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Global Labor Justice

Initial written submission

Protecting Human Rights During and After the COVID-19 Pandemic – Response to Joint Questionnaire by Special Procedure Mandate Holders

This input is provided by Global Labor Justice. We welcome the decision of the Special Procedure mandate holders to focus their forthcoming reports to the United Nations Human Rights Council and the General Assembly regarding the impact of the COVID-19 pandemic on the enjoyment of human rights. We appreciate the opportunity to provide input and look forward to further contributing to the drafting process.

In line with the increasingly prominent norm of corporate accountability for labor standards in global supply chains within transnational governance, including international regulation, market-based, civil liability, and domestic regulation regimes,¹ the submission provides evidence on the following key points pertaining to fast fashion production line workers in Asia, a majority female workforce with intersecting vulnerabilities associated with migrant status, living in poverty, and belonging to marginalized communities:

- I. Human Rights Impacts of Fast Fashion Brand Purchasing Practices During COVID-19 on Women Workers on Asian Fast Fashion Supply Chains
 - A. Risk factors for human rights impacts based on fast fashion brand purchasing practices predating/during COVID-19

¹ Genevieve LeBaron & Andreas Rümke, Steering CSR Through Home State Regulation: A Comparison of the Impact of UK Bribery Act and Modern Slavery Act on Global Chain Governance, *Global Policy* 8:Suppl. 3 (2017), p15-28. <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12398>, Ashley Feasley, Eliminating Corporate Exploitation: Examining Accountability Regimes as Means to Eradicate Forced Labor from Supply Chains, *Journal of Human Trafficking*, 2:1, 15-31 (2016), <https://www.tandfonline.com/doi/abs/10.1080/23322705.2016.1137194>.

- B. Risk factors for human rights impacts based on gendered workforce demographics, including life-stage related risk factors for human rights abuses during COVID-19
 - C. Erosion of social protection floors in garment production countries by fast fashion brand practices of sidestepping tax and regulatory frameworks
 - D. Economic impacts of fast fashion brand purchasing practices during and predating COVID-19 for women workers on Asian fast fashion supply chains, including food insecurity and poverty due to loss of income and unemployment
 - E. Health impacts of government and brand responses to COVID-19 for women workers on Asian fast fashion supply chains
 - F. Freedom of association violations during COVID-19 impacting women workers on Asian fast fashion supply chains
 - G. Exploitative labor practices during COVID-19 impacting women workers on Asian fast fashion supply chains
- II. Limitations in Economic Recovery Measures for Women Workers on Asian Fast Fashion Supply Chains
 - III. Recommendations to Transform Working Conditions on Asian Fast Fashion Supply Chains, Address Anticipated Long Term Impacts of COVID-19 on the Human Rights of Women Workers on Asian Fast Fashion Supply Chains

Global Labor Justice Mission

Global Labor Justice is a new strategy hub supporting transnational collaboration among worker and migrant organizations to expand labor rights and new forms of bargaining on global value chains and international labor migration corridors. Global Labor Justice works with grassroots worker and migrant organizations to promote long term change in policy and corporate practice that prevents labor exploitation leading up to and including modern day slavery and promotes innovative accountability structures that respond to the increasingly globalized economy.

Introduction

The unprecedented impacts of COVID-19 are deep and far-reaching, affecting the health and livelihoods of more than 150 million workers in global supply chains and 40 million workers in fast fashion supply chains—a workforce largely made up of women. This submission reviews the gendered impact of COVID-19 on workers in Asian fast fashion supply chains, which

produce primarily consumer apparel and footwear, and comprise 60% of the 40 million garment workers worldwide.

The human rights impacts laid out in this submission affect a majority female workforce with intersecting vulnerabilities associated with migrant status, living in poverty, and belonging to marginalized communities. Some women production line workers are locked out of supply chain employment. This means that they are unable to work and earn wages due to government lockdowns, layoffs, furloughs, and refusal of global brands to pay for existing contracts and orders. Other women workers are locked into supply chain employment – meaning that they are forced to work amidst the pandemic – in order to feed themselves and their families. Whether locked out or locked in, women workers on Asian fast fashion supply chains face a spectrum of violence and other human rights abuses rooted in risks associated with brand purchasing practices, concentration of a majority woman workforce in the lower tiers of supply chain production, and working conditions in supplier factories.

Predating COVID-19, production workers on fast fashion supply chains lived from paycheck to paycheck, without access to healthcare and social protection systems. Lead firms have reaped financial benefits by extracting labor from workers at the lowest possible cost—paying below living wages and sidestepping contributions to national social protection schemes by driving states to compete through deregulation. In short, lead firms on fast fashion supply chains have systematically created and benefited from the precarious conditions of supply chain workers. They are responsible for eroding individual and social safety nets, precipitating the humanitarian crisis facing millions of workers in the wake of the COVID-19 pandemic.

During the COVID-19 pandemic, some women production line workers are locked out of supply chain employment due to government lockdowns, layoffs, and refusal of global brands to pay for existing contracts and orders; other women workers are locked into supply chain employment in order to feed themselves and their families. Whether locked out or locked in, women workers on Asian fast fashion supply chains face a range of human rights violations detailed in the sections that follow.

