

**Clean
Clothes
Campaign**

International Secretariat

False Promises

Migrant Workers in the Global Garment Industry – Discussion Paper



Clean Clothes Campaign

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False Promises

Migrant Workers in the Global Garment Industry
CCC Discussion Paper, 2009



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The Clean Clothes Campaign (CCC) is dedicated to improving working conditions and supporting the empowerment of workers in the global garment and sportswear industries. Since 1989, the CCC has worked with trade unions, NGOs, and workers around the world to help ensure that the fundamental rights of workers are respected. CCC educates and mobilises consumers, lobbies companies and governments, and offers direct solidarity support to workers as they fight for their rights and demands better working conditions.

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Cover

Migrant workers from various sectors participating in a Migrant Worker Day demonstration to demand government protection of migrant workers rights, December 2009, Bangkok. Photo courtesy Thai Labour Campaign.

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CCC Discussion Paper

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Debt bondage, false promises, retention of documents and threats of violence and deportation are all commonly faced by migrant workers in the garment industry.

Chapter 1

Introduction

Migrant workers are becoming an increasingly important part of the workforce within the global garment industry. These workers are in a particularly vulnerable position in terms of workplace exploitation and face specific barriers to articulating and demanding their rights as workers.

The Clean Clothes Campaign recognises the need to ensure that the rights of migrant workers are properly addressed within its campaigning and lobbying work. In order to do this we want to develop a better understanding of the dynamics of migration within the industry, specific issues faced by migrant workers, the strategies being employed by workers and their organisations to improve conditions and to demand rights, and the barriers they face in attempting to do this. We also wanted to find out what, if anything, other actors, including companies, multi-stakeholder initiatives and government and international agencies, are doing to address these issues and identify gaps in this work. As increasing numbers of women workers are joining the migrant work force we also want to develop a better understanding of the gendered nature of migrant worker exploitation and the specific problems faced by women migrant workers in the garment industry.

Migrant workers in the garment industry: An overview

A number of garment-producing countries have been identified as having a high proportion of migrant workers in employed the industry. These include Taiwan, Malaysia, Thailand, Mauritius, Jordan, Egypt and the Maldives. For most of these countries the industry more or less relies on the import of labour for its ability to compete on a global level.

In Malaysia, Thailand and Taiwan these are established industries that have relied for many years on the import of labour. In the Middle East export-oriented garment industries have seen rapid growth in recent years, and have drawn in large numbers of migrant workers from China, Bangladesh, India, Sri Lanka and elsewhere to work in the industrial zones where they are based. This growth is a direct response to

Migrant garment workers are part of a growing global industry of managed labour migration.

changes in trade agreements and is based on the movement of foreign capital aiming to take advantage of more favourable terms of trade.

Migrant workers also make up a large percentage of workers found in garment industries based in Europe, the US and Australia. As brands look to shorten lead times and transport costs on fast fashion lines many are looking for production that is based closer to retail markets, but at prices that are comparable to manufacture in Asia or Africa. This is being made possible through the use of migrant workers, many of whom are unable to work legally due to strict asylum or immigration policies in the global north.

The increasing presence of migrant garment workers cannot be separated from a more general trend in the industry, namely a dramatic shift from the use of permanent, regular employment to temporary, contract and seasonal labour. As brands and retailers develop

buying policies that are based on lower prices, shorter lead times and more favourable (to them) terms of trade and credit their relationships with suppliers are becoming increasingly unstable and temporary. This in turn is translating into an increase in job insecurity and worsening working conditions.

Although conditions for all garment workers are deteriorating as a result, migrant workers are particularly vulnerable to exploitation. As capital and trade is increasingly liberalised, allowing companies to move freely from one country to another, the movement of people is subject to ever greater controls. As the document below outlines migrant garment workers are part of a growing global industry of managed labour migration, sometimes involving long and complex labour supply chains that obscure normal relationships between employer and employee. At the same time most migrant workers exist in legal grey areas, where their status and identity as workers is subject to constant legal and economic insecurity. Government policies on migration and work are instrumental in creating a whole tier of workers whose legal status prevents them from speaking out to demand their rights and in creating a pool of workers subjected to conditions akin to modern slavery.

Addressing these injustices will require concrete action by international agencies, governments, industry and campaign groups – there is a need for campaigners and advocates to ensure that this action is focused on enabling workers to defend their rights as workers and not on controlling the movement of workers who depend on migration for the livelihoods of themselves and their families and, in some cases, security and refuge. Despite the particular vulnerability of migrant garment workers and the difficulties they face in organising, numerous unions, migrant worker groups and NGOs are using innovative methods to support them in improving conditions, some proving successful in achieving real advances for migrant workers. These are still very limited in number and to replicate these victories more widely will take more cooperation, trust and understanding between traditional, locally based unions and worker organisations and those specifically working with migrant communities.

International campaigns, such as those carried out by the Clean Clothes Campaign, also need to ensure that migrant worker voices are properly represented in the strategies employed and demands made towards industry and governments. There is a need to ensure migrant worker organisations are included in networks and that information about migrant workers is spread more widely through the labour rights movement.

About this document

This document aims to engage CCC partners and other organisations, groups, and individuals in developing the CCC's strategy and approach to ensure that CCC activities support migrant garment workers in defending and demanding their labour rights. It also aims to raise awareness of the specific barriers faced by migrant garment workers and the need for organisations and campaigns to ensure these are addressed in their work. This is not a final or exhaustive report into migrant work in the garment industry. Although we aim to provide an overview of the key issues facing migrant workers, this is by no means exhaustive and further research is clearly needed into a number of important areas including the gender dimension of migrant worker exploitation, the labour supply chain and employment relationships within it and particularly into labour agencies and their role in the exploitation of migrant workers.

Finally we invite comments, suggestions, disagreements, and corrections from unions, NGOs, migrant worker groups, and others to help us to move forward in turning the information contained here into concrete strategies and actions in support of migrant garment workers worldwide. Please contact the CCC International Secretariat (info@cleanclothes.org) with any feedback on the issues raised in this discussion paper.

Methodology

This report was based on information collected from interviews with a range of stakeholders including migrant worker organisations, trade unions, NGOs, multi-stakeholder initiatives and industry actors. The interviews were carried out by Clean Clothes Campaign and SOMO (the Centre for Research on Multinational Corporations) researchers between December 2008 and March 2009. An earlier (2008) CCC desk research study on migrant workers in the garment industry was the first phase in this research project and was also an input to this second phase.

As part of the research and feedback process two network consultation events were held in 2009. In February 2009 a session was organised at the CCC European Coordination meeting during which the initial findings of the research were presented. This also provided an opportunity for representatives of the European CCC network to provide input into this research project. In March 2009 the CCC and SOMO organised a seminar entitled “Migrant workers in the global garment industry” which brought together representatives from over 20 organisations from across Asia supporting migrants in both country of origin and country of destination and allowed us to consult directly with these groups on the information already obtained through previous desk research and the individual interviews. It also enabled CCC to develop contacts with those groups directly working on migrant issues – relationships which we hope to develop further over the course of this work. The report of this seminar is available from the CCC and/or SOMO office.

The scope of the research was limited in a number of ways, and this will have had an impact on some of the findings. Some of these limitations will need to be addressed in future work on this area.

Many of the groups we tried to contact were groups that the CCC previously had not had a strong relationship with and finding information about all the different work being done by different organisations, contact details for English-speaking people in those organisations, and arranging interviews proved difficult. The lack of resources and time available to organisations engaged in this work may also have meant participating in this research was not a priority.

This was particularly true for contacting local or national trade unions that are currently engaged in organising migrant workers and meant some important trade unions (e.g. Jordan/Mauritius) were not covered. Therefore, although the International Textile, Garment and Leather Workers Federation was interviewed and several trade union representatives attended the seminar, the information we obtained about trade union activities in this area was extremely limited and by no means represents the variety of work being done to support migrant garment workers across the world.

The research also ended up being focused to a large extent on South East Asia. This was due to the availability of contacts, the location of the consultation seminar and the prevalence of garment production in, for example, Thailand and Malaysia. For future research it would be interesting to gather more information about migrant garment workers in other production countries, especially in the Middle East, Europe, and Mauritius.

Finally, there was a difficulty created by the fact that our research was industry specific, while the focus of most migrant worker organisations (apart from trade unions) is not. Many migrant workers do not specifically identify themselves with a particular industry and increasingly they are employed in a number of different workplaces from a variety of industries. Therefore one Bangladesh worker in Malaysia may work in the garment, electronic, furniture and car industry through the period of their stay. This means that few organisations included in the research work specifically on one industry, but focus more on migrant rights in general (regardless of where workers are employed) or are organised around specific migrant communities. The exception to this is in places where almost all migrant workers are employed in one industry (e.g. Mae Sot in Thailand) but this is not the norm. This means that although where possible we have tried to use examples or cases specifically from garment factories some information in more general.

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Chapter 2

Overview of Issues Facing Migrant Workers

To a large extent the conditions faced by migrant workers are similar to those documented throughout international garment supply chains. It was clear from interviews with migrant worker groups that violations of the right to freedom of association and failure to provide a living wage were two of the biggest problems reported by migrant workers.

However there are a number of added issues related to their status as migrant workers that place them in an even more vulnerable position than local workers and which exacerbate even those issues they share. Below is a summary of the issues identified during the research.

Low pay, no pay, deception, and overtime

Throughout the garment industry it seems that migrant workers are paid wages well below a living wage level and often receive lower pay and work under worse conditions than local workers. For example in Mae Sot, Thailand, where the minimum monthly wage is 152 baht, most migrants working in the garment industry receive between 35 - 60 baht.

Migrant workers are often employed on a piece rate basis and work excessive overtime during peak order periods. Conversely, when orders are low they may have no work at all during which they receive no pay. In many cases attempts to cut overtime are resisted by migrant workers, who experience this as a drop in their already meagre salaries. For workers who have no freedom of movement and no opportunity to become involved in local or community activities they may prefer to work rather than be confined without pay to dormitories. Therefore overtime issues need to be dealt with in conjunction with remediation of wages and implementation of contracts that guarantee minimum salaries.

Deductions

The low pay received by migrant workers is further diminished by the deductions that are taken out of their wages. In Malaysia employers using migrant workers have to pay a levy to the government and this is often deducted from migrant workers' wages. Deductions are also often made to cover accommodation, food, electricity, and uniforms. Many workers do not know what deductions are being made and they are often not clearly listed on wage slips. Any medical treatment required by workers, even treatment of workplace injuries, is also deducted from wages. Vietnamese workers at one factory in Malaysia reported that a co-worker's arm became stuck inside a garment-printing machine during the night shift. It took two hours for people to raise the alarm and stop the machine. The injured worker stayed in the hospital, lost one arm, and had to take three months off without pay. When he returned to work (at the same machine) the medical costs incurred for the operation and treatment were deducted from his wages. In the end he decided to return to Vietnam and had to pay for his ticket and the "penalty" fee for retrieving his passport and leaving his job.¹

Pay discrimination: dividing workers

Migrant workers usually operate in what the Ethical Trading Initiative describe as a "two tier" workforce, with migrant workers often doing the same job as that carried out by local workers but for lower wages and in poorer conditions. Even within migrant groups wages may differ. For example at the CMT factory in Mauritius, Sri Lankan workers were paid 50% more than workers from Bangladesh for the same work.

This creates a situation where workers are put into competition with each other within the same workplace or even department. This explains part of the reason behind the tensions between local and migrant workers. It is also an issue for union organising or worker solidarity: unions may see migrant workers as a threat to the pay and conditions of their members and as a result develop anti-migrant attitudes (see below). Nike noted that at a supplier in Malaysia (Hytex) where rights violations of migrant workers were exposed the repayment of deductions to migrant workers caused tensions because local workers viewed this as a “pay rise” from which local workers were excluded.

