

LIVING DRAFT

# Sector Wide Solutions

## for the sports shoe and apparel industry in Indonesia

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Clean Clothes Campaign and Oxfam Australia  
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## Introduction

This document sets out sector wide solutions for the sports shoe and apparel industry in Indonesia. These solutions are put forward by a network of labour rights groups worldwide (which include consumer groups) who remain concerned about continued labour rights violations in the supply chain<sup>1</sup> of major buyers (retailers and brands ) in Indonesia. The most recent examples have been the cases of mass closures of factories supplying adidas sports shoes and other threatened closures.

The solutions set out in this document were developed as a result of more than a decade of close consultation with numerous unions, non-government organizations, labour lawyers, and various worker organisations, as well as extensive dialogue with government agencies, trans-governmental agencies (like the ILO), factory managers and apparel buyers and retailers. Most importantly, this set of specific solutions and recommendations stems from close observation of recent, disturbing trends towards the degradation of labour standards, including violations of trade union rights in Indonesia.

The solutions set out in this document are a call for companies to ensure that fair and transparent practices are in place in their supply chains and to ensure the key issues affecting Indonesian workers, who in the sportswear and apparel industry are mostly women, are rigorously addressed. This means addressing the three fundamental issues set out in this solutions document *in addition* to efforts companies may already be undertaking to implement (international) labour standards.

In developing these solutions for buyers to implement we recognize that governments, employers and investors have a crucial role to play in upholding workers human rights. It is our belief that these solutions, which build on existing codes<sup>2</sup> and company policies, represent constructive and concrete steps forward. If implemented these solutions will improve workers rights and be positive for the industry as a whole.

## Brief background to Labour Rights in Indonesia

The apparel and shoe manufacturing industry in Indonesian saw relative gains in terms labour standards in the 1990's largely due to legal changes and labour organising taking place within Indonesia. These gains were also supported and facilitated by labour rights campaigns NGOs, unions and consumer groups outside Indonesia.

One of the frequently cited “accomplishments” of the anti-sweatshop push of the 90's is the adoption of codes of conduct by major apparel buyers and the introduction of elaborate factory monitoring or audit schemes.

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<sup>1</sup> Supply chain includes all places where products are made and can include factories of varying sizes, small businesses and homes.

<sup>2</sup> Company codes generally recognise law

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Unfortunately, some of the most fundamental labour concerns have fallen through the cracks of codes and monitoring. Or, as is the case with the recent sudden rise in short-term contract labour, companies appear to be developing new employment schemes that conveniently fit between the cracks and disallow their employees' access to the protection that most of the domestic labour law and company codes of conduct afford.

## Fundamental issues facing Indonesian workers today

The three crucial issues affecting the livelihoods of Indonesian workers in the apparel and sports shoe industry and their ability to claim their rights are:

1. **Freedom of Association, the right to organize & Collective Bargaining: Obstacles to be able to form and join unions**
2. **Short-Term Contract Labour: The rapid increase and misuse of short-term contract labour**
3. **Factory Closures, Severance & Back Pay**

### 1. Freedom of Association, the right to organize & Collective Bargaining

Freedom of Association is the foundation on which all other workplace issues rest and a tool for workers to claim their rights, bargain for fair wages and conditions and to address grievances. When workers have true representation in the workplace they do not always need an outside entity to come in and help solve their problems for them, they have representation and problem solving mechanism in real time and on a scale readily available to all. Despite positive changes towards increased legal protection for union organizing in 1998 in Indonesia, Freedom of Association, the right to organise and collectively bargain remains a right that continues to cause a great deal of antagonism from employers towards many Indonesian workers when workers try to establish trade unions in factories.

Currently buyer purchasing practices require suppliers to produce products fast, cheap, flexibly and to an agreed quality. The impact these practices have in discouraging or preventing freedom of association and the right to organise and collectively bargain, for example by giving rise to the use of short term contracts and frequent closures, cannot be overstated.

### 2. Short-Term Contract Labour

An employee's employment status is very much the backbone of their job – it determines what kind of job security one will have, what kind of rights and benefits one is entitled to by law, and what kind of potential one has for promotion or career development. Having a short term contract, or having no employment contract at all as a short-term or day

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labourer, is one of the most frightening and tenuous positions to be in as a worker. The issue of short-term contract labour has been rapidly gaining momentum in Indonesia; it is increasingly common to find garment factories with 50% or more of the workforce on short-term contract basis, oftentimes despite years of dedicated service by these contract workers. The contract workers are, by definition, disqualified from the rights and benefits of “regular” workers such as paid leave time, associating with the union of your choice, seniority or annual bonuses or any kind of accreditation or benefits that employees are able to accrue over time.