On the first anniversary of International Labor Organization (ILO) Convention 190 on Violence and Harassment (C190), this submission also directs attention to the relevance of the C190 legal framework in addressing the spectrum of violence facing women workers on fast fashion supply chains. C190 is the first international labor standard to lay out a gender-inclusive approach to addressing violence in the world of work and measures to end GBVH, including addressing risks associated with discrimination, unequal relationships of power and occupational health and safety. These protections apply to all workers, including temporary, contract, home based, and apprentice workers. They extend beyond the workplace to cover commutes and migration for

employment. C190 also recognizes links between domestic violence and the world of work, and recognizes the interconnection between the world of work and regulations and policies that govern not only labor, but also non-discrimination, migration, and criminal law. If broadly ratified, C190 can play a part in supporting women workers and their organizations to demand a world of work free from physical, psychological, sexual, and economic harm. Global Labor Justice urges Special Procedure mandate holders to call for widespread ratification² and implementation of C190.³

Part 1 lays out the human rights impacts of fast fashion brand purchasing practices—both during and predating COVID-19—on women workers on Asian fast fashion supply chains. Social and economic impacts include food insecurity and poverty due to loss of income and employment. Women workers are also facing freedom of association violations, forced labor and other exploitative labor practices, and occupational health and safety risks. These risks are compounded by the systematic erosion of social protection floors in garment producing countries due to fast fashion industry practices of sidestepping tax and regulatory frameworks.

Part 2 explains the limitations in existing economic recovery measures in the garment sector, including government and brand failure to avert and relieve this urgent humanitarian crisis and include a gender lens in their limited responses.

Part 3 provides recommendations for fast fashion brands to transform working conditions on Asian fast fashion supply chains and address the long-term impacts of COVID-19 on the human rights of women workers on Asian fast fashion supply chains. The norm of corporate accountability for labor standards in global supply chains is increasingly prominent within transnational governance, including international regulation, market-based, civil liability, and domestic regulation regimes.⁴ Global Labor Justice urges Special Procedure mandate holders to

² Uruguay was the first country to ratify C190 on December 17, 2019. The governments of Argentina, Belgium, Finland, France, Namibia and Spain have committed to ratifying C190, and the Prime Minister's office in Jordan has indicated that they would look into ratifying C190. Around the world, trade unions have called for the ratification of C190.

³ Global Labor Justice, *Advancing Gender Justice on Asian Fast Fashion Supply Chains Post-COVID-19* (2020), <https://www.globallaborjustice.org/wp-content/uploads/2020/06/Advancing-Gender-Justice-on-Asian-Fast-Fashion-Supply-Chains-Post-COVID-19-Guidance-from-ILO%E2%80%99s-Convention-190-on-its-First-Anniversary-single-page.pdf>.

⁴ Genevieve LeBaron & Andreas Rümke, *Steering CSR Through Home State Regulation: A Comparison of the Impact of UK Bribery Act and Modern Slavery Act on Global Chain Governance*, *Global Policy* 8:Suppl. 3 (2017), p15-28. <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12398>, Ashley Feasley, *Eliminating Corporate Exploitation: Examining Accountability Regimes as Means to Eradicate Forced Labor from Supply Chains*, *Journal of Human Trafficking*, 2:1, 15-31 (2016), <https://www.tandfonline.com/doi/abs/10.1080/23322705.2016.1137194>.

call for fashion brands and other lead firms to uphold accountability for human rights by taking the following urgent action steps:

- Engage in human rights due diligence that identifies risk factors for human rights impacts, including GBVH, and take actions to mitigate adverse impacts
- Protect and promote women workers' associational agency, including their ability to join trade unions at supplier factories and negotiate to address GBVH through collective bargaining and enforceable brand agreements
- Publicly support ratification of ILO Violence and Harassment Convention, 2019 (C190) and uphold binding accountability for C190 obligations by entering enforceable agreements across fast fashion supply chains
- Contribute to maintaining social protection floors in all production countries

As workers, suppliers, and brands work together to rebuild supply chain capacity in the fast fashion sector, these action steps are foundational to a new era of supply chains where brands and their investors are held accountable for responsible business practices. These actions will fundamentally shift the imbalance of power and massive inequalities that have long plagued the global fashion industry.

Human Rights Impacts of Fast Fashion Brand Purchasing Practices During COVID-19 on Women Workers on Asian Fast Fashion Supply Chains

A. Risk factors for human rights impacts based on fast fashion brand purchasing practices predating/during COVID-19

The humanitarian crisis facing 40 million garment workers and their families in the wake of the COVID-19 pandemic is a predictable outcome of the structure of risk distribution across fast fashion supply chains. Industrial uncertainty caused by brand purchasing practices is placed upon workers through flexible work contracts, periods of unemployment when production demand decreases, and low wages.

In the wake of COVID-19, fast fashion brands have disengaged from business relationships on garment supply chains—whether from financial distress due to decreased sales, or perceived opportunities to receive discounted rates from working with alternate supplier factories.⁵ Many fast fashion brands facing demand-side shocks have breached contracts; and cancelled, suspended, amendment or postponed orders that had already been made or planned.⁶

⁵ Center for Global Workers' Rights (CGWR), *Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of the Global Garment Supply Chains* (March 27, 2020), <https://www.workersrights.org/wp-content/uploads/2020/03/Abandoned-Penn-State-WRC-Report-March-27-2020.pdf>.

