

From moral responsibility to legal liability?

Modern day slavery conditions in the global garment supply chain and the need to strengthen regulatory frameworks: The case of Inditex-Zara in Brazil



Repórter Brasil & SOMO

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Repórter Brasil

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Amsterdam, May 2015

Colophon

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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.



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Repórter Brasil was founded in 2001 by journalists, educators and social scientists. Its mission is to identify and address public labour and human rights violations in Brazil, as well as other kinds of social and environmental crimes. Because of its work, it has become one of the most important sources of information about forced labour in the country. Its news, investigations, researches and educational methodology are used by leaders in the government, companies and also civil society organizations as tools to advance the protection of human rights.



Contents

Executive summary	5
1 Introduction	9
1.1 Background	9
1.2 Objectives	9
1.3 Reading guide	10
1.4 Methodology	11
1.5 Review procedure	12
2 The global garment industry v13	13
2.1 Introduction	13
2.2 Working conditions in the garment industry	16
2.3 Voluntary industry initiatives	17
2.4 Second and further tier suppliers not properly inspected	17
3 The Brazilian garment industry	19
3.1 Introduction	19
3.2 Outsourcing and informal labour	19
3.3 Modern-day slavery	20
4 Law and policy framework	23
4.1 International norms	23
4.2 Brazilian legal framework	26
4.3 Measures to eradicate forced labour and slave labour practices	27
4.4 Regulatory developments on outsourcing	31
5 The Inditex case	34
5.1 Federal inspections	34
5.2 Compensation for the workers	37
5.3 Agreement between Brazilian authorities and Zara Brasil	38
5.4 In conclusion	39
6 Inditex's actions following the 'slave labour' case	41
6.1 Improving CSR policies and practices	41
6.2 Compliance with Conduct Adjustment Agreement?	46
6.3 Legal action	51
7 Conclusion and recommendations	55
7.1 Improvements and persisting issues	55
7.2 Harmful litigation strategy	56
7.3 Legal liability of brand owners: a step that needs to be taken	57
7.4 Recommendations for the Brazilian Government	58
7.5 Recommendations for clothing brands and retailers	62
Annex I	64

Acronyms

ABVTEX	<i>Associação Brasileira do Varejo Têxtil</i> (Brazilian Association of Textile Retail)
CCC	Clean Clothes Campaign
CDHIC	<i>Centro de Direitos Humanos e Cidadania do Imigrante</i> (Centre for Human Rights and Immigrant Citizenship)
CIC	Immigrant Citizenship Integration Centre
CLT	<i>Consolidação das Leis do Trabalho</i> (Consolidation of Labour Laws)
CONATRAE	<i>Comissão Nacional para a Erradicação do Trabalho Escravo</i> (National Commission for the Eradication of Slave Labour)
CPI	<i>Comissão Parlamentar de Inquérito</i> (Parliamentary Inquiry Commission)
CRO	Contract research organisation
CSO	Civil society organisation
CSR	Corporate social responsibility
FGTS	<i>Fundo de Garantia do Tempo de Serviço</i> (Guarantee Fund for Time of Service)
GEFM	<i>Grupo Especial de Fiscalização Móvel</i> (Special Mobile Inspection Group)
ILO	International Labour Organization
MPF	<i>Ministério Público Federal</i> (Federal Prosecutions Office)
MPT	<i>Ministério Público do Trabalho</i> (Labour Prosecutor's Office)
MTE	<i>Ministério do Trabalho e Emprego</i> (Ministry of Labour and Employment)
NGO	Non-governmental organisation
QR	Quick response
SEDH	Special Secretariat on Human Rights
SIT	<i>Secretaria de Inspeção do Trabalho</i> (Secretariat of the Labour Inspection)
SOMO	<i>Stichting Onderzoek Multinationale Ondernemingen</i> (Centre for Research on Multinational Corporations)
UDHR	Universal Declaration of Human Rights
UN	United Nations

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Executive summary

Background

In August 2011, Brazilian federal government inspectors found 15 immigrants working and living under deplorable conditions in two small workshops in São Paulo. Workers had to work for long days – up to 16 hours – and were restricted in their freedom of movement. The inspectors later concluded that the conditions in the two workshops were to be classified as ‘analogous to slavery’. The workers were sewing clothes for Zara, a brand of Inditex, the world-renowned fast fashion pioneer from Spain. The workshops where the abuses took place were contracted by Zara’s supplier.

According to the inspection report, Zara Brasil exercised directive power over the supply chain and therefore should be seen as the real employer and should be held legally responsible for the situation of the rescued workers.

The company faced several sanctions: it was fined for 48 different infractions found during the inspection of the workshops; and the company risked entering the so-called ‘dirty list’ of slave labour - a public registry of individuals or enterprises caught employing workers under conditions analogous to slavery. Zara Brasil has been fighting these sanctions in court, which challenged the legitimacy of the dirty list as a tool. The current report questions this litigation strategy.

Objectives

Based on an analysis of the case of forced labour in Inditex’s supply chain, this report will demonstrate that voluntary corporate social responsibility (CSR) initiatives and self-regulation are insufficient as a tool to address human rights violations in the global garment industry. Additional legislation is required.

Several initiatives undertaken by the Brazilian government to counter forced and slave labour have been described as best practices. In order to adequately address serious labour rights concerns in the Brazilian garment industry, however, the Brazilian regulatory framework needs further strengthening. By publishing the current report, SOMO and Repórter Brasil aim to help further strengthen these measures, as well as making the case for introducing supply chain liability in the Brazilian regulatory framework.

Inditex’s actions following the case of modern day slavery conditions:

Improving CSR policy and practices

The slave labour scandal in workshops producing for Zara Brasil has led to a number of improvements in the company’s operations, such as a significant increase in the number of inspections, strength-

ening of its supplier monitoring mechanisms and investments in immigrant communities' projects (for further information see chapter 6).

Persisting weakness in monitoring system

One of the major issues in the Brazilian garment industry is the high incidence of outsourcing and subcontracting through which informal workshops are incorporated in the supply chain. In these informal workshops, the risk of serious human rights and labour rights violations is high. SOMO and Repórter Brasil are of the opinion that Inditex's monitoring mechanisms, although strengthened, are still not adequately addressing this problem. In July 2013, during a hearing at the Labour Prosecutor's Office, Zara Brasil itself could not guarantee that informal workshops were no longer part of its supply chain.

The current research provides indications that the company's supply chain monitoring is not 100% effective. The examples of companies included on Zara Brasil's supplier list, even though they had been out of business for months, illustrate this (see cases of ND Confecções and Rolepam Lavanderia Industrial in Chapter 6).

In addition, labour rights infringements at a number of other suppliers and subcontractors (see annex I) were not reported to the Labour Prosecutor's Office (MPT). Based on an agreement between Zara Brasil and the MPT, corrective action plans must be adopted and sent to the authorities if the company's audits reveal inconsistencies with the Brazilian labour law and the Inditex code of conduct. Inditex is of the opinion that the labour rights infringements fall outside of the scope of the agreement. SOMO and Repórter Brasil are of the opinion that Inditex is not fulfilling all of its obligations as laid down in the agreement with the MPT, a view that is supported by the Parliamentary Inquiry Commission (CPI) that was created by the Legislative Assembly of São Paulo to investigate cases of slave labour in the state. And even though Inditex states that it was aware of and played an active role in resolving these issues, SOMO and Repórter Brasil have received no supporting evidence for this.

Harmful litigation strategy

In June 2012, Zara Brasil filed a lawsuit against the Brazilian authorities, contesting both the fines that were imposed on the company as well the decision to put Zara Brasil on the so-called 'dirty list'. By means of this court case, Zara Brasil has not only been contesting its own legal responsibility, but also the constitutionality of the dirty list as a tool to fight slave labour. The argumentation used by the company is that the Ministry of Labour should not create penalties (eg: blacklisting), but should only apply those penalties already provided for in existing laws or collective bargains.

The company's litigation efforts against the labour inspection and the 'dirty list' risk undermining the potential of the Brazilian authorities to effectively fight other situations of modern slavery in the

country, not only in the garment industry but also in many other economic sectors¹. The list's extinction would remove the main search reference for Brazilian companies committed to eliminating the use of slave labour in their business relationships. SOMO and Repórter Brasil argue that the company's alleged commitment to human rights is incompatible with its explicit attempt to undermine a tool that is an international example of good practice in fighting forced labour.

Moral responsibility versus legal liability

In its response to the 2011 slave labour scandal, Inditex combined progressive measures in the voluntary CSR realm with reactive litigation in the legal realm. In other words: it voluntarily assumes 'moral' responsibility but resists legal responsibility for the working conditions within its supply chain. In fact, this combination of strategies reveals an inconsistency: in the CSR realm, Inditex assures its stakeholders that it is able to effectively monitor its supply chain, while in the legal realm, it refuses to assume responsibility for the conditions in the sewing workshops, arguing that outsourcing was unauthorised, Zara Brasil was not aware of it and that its contracting party had been deceiving audits, i.e. Zara Brasil is unable to control its supply chain.

There is another inconsistency in Inditex's approach: while it has publicly acknowledged the value of the dirty list as a tool to combat slave labour by joining the National Pact for the Eradication of Slave Labour, the company's legal strategy undermines the tool, as it jeopardizes the very existence of the list. Repórter Brasil and SOMO are of the opinion that the dirty list and other measures to combat slave labour in Brazil need strengthening instead of weakening.

Legal liability of brand owners: a step that needs to be taken

The present report demonstrates once again that private audit systems and certifications are not sufficient to overcome labour precarisation and human rights abuses in the textile and garment industry. There are many more examples of severe human rights abuses occurring in the supply chains of Western brands and retailers.²

1 During the last phase of the production of this report this risk turned out to be very real as the 'dirty list' is temporarily put on hold. The Brazilian Association of Real Estate companies (Associação Brasileira de Incorporadoras Imobiliárias) had filed an appeal at the Supreme Court claiming that the list is not supported by the law and that it denies companies the right to a legitimate defense. This reasoning is comparable to the one followed by Zara Brasil. While awaiting the final Supreme Court decision - which may take years - a preliminary decision of one of the judges of the Supreme Court has decided to stop updating the list with names of new offenders. See: Repórter Brasil, "Ação de construtoras barra publicação da 'lista suja' do trabalho escravo", 30 December 2014 < <http://reporterbrasil.org.br/2014/12/lobby-de-construtoras-barra-publicacao-da-lista-suja-do-trabalho-escravo/> >.

2 See for instance SOMO and CCC, "Fatal Fashion: Analysis of recent factory fires in Pakistan and Bangladesh: a call to protect and respect garment workers' lives", March 2013, <http://www.somo.nl/publications-en/Publication_3943 >; Repórter Brasil, "Confecção de roupas infantis flagrada explorando escravos tinha certificação" (only in Portuguese), <<http://reporterbrasil.org.br/2013/02/confeccao-de-roupas-infantis-flagrada-explorando-escravos-tinha-certificacao/>>.

Slavery, deadly fires and other kinds of rights violations faced by workers largely reflect a business model that focuses on low-cost production. A model in which big brands and retailers have broad discretion to influence the working conditions imposed on their manufacturer networks. In this scenario, the understanding that retailers have a mere “social responsibility” for workers’ rights must be urgently left behind.

Voluntary supply chain monitoring is neither a sufficient nor a fair solution to the problem of slave labour and other recurrent labour rights violations. It does not erase the economic impetus that is driving precarious and illegal workshops to be a significant part of the garment industry. In fact, it leaves the legal responsibility for labour and human basic standards with the workshop owners, while the powerful economic actors in the production network – brand owners and giant retailers – benefit from low-cost production while ‘outsourcing’ the risks of legal sanctions for human and labour rights abuses.

Recommendations:

For the Brazilian Government

- ❑ Establish, through law, strict liability of companies in the top of the production chain over labour and human rights violations in the production of their own brands.
- ❑ Take measures to guarantee that the legal status of the ‘dirty list’ is strengthened in order to avoid any future questioning of its legality by offenders.
- ❑ Strengthen the capacity of the labour inspection so that it is able to adequately monitor compliance of companies with the agreements made.

For brands and retailers

- ❑ Identify, prevent and mitigate risks and negative impacts in their supply chain, in accordance with the UN Guiding Principles on Business and Human Rights.
- ❑ Establish consistency between the legal and CSR strategy.
- ❑ Map supply chain and provide transparency about their supplier base.
- ❑ Establish or participate in genuine and credible grievance mechanisms.
- ❑ Eradicate unsustainable subcontracting arrangements.
- ❑ Develop sustainable business practices.

1 Introduction

1.1 Background

In August 2011, Brazilian federal government inspectors found 15 immigrant workers working and living under deplorable conditions in two small workshops in São Paulo. Workers had to work for long days – up to 16 hours – and were restricted in their freedom of movement through illegal deductions from their wages or were forbidden from leaving the workshop without permission. The inspectors later concluded that the conditions in the two workshops were to be classified as ‘analogous to slavery’. The workers were sewing clothes for Zara, a brand of Inditex, the world-renowned fast fashion pioneer from Spain. The abuses took place in two workshops in São Paulo that were contracted by Zara’s supplier. Repórter Brasil, co-author of this report, has a role as monitoring partner of the Pact for Decent Work in São Paulo’s Garment Industry. Therefore, Repórter Brasil was present during the August 2011 inspections.

The exploitative working conditions described above are not unique to Inditex’s Brazilian supply chain. There are a significant number of informal labourers in Brazil’s garment industry, working in unregistered sewing workshops or in home-based workshops.³ Informal workers do not enjoy basic rights that are guaranteed by law to regular workers – such as paid vacations, a 44-hour maximum working week, unemployment insurance and access to public social security benefits. Informal workers are commonly paid per piece sewn, in an arrangement that forces them to face long working days to earn their survival.

The Brazilian government has undertaken a broad range of policy measures and initiatives to detect, prevent and address such labour-related abuses. One of these tools is the ‘dirty list’ of slave labour. Individuals or enterprises caught employing workers under conditions analogous to slavery risk having their names included in this public registry.

After the inspectors concluded that the conditions found in the workshops could be classified as ‘analogous to slavery’, the Brazilian subsidiary of Zara – Zara Brasil – risked entering the dirty list. In response, Zara Brasil has both challenged its listing as well as challenging the legitimacy of the tool itself in court. The current report questions this litigation strategy.

1.2 Objectives

Based on an analysis of the case of forced labour in Inditex’s supply chain, this report will demonstrate that voluntary corporate social responsibility (CSR) initiatives and self-regulation are insufficient as a tool to address human rights violations in the global garment industry. The report provides recommendations towards Inditex and similar brands and retailers to implement and

3 Carlos Freire da Silva, ‘Trabalho Informal e Redes de Subcontratação: Dinâmicas Urbanas da Indústria de Confecções em São Paulo’ <http://www.fflch.usp.br/ds/pos-graduacao/sites/trajetorias/txts/Carlos_Freire.pdf>.

improve their corporate responsibility to respect human rights, which includes coherence between their legal and CSR strategies.

In order to adequately address serious labour rights concerns in the Brazilian garment industry, however, the Brazilian regulatory framework also needs strengthening. Several initiatives undertaken by the Brazilian government to counter forced and slave labour have been described as best practices by various institutions – e.g. by the International Labour Organization (ILO),⁴ the United Nations (UN) Human Rights Council⁵ and the Walk Free Foundation.⁶ By publishing the current report, SOMO and Repórter Brasil aim to help further strengthen these measures, as well as making the case for introducing supply chain liability in the Brazilian framework.

1.3 Reading guide

The report is structured as follows:

- Chapter 2 characterises the global garment industry and highlights the precarious working conditions that are prevalent in the industry;
- Chapter 3 zooms in on the Brazilian garment industry, the way it is structured and the appalling conditions that are found in (illegal) sewing workshops;
- Chapter 4 describes the regulatory and policy framework that is relevant for the Brazilian garment industry in addressing forced and slaved labour, including rules that are applicable to supply chain relations;
- Chapter 5 illustrates the way this regulatory and policy framework plays out in practice by means of the case of modern-day slavery conditions found in Inditex's supply chain in 2011;
- Chapter 6 describes the approach taken by Inditex in response to the case, illustrating both the strengths and weaknesses of their voluntary approach and the threats of their litigation strategy to the framework as a whole;
- Chapter 7 summarises the conclusions of the analysis and provides recommendations aimed at the Brazilian government, as well as at companies like Inditex, regarding how to strengthen approaches to combat forced and slave labour.

4 ILO, "The good practices of labour inspection in Brazil: the eradication of labour analogous to slavery". International Labour Office. (Brasilia: ILO, 2010), p. 16.

5 United Nations Human Rights Council, "Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian," August 2010 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.20..Add.4_en.pdf>.

6 Walk Free Foundation, "the Global Slavery Index 2013" <<http://www.globalslaveryindex.org/>>.

1.4 Methodology

Several sources of information were collected, organised and analysed over the last three years, including:

Source

On-site monitoring: Repórter Brasil participated as an observer in the Brazilian government's inspection that found modern-day slavery conditions in the production of Zara's clothes

Date of research

August 2011

Data collection method

Participatory observation

Source

Official documents – reports, extrajudicial settlements, lawsuits, etc. – that are outcomes of the above-mentioned inspection

Date of research

May 2013 to November 2014

Data collection method

Desk research

Source

Individual labour lawsuits filed in 2012 and 2013 against the company's suppliers and subcontractors

Date of research

2nd semester 2013

Data collection method

Desk research

Source

Inditex's documents about its CSR policies

Date of research

May to December 2013

Data collection method

Desk research

Source

Interviews with three workers of sewing workshops that were part of Inditex's production chain

Date of research

2nd semester 2013

Data collection method

Empirical research

Source

Interviews with several other actors – Brazilian government officials, labour prosecutors, human rights NGOs, representatives of the Latin American immigrant community in Brazil and activists on labour issues.

Date of research

May to December 2013

Data collection method

Empirical research

1.5 Review procedure

SOMO has strict guidelines for review procedures stipulating that all companies mentioned in a research report should be given the opportunity to review, respond to and comment on draft passages of research reports that directly relate to the company in question. This opportunity to respond is intended to avoid publishing inaccuracies and is, as such, an essential element of ensuring high-quality research. However, it is important to note that, even if a draft research report is reviewed by a company or companies, the authors of the report remain solely responsible for the contents of the report.

For the current report, the review process consisted of sharing a draft of the report with Inditex and Zara Brasil.⁷ In response to this review request, Inditex proposed a meeting with SOMO. A meeting between Inditex and SOMO took place on 23 April 2014 in Amsterdam. During this meeting, Inditex gave a reaction to the draft report, which the company later also submitted in writing, dated 2 May 2014. In response to Inditex's letter, SOMO and Repórter Brasil sent some additional questions. Inditex responded to these questions by sending another letter, dated 3 July 2014. Inditex's comments have been processed in this final version of the report, in a condensed form.

It should be noted that Inditex's review comments included some information that conflicted with the research findings (especially with some of the information gathered from the labour inspection reports). Wherever this was the case, findings from both Inditex as well as SOMO and Repórter Brasil are reported.

⁷ The review procedure for this report did not include the (sub)contractors of Zara Brasil mentioned, since their mentioning solely reflects information that is already in the public domain, without additional interpretation by the authors.

