

# Comments for Business & Human Rights Resource Centre

## 1.- Comments on the reports:

- [PDF] "From moral responsibility to legal liability?", SOMO and Repórter Brasil, May 2015, [http://www.somo.nl/publications-en/Publication\\_4188/at\\_download/fullfile](http://www.somo.nl/publications-en/Publication_4188/at_download/fullfile)

- [PDF] [Português] "Da responsabilidade moral à responsabilização jurídica?", SOMO and Repórter Brasil, 9 May 2015

[http://www.somo.nl/publications-en/Publication\\_4188/at\\_multi\\_download/files?name=Da%20responsabilidade%20moral%20a%CC%80%20responsabilizac%CC%A7a%CC%83o%20juri%CC%81dica%3F.pdf](http://www.somo.nl/publications-en/Publication_4188/at_multi_download/files?name=Da%20responsabilidade%20moral%20a%CC%80%20responsabilizac%CC%A7a%CC%83o%20juri%CC%81dica%3F.pdf)

It is important to highlight that the core of these articles, the SOMO report about the Brazilian supply chain, is actually saying that Zara in Brazil is acting in a very positive way. In this sense we would like to invite to read the report's conclusions in the page 55 of the report:

([http://www.somo.nl/publications-en/Publication\\_4188/at\\_download/fullfile](http://www.somo.nl/publications-en/Publication_4188/at_download/fullfile)).

These conclusions clearly reflect the efforts developed by Inditex regarding not only the improvement of the working conditions in our supply chain, but also a more general intervention in structural problems of the Brazilian textile sector and, in a broader sense, the social and labour integration of migrants in Brazilian society. All these initiatives have been carried out in close collaboration both with Brazilian NGOs and the Brazilian authorities and they shape the most innovative approach to this issue in the Brazilian industry.

Despite this global positive assessment, SOMO/Repórter Brasil focuses on two main concerns: a) the level of effectiveness of the compliance programme of Inditex in Brazil and b) the –according to the editors of the report- apparent contradiction between the CSR policy and the legal approach of the company.

- a) In the specific field of compliance monitoring in the supply chain, although the report states that “provides indications that the company’s supply chain monitoring is not 100% effective”, Inditex can guarantee that, after the case involving the Brazilian company Ahá in summer 2011, there has been not a single case of attempts against fundamental labor rights among the Brazilian companies that manufacture its products.

The complete list of Brazilian companies supervised by Inditex since 2012 account for 450 companies, with more than 2,800 audits completed. These procedures involve inspections from both independent and international agencies as Intertek, SGS and Apcer, and internal surprise visits from in-house teams. Any infringement detected is immediately solved, as the own audits show.

The reports that you mention refer to supposed labour infringements in the Brazilian supply chain of Inditex in the past, during 2012, 2013 and 2014. As the report itself recognize (page 49), most of the initially mentioned cases simply were not related with companies working with Inditex (actually, 65% of the cases were discarded by this reason). Secondly, almost all the cases really related with Inditex (85%) refer to usual discrepancies between employees and employers solved through conciliation agreements driven under the Inditex’ effort of supply chain monitoring. The remaining cases (10 during more than two years and a half) were sanctioned by Labour Courts in regular labour procedures.

None of the cases mentioned in the report relates to the violation of human rights or the systematic breach of basic labour rights, but rather discrepancies between employees and employers in terms of their respective assessments of specific aspects of their employment contracts. As is usual in a democratic country with a system of laws, procedures, and courts, workers are entitled to avail of their right to seek protection in a labour court to resolve those discrepancies. The exercise of these rights cannot and should not be interpreted as a symptom of rights violation but rather as a sign that the legal protection system afforded by a

democratic nation is working as intended. On the contrary, it represents the due exercise of his or her rights.

It is true that labour litigation is far more prevalent in Brazil than in other developed economies. But compared to average incidence rates in the overall Brazilian labour market, the number of cases brought before the labour courts involving Inditex's supply chain point to significantly lower conflict rates - specifically an approximate annual ratio of one case for every 400 workers involved in Inditex's supply chain, compared to an average in Brazil of one case for every 25 workers.