⁶ SOMO, ECCHR, and PAX, *Responsible disengagement in the time of corona*

Supply-side shocks in the COVID-19 crisis have included inability of suppliers to meet contractual commitments to deliver products because factories have been forced to close by government-imposed lockdowns or delay in raw materials. In these scenarios, brands have refused to pay for orders they have not received or alternately terminated the relationship in order to find another supplier that can deliver the project.⁷

Disengagement in each of these forms—leading to widespread layoffs across production countries—has had severe consequences for garment workers and their families. Workers on production lines live paycheck to paycheck due to industry practices of paying below living wages. Poverty-level wages eclipse the possibility for individual and family savings. Due to national practices in garment producing countries, of subsidizing foreign investment and export processing zones (EPZs), while privatizing health care and gutting social safety nets, workers also do not have access to social protection in times of crisis. The result: millions of garment workers — mostly women — have been left facing severe food, housing, education, and healthcare insecurity during this time of global pandemic.

Additionally, not only do brand production contracts have such low margins that suppliers were left without funds to retain workers or provide subsistence support, but supplier factories—and in turn, production line workers—absorbed the financial impact of penalties by brands for late orders due to raw material delays from China beginning in January, unplanned cost hikes for raw materials due to COVID-19, delayed payments for complete orders, and cancellation of raw material orders from raw material supplier factories.⁸

B. Risk factors for human rights impacts based on gendered workforce demographics

Women workers are disproportionately impacted by rights abuses and violence in garment supply chains in part because they make up the vast majority of fast fashion production workers. Global supply chains created incentives for and took advantage of increasing numbers of women entering paid employment in the formal sector. Profit margins for suppliers and brands were reliant on the profits that came from squeezing women workers and their lack of alternative choices. Despite their numerical majority within the garment sector, women workers remain within low skill level employment and rarely reach leadership positions in their factories and unions.⁹

(April 2020), <https://www.business-humanrights.org/sites/default/files/documents/Time-of-corona.pdf>.

⁷ SOMO, ECCHR, and PAX, *Responsible disengagement in the time of corona*

(April 2020), <https://www.business-humanrights.org/sites/default/files/documents/Time-of-corona.pdf>.

⁸ Center for Global Workers' Rights (CGWR), *Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of the Global Garment Supply Chains* (March 27, 2020),

<https://www.workersrights.org/wp-content/uploads/2020/03/Abandoned-Penn-State-WRC-Report-March-27-2020.pdf>.

⁹ Asia Floor Wage Alliance (AFWA) et al., *Gender Based Violence in the Gap Garment Supply Chain* (2018a), <http://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf>.

Asia Floor Wage Alliance (AFWA) et al., *Gender Based Violence in the H&M Garment Supply Chain* (2018b), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-HM-May-2018.pdf>.

Rise in employment of contract workers on fast fashion production lines has been attributed to buyer purchasing practices. Downward pressure on prices and increasingly unpredictable seasonal variation in production, require garment suppliers to employ a flexible, low-wage workforce. Contract workers cost less to employ per unit, often receive lower wages, rarely receive non-wage benefits, including paid leave and social security, and can be fired according to shifting employer needs.¹⁰ These terms of employment leave women contract workers particularly vulnerable to exploitation when compared to directly employed workers.¹¹

With few exceptions, women workers on fast fashion production lines hold low-wage, temporary positions. In many countries, internal or international labor migrants make up the majority of the workforce. Migrant women workers enter the labor market in order to contribute resources to financially distressed households. International, interstate, and inter-district migrants incur costs associated with migration for employment, which may include costs associated with transportation, housing in production areas, and displaced costs associated with caring for children, elderly, and unwell members of the household.

Notwithstanding these realities, women's employment changed household budgets which became dependent on this income- especially but not only in women headed households. In short, fast fashion production workers are particularly financially vulnerable due to their socioeconomic status, costs associated with migration, and concentration in low wage temporary work that pays below living wages and precludes the possibility of savings. These risk factors for extreme financial vulnerability have compounded the impact of COVID-19 on production line workers who have faced extreme financial distress with no personal or social safety net, or have alternately persisted in working despite COVID-19 related occupational health and safety risks.¹²

Life-stage related risk factors for human rights abuses during COVID-19

Prior to and during the COVID-19 crisis, older women face higher risks of termination and economic violence associated with loss of livelihood. It is common practice across the industry to fire women workers before they are eligible for seniority benefits.¹³ Older women may also

Asia Floor Wage Alliance (AFWA) et al., *Gender Based Violence in the Walmart Garment Supply Chain* (2018c), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-Walmart-25-May-2018.pdf>, Global Labor Justice and Asia Floor Wage Alliance, *End Gender Based Harassment and Violence: Pillar 1 - Gender Justice on Garment Global Supply Chains: An Agenda to Transform Fast-Fashion* (2019), https://asia.floorwage.org/wp-content/uploads/2019/10/End-GBVH_GLJ_AFWA-2019.pdf.

¹⁰ Ibid.

¹¹ Man-Kwun Chan, *Contract Labour in Global Garment Supply Chains*, WIEGO (2013), <https://www.wiego.org/publications/contract-labour-global-garmentsupply-chains>.

¹² AFP, 'Starving' Bangladesh garment workers protest for pay during lockdown, RTL Today (April 13, 2020), <https://today.rtl.lu/news/world/a/1500826.html>.