From interviews with migrant support groups it is clear that it is on the issue of wages that most cases or industrial action involving migrant workers are taken (although where workers have started to make demands around wages other issues related to forced labour, poor accommodation, health and safety problems, and physical and sexual abuse may also be revealed).

This is not surprising. Given the insecurity they face as a result of their legal status and lack of legal protection the risk of taking action at all is so high that, according to the Worker Rights Consortium, migrant workers tolerate longer hours and worse conditions than local workers. However even where workers are not suffering debt bondage (see below) most have come for a limited period of time in order to save money or support families to move out of poverty. The failure of the employer to provide even subsistence wages may therefore be an issue that is deemed worth the risk.

There is a need to build trust between migrant communities and local unions.

Freedom of association and organising

The majority of garment workers, whether they are migrant workers or not, face significant problems in exercising their right to freedom of association. For migrant workers there are specific barriers that make the task even more difficult.

Migrant workers in Thailand and Malaysia are not allowed by law to form their own trade union organisations. Although they are legally able to join local trade unions, workers will often be given conflicting information on their entitlements under law. Even where the right to join a local trade union is not prohibited by law, agents and employers may include prohibitions on the joining of local associations in contracts, for example, or will deliberately misconstrue certain laws. There are documented examples of migrant worker contracts that explicitly forbid membership in local organisations, for example, in the case for Vietnamese migrant workers in Malaysia.

Even where there are no legal obstacles to migrant workers joining unions other significant barriers remain. Many migrant workers may have a stronger identity as migrants than as workers, with a greater affiliation to their national group than to the industry that they are a part of. As MAP states:

“Migrants ... rarely identify themselves as a ‘[garment] worker’... these are jobs that they did not choose to do and which no one else gives value to. With no worker identity, it is difficult to come together as ‘workers’, to risk livelihood and safety for an identity which holds no importance.”

Even where a worker identity can be established, migrant workers may be unaware of what rights they are entitled to as workers, or what a trade union can and should do. For migrants coming from countries like Burma, where trade union organisations are prohibited, or Vietnam, where they are government controlled, workers may have a limited or no experience of trade unions or may be suspicious of union organisations. As MAP told us:

“Migrants from Burma have little experience of organising as workers. Trade unions have been banned in Burma since 1964; the military regime has routinely practiced systems of forced labour. Gatherings of more than five people are forbidden by law. Thus, migrants have arrived in Thailand with no experience of organising as workers, and with only the knowledge that any action puts labour activists at risk of arrest and long sentences of imprisonment.”

Few, if any, unions include migrant workers in their leadership, nor are they often represented on committees. This may be because this is prohibited by law. In Malaysia, this is due to union regulations that require workers to have been a union member for over three years prior to taking on a position in the union. As most workers will finish their contract within this time assuming a position is more or less impossible. Even if these restrictions can be overcome migrant workers are less likely to be elected than local workers.

As a result, union leaders are likely to be the same nationality as employers, police and others in authority; migrant workers may be suspicious of their motives or unwilling to share their problems or concerns. This is particularly an issue for women migrant workers where most union leaders are men. There is therefore a need to build trust between migrant communities and local union representatives, which may be a long, difficult, and time-consuming process.

Meanwhile, garment worker unions are often stretched for resources and paying for the translation of materials and providing interpreters for meetings may not be a priority for most. A number of interviewees suggested that there is anyway some reluctance from unions to put resources into organising migrant workers, whose membership and participation in the union is likely to be of a limited duration and possibly controversial for some of the grassroots, local membership.

Further barriers to organising migrant workers include language and cultural difficulties and the divisions imposed by employers (e.g. wage differences, shift patterns, accommodation).

Legal status and government failure to protect rights

The lack of legal protection is at the root of much of the exploitation faced by migrant workers, regardless of the industry they work for. A fundamental change in the attitudes and policies of governments towards migrant workers will be required before there is any possibility to ensure the rights accorded to them by international conventions and agreements. Although the ILO is clear in their assertion that all workers are entitled to these rights regardless of legal status, few countries prioritise the enforcement of these rights over and above the enforcement of immigration policy.

For example, at a knitwear factory in the UK, where undercover journalists found wages being paid that were half the legal minimum, excessive working hours, and terrible health and safety standards it was the UK

Migrant workers in Thanks and Malaysia are not allowed by law to form their own unions.

border agency that was called in to investigate. While the employer will face fines for breaches in employment law, the biggest fine, up to £10,000 per person, will be for the employment of undocumented workers.²

In Thailand the lack of legal status is used for systematic discrimination. Two million Burmese workers have to enter illegally but then are granted permission to stay and work. They are given one years permission to stay, but always remain “illegal” and live as second-class citizens. This system is used to prevent them from accessing social rights and labour rights, although recent court successes have improved the ability of migrant workers to demand rights related to wages and overtime payments.³ Burmese refugees throughout Asia are in a particularly difficult position and are not provided with the protection they should receive. Many Burmese refugees in Malaysia have to wait for a long time for their status as refugees to be granted and in the meantime have to work as undocumented migrants. The 50,000 who are recognised as refugees also face continued threats of arrest, detention and/or deportation.⁴

Undocumented workers are entirely deprived of protection and highly vulnerable to the worst forms of exploitation. Any attempts to speak out about conditions or abuse are likely to result at best in deportation and at worst in imprisonment and/or corporal punishment.

Legal status as a method of control

Although it is clear that undocumented workers are the most vulnerable group, the division of the migrant workforce into “legal” and “illegal” workers also adds to the insecurity and exploitation of those workers who do not have permission to legally reside and work in a country. In most garment producing countries

Undocumented workers are entirely deprived of protection and highly vulnerable to the worst forms of exploitation.

visas for migrant workers are tied to a specific employer or are at least based on the principle that the worker is employed. Workers are therefore reliant on their employer regularly renewing their work permit in order to maintain not only employment but also legal status. Should a worker get dismissed, not get a permit extension, or is made redundant they automatically become “illegal” and will lose the already limited rights granted to them as a “legal” worker.

This puts the employer in an extremely powerful position as not only can they threaten employees with job loss and loss of income but they can also remove rights and protections that would be guaranteed to those with citizenship. Getting legal redress for labour rights violations, illegal dismissal, or underpayment/non-payment of wages becomes more difficult once a worker is dismissed and becomes de facto “illegal”. For example, in Thailand although a migrant worker can in theory apply for a temporary stay visa, in reality this sort of visa is rarely granted. A Burmese migrant worker for example who spoke up about rights violations and lost her job would have to return to Burma and apply for a day visa if she wished to return to Thailand to take court action against the employer. In Malaysia workers can apply for a temporary visa, but this has to be renewed monthly, can only be granted three times in a row, and has to be paid for by the worker herself. This is entirely unrealistic for most migrant garment workers and few are able to access this process.

Although under ILO conventions the status of workers should be irrelevant in terms of protection of rights this is not followed in practice. Where companies, auditors, or government agencies do have policies with regard to migrant workers they are often framed

in the context of excluding undocumented workers from employment and there are no provisions for safeguarding their rights. For example the UK Gangmasters Agency, set up to enforce legal protection of migrant workers in the agriculture sector explicitly excludes from its remit any workers who do not have permission to work.⁵ Asda-Walmart’s only reference to migrant workers’ rights is to check on the legal status of those employed in supplier factories.⁶

The division of workers into documented and undocumented workers for the purpose of legal or other forms of protection works to undermine the rights of all workers. It is clear that such distinctions do not prevent undocumented workers from gaining employment but it ensures that they remain “underground” and easily exploitable.

Impact on freedom of movement

The policing of migration policy has a serious impact on the freedom of movement of migrant workers. The most extreme example of this is in Malaysia, with its much-feared RELA (*Katan Relawan Rakyat Malaysia/ Volunteers of Malaysian People*). RELA is an armed but poorly trained volunteer corps that operates under the powers of the Home Affairs Ministry.⁷ RELA has the authority and power to stop any person anywhere who they believe to be a terrorist, undocumented migrant, or other undesirable person and arrest them without a warrant. As many employers retain the documents of their employees, even a documented worker may not be able to move about freely without fear of arrest. Once a worker has been taken into detention it may be impossible to prove their legal status and ensure release. Similar issues are reported in Thailand, where migrant workers are often stopped by the police, asked for bribes, assaulted, and/or arrested.⁸ The regularity and unpredictability of these policing methods within areas populated by migrant workers means many chose to stay in and around the factories or workshops in order to evade arrest.

Deportation as punishment

Even in countries where immigration police are not patrolling the streets deportation is often the resulting consequence of any kind of industrial action. There are numerous cases of employers simply calling in immigration officials if workers become troublesome, or if they are simply no longer needed. At the CMT factory in Mauritius hundreds of Sri Lankan workers were arrested, detained for several days on buses in the plantations, and then forced onto flights back to Sri Lanka. According to one of the workers,

“They took us to the airport and left us there for three days. We could not travel. We had no tickets. Armed gunmen, who we were told were from the Mauritius

armed forces, came and threatened us. We feared we would be shot if we continued to protest. We were then kept in a camp.”⁹

This was the result of workers complaining about late payment of wages, poor living conditions, and excessive overtime.

Lack of information

Even where basic rights are covered by law, most migrant workers lack information about these rights and on how and where to seek redress. For example, according to Tenaganita, nearly half of the factories in Malaysia do not follow the law with regard to working hours and push migrants to work seven days per week, sometimes for 12 hours per day.¹⁰ According to NGOs working in Laos most workers leaving from Laos to Thailand or elsewhere do not know their rights, what wage they should be paid, or how much they are getting because the documents are almost always in English.¹¹

Employment relationships

Few migrant workers enjoy direct employment relationships with the factories or production site where they actually work. Many have signed numerous work contracts: with the recruiters, the employment agent in the destination country (outsourcing agent), and the factory management. The contract signed with the recruitment agency will often stipulate better terms and conditions than the contracts signed in the destination country. Workers who raise this issue with employers in the destination country will often be informed that their original contract has no legal standing.

Labour outsourcing agents/brokers (employment in destination country)

In Malaysia, companies that employ fewer than 50 migrant workers are obliged by law to use an outsourcing agent.¹² However, few employers, even those that employ more than fifty, directly employ migrant workers. The work permit that allows a migrant worker to stay in Malaysia will usually be tied to a specific work agent rather than to an actual place of work. This means workers are moved around to different workplaces or increasingly not given work at all. Yet it is impossible for migrant workers to leave the agent to seek more permanent work as to do so would render them immediately “illegal”. Where migrant workers are not being provided work the agent will usually provide one very basic meal per day and accommodations, usually in overcrowded dormitories.

The relationship between the factory management and the labour outsourcing agent and the degree to which factory management can and will control the wages and conditions of work is an important barrier to migrant workers being able to demand improvements. Legally the “employer” is the outsourcing agent, but the factory manager will have significant influence over conditions at the workplace and will be more visible than the agent, who may have only very limited contact with workers. Unless the responsibility for employment conditions is properly clarified and workers are clear about the terms and conditions of their employment it will remain difficult, if not impossible, to demand improvements.

Vietnamese workers in Malaysia reported that they do not know who is their actual employer and when they do try to complain it gets really complicated. Most have no contract in hand; the one they originally signed was kept by the agent in Vietnam. Even if they try to use this contract to demand their rights the employer tells them that there is no contract, that is has no validity in Malaysia.¹³

Labour recruitment agents/brokers (recruitment from country of origin)

Labour recruitment for overseas work is big business and the networks are large and complex. At the bottom of the “labour supply chain” is the point of recruitment. Workers are often recruited by labour contractors who come to their communities, or are recommended by relatives or friends.

In some cases, for example in Burma, workers may be recruited by fellow workers during visits home. In the Philippines agents come directly from the destination country (e.g. Singapore) to find workers; in Bangladesh workers are recruited by individuals who find workers from villages in their local area. In Vietnam recruitment is done through government-run agencies.

Deportation is often the resulting consequence of any kind of industrial action.