### 3. Factory Closures, Severance & Back Pay

As a general principle closures need to be prevented at all costs.

Where buyers exit from factories and countries, or their suppliers’ have decided to either close factories or shift production elsewhere, along with the manner in which these closures have been carried out has become a major issue for the welfare of workers and communities. Often closures occur abruptly, without adequate notice and without workers being paid compensation or even earned back-pay and national insurance payments.<sup>3</sup>

When considering the issue of factory closures and back pay, it is important to keep in mind that for most workers in the light manufacturing sector the amount of money that one is able to save from day to day is very minimal; often times the severance one gets is the only ‘pension’, safety net or savings that one has to fall back on despite years of dedicated service.

Health insurance is required by law to be paid into either the Jamsostek or equivalent health fund. Jamsostek is the compulsory social security program for most categories of paid workers in Indonesia managed by the government of Indonesia.<sup>4</sup> Jamsostek also provides a health care scheme to workers. Jamsostek administers a membership database and collects contributions from employers. Under Jamsostek the employee will pay [to be inserted] % percent of their wage with the employer paying an equal contribution on top. In the event of a factory closure workers are covered by their health fund for [to be inserted] months/years, after the employment relationship ends.

Oftentimes employers are not making the contributions as required by law and buyers are failing to pick this up during regular monitoring. This means workers may be left without health coverage both while the factory is operating and if it suddenly closes. Whilst the law makes health insurance compulsory, the law also allows the employer to provide a clinic in lieu of enrolment into the Jamsostek health care scheme. Some employers have used this loophole in the law to provide workers with a substandard clinic.

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<sup>3</sup> Managing Responsible Transitions – Guidelines, Revision #1, following the MFA Forum Strategy Discussion, April 20, 2007 (NB. This document is in draft form and may be subject to changes).

<sup>4</sup> Purwoko, Bambang: “The Social Security System in Indonesia” The University of Pancasila at: <http://www.actuaries.org/AFIR/colloquia/Cairns/Purwoko.pdf>. Construction workers, domestic workers and security guards are exempt from coverage under JAMSOSTEK.

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If entire workforces are denied their legal right to proper severance, then entire populations can be left stranded without any savings and may face difficulties in finding alternate employment, sometimes because they are too old and tired. This has the potential of contributing to heated labour strife, development stagnation and perhaps even economic collapse in certain sectors of society. Factory closures have proved particularly devastating in Indonesia the past few years. Dozens of shoe and apparel factories have shut down literally overnight, and to date only one factory has followed complete and proper closure procedures. Most factories have shut down and left thousands unemployed and a debt of millions of dollars in unpaid wages, benefits, and severance.

## Solutions

### *1. Freedom of Association, the right to organize & Collective Bargaining*

These rights are set down in ILO Conventions relating to freedom of association, the right to bargain collectively and the right of workers' representatives not to be discriminated against for their union activities (ILO Conventions 87, 98 and 135 respectively). In accordance with the UN convention on the elimination of all forms of discrimination against women these rights apply without discrimination and equally to men and women.

Buyers sourcing from factories in Indonesia should require and monitor to ensure that the management teams of all of their supplier factories in Indonesia abide by the following practices with respect to freedom of association:

- 1.1 Management should be required to proactively adopt and post a “Freedom of Association Policy” for all their facilities. This policy should state something to the effect that, “this place of employment respects the rights of all employees to associate with any union of their choice, and that employees will not be reprimanded in any way by management if they choose to join a union. Moreover, that management will not tolerate anyone harassing or intimidating union officers or members.” This policy should be read aloud to all employees at least once (for example by a supervisor during a morning meeting) and it should be posted in Bahasa Indonesian language within easy view in several popular locations around the factory grounds.
- 1.2 Management may not assist, inhibit, or interfere in any way with the formation of a union.
- 1.3 Management may not form an employee committee or joint labour-management committee in such a manner that it undermines the role of any duly registered union at that factory.
- 1.4 Management may not intimidate, harass, demote, transfer, promote, or terminate a worker based on their association with a union.
- 1.5 Management must not discriminate between or express favoritism to one union or another, especially at factories where there is more than one legally registered union.