¹³ Asia Floor Wage Alliance (AFWA) et al., *Gender Based Violence in the Gap Garment Supply Chain* (2018a), <http://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf>. Asia Floor Wage Alliance (AFWA) et al., *Gender Based Violence in the H&M Garment Supply Chain* (2018b), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-HM-May-2018.pdf>.

be unable to maintain the rigor of extremely high production targets, furthering the preference among supplier factory management for young women workers. Due to the unprecedented scale of layoff during COVID-19 and in its aftermath, it is likely that older women workers will be largely excluded from the production line workforce. Families typically rely on the incomes of older women within the family as an established resource stream, while younger women who enter the workforce will bring in a new income stream.

Widespread layoffs of senior women workers may have significant consequences for the workforce at large: an erosion of tacit industrial knowledge within the workforce, that stands to increase the vulnerability of young women workers to labor exploitation and abuse. Suppliers have also used the excuse of COVID-19 to retrench women trade unionists as a form of union busting.

Whereas older women workers are being forced out of supply chain employment, young girls are increasingly entering the workforce due to school closures, inability to pay school fees, and limitations in accessing digital education in resource-poor households. AFWA reports from the ground confirm increased recruitment of young girls, and requirements that they remain locked into factory hostels.

Younger, unmarried women are particularly vulnerable to sexual harassment from both male managers and coworkers. In factories where majority male supervisors and line-managers oversee an overwhelmingly female workforce, male monopoly over authority can contribute to a culture of impunity around sexual violence and harassment. Daily wage contract workers, migrant women, single women, and women from socially marginalized communities may be at increased risk of violence within the factory.^{14 15}

Mothers of young children have also experienced heightened financial distress during COVID-19. In some regions in India, they have been unable to return to work since legally mandated child care facilities have been temporarily stopped. This loss of employment threatens the economic security of the family.¹⁶

Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the Walmart Garment Supply Chain (2018c), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-Walmart-25-May-2018.pdf>.

¹⁴ Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the Gap Garment Supply Chain (2018a), <http://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf>.

Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the H&M Garment Supply Chain (2018b), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-HM-May-2018.pdf>.

Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the Walmart Garment Supply Chain (2018c), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-Walmart-25-May-2018.pdf>.

¹⁵ Shikha Silliman Bhattacharjee, Fast fashion, production targets, and gender-based violence in Asian garment supply chains, in Labour, Global Supply Chains, and the Garment Industry in South Asia: 195-215 (Sanchita Saxena ed., 2020).

¹⁶ Asia Floor Wage Alliance (AFWA), Brands' Responsibility in COVID-19 Humanitarian Crisis: Contribute to Garment Workers' Relief (April 2020a), <https://asia.floorwage.org/wp-content/uploads/2020/04/Brand-SRC-forGarment-Workers-Impacted-by-COVID-19.pdf>.

C. Erosion of social protection floors in garment production countries by fast fashion brand practices of sidestepping tax and regulatory frameworks

In fast fashion and other supply chains, emerging economies subsidize brands, retail platforms, and consumers at the cost of workers and the environment in manufacturing countries. As governments in production countries compete to expand their production base and maintain foreign exchange earnings, the organization of fast fashion supply chains allows brands and retail platforms to sidestep responsibility for the impacts of high quality low cost products on workers and the environment.¹⁷ Lead firms sidestep accountability for upholding working standards and contributing to social protection frameworks by locating production in free trade zones, and paying wage standards that fall below living wages. These long standing business practices erode both personal and social safety nets for workers by leaving production line workers living paycheck to paycheck without supporting personal savings, and transferring the onus of maintaining social protection to production countries.

D. Economic impacts of fast fashion brand purchasing practices during and predating COVID-19 for women workers on Asian fast fashion supply chains, including food insecurity and poverty due to loss of income and unemployment

Between March and May 2020, governments in Asian garment production countries commonly shifted between a range of lockdown approaches—requiring workers to respond to rapidly evolving contexts.¹⁸ Government lockdowns, furthermore, are just one of the many factors that have left production line workers locked out of employment. Workers have also been locked out of employment due to brand disengagement that has precipitated factory closure and downsizing.

In lockdown scenarios, garment workers have faced layoff patterns that reflect existing structures of social discrimination. Asia Floor Wage Alliance (AFWA) has identified a range of factors that inform current employment status for garment workers during the COVID-19 crisis, including nature of contract, spatial proximity to factories, age, gender, union membership, minimum wage level, and religion.¹⁹

¹⁷ Padmini Swaminathan, *The 'Costs' of 'Success': Re-visiting the Knitwear Cluster of Tiruppur*, in Dev Nathan ed., *Oligopolies, Subsidies, and Challenges in Global Production: Labour Mining, Environmental Damage, and the Low-Level Trap in Garment Production* (Cambridge: Cambridge University Press, 2020 forthcoming).

¹⁸ The range of lockdown response include: *Total national lockdowns* where all services except essential services are suspended; *Partial national lockdown* where certain services, including garment and other production factories are permitted to operate in select regions; *Localized lockdown* where particular cities, states, or regions have a lockdown in place but this does not correspond with a national policy; *Partial localized lockdown* where some services are suspended but factory work may still be permitted; and *Lockdown (total, partial, or localized)* including border closure, where national or state governments have closed at least one territorial border.

¹⁹ Asia Floor Wage Alliance (AFWA), *Brands' Responsibility in COVID-19 Humanitarian Crisis: Contribute to Garment Workers' Relief* (April 2020a), <https://asia.floorwage.org/wp-content/uploads/2020/04/Brand-SRC-forGarment-Workers-Impacted-by-COVID-19.pdf>.

