“European textile industry and human rights due diligence: Key developments, human rights allegations & best practices”

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Business & Human Rights Resource Centre
## CONTENTS

Introduction: Human rights challenges and opportunities in the European textile sector - the role of the EU ................................................................. 1

1. Overview of human rights allegations involving EU textile companies (June 2011 – March 2018) ........................................................................ 2

2. Key legal cases of access to remedy, obstacles and challenges ..................... 8

3. Overview of human rights due diligence initiatives in the textile sector and engagement by EU textile companies ....................................................... 11

4. Existing policy frameworks: Lessons learnt from the Dutch Covenant on the Textile Sector and the German Initiative on Textiles ................................ 13

Recommendations to overcome the existing challenges to respect and protect human rights in the European textile industry and its supply chains ................. 16

This report was commissioned by MEP Lola Sánchez Caldentey.
INTRODUCTION:

Human rights challenges and opportunities in the European textile sector - the role of the EU

The 24th of April 2018 marked the five-year anniversary of the Rana Plaza textile factory disaster in Bangladesh where 1,135 people lost their lives and as many as 2,000 were injured, most of whom were women and children. Numerous multinational textile companies sourced goods from the production in this building, among them a range of companies headquartered in the EU. While the scale and impact of this incident makes it one of the most well-known cases of human rights abuse in the textile industry, it is by no means an isolated incident. Civil society organizations have documented a large number of human rights abuses associated with the textile sector over the years.

The United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted unanimously by the UN Human Rights Council in June 2011, established that companies have a responsibility to carry out human rights due diligence across their operations, including in their supply chains. The European Union (EU) subsequently recommended that all its member states adopt a National Action Plan on Business and Human Rights (NAP), to implement the UNGPs at the national level. Since then, 13 EU member states have adopted NAPs and several others are being developed.

Seven years after the adoption of the UNGPs and five years after the Rana Plaza disaster, to what extent have EU textile companies integrated respect for human rights throughout their operations? Are EU companies carrying out robust human rights due diligence throughout their supply chains to prevent the next ‘Rana Plaza’?

This briefing explores these questions by laying out the main challenges and opportunities in the EU textile sector. Based on data collected by the Business & Human Rights Resource Centre (Resource Centre) over the last seven years on over 170 specific cases, the briefing provides an overview and analysis of responses from EU textile companies to a wide range of allegations of negative human rights impacts. This will help shed light on the key human rights issues, the scale and geographical dispersion of alleged abuses, and the quality of the responses to these allegations.

This briefing also shares lessons from key legal cases involving EU textile firms where alleged victims sought access to remedy. Furthermore, this briefing explores several positive corporate initiatives and best practices on human rights due diligence to overcome and mitigate alleged abuses in the sector. It concludes with recommendations for EU policy-makers and decision-makers, as well as to companies, to overcome the existing challenges to respect and protect human rights in the EU textile industry and its supply chains.

At present there is a lack of coordination among member states on how to tackle these issues. By surveying the scale of the abuses, the lack of access to remedy for victims, and identifying the gaps, challenges and opportunities, this briefing emphasizes the need for an EU-wide homogenous set of legislation on human rights responsibilities for EU textile companies.

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1. Overview of human rights allegations involving EU textile companies (June 2011 – March 2018)

From June 2011, when the UNGPs were adopted, to March 2018, the Resource Centre approached EU textile companies 173 times with invitations to respond to allegations of human rights abuses connected to their operations. Sixty-eight percent responded to these invitations, which lies below the Resource Centre’s global average response rate of 73%.8

WHERE DO ALLEGED ABUSES OCCUR?

Based on this sample, over 80% of the allegations of abuse by EU textile companies concerned extra-territorial human rights impacts, i.e. incidents reported abroad linked to supply chain production sometimes spanning multiple countries (see figure 1). This finding underlines the importance of preventing and remedying human rights impacts abroad, as this is where the majority of cases occur. The highest number of allegations of abuse happened in Asia (38%), closely followed by Europe (non-EU) and Central Asia (36%, this included Albania, Serbia, Turkey, Ukraine and Uzbekistan), Europe (EU, 18%), the Middle East and North Africa (3%), cross-regional allegations (3%) and South America (2%).

Taken together, the whole of Europe and Central Asia account for over half of the cases of abuse, compared with 38% occurring in Asia. A series of factory disasters across South Asia, most notably the 2013 collapse of the Rana Plaza factory building in Bangladesh, however demonstrates that the cases in Asia often involve a higher number of people killed. This explains why factory conditions in Asia have become the subject of increased focus.

South Asia is one of the biggest garment-producing regions in the world. While the conditions in its garment supply chains have rightly been the focus of much attention, the scale of allegations against EU companies in Europe suggests that companies need to be alert to human rights risks at home as well. Turkey, for instance, the third largest textile exporter to the EU,9 as well as emerging markets in Eastern Europe, have thus far received less attention – with severe consequences for human rights. As the 2017 report by Clean Clothes Campaign “Europe’s Sweatshops”10 documents, poverty wages, forced overtime, harassment, and other poor working conditions are common throughout many garment factories in Central, East and South East Europe. This suggests the lack of a common European framework to tackle these issues remains a major gap.