2 The global garment industry

2.1 Introduction

The fashion industry is vastly different from what it was a generation ago. Contrary to other consumer goods, retail prices of clothing have gone down over the past few years.⁸ At the same time, stores refresh their inventory ever more frequently with new items arriving every week. This ‘fast fashion’ model departs from traditional norms of designer-led fashion seasons, using instead designers who adapt their creations to customers’ demands on an on-going basis.⁹ New pieces of clothing arrive at stores on a continuous basis in a productive arrangement in which the reduction of time between design, manufacture and distribution of clothes is essential. This approach has a major impact on the supply chain by requiring quick responses from suppliers to the demands of brand and retail companies.

A small group of giant garment brands and retailers plays a pivotal role in the global garment industry. With their buying power, these brands and retailers influence conditions throughout the entire supply chain. Garment brands and retailers generally do the designing, branding and marketing but they do not make the products they sell. They set the terms for manufacturers that make the finished goods. They define models, measures and fabrics. They establish quantities, set deadlines for delivery and require corrections in pieces. At this part of the value chain, which is characterised by high entry barriers for new brand companies and retailers, profitability is greatest. Entry barriers for manufacturers, by contrast, are substantially lower. The relative ease of setting up manufacturing companies has led to an unparalleled diversity of garment producers in developing and emerging economies, which are facing immense competition and low returns¹⁰ This contributes to power imbalances between the retailers/brands and manufacturers, illustrated in the figure on the next page.

Manufacturing of yarn, fabrics and clothing predominantly takes place in developing and upcoming economies. Major exporters of apparel products include China, Hong Kong, Bangladesh, Turkey, Viet Nam and India.¹¹ To be able to offer clothes at bargain prices and to respond rapidly to changing fashion trends, clothing brands and retailers are continually looking for cheap production locations that can accommodate complex orders and deliver quality goods at short notice. The average garment company may spread its orders over hundreds of changing suppliers. Long-term relationships with suppliers are rare. The pressure on short lead times and low prices has a knock-on effect throughout the whole supply chain.

8 Modint, “Prijs van kleding blijft achter bij totale inflatie”, no date <<http://www.modint.nl/nieuwsberichten/website/modint-nieuws/prijs-van-kleding-blijft-achter-bij-totale-inflatie>>.

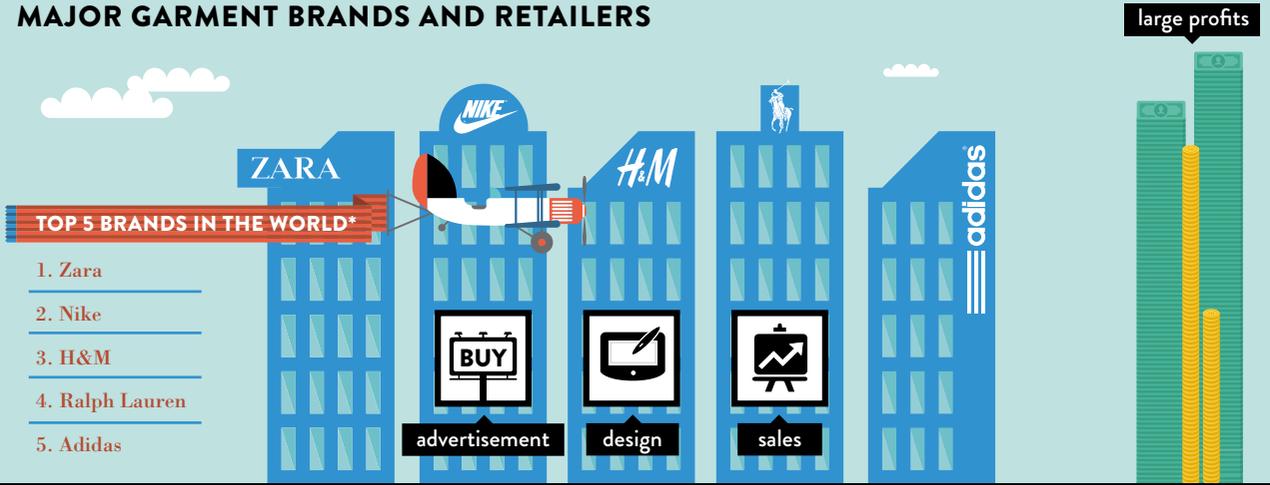
9 Crofton, S.O. & Dopico, L.G, “Zara-Inditex and the growth of fast fashion” in: Essays in Economic & Business History, Vol XXV, 2007.

10 Based on McCormick, D., Gereffi, G. et al. “The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries?” (Vienna: UNIDO, 2001) and Pan, J. “Global Cotton and Textile Product Chains: Identifying challenges and opportunities for China through a global commodity chain sustainability analysis,” (2008).

11 UNCTAD, “Handbook of Statistics 2013”, 2013 <<http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=759>>.

Power Relations in the Garment Supply Chain

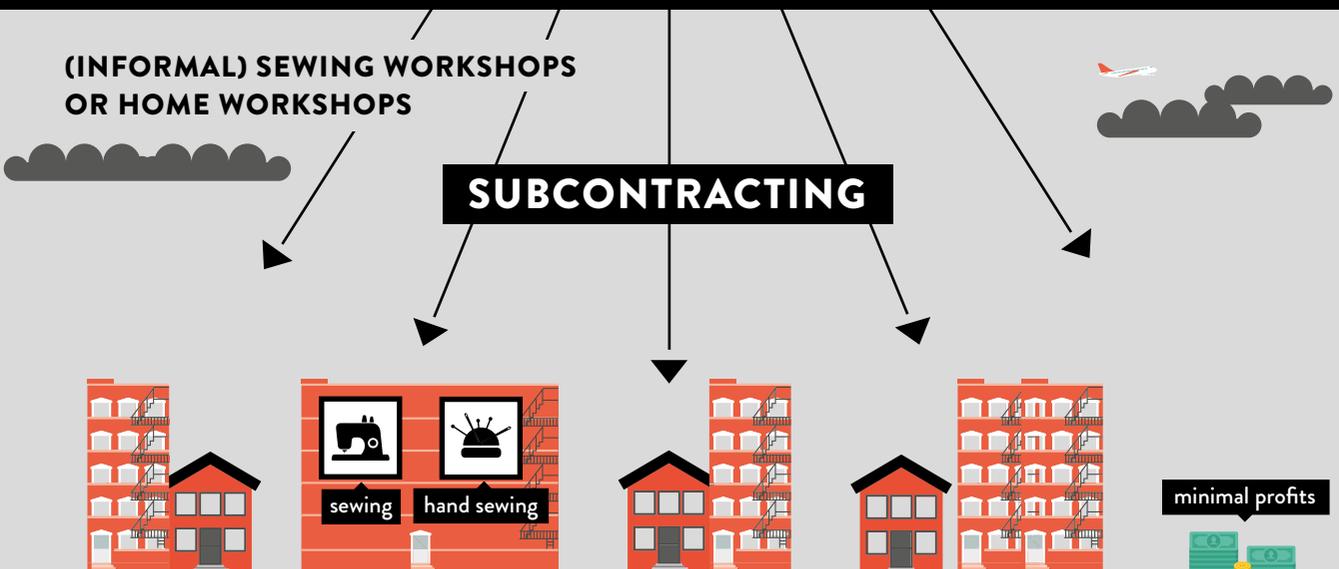
MAJOR GARMENT BRANDS AND RETAILERS



GARMENT FACTORIES



(INFORMAL) SEWING WORKSHOPS OR HOME WORKSHOPS



* based on brand value. Source: MBaskool website "Top 10 Apparel Brands in the World 2013"
<http://www.mbaskool.com/fun-corner/top-brand-lists/7708-top-10-apparel-brands-in-the-world-2013.html>

Box 1: The case of Inditex, the fast fashion pioneer

The Inditex Group is famous as one of the leading exponents of the fast fashion business model. The Inditex group is currently the largest global fashion retailer by number of stores. It has over six thousand points of sale in 86 countries in all continents. About one third of them belong to Zara, the group's largest and best-known brand. Pull & Bear, Massimo Dutti, Bershka, Stradivarius, Oysho and Uterqüe complete the portfolio of brands controlled by the multinational conglomerate founded in 1975 in the Spanish city of A Coruña¹.

Like no other fashion company, Inditex is able to identify and translate the latest trends into fashionable products. Its intelligence gathering systems, coupled with the setup of the supply chain, make it possible for the company to shorten the design-to-store cycle to an absolute minimum.

Inditex's business model has been praised by many business analysts as being perfectly suited to the fast-paced fashion industry. Contrary to most of its global competitors, Inditex does not source the majority of its clothes from Asian countries such as China, Bangladesh or India. Instead, the company has designed its supply chain to allow for so-called 'proximity sourcing'.² A large share of its production takes place in Spain and Morocco, with close geographical proximity to Europe, which forms Inditex's largest market. In line with the proximity sourcing concept, an important part of Zara pieces sold in its Brazilian stores is produced by Brazilian manufacturers (for more information see box 3).

According to Inditex, the 'proximity sourcing' concept covers between 55 to 60% of total production. These garments are produced by the company's main suppliers in Spain, which include Inditex-owned factories. Other major suppliers are located in Portugal, Morocco and a number of European countries. The rest of the Group's production is sourced from over 40 different countries located in the Americas, Asia and Africa.³ By having its suppliers closer to its retail markets, Inditex is better able than its competitors to respond quickly to changing fashion trends.

While proximity sourcing is more expensive than sourcing from low-wage countries, it allows Inditex to respond directly to information about what consumers are actually buying. According to an article in The Financial Times, thousands of real-time reports on changing consumer behaviour are sent from Zara shops around the world to Inditex's headquarters.⁴

1 Inditex, "Our Group": <http://www.inditex.com/en/who_we_are/our_group>

2 Inditex Annual Report 2013, p. 63.

3 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

4 The Financial Times, "Inditex keeps its finger on the pulse", 22 May 2011, <<http://www.ft.com/cms/s/a79b5b16-8485-11e0-afcb-00144feabdc0>>, (10 March 2014).

◉ Box 1: The case of Inditex, the fast fashion pioneer

While other companies have to wait several months before their products arrive from Asia, and risk that they have gone out of fashion in the meantime, Inditex can use this information and its nearby suppliers to restock the most popular items sold in its store in a fortnight. While the standard design-to-retail cycle is five to six months, Inditex's cycle is only five weeks. The company needs only two weeks to deliver repeat orders or orders with slight changes to stores. The shorter cycle allows Inditex to bring more styles to its stores and to update them constantly.⁵ Additionally, the company orders small quantities at short notice, rather than bulk orders in advance.⁶ Subsequently, speed and flexibility are the main requirements for suppliers and subcontractors.

This business model has given the company a significant competitive advantage over its competitors and largely explains how the company has been able to become the largest global fashion company over the last decade. Its direct competitors, such as H&M, Gap and Benetton, rely to a larger extent on supplies from countries such as Bangladesh and therefore find it more difficult to keep up with fast changing fashion trends and consumer demands. This has made the company highly profitable. However, the down side of the fast fashion model is that its reliance on fast and flexible production can translate into precarious working conditions. The conditions found at the two São Paulo workshops described in this report are an example of that.

5 Crofton, S.O. & Dopico, L.G, "Zara-Inditex and the growth of fast fashion" in: Essays in Economic & Business History, Vol XXV, 2007.

6 Zhelyazkov, G. "Agile Supply Chain: Zara's case study analysis", September 2011, Design, Manufacture & Engineering Management; Strathclyde University Glasgow.

2.2 Working conditions in the garment industry

The global garment industry is characterised by poor working conditions. Poverty wages, child labour, and forms of forced and bonded labour are rampant throughout the garment supply chain. Some workers work in unhealthy and even highly dangerous conditions. The 2013 Rana Plaza building collapse, which cost the lives of more than 1,100 workers, marked the tragic low point in a long series of fatal factory accidents in Bangladesh, Pakistan and Cambodia.¹² It brought international attention to the harsh conditions that garment workers are facing.

12 See, for instance, SOMO and Clean Clothes Campaign (CCC), "Fatal Fashion: Analysis of recent factory fires in Pakistan and Bangladesh: a call to protect and respect garment workers' lives", March 2013, <http://www.somo.nl/publications-en/Publication_3943>.

2.3 Voluntary industry initiatives

However, poor working conditions in the clothing industry are not a new phenomenon. In fact, the garment sector was one of the first industries in which debates about supply chain responsibility and labour rights came to the fore. Since the late 1980s, public indignation about sweatshop conditions have catalysed the development of initiatives to improve working conditions in the garment supply chains, such as company codes of conduct and multi-stakeholder initiatives. These initiatives have undoubtedly led to some improvements; still questions remain about the extent to which things have really changed for the better on the factory floor. Company codes of conduct, for example, look good in theory but in practice the effectiveness of these codes is often undermined by brand and retailer companies' purchasing practices, which in recent years have come to be ever more focused on low prices and fast deliveries. The limited effectiveness of purely voluntary initiatives have sparked some initiatives towards more binding instruments, which are featured in Box 2.

2.4 Second and further tier suppliers not properly inspected

In addition, inspections (social compliance audits) usually only take place at first-tier suppliers; the entities that deliver end products. Subcontracted units, outsourced processes and earlier production stages (such as cotton, harvesting, spinning, weaving and dyeing) fall beyond the scope of these social compliance audits. When inspections do take place, they often fail to detect sensitive issues such as bonded labour, harassment and discrimination.¹³

The Brazilian government is one of the first governments to move beyond voluntary initiatives by undertaking steps to hold companies to account for adverse impacts on human rights in their supply chains. The Brazilian initiatives to eradicate forced and slave labour are discussed in more details in Chapter 4.

13 Clean Clothes Campaign (CCC), "Looking for a quick fix: How weak social auditing is keeping workers in sweatshops, 2005, <<http://www.cleanclothes.org/resources/publications/05-quick-fix.pdf>>.

Box 2: Towards binding instruments

The Accord on Fire and Building Safety in Bangladesh

A break with voluntary and self-regulating approaches towards labour rights issues in the garment industry was achieved when the Accord on Fire and Building Safety in Bangladesh¹ (Bangladesh Accord) entered into force in May 2013. The Bangladesh Accord is an agreement between more than 170 clothing brands and retailers, trade unions and NGOs designed to make garment factories in Bangladesh safe places to work.

The Accord requires independent inspections of supplier factories, public reporting, training and mandatory repairs and renovations. It includes a central role for workers and unions in both the oversight and the implementation of the Accord, including the establishment of worker-led safety committees. It takes into account the need for supplier contracts with sufficient financing and adequate pricing. The unique aspect of the Accord is that it includes a binding contract to make these commitments enforceable. While the Bangladesh Accord only focusses on building safety and is limited to Bangladesh, it is promising that brands and retailers have committed to legally binding agreements.

The Indonesian Freedom of Association Protocol

In June 2011, Indonesian textile, clothing and footwear unions; major sportswear, shoe and garment factories and sportswear brands, including Adidas, Nike and Puma signed the Freedom of Association Protocol. The protocol contains a number of provisions, all with the aim of creating time and space for trade union activities and promoting better industrial relations in sportswear producing factories².

This Protocol not only establishes that unions are permitted but also provides a set of detailed guidelines as to what freedom of association will mean in practice at factory level. The Protocol stipulates that collective agreements will be negotiated locally, that unions will be supplied with their own premises and that employees will be able to get time off for union work. One central element of the Protocol is that the supplier and the union will negotiate a collective agreement within six months of a local union section forming at the factory and that negotiations will take place without restrictions. Another important element of the Protocol is the establishment of committees at the factory charged with investigating complaints, settling disputes and monitoring the implementation of the FoA Protocol.

The FoA Protocol also foresees for the establishment of a national-level committee consisting of representatives of unions, NGOs, suppliers and brands. This committee can make recommendations on how disputes are to be resolved. If disputes cannot be resolved by any of the committees, the case will be taken to court³.

1 The Accord on Fire and Building Safety in Bangladesh, website <<http://bangladeshaccord.org/>>.

2 IndustriALL website, "Adidas and Nike told to meaningfully engage in Indonesia", 17 July 2012 < <http://www.industriall-union.org/adidas-and-nike-told-to-meaningfully-engage-in-indonesia> >

3 Swedwatch, "PLAY FAIR – A CAMPAIGN FOR DECENT SPORTSWEAR Has the first agreement between multinational companies and local unions strengthened freedom of association in Indonesia?", November 2013 <http://www.swedwatch.org/sites/default/files/swedwatch_-_fair_play_-_eng.pdf>

3 The Brazilian garment industry

3.1 Introduction

Brazil's textile and apparel industry mainly caters to the country's domestic market, which has grown in importance over the last few years due to the country's rapidly expanding middle class. In addition, a considerable number of textile and apparel products are exported. In 2013, Brazilian textile and apparel exports represented a total value of US\$ 1,260.6m. The top 10¹⁴ export destinations for Brazilian textile and apparel products include other Latin American countries and the United States (the US ranks at number two, after Argentina). The Netherlands is number 10 on the list.¹⁵

The textile and apparel industry is an important employer within Brazil's economy. In 2012, according to official statistics, the industry – ranging from textile to retail companies – created jobs for 1.7 million people, most of which (733,000) were concentrated in manufacturing clothes and other apparel items.¹⁶ To give some context, the working population of Brazil in 2012 totalled 93.9 million people.¹⁷ Most sewers – the largest occupational category in the industry – are women. Their average pay is close to the national minimum wage, which is currently about US\$ 250 a month.¹⁸

C&A from the Netherlands is the largest fashion retailer in Brazil with over 260 stores, followed by the Brazilian department store chain Lojas Renner with 212 stores.¹⁹ Inditex, operating in Brazil through Zara Brasil, has so far opened 53 stores in the country.

3.2 Outsourcing and informal labour

In addition to the official numbers, there are a significant number of informal labourers in Brazil's garment industry, working in unregistered sewing workshops or in home-based workshops which are spread all over the country. Informal workers do not enjoy basic rights that are guaranteed by law to regular workers – such as paid vacations, a 44-hour maximum working week, unemployment

14 1. Argentina; 2. United States; 3. Paraguay; 4. Uruguay; 5. Venezuela; 6. Mexico; 7. Chile; 8. Colombia; 9. Bolivia; 10. The Netherlands.

15 ABIT (Brazilian Textile and Apparel Industry Association), "Brazilian Exports of Textile and Manufactured Products per Country", Jan–Dec 2013, <<http://www.abit.org.br/adm/Arquivo/Servico/030812.pdf>>.

16 General Register of Employed and Unemployed Workers (Cadastro Geral de Empregados e Desempregados CAGED), Ministry of Labour and Employment, <<https://granulito.mte.gov.br/>>.

17 IBGE (Brazilian Institute of Geography and Statistics), "National Survey by Household Sample" <<http://cod.ibge.gov.br/2300J>>.

18 Seamstresses Union of São Paulo and Osasco, Collective Bargaining Agreement (CBA) 2014 <<http://www.costureirassp.org.br/images/noticiasimg/circular2014a.pdf>>.