The report also refers to the contents of a hearing at the Labour Prosecutor's Office in July 2013 to conclude that Inditex itself would recognize difficulties to effectively monitor the supply chain. This is just a translation mistake from the Portuguese original document (attached), where the MPT prosecutors transcript Inditex statement as follows: "Inditex Group considers highly unlikely [that a supplier could divert orders to unauthorised workshops], since it would mean the contract termination and that the supplier would never work again with the group". Inditex guarantees the correct performance and control of the Brazilian supply chain, backed by the experience of the Framework Agreement signed with the Federation of Unions and the know-how of the audits performed by independent companies.

- b) The second concern of the report stands on legal strategy followed by Inditex. As you know, Inditex has challenged the administrative procedure of the so called "Dirty List", alleging that there is not room for the constitutional right of self-defense. The List is a public exposure of the Companies that have been accused of not respecting dignity and labour workers' right in the supply chain.

From our point of view, SOMO/Repórter Brasil position contradictorily argues against the exercise of the constitutional right of any natural or legal person to appeal a decision before the court authorities but denies it for Inditex.

We would like to remark that Inditex's stance on the "dirty list" is clear-cut: Inditex considers the list itself totally constitutional. However, Inditex will always defend its democratic right to legitimately uphold its rights as an individual or as a company, and we have not been given the right to a legitimate defence in this process. The possibility that Zara Brazil could be included on this list would be highly contradictory as it threatens punishing a company that has demonstrated, an unprecedented commitment to the same objectives which the "dirty list" sets out to achieve. Inditex would like to be heard, which the current procedure does not allow.

Inditex has not only been able to guarantee that there is no precarious employment among its Brazilian suppliers since 2011; the brand has also developed a more ambitious and innovative plan in Brazil over the last three years, with a view to training Brazilian business owners, combating informal labour in the manufacturing sector, and supporting the integration of immigrant communities. Inditex has collaborated closely with renowned NGOs on this task, including CDHIC, CAMI and Missão Paz. The brand has also worked with public bodies such as the São Paulo State Secretary of Justice and Defence of Citizenship. In the latter case, Inditex has contributed the funding required to create São Paulo's Centre for the Integration of Immigrant Citizens.

Inditex is implementing one of the most innovative projects in its sector in Brazil in order to ensure the traceability of products. Zara is the only retail enterprise in Brazil that includes, in all the products manufactured within the country, a label specifying the manufacturing company and exact location where the garments were made, as well as the date when the supplier last underwent an audit. The project, which is called "Fabricado no Brasil" ("Made in Brazil") is pioneering on a global level.

As final comments on the report, we would like to remark that the list of recommendations for clothing brands and retailers made by SOMO/Repórter Brasil (chapter 7.5, pages 62 and 63) could be perfectly consider as a reflect of Inditex performance in Brazil:

- Consistency between legal and CSR strategy: Inditex legal actions are clearly focused on eliminate any sign of arbitrariness and avoid contradictions between social goals and administrative and legal procedures. Let us to also clarify that the “dirty list” is now suspended by a decision of the Brazilian Supreme Court after the request of entities totally alien to Inditex.
- Supply chain mapping / Transparency: Inditex is leading both the product traceability and the transparency of its supply chain, as perfectly shows not only the development of the accord with the Brazilian labour authorities but also the pioneering project ‘Fabricado no Brasil’.
- Genuine and credible grievance mechanism: The report itself, although it does not refer to the grievance mechanism include in the Inditex Code of Conduct for Manufacturers and Suppliers, expressly mention (page 43) the development of the ‘ad hoc’ mechanism established by Inditex with the Brazilian NGO CDHIC.