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- 1.6 Management should provide opportunities for unions to disseminate information regarding freedom of association and unions (such as billboard space for posting information or a space near the factory entrance or exit where information can be distributed).
- 1.7 If a union has been in place at a factory since prior to 1998 (when FOA laws changed in substantially in Indonesia) the factory management should ensure that a credible and transparent union membership verification process is conducted to assure that all employees are members of the union as a result of their own free and fair choice.
- 1.8 Management is encouraged to assist with dues check-off if a union requests it, but dues check-off should not automatically continue if the union pre-dates 1998 and there has not yet been a verification process or some other mechanism to assure that all employees have freely and fairly authorized the union to deduct dues from their wages. This recommendation is of particular importance if there is more than one union at a factory.
- 1.9 FOA and the right to organise and collectively bargain are written into the contract between the buyer and their suppliers.

### *Collective Bargaining*

- 1.10 If a union forms, factory managers should enter into good faith negotiations for a collective bargaining agreement. If a factory has more than one union the legal obligation of management is only to negotiate with the majority union, but management should make every effort to consider the minority union's opinion as well.
- 1.11 Buyers should pay a product price that adequately supports the terms and conditions of the negotiated Collective Bargain Agreement (CBA). Where no CBA exists buyers should still follow fair sourcing and pricing practices such that companies are able to comply with internationally recognised labour standards, most of which are referenced in their own codes AND function with a reasonable enough margin through which meaningful collective bargaining can take place.
- 1.12 In addition to an adequate product price buyers commit to exploring incentives for suppliers who respect FOA and CBA agreements and processes. These incentives could include an FOA/CBA premium, increased order volume, long term commitment to the supplier and other possible incentives.
- 1.14 Buyers should make it clear to government authorities they are prepared to ensure a fair product price is paid which leaves room for meaningful collective bargaining at the factory level.
- 1.15 Buyers should ensure information on product price is available to the union to use in collective bargaining negotiations. In order for this to be feasible, both buyers and factory management will have to be more forthcoming with information regarding costs.
- 1.16 Current moves by brands to lean production methods should not intensify pressure on workers or contribute to undermining FOA and CBAs.
- 1.17 Buyers have a relationship with both the workers who make their products as well as the factory management who employ these workers. As such, buyers have a responsibility to give workers, through their union representatives, access to pricing information so that that the unions can effectively negotiate collective bargaining agreements. Without this information, it remains extremely difficult for workers to

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negotiate on an equal basis with employers and workers will continue to be denied their rights.

### *2. Short-term contract Labour*

Buyers should strongly discourage the use of short-term contract labour as this status undermines factories abilities to comply with Indonesia and international standards on freedom of association and the right to organise and collectively bargain. Short term contract labour undercuts all employee rights and benefits.

Buyers sourcing from factories in Indonesia should require and monitor to ensure that the management teams of all of their supplier factories in Indonesia follow the following practices with respect to employing short-term contract labour:

- 2.1 Bargaining unit positions (i.e. jobs held by union members) must never be filled with short-term labour if the union member is fired, resigns, or retires. If the company needs to downsize resulting in a significant number of layoffs the management and union should negotiate (prior to the layoffs) both the lay off and re-hiring procedures to be followed should the company's business pick-up again.
- 2.2 Indonesian law states that temporary/contract workers can only be hired for work that is "temporary" or "seasonal" by its nature. Other regulations clarify that a contract worker cannot perform the "principle" work of the factory. In the garment manufacturing context this can and should be interpreted to mean that the only jobs that can be contracted out on a short-term basis are those that are clearly exceptional / out of the ordinary day-to-day work of the factory such as doing some hand-sewing details on one order where the factory typically does not do any hand-sewing.
- 2.3 The exponential rise in short term contract labour since the new law allowing short term contract labour was introduced in Indonesia this law has been abused, including its use to break unions or prevent them from forming. A solution is for companies to follow the International Labour Organization's recommendation regarding the use of short-term or "contract" labour stated in their No 6 October 2006, *Better Factories Newsletter*:  
"The ILO recommends that fix duration contracts (i.e. short-term/ temporary contracts) should not be used for long term employment, and suggests that permanent employment employees should only be put on Un-Determined (i.e. fixed, long-term, permanent) time Contracts (UDCs)."
- 2.4 Furthermore, Indonesia law ensures, as minimum protection, that once a short-term employee has been hired on short-term contracts twice by the same employer, or for two years, the employees should automatically be hired on a permanent/ long-term basis with the third contract.