19 See <<http://www.businessoffashion.com/2014/02/brazil-fast-fashion-heats.html>>.

insurance and access to public social security benefits. Informal workers are commonly paid per piece sewn, in an arrangement that forces them to face long working days to earn their survival.²⁰ Informal labour is the dark side of the restructuring that took place in the garment industry from the 1990s onwards. Gradually, a greater variety of models of clothes gained space on retail shelves. Clothes are now manufactured on a smaller scale and are replaced by new products at an increasingly fast pace. This more dynamic market, accompanied by increasing competition from Asian imports, led many Brazilian manufacturers to reduce their number of direct employees. Labour-intensive manufacturing stages such as sewing were outsourced to a vast network of small workshops with precarious working conditions, giving the industry more ‘flexibility’ – i.e., lower fixed labour costs – to deal with the fluctuations in demand that are inherent in this new market’s volatility.²¹

These informal workshops often have only one company as their customer and produce clothing exclusively for a single brand. They are frequently created by former employees of the client company to meet sewing demands previously met by the client’s own workforce. The economic fragility of these workshops is a big issue for employees. Many workshops close shortly after starting their activities, not paying severance amounts and not issuing the documents required for their employees to receive unemployment insurance.²²

3.3 Modern-day slavery

The most dramatic aspect of the increasing precarisation of labour is modern-day slavery conditions. Many informal or illegal workshops employ immigrants from other parts of South America – often undocumented migrants. They are forced or cheated into these jobs or do not have any other option than to accept this kind of low-paid work because of their undocumented status. Most of the immigrant workers in Brazil come from Bolivia, Paraguay and Peru. The immigrants are often smuggled into the country with false documents and with the agreement to pay back the often exorbitant travel costs by working in the garment workshops. Upon arrival, working conditions and wages often turn out to be much worse than agreed upon. Physical persuasion, forced work and harassment are commonplace. After arrival, the immigrants’ documents are often taken away, preventing them from moving to another employer or from going back to their country of origin. Workers usually come to live in the workshops or in cramped dormitories and quickly accumulate debt, which includes the cost of their trip, water, electricity and food. Workers are forced to work long hours, up to 16 hours a day, sometimes seven days a week, for little pay.²³

20 A broad view about such reality can be found in the Final Report by the Parliamentary Inquiry Committee established at São Paulo City Council (available only in Portuguese): <http://www1.camara.sp.gov.br/central_de_arquivos/vereadores/CPI-TrabalhoEscravo.pdf>.

21 Renato Bignami, “Trabalho escravo contemporâneo: o sweating system no contexto brasileiro como expressão do trabalho forçado” (available only in Portuguese), <<http://reporterbrasil.org.br/agenciadenoticias/trabalhoescravo.pdf>>.

22 Labour Prosecutor’s Office, hearing, <<ftp://189.89.66.134/documentos/docs/ataaudiencia58a2fc6ed39fd-083f55d4182bf88826d.doc>>.

23 National Pact for the Eradication of Slave Labour, Cartilha das Confecções <http://reporterbrasil.org.br/documentos/pacto_web.pdf>

Box 3: Inditex's operations in Brazil

Inditex operates in Brazil through its wholly owned subsidiary Zara Brasil. Inditex opened its first store in Brazil in 1999 and since then it has rapidly expanded its local operations.¹ Since 2012, Inditex also started operating in Brazil through Zara Home, the group's home items business – which sells bedroom, tableware, and bathroom garments and accessories.²

Around 35-40% of Zara pieces sold in Brazil are produced by a widespread network of Brazilian suppliers and subcontractors. Imports account for 60-65% of the pieces of clothing sold in Brazil. A considerable share is produced in Spain, where Inditex has its own factories in charge of manufacturing the company's most elegant models with higher added value. Products sold in Zara's Brazilian stores are further imported from countries such as Argentina, Cambodia and Bangladesh³.

In 2012, the Inditex group reported doing business with 59 Brazilian suppliers. According to Inditex, those enterprises in turn sub-contracted 182 other companies – sewing workshops, dyeing shops, laundries, etc. – at different production stages along their supply chain. A total of 15,800 employees worked for manufacturers providing services for the group in Brazil that year, according to Inditex.⁴

These figures show that, for every direct supplier, the company claims to maintain an average of three subcontracted enterprises in its Brazilian supply chain. Given the fact that (unauthorised) subcontracting is common in the Brazilian garment industry (see paragraph 3.2), the possibility of a higher number of manufacturers engaged in Zara production should not be ruled out. Of the nine countries⁵ for which Inditex discloses this kind of information – which are the main manufacturing clusters, accounting for 87% of the group's total production – only China has higher levels of subcontracting (4.3 subcontracted units per direct supplier).

1 Inditex Annual Reports 2011 and 2012. See <http://www.inditex.com/en/downloads/annual_report_2012.pdf> and <<http://www.inditex.com/en/downloads/Annual-Report-Inditex-2011.pdf>>.

2 Zara Home Brasil's website, <<http://www.zarahome.com/webapp/wcs/stores/servlet/home/zarahomebr/pt/zarahomens>>.

3 Questionnaire completed by Inditex for "Free Fashion", an application for smartphones developed by Repórter Brasil, <<http://reporterbrasil.org.br/2013/12/conscious-clothes-shopping-app-for-android-and-iphone-launched-in-brazil-for-christmas/>>.

4 Inditex Annual Report 2012; <http://www.inditex.com/en/downloads/annual_report_2012.pdf>.

5 Spain, Portugal, Turkey, India, Brazil, Bangladesh, Morocco, China and Argentina, <http://www.inditex.com/annual_report/en/Performance/SocialIndicators.html>.

The informal workshops that put immigrant workers to work produce for the domestic market but are often also linked to international garment brands and retailers. Mostly, the workshops become part of the brands' and retailers' supply chain through subcontracting arrangements. First-tier suppliers often choose to outsource a large part of the production process or a large part of the production of garments to other units. These practices are not unique to Brazil. In Argentina, for example, clothing manufacturing also largely takes place in the informal sector where a lot of (undocumented) immigrants are working under exploitative conditions.

4 Law and policy framework

4.1 International norms

Universal Declaration of Human Rights

According to the Universal Declaration of Human Rights (UDHR), all human beings are born free and equal in dignity and rights. Everyone has the right to free choice of employment and to just and favourable conditions of work. All human beings have the right to freedom of movement and all forms of slavery are prohibited. The UDHR itself is not a binding treaty, but it provided the normative basis for the development of international human rights law. Most important in this context is the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. International human rights law stipulates that exacting forced labour is a crime, and should be punishable through penalties that reflect the gravity of the offence.²⁴

Conventions of the International Labour Organization

Labour-related human rights have further been laid down by the International Labour Organization (ILO), which sets international labour standards by adopting conventions that ratifying countries have to translate into their national legislation. Eight of the ILO's conventions have been qualified as 'fundamental'. These conventions are binding upon every member country of the ILO, regardless of ratification. These fundamental conventions cover the following subjects: child labour, forced labour, discrimination and freedom of association and collective bargaining. Brazil has ratified seven out of the eight fundamental ILO Conventions. The "Freedom of Association and Protection of the Right to Organise Convention" has not been ratified by Brazil.

According to the ILO, the term 'forced labour' refers to situations in which women and men, girls and boys are made to work against their free will, coerced by their recruiter or employer. Coercion tactics include violence or threats of violence, or more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities. Human trafficking and slave labour are also forms of forced labour.²⁵

The ILO estimates that almost 21 million people around the world are victims of forced labour. More than half (11.7 million) of all forced labourers are found in the Asia-Pacific region, followed by Africa (3.7 million) and Latin America (1.8 million). Migrant workers and indigenous people are particularly vulnerable to becoming victims of forced labour.²⁶

ILO Conventions 29 and 105 prohibit all forms of forced or compulsory labour. The 'forced labour convention' (C29) requires that the illegal extraction of forced or compulsory labour should be

24 SOMO, "Fact sheet forced labour – Focus on the role of buying companies," September 2013
<http://www.somo.nl/publications-en/Publication_3991>.

25 International Labour Organization website, "21 million people are now victims of forced labour, ILO says," 1 June 2012,
<http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang-en/index.htm>.

26 Ibid.

punishable as a penal offence, and that ratifying states should ensure the relevant penalties imposed by law are adequate and strictly enforced. The ‘abolition of forced labour convention’ (C105) is aimed at the abolition of certain forms of forced labour that are still allowed under the forced labour convention. The convention stipulates that each ratifying country must strive to suppress and not to make use of any form of forced or compulsory labour:

- as a means of political coercion or education, or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- as a method of mobilising and using labour for purposes of economic development;
- as a means of labour discipline;
- as a punishment for having participated in strikes;
- as a means of racial, social, national or religious discrimination.

Additionally, forced or compulsory labour is considered to be one of the worst forms of child labour in the Worst Forms of Child Labour Convention, 1999 (No. 182).²⁷

On 11 June 2014, the ILO adopted the ‘Protocol of 2014 to the Forced Labour Convention, 1930’.²⁸ This protocol is described as a landmark new treaty that updates a widely-ratified, but outdated, treaty. The protocol was developed in order to better address contemporary abuses, including abuses against migrants and in the private sector.²⁹ The prevention measures in the new Forced Labour Protocol include creating national plans of action, expanding labour laws to sectors at risk of forced labour, improving labour inspections, and protecting migrant workers from exploitative recruitment practices. The new treaty also requires governments to support due diligence by businesses to prevent and respond to forced labour in their operations. The treaty requires governments to take measures to identify, release and provide assistance to forced labour victims, as well as protecting them from retaliation. Article 4 of the treaty also obliges governments to ensure that all victims, regardless of their legal status or presence in a country, have access to justice and remedies, including compensation, in the country where the abuse occurred.³⁰

United Nations Guiding Principles on Business and Human Rights

Although international human rights law is only binding for states and does not directly apply to companies, it has been acknowledged at the UN level that companies have the responsibility to respect human rights. This was formalised with the adoption of the ‘Protect, Respect and Remedy’

27 SOMO, “Fact sheet forced labour – Focus on the role of buying companies, September 2013, <http://www.somo.nl/publications-en/Publication_3991>.

28 ILO, Provisional Record, 103rd Session, Geneva, 2014, Text of the protocol to the forced labour convention, 1930, <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_246615.pdf>.

29 Human Rights Watch, “Global Treaty to Protect Forced Labor Victims Adopted,” 11 June 2014, <<http://www.hrw.org/news/2014/06/11/global-treaty-protect-forced-labor-victims-adopted>>.

30 Ibid.

framework in 2008,³¹ followed by the adoption in 2011 of the Guiding Principles,³² which outline how states and businesses should implement the UN framework.

The ‘Protect, Respect and Remedy’ framework rests on three pillars. The first is the State’s duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address any adverse impacts. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.

An important principle under the corporate responsibility to respect human rights is for companies to act with due diligence. Human rights due diligence can be understood as a business process through which enterprises actively identify, prevent, mitigate and account for how they address and manage their potential and actual adverse human rights impacts. The process should include assessing actual and potential impacts throughout their business operations, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. (Potentially affected rights holders, or their legitimate representatives, should be engaged in a meaningful manner.

Due diligence implies more than just an assessment of risks for the company; the purpose is to understand and address risks and abuses that the company’s activities pose to rights holders, such as factory workers, their dependents and communities, including in its supply chain and through its other business relationships. Moreover, due diligence demands companies to see to it that future violations of human rights are prevented and that adverse impacts are mitigated. Remediation and redress for victims of human rights abuses is an important principle under the corporate responsibility to respect human rights.³³

As part of their responsibility to respect human rights, companies should provide access to remedies for individuals, workers and/or communities who may be impacted by their activities by establishing or participating in a grievance mechanism to handle complaints. In accordance with Principle 31 of the UN Guiding Principles, grievance mechanisms should be legitimate, accessible, predictable,

31 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. “Protect, Respect and Remedy: a Framework for Business and Human Rights”, 2008, <<http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>>.

32 United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights. Implementing the United Nations ‘Protect, Respect and Remedy’”, 2011, <http://www.ohchr.org/Documents/Publications/Guiding-PrinciplesBusinessHR_EN.pdf>.

33 United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights. Implementing the United Nations ‘Protect, Respect and Remedy’”, 2011., <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>; SOMO, CEDHA and Civedep. “How to use the Guiding Principles on Business and Human Rights”. March 2014, <http://www.somo.nl/publications-en/Publication_4059>.

equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue.³⁴

4.2 Brazilian legal framework

As discussed in the previous chapter, forced labour (including debt bondage) is a major problem in Brazil. Therefore, the eradication of labour analogous to slavery is one of the key objectives in the Brazilian government's human rights agenda.

The basis for the protection of labour rights in Brazil is found in Article 7 of the Federal Constitution, which guarantees the rights of workers and prohibits night, dangerous or unhealthy work for minors under 18 years of age, and any work for minors under 16 years. Exceptions are made for apprenticeships, which may be started at the age of 14. The law also makes an exception for adolescents aged 14 to 15 to work under the supervision of their guardian or parents and on the same worksite, as long as it is not harmful to their development.³⁵

In Article 149 of the Brazilian Criminal Code (modified in 2003), Brazil adopted the concept of "work analogous to slavery", which is a broader concept than the forced labour concept used in the ILO conventions on the issue. According to the Brazilian Penal Code, work in degrading conditions and exhaustive workdays also fall under the concept of "work analogous to slavery", even when there is no evidence of restriction of freedom.³⁶ "Degrading conditions" are usually characterised by a combination of the following factors: precarious lodging; susceptibility to illness; poor sanitation conditions; insufficient and inadequate nutrition; inadequate compensation and unpaid wages and; abuse and violence.

The Brazilian Penal Code prescribes sentences of two to eight years for offenders that often can be commuted to social services – for example, making food donations to the poor. In addition, it prescribes for fines to be issued. Article 197 of the Penal Code punishes the use of violence or serious threats to constrain someone to work.³⁷ Human trafficking is punishable under Articles 231 and 231-A of the Penal Code, with sentences ranging from two to eight years.³⁸

34 United Nations Human Rights Office of the High Commissioner, "Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy"", 2011, <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>; SOMO. Using Grievance Mechanisms. March 2014, <http://www.somo.nl/publications-en/Publication_4059>.

35 United States Department of Labor, Bureau of International Labor Affairs, "Brazil", no date, <http://www.dol.gov/ilab/reports/child-labor/brazil.htm#ENREF_61>.

36 ILO, "The good practices of labour inspection in Brazil: the eradication of labour analogous to slavery", International Labour Office. – Brasilia: ILO, 2010, p. 16.

37 United Nations Human Rights Council, "Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian", August 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.20..Add.4_en.pdf>.

38 Ibid.

Despite the existing legal framework, a high degree of impunity continues to exist. Criminal prosecutions for the crime of slave labour remain relatively rare. When cases are brought before the courts, offenders exploit legal loopholes to avoid punishment, such as measures to delay the judicial proceeding and avoid a trial. As a result, few prison sentences have been handed down to perpetrators since 1995, when Brazil officially recognised the existence of contemporary forms of slavery in the country.³⁹

4.3 Measures to eradicate forced labour and slave labour practices

In recognition of the severity of the problem, over the past few years the Brazilian government has adopted several additional measures to eradicate forced and slave labour practices. These measures are illustrated in figure on the next page, and explained below.

Inspections

Among the key measures adopted by the Brazilian government in the fight against forced labour, notably in the agricultural sector, is the creation of a Special Mobile Inspection Group (GEFM). The GEFM was initiated in 1995 and falls under the responsibility of the Ministry of Labour. The GEFM specifically focuses on detecting forced labour and situations analogous to slavery and supplements the general labour inspection. The GEFM consists of labour inspectors, supported by prosecutors of the Labour Prosecutions Office (*Ministério Público do Trabalho – MPT*), agents and marshals of the Federal Police and the Federal Highway Police⁴⁰.

The task division of the members of the GEFM is as follows: labour inspectors collect evidence; compile reports, provide work permits for freed workers; and register freed workers in the unemployment insurance scheme. The labour prosecutor's main task is to propose immediate legal action and to agree on Conduct Adjustment Terms with the offender in which compensation of the victims is included. The Federal (Highway) Police is responsible for ensuring the safety of the group; for the collection of evidence for a possible criminal indictment; weapon confiscation; detaining of criminals; closing down the workplace and apprehension of goods produced in the case of illegal activities.⁴¹

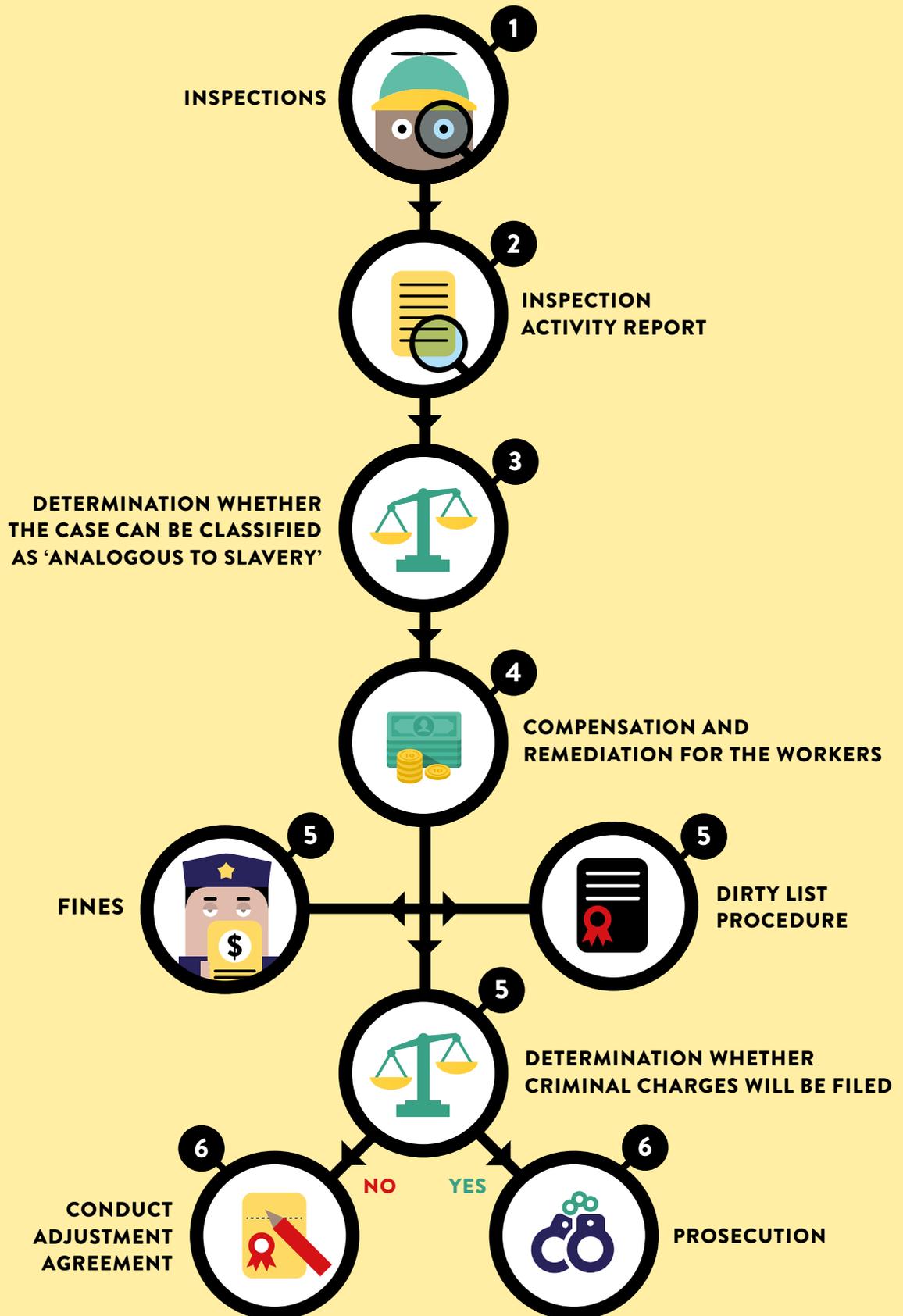
The Secretariat of the Labour Inspection (*Secretaria de Inspeção do Trabalho – SIT*) receives complaints through an institutional network of partners (CSOs and labour unions). Based on these complaints, the GEFM conducts its secret inspection operations. In addition to acting upon complaints, the GEFM can also decide to conduct inspections on its own initiative, based on continuous intelligence gathering of sectors and regions. If, during the inspections, workers are found working in conditions analogous to slavery, they are rescued and efforts are undertaken to secure the safety and rights of these workers.