Although the Resource Centre’s sample does not include abuses in Sub-Saharan Africa, the region’s rising importance for the global textile industry as manufacturing site, a growth primarily led by Ethiopia (whose government has attracted foreign direct investment to increase production capacity in garments and textiles) is likely to present similar human rights risks.11 Textile supply chains are generally characterised by complex networks of subsidiaries and subcontractors in countries all over the world which can jeopardise traceability of human rights abuses back to the top of the supply chain. This makes it difficult to establish responsibility and liability for abuses12 and further illustrates the importance of brands monitoring their entire supply chains more effectively and engaging with suppliers regarding human rights.

8. This does not constitute the total number of allegations of abuses related to EU textile firms posted on the Resource Centre’s website over this period. The Resource Centre only actively seeks company responses to allegations of abuse when no public statement is otherwise available, and normally does not seek responses to reports on human rights lawsuits or on regulatory sanctions – these get posted right away. Hence, the responses sought will not necessarily mirror the regional focus or trends most commonly reported on, nor can they claim to be fully representative of industry responses to alleged abuses as a whole. At the same time, for certain cases, especially those that do not receive much public attention, the statements here are the only publicly available responses to a particular allegation. The trends identified thus serve as a good indication of areas where bold, concerted action is lacking. For more information on the Resource Centre’s company response mechanism policy, please see here: https://www.business-humanrights.org/en/company-response-rates
1. OVERVIEW OF HUMAN RIGHTS ALLEGATIONS

WHICH HUMAN RIGHTS ISSUES ARE AT STAKE?

As previously mentioned, the company responses in this sample do not cover the full scope of human rights impacts textile companies can have, but rather represent key areas of risk.

Over 80% of cases in the sample are related to allegations of labour rights abuses. The textile sector provides employment to millions of workers worldwide, a large majority of whom are women, and remains a labour-intensive industry. The distinction between other human rights issues and labour rights abuses was often not particularly clear-cut; indeed almost every allegation involved the workplace in some form. “Labour rights abuses” included concerns over living wage, freedom of association, child and forced labour and workplace health and safety.

Cross-cutting issue: Gender

Globally, estimates put the share of female workers in the garment industry at over 75% while in some countries such as Bangladesh and Cambodia women account for an estimated 80% and 90% respectively. In this sample, 51% of the allegations included gender-specific abuses, such as sexual harassment and pregnancy discrimination, or saw female workers particularly affected by low wages and lack of collective bargaining rights.

Lack of a living wage and restrictions on the right to freedom of association were the most common issues in the responses sought by the Resource Centre, highlighting the importance of a focus on basic rights in the workplace (see chapter 3 for positive initiatives related to these issues). Allegations pertaining to health and safety concerns did not feature as prominently among the responses. This is likely due to widespread media coverage of recent severe health and safety violations and increased pressure on companies to respond publicly. Such cases include fires at a KIK factory in Pakistan and the Tazreen Fashions garment factory in Bangladesh in 2012, as well as Rana Plaza in 2013. The Resource Centre actively seeks responses from companies only where there is no public statement otherwise available, hence our sample of allegations highlights issues that receive less attention. Moreover, while there is still much more that remains to be done, the Bangladesh Accord has resulted in improvements across the 1,600 factories it covers, and provided an example of what can be done to strengthen working conditions and respect for workers’ rights. The findings here suggest that similar efforts are still lacking in the area of living wages and freedom to organise. A common framework for EU companies covering these issues in a holistic manner has the potential to transform workers’ lives without jeopardising competitiveness.

Figure 1: Region of alleged abuse
Key issue: Living wage

The International Labour Organisation defines a living wage as a basic human right, as do both Article 23 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Economic, Social and Cultural Rights. Receiving a living wage enables workers to cover the basic needs of an average-sized family, including housing, health, food and some rest and leisure. The lack of a living wage across much of the garment sector means that many workers are forced to work long hours, and often feel unable to refuse work or take time off when they are ill.

Key issue: Freedom of association

The right to form employees’ organisations is enshrined in both the ILO Declaration on Fundamental Principles and Rights at Work and the Universal Declaration of Human Rights. The freedom to organise is recognised as a prerequisite for social dialogue and collective bargaining, crucial to ensuring workers are able to defend and claim their rights.

Other issues

Another allegation for which company responses were sought is the use of child labour, which is still far too common in most regions. Other abuses included violence, beatings and the arbitrary detention of workers. The right to freedom from discrimination, particularly for vulnerable groups and informal workers such as migrant, immigrant and refugee workers, was also raised. For instance, in 2015 the Resource Centre approached 28 textile companies, 24 of which were EU textile brands, to respond to questions about their actions to ensure non-discriminatory treatment and protection of Syrian refugees in their supplier factories in Turkey. While only two companies failed to respond, the survey revealed that only a few leading companies are taking decisive action. NEXT, for example, shared their “Syrian Refugee Action Plan”, which sets out clear dos and don’ts for suppliers. The Plan makes clear that factories should not expel any Syrian workers and specifies that Syrian workers should be afforded equal treatment and paid at least the gross national minimum wage. Other companies however appeared less willing to act, once more highlighting the importance of a common framework as a reference point for action.