Labour Recruitment from Bangladesh

Source: International Textile, Garment and Leather Workers Federation (ITGLWF)

The ITGLWF explained the process of labour recruitment for migrant workers travelling from Bangladesh to overseas employment in Malaysia, Jordan or Egypt:

“The typical pattern for migrant workers in Bangladesh is that they are recruited in their village by sub-agents who promise the opportunity for work abroad in order to earn significantly more money than would be possible in their rural community or even in Dhaka. The employment fee is discussed with the family and they are asked to pay a deposit up front, with the remainder of the fee provided by the agent as a loan.

As soon as the contracts and loans are agreed and signed workers are taken in mini-vans to the capital, where they are placed in a ‘holding centre’ until documents are arranged. Few workers will have passports already and sorting out documentation can be complicated. This means some workers are kept in the centres for up to two months. During this time workers are not allowed to go out on their own and are threatened should they decide to change their mind about working abroad. The threats include violence against the worker, the workers’ family and demands for the immediate repayment of the fee or loan.

Once documentation is secured workers are kitted out in distinctive overalls – in the main they are white or fluorescent. According to labour brokers the “uniform” is provided as workers have no decent clothes, but the dressing of all workers in distinctive colours also makes them easy to spot on the way to and through the airport. Labour brokers reportedly pay bribes to airport staff to ensure workers do not run away from the airport. Workers are then flown to wherever work permits have been arranged for.

Once workers are transferred to the host country their documentation is withheld by the employer, they are housed in pretty bad accommodations, and required to pay recruitment fees and travel costs. Money is often deducted for accommodations and workers will be fined if they talk or make mistakes.

They are paid directly from the labour broker straight into a bank account of the recruitment agent. The agent deducts fees before passing anything onto the workers. Often the family at home are also paying so are in fact double paying the loan. Almost all workers still owe money at the end of their working period.”

Recruitment agencies work with brokers in destination countries and are paid based on the volume of employees they place.¹⁴ For example in Taiwan the labour broker will work with representatives of low-level management to get the permit and will pay these managers per permit granted. This job order is then sold to the highest bidder in the Philippines.¹⁵ Tenaganita report that in Malaysia permits are now being sold for work that does not actually exist because so much money can be made from the provision of permits.¹⁶

In most countries the regulation of these agencies is weak or non-existent and often “recruitment agencies” consist of nothing more than a phone and an address. In the best cases people are recruited and employed through legally registered organisations, but even in these cases the actual person who recruited the worker may be three or four steps away from the registered agent. In Sri Lanka, for example, such sub-agents are unlicensed and often provide

workers with false contracts and charge high commissions. Licensed central agencies in Sri Lanka are not accountable for the practices of these sub-agents.

Given the desire of sending countries to export workers and the income-generating potential of importing workers, many of the groups interviewed felt that it was unlikely that governments would take steps to properly regulate this system. The one “best practice” example cited by a number of commentators, including the Business for Social Responsibility report, is that of the Philippine government.

Recognising problems with unregulated labour recruitment the government established a system of monitoring labour agencies, implementing a system of rewards for good practice and punishments for malpractice. They have also established a “one-stop” shop for administration of labour migration, standard fees are publicised, and standard contracts enforced.¹⁸ However, despite the praise for such a system it is

clear that the vast majority of workers are still paying high fees to labour brokers and that most still suffer from debt bondage as a result (see below). According to the Hope Foundation in Taiwan,¹⁹ Philippine workers pay on average \$7,000 for each job, often paid for from loans. Half of this fee is kept by the broker.

Forced labour and labour trafficking

Forced labour is defined by the ILO as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” According to the ILO definition lack of consent exists even if the worker has agreed to employment if this agreement was obtained on the basis of false promises and deception on terms of work, if recruitment has caused induced indebtedness, or if the employers withhold payments and/or retain identity documents.²⁰

Forced labour is also considered to exist if workers face penalties designed to keep someone employed against their will. This includes the need to pay financial penalties if the worker wishes to leave, the threat of denunciation to the authorities and deportation and threats of physical violence against the worker, their family or close associates.

According to interviews with migrant support groups debt bondage (see below), false promises (see above: wages), retention of documents (see below), financial penalties (see above: wages) and threats of violence and deportation (see above: legal protection) are all common issues faced by migrant workers in the garment industry.

Debt bondage

From the interviews with migrant worker groups it is clear that all migrant workers have had to pay considerable sums to gain employment – often described as “fees” for agents, language courses, arrangement of documents, flights and medical certificate. For example Vietnamese workers reported paying a minimum of US\$2000 to work in Malaysia and reported considerably higher fees for working in Taiwan and Korea.²¹ A Bangladesh worker interviewed by the Clean Clothes Campaign in Malaysia had paid the equivalent of 2,000 euros.

To pay these fees some workers mortgage or sell land and property, use savings or borrow money from friends, family or neighbours. As most workers come from poor communities and are unable to borrow money from banks or family they usually have to borrow instead from either the agent or from local loan sharks at high rates of interest.

Due to the high level of the fees workers need to pay, and the high rates of interest on the loans (we heard reports ranging from 15% per year to 30% per month) needed to cover these fees, and the poverty wages they receive, few workers are able to earn enough to cover even the initial cost of getting the job in the first place. Rather than earning money to invest in a more secure future for their families most simply find themselves and their families caught in spiraling levels of debt.

False promises

For many migrant workers, the wages they actually receive may be significantly lower than the wages they were promised at the point of recruitment. For example one group of Vietnamese workers in Malaysia interviewed by the Textile Clothing Footwear Union of Australia in early 2008 were guaranteed by the labour agency that they would be working eight hours per day, six days a week, and three hours overtime a day. For this they would receive wages of 750 Malaysian ringgit per month. The reality was very different, with the employer able to give or not give work as he chose. This meant that on some days work lasted for 18 hours, on others there was no work at all. All workers were paid on a piece rate basis and were rarely able to earn the money promised. The few who were employed on a basic rate were paid only 18 ringgit for 10 hours work.²²

There are now reports that increasing numbers of workers are arriving to find that there is no work at all. Instead they are kept in dormitories and given one meal a day by their employer, but do not receive any wages. They are unable to earn any money during these periods of unemployment. One Bangladesh worker we interviewed in Malaysia had not worked regularly for over six months and was unable to pay off any of his loan. As the loan he had taken was at a very high rate of interest (25% per month) the amount he owed to the loan shark was much higher after 18 months of “work” than when he took the loan out in the first place.

Retention of documents

The retention of legal documents by employers is common practice and effectively prevents workers from leaving the workplace, changing jobs or even leaving the country. It also restrains the ability of workers to move around freely, particularly in cases where they are likely to be subject to document checks. Factory owners in Jordan have been resistant to returning documents, claiming it is their only guarantee to ensure workers complete their “contracts”.²³ Others claim that workers ask them to look after the passports due to the lack of secure places in dormitory accommodation. Although it is

possible for factories to store passports for workers it is imperative that workers have access to these documents at all times. If documents are withheld then workers are working as forced labourers under the ILO definition.

Penalties for leaving employment

If migrant workers do choose to leave for whatever reason, not only are they obliged to pay their flight tickets, but they may lose deposits paid from wages and have to pay a fine to get passports returned. At the CMT factory in Mauritius workers had money deducted each month, until they had reached a \$200 deposit. This was only returned at the completion of a contract, and was withheld from workers who left employment earlier, even if the contract was terminated by the employer. For example, when workers were deported following a campaign for better wages (see case study) this money was never returned.²⁴ Vietnamese workers in Malaysia reported having to pay 1,200 ringgitt on top of the cost of their plane ticket in order to get their passports returned.

Trafficking

Much of the work being done by governments and NGOs around migrant work tends to focus on the “trafficking” of people. The definition of trafficking is fairly broad, and can cover any migrant brought to a second country under false pretences or kept under forced conditions.

For example Tenaganita has likened the outsourcing system in Malaysia to human trafficking, citing widespread abuses of migrant workers including non-payment of wages, withholding of passports, restricted movement, lack of food and unsafe accommodation, and failure to provide employment;²⁵ this organisation has even used anti-trafficking legislation in the US to file a case against an electronics company employing migrant labour. In Thailand some of the Burmese workers employed under forced labour conditions are considered to be trafficked. This means they can have a temporary stay in Thailand to pursue a case against the trafficker. In some instances it has been possible

to use this stay to also pursue a labour rights case (if strong lobbying takes place).²⁶

However, for the most part anti-trafficking campaigns and legislation apply the definition fairly narrowly and tend to focus on people smuggling for the sex and other industries. So far anti-trafficking campaigns or legislation have failed to address the exploitation of workers by labour agents providing workers to industries such as the garment industry. In reality anti-trafficking enforcement has tended to lead to anti-migration policies such as tighter border controls, which ultimately increase the power of labour agents. The result for workers, whether or not the state deems them as “trafficking victims” or “illegal workers” is ultimately the same: deportation to country of origin. For example those workers that win their trafficking cases in Thailand are classified as victims and supported to return home. If they are not considered trafficked they are arrested and deported. Pursuing a labour case or trafficking case is difficult and deportation to Burma is dangerous so the legislation is of little assistance to workers hoping to defend their rights.²⁷ Therefore it is clear that the use of anti-trafficking legislation would need to be considered extremely carefully given the risk it carries for migrant workers.

Even if the concept of trafficking was to be applied more widely the use of anti-trafficking legislation remains politically controversial. According to MAP the labelling of women workers as “trafficking victims” denies them the possibility to choose migration as a means of earning a living and is an obstacle to them seeking redress against their exploitation as workers.

“This is an identity which relegates women to individual victims of a trafficker, not an identity of labour activists fighting for their rights. A trafficking victim seeks redress against the criminal act of trafficking, a labour activist collectively seeks to redress the exploitative conditions that all workers face,” explained one MAP representative.²⁸

Given the lack of clarity in definition and application of “trafficking” it is difficult to comment on the prevalence of trafficking within the garment industry.

It is also unclear to what extent, given the anti-migrant nature of most anti-trafficking legislation, the use of “anti-trafficking” language and legislation could help in any campaign to improve garment workers’ rights.

Labour recruitment for overseas work is big business.

Gender

Only a few of the organisations interviewed were addressing the gendered contexts of migrant worker exploitation, although it is increasingly women workers who are migrating for work. For example, only women

workers from Bangladesh are now being given work permits for Mauritius, where a large number of migrant workers are employed in the garment industry.²⁹ In Thailand women form the majority of the migrant garment workforce, in Malaysia the majority are still men but more women workers are arriving and are facing a system of total control. Seventy percent of the migrants from the Philippines used to be women but now it is just under 50 percent.³⁰

More research needs to be done into the specific problems faced by women who migrate for work in order to ensure migrant workers organisations, trade unions, and campaigners can effectively support women migrant workers to address the particular issues faced by migrant women workers.

Gender discrimination is apparent in both the recruitment process and employment conditions of women migrant workers. In some cases the women themselves may not have chosen to migrate but have been compelled to do so by their families.³¹ In these cases the young women may not have been involved in negotiations over, for example, contracts, country of destination, or length of service, all of which may have been decided between the (male) agent and her father or other male relatives.

Even where the decision to migrate has been made by the women herself, once they have left home and begun the process of migration, women migrant workers may feel more dependant on the agent for protection and safety and therefore more open to abuse by these individuals. Some women workers have reported preferring to work for an outsourcing agent in the country of destination,³² as they will “look after” workers’ once they have arrived in a foreign country.

Women migrant workers may earn less than their male counterparts. For example in Thailand women often earn lower wages than their male counterparts and experience lower living standards. They also face other discrimination such as deductions for menstrual leave, forced medical checks, and pregnancy and HIV testing. In Thailand many Burmese women have been forced to cut their hair short and in both Malaysia and Thailand marriage is prohibited for women workers. Either marriage or pregnancy can be grounds for deportation.