Widespread unemployment has led to hunger and malnutrition among workers and their families' due to layoffs, furloughs, non-payment of wages (Bangladesh, Cambodia, India, Indonesia, Sri Lanka, Thailand,²⁰ and unpaid mandatory quarantine following festivals.²¹

E. Health impacts of government and brand responses to COVID-19 for women workers on Asian fast fashion supply chains

- *Occupational health and safety risks to fast fashion supply chain workers locked into employment due to urgent economic need.*

Fast fashion production line workers report working in both lockdown and partial lockdown scenarios. As documented by AFWA,²² even during partial and even total national lockdowns in India and Sri Lanka, some garment factories operated formally with state permits to produce Personal Protective Equipment (PPE) kits and hazmat suits for healthcare workers. AFWA also documented violations of these policies. For instance, in Bengaluru, India, a garment factory continued producing garments under a permit for PPE production until it was forced to shut down following police detection.

The lack of PPE and social distancing protocols in production factories are exposing workers and their families, including young children, to COVID-19 in the workplace and during commutes to work.²³ Workers have tested positive for COVID-19 after requests for masks were denied by supplier factory management.²⁴

²⁰ Sandar Nyan, 'I guess we're just supposed to starve' – laid-off Myanmar migrants denied wages and trapped by Thailand in lockdown, Myanmar Now (May 14, 2020), <https://myanmar-now.org/en/news/i-guess-werejust-supposed-to-starve-laid-off-myanmar-migrants-denied-wages-andtrapped-by>, Asia Floor Wage Alliance (AFWA), Brands' Responsibility in COVID-19 Humanitarian Crisis: Contribute to Garment Workers' Relief (April 2020a), <https://asia.floorwage.org/wp-content/uploads/2020/04/Brand-SRC-forGarment-Workers-Impacted-by-COVID-19.pdf>.

²¹ Sen David, Mandatory quarantine to help prevent coronavirus spread, Khmer Times (April 17, 2020), <https://www.khmertimeskh.com/50714122/mandatory-quarantine-to-help-prevent-coronavirus-spread/>.

²² Asia Floor Wage Alliance (AFWA), The Emperor Has No Clothes: Garment Supply Chains in the Time of Pandemic, Issue 2 (2020), <https://asia.floorwage.org/wpcontent/uploads/2020/05/The-Emperor-Has-No-Clothes-Issue-II-May.pdf>.

²³ Brandon Wiggins, Bangladesh Garment Workers Forced to Return to Factories Despite Covid-19 Fears, Global Citizen (May 12, 2020), <https://www.globalcitizen.org/en/content/bangladesh-garment-factories-coronavirusunsafe/>.

²⁴ Kimi Colney, Migrants from the northeast are stuck between hostile employers and unemployment at home, The Caravan (May 19, 2020), <https://caravanmagazine.in/communities/migrants-from-the-northeast-are-stuckbetween-hostile-employers-and-unemployment-at-home>.

- *Severe health consequences for unemployed migrant workers traveling home, including dehydration and death.*²⁵

In both India and Sri Lanka, migrant garment workers were left stranded in production hubs, neither earning wages to support themselves and their families nor able to return to their homes.²⁶ In the Free Trade Zones (FTZs) in Wathupitiwala and Katunayake, Sri Lanka, thousands of women workers were stranded in boarding houses and residential quarters for weeks before being released and transported home²⁷ (Colombo Page 2020). In India, migrant workers and their families walked hundreds of kilometers in sweltering heat, without access to food and water to reach their villages.²⁸

F. Freedom of association violations during COVID-19 impacting women workers on Asian fast fashion supply chains

- *State violence against workers who call for wage and other forms of economic relief*
 - **Bangladesh:** Workers faced physical harm from police use of batons and tear gas in response to workers protest calling for salary during lockdown.²⁹
 - **Myanmar:** Labor union leaders have been arrested and imprisoned on criminal charges for challenging layoffs.³⁰
- *Retaliation against workers who call for personal protective equipment and/or paid leave due to COVID-19 occupational health and safety risks*

²⁵ The Wire Staff, Without Food for Days and in Searing Heat, Migrants Die on Shramik Special Trains, The Wire (May 27, 2020),

<https://thewire.in/labour/without-food-for-days-and-in-searing-heat-migrants-die-on-shramikspecial-trains>.

²⁶ Asia Floor Wage Alliance (AFWA), The Emperor Has No Clothes: Garment Supply Chains in the Time of Pandemic, Issue 2 (2020),

<https://asia.floorwage.org/wpcontent/uploads/2020/05/The-Emperor-Has-No-Clothes-Issue-II-May.pdf>.

²⁷ ColomboPage News Desk, "Army Troops with FTZ authorities transport over 5100 stranded FTZ Employees Home," http://www.colombopage.com/archive_20A/Mar28_1585336506CH.php (March 28, 2020).

²⁸ Saurabh Sharma and Sumit Khanna, India's migrant workers face long walk home amid coronavirus lockdown, Reuters (March 26, 2020), <https://www.reuters.com/article/us-health-coronavirus-india-migrant-labo/indiasmigrant-workers-face-long-walk-home-amid-coronavirus-lockdownidUSKBN21D2O0>.

