Non-Judicial Mechanisms in Global Footwear and Apparel Supply Chains

Lessons From Workers in Indonesia

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About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project, which draws on the findings of five years of research. The findings are based on over 587 interviews, with 1,100 individuals, across the countries and case studies covered by the research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project is on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by businesses throughout their operations, supply chains and other business relationships.

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Acronyms

CCC: Clean Clothes Campaign. A global network of organisations campaigning for better wages and working conditions in the footwear, garment and textile sectors.

Factory C: A sport shoe factory in Indonesia (research participants from the factory requested that it not be named).

FSPTSK: Federation of Textile, Garment and Footwear Unions).

Garteks: the garment and textile division of Serikat Buruh Sejahtera Indonesia (SBSI) (Indonesian Prosperous Workers Union).

GSBI: Gabungan Serikat Buruh Indonesia (Indonesian Workers Union Association)

ILO: International Labour Organization.

KASBI: Kongres Aliansi Serikat Buruh Indonesia (Indonesian Congress of Allied Unions)

Komnas Ham: Komisi Nasional Hak Asasi Manusia (The Indonesian Human Rights Commission).

LPSK: Lembaga Perlindungan Saksi dan Korban (Witness and Victim Protection Agency). An independent government agency tasked with providing protection to witnesses and victims of crimes who request its services during criminal investigations.

NCP: National Contact Point for the OECD Guidelines for Multinational Enterprises

Perbupas: Perkumpulan Buruh Pabrik Sepatu (The Association of Footwear Workers). An affiliate of the GSBI union, Perbupas changed its name to SBGTS in 2007.

SBGTS: Serikat Buruh Garmen Tekstile dan Sepatu (Shoe, Garment & Textile Workers' Union). Before 2007 SBGTS was known as Perbupas.

SPN: Serikat Pekerja Nasional (National Workers Union).

WRC: Worker Rights Consortium. An independent organisation established by universities in the United States to investigate labour rights issues in factories supplying the collegiate apparel market.

Executive Summary

Workers in Indonesian factories that produce footwear and garments for some of the world's most profitable brand names are frequently denied basic rights, including the freedom to organise and collectively bargain and a decent wage. Against this backdrop of weak law enforcement, workers face considerable barriers in seeking justice for violations of their rights. In an environment sometimes very hostile to labour activism, worker representatives who actively organise and demand improved conditions face intimidation, discrimination and threats to their economic security.

To combat these challenges, Indonesian trade unions are increasingly utilising non-judicial mechanisms, including various international human-rights-based mechanisms, to strengthen their chances of obtaining redress for violations of workers' rights. This report examines the use of such mechanisms by Indonesian trade unions representing workers employed within the supply chains of global footwear and apparel brands, focusing particularly on their efforts to exercise freedom to organise and collectively bargain and the right to a decent wage. To illustrate the considerable challenges involved, the report is linked to an online supplement that provides a detailed chronological narrative of one union's struggle over a 17-year period to seek redress for multiple labour violations at a particular footwear manufacturer (Factory C).^{*} The report's analysis also draws from a broad range of other case studies within the sector.

Key lessons

Our research indicates that, rather than relying on any single redress mechanism to deliver justice, Indonesian trade unions in this industry generally use multiple strategies to pursue particular grievances, including engagement with non-judicial mechanisms, formal legal complaints and informal campaigning strategies. The expectations they have of each non-judicial mechanism is based on their previous experiences with it and the unions often use some of those mechanisms to achieve purposes that would not necessarily have been envisaged by those who designed the mechanism's grievance handling procedure. For example, grievances were sometimes lodged with state non-judicial mechanisms such as the Indonesian Human Rights Commission, not because the union expected that the Commission would investigate (they know how under-resourced it is), but because they have found that if local police know that there is a possibility of a Commission investigation then the police will be more likely to act on a complaint. Lodging grievances with the Victim and Witness Protection Agency (LPSK) served a similar purpose, but that agency also provided support to complainants who were afraid their complaint might put them in personal danger. Regular supportive phone contact with LPSK (and calls from LPSK to the police to check on the progress of their investigations) reassured those workers and gave them confidence to continue to seek redress through other mechanisms, even though the LPSK's capacity to directly assist them to pursue the grievance was very limited.

In each of the cases we researched, this complex strategic engagement with multiple grievance mechanisms was supplemented by efforts to generate local and/or international media coverage of the grievance, using a variety of methods, including demonstrations, connections with national and global activist networks and social media outlets such as YouTube and Facebook.

The unions' experience has been that if they can activate sufficient interest in their dispute through engagement with traditional media and/or social media then it can not only increase the pressure on local and international companies to take their grievance more seriously but, in the context of a relatively weak state commitment to the rule of law, it can also influence the way state institutions (such as the police and the courts) respond to their grievance.

In order to understand how non-judicial mechanisms can contribute to the resolution of rights-based grievances, it is therefore necessary to look beyond their role as discrete processes and consider how they interact with these other strategies. Our research suggests that, considered from this perspective, non-judicial mechanisms can play a more useful role than is apparent when they are considered in isolation. Arguably this should be taken into account when non-judicial mechanisms are designed or reformed, so that each mechanism can play the most useful role it can within the array of possible means of seeking redress.

Worker representatives reported that non-judicial mechanisms can be particularly useful for their ability to target stakeholders that are beyond the jurisdictional reach of traditional law-enforcement agencies. In a highly globalised sector, achieving improvements of working conditions involves influencing the local and global forces that influence those conditions. For this reason, Indonesian trade unions in the garment and footwear sector use non-judicial mechanisms to target not only the local manufacturer but also corporate decision makers at the international level, particularly global buyers. This highlights the importance of non-judicial mechanisms as part of coordinated advocacy strategies that target both local and international stakeholders. It also demonstrates the importance of the relationships between local labour organisations and international civil society organisations, which often facilitate access to international non-judicial redress mechanisms and dialogue with international buyers.

The report finds that, while many factors influence the effectiveness of individual non-judicial grievance mechanisms, in the context of improving respect for workers' rights in manufacturing supply chains three considerations stand out. First, the extent to which a mechanism facilitates trade union involvement and supports freedom of association is particularly important—without the support of their own representative organisations it is very difficult, if not impossible, for individual workers to achieve change. Second, if a non-judicial mechanism can contribute an authoritative assessment or verification of the facts surrounding the alleged violation, this can help motivate the parties to move beyond factual disputes into more constructive dialogue. Third, the capacity of a particular grievance mechanism to exert influence over the purchasing practices of global buyers is an important factor influencing the mechanism's impact. In the context of intense competition for orders, manufacturers will not be motivated to improve wages and working conditions if they are required to fully cover any resulting increases in overall production costs. The extent that any mechanism can compel overseas buyers to share these increased costs is a key factor in any sustainable improvements to workers' human rights.

