffective and/or corrupt judiciaries, a de facto barrier to access to remedy. If sufficiently accessible themselves, NHRIs' complaint mechanisms can offer a modicum of redress. In the case of complaints involving transnational actors, regional and global networks of NHRIs can serve as starting points for improving access to remedy in the home states of such actors.
- The broad mandate and competences as well as the autonomy from government foreseen in the Paris Principles enable NHRIs to carry out inquiries and suo moto investigations. These instruments may be effective in bringing adverse impacts of business activities to light and creating a forum in which they can be discussed and remedied. To use them, NHRIs need to use their mandates creatively. Thus far, many have concentrated their fact-finding powers on public institutions, like prisons or care homes, rather than on private actors, such as garment producers.²⁷³ Overall, NHRIs need to engage more regularly with business representatives and vice versa. Multi-stakeholder initiatives create space for this kind of engagement but so too does the provision of active support by NHRIs to businesses aimed at helping them meet their corporate responsibility to respect human rights.
- Effective cooperation with the multitude of civil society groups, as envisaged by the Paris Principles, is integral to a NHRI's legitimacy. The character and effectiveness of such partnerships is determined by the degree to which the NHRI is truly independent from the government, though, and the perception in civil society of that independence. On the one hand, NHRIs depend on civil society to build up pressure on governments to implement recommendations for better human rights protection and realisation. On the other hand, NHRIs must remain independent from NGOs if they are to be an effective channel through which communities' grievances can be brought to the attention of the government. Capacity building in this area should thus be focussed on building up trust between a NHRI and civil society but not necessarily on aligning their positions. As a result, NHRIs could become more accessible for rights-holders, have an outreach mechanism to engage with vulnerable groups at the local level and increase their public legitimacy.
- Last but not least, many NHRIs, in Asia as elsewhere, focus their work on the UN human rights treaties and the respective fora and actors. They are less engaged with the ILO conventions, and few NHRIs have experience working with trade unions. To make better use of their leverage, NHRIs should avail themselves of the many opportunities to increase their work with trade unions.

273 See GANHRI/UNICEF (2018), p. 30, Table 4, Protection and monitoring of human and of child rights during the past five years.

6 Recommendations: taking the human rights-based approach to development cooperation forward

As shown above, responding to the human rights challenges in the garment sector will require the use of all policy channels and the alignment of the actions of all key stakeholders, all of whom use their leverage at every turn of the process. Development cooperation has an important role to play in this regard, with respect to both home state regulation and support for improved garment-sector governance in production countries.

One of the most effective ways to influence international brands and retailers is home state regulation. This involves, in particular, adequate corporate human rights due diligence procedures. The BMZ should therefore support the introduction of binding due diligence standards within the context of inter-ministerial coordination processes for the German NAP.

With regard to its political dialogue with garment producing countries, the BMZ needs to address the obligations under CEDAW to tackle discrimination against women. Development cooperation should address, in political dialogue, producing countries poor performance in supporting women's rights, as this is one of the root causes for inadequate human rights due diligence in the garment sector. Good entry points are human rights causes that producing countries do not generally openly disagree with, such as gender equality, the prohibition of child labour and corruption, as well as improvement of the regulatory environment and the environmental impacts of industry. Political dialogue should refer to concluding observations issued to the country by treaty bodies and/or the UPR recommendations.

A gender equality perspective is key to addressing the human rights impacts in the garment sector, and BMZ should mainstream gender equality in all its sector-related efforts. BMZ should address four priority areas:

- support of skills development, to qualify women to work in the technologies increasingly used in the formal sector;
- continued support aimed at empowering women workers to express and exercise their rights, at and outside of the workplace;
- support of access to high quality, family-centred childcare, especially for the formal sector, to enable women workers to remain in the formal sector after marriage;
- addressing gender-based violence and sexual harassment at work and in the general public, including in public transport;
- support of research into solutions for informally employed women and addressing the issue through multi-stakeholder initiatives.

Capacity-building needs to be tailored to the individual producing countries, taking into account the nature of the production chain in each country and thus focussing on the most pressing challenges there. This will translate to a different focus in different countries:

- in countries involved only in the “cut-make-trim” stage of the production chain, like Lao PDR, Cambodia und Myanmar, the focus would be on human rights standards in sewing factories, in particular discrimination against

women, social security and the right to collective bargaining;

- in countries where production contributes to water scarcity and pollution like Pakistan, for instance, the focus would be on efficient water usage and environmental standards;
- in countries like in Bangladesh and the Philippines that are characterised by vertical integration (of wet processing and garment manufacture) within the production chain, the focus would be on water usage, waste water and chemicals, in addition to human rights due diligence.

Continued regional cooperation is necessary to reverse the race to the bottom. Pursued in isolation, country-based approaches run the risk that production sites will be relocated to countries with lower production costs and weaker human rights standards. Existing regional programmes, such as the BMZ/GIZ project “Social and labour standards in the textile and garment sector in Asia” and the European Commission’s SWITCH-Asia programme, show the value of getting different countries to engage in dialogue, even if they are competitors. Decreasing the incentives for companies to relocate their production sites should play an even more prominent role in the future. The ILO and the global union federation IndustriALL can be important partners in efforts to ensure low wages or weak levels of worker representation cease to be a competitive advantage.