²⁹ Aklakur Rahman Akash, 7th Anniversary of Rana Plaza Tragedy: Covid-19 adds to woes of survivors, The Daily Star (April 24, 2020), <https://www.thedailystar.net/city/news/7th-anniversary-rana-plaza-tragedy-covid-19-adds-woessurvivors-1896163>.

³⁰ Kyaw Lin Htoon, Is COVID-19 a smokescreen for labour abuses, Frontier Myanmar (May 27, 2020), <https://frontiermyanmar.net/en/is-covid-19-smokescreen-for-labour-abuses>, Elizabeth Patton, Union Garment Workers Fear 'an Opportunity to Get Rid of Us,' N.Y. Times (May 8, 2020), <https://www.nytimes.com/2020/05/08/fashion/coronavirus-garment-workers-asia-unions.html>.

- **Myanmar:** Fast fashion production workers were laid off for exercising their rights to freedom of association and engaging in protests. Union leaders were arrested and imprisoned on criminal charges. At least 300 union members were fired under the pretext of COVID-19 cutbacks, and replaced by non-union workers. Workers demanding their wages surrounded their employers' car when the employer was leaving failed negotiations. Four workers were physically injured.³¹
- **India:** Fast fashion production workers who demanded personal protective equipment were physically assaulted by a factory owner outside their homes.³²
- **Sri Lanka:** Fast fashion production workers were fired for requesting legally mandated bonus payment.³³

G. Exploitative labor practices during COVID-19 impacting women workers on Asian fast fashion supply chains

- *Extended working hours without overtime pay*

The government of India has required some categories of industrial workers to extend workdays to 10/12 hours without overtime pay to make up for the limited workforce amidst lockdown. This policy violates international labor standards on working time, including the ILO Hours of Work (Industry) Convention (C1), the very first ILO Convention adopted in 1919³⁴.

- *Deprivations of liberty at the hands of factory management that present risk factors for forced labor*

In India, migrant workers have been locked into factories without access to basic necessities.³⁵ Worker organizations are also reporting a spike in recruitment of young

³¹ Kyaw Lin Htoon, Is COVID-19 a smokescreen for labour abuses, Frontier Myanmar (May 27, 2020), <https://frontiermyanmar.net/en/is-covid-19-smokescreen-for-labour-abuses>, Andrew Tillett-Saks (@AndrewTSaks), "Another @zara and @mango factory in #Myanmar, Rui-Ning Factory, is using #Covid_19 as an excuse to union-bust. Union president in video and nearly 300 fellow union members dismissed. Wealthy fashion brands seeing global pandemic as opportunity to break garment unions. #1u" (April 16, 2020, 3:57pm) (Tweet), <https://twitter.com/AndrewTSaks/status/1250876097836855309>.

³² Kimi Colney, Migrants from the northeast are stuck between hostile employers and unemployment at home, The Caravan (May 19, 2020), <https://caravanmagazine.in/communities/migrants-from-the-northeast-are-stuck-between-hostile-employers-and-unemployment-at-home>.

³³ World Socialist Web Site, Worsening conditions at Hirdaramani garment plants in Sri Lanka (May 16, 2020), <https://www.wsws.org/en/articles/2020/05/16/sril-m16.html>.

³⁴ ILO, *Convention 1 - Hours of Work (Industry) Convention (1919)*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C001.

³⁵ Asia Floor Wage Alliance (AFWA), Brands' Responsibility in COVID-19 Humanitarian Crisis: Contribute to Garment Workers' Relief (April 2020a),

women workers from marginalized communities, and the practice of requiring them to work during lockdown conditions.³⁶

Limitations in Economic Recovery Measures for Women Workers on Asian Fast Fashion Supply Chains

Governments and brands have failed to avert and relieve this urgent humanitarian crisis, and have specifically failed to include a gender lens even in limited responses. According to the UN Global Health Crises Task Force (GHCTF), experience from past outbreaks shows the importance of incorporating a gender analysis into preparedness and response efforts to improve the effectiveness of health interventions and promote gender and health equity goals.³⁷ Despite these guidelines, the Gender and COVID-19 working group—a global group of researchers, health practitioners, policy actors and advocates engaged in monitoring policy responses to COVID-19³⁸—reports being unaware of any gender analysis by governments in affected countries or in preparedness phases.³⁹

Women make up an estimated 85% of production line workers on fast fashion supply chains. In a sample survey of statements and commitments released by 15 fast fashion brands and retail platforms between March and June 2020, GLJ was unable to find even one reference to the gendered consequences of COVID-19.

Not only are government and brand responses failing to address the gendered effects of COVID-19, but according to the ILO, it is unclear whether macroeconomic policies and measures will even reach the textile, clothing, leather, and footwear industry. It is even less certain if small and medium enterprises (SMEs), and in turn, garment workers, will be able to access financial assistance.⁴⁰ The ILO has also expressed concern that financial responses may

<https://asia.floorwage.org/wp-content/uploads/2020/04/Brand-SRC-forGarment-Workers-Impacted-by-COVID-19.pdf>.

³⁶ Asia Floor Wage Alliance (AFWA), Brands' Responsibility in COVID-19 Humanitarian Crisis: Contribute to Garment Workers' Relief (April 2020a),

<https://asia.floorwage.org/wp-content/uploads/2020/04/Brand-SRC-forGarment-Workers-Impacted-by-COVID-19.pdf>.

³⁷ UN Global Health Crises Task Force (GHCTF), Final Report (2017), <https://www.un.org/en/pdfs/Final%20Report.Global%20Health%20Crises%20Task%20Force.pdf>.