In many factories the direct supervisor of workers will be somebody from within whichever language or national group are employed on a particular line or section; the sexual harassment experienced by migrant women workers is often committed by these supervisors. The difficulties of all women workers to address and confront sexual harassment by employers and supervisors is well known. Such diffi-

culties increase however when the abuse is happening within the migrant community, where loyalty to or affinity with supervisors from within that group may be stronger and where women may be under pressure not to report their fellow migrants. Of course it is not only the supervisors that are involved in such practices. Women also report sexual harassment from owners and agents, both in the factories and in the worker dormitories and there are some reports of women being asked for sexual favours in exchange for work or promotion.³³

Women may also be concerned that reports of sexual harassment and abuse, particularly against those from within their community, could easily reach back to their own community in the country of origin, particularly where migrant workers are recruited from the same village or region. Such reports could cause problems for women on their return, particularly if they resulted in the dismissal of other workers from the same community. For example Sri Lankan workers interviewed in Mauritius expressed a fear of repercussions in their home country should their experiences of sexual harassment at the factory become public.³⁴ Finally, women may not want reports of problems or difficulties at work to get back to their families especially if those families have helped them to get the work in the first place.³⁵

Women migrant workers also face more barriers in regard to freedom of movement and freedom of association than their male colleagues. In Malaysia, Workers Hub for Change reports attacks on women workers by the RELA during dormitory raids or street arrests. In Thailand workers are at high risk of sexual assault or rape by the police. Should women migrant workers in Thailand or Malaysia get arrested there is also a high risk of sexual abuse in the police station or detention centre. It is not just the authorities that pose these risks. Attacks on migrant workers from local gangs in Mae Sot is common. All of these means that many women migrant workers feel unable to leave the dormitories or factories and this prevents their freedom of movement. It also adds to the dependency they may feel on the labour agent or employer.

In terms of organising, there is certainly a perception that women workers are easily controlled by management and are generally more reluctant to speak out than their male colleagues. Thai and Malaysian unions report that it is difficult to get women interested in the work they are doing, although others have suggested that women may feel that male-led unions are unlikely to address the concerns most immediate for women.³⁶ MAP reports that although it is often women who take labour cases or lead initial workers’ struggles, they often face difficulties in assuming leading positions once an organisation is set up.³⁷ This is exacerbated by cultural pressures and the perception that women

who are strong and outspoken are also morally “loose.” Laos organisations also commented that women there are often embarrassed about speaking publicly and few are encouraged to develop the skills and confidence needed for public speaking and negotiation.³⁸

This is not the whole picture however; some women do speak out and often more effectively. For example in Thailand there are numerous women worker organisations and support groups. Many women are involved in the various Burmese groups there, although they remain in the minority. In the Burma Campaign committee there is one woman and nine men, in the Karen Organisation they have 1,000 female members and 2,000 male members, and in the Federation of Trade Unions Burma (FTUB) office there are 10 men and eight women (although the members are mostly men).³⁹

Finally, women may suffer even more dire consequences should they lose the precarious legal status they have as migrant workers. In Malaysia the loss of work and the associated visa leaves many at risk to trafficking into the sex industry. In Thailand and Malaysia workers are reported to face a constant “loop” of deportation and re-entering illegally, leaving them vulnerable to ever greater levels of exploitation.

Factory closures and mass redundancies

As the economic crisis hits both destination and origin countries the consequences of factory closures and mass layoffs are worsening the situation faced by migrant workers.

In Malaysia many migrant workers are now being thrown out of factories, especially in manufacturing, where job losses for both migrant and local workers are high. Half a million locals are facing potential unemployment and this has implications for migrant workers both in terms of the work opportunities available to them and in terms of the possibility of getting support for their continued employment from their local colleagues.

As a result of the drastic job cuts the Malaysian government is now promoting a “migrant workers first out” policy. Reports suggest that, as a result, up to 30,000 migrant workers from Bangladesh will have their work visas revoked.

For migrant workers the only legal option is to return to their country of origin, as work permits are only valid while jobs exist. However most will not have money for tickets and will have been unable to pay back the debts accrued through the initial recruitment process. As such many are simply unable to return home and many become undocumented workers. Those that do return home may end up in a worse financial situation than they were in prior to migrating and will have a continued obligation to pay the debts accrued in attempting to migrate in the first place.

As the economic crisis also hits those countries most commonly known to send workers abroad (e.g. Philippines, Bangladesh, Vietnam) the pressure or incentive for workers to migrate for work might increase. In Cambodia, for example, a large number of garment workers have lost their jobs in recent months without compensation. It is not clear where the workers have gone since the closures, although many have not returned home. The workers are already broke and will try to migrate, so at this point are very vulnerable.⁴⁰

At the same time, governments who promote migration as a way of keeping local unemployment down may choose to ignore the exploitation facing their workers in order to maintain high migration figures. In the Philippines many migrant workers have been returning to find that the employment situation at home is no better or even worse than the country they migrated to. As there are no new funds for the government to support these workers and they have told agencies to look for jobs overseas.⁴¹

Gender discrimination is apparent in both the recruitment process and employment conditions of women migrant workers.

**Migrant workers are
not silent “victims” ...
migrant workers are
taking action.**

Chapter 3

Supporting and Organising Migrant Workers

It is clear from all the information gathered during this research project that the ability to organise and get information about rights and services available are important elements in ensuring migrant workers are able to demand better working and social conditions. Trade unions, migrant support groups, self-organised migrant worker groups, and NGOs are working on this and some examples of innovative work being carried out already exists. This chapter provides a short overview of some of the strategies being employed by migrant workers and their supporters.

Worker action

Almost all the information and research on the position of migrant workers rightly emphasises their vulnerability to exploitation, but it is important to recognise that migrant workers are not silent “victims”. All over the world, despite the risk, migrant workers are taking action, either as individuals or groups, to defend their rights and improve conditions.

Migrant worker strikes and stoppages are a regular occurrence. In Mae Sot, Thailand, for example, Burmese workers strike several times a month.⁴² The industry in Jordan has seen waves of strikes by its Bangladeshi workers and in Mauritius workers from China, Bangladesh, and Sri Lanka have taken industrial action in relation to pay and conditions. In many cases workers have been successful in getting at least some of their demands met.

At the same time those considered “leaders” in the action do invariably lose their jobs or visas, face denunciation and deportation and, in some cases, violence as a result of taking a stand and it is unclear if the improvements made as a result of such actions can be sustained in the long term unless workers have support from outside the factory.

Migrant worker strikes and stoppages are a regular occurrence.

Not all action taken by workers involves directly confronting their employer. Workers have also tried to get help and support from outside the factory, including from their home government representatives. For example, in Malaysia groups of Vietnamese and Bangladeshi workers have requested assistance from their respective embassies. Most embassies have failed to respond to such requests for support.

“Leaders” invariably lose jobs or visas, face denunciation and deportation and, in some cases, violence.

Finally, some workers vote with their feet. Despite the risk of losing visas and work permits hundreds of workers simply leave their employer and seek work elsewhere. In some cases workers may decide that working without papers may be preferable given the constraints and costs imposed on them by working with permits.

Organising and supporting migrant workers

It is clear that unions and migrant worker groups face huge barriers in organising and supporting migrant workers. As outlined above these include communication and language difficulties, legal barriers, difficulties in gaining trust and access to migrant communities, and a serious lack of resources. However, the fact that migrant workers, even without the support of trade unions or NGOs, are taking action themselves shows that there is a need, desire, and willingness within migrant worker communities to defend their rights and that there are also plenty of opportunities for local and national trade unions and organisations to offer support and solidarity for these struggles.

Trade unions

For all workers the most effective way of defending rights is through the formation of independent trade unions and it was clear from the research that most groups agree that this remains the most effective way for addressing the issues faced by migrant workers. In countries where a high proportion of workers in the industry are migrant labour it is also increasingly important for trade unions to involve migrant workers

in their organising strategies and many trade unions are now developing this work.

In Jordan the textile union has developed an extended programme that has organising of migrant workers as its main focus. It has set up three local offices in the areas where migrant workers are living. In Mauritius efforts are underway by ITGLWF-affiliated unions to recruit migrant workers and in Namibia the local union has tried to recruit migrant workers with varying degrees of success and in some cases have ensured migrant workers were covered in collective agreements.⁴³ In Thailand one textile trade union has actively started to recruit migrant workers. This was the first workplace union to accept migrant workers and its membership is now made up of 400 Thai workers and 100 migrant workers. These migrant workers are included in the collective bargaining agreement and now receive the same wages, bonuses, and conditions as the Thai workers. When the migrant workers have any problem the committee of the trade union can now also act on their behalf. For example when some migrant workers were arrested by police for lack of documents, the trade union intervened and represented the migrant workers in the process.⁴⁴

Labour rights and migrant support groups

As outlined above there are significant barriers for trade unions in carrying out this work, including legal prohibitions, cultural and linguistic (mis)understanding, racism within the union and local/migrant workforces, lack of trust of union officials, limited resources, and a lack of understanding of the purpose of the union and the right to freedom of association.

For these and other reasons it seems that, at least initially, organisations set up specifically to support and work with migrant communities have been more successful than traditional unions in contacting and organising migrant workers and in supporting self-organising within migrant communities (at least in the countries involved in this research project). Organisations like MAP in Thailand and Workers Hub for Change in Malaysia are examples of associations that have been doing this kind of work. However these associations do not have the same role as unions and are not able to negotiate or defend labour rights in the same way. Nor do they have the representative function needed to bargain with employers or authorities on behalf of workers. Many migrant support groups may not have labour rights as their main focus and will tend to work more on social rights or political organising. For example many of the Burmese associations in Thailand are focused more on organising for political campaigning than for defending labour rights.

Over the last few years the Action Network for Migrants (Thailand), a network of 15 NGOs and migrant groups, has been building links with Thai unions and labour groups. Gradually the union leaders have become more receptive and have also agreed to form a joint committee of migrant and Thai workers. The Thai labour groups agreed to take the migrants' demands to the government on International Migrants Day and to include migrants' demands in their petition to the government on labour day. Some of the Thai unions have been openly reaching out to migrants for membership in the unions, in some cases, taking into consideration the low wages that migrants receive, dues were waived. NGOs continue to play a role in developing these connections, providing space for migrant and Thai groups to meet and discuss, providing translators for communications, and supplying the Thai unions with detailed information on the migrant situation.

It is clear that such an approach can be successful in supporting migrant workers to organise and demand their rights but the traditional mistrust between unions and worker associations or NGOs prevents this from happening on any significant scale. This problem may be accentuated in the case of groups that also have a gendered focus, but more research is needed to investigate these specific barriers.

Networking with organisations in home and sending countries

As labour supply chains and production supply chains are becoming increasingly transnational there is a clear need for the response to be transnational as well. Networks such as Migrant Forum in Asia are doing important work in trying to build these links and create a stronger voice for migrant workers.

There are also some examples of exchanges between trade unions based in countries of destination and origin. In the garment industry this has been limited so far to some sharing of experiences and ideas between unions in Jordan and Malaysia with unions in Bangladesh for example. The ITGLWF is looking at developing schemes in which membership in a worker's country of origin union provides automatic membership in the union in the host country. This would enable unions in country of origin to start organising migrant workers prior to departure. Other schemes are looking into multinational organising which enables workers in unionised parts of the supply chain to bargain on behalf of the non-unionised workforce. Such a project is currently being developed by the communication workers union.⁴⁵ Unions in the garment industry may start looking into similar projects.

Case study: Supporting returning migrants

Sources: IMA Research Foundation, Bangladesh and Tenaganita, Malaysia

In Bangladesh migrant workers who had returned from work in various countries found that it was almost impossible to seek redress for the violations committed against them by employers and agents in both Bangladesh and the country in which they were employed. In response to this a group of migrant workers set up a foundation, International Migrant Alliance Research Foundation (IMA, Bangladesh), which is working to get justice for Bangladeshi migrants and to campaign for recognition of Bangladeshi migrant workers' rights. They have taken up a large number of legal cases on behalf of migrant workers, do action research on migrant worker issues, and provide migrant worker services and support for returning migrants and their families.

