

Sector-Wide Solutions

for the sports shoe and apparel industry in Indonesia

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Oxfam Australia and the Clean Clothes Campaign, revised 2009



Introduction

This document sets out sector-wide solutions for the sports shoe and apparel industry in Indonesia. These solutions are put forward by Oxfam Australia, the Clean Clothes Campaign and a network of labour rights groups worldwide (which include consumer groups) who remain concerned about continued and pervasive labour rights violations in the supply chain¹ of major buyers (retailers and brands) in Indonesia. The most recent examples have been the cases of mass closures of factories supplying sports shoes and other threatened closures.

The solutions set out in this document were developed as a result of more than a decade of close consultation with numerous unions, non-government organizations, labour lawyers, and various worker organisations, as well as extensive dialogue with government agencies, trans-governmental agencies (like the ILO), factory managers and apparel buyers and retailers. Most importantly, this set of specific solutions and recommendations stems from close observation of recent, disturbing trends towards the degradation of labour standards, including violations of trade union rights in Indonesia. The document is not set in stone, however, and we expect adjustments as buyers move forward in implementing the solutions.

The solutions set out in this document are a call for companies to ensure that fair and transparent practices are in place in their supply chains and to ensure the key issues affecting Indonesian workers, who in the sportswear and apparel industry are mostly women, are rigorously addressed. This means addressing the three fundamental issues set out in this solutions document *in addition* to efforts companies may already be undertaking to implement (international) labour standards.

In developing these solutions for buyers to implement, we recognize that governments, employers and investors have a crucial role to play in upholding workers human rights. It is our belief that these solutions, which build on existing codes² and company policies, represent constructive and concrete steps forward. If implemented, these solutions will improve workers rights and be positive for the industry as a whole.

Brief Background to Labour Rights in Indonesia

The apparel and shoe manufacturing industry in Indonesian saw relative gains in labour standards in the 1990's largely due to legal changes and labour organising taking place within Indonesia. These gains were also supported and facilitated by labour rights campaigns NGOs, unions and consumer groups outside Indonesia.

One of the frequently cited “accomplishments” of the anti-sweatshop push of the ‘90s is the adoption of codes of conduct by major apparel buyers and the introduction of elaborate factory monitoring or audit schemes. Unfortunately, some of the most fundamental labour concerns fall between the cracks of codes and monitoring. Or, as is the case with the recent sudden rise in short-term contract labour, companies appear to be developing new employment schemes that conveniently fit between the cracks and disallow their employees’ access to the protection that most of the domestic labour law and company codes of conduct afford.

¹ Supply chain includes all places where products are made and can include factories of varying sizes, small businesses and homes.

² Company codes generally recognise law

Fundamental Issues Facing Indonesian Workers Today

The three crucial issues affecting the livelihoods of Indonesian workers in the apparel and sports shoe industry and their ability to claim their rights are:

- 1. Freedom of Association, the Right to Organise & Bargain Collectively**
- 2. Short-Term Contract Labour**
- 3. Factory Closures, Severance & Back-pay**

1. Freedom of Association, the Right to Organise & Bargain Collectively

Freedom of Association is the foundation on which all other workplace issues rest and a tool for workers to claim their rights, bargain for fair wages and conditions and to address grievances. When workers have true representation in the workplace they do not always need an outside entity to come in and help solve their problems for them, they have representation and problem solving mechanism in real time and on a scale readily available to all. Despite positive changes towards increased legal protection for union organizing in 1998 in Indonesia, freedom of association, the right to organise and bargain collectively, is circumscribed. When workers try to establish trade unions in factories, they continue to experience a great deal of antagonism from employers.

Moreover, buyer purchasing practices currently require suppliers to produce products fast, cheap, flexibly and to an agreed quality. The impact these practices have—by giving rise to the use of short term contracts and frequent closures, for example—in discouraging or preventing freedom of association and the right to organise and bargain collectively cannot be overstated.

2. Short-Term Contract Labour

A worker's employment status is very much the backbone of his/her job—it determines what kind of job security one will have, what kind of rights and benefits one is legally entitled to, and one's potential for promotion or career development. Having a short-term contract, or having no employment contract at all as a short-term or day labourer, is one of the most frightening and tenuous positions to be in as a worker. The issue of short-term contract labour has been rapidly gaining momentum in Indonesia; it is increasingly common to find garment factories with 50% or more of the workforce on short-term contracts, oftentimes despite years of dedicated service by these contract workers. The contract workers are, by definition, disqualified from the rights and benefits of "regular" workers such as paid leave time, associating with the union of your choice, seniority or annual bonuses or any kind of accreditation or benefits that employees are able to accrue over time.