39 Ibid.

40 ILO, "The good practices of labour inspection in Brazil: the eradication of labour analogous to slavery/International Labour Office. (Brasilia: ILO, 2010), p. 15.

41 Ibid.

Initiatives of the Brazilian Authorities to Eradicate Slave Labour



After the inspection operations are concluded, the GEFM issues an Inspection Activity Report. Copies of this report are sent to the Attorney General's Office; the Labour Prosecution's Office (MPT); the Federal Prosecution's Office (MPF); and to the federal police. Based on the reports of the GEFM and the Labour Prosecutor, the Federal Prosecution's Office determines whether criminal charges can be filed.

In 2002, permanent and mobile courts were set up to support the GEFM. The mobile courts play a role in negotiating payment of outstanding wages to workers, based on a calculation of what informal workers should have received in a formal work relationship. Mobile courts can impose immediate fines, freeze bank accounts and seize assets.⁴²

Rural activities have been the central focus of official inspections since 1995, when the GEFM was created. However, cases of modern-day slave labour in urban areas have increased dramatically over the past five years. Inspections related to urban slavery are not made by the GEFM, but mainly by labour inspectors from the Labour Ministry's regional offices, operating under similar protocols and also supported by prosecutors and marshals of the federal police. In 2013, slave labour in urban areas exceeded 50% of total freed workers throughout the country.

Since 1995, over 3,000 locations – mostly farms, but also urban enterprises such as sewing workshops – were inspected by the GEFM and the Labour Ministry's regional offices, resulting in the liberation of some 45,000 people working in modern-day slavery conditions.

Compensation and remediation

The employer is responsible for the payment of any outstanding wages and may be required to pay compensation for moral damage. The labour inspector decides what amount is owed to the rescued workers (wages, severance dues). If the employer refuses to pay the workers, the Labour Prosecutor can propose cautionary action with a request to freeze the employer's assets. In cases where employers refuse to cooperate, the MTE makes resources available from the Emergency Assistance for Workers Victims of Slave Labour fund. Apart from the severance dues, workers are entitled to three installments of unemployment insurance (equivalent of the minimum wage). Brazilian law also specifies that rescued workers should be provided options for re-assimilation into the labour market.

Conduct Adjustment Agreement

Instead of a criminal charge, the Labour Prosecutor can propose a Conduct Adjustment Agreement with the employer. This agreement might specify individual and collective moral damages that the employer needs to pay. In addition, the agreement often specifies that the employer needs to repair irregularities before restarting production activities.

42 United Nations Human Rights Council, "Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian", August 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.20..Add.4_en.pdf>.

The 'dirty list' of slave labour

Since 2004, the Secretariat of the Labour Inspection has been using an offender registry, also known as the 'dirty list'. Individuals and legal entities caught submitting its workforce to conditions analogous to slavery risk entering this list.

Since its creation, the 'dirty list' has been considered to be one of Brazil's main weapons in the fight against slave labour. By making inspections transparent, it allows for public pressure and for the market to take actions against those engaging in the practice. Companies on the list are barred from receiving public funds or obtaining tax incentives. In addition, companies that are members of the National Pact for the Eradication of Slave Labour agree to restrict their business with the companies on the list. The National Pact Against Slave Labour, launched in 2005, brings together businesses and civil society.⁴³ Signatories of the pact work together to eliminate the use of slave labour in their supply chains. The Pact has over 400 signatories whose revenues are equivalent to 30% of Brazil's Gross National Product.

Before being included in the list, inspected companies have the opportunity to defend themselves at the Ministry's first and second administrative levels – a proceeding that may take a few months to several years. If those instances confirm the information verified on-site by inspectors, the company will be registered in the 'dirty list'.

Box 4: Future of dirty list insecure

At the time of writing this report, the future of the dirty list is insecure. Pending a final decision by the Supreme Court, the list is no longer updated. This is the result of a successful litigation strategy of the Brazilian Association of Real Estate Companies (*Associação Brasileira de Incorporadoras Imobiliárias*). The Association, whose individual members include companies already included or risking being included on the list, pursued a comparable litigation strategy to the one followed by Zara Brasil as elaborated in paragraph 6.3. The Association has filed an appeal at the Supreme Court claiming that the list is not supported by the law and that it denies companies the right to a legitimate defence. While awaiting the final Supreme Court decision – which may take years – in a preliminary decision of one of the judges of the Supreme Court it was decided to stop disclosing new versions of the list. This means that one of the most effective internationally recognised tools to combat modern day slavery is no longer available, at least for now. Ultimately, the list's extinction removes the main search reference for Brazilian companies committed to eliminating the use of slave labour in their business relationships. Hopefully, the preliminary decision will be revoked by the Supreme Court and the dirty list will be legally strengthened by the Brazilian government. The present report provides recommendations to do so (in Chapter 7).

43 National Pact for the Eradication of Slave Labour website, <<http://www.pactonacional.com.br/>>.

Offenders remain on the list for two years, under government monitoring. Afterwards, they are excluded from the register if they have not relapsed into the crime and have paid off all fines related to the inspection.

4.4 Regulatory developments on outsourcing

In addition to the above-mentioned tools and policy measures aimed at addressing forced and slave labour on site or with the direct employer and offender, regulations on outsourcing are also important to consider since most cases of labour exploitation in the garment sector occur in informal, subcontracted units.

Brazil lacks specific laws on outsourcing. Currently, the practice is regulated only by a binding decision⁴⁴ of the Supreme Court, which states that it is illegal to hire workers through an “interposed company”. The reasoning is that the employees of the so-called interposed companies in fact operate under the orders of the ultimate client, making them effectively part of the client’s permanent staff.

Moreover, the binding decision outlaws companies from outsourcing their core businesses. The binding decision states that only those activities with no direct relation to the main activity of the client company may be outsourced – for example, cleaning and security services in a clothing manufacturer. Moreover, it states that client companies have secondary liability in labour rights violations faced by its outsourced workers. According to jurisprudence of the Superior Labour Court, this principle is applied in cases of subcontracting, where the subcontracted company is producing exclusively for a single client and there is empirical evidence that the ultimate client has interfered in the execution of services.

In a common – but not unanimous – interpretation of this court decision, a clothing manufacturer should not outsource manufacturing activities such as sewing, supposedly inherent to its core business. The Supreme Court’s binding decision has been invoked in several lawsuits brought forward mostly by workers who claim secondary liability of medium and large clothing manufacturers for labour rights violations occurring in subcontracted workshops. There are favourable rulings on that claim, but there are also many others rejecting the liability of such enterprises. The explanation for those diverging decisions is the absence of clearly defined criteria that would inform the judgement of what is considered the core business of a company, or what is considered to be ‘interference in the execution of services’.

The ban of this type of outsourcing is advocated by several labour prosecutors and labour inspectors from the federal government, given the notorious precarisation associated with this type of arrangement.⁴⁵ Nevertheless, the transfer of sewing activities to small workshops has been growing signifi-

44 The binding decision (only in Portuguese), <http://www3.tst.jus.br/jurisprudencia/Sumulas_com_indice/Sumulas_Ind_301_350.html#SUM-331>.

45 Tiago Muniz Cavalcanti, “Trabalho escravo na moda: os grilhões ocultos da elite brasileira”, (available only in Portuguese), <<http://reporterbrasil.org.br/2013/11/os-grilhoes-ocultos-da-elite-brasileira/>>.

cantly in Brazil's garment industry in recent years. Such practices very often incorporate workshops with precarious working conditions in the global garment supply chain. In Brazil they are called 'facções' or 'backyard workshops', They play the role of reducing labour costs for medium and large manufactures – and, indirectly, retailers – at the expense of human and labour rights.

Debates about the legality of outsourcing arrangements are not unique to the garment sector. In fact, this is a source of lawsuits brought forward by workers and prosecutors in many different supply chains, invoking the above-mentioned binding decision to hold contracting companies liable for labour rights violations. As mentioned, court decisions on this subject have been very unpredictable which is explained by the absence of clear criteria to apply the current regulation. In this scenario, workers' unions claim that the binding decision is an insufficient tool to avoid labour precarisation, in a context of increasing outsourcing practices in the country.⁴⁶ Business sectors, in turn, complain that today's situation does not provide legal certainty for the development of various economic activities in Brazil.

Given the ambiguity of the current legislative framework, the Brazilian National Congress is currently debating the adoption of an unprecedented law regulating outsourcing (see box 5). However, the bill under discussion⁴⁷ faces strong opposition by the country's largest labour federations, as well as other civil society organisations.⁴⁸ Unlike the legally binding decision currently in effect, the proposal does not prohibit the outsourcing of core activities, virtually opening any productive activity to subcontracting. Moreover, there is no mention of contractors and contractees joint liability for labour conditions in outsourced projects. Instead the bill places the responsibility at the contracted party, and only in the very last resort provides an option for liability of the contracting (eg. buying) company.

This report by SOMO and Repórter Brasil argues against such an approach and advocates instead for strict liability of brands and retailers for human rights violations in the production of their own brands (see Chapter 7).

46 Central Única dos Trabalhadores (CUT), Technical Note (only in Portuguese), www.cut.org.br/sistema/ck/files/old/notatecnica-dacutsobreo.doc.

47 See full text of the bill (available only in Portuguese), <http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=791FECDC1BC242423EC3E7ECA21A1516.node1?codteor=246979&filename=PL+4330/2004>.

48 Ivan José Tessaro and André Simionato Doenha Antônio, "Críticas ao Projeto de Lei da Terceirização (PL 4.330/2004)" – available only in Portuguese, <<http://www.anamatra.org.br/index.php/artigos/criticas-ao-projeto-de-lei-da-terceirizacao-pl-4-330-2004>>.

Box 5: Debate on outsourcing regulation

In a proposal to regulate outsourcing (Bill 1621/07) supported by the Unified Workers' Central (Central Única dos Trabalhadores), the biggest national trade union centre in Brazil, the principle of joint liability of client and contracted companies is introduced. The bill also determines that client companies are responsible for overseeing compliance with labour legislation at contracted companies (first-tier suppliers). It is not clear, however, how this legislation could be applied to subcontracted companies (second-tier suppliers), which are, in the garment industry as well as in other supply chains, an important focus of labour and human rights violations.

Since 2013, the debates around Bill 1621/07 were suppressed by another proposal to regulate outsourcing. Supported by important organisations linked to the corporate sector, like the National Confederation of Industry (NCI) and the National Confederation of Trade (NCT), Bill 4330/04 is the only new law proposal about the subject ready to be voted by the Brazilian House of Representatives. This possibility – that still depends on an agreement between different party leaders – faces massive opposition from workers' unions and the National Association of Labour Court Judges.

Unlike the binding decision of the Supreme Court, this bill creates no restriction for the outsourcing of the company's core business, nor any other kind of activity. It also does not include the principle of joint liability between client and contracted companies.

According to the National Commission for the Eradication of Slave Labour (CONATRAE),¹ this bill must be abandoned to protect human rights in the industry. The proposal opens up the possibility of a further increase in precarious labour situations by making virtually any productive activity likely to be outsourced, without the definition of appropriate responsibilities for client companies and effective measures to avoid common violations of labour rights associated with this type of production arrangement. CONATRAE fears that this bill will legitimate the work of the "gatos", a typical middleman figure in Brazilian rural activities.² They are commissioned by landowners to recruit and manage workers in short-term contracts, and might be considered, if this bill becomes law, legally responsible for many situations of slavery, preventing the landowners from being held accountable for this kind of crime taking place on their properties.

1 The National Commission for the Eradication of Slave Labour (CONATRAE) is a collegiate organ tied to the Special Secretariat on Human Rights (SEDH) of the Presidency of the Republic, and formed by representatives of the Executive, Legislative and Judiciary branches, aside from various other segments of civil society.

2 See CONATRAE's position (only in Portuguese), <<https://www.sinaet.org.br/index.php?r=mobile/noticiaView&id=7942>>.

5 The Inditex case

This chapter describes the situation that was found during the inspections by the Labour Ministry's São Paulo Regional Office in July and August 2011, at two workshops producing Zara items and the immediate actions taken by the labour prosecutor (MPT) and the labour inspection (MTE). The chapter is designed to illustrate the Brazilian state's approach to addressing slave labour that was described in the previous chapter, the loopholes that exist in holding companies to account and the threats that are posed to it by means of Inditex litigation efforts.

Repórter Brasil was present during these inspections in its capacity as an observer. In 2009, Repórter Brasil was formally assigned as the main monitoring partner of the Pact for Decent Work in São Paulo's Garment Industry⁴⁹.

5.1 Federal inspections

In July and August 2011, MTE inspectors found 15 foreign workers – 9 men, 6 women - subjected to conditions analogous to slavery in two workshops in São Paulo where clothing for the Zara brand was being produced. The workshops had been subcontracted by AHA, a major supplier of Zara Brasil at that time.

According to the inspection report, the two workshops were exclusively sewing pieces for Zara.⁵⁰ However, in its reaction to a draft of this report, Inditex claims that the workshops were producing for multiple customers of AHA as well as for AHA's private label.⁵¹

On the outside, the workshops seemed to be residences. Dark fabrics hung over windows and obstructed the view of the inside: tight, dirty spaces without ventilation, exposed electrical wiring – bringing imminent threat of fires – and children circulating among sewing machines, which were unsecured and with their straps exposed, at risk of serious accidents.

The situation found by inspectors, followed on-site by Repórter Brasil, included working hours of up to 16 hours a day, completely illegal hiring, child labour (one of the 15 workers was 14 years old) and restricted freedom of movement, whether through illegal deductions from wages or explicit prohibition from leaving the workshop without permission. One of the workers confirmed that he could only leave with his employer's consent – which was granted only in urgent cases, such as when he had to take his son to the doctor in an emergency.⁵²

49 The Pact for Decent Work in São Paulo's Garment Industry (only in Portuguese): <<http://reporterbrasil.org.br/2010/03/pacto-contra-a-precarizacao-e-pelo-emprego-e-trabalho-decentes-em-sao-paulo-cadeia-productiva-das-confeccoes/>>

50 Report of the inspectors of the federal government, August 2011, pp. 54, 107 and 116.

51 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

52 Report of the inspectors of the federal government, August 2011, pp. 6, 26, 55, 91, 93-95 and 125.

The victims lived with their families at the workshops. Several people shared just a few rooms and slept on mouldy mattresses spread on the ground. They had been recruited in Bolivia and Peru and travelled the typical journey for Latin American immigrants who arrive in Brazil attracted by promises of better living conditions. Upon arrival, they were forced to work to pay off debts. During the inspection two notepads were seized with debt calculations relating to ‘travel tickets’ and ‘documents’.

The notepads also showed that payments received by employees were well below the country’s minimum wage. They ranged from R\$ 274 to R\$ 460 (€123-206) per month, far less than the minimum wage then in force in the country of R\$ 545 (about €244). This finding is also contested by Inditex. In its response to SOMO and Repórter Brasil, the company states that the investigative work performed by Inditex revealed that the workers were earning significantly more than the amounts shown in the report.⁵³ The company did however not send any supporting documents.

Workers were paid per piece sewn, which forced them to work long hours in order to obtain decent earnings. The inspection found that Inditex’s direct supplier – AHA – used to pay R\$ 6 (about €2.70) per piece to the subcontracted workshops. Of that amount, inspectors say sewers never received more than R\$ 2 per piece (around 90 cents in euros). To put things in perspective: a model similar to what they produced was being sold at the time for R\$ 139 (approximately €62) at a Zara store in São Paulo.

At the time of the inspections, according to the inspectors, business with Zara Brazil represented 91% of AHA’s revenues. They found that AHA was the fastest growing supplier in terms of pieces sold to the brand in Brazil between July 2010 and May 2011. Interestingly, in the period from January to April 2011, a sharp decline was seen in the number of its employees – from 100 to only 20. In particular, the number of sewers was reduced from 30 to only five.⁵⁴ This can only be explained by the strategy of transferring sewing activities to small workshops; some of them operating in the informal or illegal sphere (see Chapter 3).

Brazilian government inspectors examined AHA’s documents and, among its subcontractors, they found 33 workshops – including the two inspected – that were employing unregistered workers and that failed to make the mandatory contributions to the Guarantee Fund for Time of Service (FGTS). These workshops would have been responsible for producing about 46,000 pieces for Zara between April and June 2011.⁵⁵

However, in response to SOMO and Repórter Brasil, Inditex contested the MTE’s findings. Inditex wrote: *“The report prepared by the MTE inspectors does not specify any information whatsoever regarding the other 31 workshops referred to in this paragraph. In the event that these workshops were responsible for the production of 46,000⁵⁶ pieces for Zara (a claim that is wholly unsubstantiated as none of these workshops was intervened by the MTE), this would prove that the workshops were*

53 Inditex, “Inditex comments on SOMO and Repórter Brasil report”, 2 May 2014.

54 Report of the inspectors of the federal government [August 2011], p. 28.

55 Report of the inspectors of the federal government [August 2011], pages 46-47.

56 The Inditex response mentioned the number 49,000, but that was based on a typing error in our draft report, now corrected.

producing for other customers of AHA or for the latter's private-label brand. However, there is no evidence that the MTE inspected any of these workshops or took any measures against their owners or AHA or to protect the rights of these workshops' workers.⁵⁷ This statement is surprising as the MTE's inspection report definitely makes mention of a list of 33 informal workshops (including the two inspected workshops) that were contracted by AHA to produce Zara garments. The inspectors found this information in AHA's documents.⁵⁸



Flowchart showing the links between Zara Brasil and subcontracted workshops. Among them were the subcontractors where modern-day slavery conditions were found.

After analysis of the case of the two inspected workshops, the labour inspectors concluded that the conditions in the workshops were to be classified as analogous to slavery. According to the inspection report, Zara Brasil exercised directive power over the supply chain and therefore should be seen as the real employer and should be held legally responsible for the situation of the rescued workers.

According to the labour inspection, AHA operated only as a "logistics arm" of Zara Brasil, which in fact exercised directive power over the entire supply chain – defining models, choosing fabrics, imposing deadlines, doing quality controls, requesting corrections, etc.

57 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

58 Report of the inspectors of the federal government [August 2011], pages 46-47.

"[AHA's] creation staff does nothing but assembling and passing on [to workshops] pilot parts based on Zara's strict definitions. Such interposed pseudo companies, the so-called suppliers, actually work as real production cells for Zara, all networked by contracts simulating supply. However, they actually cover up a clear employment relationship between all workers in the workshops and the company fined [Zara]."⁵⁹

Therefore, according to the Ministry, Zara should be considered as the real employer of the freed immigrants, who only sewed pieces for the brand. The Ministry's interpretation is rooted in the Consolidation of Labour Laws (CLT), legislation that defines what should be considered as an employer and as an employee under Brazilian law. According to the CLT, every individual who provides non-casual, paid services to an employer with subordination to its orders and determinations should be considered its employee.⁶⁰ In addition to the CLT, the Ministry's interpretation is also supported by the binding decision that regulates outsourcing in Brazil (see previous chapter), which states that hiring workers through an interposed company is illegal.