The human rights-based approach needs to be the scaffolding of all development cooperation in the garment sector. BMZ should ensure that all development cooperation programmes, including those with the private sector, are in line with the UNGPs and the obligations under the relevant human rights treaties. As envisioned in the German NAP, BMZ should support processes to develop National Action Plans on business and human rights in production countries. This will provide a good opportunity to shift from a state and business-centred approach to multi-stakeholder dialogues and multi-stakeholder monitoring. Gender equality should be mainstreamed into the planning and implementation of such support for NAPs.

Ratification of international treaties and their compliance should be consistently supported, through capacity-building for regulation, compliance and monitoring. BMZ support in the textile and garment sector should focus on improved monitoring, complaint investigation and remedies. Corruption and the lack of independence of existing monitoring structures should be tackled by integrating NRHIs and trade unions into the evaluation of business compliance. Training for labour inspectors and social auditors should qualify them to perform comprehensive and accountable assessments. The current audit fatigue illustrates the need for further research to make existing instruments more effective and better aligned with the human rights principles of transparency, participation and accountability. Along with strengthening state capacities, support needs to be lent to civil society in its attempts to create binding and ambitious criteria in the sector and have effective monitoring and remedy mechanisms put in place.

Strengthening NHRIs should be part of the focus on improved monitoring, complaint investigation and remedies. When supporting NAP processes in production countries or when undertaking programmes in the sector, the BMZ should actively seek opportunities for NHRI involvement while at the same time building their business and human rights capacities. Key areas for capacity-building are staff capacities and strategy development in business and human rights; organisational development, including cooperative relationships with civil society, businesses, trade unions and regional and global NHRI networks; institutional development, including building NHRI capacities to handle complaints, undertake suo moto investigations and building their business and human rights agenda on that basis. Regional networks can greatly facilitate and legitimise these endeavours. To this end, the APF, the regional NHRI network, should also be supported.

Improving labour relations also requires strong trade unions. Collective bargaining is one of the most important means of ensuring that wage and productivity growth go hand-in-hand. German development programmes have contributed to improved labour relations by fostering dialogue between employers and workers,

particularly at the workplace level. This has to be met by equal advances in the fields of freedom of association and social protection of workers. BMZ should focus on strengthening trade unions at the local level by providing:

- training on social protection schemes (injury, rehabilitation) as well as on maternity benefits;
- targeted support for women trade unionists, to make trade unions more attractive to women and more responsive to their needs; and
- support to multi-stakeholder dialogues that are participatory and inclusive, where applicable, such as in the processes leading to the development of National Action Plans.

Address impacts on child rights. In the long run, improvements in the area of women’s empowerment and an increase in wages should also have positive impacts on children in the garment sector. However, there are a number of child rights issues that need to be addressed directly, the most pressing being the wide-spread child labour in the informal sector. Development cooperation should support access to vocational training for out-of-school children and informal child workers, particularly for those of low social status and migrants, and should support anti-trafficking initiatives.

Abbreviations

ADB	Asian Development Bank	GANHRI	Global Alliance of National Human Rights Institutions
APF	Asia Pacific Forum of National Human Rights Institutions	GDP	Gross domestic product
ASEAN	Association of Southeast Asian Nations	GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (German Federal Ministry for Economic Cooperation and Development)	GSP+	Generalised Scheme of Preferences Plus
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	ICESCR	International Covenant on Economic, Social and Cultural Rights
CSR	Corporate social responsibility	ICN	India Committee of the Netherlands
DIMR	Deutsches Institut für Menschenrechte (German Institute for Human Rights)	ILO	International Labour Organization
DOL	Department of Labour	Komnas HAM	Komisi Nasional Hak Asasi Manusia (National Human Rights Commission of Indonesia)
ELSAM	Institute for Policy Research and Advocacy, Jakarta	NAP	National Action Plan on Business and Human Rights
ETO	Extraterritorial obligations	NGO	Non-governmental organisation
EU	European Union	NHRC	National Human Rights Commission
FELDA	Federal Land Development Authority	NHRI	National Human Rights Institution
FGV	Felda Global Ventures Holdings Berhad	OECD	The Organisation for Economic Co-operation and Development
FNV	Federatie Nederlands Vakbeweging (Netherlands Trade Union Confederation)	OHCHR	Office of the United Nations High Commissioner for Human Rights
		SOMO	Stichting Onderzoek Multinationale Ondernemingen (Centre for Research on Multinational Corporations)

SUHAKAM	Suruhanjaya Hak Asasi Manusia (Human Rights Commission of Malaysia)	UNICEF	United Nations International Children's Emergency Fund
UK	United Kingdom	USA	United States of America
UN	United Nations	WTO	World Trade Organization
UNGPs	United Nations Guiding Principles on Business and Human Rights		

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