QUALITY OF COMPANY RESPONSES

Due diligence, as outlined in the UNGPs, involves not only an assessment of actual and potential human rights impacts, but also acting to address impacts and communicating that publicly. This section examines the quality of selected company responses to allegations of abuse received by the Resource Centre. For each year covered by the report, a “cluster” of several company statements relating to the same allegation, for instance an NGO report naming several companies, was selected and each individual company scored based on the quality of their response. Of the 170 responses sought overall, these clusters add up to a total of 18 responses. This approach was chosen for purposes of comparison. The assessment of the quality of company responses was carried out using three indicators (Measurement Theme E) developed by the Corporate Human Rights Benchmark (CHRB).

The report focuses only on responses received by the Resource Centre. It does not assess or take into account other public statements made by companies, nor does it seek to assess the accuracy of the allegation itself.\textsuperscript{25}

Each response was scored across three indicators with a maximum score of eight points, and divided into three tiers accordingly (excluding non-responses):

1. Low quality response (0-2). Companies were awarded points for responding to the allegation itself as well as the level of detail provided. For example, if companies responded with a general statement that did not address the allegation, they were awarded zero points for this indicator.

2. Medium-quality response (3-5), indicating some engagement and reference to policies committing them and their business relationships to the general human rights principle in question. Further points were awarded if companies provided details on a specific policy aimed at preventing the type of alleged human rights impact from reoccurring.

3. High-quality response (6-8), indicating the company provided evidence of having taken appropriate action, e.g. providing remedy, describing management systems in place to prevent adverse impacts and engaging in dialogue with stakeholders.

Between 2011 and 2015, the average number of companies approached for each cluster was six, growing to 27 in 2016 and then 50 in 2017. However, an analysis of responses received by the Resource Centre between 2011 and 2017 shows that the quality consistently remains at an average score of three out of eight.

<table>
<thead>
<tr>
<th>Year</th>
<th>Responses sought</th>
<th>Non-responses</th>
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<th>Medium quality</th>
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<td>4</td>
<td>3</td>
<td>0</td>
<td>1</td>
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</tr>
<tr>
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<td>1</td>
<td>1</td>
<td>3</td>
<td>1</td>
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</tr>
<tr>
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<td>7</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>3.3</td>
</tr>
<tr>
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<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
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<td>3</td>
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<td>5</td>
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<td>32</td>
<td>7</td>
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<td>55</td>
<td>23</td>
<td>23</td>
<td>7</td>
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</tr>
</tbody>
</table>

Figure 2: Assessment of quality of company responses

Inditex, as one example of a high-scoring response, referred to its Code of Conduct and Policy on Human Rights, in a response to the Clean Clothes Campaign report “Europe’s Sweatshops”. Both of these policies apply to suppliers, manufacturers and factories and

\textsuperscript{25} The full responses can be accessed via the Resource Centre website.

\textsuperscript{26} Ibid

\textsuperscript{27} Note: If there was more than one cluster per year, the one with the most approaches per allegation was chosen.

\textsuperscript{28} While it is impossible to say with certainty what the reasons for this sudden increase are, possible explanations could include a rise in reports and investigations involving large numbers of textile companies. Another could be increasing transparency along the supply chain by companies themselves since the adoption of the UNGPs in 2011 and legislation such as the UK Modern Slavery Act 2015, thus making it easier for suppliers and abuses in supply chains to be traced. This is an important development and crucial to providing adequate remedies for victims of potential abuse.
commit them to the principle of a living wage. Inditex also provided details on its strategy to achieve a living wage by “[p]romoting collective bargaining; responsible purchasing practices; improved working methods and systems; collaboration with other stakeholders and support campaigns”. Although it stated that “[a]ll five factories [referred to] have been monitored and reviewed […] in terms of labour standards and working conditions, including wages and working hours, with positive result in all cases”, it explained its approach to remediation, which includes developing customised improvement plans in collaboration with unions and NGOs, and highlighted its programme in Europe to deepen the work of social audits in relation to priority issues such as gender inequality and female empowerment. Inditex also pointed to steps it had taken to strengthen worker and community participation, such as signing the Global Framework Agreement with IndustriALL Global Union and employing local experts in key production regions.

In contrast, low-scoring companies made no reference to the specific instance or context where the alleged abuse occurred. One brand for instance merely sent a general statement saying it “considers the respect of human rights as critical” but did not provide any further detail, a response we found to be unsatisfactory.

While overall there is a rise in responses of medium quality, indicating that more brands have policies in place to prevent human rights abuse, there remains a gap between responding publicly and taking action. The findings suggest companies need to allocate more resources, including mitigating and providing remedy for abuses, and preventing similar future violations. Companies need to pay particular attention to ensuring effective consultation with all affected stakeholders, especially the victims (e.g. workers, communities) and civil society, as this was the area where companies scored the least points (see point 3 above).