3. Factory Closures, Severance & Back Pay

Factory closures have proved devastating in Indonesia the past few years. Dozens of shoe and apparel factories have shut down literally overnight and, to date, only one factory has followed complete and proper closure procedures. Most factories have shut down and left thousands unemployed and a debt of millions of dollars in unpaid wages, benefits and severance.

Because of their profoundly negative impact on the welfare of workers and communities, factory closures need to be prevented at all costs. The decision and manner in which buyers exit

from factories or countries, or suppliers close factories or shift production elsewhere, has become a major issue for workers. Often closures occur abruptly, without adequate notice and without workers being paid compensation or even earned back-pay and national insurance payments.³

When considering the issue of factory closures and back pay, it is important to keep in mind that for most workers in the light manufacturing sector the amount of money that one is able to save from day to day is very minimal; often times the severance one gets is the only ‘pension’, safety net or savings that one has to fall back on despite years of dedicated service.

It is required by law that health insurance be paid into either the Jamsostek or equivalent health fund. Jamsostek is the compulsory social security program for most categories of paid workers in Indonesia managed by the government of Indonesia.⁴ Jamsostek also provides a health care scheme to workers. Jamsostek administers a membership database and collects contributions from employers. Under Jamsostek the employee will pay a 2% of their wage with the employer paying 3.7% on top.⁵ The worker contributes only for the payment of “Jaminan Hari Tua/JHT” (pension insurance).

Oftentimes employers are not making the contributions as required by law and buyers are failing to pick this up during regular monitoring. This means workers may be left without health coverage both while the factory is operating and if it suddenly closes. Whilst the law makes health insurance compulsory, the law also allows the employer to provide a clinic in lieu of enrolment into the Jamsostek health care scheme. Some employers have used this loophole in the law to provide workers with a substandard clinic.

If entire workforces are denied their legal right to proper severance, then entire populations can be left stranded without any savings and may face difficulties in finding alternate employment, sometimes because they are too old and tired. This has the potential of contributing to heated labour strife, development stagnation and perhaps even economic collapse in certain sectors of society.

Solutions

1. Freedom of Association, the Right to Organise & Bargain Collectively

These rights are set down in ILO Conventions relating to freedom of association, the right to bargain collectively and the right of workers' representatives not to be discriminated against for their union activities (ILO Conventions 87, 98 and 135 respectively). In accordance with the UN convention on the elimination of all forms of discrimination against women these rights apply without discrimination and equally to men and women.

³ Managing Responsible Transitions – Guidelines, Revision #1, following the MFA Forum Strategy Discussion, April 20, 2007 (NB. This document is in draft form and may be subject to changes).

⁴ Purwoko, Bambang: “The Social Security System in Indonesia” The University of Pancasila at: <http://www.actuaries.org/AFIR/colloquia/Cairns/Purwoko.pdf>. Construction workers, domestic workers and security guards are exempt from coverage under JAMSOSTEK.

⁵ Peraturan Pemerintah Republik Indonesia No. 14/1993 Tentang Penyelenggaraan Program Jamsostek Bab III Pasal 9 (Government Rules No. 14 Year 1993 Concerning The Implementation of Jamsostek Program) Chapter 3 Article 9

Buyers sourcing from factories in Indonesia should require and monitor to ensure that the management teams of all of their supplier factories in Indonesia abide by the following practices with respect to freedom of association (FOA):

- 1.1 Management should be required to proactively adopt and post a “Freedom of Association Policy” for all their facilities. This policy should state something to the effect that “this place of employment respects the rights of all employees to associate with any union of their choice, and that employees will not be reprimanded in any way by management if they choose to join a union. Moreover, that management will not tolerate anyone harassing or intimidating union officers or members.” This policy should be read aloud to all employees at least once (for example, by a supervisor during a morning meeting) and it should be posted in Bahasa Indonesian language within easy view in several popular locations around the factory grounds.
- 1.2 Management may not assist, inhibit, or interfere in any way with the formation of a union.
- 1.3 Management may not form an employee committee or joint labour-management committee in such a manner that it undermines the role of any duly registered union at that factory.
- 1.4 Management may not intimidate, harass, demote, transfer, promote, or terminate a worker based on their association with a union.
- 1.5 Management must not discriminate between or express favouritism to one union or another, especially at factories where there is more than one legally registered union.
- 1.6 Management should provide opportunities for unions to disseminate information regarding freedom of association and unions (such as billboard space for posting information or a space near the factory entrance or exit where information can be distributed).
- 1.7 Management is encouraged to assist with dues check-off if a union requests it. If there is more than one union present at a factory where check-off is taking place, and if one or more of those unions alleges that the records management is using to manage the check-off process do not reflect workers’ free choice, then there should be a verification process to ensure that workers have freely authorised the union and management to deduct dues from their wages. This process of verification needs to be independent, transparent and credible.
- 1.8 Freedom of association and the right to organise and bargain collectively are written into the contract between the buyer and their suppliers.