IMA work closely with Tenaganita, a migrant worker support NGO in Malaysia and this cooperation has ensured that Bangladesh migrants supported by Tenaganita in Malaysia can be referred to IMA on return, that Tenaganita can continue tracking cases, and both groups can develop a greater understanding of the problems and conditions of migrants before, during, and after migration. Tenaganita staff regularly visit Bangladesh and IMA to exchange information and develop joint strategies. They also work together on urgent action cases – the most recent in April 2009 involved a protest of Bangladesh migrant workers who staged a sit in at Dhaka airport to demand repayment of the US\$4,600 expenses that they incurred after arriving in Malaysia for non-existent work.⁴⁶

<http://www.imabangladesh.org>

<http://www.tenaganita.net/>

Conclusion

There is general agreement that the only way to challenge the exploitation of migrant workers is through worker organising and ensuring that workers' movements include and support migrant worker struggles. Although there are examples of unions successfully organising and supporting migrant workers, this is not a widespread experience due to a combination of barriers to organisations, lack of resources, and reluctance from traditional unions who may view migrant workers as threatening to local workers and the gains they may have won.

This means that it might be necessary for unions and NGOs that already have links with the migrant communities to work more closely together, in order to educate and raise awareness of labour rights and trade unions, build up trust between the union and the migrant workers themselves, and ensure that migrant workers are supported in getting their needs and particular problems recognised and understood within the union movement.

Developing networks between unions and groups working on the ground both in sending and host countries can facilitate the exchange of information, ensure support for migrant workers at all stages of recruitment, employment, and return, and can create a strong platform for lobbying and advocacy.

Education and awareness raising

There is a clear need for rights-based education work to take place in both country of origin (where possible) and destination. There are examples of a number of NGOs carrying out this work. However these efforts are limited and more such work is needed to begin to serve the needs of migrant workers in garment industry supply chains.

Community organising is a useful base for raising the issue of labour rights.

Language barriers remain an issue in education work, particularly in the case of written materials. Therefore groups working on education and awareness raising emphasised the need for materials to be produced in a variety of languages to make them accessible to migrant workers. Others mentioned the need to use a variety of formats to ensure access to those workers who may not have high literacy levels.

Finally a number of groups felt that their experience had taught them that it was important to focus first on issues seen by migrant workers as most relevant to them, for example health issues. This was particularly relevant to women workers who were found to be more likely to initially attend workshops on health or access to services than on labour rights. Once contact is made through these issues the work can be enlarged to include other issues. Examples of educational resources collected through the course of the research project included leaflets, CDs, karaoke, media, radio, booklets, and posters.

It is also important for groups to find ways of reaching out to migrant communities and to distribute material in places where migrant (especially women) workers are already likely to be. For example in Taiwan the Hope Workers Centre have attempted to reach Filipino workers by distributing resources and materials in a diverse number of locations including through churches, taxis, cafés, and restaurants used by the Filipino community. In Malaysia information is distributed through existing Burmese community groups.

Community organising is also a useful base from which to raise the issue of labour rights and this is being done in both countries of origin and destination. In destination countries such as Thailand and Taiwan some groups have started education programmes for migrant workers or migrant workers' children and have opened up direct support services and labour centres. NGOs have also supported the formation of voluntary self-help and migrant worker groups.

In countries of origin safe migration workshops were being run in communities experiencing a high level of outward migration, for example on the Cambodia-Thai border. These workshops aimed to talk to communities in advance about the dangers of labour traffickers and agents and the dangers of fake promises and exaggerated claims made on their behalf. This work also includes keeping a record of migrants prior to leaving and following their return. One group working in the Philippines set up an SOS sms helpline for Philippine migrant workers facing problems, which would enable them to get in touch with partner organisations working in their host country and ensure their complaint was logged at the embassy.

Thailand: Burmese Workers Using the Rule of Law

Source: "Migrant Workers from Burma Organising in Thailand", Jackie Pollack, 2009

Following a legal training provided by the Migrants Assistance Programme (MAP) in Mae Sot, Thailand and with support from local community based organisation Yaung Chi Oo Workers Association one group of workers from a knitting factory decided to attempt to try using legal mechanisms to challenge their exploitation. Their struggle to take their case through legal channels exposed the many barriers and obstacles in the path of migrant workers to taking collective action against their exploitation.

The Labour Protection Office was located one and a half hours away from the border town where they worked: A drive through the mountains passing three checkpoints; a journey that as migrants they were not allowed to make. Even when the Labour Protection office was persuaded to provide services to this group, the official was Thai who could not speak Burmese and therefore could not communicate with the workers.

Meanwhile, the employer dismissed all the leaders of the group and eventually all the workers. They were blacklisted as "troublemakers" from all factories in the town. Having lost their jobs, the workers lost their legal status and were harassed, arrested, and deported.

They organised themselves to ensure that a group of leaders, mostly women, stayed on the border to return for negotiations. When the employer did not follow the labour protection order then the migrant workers agreed to go to court. In the first court hearing the employer offered each migrant 10,000 baht although the ruling was for 160,000 baht per worker. The judge said this was too little and suggested an increase of a further 2,000 baht. When the migrant representative was asked if the group would accept this, she said no. The judge said she did not believe the migrant was speaking on behalf of the other migrants who were all in court and so they were asked. Without a moment's hesitation, in unison the group stood up and a resounding "Ma Houk bu" (no) echoed through the court.

The migrants in this case eventually received about half of the compensation owed to them, but it changed the nature of all further negotiations. Instead of spontaneous strikes, workers in the area started to organise and negotiate. Each year since this case, approximately 1,000 workers in the area have taken cases forward with MAP's assistance and received compensation of between 1 million and 4 million baht a year. This also gave other NGOs the courage to support migrants to take legal action and now there are several NGOs throughout Thailand that provide legal assistance to migrants in cases of labour exploitation.

Pre-departure training for migrants preparing to leave for work is also being carried out. In the Philippines training is being done by the government. In Cambodia training is given by Legal Support for Children and Women (LSCW). The training covers subjects such as labour rights, legal rights, medical information, and health and safety. Many groups of workers are going to the same country or even workplace so training is on local laws in destination countries as well. In some cases LSCW are working with migrant workers through the agencies, but most labour agencies are not interested. It is important that pre-departure training courses are carried out by groups that are independent of the agencies themselves, are done prior to workers signing a contract, and focus on information regarding workers' rights, welfare and access to information.

Education and information provision takes place all over the world and in a variety of ways. Groups have different ways of reaching out to migrant workers but all are attempting to provide education as a way of increasing awareness of both social and workers' rights. As well as ensuring workers have the information they require to demand these rights are met such work is also important in bringing workers, particularly women, together and represents an important first step in organising.

Legal support

Despite the difficulties for workers in accessing legal protection there have been numerous legal cases taken against employers by migrant workers. Several NGOs and migrant worker groups have successfully taken legal action on underpayment of wages and health and safety violations.

In Thailand, MAP supports around 600 - 1,000 migrant workers in taking legal cases against their employers each year (see box).

They believe that these cases have been vital in challenging the assumption that migrant workers can be employed at lower wages and in removing the perceived impunity employers enjoyed with regard to migrant labour rights. MAP, and their colleagues at the Yaung Chi Oo Workers Association, have faced a lot of pressure from local employers as a result of the work they were doing alongside local worker associations. This included threats of and actual violence against MAP employees and associates.

There are also cases of migrant workers pursuing, or trying to pursue legal action after deportation but this can prove extremely difficult unless support groups in both sending and host countries are involved. In Bangladesh the IMA foundation (see page 23) has been working with lawyers to try to get repayment of fees paid by workers to agents and the government. Cases have been filed on behalf of workers who have been deported or paid high fees on the basis of false promises and who returned to Bangladesh destitute.

IMA has been successful in winning a large number of legal cases that have led to workers being refunded the money that they paid to agents based on the argument that recruitment was done under false pretences.

One of the underlying causes of migrant worker exploitation is the assumption that, due to their vulnerability and status as migrants, they are unable to make their voices and demands heard. The pursuance of legal cases against exploitative employers or labour agents is important in challenging this perceived impunity and has proved that legal provisions can be applied to all workers regardless of nationality.

Targeting brands and retailers

Using specific cases to put pressure on buyers has been done by some of the Asian-based organisations that we spoke to. For example local Bangladeshi migrant groups targeted Walmart when it was found that one of the retail giant's suppliers was using a factory employing Bangladesh migrant workers in

Jordan. The result was mixed; although Walmart stopped buying from the factory, which led to the loss of employment for both local and migrant workers, they did compensate the workers.

In Malaysia, Tenaganita worked with a US partner to bring an anti-trafficking complaint against electronics company Esquelle following a batch of complaints received by them from migrant workers. They had initially tried to contact the company directly but with no response. Following the complaint being filed in US courts Esquelle did get in contact and a process is now underway to resolve issues at the factory. Although Tenaganita recognises that there are concerns about the use of anti-trafficking legislation as a tool to support migrant workers they believe that this has been a successful strategy to get action from a multi-national corporation and may consider using this in future cases involving electronics and garment brands.

A number of organisations have had experiences with campaigning and engaging international media or campaign networks. See the case study on Nike/Hytex and CMT/Arcadia and NEXT for more information. Lessons from these experiences are also included in campaigning strategies in chapter 7.

Legal cases against exploitative employers or labour agents are important in challenging perceived impunity.

**Slavery: no company
wants their brand
linked to such a word.**

Chapter 4

Responses from Brands and Retailers

This research also included surveying some of the larger name brand garment companies and retailers to see if and how they are identifying and resolving problems relating to violations of migrant workers' rights.

We selected companies that were targets of previous campaigns on migrant workers' rights or those that were already engaged in corporate social responsibility work in general. We also tried to find out how employers themselves reacted to demands for improvements made by migrant workers.

Not all brands and retailers agreed to be interviewed. Many of those that did requested that the responses be kept confidential. The research findings below are based on these responses but may not attribute particular actions to specific brands.

Employers: evading the problem and blaming the victim

Many factory owners refuse to take responsibility for the working conditions of migrant workers on the basis that they are not the direct employer of these workers. They therefore deem employment conditions to be the responsibility of the outsourcing agency or labour agency. The labour agent, who is legally and contractually the employer, would not consider themselves responsible for ensuring that workplace conditions meet good standards.⁴⁷ The confusion caused through the failure to clarify who is legally responsible is useful for both agent and factory owner in evading responsibility.

Legal cases, strikes, and campaigns have had some success in getting improvements at some factories. However in the vast majority of cases employers are responding to such demands by dismissing workers and/or calling in immigration authorities. Responses have also included closure of the factory, intimidation of worker leaders, and in some cases violent attacks. Even where worker action has resulted in some improvements, these tend to be short lived and are

reversed as soon as the work permits of the workers involved come to an end. The experience of migrant workers in Mae Sot in Thailand seems common:

"Sometimes the employer comes to convince the worker to come back to work by agreeing a small pay rise, but they sack the leaders. In many cases they just call the police," explained Moe Swe, of the Yaung Chi Oo Workers Association.⁴⁸ Moe Swe also told us that organising workers can be dangerous. "We've seen two or three cases where worker leaders have simply disappeared. Some workers are beaten up and put in hospital. One leader was beaten recently and his hands were broken," he said.

In cases where brands and retailers have been involved in pushing for improvements employers have often taken positive action to address complaints, particularly in relation to living conditions. However, this is often accompanied by more negative responses. The management of CMT (see case study 2) in Mauritius made improvements in dormitory conditions and contracts following media exposure of the living and working conditions of migrant workers from Sri Lanka, China, and Bangladesh. However they refused to grant compensation to deported workers for fees deducted during their employment and for unpaid overtime. Instead CMT gave a grant to the Sri Lankan union involved in the case, demanded this grant was used to pay for "education programmes" and not to pay compensation and cut their relationship with Sri Lankan labour agencies that cooperated with the investigation. Ultimately those workers initially involved in the case received nothing. At Hytex in Malaysia (see case study 1) workers reported threats from management following the lodging of a complaint with Nike representatives in Malaysia.⁴⁹ Brands also report some resistance to changes demanded of their suppliers.