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- 2.5 Short-term workers should be paid the same the salary and given the same monetary benefits as regular employees (i.e. meal allowances, transportation allowances, production and holiday bonuses etc.)
- 2.6 Buyers should give enough notice to factories about changes to orders or placement of orders so that the factory is able to adjust the workforce training, layout, and size accordingly. Buyers must recognize that haphazard purchasing practices impact working conditions (especially last-minute orders) contributing to the phenomena of short-term contract workers.
- 2.7 Short term contract labour is being used as a strategy to either break unions or prevent them from forming, thus violating workers fundamental rights. Buyers should support attempts by civil society, including trade unions for the repeal of this law.

### *3. Factory Closures, Severance and back pay*

#### ***Overarching principles<sup>5</sup>***

- **Redundancies should be the last resort, but not the last step.** Opportunities to make the factory competitive through partnerships to upgrade technology, management or skills should first be explored. If retrenchment is necessary, consideration should be given to whether workers can be relocated within the plant, to a related company or to another local employer/supplier.
- **Approach to restructuring and contractor disengagement should be planned, with clear rules, policies and commitments,** based on:

**Compliance** with national laws, international labour standards and the terms of collective bargaining agreements.

**Consultation** between stakeholders.

**Consideration** of the likely impacts of closure on workers and the local community in each particular case (e.g. taking into account local social and economic context, employer's involvement in healthcare, housing etc.).

#### ***Where a decision to reduce orders is likely to result in substantial retrenchment and/or closure buyers should:<sup>6</sup>***

- 3.1.1 Ensure that international standards regarding (mass) dismissals and closure are upheld, buyers' policies regarding closures/mass dismissals (when exiting a factory is unavoidable) should require an impact assessment regarding the effects on the workforce.
- 3.1.2 Take care to prevent a knock-on effect where their announcement can lead to other brands leaving the supplier. In case of exits related to compliance, it might be essential for brands to announce the planned withdrawal collectively and publicly (in the hope that the supplier will chose to comply rather than to lose the assets from being shipped out of the country and/or sold off so that revenue can be used to pay debts to workers.
- 3.1.5 Withdrawal orders, and the exit can be prevented).

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<sup>5</sup> Page 8, Managing Responsible Transitions – Guidelines

<sup>6</sup> Several points under this section have been adopted from Managing Responsible Transitions – Guidelines, page 10.

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- 3.1.3 Consider the feasibility of transferring this order to another factory within the country.
- 3.1.4 Actively prevent of orders should be announced as soon as possible to long time in advance to management and workers representatives, to prevent a negative impact on the workforce (the supplier may find other clients, the workers may not fight the dismissal if other job opportunities are offered). Provide sufficient notice to the supplier and workers via their union for a retrenchment consultation procedure with the workforce to be invoked and monitor the consultation process.
- 3.1.6 Monitor supplier adherence to national laws regarding retrenchment of workers or closing down of a facility so that workers are compensated in line with national law.
- 3.1.7 In the situation where one of the following (or similar) occurs:
- the employer as well as the authorities fail to pay the legal entitlements due to the workers;
  - when buyers have demonstrably failed to monitor and remediate for social security payments;
  - where buyers have failed to ensure the establishment of mechanisms to ensure workers can receive severance due even if the employer goes bankrupt or defaults;
- Then buyers should provide direct financial support to the workers which would cover the amount that they have been left without (namely their entitlements).
- 3.1.8 Monitor and where necessary assist and participate in negotiations between employer, workers and government to ensure severance is fully paid in timely manner. Buyers should maintain direct communication with the union or other elected worker representatives throughout the process, and cooperate with other buyers to have maximum leverage.
- 3.1.9 Where there is no trade union within the factory the employer should ensure that workers are able to freely elect a workers' committee to represent their interest in the development of any retrenchment plans.
- 3.1.10 Buyers should encourage suppliers to provide workers with paid time off to look for new employment prior to closure, and provide first hire priority in other factories in the region owned by the same company.
- 3.1.11 The employer should ensure that all workers have access to prompt and professional assessment of their health at the end of their employment, through appropriate national medical facilities to determine whether there are work related health problems, injuries or disabilities.
- 3.1.12 Buyers should always actively monitor for blacklisting of workers and take concrete measures, including independent investigation and consultation with workers representatives and labour groups on remediation measures when reasonable suspicion of blacklisting is established.
- 3.1.13 Buyers should work with other stakeholders to develop (re)training packages for workers should the workers wish to undertake such training.
- 3.1.14 If a relationship is maintained with a manufacturer who owns more than one factory in a region, the buyer should make sure that the manufacturer offers first hire opportunities to workers who lose their jobs when one of the factories is