KEY REPORTING ISSUES: MODERN SLAVERY & FORCED LABOUR

Under the UK Modern Slavery Act 2015 any company that operates in the UK and has an annual turnover exceeding £36 million is required to report annually on steps it is taking to tackle modern slavery in its operations and supply chains. The UK Modern Slavery Act is a cross-sectoral law, however the transparency in supply chains provision (Section 54) has impacted garment supply chains.

The Modern Slavery Registry, operated by the Resource Centre, includes statements from 58 companies in the textiles, apparel and luxury goods industry and headquartered in the EU.

The Modern Slavery Act sets out three minimum requirements:

1. Every statement must be approved by the board of directors.
2. Every statement must be signed by a director (or a designated member if the company is a partnership).
3. There must be a link to the statement on the company’s homepage.

These requirements have a significant effect: approval by the board demands buy-in from the very top for company-wide action to combat modern slavery risks; a director’s (or equivalent) signature creates clear accountability; and availability of the statement on the company’s homepage means better accessibility for consumers and investors who want to understand company action. According to assessment by the Modern Slavery Registry, only 26% of the 58 statements by EU textile, apparel and luxury goods companies meet all three minimum requirements (this is slightly higher than the 19% compliance by statements held on the Modern Slavery Registry overall).

30. These numbers are based on a sample of statements found on the Modern Slavery Registry as of 11 April 2018. They do not necessarily reflect all companies that have prepared modern slavery statements. The Home Office estimates between 9,000-11,000 companies are required to report, and the Registry holds statements for only half of the estimated number of companies expected to report under the Act. For more information please visit the Modern Slavery Registry.
31. Note: Where companies have published more than one statement, information corresponds to the most recently published.
1. OVERVIEW OF HUMAN RIGHTS ALLEGATIONS

In 2016, KnowTheChain (KTC), a joint initiative by Humanity United, the Resource Centre, Sustainalytics, Verité and Thomson Reuters Foundation benchmarked 20 of the largest apparel and footwear companies on the transparency of their efforts to eradicate forced labour from their global supply chains.\(^{32}\) Seven of the twenty companies were based in the EU.\(^{33}\) The benchmark found an average overall score of 46/100 for the sector, with European companies scoring an average of 51/100. In contrast to the company responses sought by the Resource Centre, the sector scores relatively highly here when compared to other sectors benchmarked (39/100 for information and communications technology and 30/100 for food and beverage). However, the sector average masks a significant disclosure and performance gap among EU companies, with Adidas scoring 81/100 and Prada scoring only 9/100.

In conclusion, EU textiles companies have relatively strong disclosure in place on their efforts to tackle forced labour in their supply chains and perform better than the overall cross-sectoral businesses’ average on reporting under the UK Modern Slavery Act. However, this is still far from adequate reporting practices. With regard to the quality of responses to allegations of human rights abuse, European companies on average demonstrate poor record when it comes to responding meaningfully.

While progressive practice by leading companies serve as positive examples, they cannot make up for lack of action by others. It is crucial that all companies conduct proper human rights due diligence along their entire supply chain. Public rankings such as KTC are a powerful tool given that they raise real reputational risks for those lagging behind and encourage a race to the top. EU-wide homogenous legislation on companies’ human rights responsibilities would further reward leaders, who would have “first-mover advantage”. Practices of high-scoring companies can serve as a reference for informing the design of a common EU framework.

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32. Note: KTC does not evaluate implementation of these efforts.
2. Key legal cases of access to remedy, obstacles and challenges

The numerous legal, practical and financial barriers faced by foreign victims trying to access remedies in the home states of transnational corporations has been extensively documented. Of the three lawsuits that the Resource Centre has profiled through its Corporate Legal Accountability project that were filed against EU textile companies since 2011, two cases were filed in an EU country (Germany and France), one in the US and none in the country where the alleged abuse occurred. Over 80% of the allegations we tracked were based on abuses in non-EU countries, often in weak governance zones, where it is more difficult for victims to have access to justice. This, along with what the Resource Centre has learned from years of work on corporate legal accountability, suggests that EU states are not only violating their extraterritorial obligations to protect from human rights abuses abroad but failing to provide adequate access to legal remedies for victims who suffered human rights abuses abroad involving EU textile companies. This lack of access to remedy also stands in sharp contrast to the increasing regulation of human rights due diligence by states across the world, as well as specifically EU states’ commitments on business and human rights – both under NAPs that many EU governments have adopted or are currently developing, and the OECD Guidelines for Multinational Enterprises.

In 2017, France adopted a law establishing a “duty of vigilance” for large multinational firms carrying out all or part of their activity in France. Under the law, companies are legally obliged to identify and prevent adverse human rights impacts resulting from their own activities, from those of companies they control, and of their subcontractors and suppliers. The Dutch parliament also passed a law on corporate due diligence to prevent child labour in 2017. Although the Dutch law is still awaiting approval from the Senate, under the current draft, companies would be obliged to investigate and determine whether there is reasonable suspicion that child labour contributed to the goods or services they are selling or supplying. If such a reasonable suspicion exists, companies are required to create a “plan of action” to address their findings. These legislative developments are crucial to promoting companies’ respect for human rights. However, the focus of these laws is more on prevention than on remediation and judicial hurdles for those seeking justice remain. These include:

- Establishing jurisdiction for extraterritorial claims
- Holding parent or controlling companies liable for abuses by their subsidiaries and suppliers down their supply chains
- Having access to sufficient information, including to provide evidence of the impacts of a company’s activities/violations
- Lack of collective redress for victims
- Limited statute of limitation in producing countries
- Sustaining procedures despite financial, legal and practical obstacles including length

Textile production is often subcontracted to suppliers in countries where labour is cheap, domestic law not always implemented or aligned to international human rights standards (which under the UNGPs companies should respect regardless of national laws), and abuses

more likely to occur even though due diligence should cover the entire supply chain including those suppliers at the very end. The lack of adequate legal avenues and remedial mechanisms for human rights violations in those countries can lead victims to seek remedy where brands are headquartered. It is thus crucial for domestic courts to accept jurisdiction over abuses that take place outside their territory. Challenges to accessing remedy moreover arise in the context of restrictions on civic freedoms. These include strategic lawsuits against public participation (SLAPPs), increasingly filed against NGOs and activists engaging in advocacy on behalf of victims of human rights abuses, as well as administrative burdens e.g. through laws such as the Law on Associations and NGOs (LANGO) in Cambodia, under which NGOs are subjected to burdensome registration requirements, including signing a Memorandum of Understanding with the Government before undertaking any activities.

Moreover, EU companies' involvement in abuse is often indirect. As the 2017 report ‘Creating a paradigm shift’ by the Resource Centre and Amnesty International argues, liability for abuses committed by other actors is essentially a question of whether a company could have prevented these from occurring. While there have been potentially promising developments in this regard with some EU courts increasingly ready to hear these claims, EU courts accepting extraterritorial claims remains a challenge.

THREE EXAMPLES OF PURSUING ACCESS TO REMEDY: CASES AGAINST AUCHAN, KIK, AND PWT GROUP

In April 2014 three NGOs filed a lawsuit in a French court against the retailer Auchan alleging that the company had used misleading advertisements regarding the conditions in which its clothing was manufactured. Labels from Auchan’s clothing range were reportedly found in the rubble of the Rana Plaza factory collapse in 2013. Auchan denies having placed orders at the Rana Plaza factory. This lack of transparency and the resulting lack of access to relevant information, including information likely to constitute evidence of the impacts of companies’ activities, also undermines the ability of victims to build a robust legal claim. Shortly after the case was filed, the prosecutor’s office launched a preliminary investigation. However, in January 2015 the investigation was dropped without further action.

In 2015, survivors and relatives of victims of the 2012 fire at the Ali Enterprises factory in Pakistan, which left 260 people dead and dozens more injured, filed a claim against KIK, the factory’s main customer, in a regional court in Dortmund, Germany. They argued that KIK shares responsibility for the injuries and deaths due to the lack of fire safety measures at the factory. In 2016, the court, in a historic decision, accepted jurisdiction over the case and granted legal aid to the victims and their families. In January 2018, more than five years after the fire broke out, KIK agreed to contribute to an ILO fund providing monthly pensions to families of the victims as a result of negotiations facilitated by the ILO. However, the lawsuit is still ongoing and KIK continues to deny responsibility for the fire, refusing to accept liability and pay compensation for the pain and suffering of victims. The court is currently also considering whether the statute of limitations on the case has passed. While this case is an important signal to textile brands that they can be held responsible for abuses in their supply chains,

44. There are two case law developments which illustrate that there is still no consistency in EU courts accepting extraterritorial claims: In October 2017, a UK court allowed Zambian victims’ claims in the Vedanta Resources water pollution case to continue being heard in the UK, whereas on the other hand in a case against Shell, UK courts dismissed the claim saying Shell was merely a holding company which did not exercise any control over its Nigerian subsidiary.
the lengthy proceedings and delay for victims to receive any form of compensation are a clear testament to the fact that swift and effective legal remedies are currently elusive.

Courts have a critical role to play in realising access to remedy, yet judicial actions against companies in the textile industry remain rare. Indeed, legal recourse is often not a viable option for victims of abuse. In these instances, leveraging non-judicial processes can be a crucial complementary means through which victims can seek remedy.\(^{48}\) The OECD National Contact Points (NCPs) are among the best-known and utilized state-based non-judicial grievance mechanisms.\(^{49}\)

In 2014, Clean Clothes Campaign Denmark and Aktive Forbrugere (Active Consumers) submitted a complaint to the Danish NCP against PWT Group A/S for failing to carry out due diligence in relation to its supplier, the textile manufacturer New Wave Style Ltd., which operated in Bangladesh’s Rana Plaza building. The complainants requested that PWT Group take necessary measures to improve its conduct, including disclosing supplier lists to the public and ensuring transparency regarding its business practices by regularly publishing inspection reports from where production takes place.