For example one supplier felt that the demand requiring him to return passports to migrant workers would result in workers choosing to leave or break the terms of their contracts.⁵⁰

Brands and retailers

Protecting their reputation

We interviewed a number of brands and retailers, many of whom we know have had or do have migrant workers in their supply chains. The responses were extremely varied, and the quality of response was closely related to the kind of experience they have had in dealing with high profile cases of migrant worker exploitation in their supply chains.

Those companies who outlined the most concrete steps to address migrant worker issues and had developed strategic guidelines and procedures to detect and remediate them were NEXT and Arcadia (buyers from CMT Mauritius in 2007), Nike (buyers from Hytex, Malaysia in 2008), and Jones (one of the buyers identified in NLC research in Jordan 2006). All of these cases made headline news in major retail countries, news that linked their brand name with a word like “slavery.” As the ETI told us

“No company wants to have their brand name linked with such an emotive word.”⁵¹

Two further companies interviewed, ASDA and HEMA, had also experienced cases involving migrant workers (both in Mauritius), yet had still not developed any kind of strategy for remediation of violations involving migrant workers. ASDA was also implicated in the CMT case, but was never linked so publicly in the media. They seem to have piggybacked on some of the work done by NEXT and Arcadia in resolving that case, but this had not led to development of any company policies. HEMA was also involved in a case in Mauritius in 2002, but as they themselves acknowledge, “we did a lot of work at the time but no longer have the details,” they could not confirm if they still buy from the factory involved. Again HEMA did not consider their other sourcing countries to be high risk thus it appears migrant workers are not a priority issue for them. Primark clearly had some knowledge of the problems of remediating migrant worker violations, but were interviewed only weeks after an expose highlighted migrant worker abuse in a UK supplier and had yet to convert this learning into a strategic response.

Adidas and H&M had not been publicly linked to migrant workers’ rights violations but still had some awareness of the need to address the specific types of exploitation that they are vulnerable to. Adidas was contacted by campaigners when the Hytex case went public and was clearly concerned that they were at risk of future exposure.⁵² H&M have not had any public cases involving migrant workers, but are also aware that there are risks in their supply chain and seem to be following the debate and have some view of what the main issues may be for them. They are working on internal migrant issues in China.

Carrefour gave the weakest response of the companies contacted by the CCC. They have never been publicly linked to the use of migrant workers in their supply chain and clearly consider that there is a low risk of finding migrant workers in the future.

From the above we can conclude that brand reputation is the primary motivation for brands and retailers, and the extent to which they view this reputation to be “at risk” determines their actions. Work to identify and address violations of migrant workers rights is only a priority for those companies who see it as a “high risk” area. Public exposure of migrant worker abuse could, therefore, be useful in getting this issue on the CSR agenda of brands and retailers. Follow up not only with the retailers directly implicated in a case, but with other brands and retailers that may have migrant workers in their supply chain could ensure such public exposure has a wider impact on the industry.

The examples of ASDA and HEMA show that individual cases do not always lead to long term or strategic supply chain actions. Nor do they necessarily force migrant worker rights onto the wider industry CSR agenda. More work needs to be done to raise the visibility of migrant workers and ensure that demands voiced by migrant workers are addressed.

Codes of conduct and policies

Most companies surveyed believe that the issues faced by migrant workers are already covered by their codes of conduct and most have not included specific reference to migrant workers in their codes. There are some exceptions:

H&M does include specific reference to migrant workers in their code. Their code states that: “If foreign workers are employed on contract basis, they should never be required to remain employed for any period of time against their own will. All commissions and other fees to the recruitment agency in connection with their employment should be covered by the employer” (*H&M code, 4.1.2*).

Brand reputation is the primary motivation for brands and retailers.

Walmart (which owns ASDA) also mentions migrant workers in their sourcing code, but only in relation to their legal status: “Only workers with a legal right to work shall be employed or used by a supplier. All workers’ legal status, must be validated by the Supplier by reviewing original documentation (not photocopies) before they are allowed to commence work.” It is unclear if this means undocumented workers would be excluded from using the code to demand their rights.

Jones Apparel told us they are planning to include migrant workers in its new code to be released later in 2009, although they did emphasise that their code was lagging behind actual practice. We were unable to get copies of the proposed wording or content of these clauses.

Some companies that have not included migrant workers specifically in their codes have included them in the guidelines of implementation that accompany them or have issued particular guidance on the use of migrant workers. These include **Nike**, **Next**, and **Arcadia**, who focus mainly on recruitment and contract practices. Adidas report that they are in the process of drawing up similar guidelines, based on their “practical experience” of dealing with these issues. These guidance notes are generally only sent to suppliers and local compliance staff in those countries where migrant workers are prevalent in the industry or attached to commercial contracts. Factory auditors will also be supplied with copies.

Although most brands and retailers felt specific mention of migrant workers was not necessary in codes, workers’ organisations and support groups felt it was an important first step toward recognising both the existence and particular vulnerabilities of migrant workers within garment supply chains. Given the lack of state protection afforded to migrant workers, the inclusion in codes of standards that explicitly meet the relevant ILO and UN conventions on migrant work

could be important in enabling workers to demand their rights granted by these conventions.

However, codes will only be useful in this regard to the extent that workers and worker organisations can access them. This is where the “guidelines” being issued by some brands may fail to support workers in defending their rights. If, as appears to be the case at the moment, the guidelines are only issued to suppliers and auditors they are not useful to workers in knowing and demanding the rights they claim to guarantee. Similar critiques were made of the first codes, which were generally regarded by some brands as “semi-confidential” documents that could not be shared with workers. Finally, codes at a minimum could be used to ensure that the implementation of labour standards is done in a way that protects migrant workers but does not exclude them from supply chains. Specific code standards need to be positive in regard to migrant work and focus on the implementation of rights of all workers, regardless of status.

Audits and migrant workers

All the brands and retailers we interviewed used audits as the standard tool for identifying violations of migrant workers’ rights. Some companies had done some work to map out where migrant workers existed in their supply chains and others said that they were aware of where migrant workers were prevalent and that issues specific to migrant workers needed to be checked by auditors. Although no brand or retailer had specific questions included in audits relating to migrant workers most felt they would appear under sections relating to forced labour and anti-discrimination. Some also asked for extra checks on dormitories, contracts, personnel files, and retention of documents.

No brands or retailers interviewed seemed able to explain how migrant workers were properly and explicitly included in audits. Most also said they interviewed workers, but few had specific guidelines on inclusion of migrant workers in the interviews. Brands did acknowledge difficulties in including migrant workers partly because of language issues but also because they are less willing to speak out. Three companies said they made provisions for translation, but this was normally confined to the local language plus one extra language.

In all of the public exposes mentioned in this report auditors had been regularly carried out at the supplier factories involved. At Hytex workers had tried to contact the brand involved to raise concerns about migrant worker exploitation a year before the case broke in the news. This would indicate a failure of audits to pick up the serious violations taking place, even in factories and countries where migrant workers

may be in the majority. This is not surprising: it is clear that in every case audits rely almost entirely on document reviews, and that contracts, pay slips, and legal documents are the primary source of evidence. No one mentioned off-site interviews or contacting local or migrant organisations. Only Nike mentioned any attempt to set up a credible system that workers could use to register complaints or raise grievances (see below).

Where migrant worker violations have been properly addressed, remediation has relied to a large extent on cooperation with local migrant worker support groups or local trade unions, who were able to give an accurate analysis of the issues involved. Yet, brands and retailers appear not to have developed their relationships with these migrant worker groups either to facilitate better information gathering by auditors or to implement programmes aimed at preventing such abuses in the future. Instead brands continue to rely on an auditing system that, as even they acknowledge, is unlikely to adequately identify violations of migrant worker issues.

Improving migrant workers rights: remediation strategies

Unsurprisingly guidance and remediation was focused on those issues that brands and retailers view as most important in terms of migrant workers exploitation – those that lead to a situation of forced labour. Strategies were being developed both for dealing with individual cases and, in a few cases, for use along supply chains. The strategies and actions focus on labour agents and suppliers, contracts and employment relationships, access of workers to documents, and dormitory conditions.

Among the actions included in these migrant worker strategies were the use of registered labour agents only, insistence on direct employment and direct payment of wages by factory, training of workers in home countries, the checking of contracts and double signing of contracts (in home country and host country), checks that workers understand contracts, reimbursement of agency fees, and full access by workers to documents.

There were some significant gaps in work being done by companies on migrant worker issues. For example no strategies seem to exist for preventing the deportation of workers or remediation of abuses involving workers that have already been deported. No company has developed any guidance for dealing with retrenched migrant workers as a result of factory closures, which is becoming a serious issue in countries like Malaysia. None of the brands interviewed had developed policies for finding and dealing with gender specific violations or for ensuring that women migrant workers were specifically included in audits or remediation strategies

Remediation strategies employed by any of the brands and retailers need to ensure that legal status and deportations do not prevent these workers from accessing remediation plans, including re-employment at the same or another supplier factory, and reimbursement of fees or deductions or compensation. They also need to act quickly to ensure that workers are not forcibly deported during any industrial dispute before getting the opportunity to demand these rights.

The fact that gender is not taken into account in monitoring, auditing, and remediation in an industry where the vast majority of workers are women is outrageous. There is a clear need for companies to do more to ensure that audits and monitoring are gender sensitive and efforts need to be made to ensure concerns of women are properly included. Women need to be properly involved in any plans to tackle gender issues, including sexual harassment, to ensure that the remedies are not detrimental to them either in the country of origin or destination.

A number of the remediation strategies described by brands or retailers were interesting, and in some cases (particularly in regard to employment relationships) were not that far from the demands being made by migrant workers. If these strategies are implemented properly and thoroughly they could certainly go some way to tackling some of the barriers faced by migrant workers by clarifying and stabilising the relationship between employer and employee and by tackling the issue of debt bondage and false promises. However they do not address those issues that make organising and speaking out most difficult – nothing to oppose

In all of the public exposes mentioned in this report audits had been regularly carried out at the factories involved.

Nike Hotline

The only brand that mentioned any attempt to set up a system to allow migrant workers to raise complaints about their working conditions was Nike, which is testing the usefulness of a “Nike hotline” for workers in Nike’s Malaysian suppliers.

The hotline constitutes a toll-free number that has been in operation since November 2008. Interestingly, although the hotline received no calls between November and January (when the interview took place), the mobile phone of the Nike Malaysia representative received 300 calls between August and October 2008 and a further 60 between November and December. The representative was closely involved in delivering the remediation plan for the Hytex case and therefore the issues raised by workers varied depending on the situation with the case. For example in August calls were about passports and were resolved quickly. In September calls related to the offer to pay for return flights, which Nike had agreed to partially reimburse. From October complaints were regarding reduction of hours and returning to the factory after a period of absence. Others related to personal problems.

The fact that the mobile number was used but not the hotline is partly due to the close involvement of the Nike representative in the Hytex case resolution process and partly due to the limited advertisement of the hotline so far. It may also indicate that workers are more likely to call an individual they

know or have been recommended than a foreign based, toll-free line. It is also clear that calls were related to the information that was being given to workers as part of the remediation process, which had potentially given the workers more confidence in the usefulness of calling and a better understanding with regard to which issues could be raised.

This emphasises the importance of making this information widely available to workers, unions, and worker support organisations. This is why we were pleased to see that alongside the hotline Nike was working with the Malaysian NGO Tenaganita to monitor conditions for migrant workers in Nike supplier factories and deliver training to workers and management. However such a programme requires considerably more investment than simply setting up a hotline and we understand that these plans may now have been dropped.