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closed. If the manufacturer doesn't own more than one factory in the region, or otherwise transfer of workforce is not feasible (e.g. not enough orders), and the brand maintains an order base (as part of responsible sourcing) in the region with other suppliers, a condition for new contracts or for expansion of production could be to give preferential treatment to fired workers<sup>7</sup>.

### 3.2 *When the factory is open and orders are currently placed*<sup>8</sup>

- 3.2.1 Buyers should determine if national laws and provisions cover all workers in the concerned facilities.
  - 3.2.2 Management should cover workers through the Jamsostek health insurance instead of providing alternative means. Enrollment into the Jamsostek health programme will, unlike private initiatives, ensure workers continuous access to health care following a factory closure
  - 3.2.2 Management should follow all proper procedures to pay into Jamsostek<sup>9</sup> and provide workers with all necessary documentation as well as educating/informing workers on how to access the funds when needed. Buyers should monitor this at factory level by comparing receipts from Jamsostek with deductions made from workers payslips and by interviews/visits to Jamsostek office to confirm the information provided by the companies on the number and length of enrolments matches.
  - 3.2.3 Buyers should include a clause in the contracts that outstanding payments may be withheld if factory closes or mass dismissals fail to be announced in a timely fashion, and/or if the employer fails to fulfill all outstanding social security, back wages and severance payments to the workers. When the factory is closed, the economic relationship between the buyer and the employer ends, but goods may still be in transit and if the buyer creates the legal option to default on these payments in advance, this can provide a very good incentive to employers to settle outstanding payments to workers.
  - 3.2.4 Actively engage with workers, worker representatives and government agencies to ensure that **ILO convention 173 Protection of Workers' Claims in case of Employer's Insolvency is implemented**. This convention covers cases where major layoffs coincide with employers failing to pay workers' legal claims. According to the convention, it is preferred that countries found a guarantee institution at a national level that will pay workers what they are legally due<sup>10</sup> if the employer is declared insolvent.
- 3.3 In the Indonesian context, there are several possible mechanisms that could be further investigated and supported with regard to factory closures, severance and back pay:

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<sup>7</sup> Note this relates to workers losing their job as part of mass dismissals or closures.

<sup>8</sup> Several points under this section have been adopted from Managing Responsible Transitions – Guidelines, page 10

<sup>9</sup> PER-05/PEM/1993 Chapter VII lists the services provided under JPK of JAMSOSTEK, and PER-01/MEN/1998 lists the services that must be provided at a minimum if an employer chooses to go with a health insurance plan other than JPK of JAMSOSTEK

<sup>10</sup> Indonesian law requires severance pay, any outstanding entitlements and wages be paid to workers at the time of closure. There have been numerous cases in recent years where this has not happened.

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- a) The Indonesian government has been exploring the possibility of setting up a separate and specific fund for compensation that employers would pay into in much the same way as they currently pay into the Jamsostek health fund.
- b) The requirement of the owner of each new factory at the time the factory is purchased to pay into a guarantee fund, or set up an escrow account as insurance for workers entitlements in the event of closure. Buyers could also be required to pay into such a fund or account. Workers entitlements would be paid from whichever of these funds is in place if the employer fails to pay workers legal entitlements.
- c) Where all else fails there is nothing to prevent buyers from making one off special payments to workers, equivalent to the amount they would have received via their legal entitlements.

### Concluding Comment

We hope buyers will view our solutions in the spirit in which they are intended. We wish these solutions to be received as constructive input to resolve fundamental issues requiring immediate attention in the apparel and sports shoe industry in Indonesia to ensure workers rights and livelihoods are upheld.

We welcome further discussion on these solutions, but most of all we look forward to their implementation.