## 2.- Comments on the articles:

- “Fashion brand Zara once again associated with Brazilian labour rights abuses”, SOMO and Repórter Brasil, 9 May 2015, <http://www.somo.nl/news-en/fashion-brand-zara-associated-once-again-in-brazilian-labour-rights-abuses>
- [Português] “Zara corta oficinas de imigrantes e será multada por discriminação”, Repórter Brasil, 9 May 2015, <http://reporterbrasil.org.br/2015/05/zara-corta-oficinas-de-imigrantes-e-sera-multada-por-discriminacao/>

Allegations contained in these articles release in coordination by SOMO and Repórter Brasil were directly responded by Inditex to the authors, as could easily checked visiting <http://reporterbrasil.org.br/wp-content/uploads/2015/05/Respostas-Zara.pdf>. A summary of the Inditex´arguments is as follows:

### Labour infractions in the supply chain

With regard to the recent Brazilian Labour Inspection's report claiming about supposed labour infractions among companies supplying Inditex in Brazil, we must firmly state that:

- i) All the cases, which are minor infringements that could be easily solved when reported, are referred to previous years, mostly 2012 and 2013, and cannot be defined as 'new'.
- ii) In any case, it is not understandable why they have not been reported previously during all these years.
- iii) Following the Law and the Inditex's Agreement, the Labour inspection had the obligation of reporting any finding to Inditex, which would have then days to solve the case.
- iv) Inditex's production represents only the 15% of the whole manufacturing capacity of the Brazilian companies mentioned in the Labour Inspection report, the rest being dedicated to other Brazilian brands.
- v) The filing presents many other inaccuracies and unfairly targets Inditex (please see below analysis about the 'findings').
- vi) For all these reasons it has been challenged by Inditex.

We truly believe that one claim like that cannot be sustained.

As a matter of fact, as we have previously mentioned, since 2012 Inditex has carried out more than 2,800 audits to the Brazilian companies that manufacture its products, supported by the most demanding international procedures based on our Framework Agreement with the Global Federation of Unions (IndustriALL, which represents 50 million workers in 144 Countries) and performed by prestigious international and independent agencies as Intertek, SGS and Apcer. Inditex can firmly guarantee the correct performance of this Brazilian supply chain in terms of labour standards.

As it has been mentioned beforehand, Inditex's production represents only the 15% of the whole manufacturing capacity of this supply chain, the rest being dedicated to other Brazilian brands. It is surprising both that no other brand has been appointed in this sense and the fact that in all this period since 2012 there has not been any

report from the authorities. Should they be right now –even all being minor administrative cases-, it is not understandable why did they not communicate any issue on time. Mainly because Inditex's 2011 Agreement with the Labour Inspection in Brazil obliges them to do so: to communicate it, should they find any issue, and afterwards Inditex had 10 days to solve the case.

In the meantime, every Inditex audit had previously detected and, what is more important, solved these cases through the Inditex Compliance Programme.

Analysis about the 'findings':

- All of these cases are administrative infringements. There is not a single case of violation of fundamental rights.
- All of the cases presented concern administrative matters that can be easily corrected when the irregularity is discovered.
- During the whole period covered (from 2012 to 2015), audits performed by Inditex have been implemented with its own correction plans, solving in many cases similar problems to the ones included in the Labour Inspection file.

a) Employees working without a formal contract in eight different companies

- After checking the information sent by the MTE, we can only see 17 workers not registered. The information sent by the SRTE/SP does not clarify as the list of all the companies with not registered workers does not fit with actual non-compliance of in the single files of each of these companies.
- Apparently, some or many of these workers could be in the five companies that were not part of the supply chain
- Also, our the audits show that it is not eight but six companies who were actually part of the supply chain. Two of them, even being listed in the TAC suppliers' list, they were blocked for different reasons prior to manufacture any garment.
- All these six companies were audited between July 2012 and July 2014

- The audits show that there was also one not registered worker issue in 2013 that was of course solved.
- None of these eight Companies work anymore in the scope of Inditex. They have left to be suppliers between December 12 and July 14.