Overall, this case study report demonstrates that although no individual mechanism has been effective in delivering comprehensive redress to Indonesian garment and footwear workers, by simultaneously pursuing a variety of grievance strategies trade unions in this sector have mobilised a form of cross-institutional accountability and increased the pressure on key decision-

Cover: A sports shoe factory.

Source: Clean Clothes Campaign

makers involved in these mechanisms to take their grievances seriously. In some cases, these multi-pronged grievance strategies have resulted in strengthened respect for workers' rights and increased space for workers to organise and pursue other rights.

However, while we found evidence that combining strategies in this way can result in improved respect for workers' rights, in those cases where some form of human rights redress was achieved it was generally partial and in some cases the relevant improvements in respect for human rights proved to be temporary. Further, some Indonesian unions who have previously worked effectively with networks of international trade unions and labour right organisations to leverage pressure on global brands and their suppliers are now finding that these networked links are weakening, both because organisations campaigning on these issues in the Global North are finding it more difficult to fund their campaigns and because the Indonesian government is making it more difficult for international organisations that work on these issues to maintain a presence in Indonesia.

As such, while strategically pursuing simultaneous complaints through multiple grievance mechanisms operating at different scales can enhance Indonesian garment workers' chance of receiving meaningful redress, this enhancement should not be overstated. In the absence of binding and properly implemented state protections for labour and human rights it will remain very difficult for Indonesian garment and footwear workers to persuade their employers to respect their rights.

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Table 1: Indonesian footwear and apparel case summary

<i>Business activity / project</i>	Export-oriented footwear and apparel production in Indonesia.
<i>Companies (including domicile)</i>	For the three major case studies, the key companies are Adidas AG (Germany), New Balance (USA), Nike Inc. (USA), and their Indonesia-based suppliers (South Korean and Indonesian owned).
<i>Key stakeholders</i>	<p>25,000 workers in the three major case study factories. More than 300,000 factory workers employed in the Indonesian supply chains of case study brands; around 80% of these workers are young women. Approximately 696,000 workers directly employed in large-scale ready-made apparel and footwear manufacturing (Badan Pusat Statistik, 2014).</p> <p>Indonesian unions: SPN (National Workers Union), KASBI (Indonesian Congress of Allied Unions), Garteks (Footwear, Leather, Textile and Garment Federation), GSBI (Indonesian Workers' Federation), FSPTSK (Federation of Textile, Garment and Footwear Unions).</p> <p>Global unions: IndustriALL and ITUC.</p> <p>NGOs: Oxfam, Jakarta Legal Aid Institute, Clean Clothes Campaign (CCC), Worker Rights Consortium (WRC).</p>
<i>Human Rights Abuses</i>	<p>Cases include violations of:</p> <p>Freedom of association and the right to negotiate or bargain collectively (ILO Conventions 87 & 98, Article 20 Universal Declaration of Human Rights);</p> <p>The right to job security and protection against irregular/precarious work arrangements (ILO Convention 158);</p> <p>The right to just and favourable remuneration (Article 23(3) Universal Declaration of Human Rights).</p>
<i>Mechanisms/ claim making strategies</i>	Include: Bipartite negotiations, local labour department mediation, strikes and demonstrations, regional police, National Human Rights Commission, Victim and Witness Protection Agency, the Worker Rights Consortium, the German OECD National Contact Point, the Freedom of Association Protocol, media and social media.

Introduction

This case study report examines the use of non-judicial mechanisms by Indonesian factory workers to access their human rights and seek redress for violations of those rights within the supply chains of global footwear and apparel brands. Factors such as weak state enforcement of labour regulation, the repression of workers' organisations, and global business practices that fail to reward compliance make the task of claiming workers' rights highly complex.

Footwear and apparel workers are employed within a relatively mobile, globalised business in which it is standard practice to outsource production to low-cost jurisdictions. The dominant business model adopted by most international fashion labels involves in-house development of the brand, product design, marketing and sales, with product manufacturing outsourced to lower-cost suppliers in regions with cheaper labour markets, mostly in Asia. Apparel production, which requires relatively little capital investment, is particularly 'flexible'. While there is some variation in sourcing strategies within this sector, many garment supply chains are highly dispersed, with less stable supplier relationships and production of multiple brands in a single factory.¹ Outsourcing production has enabled brand companies to reduce costs dramatically, freeing up capital to invest in increasingly sophisticated distribution and marketing strategies and brand image (Locke, 2002). However, this model has come under intense criticism for perpetuating low-wages, excessive working hours and sub-standard working conditions, creating a risk that countries with high levels of un-employment will engage in a 'race to the bottom' on labour standards so as to attract increased foreign investment (Olney, 2013).

Exploitative practices in the sector have had a disproportionate effect on women, who make up approximately 80 per cent of factory workers in the large-scale textile, garment and footwear sector (Kuncoro, 2011). In 2013 the ILO reported that in a survey involving interviews with 918 employees in 42 garment and textile factories, 80 per cent of the female workers interviewed reported high levels of concern regarding harassment and abuse (ILO, 2013). Further, as ILO Equal-opportunities advisor Miranda Fajerman (cited in Buensuceso, 2013) notes, '[w]omen who work face a double-burden in society. They can work but are also perceived to have the main responsibility of caring for the family at home.'

In response to significant civil society pressure to improve corporate accountability and prevent human rights violations in their supply chains, many companies have developed or adopted labour rights and environmental compliance policies, usually in the form of corporate codes of conduct. Implementation of these policies largely relies on auditing to assess suppliers' performance against legal regulations and company code of conduct commitments, and identify any breaches in need of remediation. However, these audit-based programs have demonstrated only limited benefits for workers and have been largely unsuccessful in tackling less visible human rights abuses, such as violations of freedom of association, sub-standard wages, forced overtime, precarious contracting arrangements and discrimination (Pruett, 2005; Locke et al., 2009). At the same time, there are a number of significant barriers that make it extremely difficult for factory workers to access their rights. These include repression of labour activism,

weak enforcement of legal protections by state-based government institutions and the courts and serious social inequalities that marginalise workers and inhibit their ability to access justice.

The research undertaken for this report indicates that, in the face of these challenges, Indonesian garment and footwear trade unions and their allies increasingly look beyond the traditional industrial relations disputes system by using non-judicial mechanisms together with a range of alternative strategies to try to persuade employers to comply with the law and respect workers' human rights. Most non-judicial mechanisms employed by workers in seeking their rights can be divided into those that primarily target local or international stakeholders. This study demonstrates that each of these has clear limitations, and that this drives many worker organisations to adopt a combination of several different redress strategies. This suggests that rather than examining non-judicial mechanisms in isolation, it is important to consider the role these mechanisms play as part of multi-pronged strategies and the potential these mechanisms have to complement formal legal grievance processes and informal campaign strategies.