The full impact of Nike’s intervention will not be clear until the hotline has run for a longer period, and actions taken on the basis of hotline complaints are evaluated. However it is unlikely to be as effective as locally based groups or individuals in monitoring problems or reporting complaints and it is unlikely to result in the more systematic changes required to tackle violations of migrant workers rights.

deportations, to support the “legalisation” of workers fighting court cases, or to oppose the tying of visas to a particular factory. This remains a serious obstacle for workers attempting to seek justice through the CSR policies of the buyers they are producing for.

Actions beyond the factory floor: government policies

Most brands and retailers interviewed acknowledged the importance of government policies in protecting migrant workers (or, more commonly, keeping them in conditions conducive to exploitation). In fact Carrefour explicitly stated that they felt the problems facing migrant workers were specifically the responsibility of the government.

Brands and retailers interviewed did have a lot of suggestions of what action was needed by government and identified a number of aspects of govern-

ment policies that made remediation of violations involving migrant workers more difficult. A number of companies cited problems such as the lack of regulation of labour agencies and recruitment of migrant workers, deposits requested by governments from migrant workers (Malaysia and Vietnam), the policing of and crackdowns on migrant workers in host countries, government policies on accommodation and dormitories, prohibitions on migrant worker organising, and a lack of legislation guaranteeing equal rights for migrant workers as particular problems. There seemed to be some desire to see bilateral agreements between governments in sending and host countries, greater involvement of embassies in protecting migrant rights, more and better inspections of factories and labour agents, and equal rights legislation.

Yet most brands and retailers interviewed did not feel that lobbying governments was a role they could or should play. According to Nike “Individual companies cannot do much to influence policies ... lobbying is not our priority.” Some companies were able to cite some examples of involving government, for example Adidas mentioned working with the Philippine government to check and inspect labour agencies supplying workers to Taiwan. Jones mentioned some positive experiences of working with the Egyptian government to inspect factories, and Walmart admitted it does sometime lobby governments on labour rights issues, although not specifically on migrant worker issues.

Labour rights groups have been wary of encouraging industry to lobby governments in this way. The experience of workers’ movements is that, in general, industry lobbying has rarely resulted in pro-worker policies or legislation. Politically it would also be difficult to make a lobbying demand while at the same time opposing the undue influence that multinationals have on governments. However it would be possible and desirable for brands and retailers to support local calls and campaigns for changes to laws and policies that currently operate as barriers to migrant worker rights.

MSIs acknowledge that treatment of migrant workers by employers and governments is a barrier to ensuring decent conditions in the garment industry.

Chapter 5

Responses from MSIs Active in the Garment Industry

Multi-stakeholder initiatives (MSIs), to which a large number of large brands and retailers belong, clearly have a role to play in developing a more strategic approach to tackling the exploitation of migrant workers. As a forum that brings together representatives from industry, trade unions, and NGOs they provide a space for developing best practice for the improvement of labour standards.

Introduction

The information in this section of the report comes from interviews conducted with staff members responsible for this area of work at each MSI, the base codes and guidelines available on their website, and other documents relating to migrant workers provided by the Ethical Trading Initiative and the Fair Labor Association.

The four MSIs we interviewed all work in slightly different ways: the Fair Labor Association, the Worker Rights Consortium, and the Fair Wear Foundation are more investigative, while the Ethical Trading Initiative tends to be more project based. However all four acknowledged the need to develop and improve work being done in the area of migrant workers' rights.

The ETI has now identified migrant labour as a core priority. An impact assessment study done of the first ten years of work done by the ETI highlighted the rapid shift from permanent employment to temporary, casual, and seasonal employment, which often included the use of migrant workers, as a significant barrier to the improvement of labour standards.⁵³

The study also noted that the use of migrant workers is increasingly being reported throughout ETI member supply chains.⁵⁴ The FWF recognises migrant workers as a vulnerable group, although in the supply chains of their members internal migration is a more significant issue than external migration.⁵⁵ The FLA is just starting to work on the issue, with a focus on uncovering and remediating problems in receiving countries.⁵⁶

The WRC has started investigations into cases involving migrant workers in Thailand and Malaysia.⁵⁷

Migrant workers, base codes, and standards

All member companies of MSIs have to sign up to the core standards on which the various MSIs are based. Although these standards vary to some extent, they are generally based on the core International Labor Organisation standards. The ETI, the FLA, and the FWF are in the process of reviewing these standards and the guidelines for implementation.

The ETI code is likely to remain unchanged because ETI believes that it already covers core standards. The guidelines for implementation that accompany the ETI code do stress the importance of addressing the needs of migrant workers, included as a “vulnerable group”.

“Member companies should give special attention to the rights of workers most vulnerable to abusive labour practices, notably women, homeworkers, agency workers, temporary workers, migrant workers, and smallholders.”⁵⁸

The FLA has started working in detail to develop text that they want to include in their revised code. As part of this process a report on migrant labour in Malaysia has already been produced and a further multi-stakeholder dialogue is in process.

A two-tier employment system is growing.

They hope this will identify gaps in the current code provision and highlight areas that member companies need to start working on. They are unlikely to include a standalone provision on migrant workers, but are looking to augment the text in various areas of the code, for example on forced labour. This review is ongoing and the topic of migrant work is likely to be discussed in code review meetings in mid- to late 2009.

The FWF is also reviewing their code as part of the JO-IN project,⁵⁹ and migrant workers may be included in the revised code text.

The Worker Rights Consortium does not have specific text on migrant workers in their code but do ensure that the standards are applied to all workers. Although they feel there could be some benefit to including wording on some of the key migrant workers issues, such as document retention, broker fees, etc. this is unlikely to be done soon because changing the code can be a difficult process. However they do not feel this prevents them from raising the issue of migrant workers' rights in their work and they are actively doing this. They feel that the biggest impediment to highlighting migrant rights issues is not the lack of inclusion in the code but the lack of legal protection afforded to migrant workers. In the WRC's view, work on this issue is to some extent more urgent than code revision.

Monitoring tools, audits, and reporting

Out of the four MSIs only the FLA and FWF undertake auditing and verification of member companies. ETI members have to submit reports on their supply chain activities and WRC do their own field research into working conditions in factories supplying member universities.

The FLA believes that audit procedures that look at forced labour and employment relationships are those that are most likely to detect migrant worker issues. Audit reports on these areas will include checks on document retention, contracts, forced medical exams,

and the use of physical force within the factory. They will also look at the nature of employment relationships within the supply factory. In many facilities supplying FLA members the increasing use of labour agencies has been identified, but as yet there is no specific requirement for the clarification of employment relationships. This is an area FLA says it will focus on in its 2009 discussions.

The FWF audits and verification reports include a chapter on workforce characteristics, which is where the presence of migrant workers should be indicated. During the audits there are five sources of information that have to be included: worker interviews, documents, what auditors see, management interviews, and information from local stakeholders. Where migrant workers are present a representative number must be included in worker interviews and the living accommodation for these workers is checked. The FWF also produces detailed country studies for each key production country used by their members; these studies provide context for the audits and verifications done on specific suppliers. The FWF is currently revising the way these studies are being carried out to ensure stakeholders and local organisations are more involved and where relevant this will include organisations with expertise in migrant work. The FWF also ensures that contacts for local groups are provided to member companies.

ETI member companies have to submit reports based on their own audits and supply chain activities. They do not have to report on the presence of migrant workers specifically, although they do have to include a breakdown of regular, temporary, or seasonal, agency workers, subcontractors, homeworkers, and out-workers. Migrant workers will appear in all of these categories (except regular workers). They may start asking for specific information on migrant workers in the future and acknowledge the need for stricter auditing policies in this area.

The WRC focus is to start building closer relationships with unions and worker organisations that are supporting migrant workers. They believe that this will take some time, as trust needs to be built, which can only be done through practical collaboration.

None of the MSIs interviewed have come up with clear policies for remediation of code violations involving migrant workers. The FWF prefers not to have "cut and paste" responses but to work with companies and employers on corrective action plans (CAPS). The FLA is still in the middle of researching the topic and may come up with specific guidelines. The ETI does include some coverage of migrant issues in its training programmes and is encouraging members to share information they have on migrant workers and methods of remediation used.

They have set up a standing forum on migrant labour to enable better dialogue between stakeholders on these issues.

Awareness raising

To an extent the purpose of MSIs is to provide a forum for information sharing, highlighting important issues and the development of best practices.

The ETI has done some work to raise awareness of migrant worker issues amongst its membership. This has included the production of a briefing paper⁶⁰ for member companies specifically focusing on Malaysia. The document highlights the possibility of bonded, migrant workers in Malaysian supply chains, explains the main issues facing workers in Malaysia, and includes guidance for auditors and corporate responsibility (CSR) representatives. The document recommends the organising of a tripartite delegation from the ETI to the Malaysian government and employer associations, although it is unclear if this has taken place. The 2008 ETI conference included a session on the need to address concerns around migrant work, which has resulted in a more general briefing on migrant work.⁶¹ It has also run two workshops for members on migrant worker issues and has established a standing forum to collect and share information on the migrant worker issue.

The FLA paper on Malaysia details a number of concerns in relation to migrant workers and proposed a number of recommendations for action by the FLA and those member companies operating in Malaysia.⁶² The ongoing discussion on migrant labour within the FLA should raise awareness of its members on the issue of migrant workers in the garment industry, but it remains to be seen to what extent its members will see this as a priority.

MSIs have a role to play in developing more strategic approaches to tackling these issues.

Lobbying

MSIs can also have a role in coordinating the lobbying of governments and other decision-making bodies. The FLA is looking at how it could move forward on coordinating lobbying by its member brands and retailers, particularly on legal impediments to freedom of association and developing better regulatory frameworks for labour agencies. However it is unclear what kind of form such lobbying could and should take. The FLA does acknowledge that the weakness of laws and practical protection of migrant workers' rights are a significant barrier to addressing exploitation, particularly in regard to labour recruitment and outsourcing agencies and work permits. They acknowledge that the issues are extremely complex and that there is a need to get guidance on how to deal with these issues. This will include discussion with member companies, building better alliances with trade unions, and getting advice from institutions such as the ILO.

The ETI has already had some success in lobbying the UK government on migrant issues and played an important role in developing the Gangmasters Licensing Act, which provided for an authority to investigate and licence labour agents in the agriculture sector. It is unclear to what extent a similar role could be played by a UK-based initiative like the ETI in other countries where the influence of its members (mostly UK-based multinationals, retailers, and brands, NGOs, and trade unions) may be less direct.

Research done by the ETI has shown that a two-tier employment system is growing, with migrant workers employed under worse terms and conditions than non-migrant labour. ETI recognises the need to ensure that this is challenged both through changing buying patterns that encourage the use of more informal labour relationships and by ensuring the focus of remediation efforts is on employment rights for all workers rather than just on legal status.

Conclusions

All the MSIs interviewed acknowledge that the treatment of migrant workers by employers and governments is an important barrier to ensuring decent working conditions in the garment industry.

All identify the legal framework governing migration, the use of recruitment and labour agencies, and the forced labour conditions under which a large number of migrants work as difficult but important issues to tackle.

The ETI and FLA appear to be increasingly prioritising work on migrant labour at least in terms of development of policies, although it is unclear to what extent

this is being translated into practical work along member-company supply chains. Both MSIs have members that have been exposed for use of migrant workers and identify this as a high-risk issue. The WRC is the only group that is currently engaged with building links with migrant worker groups on the ground in Malaysia and Thailand. The FWF has not found significant (external) migration in supply chains of its member companies so has not yet identified this as a priority although sees links with issues of internal migration in China and India.

Currently all member companies monitor conditions through social audits that, unless drastically changed, are unlikely to adequately identify the problems faced by migrant workers. Even if audits do manage to pick up the issues there appears to be considerably less progress in developing adequate responses to addressing issues relating to migrant workers, despite the clear acknowledgement that the exploitation of migrant workers is both a barrier to improving conditions in the garment industry and poses a serious risk to brand and retailer reputations. This needs to be urgently addressed if there is to be any real improvement.