Collective Bargaining

- 1.9 If a union forms, factory managers should enter into good faith negotiations for a collective bargaining agreement. If a factory has more than one union the legal obligation of management is only to negotiate with the majority union, but management should make every effort to consider the minority union’s opinion as well.
- 1.10 Buyers should pay a product price that adequately supports the terms and conditions of the negotiated Collective Bargain Agreement (CBA). Where no CBA exists buyers should still follow fair sourcing and pricing practices such that companies are able to comply with internationally recognised labour standards, most of which are referenced in their own codes AND function with a reasonable enough margin through which meaningful collective bargaining can take place.
- 1.11 In addition to an adequate product price buyers commit to exploring incentives for suppliers who respect FOA and CBA agreements and processes. These incentives could include an FOA/CBA premium, increased order volume, long-term commitment to the supplier and other possible incentives. Incentives for CBAs should only be applied in cases where the CBA includes a living wage, adequate limits on working hours and provision for job security. Such incentives should also only be applied in cases where the union which negotiates the CBA is the appropriate collective bargaining agent, was not

formed by management, is not under external control, and is democratic through following its own rules (assuming those rules make the union leadership democratically accountable to the union's members and that all non-management workers at the factory are allowed to join that union). The process for checking whether the union meets these criteria needs to be independent, transparent and credible.

- 1.12 Buyers should make it clear to government authorities they are prepared to ensure a fair product price is paid which leaves room for meaningful collective bargaining at the factory level.
- 1.13 Buyers should ensure information on product price is available to the union to use in collective bargaining negotiations. In order for this to be feasible, both buyers and factory management will have to be more forthcoming with information regarding costs.
- 1.14 Current moves by brands to lean production methods should not intensify pressure on workers or contribute to undermining FOA and CBAs.
- 1.15 Buyers have a relationship with both the workers who make their products as well as the factory management who employ these workers. As such, buyers have a responsibility to give workers, through their union representatives, access to pricing information so that that the unions can effectively negotiate collective bargaining agreements. Without this information, it remains extremely difficult for workers to negotiate on an equal basis with employers and workers will continue to be denied their rights.

2. Short-term Contract Labour

Buyers should strongly discourage the use of short-term contract labour as this status undermines factories abilities to comply with Indonesia and international standards on freedom of association and the right to organise and collectively bargain. Short term contract labour undercuts all employee rights and benefits.

Buyers sourcing from factories in Indonesia should require and monitor to ensure that the management teams of all of their supplier factories in Indonesia follow the following practices with respect to employing short-term contract labour:

- 2.1 Bargaining unit positions (i.e., jobs held by union members) must never be filled with short-term labour if the union member is fired, resigns, or retires. If the company needs to downsize resulting in a significant number of layoffs the management and union should negotiate (prior to the layoffs) both the lay off and re-hiring procedures to be followed should the company's business pick-up again.
- 2.2 Indonesian law states that temporary/contract workers can only be hired for work that is "temporary" or "seasonal" by its nature. Other regulations clarify that a contract worker cannot perform the "principle" work of the factory. In the garment manufacturing context, this can and should be interpreted to mean that the only jobs that can be contracted out on a short-term basis are those that are clearly exceptional/out of the ordinary day-to-day work of the factory, such as hand-sewing details on one order where the factory typically does not do any hand-sewing.
- 2.3 Since the new law allowing short-term contract labour was introduced in Indonesia, abuses have been rampant. The country has experienced an exponential rise in short-term contract labour and it has been use to break unions or prevent them from forming. A solution to this pervasive labour violation is for companies to follow the International Labour Organization's recommendation regarding the use of short-term or "contract" labour stated in their No 6 October 2006, *Better Factories Newsletter*:
"The ILO recommends that fix duration contracts (i.e. short-term/ temporary contracts) should not be used for long term employment, and suggests that permanent employment employees should only be put on Un-Determined (i.e. fixed, long-term, permanent) time Contracts (UDCs)."
- 2.4 Furthermore, Indonesia law ensures, as minimum protection, that once a short-term

employee has been hired on short-term contracts twice by the same employer, or for two years, the employees should automatically be hired on a permanent/ long-term basis with the third contract.