This case study report also identifies three factors that could maximise the potential contribution of non-judicial mechanisms to ensuring that human rights redress is available to workers in global supply chains. First, workers are only able to make effective claims for their rights when they enjoy freedom to organise and collectively bargain through independent trade unions and labour organisations. Therefore, the extent to which non-judicial mechanisms have the capacity to strengthen and support these democratic organising rights is a key consideration. Second, in lieu of reliable state-based labour inspections or more credible social auditing practices, non-judicial mechanisms need to provide a means to obtain an authoritative assessment of the facts, which provides a starting point for achieving appropriate redress. Third, substantial and sustainable improvements in working conditions require that international buyers ensure the price paid for goods adequately covers the additional costs that can arise in association with paying decent wages and upholding workers' rights. This means that the contribution a non-judicial mechanism can make in achieving redress will substantially depend on that mechanism's ability to influence the purchasing practices of global companies.

Methodology

This report is part of a series based on the findings of a three-year Australian Research Council Linkage Project analysing the effectiveness of non-judicial redress mechanisms in responding to human rights concerns in which transnational business activity is involved. We adopt a broad definition of non-judicial redress mechanisms, namely those that are mandated to receive complaints and help resolve disputes but which are not empowered to produce legally binding adjudications.

Research has sought to shed light on the range of factors that contribute to greater or lesser effectiveness and legitimacy in the functioning of transnational grievance-handling systems. A key objective of the project is to develop recommendations regarding how non-judicial forms of redress can better support communities who are adversely impacted by business operations to access justice and have their human rights respected. These recommendations are primarily aimed at those who participate in these mechanisms, including businesses, affected communities and civil society organisations, as well as staff and other members or stakeholders of grievance-handling mechanisms themselves.

This case study is the companion to another report in this series, *The Freedom of Association Protocol—A localised non-judicial grievance mechanism for workers' rights in global supply chains*, and draws from some of the case studies discussed in that report. While the *Freedom of Association Protocol* report examines one redress mechanism in greater detail, this report focuses on the wide variety of strategies adopted by organisations of Indonesian garment and footwear workers when seeking justice for violations of their human rights.

This case study was selected because the Indonesian trade unions we interviewed had a considerable history of engaging with multiple human rights grievance mechanisms at both international and national scales, and it gave us an opportunity to study the role that engagement with the non-judicial mechanisms played within their wider strategies for claiming human rights.

This report's findings are based on extensive primary and secondary source research gathered through in-country research in Indonesia, as well as ongoing engagement with human rights advocates and others knowledgeable about labour rights issues in this industry and strategies to improve respect for them. In particular, the report is informed by extensive semi-structured interviews and focus group discussions with more than 60 workers and factory-level worker representatives, 22 national-level union representatives and NGO representatives, 15 business representatives and one national labour ministry representative during field trips to Indonesia conducted between June and September 2013. Additional research meetings were also held during field trips to Indonesia in June and September 2014 and March 2016. In addition, information is drawn from relevant research, online media articles, civil society organisation and company websites as well as previous research interviews conducted between 1998 and 2007 (Connor, 2008).² The draft conclusions of this report were shared with key research participants and their comments were considered when preparing the final version.

The scope of our research in this case is limited in several ways. This report draws from a number of factory-level cases raised by trade unions interviewed as part of this research. As such, the mechanisms discussed in this report are those specifically mentioned or discussed by interview participants. Accordingly, the report does not provide a comprehensive overview of the government and non-government redress forums potentially available to worker organisations in Indonesia, nor a detailed analysis of the efficacy of each individual mechanism. Instead the report's focus is the role of non-judicial mechanisms within the broader struggles of worker organisations that seek justice and respect for human rights.

Factory C case study (1998-2014)

To illustrate the context in which these struggles take place, an online supplement to this report provides a detailed chronological account of the strategies pursued by the Perbupas/SBGTS union to claim the rights to freedom of association and collective bargaining over a 17-year period in a particular Indonesian factory that produces footwear for the multinational sportswear company Adidas (Factory C).^{*} That online supplement can be found on our project website – <http://corporateaccountabilityresearch.org/njm-project-publications/#njr-reports>. Rather than summarise that history, this section of this report instead presents some reflections upon it, as a means of introducing some of the themes that are then explored more fully later in the report.

Parkati, an Indonesian trade union organiser, during a March 2006 demonstration in front of the PT Tae Hwa factory, which supplied the international sport shoe brand FILA for many years. Parkati's experience illustrates the considerable challenges facing trade union organisers in Indonesia's garment and footwear industry. She was dismissed from the factory in 1999 following her participation in a demonstration for better wages and conditions in the factory. Although her campaign to be reinstated was never successful, she continued to organise and support workers in the factory, including after the factory closed in 2005 without paying workers their severance entitlements. *Credit: M. Revaldi/Oxfam Australia*

The lengthy and ongoing history of allegations of violations of Freedom of Association at Factory C illustrates the complexity and challenges facing unions seeking to pursue redress through non-judicial mechanisms. It also demonstrates the way in which worker organisations are responding to the challenges of weak law enforcement and marginalisation by adopting a combination of different grievance strategies, including engaging with multiple non-judicial mechanisms. Leaders of the Perbupas/SBGTS union have engaged with many grievance processes involving a wide variety of such mechanisms, including the German National Contact Point for the OECD Guidelines, Adidas' internal grievance process for its code of conduct, the Indonesian National Human Rights Commission (Komnas HAM), the Worker Rights Consortium (WRC)³ and more recently the FOA Protocol. In addition the Perbupas/SBGTS union has cooperated with international NGOs in public campaigns seeking to persuade Adidas to ensure Factory C's compliance with international human rights norms.

Importantly, the union has deliberately activated multiple grievance processes (and other strategies), and has activated them simultaneously rather than sequentially. This has not only aggregated the pressure for change generated by each of these different grievance processes; the grievance processes have also interacted with each other in interesting ways. Thus, for example, the union's complaint to Komnas Ham in 2005 resulted in a finding in favour of the union. Al-

though this finding was not enforceable in a court, it had a significant impact on Adidas' response to the allegation that Factory C's dismissal of 33 union leaders in October 2005 had breached Adidas' code of conduct. Up until that point Adidas had refused to take a position on whether or not those dismissals had breached Indonesian law or Adidas' code of conduct; instead Adidas had insisted that the union needed to pursue the case through the Indonesian judicial system. When Komnas Ham agreed to investigate, Adidas committed to respecting its decision. After Komnas Ham found in favour of the union Adidas formally called upon Factory C to reinstate the dismissed union leaders and refused to increase order levels to the factory until the issue was resolved. In a separate, more recent, union dispute at the factory (unresolved at the time of writing) Adidas also declined to conduct its own investigation of an alleged violation of Freedom of Association. In this case Adidas instead advised the union to pursue this grievance through the National Committee of the Freedom of Association Protocol, a committee on which both the union and Adidas are represented.