There is also a role for MSIs to play in developing more strategic approaches to tackling these issues. This could include producing clear guidance on remediating issues, developing guidelines on the monitoring of and use of labour agencies and employment relationships, the coordination of lobbying governments in both sending and hosting countries (which individual companies seem somewhat reluctant to do), and the building of networks with groups who work with migrant workers. Finally MSIs need to put more time and resources into developing links with those organisations working on the ground to support migrant workers, both for gathering information and developing adequate responses.

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**Workers were
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Chapter 6

Case Studies

The Clean Clothes Campaign and others in the network have had some experience with working on cases of rights violations involving migrant workers. Throughout this report we have referenced a number of such cases and this section gives a brief outline of four of those cases.

Case study 1: Hytex, Malaysia

Information from Textile, Clothing and Footwear Union of Australia (TCFUA) and Tenaganita, Malaysia

In January 2008 Hung Nguyen of the TCFUA travelled to Malaysia to investigate the conditions of Vietnamese migrant workers. While there he met with a group of Vietnamese workers outside of their dormitory. They told him how they had been sold to nine different employers. Most were working in an electronics factory and were working from 8 a.m. until midnight. Some were working at Hytex producing for Nike.

The Hytex workers told him about the horrible conditions in the dormitories they were made to live in, the deductions being taken from their wages, the fact that their documents were being held and that they were too frightened to travel outside the factory without them.

The Textile, Clothing and Footwear Union of Australia started by lobbying the government in Australia and bringing the situation of the workers to the attention of the international unions. A letter was sent to Nike but they simply denied the allegations. It appeared that these approaches were not going to be effective in addressing the violations at Hytex so the TCFUA contacted journalists from an Australian TV channel. A TV crew went to Malaysia to make a film clip about the factory.

Following the TV exposure Nike finally acknowledged that there were problems and put in place some remediation plans. This included the return of documents, back pay of \$2,000 (for government levy and deductions), and the rehousing of workers in accommodation that met acceptable standards. 20,000 workers at Nike suppliers are now living in a high rise building in a residential area in better conditions.

Nike met with Tenaganita, a Malaysian women and migrant rights organisation, and said they wanted to give them responsibility for monitoring conditions for migrant workers in their supply chains. However, Nike have since pulled back saying they do not have the resources. They know that the conditions have not improved enough yet. Nike came running to the organisation as soon as there was a big public case on the situation. One thing that caught Nike out was that their logo was everywhere. Nike was hiding behind the fact that the national law does not cover accommodation and so their suppliers had not violated any national law. In the end they accepted that improvements were needed and that other violations regarding wage deductions and the withholding of papers needed to be addressed.

Some workers did notice some changes but problems continue to exist. There are still lots of illegal deductions made from workers' wages and now some workers are facing unfair dismissal. Dormitories are also starting to deteriorate. Therefore there is a need to continue documenting problems at the factory and ensure that any agreements made cover all workers.

In a case such as Hytex, where there are workers from various countries of origin, there is a clear need to share information and prove a pattern of exploitation across workers groups of differing nationalities.

Case study 2: CMT, Mauritius

Information from National Workers Congress, Sri Lanka and Labour Behind the Label, UK

In August 2007 the *Sunday Times* newspaper ran a front page story linking UK retailers Top Shop (owned by the Arcadia Group) and NEXT to a Mauritian factory employing migrant workers from China, India,

Sri Lanka, and Bangladesh. Conditions for workers were appalling: workers were paid different wages based on nationality, worked over 70 hours a week, their documents were withheld and deductions were made from their wages. Living conditions at the dorms were cramped and dirty, for the 985 employees in the factory there were only 10 toilets and at least three of them did not work at any time. Water was rationed to only half a litre a day.

The ensuing case revolved around the deportation of a group of Sri Lankan workers who had tried to demand timely and accurate payment of wages with the support of the local union. The company told workers they had to go back to Sri Lanka and forcibly removed them from their dormitory. They were taken to a sugar cane plantation and left there for five days. The majority of the workers were never provided with a plane ticket and had to pay for it themselves (although they had already paid for their ticket via wage deductions).

Workers contacted the National Workers Congress (NWC) once they returned to Sri Lanka to ask for their support. The campaign demand was to ask for payment of overtime and unpaid wages to the 40 workers and compensation for early return.

The union had already requested support from the CCC network, but had not been able to specify the brands or retailers. Following media reports, the case was picked up by Labour Behind the Label (CCC UK). Following the campaign there were negotiations with buyers and with the CMT factory. Conditions at the factory have reportedly improved considerably and the local union is now permitted to organise workers. The result was not so good for those workers already deported. CMT refused to pay compensation to the workers, claiming they were involved in an illegal strike. The retailers involved also reported that the documentation provided by NWC did not match documents held by CMT. In the end the factory paid a \$30,000 grant (the amount demanded for compensation) to NWC for an education campaign, but stipulated it could not be used for compensation.

Case study 3: Bangladesh migrant workers, Jordan

Information from NLC website <http://www.nlcnet.org/article.php?id=502>

In December 2007 the National Labor Committee (NLC) in the US released a report into conditions facing Bangladeshi migrant workers at Jordanian factories supplying Jones Apparel and Walmart. The release of the report and launch of a public campaign in the U.S. coincided with a strike by the 3,000 workers (1,500 from Sri Lanka, 900 from Bangladesh,

400 from India and 100 from Nepal) employed at one of the featured factories, Classic Fashion Apparel.

The report cited illegally low wages, excessive working hours, appalling living conditions, physical and verbal abuse and sexual assault of women workers. A campaign was run targeting the companies involved as part of an ongoing campaign on the Jordanian-US free trade agreement and the exploitation of migrant workers. No information is available on the Walmart response. Jones Apparel reports that they have been working to improve conditions at the factories, and the NLC reports that some gains have been made on a governmental level as a result of their campaign and lobbying work. However, no information is available in relation to the specific cases raised as part of the Classic Factory report.

Case study 4: Tommy Hilfiger, Mae Sot, Thailand

Information from Yaung Chi Oo worker association, Thailand,⁶³ and D. Arnold, "Exploitation in Global supply chains," 2003⁶⁴

This 2003 case was based on interviews and reports done by Norwegian Church Aid (NCA) and the Burma Labor Solidarity Organisation (BLSO) on working conditions at New Products Knitwear Co. Ltd, which the NCA claimed was producing for Tommy Hilfiger. Researchers found working hours of 11 hours a day and wages of only 35-60 baht a day. The findings went into a documentary that was shown in Norway and in the US. The Norwegian and Burmese groups also wrote to Tommy Hilfiger but the workers did not know what was happening. Tommy Hilfiger informed their Hong Kong office and Hong Kong contacted the Mae Sot factories. The factory manager called the workers and said that they should take three months off and they would pay transport to go home (500 baht). They had to sign a paper written in Thai for receipt of the money. The workers signed the paper, but as they did not read Thai they did not know that the paper said that they volunteered to go back to Burma. While they were away the factory closed and changed its name.

If the workers had been informed of what was happening, if some organisation had educated them about what was going on they could have used this information to start negotiating with their employers. The Burmese group involved in the case was more focused on research and was not focused on organising workers. However workers were confused about who was running the NCA campaign in Norway and who had been in contact with the company. This experience had a very negative impact on migrant workers' trust for local groups. Tommy Hilfiger offered to give workers compensation a few years later but by then the workers were gone and it was impossible to arrange.

Chapter 7

Synthesis of Recommended Targets and Demands

Based on the information gathered during the research and consultation process thus far certain groups can be identified that could and should play an essential role in efforts to ensure respect for migrant workers' rights. The following is a summary of these groups and the demands being made of them by the wider movement for migrant workers' rights.

Demands toward companies

In interviews with worker organisations and researchers and during the consultation with migrant worker organisations in Asia we collected a number of recommendations for companies to properly address migrant worker issues. These include:

1. Adopt a positive approach towards migrant workers and acknowledge that they can and do exist in supply chains. For example:
 - ensure that migrant workers are explicitly mentioned in codes and implementation policies,
 - ensure that references to migrant workers are focused on rights and not legal status,
 - take a positive attitude to migrant work and avoid policies that aim to exclude the use of migrant workers,
 - ensure standards are based on international conventions and not just on national law, which often offers weaker protection to migrant workers,
 - the gendered aspect of migration and work should be properly taken into account.
2. Auditing and monitoring of working conditions should include steps to adequately include the perspective and needs of migrant workers by:
 - ensuring an appropriate composition of workers and stakeholders (e.g. migrant groups) are involved,
 - making sure the right areas are inspected (e.g. kitchens, dormitories, etc.),
 - ensuring contracts include labour standards that may not be included in local law (e.g. accommodation),
 - ensuring that the company covers all additional expenses of migrant workers (healthcare, etc.),
 - providing access to the factory for local migrant groups,
 - involving unions or migrant worker groups in monitoring of conditions.
3. Publicly disclose the location of both production sites using migrant workers and the details of labour agents being used to supply workers to these sites;
4. Promote and support dialogue between company and migrant workers and their representatives;
5. Demand the abolition, reform, or regulation of labour agencies and ensure direct employment of workers;
6. Provide pre-departure training for migrant workers;
7. Ensure suppliers pay all recruitment fees, government levies, etc.;
8. Compulsory medical testing should be prohibited.

Demands toward governments

Governments are responsible for upholding labour rights for all workers and for the laws and processes governing the migration of workers to and from their countries. Most fail to offer the protection workers are entitled to and many are too keen to make migrant workers scapegoats in times of financial difficulty. Groups interviewed all identified the need to push for greater recognition of the benefits migration brings to the country of origin and destination and the need for a more pro-migrant attitude from governments. Demands outlined include:

1. Employment law should take priority over immigration policies,
2. Laws should be changed to ensure better protection of migrant workers,
3. Enforcement of existing laws needs to be improved,
4. Foreign worker “first out” policies should be abolished,
5. Visas should not be tied to a particular employer,
6. Application processes for visas and permits should be made simpler and more accessible to workers,
7. When labour complaints are made the government should grant workers involved in legal action against employers the right to stay, work and have their complaint heard,
8. Embassies should take responsibility for protecting the rights of migrant workers from their countries, regardless of legal status or migration process,
9. Take a proactive role in promoting and informing workers about labour rights,
10. Sign bilateral agreements with countries of origin and destination,
11. Sign and ratify the ILO and UN conventions on migrant workers and their families and ensure they are properly implemented.

Demands toward civil society and the labour movement

Civil society in general and the labour movement in particular have an important role to play in amplifying the demands of migrant workers. The research highlighted a number of recommendations for these groups.

1. Representing migrant workers:
 - Allow workers to join a trade union and include migrants in elections and negotiations,
 - Ensure that migrant workers are represented in collective bargaining agreements,
 - Civil society/labour organisations should not pursue/support policies that discriminate against migrant workers (e.g. migrant workers “first out” and “British jobs for British workers” were both trade union demands).
 - Ensure that information and research is done for the benefit of workers and is made available to migrant workers’ groups working directly on the issue.
2. Advocacy:
 - Civil society/labour organisations should work with marginalised people who need their support most, regardless of pressure or criticisms that might be made of them.
 - Encourage trade union solidarity action with migrant workers along supply chains (e.g. transport unions could refuse to unload certain articles).
 - NGOs should shift priority to focus on basic rights of migrants rather than welfare.
 - Civil society/labour organisations should pressure governments and companies to respect workers’ rights.
3. Information sharing:
 - Unions from sending and receiving countries should develop joint work on organising strategies and share information.
 - Research needs to be done on the whole supply chain: who is involved, the situation of migrant workers and working conditions, the brands being produced.
 - Research groups should work with migrant workers directly to ensure their work feeds into the movement for migrant workers’ rights.
 - Information should be shared with and between migrant worker organisations in different countries.

Endnotes

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