³⁸ Gender and COVID-19 Working Group (CWG), Working Group Resources (2020), <https://www.sfu.ca/fhs/gendercovid/working-group.html>.

³⁹ Clare Wenham, Julia Smith and Rosemary Morgan, COVID-19: the gendered impacts of the outbreak (March 6, 2020), <https://www.thelancet.com/>.

⁴⁰ ILO, COVID-19 and the textiles, clothing, leather and footwear industries (April 8, 2020a), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/briefingnote/wcms_741344.pdf.

disproportionately cushion employers.⁴¹ In short, current approaches stand to deepen gendered labor market, economic, and health inequalities for women garment workers.

Recommendations to Transform Working Conditions on Asian Fast Fashion Supply Chains, Address Anticipated Long Term Impacts of COVID-19 on the Human Rights of Women Workers on Asian Fast Fashion Supply Chains

A. Fast Fashion Brand and Retail Platform Accountability to Address the Humanitarian Crisis Facing Asian Fast Fashion Production Line Workers

The norm of corporate accountability for labor standards in global supply chains is increasingly prominent within transnational governance, including international regulation, market-based, civil liability, and domestic regulation regimes.⁴² Transnational regulatory initiatives include the 2011 United Nations (UN) Guiding Principles for Business and Human Rights⁴³ and revised OECD Guidelines for Multinational Enterprises. Dozens of states have passed legislation addressing corporate accountability for labor standards in global supply chains, including 55 pieces of national legislation ordering mandatory disclosure of labor rights issues in supply chains since 2009.⁴⁴ This emerging custom in international law establishes the obligation of brands and platform retailers like Amazon to act in both immediate and long terms ways to uphold human rights and labor rights across their supply chains.

Accountability for GBVH and other forms of violence on garment production lines is informed by the structure of fast fashion supply chains and retail practices. Fast fashion brands engage in high value market research, design, sales, marketing, and financial services. They typically outsource garment production to supplier companies in production countries. Tier 1 supplier companies may, in turn, subcontract all or some of the production process to smaller supplier factories. While brands and retailers do not carry out production, they drive sourcing and production patterns overseas. Fast fashion purchasing practices from suppliers dictate wages,

⁴¹ Ibid.

⁴² Genevieve LeBaron & Andreas Rümke, Steering CSR Through Home State Regulation: A Comparison of the Impact of UK Bribery Act and Modern Slavery Act on Global Chain Governance, *Global Policy* 8:Suppl. 3 (2017), p15-28. <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12398>, Ashley Feasley, Eliminating Corporate Exploitation: Examining Accountability Regimes as Means to Eradicate Forced Labor from Supply Chains, *Journal of Human Trafficking*, 2:1, 15-31 (2016), <https://www.tandfonline.com/doi/abs/10.1080/23322705.2016.1137194>.

⁴³ OHCHR, *Guiding Principles on Business and Human Rights* (2011), https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁴⁴ Genevieve LeBaron & Andreas Rümke, Steering CSR Through Home State Regulation: A Comparison of the Impact of UK Bribery Act and Modern Slavery Act on Global Chain Governance, *Global Policy* 8:Suppl. 3 (2017), p15-28. <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12398>.

working conditions, and risk factors for violence for production line workers.⁴⁵ This production model has been characterized as a buyer-driven value chain.⁴⁶

Alongside suppliers, unions and governments, fast fashion brands and retailers have a fundamental role to play: They must use their economic leverage and control to ensure that steps to address human rights violations on their supply chains, including by carrying out human rights due diligence to identify, prevent, mitigate, and account for how they address their adverse human rights impacts.

B. Urgent Action Steps for Fashion Brands and Retailers to Uphold Accountability for Human Rights

Global Labor Justice urges Special Procedure mandate holders to call for fashion brands and other lead firms to uphold accountability for human rights by taking the following urgent action steps:

- *Engage in human rights due diligence that identifies risk factors for human rights impacts, including GBVH, and take actions to mitigate adverse impacts*

In order to take action to prevent and mitigate GBVH and other forms of violence on their supply chains, brands and platform retailers must adequately document, analyze, and understand risk factors for human rights impacts, including GBVH, across supply chains. To uphold their supply chain obligations, brands and platform retailers should work with trade unions at the factory, local, national, regional, and global levels to identify and aggregate contextually specific human rights violations, spectrums of violence, and associated risk factors, including risk factors associated with brand purchasing practices and workforce demographics.

Social dialogue and meaningful engagement with trade unions and worker organizations is not only required by decent work standards, but also essential to ensuring that initiatives to address human rights abuses on garment supply chains are informed by worker experiences, accountable to workers, and ensure pathways to redress in cases of retaliation. Accordingly, initiatives that do not include a role for trade unions and worker organizations are not sufficient to catalyze critical transformations of workplace culture.

⁴⁵ Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the Gap Garment Supply Chain (2018a), <http://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf>.
 Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the H&M Garment Supply Chain (2018b), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-HM-May-2018.pdf>.
 Asia Floor Wage Alliance (AFWA) et al., Gender Based Violence in the Walmart Garment Supply Chain (2018c), <https://www.globallaborjustice.org/wpcontent/uploads/2018/05/GBV-Walmart-25-May-2018.pdf>.

⁴⁶ S. Barria, National People's Tribunal on Living Wage for Garment Workers in Asia, Asia Floor Wage Alliance Campaign: Delhi (2014).