It is also apparent from this case study that the way in which these different grievance processes impact on each other can vary over time. This is evidenced by Adidas' changing attitude to the Worker Rights Consortium (WRC). Adidas actually proposed in 2004 that the WRC should investigate allegations of human rights breaches at Factory C, and when that investigation was complete, Adidas strongly encouraged Factory C to comply with the recommendations arising from it. But by 2005 Adidas seemed to have lost confidence in the WRC. In that year Adidas declined to endorse the findings of a WRC investigation into whether Factory C's dismissal of the union leaders in October 2005 had violated freedom of association or Indonesian law.

Internal conflicts within the union notwithstanding, the combination of strategies pursued by the SBGTS union at Factory C have had a measure of success, helping the union to build significant membership and to continue to assert workers' interests at the factory. Together with the other major union at the factory, SBGTS engages in collective bargaining negotiations with the factory and it has been able to negotiate some improvements for workers. However, at least according to SBGTS leaders, the union has had limited success in creating sufficient pressure for Factory C to implement sustained improvements in working conditions and respect for workers' rights. Both major unions agree there were significant improvements at Factory C following the WRC investigation in 2004. However, at least according to one of the WRC investigators who was involved in significant discussions with Factory C management at the time, Adidas' unwillingness to sufficiently reward Factory C for making those improvements was what motivated Factory management to dismiss the entire leadership of SBGTS in the following year.

This raises the question as to what might best motivate a factory to demonstrate good faith compliance over a sustained period, so that positive outcomes from grievance processes are sustained rather than ephemeral. Adidas rejects the suggestion that its purchasing practices had any role in Factory C's refusal to reinstate the dismissed trade union leaders, and Adidas maintains that its system for scoring factory performance creates incentives (positive as well as negative) for factories to respect workers' rights. However, in this case those incentives do not appear to have been strong or direct enough to convince the supplier to comply. This suggests that those non-judicial mechanisms that are based on the leverage transnational corporations have in relation to their suppliers will not achieve significant and sustainable improvements in respect for labour rights unless those transnational companies are prepared to adjust their terms of trade. That is to say, the suppliers of such corporations need to be rewarded in a more tangible manner (via ongoing order commitments or pricing incentives) or, at a minimum, need to be

reassured that they will not face financial loss (via commitments not to shift orders) for implementing measures that increase respect for workers' rights. That is not to say that all initiatives to improve respect for workers human rights necessarily increase employers' costs but some have the potential to do so, as for example when workers exercise their associational rights by taking industrial action.

Non-judicial mechanisms and local labour disputes: strengthening institutional accountability?

The remainder of this report analyses in more detail the types of strategies adopted by Perbupas/SBGTS union at Factory C, as well as those deployed by other Indonesian trade unions interviewed for this research study. It finds that, like the Perbupas/SBGTS union, a number of garment and footwear unions across Indonesia have pursued human rights claims through non-judicial mechanisms in combination with other strategies. The following sections draw from a number of additional cases, including two case studies described in greater detail in the *Freedom of Association Protocol* companion report. Examining the strategies employed by a number of unions allows us to draw wider conclusions concerning the barriers to redress in Indonesia and the strategies that have been successful in overcoming these barriers.

This part of the report is divided into three sections. The first provides a brief overview of Indonesia's formal legal avenues for pursuing labour grievances and describes the gaps in these systems that lead workers to look for alternative or supplementary means to seek redress. The second focuses on Indonesian state-based non-judicial mechanisms and considers the extent to which these forums play a role in strengthening access to justice at the local level. The third focuses on the role of non-judicial mechanisms as international avenues for redress, which target international buyers or, occasionally, foreign investors as a means to influence the local manufacturers.

The context: Formal industrial relations dispute processes

BIPARTITE NEGOTIATIONS

Within Indonesia's formal industrial relations system, the main avenue used by workers to seek improved conditions and resolve disputes within their workplaces is bipartite negotiations with management. Under Indonesian law, bipartite negotiations are a prerequisite to lodging a formal industrial relations dispute (see Law no. 2 of 2004 concerning Industrial Relations Disputes Settlement) and ideally offer a cheap, accessible and potentially speedy way to resolve grievances. In the case studies examined, worker organisations made extensive efforts to engage in bipartite negotiations. However, these efforts were frequently undermined where management refused to recognise the union, ignored requests for negotiations or otherwise excluded the union, such as by negotiating exclusively with a more management-aligned union. For example, one of the unions at New Balance footwear supplier, Factory B, reported that it was routinely excluded from negotiations and that other than in name the existing collective bargaining agreement (negotiated with the more management-aligned union in the factory) was almost entirely identical to the company's own rule book.

Workers are often severely disadvantaged in bipartite negotiations because they have limited access to information about the true financial position of their employer or the terms of their employer's commercial relationships with global brands. Some workers interviewed observed that buyers often insist suppliers comply with codes of conduct that enshrine workers' human rights, yet usually offer worker representatives little, if any, detail about the extent to which they are willing to meet compliance costs. Management often claims that it cannot afford to comply with particular labour standards and that to do so would place the business under unreasonable financial strain, risking jobs and the stability of its future business relationships. For instance, following significant wage hikes in 2013 more than 257 factories in West Java, including exclusive suppliers of Nike and New Balance, were granted exemption from the legal minimum wage on the express grounds that they 'could not afford it' (Business Indonesia, 2013). Some worker representatives from Nike and New Balance suppliers reported that they were highly suspicious of their employers' claims, while others were uncertain and worried about whether pursuing legal wage rates might in fact result in their members losing jobs. Only one brand, Adidas, publicly refused to tolerate waivers from the minimum wage within their suppliers and introduced extra price increases to share the additional costs of substantially increased wages. As such, the lack of transparency in company purchasing practices is a major obstacle to effective bipartite negotiations.

INDUSTRIAL RELATIONS DISPUTE RESOLUTION

Under Indonesia's formal industrial relations (IR) dispute resolution system, if bipartite negotiations fail after a period of 30 days, a dispute can be lodged with the local Labour Department. The parties can then decide to undertake mediation, conciliation or arbitration; in practice, however, most parties opt for mediation. Where no agreement is achieved the mediator makes a recommendation that the parties can choose to accept or reject. If either party rejects the mediator's recommendations they can make an application to the IR Court, attaching evidence to demonstrate that the requisite mediation process has been completed.

