



Amsterdam, 23-03-2007

Dear Mr. Ruggie,

In the event that your mandate as Special Representative of the Secretary General is extended for another year, the International Secretariat of the Clean Clothes Campaign wishes to offer several suggestions and an initial response to your report, in particular where it concerns the work undertaken by TNCs to improve labour conditions in supply chains. We also include some comments on the [briefing paper for the Thailand consultation](#) "Meaningful Change: Raising the Bar in Supply Chain Workplace Standards".

### **The role of voluntary supply chain initiatives**

1. CCC, over the last decade, has been extensively involved in the development of so-called 'voluntary initiatives' aimed at addressing labour rights abuses in supply chains. We have done so from an understanding that national labour regulation often consists of a state-centric model of governance, increasingly incapable of addressing supply chain issues, which move beyond national borders. Voluntary initiatives offered a chance to develop and experiment with non-governmental regulatory systems, which offer the potential to open up and strengthen regulatory systems, as well as introduce mechanisms to encourage improvements in global supply chains. The risks of voluntary approaches also been well understood and articulated. While believing that such initiatives, if they meet certain quality criteria can be valuable instruments, we also believe that they need to contribute to, and not distract from, the development of a global regulatory framework.

2. Without legitimizing mechanisms and without real accountability structures, these initiatives are unlikely to be capable of bringing real change to the work floor level. Hence our push for what has become known as "multi-stakeholder initiatives" as distinct from business-controlled, or industry initiatives. MSIs related to supply chain issues were set up to help operationalize the potential of CSR promises by providing a platform for remediation and solutions. Contrary to industry initiatives they provide a certain limited space for trade unions and NGOs to participate in a structured manner in the process of improving workers' lives.

3. For many civil society organizations, the reason to participate in multi-stakeholder supply chain initiatives has been to 'close the regulatory gaps (...) in specific operational contexts', one of the key motivating factors as you describe in your report for the development of 'new multi-stakeholder forms of soft law initiatives'. We agree that the supply chain MSIs have not achieved this to date, and are correctly categorized as 'self-regulation'. Recent analysis from various supply chain initiatives, several of whom are now passing the 10 year mark, has however highlighted the importance and the need for involving governments in a much more structural and meaningful way if they are to enhance their impact. Some project-based work has been

undertaken in this regard (particularly through the MFA Forum, which itself involves various MSIs) .

It would be useful if the Special Representative could explore, in the coming year, how MSIs could engage more structurally with states, and what role governments can and should play in relation to them.

### **Stakeholder involvement to enhance credibility**

4. In your report you also mention the importance of participation (in addition to transparency and review) for the credibility of voluntary accountability mechanisms. We fully agree with this position and believe it is important to explore this further, particularly for supply chain initiatives. While initiatives pay lip service to stakeholder involvement, only very few initiatives involve trade unions, NGOs or, importantly, workers in a meaningful way. Workers and members of local communities, as the potential victims of human rights violations and as the intended beneficiaries of the whole process, are arguably the most important stakeholders and need to be involved at all levels and in all activities related to code implementation, if code implementation is to be successful and sustainable. If the intended beneficiaries are not directly involved at all levels, including in decision-making, real sustainable change will not be achieved. The recently published ETI impact assessment study also strongly supports the conclusion that NGOs and trade unions representing workers' needs, need to be actively involved (not just "consulted").

5. There is a fundamental difference between being involved in an advisory capacity, or being consulted, and being co-responsible. The briefing paper as well as your report, while confirming the importance of participation, does not provide a real analysis of stakeholder involvement in these initiatives. Just to mention an example: out of the six initiatives described in the briefing paper only one (ETI) has trade union as well as NGO representation in its board. SA8000 has NGO and trade union representation only in its advisory board. FLA works with trade unions in the field when handling grievances or in specific projects, but in its board only has NGOs and universities. The industry initiatives such as BSCI, EICC, WRAP, ICTI and more recently GSCP, all have consciously decided against involving trade unions and credible NGOs, even at the project or advisory level. In your report you mention that the foreseen cooperation between SAI and BSCI 'ought to generate credibility benefits'. It is unclear why you have come to this conclusion, and in the absence of any change to the BSCI oversight mechanism this is unlikely.