- *Protect and promote women workers' associational agency, including their ability to join trade unions at supplier factories and negotiate to address rights violations including GBVH through collective bargaining and enforceable brand agreements*

Freedom of association is fundamental to advancing social justice amidst rising authoritarianism, state violence, and economic recession. Accordingly, it has never been more urgent for brands to take active measures to safeguard fundamental rights to freedom of association and collective bargaining. Social dialogue and meaningful engagement with trade unions and worker organizations is not only required by decent work standards, but also essential to ensuring that initiatives to end GBVH on fast fashion supply chains are informed by worker experiences, accountable to workers, and ensure pathways to redress in cases of retaliation.

Trade unions and allied organizations have issued three levels of demands to fast fashion brands, retailers, and platforms to address the humanitarian crisis faced by millions of garment workers.

Brands must do the following

- End the economic violence facing women workers by paying in full for orders completed and in production
 - Pay supply chain relief contributions (SRCs) to compensate for the income loss resulting from suspension of work for various reasons, including quarantine and order cancellation.⁴⁷
 - Address terms of layoff in content of any future cases of downsizing, retrenchment, and closure by engaging in tripartite negotiations including trade unions, suppliers, and lead firms
- *Publicly support ratification of ILO Violence and Harassment Convention, 2019 (C190) and uphold binding accountability for C190 obligations by entering enforceable agreements across fast fashion supply chains*

Corporate social responsibility (CSR) approaches to addressing GBVH on fast fashion supply chains are not sufficient to address violence and harassment in the world of work. A 2019 study on CSR commitments to living wages and their progress—a commitment that directly addresses a significant risk factor for GBVH—conducted by the Sheffield Political Economy Research Institute (SPERI), lends insight into the limitations of non-binding CSR approaches. SPERI found that corporate commitments to living wages have, for the most part, failed to translate into meaningful action nor results. The study found little evidence that corporations effectively defined,

⁴⁷ Asia Floor Wage Alliance (AFWA), *Brands' Responsibility in COVID-19 Humanitarian Crisis: Contribute to Garment Workers' Relief* (April 2020), <https://asia.floorwage.org/wp-content/uploads/2020/04/Brand-SRC-for-Garment-Workers-Impacted-by-COVID-19.pdf>.

benchmarked, or enforced the payment of living wages to the workers in their global supply chains. Instead, corporations used the rhetoric of living wages to improve public perception of their labor practices while the reality of low-wage work persists on the ground (SPERI 2019).

Meaningful corporate accountability requires brands and retail platforms to uphold C190 obligations to end GBVH and other forms of violence in the world of work by negotiating legally binding, enforceable agreements between brands and trade unions that cover GBVH and freedom of association in the operations of brands' third-party suppliers. These agreements, which are often referred to by their proponents as "enforceable brand agreements" or "EBAs" raise the bar for protection of labor rights in supply chains by replacing brands' voluntary corporate social responsibility ("CSR") programs that have failed to end abuses with legally enforceable obligations to require and ensure that suppliers respect workers' rights.

- *Contribute to maintaining social protection floors in all production countries*

In order to uphold due diligence obligations on their supply chains to prevent economic violence, brands must restructure wealth distribution across their supply chains. This includes making sure their conduct does not create conditions of economic violence by paying living wages and contributing to social protection floors. State and corporate commitments to maintain social protection floors can help to counteract the race to the bottom for workers and the environment by creating a level playing field across countries and sectors to protect workers, promote a fair globalization, social justice and sustainable development.

Social protection and the right to social security have been integral elements of the International Labour Organization's (ILO) mandate since its creation in 1919. The right to social security has been articulated in the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the more recent Social Floors Recommendation, 2012 (No. 202). These long standing commitments are not only particularly urgent in our contemporary context of rising global inequality in the wake of COVID-19, but have also gained increasing traction in global initiatives including the Sustainable Development Goals (SDGs) and the ILO Future of Work, which emphasizes the importance of investing in people's capabilities, including by strengthening social protection (World Social Protection Report 2017-2019).

In 2017, the ILO and the International Trade Union Confederation (ITUC), in collaboration with members of the Global Coalition for Social Protection Floors, initiated the Social Protection, Freedom and Justice for Workers Network aimed at advocating for and defending social protection. The ILO Flagship Programme on Building Social Protection Floors for All, brings together public and private partners, including foundations, enterprises and the public to support governments, workers and employers in the design and implementation of adequate and sustainable social protection systems worldwide (ILO Social Protection and ILO Social Protection Floors).

Calling for an immediate response to COVID-19, including assisting countries in equitably containing the pandemic and economic crises and to begin thinking about an effective strategy for recovery once the virus abates, the ITUC are calling for a Global Fund for Social Protection, led by the ILO and UN Agencies in line with the ITUC vision for a new social contract.

As a strategy hub supporting transnational collaboration among workers' and migrant organizations to expand labor rights and new forms of bargaining on global value chains and international labor migration corridors, Global Labor Justice identifies hypothesis which we test through collaborative research and action experiments that we conduct together with our partners--migrant and worker organizations working on the front lines of advancing labor rights for migrant workers; decent work within global supply chains; and women's empowerment. Our research seeks to shape policy and practice on globalization, race, and migration.

We would welcome the opportunity to provide further input and/or contribute to further related research.

Sincerely,

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