The new IR Courts are in some respects an advance on the Ministry of Labour's P4P Committees—the departmental tribunals that previously made a first-instance determination in labour disputes—since the P4P committees were not considered independent of government. Nonetheless the industrial relations courts have been criticised as slow, unprofessional and expensive (Tjandra, 2007, 2008, 2009; ILO, 2012). Ad hoc judges are often reputed to have a poor grasp of the substantive law, relevant court procedures and legal reasoning. There are indications that industrial relations courts also suffer from the endemic levels of corruption found elsewhere in the Indonesian court system (see, e.g., Caraway, 2012; Pompe, 2005). The worker representatives we interviewed expressed very little faith in the ability of the courts to deliver reasonable outcomes. A national representative of the SPN trade union said that wherever possible they would look for ways to avoid going to court and preferred resolving issues through dialogue. Several union leaders highlighted the value of non-judicial mechanisms that facilitated involvement of international buyers, who had the potential to influence change at a much faster rate than the courts.

Other worker representatives showed more commitment to attempting resolution through the official legal process. For example, GSBI union leader, Emelia Yanti, expressed a strong desire to see the rule of law strengthen and jurisprudence emerge that supports workers' rights, decreasing the need to place the same extent of reliance on alternative advocacy techniques. How-

ever, Yanti, like most worker representatives, is pragmatic and would never rely on the courts alone. As demonstrated by Ngadinah's criminal trial (discussed in the online supplement to this report), unions feel compelled to use every point of leverage possible to increase their chances of obtaining a reasonable court decision.

Participating in the formal IR dispute process can be difficult as processes are time consuming and expensive, which puts strain on low-paid workers, particularly those pursuing unfair dismissal claims. For instance, while it is impossible to predict the outcome of a formal mediation process, union leaders at New Balance supplier, Factory B, were confident that the mediator would make a recommendation in their favour of the reinstatement of several of the dismissed workers, due to strong evidence that the factory had failed to acknowledge their status as permanent employees in accordance with applicable labour laws. However, before the final round of mediation, PT Sinar requested additional time to engage in bipartite negotiations, at which point the complainants were approached individually by company personnel (in absence of their union representatives) and offered compensation packages. Most workers agreed to a 'compensation' deal in return for dropping the claim for reinstatement, since the workers' immediate economic needs made company's cash offers too good to resist. The workers were also aware that a factory can always ignore a mediator's recommendation and that pursuing a legal complaint to the courts did not guarantee a quick resolution. The same dilemma was faced by workers at Factory C, who ultimately decided to accept severance payments rather than appeal the P4P legal decision to the Supreme Court, which has a reputation for significant corruption (Pompe, 2005) and seek an alternative route to secure an outcome. Overall, while workers engage with the formal industrial relations dispute resolution system to deal with serious violations of labour law, it is usually only one of a series of advocacy strategies and few would rely on local labour departments or IR courts as the main source of protection for their rights.

CRIMINAL JUSTICE SYSTEM

Interference with unions, such as the dismissal or intimidation of members or anti-union smear campaigns, is a criminal offence under Indonesian law and can result in between one and five years imprisonment. However, very few cases have been reported to police and only one case (PT King Jim Indonesia) has been successfully prosecuted. Most unions are not in the habit of reporting union discrimination to the police, while many police are completely unaware that the offence exists. Tjandra (2009) reports that in the case of PT King Jim Indonesia, the union had to intensively lobby the police involved in order to persuade them to prosecute, including enlisting a legal academic to explain the relevant law.

Union busting can also be difficult to prove, which may be another factor contributing to low rates of prosecution. Former union activist and current Ministry of Labour representative Dita Sari points out the challenges for workers in meeting formal evidentiary requirements:

It's impossible for us to obtain evidence unless a manager writes their intentions down, which would be a very stupid thing for them to do, not many employers are that stupid. It's like the problem of bribery—we sense something is wrong... but how do we prove it? (Interview, June 2013.)

More broadly, there are inherent limitations in pursuing criminal charges against an employer, even if successful prosecution is achieved. Criminal law does not provide relief to employees who have suffered loss or have lost their jobs as a consequence of their employer's crime and

can only provide partial justice in relation to employment disputes. Further, criminal justice systems have distinct aims to industrial relations systems and do not necessarily contribute to better conditions or industrial relations at the factory—in fact there is a risk a criminal trial could polarise the parties and increase levels of hostility. The lack of police responsiveness and difficulties in proving union-busting activities are serious drawbacks that may deter many workers from investing the considerable time and effort required to involve the police.

The role of state-based non-judicial mechanisms: strengthening formal redress

The above outline of formal law enforcement mechanisms illustrates the fact that workers are unable to rely on legal institutions alone to deliver justice. For this reason, workers often submit their cases to non-judicial institutions as a means to increase responsiveness of formal law enforcement mechanisms.

THE WITNESS AND VICTIM PROTECTION AGENCY (LPSK)

An example of an Indonesian non-judicial mechanism that has been used by workers to improve their access to justice is the Witness and Victim Protection Agency (LPSK). Located in Jakarta, the LPSK is an independent government agency that provides protection to witnesses and victims of crimes who request their services during criminal investigations. The process of registering a request for LPSK protection is straightforward (an online form is available on the agency's website) and it does not involve any costs. The LPSK has a range of initiatives designed to assist witnesses and victims, including safe houses, medical and psychological services and support with procedural law; however, it struggles with ongoing budgetary constraints (Indra Wijaya, 2013).

In the case involving Nike Supplier Factory A (summarised below) workers contacted LPSK in May 2013 because of their fear of violent retribution from local gangsters following their decision to report the case to the police and raise human rights concerns with Nike. The workers also hoped that the involvement of LPSK would make the police more responsive in conducting a proper investigation into the attacks. Workers reported frequent contact with LPSK staff, who would contact victims on a regular basis to check on their safety as well as physical and psychological wellbeing. Workers from Factory A expressed the view that their report to LPSK was beneficial in several ways, including providing complainants with support, a sense of security and enough confidence to press charges and seek redress (interview, September 2013). Factory Union A representatives also believed that reporting to the LPSK expedited the otherwise languishing police investigation into the assaults, although it appears these investigations have not resulted in any prosecution to date. Further, even if the LPSK services had no direct impact on Nike or supplier management, the involvement of this national institution heightened the profile and perceived gravity of the case and contributed additional pressure on stakeholders to provide appropriate remedies.