6. In our view, some type of formal representation for trade unions and NGOs in the governance structure of these initiatives is essential since the alternative, having corporations being solely responsible for the oversight, will ultimately mean that these initiatives will end as non-transparent, unaccountable, top-down structures. It will also mean that they can't evolve in the same direction as the 'soft law' multi-stakeholder hybrids you describe in your report. It would be useful if the SR could provide guidance on stakeholder involvement, what it means, what it does not mean, and clarify what can be expected from voluntary initiatives in this regard.

### **Insufficient impact**

7. A decade of experimenting with the development and implementation of labour standards, particularly in apparel, footwear, toy and electronics supply chains, has led to some partial successes and improvements but has failed to impact the supply chains to the extent that labour and human rights of workers within them have substantially improved. There are a number of commonly accepted reasons for this.

8. First, social auditing has failed as a tool to deliver improvements. The briefing paper also confirms that there is broad agreement among most involved that auditing (or monitoring mechanisms that are based mainly on auditing) in and of itself does not deliver change. The paper does not mention that the reasons for the failure are not just conceptual, but also have to do with the industry that has been created to undertake social audits. By and large this consists of globally operating quality control firms, which work towards a pre-existing business model that in and of itself is a barrier to providing the in-depth analysis of labour relations and of the root-causes of non-compliance that is necessary for a workplace investigation to be accurate and a good starting point for effective remediation.

9. Auditing has become an industry in itself, with significant differences in approach and quality. With some of the brands and the MSIs shifting focus from audits to worker training and remediation programmes, these social auditing companies are adjusting their profiles, claiming to be ready to provide these new services. They are likely to do as bad a job as they did with auditing, if not worse. In spite of the consensus that social auditing is not delivering new initiatives relying on the same dysfunctional audit model keep emerging (BSCI, GSCP).

10. A consensus is slowly emerging among the MSIs, that a ‘full package’ approach to code implementation encompasses the following elements:

- Quality workplace assessments followed through by remediation programmes. The Worker Rights Consortium and the Fair Wear Foundation are examples of MSIs that have developed an alternative approach to workplace assessments from the audit industry. Remediation programmes can take place at workplace, zone or country level depending on the issues.
- Concrete and effective action by buyers and suppliers to enhance respect for freedom of association and collective bargaining. These rights are often referred to as “enabling rights,” because their full implementation provides mechanisms through which workers can ensure that other labor standards are upheld in workplaces. That is to say, in workplaces with a functioning trade union, collective bargaining machinery, and effective dispute and complaints mechanism, workers are able to monitor their own workplace conditions and protect their own rights. By creating a space where industrial relations structures can take shape, implementation of all other code standards can be most effectively ensured.
- Establishment of grievance and complaints mechanisms, at workplace level but backed up by the option to file complaints with buyers or with the MSI they belong to.
- Workers need to be informed and aware of their rights, the best route for this is worker training organized by independent groups and/or trade unions.
- Organized worker involvement throughout all aspects of the remediation process greatly enhances the chances of creating sustainable change. So does genuine participation of local trade unions and labour rights NGOs.
- Enhanced transparency on findings of workplace investigations, remediation plans, composition of the supply chain and on purchasing practices. Transparency needs to be improved at all levels (buyers, suppliers and MSIs).
- Improved purchasing practices, including a commitment to long-term relations with those suppliers ready to make changes, and prices that allow for the costs of compliance to be met.