As Zara was considered to be the real employer and responsible for the worker's situation, the company was fined for 48 different infractions found during the inspection of the workshops. The fines are linked, among other issues, to illegal hiring, excessive working hours, non-payment of mandatory benefits, unsafe working conditions, inadequate housing and feeding conditions for workers and the employment of a worker under 18 years of age in unhealthy or dangerous conditions.

5.2 Compensation for the workers

The labour prosecutor concluded that approximately R\$ 140,000 (around €63,000) relating to unpaid wages and severance pay were owed to workers at the two workshops. The Ministry of Labour considered Zara Brasil to be responsible for making these payments since it was considered the real employer of the workers. However, the company refused. Instead, it proposed that payments were made by AHA, which indeed happened. "Considering workers' situation of deprivation, there was no objection to that emergency solution," the inspection report says.⁶¹

In response to a draft version of this report, Inditex stated that "it is totally false to claim that Zara Brasil refused to accept any liability in this respect as it was never asked to assume these payments". The company also stated that it had offered all the affected workers a job at Zara Brasil. However, according to Inditex, these jobs were rejected on the grounds that "the pay offered was less than what they customarily earned as undocumented garment sector workers". Inditex added that the company's own research had shown that the workers found in the incriminated workshops were earning significantly more than the amounts referred to in the MTE's inspection report.⁶²

59 Report of the inspectors of the federal government, pages 107, 114 [August 2011].

60 CLT text (only in Portuguese): <http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm>.

61 Report of the inspectors of the federal government [August 2011], page 120.

62 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

Unfortunately, SOMO and Repórter Brasil are unable to verify who is right in this case. However, it is important to mention that the official findings about the worker's earnings are based on interviews with them and on informal accounting sheets apprehended during the inspections.⁶³

5.3 Agreement between Brazilian authorities and Zara Brasil

In December 2011, Zara Brasil reached a Conduct Adjustment Agreement with the Brazilian authorities.⁶⁴ This extrajudicial settlement was negotiated between labour prosecutors and Zara Brasil. Such settlements lay down rules of conduct to be followed by a business where problems have been found, instead of criminal proceedings being pursued against them.

A first version of this agreement, presented by the prosecutors in November 2011, was refused by Zara Brasil. For the company, it contained two controversial points: 1) a ban on outsourcing by their suppliers regarding Zara Brasil's orders and 2) Zara's effective accountability for working conditions throughout its production cycle. Moreover, it also provided for the payment of R\$ 20 million (about € 9 m) in compensation for collective damages.⁶⁵

After negotiations, a final version was signed in December 2011 without the ban on subcontracting that was originally planned. The R\$ 20m compensation, in turn, was replaced by "social investments" supporting human rights and immigrant organisations of R\$ 3.5m (1.5m) – which, according to the document's closing remarks, "imply no assumption of guilt by Zara".

The agreement includes the provision for Zara Brasil to pay R\$ 50,000 (approximately €20,000, according the currency at the time the agreement was signed) for each supplier/subcontractor where prosecutors or federal government's inspectors might find new problems such as: employees without formal employment contracts; wages not fully paid; evasion of mandatory social security contributions; disrespect for legal working hours; situations of forced or child labour; violation of health and safety standards; and discrimination against foreign workers. This provision effectively makes Zara responsible for any future cases of labour violation at the company's subcontractors.

The agreement also stipulates that audits need to be carried out by Zara Brasil at all suppliers and subcontractors, at least every six months. The company must also notify authorities about possible non-compliance with Brazilian laws, as well as with its own Code of Conduct and the respective correction plans adopted. The agreement specifies that the company's monitoring methodology should focus on aspects such as: guaranteeing that workers employed in its supply chain have been formally hired; checking full payment of wages and mandatory social benefits (FGTS and social security contributions); ensuring compliance with working hours provided for in law or union agreements; and ensuring safety and health conditions in accordance with the regulations in force. When non-compliances are found, Zara Brasil must prepare Corrective Action Plans. Those plans,

63 Report of the inspectors of the federal government [August 2011], pages 95-99.

64 For the full text of the agreement, see: <<http://reporterbrasil.org.br/agenciadenoticias/tacZara.pdf>>.

65 Repórter Brasil, "Zara recusa acordo com Ministério Público do Trabalho" (available only in Portuguese), <<http://reporter-brasil.org.br/2011/12/zara-recusa-acordo-com-ministerio-publico-do-trabalho/>>.

in turn, must be submitted to both labour prosecutors and inspectors of the Ministry of Labour and Employment.

5.4 In conclusion

The authorities' approach in this case can be considered quite innovative in the Brazilian context. Zara Brasil was one of the first fashion retailers to be held legally accountable for slavery conditions of immigrants in outsourced workshops. The Conduct Adjustment Agreement was a pioneering initiative in that regard, imposing for the first time obligations to a clothing retailer related to the working conditions of workers at subcontracted units.

In subsequent years, labour inspectors found other fashion companies to be implicated in similar violations, showing that Zara's case is not unique.⁶⁶ The legal responsibility of such companies for modern-day slavery situations in first- and second-tier suppliers has increasingly become a common understanding both in MPT's and MTE's actions.

⁶⁶ For information (in Portuguese) about the several cases of enslaved workers found in Brazil's garment industry, see <<http://reporterbrasil.org.br/2012/07/especial-flagrantes-de-trabalho-escravo-na-industria-textil-no-brasil/>>.



Pictures of the working and living areas of the two inspected workshops (pictures made by Repórter Brasil during the 2011 inspections by Fernanda Forato)

6 Inditex's actions following the 'slave labour' case

This chapter describes actions undertaken by Inditex after the slave labour scandal in 2011. Inditex has undertaken several (progressive) measures in the CSR realm, assuming voluntary 'moral' responsibility. These measures are described in section 6.1 below. Notwithstanding these improvements, there are indications that Zara Brasil's supply chain monitoring and reporting are not yet in line with what was agreed with the Brazilian authorities. These indications are described in section 6.2. Furthermore, Inditex is undertaking legal actions resisting legal responsibility for the conditions found in the sewing workshops, which are described in Section 6.3. This strategy threatens to weaken the present regulatory framework for addressing slave labour in Brazil. Repórter Brasil and SOMO condemn this strategy, which will be further explained in the concluding chapter.

6.1 Improving CSR policies and practices

Supply chain monitoring and addressing labour rights infringements

The slave labour scandal revealed that Inditex's monitoring programme was not adequately detecting human rights risks. Such identification of human rights risks is part of the corporate responsibility to respect human rights as prescribed by the United Nations Guiding Principles on Business and Human Rights. The case demonstrated that Inditex was not aware of all of the locations where its products were being made. Despite being a strategic supplier to Inditex (AHA was the fastest growing supplier in terms of pieces sold to Zara, according the Labour Ministry), the company did not have the right information about AHA's capacity to process Zara orders. At the time of the labour inspection, AHA apparently only employed five sewers. With only five production workers, it would be impossible to complete the number of orders placed by Zara. According to the principle of human rights due diligence, this should have been a red flag for Zara, and the company should have investigated where its products were being manufactured.

Since 2011, Inditex has reported a significant increase in the number of audits performed at its Brazilian suppliers and subcontractors. Inditex's Annual Report 2010⁶⁷ says that no Zara supplier in Brazil had been re-evaluated on-site that year. Among the 1,087 audits carried out globally in 2010, there were only nine initial checks and no follow-ups in the country. That scenario changed radically in 2011, the year of the slave labour scandal: the group claims to have carried out over 400 social audits in Brazil, whether directly or through external audits.⁶⁸ Inditex explains the changed scenario by the fact that an urgent review of its Brazilian suppliers was needed after the company became aware of AHA's serious violations of the Code of Conduct. According to Inditex, the company's review of its suppliers confirmed that "no similar breaches were taking place elsewhere in the Brazilian supplier base."⁶⁹

67 Inditex Annual Report 2010, <http://www.inditex.com/en/downloads/Annual_Report_INDITEX_10.pdf>.

68 Inditex Annual Report 2011, <<http://www.inditex.com/en/downloads/Annual-Report-Inditex-2011.pdf>>.

69 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

In order to strengthen its monitoring mechanisms, Zara Brasil announced in September 2011 that it would work with the Brazilian Textile, Garment, Leather and Footwear Workers' Federation. According to Inditex, the union would "participate directly in monitoring Zara's entire supply chain in Brazil".⁷⁰ This fits within the context of a longer cooperation between Inditex and the international union federation IndustriALL. In October 2007, Inditex signed a Framework Agreement with IndustriALL (then called the International Textile Garments and Leather Workers' Federation – ITGLWF), which was updated in March 2014. The Framework Agreement is aimed at ensuring observance of all international labour standards throughout Inditex's supply chain. Under the agreement, Inditex recognises IndustriALL as its global trade union counterpart. As part of the agreement, Inditex agreed to provide IndustriALL with information on its supply chain.⁷¹

In order to improve conditions in its Brazilian supply chain, Inditex announced the creation of a manual of good practices for suppliers and the adoption of a social compliance certification based on parameters set by the Brazilian Association of Textile Retail (ABVTEX) to be applied to those suppliers. In a response to a draft version of this report, Inditex refers to another supplier programme: together with the consultancy firm UNIETHOS, Inditex is executing a "pilot project for development of Garment-Making Supply Chain". The first phase of this project covers 110 companies with a total of over 2,000 employees. Phase two focuses on "strengthening the businesses of small- and medium-sized companies in Inditex's supply chain (35 participating companies).⁷²

In July 2013, a hearing took place at the Labour Prosecutor's Office where Zara Brasil explained what activities it had undertaken in order to comply with the extrajudicial settlement between the company and the Brazilian authorities. On this occasion the company said that "no serious irregularity related to labour rights was found"⁷³ and that no new cases of undocumented foreigners had been found in its supply chain since the 2011 case. That result, according to Zara, was due to stronger supervision and implementation of the Code of Conduct by the company, as well as growing ABVTEX certification of sewing workshops. The company reiterated that it carries out audits of its suppliers and subcontractors at least every six months as expressly provided for in the agreement. Furthermore, Zara Brasil reported to the authorities that it had implemented two Corrective Action Plans since 2012 – at one direct supplier (with regard to health and safety issues) and at one subcontractor (with regard to safety issues and mandatory pension contributions).

To address the problem of (undocumented) immigrant workers in its Brazilian supply chain, Inditex undertook investigations into the precise causes and conditions fuelling the undocumented worker phenomenon in the Brazilian garment industry; it identified stakeholders that could help address the problems; it developed programmes with a view to "reinforcing the supply chain and addressing

70 Inditex website, "Inditex implements pioneering procedures in Brazil for controlling the supply chain in collaboration with unions, NGOs, academic institutions and business associations", 14 September 2011. This article is no longer available at Inditex's website, it can be viewed here: <http://webcache.googleusercontent.com/search?q=cache:6KVVW8agstbkJ:www.inditex.com/en/press/other_news/extend/00000876+&cd=1&hl=en&ct=clnk&gl=nl&client=firefox-a>.

71 IndustriALL website, "Inditex", no date, <<http://www.industrial-all-union.org/inditex>>, (13 May 2014).

72 Inditex, "Inditex comments on SOMO and Repórter Brasil report", (2 May 2014).

73 Term of Hearing attached to the Civil Inquiry 000393.2011.02.002/2-70.

the vulnerability of the least protected". Finally, the results of these efforts were analysed. According to Inditex, these measures resulted in the following:⁷⁴

- "the creation of an Emergency Fund, which has helped over 40,000 people;"
- "supporting the documentation of migrant workers (10,000 people attended)";
- "various activities to help vulnerable immigrants and youths (90,000 participants)";
- "professional training projects in the garment sector and related activities";
- "funding for the creation of the CIC⁷⁵, which is expected to benefit 1,000 immigrants every day";
- "overall investment in community projects of over R\$ 14m (€ 4,6m)."

Complaints hotline

In September 2011, Zara Brasil announced the establishment of a toll-free number to receive local complaints related to its production chain. According to the group, the main objective was "to create a channel for citizen cooperation through which the company can become aware of and resolve possible irregularities within the shortest possible timeframe".⁷⁶

A year later, in August 2012, Repórter Brasil reviewed the service and found some deficiencies in the process. For instance, there was no option for gathering information in Spanish, a situation incompatible with the profile of victims of slave labour in garment workshops – mostly Spanish-speaking immigrants from Latin American countries with little knowledge of Portuguese. Moreover, confusion prevailed as to the number of complaints that had been filed and how they were handled. Zara Brasil did not confirm the number of cases that had been collected by the service and forwarded to competent authorities.

After January 2013, the hotline was significantly strengthened when the company outsourced the operation of the service to the São Paulo-based NGO Center for Human Rights and Immigrant Citizenship (Centro de Direitos Humanos e Cidadania do Imigrante – CDHIC). Then the hotline ceased to focus only on Zara's supply chain and started to perform more broadly "legal and social referrals of accounts by immigrants of any nationality who want[ed] to report cases of discrimination and/or working conditions analogous to slavery".⁷⁷

The service works on Mondays to Fridays during business hours, with bilingual operators (Portuguese and Spanish). It is advertised through the CDHIC website (at http://www.cdhic.org.br/?page_id=1021) and the organisation's free newspapers, which are distributed in locations where members of São Paulo's immigrant communities usually circulate.

74 Inditex, "Inditex comments on SOMO and Repórter Brasil report", (3 July 2014).

75 The Immigrant Citizenship Integration Center, a state government project to provide bureaucratic services for São Paulo's foreigner community.

76 Inditex, "Inditex implements pioneering procedures in Brazil for controlling the supply chain in collaboration with unions, NGOs, academic institutions and business associations", <http://www.inditex.com/en/press/other_news/extend/00000876>.

77 CDHIC, "Disk 0800 visa combater discriminação e situações de trabalho análogas à escravidão", <http://www.cdhic.org.br/?page_id=1021>.

In an interview⁷⁸ CDHIC explained that the hotline receives complaints related not only to sewing workshops, but also to other economic activities and even disputes not related to labour – such as family, migration, etc. Since it began operating the service, at the date of the interview the organisation clarified it had not received complaints related to Inditex's operations.

Although especially vulnerable, immigrants in São Paulo represent only a portion of the total workforce producing clothes for Zara in Brazil. The company's suppliers and subcontractors are spread across dozens of cities in five states in the country, employing mostly low-income Brazilians. Inditex has no grievance mechanisms to address this more comprehensive reality, since Zara Brasil does not seem to have a hotline dedicated to company specific complaints, judging from the company's website.

In response to a draft version of this report, Inditex disputes this assessment by stating that, "although the programmes rolled out by Inditex are targeted to a meaningful extent at Latin American immigrant groups, in keeping with the Brazilian authorities' own assessments of the state of the garment industry, none of these initiatives discriminates in terms of beneficiaries on account of their nationality, ethnic origin or other grounds".⁷⁹

While accepting that its programmes do not exclude other beneficiaries than the Latin American immigrant community, this approach does not meet the expectations raised by the current international normative framework. Principle 31 of the United Nations Guiding Principles stipulates a number of effectiveness criteria for operational level grievance mechanisms, such as Zara Brazil's complaints hotline. These principles are: legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, a source of continuous learning and based on engagement and dialogue.

Without making a full assessment of the hotline's performance vis-à-vis each of these effectiveness criteria, based on the limited information that is publicly available on the functioning of the hotline, it can be concluded that it does not meet the accessibility, transparency and predictability criteria: since awareness about the existence of the hotline is not raised beyond the Latin American immigrant community, it is not widely accessible. Since the researchers have not been able to find information about the number of complaints received by the hotline and the outcomes of the handling of these complaints, it cannot be regarded transparent. And since the website of the hotline does not include information about the complaints handling procedures of any kind, it cannot be regarded as predictable either.

In its review of a draft version of this report, the company also states that: "Inditex's Compliance Programme implicitly includes the grievance mechanism concept as it involves periodic interviews with employees and union representatives. In addition, the framework agreement with IndustriALL, and, by extension, with the local unions, represents another mechanism under which any type of claim can be transmitted effectively and quickly from the work centres to Inditex's CSR teams."⁸⁰

78 This information was collected by Repórter Brasil in October 2013 in an interview with Tânia Bernuy, CDHIC's executive coördinator.

79 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

80 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

While recognising the importance and value of Global Framework Agreements with trade unions in preventing and addressing labour rights violations, the Guiding Principles regard operational level grievance mechanisms a necessary addition to employer-trade union relations.

Social investments

The agreement between Zara Brasil and the Brazilian authorities specified that the company should invest R\$3.5m (€1.4m) in “informative, preventive and corrective actions”. The R\$3.5m was mainly invested in projects run by three organisations recognised for their work with Latin American immigrants: Centro de Apoio ao Migrante, Centro de Direitos Humanos e Cidadania do Imigrante and Serviço Pastoral do Migrante. They covered several lines of action, such as the creation of an emergency fund intended to support immigrants in emergency situations; a programme to promote labour rights at sewing workshops – not necessarily in enterprises included in Zara’s supply chain; legal assistance for immigration regularisation; and projects for cultural promotion and civic education for immigrants.

In addition, in August 2012, Inditex announced that it would fund the creation of a centre to provide bureaucratic services for São Paulo’s foreigner community. The project is coordinated by the state government.

(Supply chain) transparency

Inditex informs interested parties about its CSR policy and practices on its corporate website (Inditex.com/sustainability). The company issues annual CSR reports, using the Global Reporting Initiative Guidelines. The CSR report includes information about supply chain monitoring, though on an aggregate level.

More specific information is shared with selected stakeholders. For instance, in Brazil Inditex shares its supplier list and audit results with IndustriALL and affiliated local unions. Unlike some other garment companies, such as H&M,⁸¹ Levi Strauss & Co,⁸² Nike,⁸³ Adidas,⁸⁴ Timberland,⁸⁵ Puma⁸⁶ and Patagonia,⁸⁷ Inditex does not publicly disclose its first-tier suppliers.

As for consumer information, Inditex informed SOMO and Repórter Brasil about the launch of the ‘Fabricado no Brasil’ initiative. Under this initiative, all labels of garments made in Brazil will include a QR code to allow full access to information about the manufacturing details of each and every garment, including social and working conditions across the production line in Brazil.⁸⁸

81 H&M, Supplier List, <<http://about.hm.com/en/About/Sustainability/Commitments/Responsible-Partners/Supply-Chain/SupplierList.html>>.

82 Levi Strauss & CO, Supplier List, <<http://www.levistrauss.com/sustainability/product/supplier-list>>.

83 Nike, Global manufacturing, <<http://nikeinc.com/pages/manufacturing-map>>.

84 Adidas, Supply chain structure, <<http://www.adidas-group.com/en/sustainability/supply-chain/supply-chain-structure/>>.

85 Timberland, Timberland Responsibility, <<http://responsibility.timberland.com/factories/>>.

86 Puma, Puma’s suppliers, <<http://about.puma.com/category/sustainability/puma-standard/>>.

87 Patagonia, The Footprint Chronicles: Our Supply Chain, <<http://www.patagonia.com/us/footprint/suppliers-map/>>.

88 Inditex, “Inditex comments on SOMO and Repórter Brasil report”, 3 July 2014.

The 'Fabricado no Brasil' seems a promising initiative. Whether it will deliver the transparency that is required, is dependent on 1) whether it will disclose the names of the direct supplier and subcontracted workshop in this labels 2) whether the supply chain information will be publicly available (and not restricted to Zara's consumers).