CASE STUDY: UNION BUSTING AT NIKE SUPPLIER, FACTORY A

In interviews union officials from Factory A reported that between April and May 2013, they were subjected to death threats and other forms of intimidation, violence and kidnappings, including

one case of a union organiser having electric shocks applied to his knee. Most of these acts were allegedly perpetrated by the head of the sub-district and his associates who were financially linked to the factory via businesses that provided services to the factory. A representative of Factory Union A stated that the union decided to report the assaults on members to the police at the provincial level in hope that the perpetrators would 'be scared off and refrain from committing further violence at the factory' (Interview, June 2013). Another representative hoped that the police investigation would result in an official record of the violence that union members were subjected to. However, the union struggled to get the police to follow up on the complaints and had to employ multiple advocacy techniques. According to national KASBI representative, Parto:

In most cases the reports made to the police are neglected when there is no pressure from other agencies. We need to address the issue of getting these organisations to perform (Interview, September 2013.)

By contacting the Witness and Victim Protection Agency (LPSK) and lodging a complaint with the National Human Rights Commission (Komnas HAM) they sought to increase pressure on police to actively investigate the case. In fact, the LPSK was in regular contact with local police to request updates on their investigations, providing increased accountability. Despite the fact that the investigations never amounted to prosecution, the union believes that police involvement still had some value. After taking the serious step of filing an official report and engaging the services of the Witness and Victim Protection Agency, the stakes surrounding the case increased and made it difficult for both the supplier and brand to ignore. Violence and overt intimidation against Union A officials ceased. Further, Nike did not use ongoing police investigation into the incidents as a reason not to take firm corrective action in the interim and responded seriously when its headquarters received the complaint. (For further analysis of the Factory A case, see the *Freedom of Association Protocol* companion report.)

NATIONAL HUMAN RIGHTS COMMISSION

Another noteworthy non-judicial mechanism in Indonesia is the National Human Rights Commission, Komnas HAM, an independent commission that monitors compliance with human rights throughout Indonesia. Its mandate is to conduct research, issue guidance, and monitor and mediate disputes in relation to human rights. Komnas HAM can present expert evaluation findings and issue non-binding recommendations or, where parties agree, it can facilitate a mediated or negotiated outcome. Where parties do not comply with Komnas HAM recommendations, Komnas HAM can submit the case for prosecution or further investigation by state authorities. There are minimal costs and procedures involved in lodging a complaint to Komnas HAM and any individual or group that has a strong case that their human rights have been violated can file a report. Complaints can be filed on behalf of others or as class actions, provided the victim of the alleged human rights abuse provides consent.

Indonesian unions and other civil society groups are generally familiar with Komnas HAM. In the month of February 2013 alone Komnas HAM received 83 complaints in relation to the conduct of corporate entities, including 29 employment-related grievances (Komnas HAM, 2013). However, Komnas HAM has little power to enforce its recommendations and many perceive Komnas HAM as toothless (Butt and Lindsey, 2012). Marred by political infighting (Aritonang, 2013), it does not have a reputation as a politically savvy institution, which might otherwise ameliorate its lack of enforcement powers, and it is not legally required to respond to complaints filed.

Perbupas worker representatives at Factory C lodged reports of union discrimination to Komnas HAM as a strategy to influence the brand and factory management and to provide a credible counterweight to the P4P committee decision, which otherwise legitimised the dismissal of the union's leadership. In a research interview in June 2013 an Indonesian labour rights advocate who has a close relationship with Perbupas and several contacts at Komnas HAM described how he helped facilitate the complaint, assisting with submissions and lobbying Komnas HAM officials behind the scenes for a proactive response. Once it had investigated, Komnas HAM issued an official statement condemning Factory C's actions and recommending immediate reinstatement of the dismissed workers. Although Komnas HAM lacks enforcement powers, as a National Human Rights Commission it does carry considerable normative authority and legitimacy, including in the eyes of international observers. Unlike the labour departments and courts, Komnas HAM's reputation is not marred by corruption. Komnas HAM's recommendations were therefore useful in terms of significantly increasing the credibility of the workers' claims and helped shift Adidas' position from one of neutrality to actively putting pressure on Factory C to reinstate the dismissed workers (Connor 2008; Adidas, 2006b, 2006c). However, Komnas HAM's recommendations that the case be fully and properly investigated by both the Labour Department and police, which could have resulted in legally binding decisions, were ultimately ignored. Since Komnas HAM had no enforcement authority it was not viewed as the legitimate authority in the eyes of Factory C management, which refused to heed Adidas' request for the reinstatement of workers. Thus, while Komnas HAM's finding motivated Adidas to change its position and increased the pressure on Factory C to reinstate the workers, ultimately the Komnas HAM complaint was unsuccessful as a strategy to change behaviour at the supplier level.

Representatives of the KASBI-affiliated union at Nike supplier Factory A also filed a report with Komnas HAM in May 2013 with the aim of increasing the profile of the case and creating pressure for other state institutions (particularly the police) to respond. However, as of September 2013, workers had not received a formal reply from Komnas HAM. Unlike the Perbupas union at Factory C, the union at Factory A lacked an intermediary with connections inside the Commission. This shows the limitations of relying on an agency that has discretion as to whether it responds to a particular complaint and also demonstrates the relative importance of informal networks and personal connections when utilising such agencies. However, despite the lack of formal response, workers believed that there was value in being able to inform other agencies (such as the police) as well as factory management and Nike that the Komnas HAM report had been filed because it created a sense that their actions (or inaction, as the case might be) were being monitored. They believe that, whether or not Komnas HAM actually investigated, reporting the case to Komnas HAM contributed to increased pressure on the police and factory management to take their grievance more seriously.

OTHER STATE-BASED COMPLAINTS MECHANISMS

Worker representatives also reported using various other state-based complaints mechanisms as a strategy to strengthen their redress claims. For example, in some cases workers have used the Ombudsman of the Republic of Indonesia to put pressure on regional labour offices (*Diskrenaker*) to carry out its regulatory functions in accordance with the law. In other cases workers have appealed to Komnas Perempuan (the National Commission for Women), particularly for support in public campaigning and media engagement. Emelia Yanti, GSBI union leader, explains why unions often approach several agencies in relation to a complaint:

In fact all these mechanisms are not separate, so when we use alternative government institutions this isn't instead of the regular legal process. When the Human Rights Commission issues a recommendation they can strengthen the credibility of our allegations, then there is the Ombudsman, who can discipline other institutions with warning letters and recommendations, so we use these strategies simultaneously, as each can strengthen the other. (Interview, June 2013.)

This research suggests that unions perceive that state-based non-judicial grievance mechanisms have an important role in strengthening the rule of law in relation to workers' rights in Indonesia; however, they acknowledge that individually these mechanisms possess limited powers and capacity. For this reason, workers do not limit themselves to formal grievance mechanisms and view less formal strategies such as strikes, protest and the use of social media (considered later in this report) as an important component of obtaining redress. In fact, at present most union leaders interviewed view strikes as a far more powerful tool to strengthen bargaining than most formal mechanisms.