11. Separately, each of the initiatives lack the resources and capacity to develop such a full-package approach, particularly since they all lack the ‘critical mass’ crucial to succeed. Collectively, it could be argued that they represent sufficient scale, particularly in the apparel sector. It is often suggested that enhanced collaboration can be left to the initiatives and stakeholders to sort out among themselves, since everyone agrees that more collaboration is key. Reality unfortunately is different. While valid attempts are made (including particularly the JO-IN project, involving FLA, SA8000, ETI, WRC, FWF and CCC) the process is painfully slow, and at the same time new, typically industry-controlled initiatives continue to emerge (BSCI, GSCP). Also, even with key initiatives working together, they lack the institutional power to develop a sector-wide approach that includes governments. It is unlikely that, in the absence of an outside force or event forcing the pace and the process, the current roster of stakeholders and initiatives will manage to sort themselves out to the point of developing a collective program of work that would manage to overcome the current deficiencies.

## **Recommendations**

12. We agree with you that the “biggest challenge is brining such efforts to a scale where they become truly systemic interventions”, and recommend that the SR in the coming year takes action to:

- clarify how supply chain initiatives should work together in order to make their programs effective and have a real impact;
- explore how they can engage more structurally with states and what role governments can and should play in relation to them;
- develop concrete support to help achieve this, including by providing guidance on implementation mechanisms, governance structures and stakeholder involvement;
- provide a proposal on how voluntary multistakeholder supply chain initiatives can be included in a broader regulatory framework for corporate accountability.

13. One possible focus of SR activity could be trade union rights, which often are restricted legally and in practice. Interestingly, the lack of worker’s representation has become a real-time problem also for companies and MSIs trying to make code implementation effective and sustainable. Those companies and initiatives serious about enacting sustainable improvement have recognized (on paper if not in practice), that without worker involvement and participation, auditing and drawing up corrective action plans will not result in significant changes. This recognition provides an exciting opportunity for a possible common agenda to improve respect for freedom of association and worker representation, in line with the relevant ILO conventions. The SR could support supply chain initiatives in providing clear guidance on what is expected from buyers and suppliers concerning compliance with the relevant ILO conventions, and in taking positive measures to enhance respect for these rights.

14. Particular attention could be paid to grievance and complaints mechanisms, and how brands and MSIs can contribute to effective mechanisms at workplace level, and how they can be more effective in resolving complaints filed with them directly. The possibility of appointing an ombudsperson at UN level could be explored.

15. Another focus of SR activity could be purchasing practices. As indicated above, one of the key barriers to sustainable compliance at supplier level is the purchasing practices of the buyer companies. Most of these relate to abuses of power asymmetries in the relationship with

suppliers for example forcing down prices and lead times, transfer of risk to suppliers, and unilateral changes in the terms of contracts and all forms of agreements at short notice. This amounts to anti-competitive behavior. Supply chain initiatives to date have been unable to develop any mechanisms whatsoever to improve purchasing practices. There is recognition throughout that responsible purchasing practices is a prerequisite to improving labour conditions in a sustainable way, but it is highly unlikely that the current MSIs will be able to get their member companies to sign up to a voluntary standard or programme that restricts them in key areas of business practices such as pricing, selection of suppliers and terms of the contractual relationship.

16. The SR could explore mechanisms to increase transparency of purchasing and pricing practices so that it is clear what suppliers are paid, what workers are paid, and what retailers charge consumers. The SR could develop a benchmark so that cost price is based on the provision of a living wage to workers within the supply chain of that product. Case studies could be undertaken into the impact of purchasing practices on wages and hours of work throughout particular supply chains, and what means exist to prevent negative impacts. The SR could investigate the development of a binding code of practice for buyers, and of a ban on below cost selling (as exists in certain EU countries).

We would be happy to meet at any time to discuss these concerns and ideas,

Looking forward to your response,

On behalf of the International Secretariat of CCC,

Ineke Zeldenrust

A handwritten signature in black ink, appearing to read 'Ineke Zeldenrust', written in a cursive style.