The National Pact for the Eradication of Slave Labour

In November 2011, Zara Brasil became a signatory to the National Pact for the Eradication of Slave Labour in Brazil.⁸⁹ At the time, about 40 of Zara's direct suppliers, encouraged by Inditex, also joined the Pact. However, in August 2012, Zara Brasil was suspended from the initiative because the company was contesting the 'dirty list' – one of the main tools propagated by the initiative – in court (see Section 6.3). According to the steering committee of the National Pact for the Eradication of Slave Labour, the retailer's attitude affronts the basic principles of the Pact. "It should be noted that one of the main commitments that make up the Pact is to restrict trade and financial links with employers that are included in the 'dirty list', the suspension note issued by the body says.⁹⁰ "Without that tool, signatory companies would lose their official consultative basis for a strict control of their supply chains."

In addition, less than two years after becoming a member of the Pact, 14 of the above-mentioned 40 Zara suppliers were suspended from the initiative.⁹¹ They were part of the list of 29 signatories that had failed to meet their obligations under the Pact's monitoring process by August 2013. Companies that join the agreement undertake to answer an information platform to share information about what they are doing to prevent the presence of slave labour in their business chains.

6.2 Compliance with Conduct Adjustment Agreement?

Despite the increased number of supplier and subcontractor inspections carried out by Zara Brasil, it is unclear to what extent the company is able to effectively monitor its entire supply chain and how it can prevent workshops with precarious working conditions from entering in its supply chain through unauthorised outsourcing arrangements. In July 2013, during a hearing at the Labour Prosecutor's Office, Zara Brasil itself admitted that the company could not guarantee that there are no unauthorised subcontracted companies in their supply chain, but that it is highly unlikely, because their direct supplier would risk losing their contract with Zara.⁹²

There are indications that Zara Brasil's supply chain monitoring is not entirely effective, and that its reporting to the MPT, as stipulated under the Conduct Adjustment Agreement, is not complete. The following two cases (ND Cofecções and Rolepam) exemplify this.

89 National Pact for the Eradication of Slave Labour website, <<http://www.pactonacional.com.br/>>.

90 The note's full text can be seen (in Portuguese) at <<http://www.reporterbrasil.org.br/pacto/noticias/view/422>>.

91 Pacto Nacional pela Erradicação do Trabalho Escravo, "Comitê suspende empresas do Pacto Nacional" (in Portuguese only): <<http://www.reporterbrasil.org.br/pacto/noticias/view/476>>.

92 Term of Hearing attached to the Civil Inquiry 000393.2011.02.002/2-70.

ND Confecções

In 2012, seven workers filed lawsuits against ND Confecções, a sewing workshop based in a small town 50 km from Sao Paolo. The workshop dismissed the sewers and stopped operating in May that year. Among various irregularities, the workers say that the employer failed to pay them for their last 25 days of work; it did not pay FGTS (Mandatory Fund for Unemployment Benefit) correctly throughout their whole contract period; it did not settle their severance pay; and it did not even register their dismissal at relevant agencies, thus preventing them from receiving unemployment insurance. More than a year later, through conciliation agreements approved by the judge, the employer agreed to compensate the workers for unpaid FGTS and severance package.

Box 6: Testimony of a former employee of ND Confecções¹ (October 2013)

"I worked a year and nine months at the workshop. Then it closed, the owner gave a sewing machine to some of the seamstresses and gave me an envelope with a thousand reais (around US\$ 490). Since I couldn't get my FGTS money, I had to go to the union and file a lawsuit."

"The company was not meeting its production deadlines. So, after the pieces were delivered, the firms (contracting industries) did not pass anything else. We even worked Saturdays, Sundays and holidays. In the end I was starting at six o'clock in the morning and leaving at six pm to help finish the job and receive the payment, but to no avail. The company still owes me 780 reais (around US\$ 380)."

1 Interview conducted by Repórter Brasil in October 2013.

Although it had been out of business since May 2012, from February of that year until July 2013, the workshop remained on the list of subcontractors submitted by Zara to Brazilian authorities.⁹³ In the second half of 2013, Repórter Brasil visited the workshop's former headquarters and confirmed that it had not been in business for many months. Repórter Brasil and SOMO asked Inditex about this in March 2014. Inditex, in response, stated that it was unfair and misleading to question its monitoring system "purely because a single company that had ceased to produce for Zara Brasil in May 2012 was mistakenly included in the list of Inditex's suppliers that was provided to the MPT in August 2012".⁹⁴

93 As explained, one of the company's obligations under the agreement signed with MPT was to keep the authorities informed about its updated supply chain.

94 ND Confecções was also included in January 2013 and July 2013 semiannual updates of its supplier list provided to the Brazilian authorities.

Rolepam Lavanderia Industrial

In May 2014, a similar situation was mentioned when Zara Brasil was summoned to attend a session of a Parliamentary Inquiry Commission (CPI). The CPI was created by the Legislative Assembly of São Paulo in April 2014, with the aim of investigating cases of slave labour in the state. During this session, the president of the commission, assemblyman Carlos Bezerra Jr., questioned the company about the supplier Rolepam Lavanderia Industrial. In May 2012, this dyeing company had its electricity supply interrupted due to lack of payment and has stopped operating since then. Nevertheless, in August 2012, even though it had stopped operating, Rolepam was still one of Zara Brasil's subcontracted suppliers according to information Inditex presented to the MPT. "It is clearly difficult for Zara to monitor its supply chain", stated Carlos Bezerra Jr. during the session.⁹⁵

Just as in the case of ND Confeções, several workers filed lawsuits against Rolepam Lavanderia Industrial after the company stopped operating. They reported, among other issues, unpaid salaries, overtime, FGTS and severance packages. Since May 2012, at least 32 Rolepam employees had first instance court rulings fully or partially favourable to their claims. In 2014, these sentences were replaced by conciliation agreements whereby the company agreed to compensate part of the workers' demands.

After the CPI session in May 2014, Repórter Brasil and SOMO questioned Inditex about Rolepam Lavanderia Industrial. Inditex said that this company "was a second tier supplier of specialised activities (actually, a laundry) provided to a supplier of Zara Brasil. Rolepam was pre-assessed by Inditex, included in the list of authorised suppliers and regularly audited to check compliance with Brazilian labour law as well as with Inditex's Code of Conduct. In July 2012, the above-mentioned supplier included Rolepam in its second tier list of companies, and consequently it was mandatory for Inditex to include it in the list provided to the MTE on that date. The purpose of the monitoring system of Inditex is not to certify the business activity of any of the companies but rather to verify over time that their working conditions comply with those required under Brazilian law and Inditex's Code of Conduct."⁹⁶

However, according to the assemblyman, cases such as the one involving Rolepam show that Zara Brasil is not fulfilling its monitoring and reporting obligations under the Conduct Adjustment Agreement signed with the Brazilian authorities.

In October 2014, the Parliamentary Inquiry Commission made a formal request asking the MPT to apply the stipulated fines related to the non-compliances that were revealed by the Legislative Assembly. "The CPI found that the company testified before the MPT full regularity of subcontracting companies who had already closed, without paying wages, or else were being sued by its employees due to various labor violations. None of this was reported to the MPT, as the agreement stipulates", according to the CPI.⁹⁷

95 Repórter Brasil, "Zara admits slavery in the production of its clothes in 2011" (only in Portuguese), <<http://reporterbrasil.org.br/2014/05/zara-admite-que-houve-escravidao-na-producao-de-suas-roupas-em-2011/>>.

96 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 3 July 2014.

97 The CPI's final report (only in Portuguese), <<http://reporterbrasil.org.br/documentos/conclusoesdorelatorio-cpidotrabalho-escravo.pdf>>.

More cases of labour rights infringements

During the research for this report, Repórter Brasil carried out a comprehensive review of Zara Brasil's supplier and subcontractor list in 2012 and 2013. Repórter Brasil searched several judicial databases to check whether there were labour lawsuits involving suppliers and subcontractors included on Zara's supplier list. Examples of lawsuits filed by workers against these manufacturing units – ND Confeccões, Rolepam Lavanderia Industrial and 16 other companies – were sent to Inditex.⁹⁸ These lawsuits are not related to slave labour, but to several other kinds of labour law violations, including non-payment of wages and mandatory social benefits, excessive working hours, unpaid overtime, forms of harassment and unsafe working conditions. They all have first-instance court rulings fully or partially favourable to the workers' claims, or else were settled through conciliatory agreements recognising workers' demands.

Inditex, in its response to SOMO and Repórter Brasil, stated that only a minor proportion of the cases – 62 out of 177 – were related to discrepancies between employees and employers arising while the employers had contractual relationships with the company. According to Inditex, 52 of these lawsuits were settled in the form of conciliation agreements known to and fostered by the company. In addition, Inditex said that it "was aware of and played an active part in resolving all the cases, through corrective measures implemented as a result of our involvement".⁹⁹

The company also argues that none of the cases "reveal the existence of widespread violations of labour legislation, but rather point to ad hoc employer-employee discrepancies". Inditex says that labour litigation is far more prevalent in the Brazilian labour culture than in any other developed country. The incidence of disputes over the application of labour law in Inditex's Brazilian supply chain, says the multinational, is dramatically below average – according to the company, at an approximate annual ratio of one case for every 400 workers, compared to an alleged average in Brazil of one case for every 25 workers. "It is worth highlighting that throughout 2012 and 2013, Inditex's supply chain in Brazil has been subject to specific controls by the MTE and MPT, Brazil's highest labour authorities; neither body has detected a single breach of labour rights in all this time."¹⁰⁰

Luiz Alexandre Faria, the MTE's labour inspector who participated in the operation that found modern-day slave labour in Zara Brazil's clothing production, says the company has delivered periodic reports to the authorities with details of its supply chain. He says, however, that the MTE has not been able to inspect Zara again. "We have a small structure and we are prioritizing new cases. I cannot say for sure that 100% of Zara's supply chain is operating under the law because we only have information from the company itself."¹⁰¹ In October 2014, the CPI made a formal request demanding that Zara Brasil's supply chain should be inspected again by the MTE.

98 See Annex 1.

99 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

100 Ibid.

101 O Estado de São Paulo, "Zara creates 'anti-slave labour' label" (only in Portuguese),

<<http://economia.estadao.com.br/noticias/geral,zara-cria-etiqueta-antitrabalho-escravo-imp-,1169445>>.

In response to questions sent by Repórter Brasil and SOMO, Inditex stated that Luis Fabre – the prosecutor responsible for signing the extrajudicial settlement between Zara Brasil, MPT and MTE in 2011 – publicly confirmed Inditex’s compliance with all its obligations under the mentioned agreement. “Mr. Fabre further noted that none of the cases mentioned in the SOMO/ Repórter Brasil report qualifies for consideration as any of the violations contemplated in the agreement”, says the company.¹⁰² When Repórter Brasil shared these statements of Inditex with Mr Fabre, the prosecutor said to be surprised by them: “The statement that was attributed to me in the mentioned context is false,” revealed the prosecutor in an email to Repórter Brasil.¹⁰³ According to Mr Fabre, he monitored the fulfillment of the agreement for a year, with no news of non-compliance, but was no longer working on the case since the end of 2012. “So I cannot say whether Zara is or is not complying with the obligations”.¹⁰⁴

Since Inditex classifies its suppliers into one of four ratings categories (A-rated Supplier, B-rated Supplier, C-rated Supplier and supplier subject to corrective action) based on the results of its audits, Repórter Brasil and SOMO asked Inditex in which category the suppliers involved in lawsuits were placed during 2012-2013. Or, otherwise, to receive the audit reports or corrective action plans related to these subcontractors. Inditex has not provided this information. “Classifying the level of compliance follows the recommendation of the Ethical Trading Initiative and the results are shared with all those stakeholders really involved in the improvement of working conditions. To provide individual disclosures regarding the components of its Compliance Programme, would affect the interests of the workers constituting its supply chain. Far from serving as an incentive for improving working conditions in workplaces in which irregularities have been detected, publication of detailed information regarding the results of our audits could seriously jeopardise the most vulnerable part of the chain, the workers themselves. The unions fully share this principle and the goals sought”, said Inditex.¹⁰⁵

According to the agreement with the Brazilian authorities, the company should inform MPT and MTE, if its social audits find such examples of labour rights infringements. The agreement describes that Corrective Action Plans must be adopted and sent to the authorities (in 30 days at most) if the company’s audits reveal irregularities based on aspects of the labor law mentioned in the agreement. Among the aspects mentioned, the document stipulates that Zara Brasil should monitor: the full payment of wages and mandatory benefits; employees being hired and legally registered under the requirements of the law; compliance with working hour regulations and; compliance with health and safety regulations¹⁰⁶.

None of these cases, all related to labour issues in 2012 or 2013, were reported to the MPT in the mentioned timeframe. Inditex is of the opinion that these cases fall outside of the scope of the agreement, since they do not relate to so-called significant irregularities: “our monitoring of the Zara Brasil supply chain over the course of 2012 and 2013, years subject to oversight by the MTE and

102 Inditex, “Inditex comments on SOMO and Repórter Brasil report”, 3 July 2014.

103 Email received by Repórter Brasil in August 2014.

104 Email received by Repórter Brasil in August 2014.

105 Inditex, “Inditex comments on SOMO and Repórter Brasil report”, 3 July 2014.

106 Section 2.1.6 of the Conduct Adjustment Agreement: <<http://reporterbrasil.org.br/agenciadenoticias/tacZara.pdf>>.

MPT, did not uncover significant irregularities at any of our suppliers. This was confirmed by MPT's attorney Luis Fabre at the committee hearing meeting of 21 May. The information provided by SOMO/Repórter Brasil does not provide any information to support otherwise. In the absence of any irregularities, therefore, there was no reason for reporting in this respect. Inditex has complied scrupulously with its disclosure requirements with the MTE and MPT. It is our understanding that any doubts in this respect should be verified with the bodies tasked with oversight of the agreement, namely the MPT and MTE."¹⁰⁷

To summarise this section, it is clear that Inditex wants to frame these cases as single insignificant incidents and as exceptions rather than the rule. Due to a lack of information, it is difficult to assess whether Inditex's monitoring mechanisms detected the above-mentioned issues, and if so, how the company has addressed these issues. Publicly available information regarding Inditex only presents audit results on an aggregated level. It is unclear from Inditex's CSR report how it responded to these violations. The company also did not share this information with SOMO and Repórter Brasil upon request. Taking into account the numerous labour rights disputes involving Zara subcontractors, it is surprising that, in July 2013, the company had only informed the authorities of the implementation of two Corrective Action Plans since 2012. Therefore SOMO and Repórter Brasil conclude there are definitely indications that Inditex's monitoring system is not 100% effective.

6.3 Legal action

In June 2012, one year after the scandal, Zara Brasil filed a lawsuit against the Brazilian authorities, contesting both the fines that were imposed on the company as well as the decision to put Zara Brasil on the dirty list. Both measures are based on the Ministry of Labour and Employment's assessment that Zara Brasil was in effect the real employer of the workers rescued from the workshops and it was thus legally responsible for the working conditions found in the workshops. By means of this court case, Zara Brasil is actually contesting both its legal responsibility and the dirty list as a tool to fight slave labour. For reasons of clarity, we deal with both lines of reasoning separately below.

Inditex refusing legal responsibility

A year after the inspections at the two workshops where fifteen slave labourers were found, Zara Brasil filed a lawsuit against the Brazilian government, seeking the annulment of all fines issued against the company. The subsidiary of Inditex maintains that "it would never consent to any exploitation of labour in a situation analogous to slavery", but that "social responsibility must be distinguished from legal responsibility."¹⁰⁸ In the lawsuit, the company challenges the view that foreigners rescued from workshops operated in practice as its own employees. It claims that it never paid or gave any orders to those workers, it was never responsible for the facilities that were the focus of problems and no contact has ever occurred between them and the fashion retailer.

Zara claims that it cannot be punished for any unlawful outsourcing promoted by one of its suppliers. "The fact is that the alleged criminal offences pointed out by the inspection report refer to

107 Ibid.

108 Lawsuit 00016629120125020003, 3rd Labour Court of São Paulo (Zara Brasil Ltda. X Federal government).

third-party conduct that is not to be confused with Zara's."¹⁰⁹ In addition, the company also claims that it is not within the competence of labour inspectors to decide who is the real employer – that would be a judiciary's task.

In a deposition to justice related to this particular lawsuit, one of Inditex's technicians in the area of CSR said that "in all audits performed by Zara, AHA had enough sewers to produce what it intended to deliver and that it reduced that number just before the government inspection".¹¹⁰ Zara Brasil's management, in turn, said that AHA had been audited "about three months before its inspection by the labour inspection, but that the audit had been deceived". Zara terminated its commercial relations with AHA after the federal inspection.

In April 2014, the Regional Labour Court of São Paulo dismissed the lawsuit filed by Zara Brasil. According to the ruling, the company does have legal responsibility for the observed situation, based both on the Consolidation of Labour Laws and the binding decision that regulates outsourcing in Brazil. The judge described as "blatant fraud" the scheme that connected the Spanish multinational to workshops that illegally exploited the labour of immigrants. In his argumentation, he noticed that outsourcing is illegal when there is direct subordination of subcontractors' workers to the company that uses the services of such subcontractor.¹¹¹

"The subordination [of the workers], although hidden behind alleged outsourcing, was direct to the intents of the retailer", describes the sentence. "The workshops where workers were found in condition analogous to slavery operated exclusively in the manufacture of Zara products, according to criteria and specifications submitted by the company and getting their meager salary also exclusively, or almost exclusively, from Zara (via indirect transfer)."¹¹² The central idea here is that Zara is the entity actually paying the workers, but that this situation was hidden because the company was using an illegal outsourcing scheme to cover the employer-employee relationship. In other words: while it appeared that Zara was paying vendors that supplied goods, Zara was actually paying its employees through indirect transfer using an illegal outsourcing scheme.

According to the verdict, the assertion, alleged during the process, that Zara does not control what is paid to subcontractors "discloses a very comfortable position for the company, because it allows to stipulate prices in his convenience, no matter if it is necessary to extract the vitality of workers without due compensation".¹¹³

The argument that the multinational was unaware of the situation that workers were subjected to is also refuted by the decision. "[AHA] was not sized to serve as a major supplier, and this Zara was well aware [of]. Performing systematic audits, the multinational knew of the extensive downsizing

109 Ibid.

110 Lawsuit 00016629120125020003, 3rd Labor Court of São Paulo (Zara Brasil Ltda. X Federal government) – 20 June 2013 hearing.

111 The full text of the judgment can be accessed at the following link: <<http://reporterbrasil.org.br/2014/04/integra-da-sentenca-judicial-em-que-zara-e-responsabilizada-por-escravidao/>>.

112 Ibid.

113 Ibid.

conducted, with the number of [AHA's] seamstresses falling more than 80% at the time when production for Zara grew", says the ruling. "Zara Brasil Ltda. is one of the largest corporations in the world in its business segment, being hard to believe, I reiterate, that had so lax controls regarding the conduct of its suppliers, being much more palatable the version advocated by the inspection, that, actually, the company controlled them to the point of holding the employer position."

In response to the judgment, Raúl Estradera, spokesman for Inditex,¹¹⁴ stated in April 2014: "With all due respect to the decision, we understand that our arguments were not taken into consideration and we had no chance to defend ourselves properly". Zara Brasil appealed the decision, which now awaits a new trial.

Inditex challenging the dirty list in court

As the labour inspection had concluded that the situation at the two inspected workshops could be classified as "conditions analogous to slavery" and that Zara Brasil was to be held legally responsible for the situation, the company was at risk of entering the dirty list. With this in mind, in addition to seeking the annulment of violation notifications issued against it, the company filed a court request in June 2012 for its name not to be included in the list. The decision to include Zara Brasil on the dirty list has been postponed until the final judgment of the company's lawsuit against the dirty list is taken.