International non-judicial mechanisms: influencing key stakeholders

FACILITATING ACCESS TO OVERSEAS BUYERS

As noted in the *Freedom of Association Protocol* companion report, the process of establishing the FOA Protocol multi-party agreement has increased the confidence of union representatives to directly communicate with and lobby international sportswear companies when seeking to resolve workplace disputes with their suppliers. Before the Protocol another non-judicial mechanism with a local presence and international influence, the WRC, also played (and is continuing to play) an important role in facilitating contact between local Indonesian trade unions and international buyers.

This role of international mechanisms is important because over the past three decades, unions actively organising in Indonesia's export-oriented footwear and apparel manufacturers have become increasingly aware of the pivotal role that international buyers can play in influencing conditions within individual factories. A worker representative at a New Balance supplier reported that the involvement of international brands was crucial in overcoming many problems: 'there is only one thing that can help—pressure from the brand—only that' (Interview, June 2013). Several union representatives report that engaging directly with a brand can lead to a faster resolution of issues and can help establish trust by allowing the brand the opportunity to respond before publicising the violations more broadly, for instance through an international media campaign. There is evidence that direct engagement with company representatives can be effective. In 2012 Yulitta* was dismissed from a factory supplying garments to Adidas and Mizuno after she began actively organising in the factory. Yulitta disputed the dismissal and commenced a mediation process at the local labour department. She also contacted Adidas and asked for them to intervene on her behalf; Adidas informed the factory that orders would be cut if they continued to engage in union busting activities. Eventually Yulitta was reinstated. According to Yulitta the company's decision was a direct result of pressure from Adidas.

However, a number of union representatives stated their frustration that often brands fail to respond to union complaints unless they are subject to additional pressure, such as the oversight of an international NGO or media exposure. For instance, while Nike denies that this is the case, KASBI claims that Nike's Indonesia representatives were unresponsive to the Factory A complaint until the union raised the issue at the FOA Protocol forum and involved the international NGO Oxfam Australia, which alerted Nike's headquarters (see the case study above, titled 'Union busting at Nike supplier, Factory A'). Unions believe that they need to be strategic in order to effectively influence international buyers to play a positive role in the resolution of workplace grievances. This has led to increased interest in the way that international campaign networks and non-judicial mechanisms can create additional leverage over multinational companies.

DIVERSE APPROACHES TO REDRESS, COMMON LIMITATIONS

As highlighted above, workers tend to view non-judicial complaints mechanisms as a means to increase their overall leverage in pursuing redress. International non-judicial mechanisms are particularly important because of the potential to focus on the responsibilities of global buyers, who are in many cases viewed as having a more pivotal role in influencing change at the factory level than domestic regulators. There is a range of international non-judicial mechanisms through which workers employed in the supply chain of international companies may raise their grievances. Mechanisms that focus on corporate accountability in global supply chains take very different approaches in terms of formal powers, leverage, institutional governance, capacity and approach to remedies. The following section compares two international non-judicial mechanisms accessed in the Factory C case study, the German National Contact Point (NCP) and the Worker Rights Consortium (WRC), to illustrate some of these different approaches and outcomes.

The complaint that the Clean Clothes Campaign (CCC) lodged with the German NCP detailed various violations of Section IV (Employment and Industrial Relations) of the OECD Guidelines at Adidas suppliers in Indonesia, including Factory C. It also appears this strategy was largely driven by Europe-based NGO stakeholders with limited coordination with local worker representatives. The German NCP had no presence in Indonesia and did not conduct any investigations into the allegations. Instead the NCP facilitated an intensive mediation process between Adidas and CCC; however, Perbupas representatives were not directly engaged and had minimum input in this process. Apart from agreement to continue dialogue with the CCC, the mediation process did not result in any concrete commitments from Adidas. Both sides disagreed on the alleged facts,

The above discussion illustrates that accountability mechanisms with strong and credible investigation powers that are willing to issue recommendations are likely to be more advantageous to workers than those mechanisms that only facilitate dialogue (particularly cases such as this where company representatives are already willing to engage with civil society representatives).

In contrast with the German NCP, the WRC had a staff member based in Indonesia with extensive experience on local labour issues. The local representative was able to conduct an in-depth investigation into working conditions at Factory C. While the German NCP process did not directly engage with workers or worker representatives, the WRC consulted intensively with the workplace union and other local stakeholders to understand grievances as well as their perspectives on appropriate solutions, which increased the credibility of the report and its recom-

mentations. Unlike the complaint to the NCP, WRC's involvement resulted in a number of tangible improvements within the factory, which indicates the benefits of local staff with stronger investigatory and advisory powers. However, it is important not to overstate the influence of either of these voluntary mechanisms. The WRC was ultimately unable to obtain commitments from Adidas to provide financial incentives to increase respect of workers' human rights, which they attributed to seriously curtailing the extent and sustainability of the benefits arising from its involvement (WRC, 2006).

MAJOR BARRIERS TO WORKERS ACCESSING NON-JUDICIAL GRIEVANCE MECHANISMS

Most major international brands sourcing footwear and apparel from Indonesia participate in at least one of several voluntary labour rights initiatives, including the Fair Labor Association, the Ethical Trading Initiative and the ILO's Better Work Indonesia program. However, worker awareness of most of these initiatives and associated grievance mechanisms remains very low. The following section examines some of the barriers that limit workers' awareness and access to these mechanisms.

Several brands mentioned by workers interviewed for this research, including Nike, Adidas and New Balance, are members of a multi-stakeholder initiative known as the Fair Labor Association (FLA). Under FLA rules, members and their suppliers must provide their own confidential grievance mechanisms for workers to make complaints directly to them, with the aim of building capacity so supplier factories can handle grievances on their own. Where these mechanisms do not resolve a complaint, the FLA's Third Party Complaint Procedure can be used as a last resort. Information about the complaints process is available online in Indonesia and the process of filing a complaint is not expensive or complex. However, none of the workers that we spoke to raised the possibility of contacting the FLA or utilising its complaints process.

In the cases of Factory B (New Balance supplier) and Factory C (Adidas supplier), grievances have remained unresolved for long periods of time, so it is interesting that the unions never considered making a complaint to the FLA. In the case of Factory C, an FLA complaint may have been viewed as unnecessary since the WRC was engaged. Workers at New Balance supplier Factory B were not familiar with the FLA and its functions apart from its involvement in a 2012 audit conducted at the workplace. Workers claimed that the audit did not result in any positive changes and that their union was never informed of the outcomes of the FLA assessment or its follow-up recommendations. As of August 2014 no information about the factory visit has been made available on the FLA website and New Balance reported only receiving a copy of the audit more than one and a half years after it was conducted.