In 2016, following an investigation of the case, the Danish NCP issued a statement concluding that PWT Group had “violated the OECD Guidelines for Multinational Enterprises by failing to carry out due diligence in relation to its supplier”. However, PWT Group could not be considered responsible for the collapse of the building, as the NCP could not establish that the inspection of PWT Group’s suppliers’ building structures was an incorporated and established buyer practice at the time of the accident. In January 2018, the Danish NCP issued a follow-up statement saying that PWT had complied with the NCP’s recommendations to such an extent that the final statement in 2016 could be removed. The complainants have expressed concern that not all of the NCP’s recommendations have been adhered to and no deadline is provided as to when PWT Group must comply.\(^{50}\)

Remedy can take many forms, ranging from financial compensation, medical care, rehabilitation, and apologies, to the prevention of harm through guarantees of non-repetition. As such, both judicial and non-judicial grievance mechanisms should form the foundation for wider systems of remedy.\(^{51}\) However, judicial avenues remain full of obstacles for victims, and non-judicial grievance mechanisms such as NCP cases are also very lengthy and, in many cases, remedies not adequate. Importantly, non-judicial mechanisms cannot establish liability or issue sanctions and decisions are not binding.

\(^{48}\) Although reports show that remedy is achieved in less than 1% of cases, see OECD Watch (2015): Remedy Remain Rare, <https://www.oecdwatch.org/publications-en/Publication_4201> 27/04/2018.

\(^{49}\) The OECD Guidelines mandate adhering states to set up National Contact Points (NCPs) “for handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the Guidelines in specific instances”. Specific instances can be submitted by any individual or organisation regarding a business, operating in or from the territory of that state for an alleged breach of the Guidelines – see full details here: https://mneguidelines.oecd.org/specificinstances.htm.


3. Overview of human rights due diligence initiatives in the textile sector and engagement by EU textile companies

Public reactions by textile companies to abuses in the sector thus far have tended to focus on high-profile cases and tragic disasters in South Asia. The creation of the Bangladesh Accord on Fire and Building Safety set up in response to Rana Plaza serves as a positive example of a legally binding agreement between brands and trade unions. As a result of pressure, primarily from activists, this agreement elicited responses from over 200 textile companies from over 20 countries in Europe, North America, Asia and Australia. However, supply-side legally binding agreements such as the Bangladesh Accord, although significant in one country and precedent-setting, are insufficient to address a problem which is global and thus subject to global market dynamics such as interjurisdictional mobility of production means. While a “demand-side” European Common Framework leaves no other alternative than compliance if companies would like their product to enter the EU market, supply-side-only agreements might not be the most effective and comprehensive measure across the whole industry.

There are a growing number of initiatives underway to enhance cooperation between stakeholders at the national, pan-national and global levels, improve working conditions and drive increased accountability and transparency on textile companies’ human rights due diligence. Key initiatives include:

Fair Wear Foundation (FWF), a European multi-stakeholder initiative governed by labour unions, NGOs and business associations, includes over 120 brands based in Europe. Member companies tend to be more small and medium-sized companies. FWF keeps track of the improvements made by the companies it works with through multiple verification processes including factory audits, company visits to check internal management systems, and a workers and third-party complaints mechanism. FWF publishes all reports on third-party complaints, audits and brand performance checks on its website.

Another initiative is ACT (Action, Collaboration, Transformation), an agreement between brands, retailers and trade unions to achieve living wages through industry-wide collective bargaining agreements. These are legally binding and enforceable for the signatory parties. ACT is the first global commitment on living wages in the garment sector that provides a framework through which all actors - brands and retailers, trade unions, manufacturers, and governments - can exercise their responsibility to achieve paying living wages.

Ethical Trading Initiative (ETI) is an alliance of companies (many based in the UK, but ETI also has members in Germany, Spain and Sweden), trade unions and NGOs. Many member brands also participate in the ACT initiative on living wage. ETI is a forum for exchange and learning, as well as for developing training, resources and practical tools to collectively establish best practice among companies.

Fair Labor Association is a collaborative effort of universities, civil society organizations, and businesses which evolved following a series of child labour and other scandals involving apparel brands. Although its members are mainly

53. Accord on Fire and Building Safety in Bangladesh (2017) <http://bangladeshaccord.org/> 25/04/2018. Note: There is also the Alliance for Bangladesh worker safety, a binding, five-year commitment to improve safety in Bangladeshi garment factories. Collectively, the Alliance’s members represent the majority of North American imports of clothing from Bangladesh. For more information, see here: http://www.bangladeshworkersafety.org/
US-based, there are some EU brands as well. Companies agree to subject their supply chains to independent assessments, the results of which are published on the FLA website. FLA also promotes a Third-Party Complaint procedure to report violations of workers’ rights in facilities used by any company that has committed to FLA labour standards.58

Better Work is a partnership between the ILO and the International Finance Corporation, which brings governments, global brands, factory owners, national stakeholders, trade unions and workers together to improve working conditions in the garment industry as well as make the sector more competitive.59

Some individual companies are also leading on integrating human rights into their operations. Adidas has its own third-party complaint process for breaches to the Adidas workplace standards or violations of international human rights norms. This grievance mechanism is in line with the UNGPs and compliant with international law.60 C&A61 and H&M62 have started to disclose their full suppliers list to increase transparency for all stakeholders. Both brands are also signatories to the Transparency Pledge, a global coalition of labour and human rights organisations and global unions working towards industry-wide minimum standards for transparency in garment supply chains.63 Brands such as Asos, Inditex and Otto, among others, are taking up progressive actions to integrate and respect human rights of refugee workers in their suppliers’ garment factories in Turkey.64 In addition, some textile companies are engaging local governments in production countries on worker’s rights. In Myanmar for example, several EU brands spoke out on raising the minimum wage in 2015.65