Zara Brasil argued that the dirty list is unconstitutional.¹¹⁵ The company argued that the executive power should not create penalties, but should only apply those already provided for in existing laws or collective bargains. According to the company, the dirty list goes against the right to a full defence and undermines the principle of presumption of innocence by applying punishments that are not a government prerogative to judge and define, but rather the judiciary's.

In July 2012, a judge of the São Paulo Regional Labour Court granted a preliminary injunction favouring the company's request not to have its name included on the dirty list.¹¹⁶ The ruling is based on alleged "irreparable damages" in terms of commercial interests and reputation that Zara may suffer if it has its name included in the list before a decision is made on the merit of the lawsuit filed by the company – which argues for the unconstitutionality of that list.

In April 2014, the company's allegations towards the 'dirty list' went on trial. The Regional Labour Court of São Paulo decided against the company and overturned the injunction that prevented the inclusion of the company in the list. According to the sentence, several legal devices provide the foundation for such a list, "with emphasis to the Brazilian Constitution, which qualifies as fundamental principles the social value of work and the dignity of the human person". The decision

114 "Justiça considera Zara responsável por escravidão e a empresa pode entrar na lista suja", Repórter Brasil

<<http://reporterbrasil.org.br/2014/04/justica-considera-zara-responsavel-por-escravidao-e-empresa-pode-entrar-na-lista-suja/>>.

115 Lawsuit 00016629120125020003, 3rd Labour Court of São Paulo (Zara Brasil Ltda. X Federal government).

116 Injunction granted in the lawsuit 00016629120125020003, 3rd Labour Court of São Paulo (Zara Brasil Ltda. X Federal government).

also highlights that the Constitution gives the Minister of State the power to issue general rules aiming at compliance with Brazilian legislation.¹¹⁷

Zara Brasil appealed against the decision and, a few weeks later, was granted a new injunction preventing the insertion of its name on the 'dirty list' again, this time until there is a final judgment no longer subject to appeal. Again, the ruling is based on alleged irreparable damages if higher courts disagree on the lower court sentence.

In communication with SOMO and Repórter Brasil, Inditex said that it considers the dirty list 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 defense in this process. The possibility that Zara Brasil 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."¹¹⁸

The Brazilian government's 'dirty list' suffers frequent attacks by companies which, when held liable for slave labour, have filed lawsuits challenging the legality of this register of offenders. Among the dozens of companies that have adopted such a strategy, Inditex's Brazilian subsidiary is certainly one of the most famous and economically significant. As has been elaborated in Box 4, a similar litigation strategy followed by the Brazilian Association of Real Estate Companies has been successful, and the future of the dirty list is even more uncertain than ever.

Moral responsibility versus legal liability

In its response to the slave labour scandal of 2011, Inditex combines some progressive measures in the voluntary CSR realm (described in section 6.1) with reactive litigation in the legal realm (described in section 6.3). In other words: it voluntarily assumes 'moral' responsibility but resists legal responsibility for the working conditions at its subcontractors. In fact, this combination of strategies reveals an inconsistency: in the CSR realm, Inditex assures its stakeholders that it is able to effectively monitor its supply chain, while in the legal realm, it refuses to assume responsibility for the conditions in the sewing workshops, arguing the outsourcing was unauthorised, Zara Brasil was not aware of it and that its contracting party had been deceiving audits, i.e.: Zara Brasil is unable to control its supply chain.

There is another inconsistency in Inditex's approach: while it has publicly acknowledged the value of the dirty list as a tool to combat slave labour by joining the National Pact for the Eradication of Slave Labour, the company's legal strategy is set to undermine the tool as it jeopardizes the very existence of the list.

Repórter Brasil and SOMO are of the opinion that the dirty list and other measures to combat slave labour in Brazil need strengthening instead of weakening, and will propose recommendations to do so in the next chapter.

117 The full text of the judgment can be accessed at the following link: <<http://reporterbrasil.org.br/2014/04/integra-da-sentenca-judicial-em-que-zara-e-responsabilizada-por-escravidao/>>.

118 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 2 May 2014.

7 Conclusion and recommendations

In this chapter, conclusions are drawn with regard to the effectiveness of the measures Inditex has taken in the moral and legal realm after the 2011 scandal. Based on these conclusions, SOMO and Repórter Brasil propose a number of ways to address the loopholes in the current system and strengthen regulatory and corporate approaches to effectively address slave labour in the Brazilian garment industry.

7.1 Improvements and persisting issues

The slave labour scandal in workshops producing for Zara Brasil has clearly had an awareness raising effect, leading to a number of improvements in the company's operations, including the following:

- Since 2011, Inditex has reported a significant increase in the number of inspections performed at its Brazilian suppliers and subcontractors, either by the company's own staff or by outside consultants.
- Not only did the company increase the number of audits, it also strengthened its monitoring mechanisms, in cooperation with the Brazilian Textile, Garment, Leather and Footwear Workers' Federation.
- Inditex undertook efforts to stimulate suppliers' compliance with the Inditex code of conduct by creating a good practices manual for suppliers; by adopting a social compliance certification scheme; and by implementing pilot projects at suppliers in cooperation with UNIETHOS.
- Together with Brazilian civil society organisations, the company has also promoted investments in immigrant communities' projects.
- Zara Brasil announced in May 2014 the launch of the 'Manufactured in Brazil' ('Fabricado no Brasil') initiative. All the labels of garments made in the country will have a QR code to allow full access to information about the manufacturing details of each and every garment, including social and working conditions across the production line.
- Zara Brasil's complaint hotline was significantly strengthened when the company outsourced the operation of the service to the Center for Human Rights and Immigrant Citizenship (CDHIC), thereby providing an avenue for "legal and social referrals of accounts by immigrants of any nationality who want[ed] to report cases of discrimination and/or working conditions analogous to slavery".¹¹⁹ It should be noted, however, that while it has been a clear improvement for the immigrant community, the complaints hotline does not yet meet all of the effectiveness criteria

119 CDHIC, "Disk 0800 visa combater discriminação e situações de trabalho análogas à escravidão": http://www.cdhic.org.br/?page_id=1021.

for operational level grievance mechanisms under the UN Guiding Principles, such as accessibility, transparency and predictability.

Notwithstanding these improvements, one of the major issues in the Brazilian garment industry is the high incidence of outsourcing and subcontracting through which informal workshops are incorporated in the supply chain. In these informal workshops, the risk of serious human rights and labour rights violations is high. SOMO and Repórter Brasil are of the opinion that that Inditex's monitoring mechanisms, although they have been strengthened, are still not adequately addressing this problem. In July 2013, during a hearing at the Labour Prosecutor's Office, Zara Brasil itself could not guarantee this.¹²⁰

This report provides indications that the company's supply chain monitoring is not 100% effective. The examples of companies included on Zara Brasil's supplier list, even though they had been out of business for months, illustrate this (see cases of ND Confecções and Rolepam Lavanderia Industrial in Chapter 6).

In addition, the research found labour rights issues at several other suppliers and subcontractors (see Annex I). And even though Inditex states that it was aware of and played an active role in resolving these issues, SOMO and Repórter Brasil have received no supporting evidence for this.

7.2 Harmful litigation strategy

Inditex's current litigation strategy against the labour inspection and the 'dirty list' could serve to undermine the potential of the Brazilian authorities to effectively fight other situations of modern slavery in the country, not only in the garment industry but also in many other economic sectors.

The company's alleged commitment to human rights can be argued to be incompatible with the explicit attempt to undermine a tool that, according to the International Labour Organisation (ILO), is an international example of good practice in fighting forced labour. The continuation of the lawsuit filed by Zara Brasil creates a dangerous precedent to undermine the effectiveness of this tool. Ultimately, the list's extinction would remove the main search reference for Brazilian companies committed to eliminating the use of slave labour in their business relationships.

In its lawsuit against the Brazilian authorities, Inditex argues that the 'dirty list' goes against the right to a full defense and the principle of presumption of innocence. It would apply sanctions that are not up to the Executive Power to define, but rather to the Judiciary Power.¹²¹ Such arguments suppress the fact that the list is not a sanction in itself, but only a transparency tool with regard to the outcome of government inspections. The market is the one to adopt sanctions, as well as other State agencies. By their own independent initiative, they decide to use it as a reference for policies of economic restriction. If Inditex questions such policies, it should challenge those who adopt them rather than shooting the messenger.

¹²⁰ Term of Hearing attached to the Civil Inquiry 000393.2011.02.002/2-70.

¹²¹ Lawsuit 00016629120125020003, 3rd Labour Court of São Paulo (Zara Brasil Ltda. X Federal government).

The dirty list can be considered consistent with the UN Guiding Principles on Business and Human Rights. In its first principle, the UNGP say that “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”. The dirty list can be regarded as a creative and effective policy instrument used by the Brazilian state to protect immigrants in its territory against violations of their rights.

The Inditex group, which publicly declares that it implements the UN Guiding Principles,¹²² should not seek to eradicate State based instruments aimed to protect human rights, but should rather honour and implement them. To be consistent with its image as a responsible company, the company should fully accept its supply chain responsibility, not only in the voluntary but also in the legal domain. The company should stop employing a legal strategy that undermines the dirty list.

7.3 Legal liability of brand owners: a step that needs to be taken

Private audit systems and certifications are clearly not sufficient to overcome labour precarisation and human rights abuses in the textile and garment industry. In Brazil, slave labour has been found even at manufacturers that have the stamp of the Brazilian Association of Textile Retail (Associação Brasileira do Varejo Têxtil – ABVTEX), the leading certification adopted by Inditex and other key companies in the country’s retail sector.¹²³ There are many more examples of severe human rights abuses occurring in the supply chains of Western brands and retailers, including the tragic factory fires and accidents that killed hundreds of workers in clothing factories in Bangladesh and Pakistan in 2012 and 2013.¹²⁴

Slavery, deadly fires and other kinds of rights violations faced by workers largely reflect a business model that focuses on low-cost production. A model in which big brands and retailers have broad discretion to influence the working conditions imposed on their manufacturer networks. They define models, measures and fabrics. They establish quantities, set deadlines for delivery and require corrections in pieces. In many situations, suppliers and subcontractors do little more than mediating the recruitment of a workforce to meet strict determinations imposed from the top of the production chain.

In this scenario, the understanding that retailers have a mere “social responsibility” for workers’ rights must be urgently left behind. Voluntary supply chain monitoring is not a sufficient nor a fair solution to the problem of modern-day slavery conditions and other recurrent labour rights violations. It does not erase the economic impetus that is driving precarious and illegal workshops

122 Inditex, Annual Report 2013, “Supply Chain Integrity”, 2013 <http://static.inditex.com/annual_report_2013/en/challenges-objectives-and-opportunities/supply-chain-integrity/>.

123 Repórter Brasil, “Confecção de roupas infantis flagrada explorando escravos tinha certificação” (only in Portuguese), <<http://reporterbrasil.org.br/2013/02/confeccao-de-roupas-infantis-flagrada-explorando-escravos-tinha-certificacao/>>.

124 See, for instance, SOMO and CCC, “Fatal Fashion: Analysis of recent factory fires in Pakistan and Bangladesh: a call to protect and respect garment workers’ lives”, March 2013, <http://www.somo.nl/publications-en/Publication_3943>.

to be a relevant part of the garment industry. In fact, it leaves the legal responsibility for labour and human basic standards with the workshop owners, while the powerful economic actors in this network – brand owners and giant retailers – benefit from low-cost production while ‘outsourcing’ the risks of legal sanctions for human and labour rights abuses.

Supply chain responsibility is internationally recognised in existing authoritative normative frameworks like the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. The UN Guiding Principles state that a company can be associated with a negative human rights impact by causing it, by contributing to it – either directly or through an outside entity – and by being directly linked to it. The UN Guiding Principles also clarify that the association between a company and a human rights impact can occur through supply chain relationships. The UN Guiding Principles have effectively clarified that companies are responsible for respecting human rights throughout their value chains. Supply chain liability would transcribe this responsibility into law, which is a logical and needed next step to enforce the responsibility to respect basic rights in the garment sector.

Supply chain liability will motivate buyers to improve oversight of their supply chains, rebalancing costs and benefits and encouraging the improvement of production models and networks for

Box 7: Examples of strict liability in supply chains

If the Brazilian government would decide to consolidate and strengthen the Supreme Court’s binding decision on illegal forms of outsourcing¹ and create a form of supply chain liability as proposed in this chapter, this would make Brazil a frontrunner in holding companies to account for the labour conditions in their supply chains. Innovative as this would be, there are examples of strict liability in supply chains in other sectors and jurisdictions that demonstrate the feasibility of this type of regulatory approach. We include these below as a means of comparison and inspiration for policy-makers.

Example 1: Product Liability Directive

The EU has a long established strict liability regime when it comes to product safety. The Product Liability Directive (85/374/EEC) was developed in 1985, and created a regime of strict liability for defective products. This means that the producer of a certain product on the EU market is liable for potential safety hazards that result from the use of this product, irrespective of where in the production process the safety hazard originates. To give an example: if a car producer sells a car on the European market with malfunctioning breaks, leading to a number of accidents, the car producer is responsible for paying the damages, even though the break itself (one of the components of the car) was produced by a (sub) contractor outside of Europe.

1 The binding decision (only in Portuguese), <http://www3.tst.jus.br/jurisprudencia/Sumulas_com_indice/Sumulas_ind_301_350.html#SUM-331>.

◦ **Box 7: Examples of strict liability in supply chains**

Example 2: Strict liability in the pharmaceutical sector²

Medicines need to be tested on humans in clinical trials before they are allowed to enter the drug market. These clinical trials are often not executed by the pharmaceutical company that owns the drug, but by so-called Contract Research Organisations (CROs). Drug testing is thus outsourced by the pharmaceutical company (the so-called 'Sponsor' of the trial) to a CRO. Notwithstanding this outsourcing practice, the European guidelines that are applied for granting market approval (the Good Clinical Practice, or the ICH-GCP guidelines) make clear that the sponsor (that is the pharmaceutical company) remains responsible for the integrity of the data, which includes the ethical conduct of the trial:

ICH-GCP Guidelines, Section 5: Sponsor

".....

5.2 Contract Research Organization (CRO)

5.2.1 A sponsor may transfer any or all of the sponsor's trial-related duties and functions to a CRO, but the ultimate responsibility for the quality and integrity of the trial data always resides with the sponsor. The CRO should implement quality assurance and quality control.

5.2.2 Any trial-related duty and function that is transferred to and assumed by a CRO should be specified in writing.

5.2.3 Any trial-related duties and functions not specifically transferred to and assumed by a CRO are retained by the sponsor.

5.2.4 All references to a sponsor in this guideline also apply to a CRO to the extent that a CRO has assumed the trial related duties and functions of a sponsor".³

This phrasing implies that, if a clinical trial participant were to experience a trial-related injury, the sponsor is liable, which can be considered a form of supply chain liability. The exception to this rule is when negligence by the CRO or its employees is behind the injury. In this case, CROs may be considered liable for trial-related injury.

Example 3: Upcoming law on sham structures in the Netherlands⁴

The Dutch Minister of Social Affairs and Employment has announced a number of measures to address sham constructions in working with migrant labourers. ◦

2 Van Huijstee, M. and Schipper, I. "Putting CROs on the Radar. An exploratory study on outsourcing of clinical trials by pharmaceutical companies to contract research organisations in non-traditional trial regions." Amsterdam: SOMO. February 2011.

3 ICH Good Clinical Practice Guidelines, section 5.2, http://ichgcp.net/?page_id=204 (accessed 17 October 2014).

4 This section is based on the following online sources (in Dutch only): <<http://www.rijksoverheid.nl/documenten-en-publicaties/wetsvoorstellen/2014/07/10/wetsvoorstel-aanpak-schijnconstructies>> and <<http://www.rendement.nl/thema/wet-aanpak-schijnconstructies#info>> (both accessed at 17 October 2014).

◦ **Box 7: Examples of strict liability in supply chains**

Among other things, the measures include monitoring on schemes to circumvent the statutory minimum wage and abuse of premium payments, on countering false independence constructions and avoidance of collective bargaining agreements. At the time of writing, the law still has to be approved.

The law introduces supply chain liability with regard to minimum wage. The main contractor or the client can be held liable for non-payment of minimum wages by the contracted agency. The employee or temporary employee can hold each link in the chain to account for payment of wages.

The law also introduces a 'black list' of offenders, showing great similarity with Brazil's dirty list. However, this list will only include the names of direct offenders, not of the client companies.

The ministry has entered into bilateral agreements with Poland, Romania and Bulgaria to address cross-border sham constructions. It has also strengthened its inspection capacity by setting up a team of 15 inspectors who specifically focus on sham constructions and enforcement of the generally binding collective agreement provisions. Finally, it has made the justice system more accessible by simplifying the procedure to obtain the minimum wage.

instance by means of shorter and more stable supply chains. Since it places punitive risks at the top of the production chain, it will serve as a driver for buyers to effectively control working conditions. It will also create a driver for buyers to adapt their purchasing practices towards a more fair distribution of costs and benefits in the supply chain, which would in turn remove one of the main drivers behind precarisation of work. In fact, supply chain liability is nothing more than a legal basis to hold companies to account for what fashion companies like Inditex say they are already doing: make sure that they are not complicit in human rights abuses.

7.4 Recommendations for the Brazilian Government

The Brazilian government's actions aimed at holding brands and retailers legally liable for situations of slave labour in the manufacturing of their (branded) products need to be defended and strengthened. Just like in the Zara scandal, labour inspectors from the federal government have pointed out other situations where outsourcing schemes were in effect masking employment relationships between sewers and retailers. This understanding, however, is not always accepted by labour judges. Brazilian legislation could thus be further improved by setting clear parameters committed to the principle that companies at the top of the production chain

should be held legally responsible for labour and human rights violations in the manufacturing of their own brands.

Currently, outsourcing in Brazil is regulated only by a binding decision of the Supreme Court, which outlaws companies' outsourcing of their core businesses. This has proved to be a principle that's difficult to apply in courts, given the lack of objective parameters to define what the core business of a particular company is. The binding decision also mentions the possibility of contracting companies being held accountable for labour violations in outsourced enterprises, but the absence of clear criteria to apply this principle also prevents this from happening in practice.

States must protect against human rights abuse within their territory. This requires effective legislation, as emphasised by the UN Guiding Principles on Business and Human Rights. As shown by the diverging court rulings based on the Supreme Court's binding decision, Brazil has no unambiguous legislation regarding outsourcing, although it is strongly associated with violations of human and labour rights. As a result of this gap, contracting companies that benefit from precarious outsourcing associated with labour and human rights abuses are rarely subject to legal sanctions.

According to data compiled by the Brazilian Inter-Union Department of Statistics and Socioeconomic Studies (Dieese), around 80% of the labour accidents in Brazil take place in (sub)contracted units.¹²⁵ Employees of these types of companies also work on average three hours more per week, receive low incomes and have less job stability.

In this context, to address labour rights abuses in (sub)contracted units, the Brazilian government should clearly establish, through law, strict liability of companies at the top of the production chain over labour and human rights violations in the production of their own brands. This type of liability is already widely applied in the realm of product safety (see box 7), and is relatively easy to enforce since it creates an obligation to deliver a certain result for brands (eg: slave labour free garments), leaving the process of how to comply with this regulation up for the brand to decide. It would thus bring an end to the ambiguity of the current regulatory framework, and avoid discussions in court on what is and what is not the core business of clothing brands and what can or cannot be considered to be 'interference of services'. This proposed form of strict liability would also make Brazil a frontrunner in the international arena.