2.5 Short-term workers should be paid the same the salary and given the same monetary benefits as regular employees (i.e. meal allowances, transportation allowances, production and holiday bonuses etc.)

2.6 Buyers should give enough notice to factories about changes to orders or placement of orders so that the factory is able to adjust the workforce training, layout, and size accordingly. Buyers must recognize that haphazard purchasing practices impact working conditions (especially last-minute orders) contributing to the phenomena of short-term contract workers.

2.7 Short term contract labour is being used as a strategy to either break unions or prevent them from forming, thus violating workers fundamental rights. Buyers should support attempts by civil society, including trade unions for the repeal of this law.

3. Factory Closures, Severance and Back Pay

There are several overarching principles⁶ related to a company's responsibility to provide decent, stable and sustainable work.⁷ First and foremost, while a factory is open and filling orders, it should be making proper payments and follow legal procedures to ensure that workers are treated fairly in the event that a closure were to occur. Next, redundancies should be the last resort, but not the last step. Opportunities to make the factory competitive through partnerships to upgrade technology, management or skills should first be explored. If retrenchment is necessary, consideration should be given to whether workers can be relocated within the plant, to a related company or to another local employer/supplier. Finally, restructuring and contractor disengagement should be planned, with clear rules, policies and commitments, based on:

- **Compliance** with national laws, international labour standards and the terms of collective bargaining agreements;
- **Consultation** between stakeholders; and
- **Consideration** of the likely impacts of closure on workers and the local community in each particular case (e.g. taking into account local social and economic context, employer's involvement in healthcare, housing etc.).

When the factory is open and orders are currently placed⁸

3.1 Buyers should determine if national laws and provisions cover all workers in the concerned facilities.

3.2 Management should cover workers through the Jamsostek health insurance instead of providing alternative means. Enrolment into the Jamsostek health programme will, unlike private initiatives, ensure workers continuous access to health care following a factory closure

3.3 The law covering Jamsostek outlines the minimum health care requirements.⁹ Factory management should follow all proper procedures to pay into Jamsostek and provide workers with all necessary documentation as well as educating/informing workers on how to access the funds when needed. Under the law covering Jamsostek, factories can opt for an alternative health care program, however it must be at least the same as, or better than Jamsostek.¹⁰ Buyers

⁶ Page 8, Managing Responsible Transitions – Guidelines

⁷ Expectations in Relation to Factory Closures and Mass Dismissals, Clean Clothes Campaign E-Bulletin, September 2007

⁸ Several points under this section have been adopted from Managing Responsible Transitions – Guidelines, page 10

⁹ Jamsostek Law: Act No. 3 Year 1992 concerning Jamsostek (Jaminan Sosial Tenaga Kerja)

¹⁰ PER-05/PEM/1993 Chapter VII lists the services provided under JPK of JAMSOSTEK, and PER01/MEN/1998 lists the services that must be provided at a minimum if an employer chooses to go with a health insurance plan other than JPK of JAMSOSTEK

should monitor and ensure that the law relating to Jamsostek is upheld in their factories. One way of checking compliance at the factory level is by checking if workers hold a Jamsostek card. The Jamsostek card provides details about the workers enrolment in the scheme.

3.4 Buyers should include a clause in the contracts that outstanding payments may be withheld if factory closes or mass dismissals fail to be announced in a timely fashion, and/or if the employer fails to fulfill all outstanding social security, back wages and severance payments to the workers. When the factory is closed, the economic relationship between the buyer and the employer ends, but goods may still be in transit and if the buyer creates the legal option to default on these payments in advance, this can provide a very good incentive to employers to settle outstanding payments to workers.

3.5 Actively engage with workers, worker representatives and government agencies to ensure that **ILO Convention 173 Protection of Workers' Claims in case of Employer's Insolvency is implemented**. This convention covers cases where major layoffs coincide with employers failing to pay workers' legal claims. According to the convention, it is preferred that countries found a guarantee institution at a national level that will pay workers what they are legally due¹¹ if the employer is declared insolvent.