While the true test of any individual company or multi-stakeholder initiative will depend on its implementation, use and enforcement, it is positive to see companies acknowledge their role in preventing and remediying human rights abuses and taking concrete steps to address these issues. There remains room for more joint action, collaboration, coordination and alignment of requirements among initiatives. This is a particularly important step towards strengthening their impact. Moreover, reality has demonstrated that voluntary initiatives are not a substitute for enforceable measures on human rights due diligence, as they usually fail to hold laggards to account and cannot fully address remedies for victims.
4. Existing policy frameworks: Lessons learnt from the Dutch Covenant on the Textile Sector and the German Initiative on Textiles

In response to the tragic accidents in textile factories in recent years, particularly Rana Plaza, the German and the Dutch governments have each set up a national multi-stakeholder initiative to achieve social, ecological and economic improvements throughout the entire textile supply chain and provide practical support to both companies and consumers in their buying decisions.

In October 2014, the German Partnership for Sustainable Textiles was founded as a cross-sector partnership. Its members consist of textile companies, associations and initiatives in the field of sustainable textiles, trade unions, civil-society organizations and the Federal government.66 The Dutch Agreement on Sustainable Garments was set up in March 2016 and is a coalition of industry organizations, trade unions, civil-society organizations and the Dutch government, which agreed to work on the transition towards a sustainable and responsible garment and textile industry.67 As participants of each national agreement, the German and the Dutch governments put multi-stakeholder collaboration in the garment and textile sector firmly on the agenda within the EU and continue to raise the issue of sustainability as part of their development policies and dialogue with producer countries.68

In January 2018, the German Partnership and the Dutch Agreement signed a cooperation agreement to further support textile companies implement supply chain due diligence by harmonising the sustainability requirements of the two agreements. In addition, member companies will collaborate on joint projects to improve working conditions in high risk areas and benefit from shared knowledge.69 The new collaboration also enables textile companies to become an associated signatory, meaning that companies can take part in both initiatives. While signatories of the German Partnership have to submit a list of their production sites and accept being subject to the Dutch complaint mechanism to join the Dutch Agreement, the signatories of the Dutch Agreement must publish a roadmap and progress report on the German Partnership’s website in order to join it.70

The table below provides an overview of the international standards and references, objectives and expectation of participants to achieve the common goals of the Dutch Agreement and the Plan of Action 2.0 of the German Partnership.

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### 4. EXISTING POLICY FRAMEWORKS

<table>
<thead>
<tr>
<th>International standards &amp; references</th>
<th>Dutch Agreement on Sustainable Garments and Textiles</th>
<th>Plan of Action 2.0 of the German Partnership for Sustainable Textiles</th>
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</thead>
<tbody>
<tr>
<td><strong>UN Guiding Principles on Business and Human Rights</strong></td>
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<tr>
<td><strong>OECD Guidelines for Multinational Enterprises</strong></td>
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<tr>
<td><strong>ILO core labour standards</strong></td>
<td>ILO core labour standards[^72]</td>
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<tr>
<td><strong>Agenda 2030 for Sustainable Development[^71]</strong></td>
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#### Objectives

| | Achieving substantial progress towards reducing adverse impacts of specific risks in the garment and textile production or supply chain. |
| | Providing individual companies with guidelines for preventing their own operation or business relationships from having a (potential) adverse impact in the production or supply chain. |
| | Developing joint activities and projects to address specific risks in the garment and textile sectors. ^[73] |
| | Joint definition of Partnership goals, implementation requirements & indicators for continuous improvement of sustainability in the textile supply chain. |
| | Improving framework conditions in producer countries & recommendations for a coordinated policy in Germany and the EU. |
| | Communicating transparently about the Partnership’s progress (orientation to consumers). |
| | Review, support progress & share experience through common platform. ^[74] |

#### Expected member company actions

| | Examining their production or supply chains by appropriate means (“due diligence”) and to take action in case any risks on adverse impacts are found. |
| | Including the Agreements’ specific themes in their business conduct and to integrate them with suppliers. |
| | Committing to prepare a roadmap with specific goals each year and to report on its implementation. |
| | Agreeing to implement the Partnership Standards and implementation requirements. |
| | Contributing to achieving the Partnership goals can vary among the members. |


Both initiatives combine the strengths and expertise of different stakeholders and support companies with due diligence research that provide important catalysts to improve working conditions in the textile supply chain beyond the existing (poor) legal measures. At the same time, there is room for improvement. Signatories of the Dutch Agreement are subject to a common complaint mechanism, but according to the NGO SOMO, until now information on the procedure has only been available in Dutch and English. The agreement also fails to offer access to remedy for victims of human rights violations. Membership in both agreements is voluntary and the objectives in company roadmaps and progress reports are self-imposed and not (legally) binding. In the case of the Dutch Agreement, companies are only required to submit an action plan; there are no quality criteria. As a result, there is no ‘strong’ sanction mechanism in case the roadmap goals are not achieved. Neither agreement has an explicit gender-specific dimension. There is a need to develop a Common European Framework on human rights due diligence and transparency in order to achieve real sustainable improvement in working conditions in the textile supply chain. This legislation would also ensure a level playing field between the signatories of both agreements and companies that are not part of it across the EU.