In addition to establishing this type of strict liability, the Brazilian government should also take the necessary measures to guarantee that the legal status of the 'dirty list' is strengthened in order to avoid any future questioning of its legality by offenders. This need is defended by ILO and other international organisations, like the Walk Free Foundation, which qualifies the dirty list as a "notable aspect" of the Brazilian government's response to the problem of modern slavery. Currently, the list is regulated by an ordinance issued of the Ministry of Labour and Employment and the Secretariat for Human Rights of the Presidency. It should, however, be incorporated into Brazilian law, thus increasing the legal certainty towards its principles to face contrary lawsuits like the one Zara Brasil is pursuing right now.

125 Dieese, "Terceirização e desenvolvimento: uma conta que não fecha" (only in Portuguese), <http://2013.cut.org.br/sistema/ck/files/terceirizacao.PDF>.

The information presented both by this report and by the parliamentary commission (CPI) that investigated Zara's activities show that the MPT's capacity to properly monitor the implementation of Conduct Adjustment Agreements should be strengthened, as well as MTE's capacity to re-inspect companies implicated in slave labour cases.

7.5 Recommendations for clothing brands and retailers

Brands and retailers should identify, prevent and mitigate risks and negative impacts in their supply chain, in accordance with the UN Guiding Principles on Business and Human Rights. This means that companies need to proactively look into the human rights risks of their activities, including their supply chain and business relations, and develop strategies to address these risks. Due diligence requires that business enterprises have policies and processes in place through which they can both know and show that they respect human rights in practice. Showing involves communication, providing transparency and accountability to individuals or groups that may be impacted, as well as to other relevant stakeholders. Of particular importance in the context of this report are the following issues:

- ❑ **Consistency between legal and CSR strategy:** Brands and retailers should make sure that their 'voluntary' CSR strategy and their litigation strategy are consistent. Companies should refrain from pursuing a litigation strategy that seeks to hamper the strengthening of the legal basis for the corporate responsibility to respect human rights. Instead, they should fully accept their supply chain responsibility, not only in the voluntary but also in the legal domain.
- ❑ **Supply chain mapping:** Brands and retailers should focus on gaining a full understanding of their supply chains. This includes second and further tier suppliers, subcontracted units, down to the informal sector. Companies should map their entire supply chain and provide transparency about their supplier base.
- ❑ **Transparency** is an important prerequisite for enabling different actors along the supply chain to address labour rights violations and to improve working conditions. Brands and retailers should share information about first- and further-tier suppliers, including factory names, possible alternative factory names, locations, whether they are strategic suppliers, the duration of the supplier relationship, etc. Companies should communicate openly about monitoring and improvement processes; including reporting about specific audit findings, corrective action plans and progress in action. Companies should facilitate independent verification with strong involvement of trade unions and NGOs.
- ❑ Ensure the establishment of **genuine and credible grievance mechanisms:** To deal with workers' needs and complaints, grievance procedures should be put in place. Such grievance procedures should meet the following core criteria: legitimacy; accessibility; predictability; equality; compatibility with internationally acceptable rights; transparency. Complaint procedures should provide a basis for continuous learning and improvement.

- **Eradicate unsustainable subcontracting arrangements:** Apart from debates on the legality and legal responsibilities in the Brazilian garment industry's manufacturing networks, there is little doubt about the lack of social sustainability of several production arrangements. In this context, it is up to Inditex and other fashion retailers to review subcontracting practices that bring workshops with precarious working conditions into their supply chain.

These practices should include a growing selection of suppliers that do not adopt outsourcing as a core business strategy. Shorter supply chains can effectively reduce the incidence of violations in the garment industry, avoiding the invisibility of the working conditions usually associated with subcontracting arrangements.

The UN Guiding Principles on Business and Human Rights describe human rights due diligence processes as an essential way to implement the corporate responsibility to respect human rights. As part of their Human Rights Due Diligence, retailers should assess to what degree its operating model is driving suppliers to outsource production to other workshops. In order to be able to respond to the latest fashion trends and to ensure that new items arrive at stores continuously, suppliers need to be extremely flexible. To meet tight deadlines or to be able to complete unanticipated or last-minute orders, manufacturers may subcontract certain production processes or even shift complete orders to other factories and workplaces, without informing the buyer.

- **Sustainable business practices:** Purchasing policies and practices should enable – and not inhibit – its suppliers from being decent employers. This should include:
 - a pricing policy that takes into account the social and environmental quality of sourced products;
 - building long-term, stable buyer-supplier relationships;
 - incorporating good production planning, including reasonable supply lead times, predictability of orders and minimising last-minute changes;
 - establishing effective communication between sourcing, financial and design divisions to make sure that the consequences of certain decisions, such as design changes and urgent orders, are understood.

Annex I

Examples of lawsuits filed by workers against Zara Brasil's suppliers and subcontractors

SOMO and Repórter Brasil had access to the list of suppliers of Zara Brasil. According to the requirements of the Conduct Adjustment Agreement, Zara Brasil must send an updated version of its supplier list to the Brazilian authorities every six months. The table below includes a number of labour lawsuits filed by workers employed at suppliers and subcontractors included on Zara's supplier list. The information was retrieved from publicly available judicial databases.¹²⁶

The labour issues that are the subject of the lawsuits included in the below table occurred in a timeframe between two subsequent updates of the Zara Brasil's supplier list, meaning that Zara Brasil considered these suppliers to be part of its supplier base.¹²⁷

In response to a draft version of this report Inditex stated that at least eight of the companies included in the table below (Rolepam Lavanderia Industrial, José Paulo dos Santos Modas Femininas, Image Confecções de Roupas, Indústria e Comércio de Confecções Morgana, Emphasis Indústria e Comércio Votorantim, Francisco José Ortega Lopes and Multicolor Textil) "were not responsible for any discrepancies with their workers while supplying to Zara Brasil"¹²⁸.

126 The following databases were used: <http://www.trtsp.jus.br/> - Regional Labour Court of São Paulo, 2nd region (capital and metropolitan area); <http://portal.trt15.jus.br/> - Regional Labour Court of São Paulo, 15th region (inner cities); <http://www.trt9.jus.br/> - Regional Labour Court of Paraná; <http://www.trt12.jus.br/> - Regional Labour Court of Santa Catarina; <http://www.trt24.jus.br/> - Regional Labour Court of Mato Grosso do Sul. Besides, complementary information was also obtained in the Official Gazettes of this respective Courts.

127 The only exception refers to the subcontracted company Bellos Jeans Indústria e Comércio Ltda – ME. This company appears in Zara's supplier list from February 2012, but not in the subsequent update (August 2012). Nevertheless, information in the lawsuits researched state that the Zara's first tier supplier only stopped to subcontract services to the company in July 2012.

128 Inditex, "Inditex comments on SOMO and Repórter Brasil report", 3 July 2014.

Supplier

Rolepam Lavanderia Industrial Ltda. (subcontracted)

Issues related to the lack of payment of wages and social benefits

Since May 2012, at least 32 employees had 1st-instance court rulings sentencing the company to paying amounts ranging from two to six months of unpaid wages. Rulings also point out that Rolepam stopped depositing the so-called Guarantee Fund for Time of Service (FGTS), social security contributions, compensation for unused vacation time and other worker benefits required by law.

Amount due to workers¹²⁹

367 thousand reais (112 thousand euros)

Supplier

José Paulo dos Santos Modas Femininas ME (subcontracted)

Issues related to the lack of payment of wages and social benefits

The Labour Court in the city of Ferraz de Vasconcelos ordered the company to pay three months of wages owed, between June and August 2012, to two sewers. The workshop was also sentenced to pay compensation for unused vacation, FGTS and other worker benefits not paid.

Amount due to workers

25 thousand reais (7.6 thousand euros)

Supplier

Bellos Jeans Indústria e Comércio Ltda - ME (subcontracted)

Issues related to the lack of payment of wages and social benefits

In July 2013, the company was convicted for wages not paid to one of its workers between February and April 2012. The decision of the 7th Labour Court in the city of Londrina also pointed out unpaid FGTS, severance and pension contributions.

Amount due to workers

6 thousand reais (1.8 thousand euros)

Supplier

Lumina Industria de Roupas Ltda - ME (subcontracted)

Issues related to the lack of payment of wages and social benefits

The company judicial agreement to compensate an employee. In addition to unpaid worked time, compensation included values regarding proportionate vacation, 13th month salary and FGTS owed by the employer.

Amount due to workers

4.3 thousand reais (1.3 thousand euros)

¹²⁹ Amounts described in convictions or judicial conciliations. All the amounts in the Annex might also include amounts linked to other labour rights violations related to the lawsuit.

Supplier

ND Confeccões Limitada - ME (subcontracted)

Issues related to the lack of payment of wages and social benefits

In 2012, seven workers filed lawsuits against the workshop, which dismissed the sewers and stopped operating without paying the severance package required by law. Through conciliation agreements, the employer accepted to compensate the workers for this and for unpaid FGTS.

Amount due to workers

12 thousand reais (3.7 thousand euros)

Supplier

Image Confeccões de Roupas Ltda - ME (subcontracted)

Issues related to the lack of payment of wages and social benefits

The company signed conciliatory agreements with at least 12 employees between 2012 and 2013. The agreements are related to payment of wages, vacations and FGTS owed to employees.

Amount due to workers

16.5 thousand reais (5 thousand euros)

Supplier

Pantex Confeccoes Ltda - Epp (subcontracted)

Issues related to the lack of payment of wages and social benefits

The Regional Labour Court of Paraná has records of the company's conciliatory agreements with at least 30 employees between 2012 and 2013. They refer to payments of wages, social security contributions, vacations and FGTS owed to employees.

Amount due to workers

47.5 thousand reais (15.5 thousand euros)

Supplier

Simetria Fashion Confeccoes Ltda - ME (subcontracted)

Issues related to working hours

The company was convicted for not paying overtime regularly worked – every Monday, Wednesday and Friday – by one of its former sewers employed between November 2011 and November 2012. In those three days, work hours stretched from 8:30 am to 8:30 pm with only a 45-minute break. She also worked three Saturdays each month, totalling about 58 hours worked in these weeks. The ruling considered the record of hours worked kept by the company unreliable. Depositions by workers claim that “the timecard used to be collected at 17:18 by the supervisor, who recorded the exit of employees even though they remained working.”

Amount due to workers

5 thousand reais (1.5 thousand euros)

Supplier

Kabriolli Industria e Comercio de Roupas Ltda - Epp (direct supplier)

Issues related to working hours

The 5th Labour Court in the city of Campo Grande ordered the company to pay a female employee who usually worked overtime. In December 2012, she worked periods of over 11 hours per day and 63 hours per week, exceeding the legal limit.

Amount due to workers

2 thousand reais (600 euros)

Supplier

Saltexil Ltda - ME (subcontracted)

Issues related to working hours

The company was sentenced at 1st instance to pay for overtime worked but not paid to four of its former female employees between 2010 and 2013. One of them worked 132 hours of overtime that were not paid by the employer.

Amount due to workers

10 thousand reais (3 thousand euros)

Supplier

José Paulo dos Santos Modas Femininas ME (subcontracted)

Issues related to working hours

The 1st Labour Court in the city of Ferraz de Vasconcelos sentenced the company to pay a female employee for overtime worked before September 2012 and not paid. They totalled nearly 10 hours per week.

Amount due to workers

25 thousand reais (7.6 thousand euros)

Supplier

Trama Z Beneficialmento Têxtil Ltda (subcontracted)

Issues related to working hours

The company was sentenced by the 3rd Labour Court in the city of Blumenau to pay a female employee who worked at the workshop between 2011 and 2013 one hour of overtime a day worked from Monday to Friday.

Amount due to workers

8 thousand reais (2.4 thousand euros)

Supplier

Indústria e Comércio de Confeções Morgana Ltda ME (subcontracted)

Issues related to working hours

In 2013, in a lawsuit filed by one of its employees, the company was convicted for allowing its employees intervals for lunch of not more than 30 minutes. In any continuous work exceeding six hours, Brazilian law requires a minimum of one hour for resting or eating.

Amount due to workers

2.5 thousand reais (760 euros)

Supplier

Emphasis Indústria e Comércio Votorantim Ltda (direct supplier)

Issues related to irregular employment

In March 2013, the 4th Labour Court in the city of Sorocaba convicted the company for deviation from job description. Registered as "general assistant", an employee worked as an ironer since her admission (May 2011) until February 2012, but she was paid less than others doing the same task.

Amount due to workers

5 thousand reais (1.5 thousand euros)

Supplier

Saltexil Ltda - ME (subcontracted)

Issues related to irregular employment

The sewing workshop was convicted in April 2013 for employing labour without regular employment documents. The Labour Court in São Miguel do Oeste, SC, agree to the claim of a former sewer of the company, who said it had worked for the workshop for a month, in July 2012, before it was formally registered as an employee.

Amount due to workers

5.1 thousand reais (1.6 thousand euros)

Supplier

Bellos Jeans Indústria e Comércio Ltda - ME (subcontracted)

Issues related to irregular employment

A former worker of the company claimed to have had her employment documents registered only in April 2012, despite having actually started working in February of that year. In June 2013, the Paraná Regional Labour Court ordered the company to rectify the date of admission and pay due social benefits regarding the irregular work period.

Amount due to workers

6 thousand reais (1.8 thousand euros)

Supplier

Francisco José Ortega Lopes EPP (subcontracted)

Issues related to pregnancy discrimination

In February 2013, the Labour Court decided in favour of an employee who, after being fired during pregnancy, requested her rehiring by the company. Subsequently, in May 2013, the manufacturer signed an agreement with the employee, undertaking to pay compensation for the job guarantee period not enjoyed.

Amount due to workers

3.8 thousand reais (1.2 thousand euros)

Supplier

Multicolor Têxtil Ltda (subcontracted)

Issues related to pregnancy discrimination

In October 2012, the company committed itself under a judicial agreement to compensate an employee for the pregnancy-related job guarantee she was not granted. The agreement, approved by the Labour Court the city of Rio do Sul also determined the readmission of the employee, then in the 8th month of pregnancy.

Amount due to workers

3 thousand reais (920 euros)

Supplier

Marcel Br Industria e Comercio de Confeccoes Ltda (direct supplier)

Issues related to pregnancy discrimination

In February 2013, a pregnant employee went to the Courts because, a few days earlier, she had her work experience contract terminated with the company. In an agreement approved by the 28th Labour Court in the city of São Paulo the company pledged to rehire the worker.

Amount due to workers

–

Supplier

Joao Reinert Textil Ltda - ME (direct supplier)

Issue related to safety in the work environment

In July 2013, the 4th Labour Court in the city of Blumenau approved an agreement between the company and one of its former female employees. It provided for the payment of a compensation for an accident at work. In a court deposition in November 2012, a representative of João Reinert Têxtil testified that the company does not have an Internal Committee for the Prevention of Accidents (Comissão Interna de Prevenção de Acidentes, CIPA48) or a safety technician or engineer. He also admitted that “employees have no safety training”.

Amount due to workers

12 thousand reais (3.7 thousand euros)

Supplier

Saltexil Ltda - ME (subcontracted)

Issues related to verbal and physical abuse

In April 2013, the Labour Court in the city of São Miguel do Oeste, ordered Saltexil to compensate a former apprentice who was only 16 years old. She reported having suffered verbal and physical abuse from supervisors and co-workers in the second half of 2012.

Amount due to workers

2 thousand reais (610 euros)

Supplier

Francisco José Ortega Lopes EPP (subcontracted)

Issues related to verbal and physical abuse

In October 2013, the Labour Court in the city of Itapetininga approved an agreement between the workshop and one of its sewers as compensation for moral damages. According to her deposition, the workshop's supervisor used to give employees pejorative nicknames such as "idiot" and "repugnant". A former sewer for the company confirmed the use of offensive terms "as a way to impose authority".

Amount due to workers

1.2 thousand reais (370 euros)

More information



Flawed Fabrics October 2014 – P. Overeem, M. Theuws

This report highlights serious labour rights and human rights violations faced by girls and young women employed in the Tamil Nadu spinning industry in South India, which is a major hub in the global knitwear sector, supplying some of the big name clothing brands including C&A, HanesBrands, Mothercare and Primark.



Fact sheet forced labour September 2013 – P. Overeem, M. Theuws

Fact sheet about forced labour in the textile and garment supply chain. It offers examples of different types of forced and bonded labour. Recommendations are made for garment buying companies to recognise cases of forced labour in their supply chains and to act upon these practices.



Fatal fashion March 2013

M. Theuws, M. van Huijstee, P. Overeem, J. van Seters (SOMO), T. Pauli (CCC)

This report describes two recent factory fires ravaging the facilities of clothing manufacturers in Pakistan and Bangladesh. The report demonstrates the urgent need for immediate and structural changes in the practices of government and business actors in the global garment industry, in accordance with the internationally recognised state duty to protect human rights and the corporate responsibility to respect human rights.



How to use the UN Guiding Principles November 2012

M. van Huijstee, V. Ricco, L.Ceresna-Chaturvedi

This guide aims to provide concrete support, guidance and a uniform reference framework for civil society organisations (CSOs) to use the United Nations Guiding Principles to address the responsibility of business to respect human rights and thereby support local communities, workers and other rights holders to ensure fulfilment of their human rights.



Maid in India April 2012 – P. Overeem, M. Theuws (SOMO), M. Peepercamp, G. Oonk (ICN)

This report present findings on the labour conditions in the South Indian garment and textile industry. In Tamil Nadu young women workers continue to suffer exploitative working conditions while making garments for Western brands. Thousands of girls work under recruitment and employment schemes that amount to bonded labour.



Captured by Cotton May 2011 – P. Overeem, M. Theuws (SOMO), N. Coninck (ICN)

This report highlights several labour rights violations faced by girls and young women employed under the Sumangali Scheme in the Tamil Nadu garment industry. As the Sumangali Scheme equals bonded labour, ICN and SOMO denounce the Sumangali Scheme as outright unacceptable and are of the opinion that sourcing companies have a responsibility to ensure that workers' rights are respected throughout their supply chain.

From moral responsibility to legal liability?

Modern day slavery conditions in the global garment supply chain and the need to strengthen regulatory frameworks: The case of Inditex-Zara in Brazil

In August 2011, Brazilian inspectors found 15 immigrants working and living under deplorable conditions in two small workshops in São Paulo. Workers had to work for long days – up to 16 hours – and were restricted in their freedom of movement. The inspectors later concluded that the conditions in the two workshops were to be classified as ‘analogous to slavery’. The workers were sewing clothes for Zara, a brand of Inditex, the world-renowned fast fashion pioneer from Spain. According to the inspection report, Zara Brasil exercised directive power over the supply chain and should be held legally responsible for the situation of the rescued workers.

Zara Brasil faced several sanctions: it was fined for 48 different infractions found during the inspection, and the company risked entering the so-called ‘dirty list’ of slave labour - a public registry of individuals or enterprises caught employing workers under conditions analogous to slavery. The ILO considers the dirty list to be an international example of good practice in fighting forced labour. However, Zara Brasil has challenged the legitimacy of the dirty list as a tool in court as a means of fighting the sanctions it faced. The current report questions this litigation strategy, and makes recommendations to strengthen the Brazilian regulatory framework, including the introduction of supply chain liability.