b) Companies with excess of working hours

- We could only confirm 16 of the Companies with these issues from the information sent by the MTE.
- One of them is blocked and never manufactured in the supply chain.
- Of the other 15, one does not work anymore in the supply chain.
- The audits for the other 14, suggested to two of them correction plans to eliminate any excess of working hours, which has been implemented.
- No other issues remain in this sense

c) Companies with FGTS debits

- In this case we could confirm all the 23 companies listed by the Labour Authority.
- Six of them were blocked and never manufactured in the supply chain.
- The other 17 have been audited between July 2012 and April 2015.
- These audits also have found and corrected five FGTS debts.
- Six of these companies with no major current issues remain in the supply chain.

d) Companies with Health and Safety deficiencies

- We can confirm that the audits of all these companies have been performed correctly and on time and that the audits show a permanent task for improving health and safety standards.

Zara currently only works with 34 of the 62 Brazilian companies the SRTE/SP's orders concern. Zara can confirm that there are no relevant irregularities, as shown by the audit reports produced by international firms that specialise in such inspections: SGS, Intertek and Apcer.



## Baseless discrimination charge

Zara does not have any capacity to intervene in the recruitment of employees by the companies with which it maintains commercial relationships, for whom Zara is just one more client among many other, given that production by Zara in these factories implies less than 15% of the total, as it has previously been mentioned. To accept this premise would be to accept that all Brazilian business people that contract these suppliers apply this alleged discriminatory practices.

To base this surprising, and completely untrue, accusation on the fact that inspectors have not been able to find workers of Bolivian origin in some of Zara's suppliers leads to the somewhat absurd conclusion that this same discrimination is produced in any of the Brazilian companies that do not have Bolivian employees -or from any other nationality, origin or race.

Also, this allegation of discrimination is not supported by facts. Zara is a multinational company and naturally employs people from different origins and nationalities.

It is important to remember that Zara has been fighting against precarious employment for years, with various initiatives and specific investment in Brazil. Since 2011 the company has invested R\$14 million in various programs, fundamentally for immigrant support.

This social investment is focused on two aspects:

- Training and support for micro-companies and immigrant employees to assist elimination of irregular practices in the textile sector of this country.
- Emergency assistance and support for social and labour integration of the immigrants.

This task is carried out in collaboration with notable NGO's (such as CDHIC, CAMI or Missão Paz) and also includes actions such as the funding necessary for the creation of the Centre for Integration of Immigrants to Citizenship, in collaboration

with the Secretary of Citizenship and Justice of the State of São Paulo. The Centre intends to attend to 1000 immigrants per day, assisting with migratory standardisation and promoting professional education.

**3.- Comments on the following article:**

- [Español] "El líder contra la esclavitud infantil que incomoda a las grandes multinacionales", El Diario, 28 April 2015,

[http://www.eldiario.es/canariasahora/sociedad/esclavitud-infantil-trabajo-Asia-ninos\\_0\\_382161784.html](http://www.eldiario.es/canariasahora/sociedad/esclavitud-infantil-trabajo-Asia-ninos_0_382161784.html)

The statements made to a Spanish newspaper by Mr. Ehsan Ullah Khan are untrue, lack any foundation and they can only be the result of an unjustified obsession with slander purpose. Assert that "100% of Zara's production in Asia is child labor" or that "Zara keeps thousands of children sewing" is not only radically false, but also reveals a complete ignorance of both our company and the reality of the textil industry in the different Asian countries. Please note that this individual is not backed by any organization, has never visited any of our suppliers and has never discussed with any of our experts the procedures of the audits. Mr. Khan has never contacted any of the NGOs that work on the ground to bring real improvement to the supply chain.

Inditex has neither knowledge about previous statements of Mr. Khan regarding Inditex nor activities of Mr. Khan linked with any kind of labor rights violations. The only previous contact with him was the result of an unannounced visit to our headquarters in 2013, when he was received by the CSR responsible for Asia. According to Mr. Khan, Inditex does not want to manufacture in Spain because "the Spanish are lazy who do not want to work". Let us note that Inditex has 42,000 direct employees in Spain engaged in its operations, including ten textile manufacturing centers.

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