78. Centre for Research on Multinational Corporations (SOMO).
Recommendations to overcome the existing challenges to respect and protect human rights in the European textile industry and its supply chains

The existing voluntary initiatives for the sustainability of the garment sector’s global supply chain have fallen short of effectively addressing human rights and labour rights-related issues in the sector. The EU Commission is currently addressing the issue under the EU flagship initiative on the garment sector. On 25th April 2017, the Commission hosted a first High-level Conference on responsible management of Supply Chains in the sector, bringing together various stakeholders. However, since then there has been no additional movement regarding the proposal. Corporate accountability needs to be extended through effective and practical binding legislation on due diligence for the garment sector for two main reasons: 1) to ensure that the EU and its trading partners and operators fulfil their obligation to respect both human rights and the highest social and environmental standards and 2) to ensure EU companies continue to succeed financially in the future. Research demonstrates that truly responsible companies attract better finance, retain the best employees, prevent legal risks, save energy and resources by avoiding public scandals, and obtain long-lasting ‘social licences’ to operate.

Recommendations to EU policy makers:

- Establish a level playing field for all EU textile companies to comply with international norms on business and human rights. This could be through regulatory minimum requirements on human rights due diligence and mandatory disclosure on human rights reporting, for example by amending the EU non-financial disclosure directive.

- Create an incentive system for companies with progressive human rights conduct. This could include procurement advantages, support through export credits or beneficial tax and customs regulations.

- Provide accessible, transparent and effective measures for access to remedy for victims of human rights abuses by EU companies inside and outside of the EU.

- The European Commission should go beyond the presentation of a Staff Working Document and propose binding legislation on due diligence obligations for supply chains in the garment sector.
  - Align with the new OECD due diligence guidance for responsible supply chains in the garment and footwear sector and the OECD Guidelines for Multinational Enterprises.
  - Align with the ILO resolution on decent work in supply chains and internationally agreed human rights, social and environmental standards.
  - Include core standards, such as occupational health and safety, health standards, a living wage, freedom of association, collective bargaining, the prevention of sexual harassment and violence in the workplace, and the elimination of forced and child labour.

- Recommend the Commission further address the following matters: key criteria for sustainable production, transparency and traceability, including the transparent collection of data and tools for consumer information; due diligence checks and auditing; access to remedy; gender equality; children’s rights; supply-chain due diligence reporting; the responsibility of companies in the event of man-made disasters.

- Take action regarding the EU flagship initiative on the garment sector.

Recommendations to EU member states:

- Enforce all existing regulations in their home country regarding the textile industry to prevent human rights abuses resulting from company supply chain structure and manufacturing procedures.

- Elevate protections for children, women of reproductive age, low-income workers, persons with disabilities, older persons, indigenous peoples, migrants, refugees and minorities, while taking into account gender-specific risks, in relation to textile production and related activities.

- Compel all businesses in their jurisdiction to ensure that their supply chains do not cause or contribute to human rights abuses due to toxic or otherwise hazardous substances in their textile production, including extraterritorially.

- Ensure victims from any country can access remedy mechanisms in home states effectively and without undue obstacles.

- Implement the ILO standards in the garment sector.

- Commit to actively pursue the May 2017 Council Conclusions, which call for "ambitious efforts in the garment sector" and "support an EU Garment Initiative", and uptake an active role in promoting a common European framework for the garment sector.

Recommendations to businesses:

- Conduct adequate human rights due diligence covering the entire life-cycle of the textile manufacturing process and company operations, including supply and value chains. Identify and assess risks, prevent and mitigate impacts, and be transparent and accountable regarding efforts.

- Publish full list of supplier locations and production sites in line with the “Transparency Pledge”.

- Engage with all suppliers to ensure human rights are respected and discontinue working with suppliers refusing to change practices that put human rights at risk, such as freedom of association and collective bargaining throughout their whole supply chains.

- Include the potential risk of negative health impacts of the use of toxic chemicals, the raw materials used for their production, as well as abuses related to the conditions at manufacturing facilities, in their human rights due diligence. Manufacturers have a responsibility to engage in continuous efforts to identify the hazards and risks within the production process along with health and safety standards and to prevent impacts, including through the development of safer alternatives and prevention of exploitative practices.

- Comply with ILO standards, such as a living wage or decent working conditions; urge the Commission to pay attention to remuneration and the working conditions in the garment sector in the Member States.
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Business & Human Rights Resource Centre is an international human rights organization. We are the only non-profit organization drawing attention to the human rights impacts (positive & negative) of 8000 companies worldwide. Our website is relied on by business people, advocates, investors and the UN. We expose reality in a field too often dominated by rhetoric and help protect vulnerable people and communities against abuses. We also provide guidance materials and examples of good practice, to help companies understand their human rights responsibilities.

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