3.6 In the Indonesian context, there are several possible mechanisms that could be further investigated and supported with regard to factory closures, severance and back pay:

a) The Indonesian government has been exploring the possibility of setting up a separate and specific fund for compensation that employers would pay into in much the same way as they currently pay into the Jamsostek health fund.

b) The requirement of the owner of each new factory at the time the factory is purchased to pay into a guarantee fund, or set up an escrow account as insurance for workers entitlements in the event of closure. Buyers could also be required to pay into such a fund or account. Workers entitlements would be paid from whichever of these funds is in place if the employer fails to pay workers legal entitlements.

c) Where all else fails there is nothing to prevent buyers from making one off special payments to workers, equivalent to the amount they would have received via their legal entitlements.

Where a decision to reduce orders is likely to result in substantial retrenchment and/or closure buyers should:¹²

3.7 Ensure that international standards regarding (mass) dismissals and closure are upheld, buyers' policies regarding closures/mass dismissals (when exiting a factory is unavoidable) should require an impact assessment regarding the effects on the workforce.

3.8 Take care to prevent a knock-on effect where their announcement can lead to other brands leaving the supplier. In case of exits related to compliance, it is essential for brands to announce the planned withdrawal collectively and publicly (in the hope that the supplier will chose to comply rather than to lose the assets from being shipped out of the country and/or sold off so that revenue can be used to pay debts to workers).

3.9 Consider the feasibility of transferring this order to another factory within the country.

3.10 Reduction of orders should be announced as soon as possible and well in advance to management and workers representatives to prevent a negative impact on the workforce. (This could enable a supplier to find other clients and workers to find other job opportunities).

Provide sufficient notice to the supplier and workers via their union in order to invoke a retrenchment consultation procedure with the workforce and monitor the consultation process.

3.11 Monitor supplier adherence to national laws regarding retrenchment of workers or closing down of a facility so that workers are compensated in line with national law.

3.12 In the situation where one of the following (or similar) occurs:

¹¹ Indonesian law requires severance pay, any outstanding entitlements and wages be paid to workers at the time of closure. There have been numerous cases in recent years where this has not happened.

¹² Several points under this section have been adopted from Managing Responsible Transitions – Guidelines, page 10.

- the employer as well as the authorities fail to pay the legal entitlements due to the workers;
- when buyers have demonstrably failed to monitor and remediate for social security payments;
- where buyers have failed to ensure the establishment of mechanisms to ensure workers can receive severance due even if the employer goes bankrupt or defaults;

Then buyers should provide direct financial support to the workers to cover the amount they have been left without (namely their entitlements).

3.13 Monitor and where necessary assist and participate in negotiations between employer, workers and government to ensure severance is fully paid in timely manner. Buyers should maintain direct communication with the union or other elected worker representatives throughout the process, and cooperate with other buyers to have maximum leverage.

3.14 Where there is no trade union within the factory the employer should ensure that workers are able to freely elect a workers' committee to represent their interest in the development of any retrenchment plans.

3.15 Buyers should encourage suppliers to provide workers with paid time off to look for new employment prior to closure, and provide first hire priority in other factories in the region owned by the same company.

3.16 The employer should ensure that all workers have access to prompt and professional assessment of their health at the end of their employment, through appropriate national medical facilities to determine whether there are work related health problems, injuries or disabilities.

3.17 Buyers should always actively monitor for blacklisting of workers and take concrete measures, including independent investigation and consultation with workers representatives and labour groups on remediation measures when reasonable suspicion of blacklisting is established.

3.18 Buyers should work with other stakeholders to develop (re)training packages for workers should the workers wish to undertake such training.

3.19 If a relationship is maintained with a manufacturer who owns more than one factory in a region, the buyer should make sure that the manufacturer offers first hire opportunities to workers who lose their jobs when one of the factories is closed. If the manufacturer doesn't own more than one factory in the region, or otherwise transfer of workforce is not feasible (e.g. not enough orders), and the brand maintains an order base (as part of responsible sourcing) in the region with other suppliers, a condition for new contracts or for expansion of production could be to give preferential treatment to fired workers.¹³

Concluding Comments

We hope buyers will view our solutions in the spirit in which they are intended. We wish these solutions to be received as constructive input to resolve fundamental issues requiring immediate attention in the apparel and sports shoe industry in Indonesia to ensure workers rights and livelihoods are upheld.

We welcome further discussion on these solutions, but most of all we look forward to their implementation.

¹³ Note this relates to workers losing their job as part of mass dismissals or closures.