This highlights the necessity that human rights mechanisms facilitate good communication with stakeholders at every level—particularly with representatives of the aggrieved individuals. A former Indonesian complaints handler at the WRC, Frans Supiarso, believes that it takes considerable time and intensive engagement to build workers' trust in a complaints mechanism. Prior to the existence of his role none of the unions in participating factories had lodged a formal complaint because they were unaware of the procedures or the contents of the code of conduct. He believes that without taking the time to confidentially explain the WRC's code and complaints mechanism with workers it would never had been used. This reflects experiences of labour or-

Among other strategies, Indonesian garment and sportswear unions have worked with international NGOs and trade unions to draw global attention to human rights issues in their factories. Here two Indonesian trade unionists take part in a protest outside a World Economic Forum meeting in Davos, Switzerland. Photo: Tim Connor

ganisations in other major manufacturing jurisdictions. China Labor Watch expert Kevin Slaten also emphasises that complaints mechanisms need a significant amount of socialisation to be effective (interview, April 2014). For that reason, China Labor Watch has an extensive socialisation program for their worker hotlines in China, including annual visits to participating factories to publicise the existence of the hotlines and to field questions about labor conditions and also to give workers an opportunity to meet the staff running the hotlines in person. Yet the WRC and China Labor Watch seem to be exceptions rather than the norm in this regard—very few complaints mechanisms systematically invest in comprehensive local socialisation processes.

The former WRC complaints handler also emphasised the need to take into account workers' lack of awareness of what might constitute a violation of their rights. While Supiarso recognised the need to remain neutral, he also pointed out that unequal access to basic information meant that grievance mechanism representatives need to be flexible in their approach to receiving complaints. In particular, he highlighted the importance of taking time to discuss cases and share relevant information, to ensure that workers can make more informed choices about what issues they take forward.

INDEPENDENCE AND CREDIBILITY

Several worker representatives were also cautious in engaging with unfamiliar initiatives due to a concern that many international mechanisms serve more to enhance the image of brands than to achieve meaningful changes in working conditions within supply chains. For instance, a national union leader at KASBI shared that many international mechanisms are viewed as 'elitist' and workers have limited trust in their effectiveness. Emelia Yanti from GSBI stated her belief that many mechanisms benefit corporate stakeholders far more than workers and she was wary of being involved in initiatives that were primarily formed as 'marketing tools'.

A Garteks union leader interviewed in September 2014 spoke candidly about her reservations with multi-stakeholder initiatives that did not engage with unions beyond a superficial level. She gave the example of Better Work Indonesia's factory assessment process, which did not actively involve participating unions in workplace audits. She had very little faith that its factory assessments were accurate, particularly because workers were only interviewed within the factory grounds, sometimes in the presence of their management, with minimum engagement of worker representatives. She also mentioned that while the program offered some good capacity support for unions, including access to communications technology, it had very little means to ensure that participating brands implement its recommendations and did not engage with critical stakeholders who might be able to increase public pressure on brands to comply.

The role of company purchasing practices

Workers' human rights are not generally denied just for the sake of it and failure to fulfill workers' minimum rights often stems from the cost pressures of shoe and apparel manufacturing. For instance, in relation to freedom of association, many factories fear that stronger unions will increase demands for higher pay, full compensation for overtime and an end to forced overtime. Further, active, outspoken unions can take industrial action that would prevent suppliers from meeting delivery deadlines (more and more international brands work on 'just in time' production models), meaning that suppliers that fail to meet delivery deadlines can damage their relationship with their customers. A unionised workforce can also resist work intensification pressures and that resistance can also make it difficult to achieve delivery deadlines. All these changes may lead to higher costs, lower profits and the risk that their buyers might reduce orders and look elsewhere. The costs of compliance are often the unspoken tension behind all labour rights violations and disputes.

Failure to address this issue can undermine progress, even where a brand commits to bringing about positive change. As discussed earlier in this report, the WRC attributes the deterioration in the situation at Factory C following initiation improvements in early 2005 to Adidas' unwill-

ingness to ensure its purchasing practices would cover increased costs stemming from legal compliance. Adidas (2004) reported its view that ‘the cost of legal compliance must be borne by the manufacturing partner, i.e. the employer.’ According to the WRC (2006):

By significantly reducing its business at the factory, for unrelated business reasons, in the midst of discussions regarding major labor rights violations...Adidas effectively communicated to [Factory C] that labor rights compliance is not a meaningful factor in the brand's sourcing decisions.

Most global brands that adopt labour rights codes of conduct for their suppliers use a combination of labour rights auditing, efficiency-based arguments and the threat of cutting orders to persuade their suppliers to comply. Efficiency-based arguments often focus on the potential for increased productivity or more efficient grievance resolution. This approach is useful but has some major limitations—efficiency gains within a more satisfied, motivated and healthy workforce are possible, but even a highly productive workforce can become less price competitive as wages and conditions increase over time, prompting brands to reconsider their sourcing decisions. This is evident in the recent sourcing trends away from China, where wages have risen significantly (Ming, 2013), and in efforts to reduce costs by ‘engineering the labour out’ of footwear and apparel manufacture by increasing the mechanisation of production (Jopson, 2013).

While the threat of cutting orders is an important point of leverage, it is doubtful that this alone is sufficient in achieving systematic and sustained improvements, especially where suppliers are operating on narrow profit margins. Depending on the size and stature of the buyer and how important it is to the factory involved, threats of withdrawing or withholding orders can work in the short to medium term. But over the long term if a union starts to impact on a factory's competitiveness there are a number of strategies which factories can and do use to undermine workers' campaigns for better conditions. For example, according to a representative from a prominent labour monitoring agency, there have been a number of cases where factories have moved to another location or shifted a certain brand's orders to another company entity within the corporate group to isolate active worker organisations from the production of high-profile fashion brands. Factory management also uses brinkmanship (e.g. in the Factory C case the employer threatened to close the factory). If, rather than relying on cutting orders, there were more direct, sustained and tangible incentives for respecting workers' rights then this would have the potential to shift the paradigm. As such, it is important that non-judicial mechanisms maintain a central focus on ensuring changes to the terms of trade that promote provide clear and concrete financial incentives for human rights compliance.

A number of brands, including Nike and Adidas, also attempt to persuade their suppliers to comply with labour codes by using a ‘balanced scorecard’ system as a means to determine which factories are rewarded with additional orders and which are punished with order reductions. The term ‘balanced’ refers to the fact that traditional business measures (speed, cost and quality) are balanced with measures of social and environmental compliance. In theory, such scorecard initiatives have the ability to promote sustainable improvements in labour rights compliance. Whether or not they do so in practice depends on the accuracy of the auditing process and on how the scorecards are designed and implemented. Companies that use such scorecards to rate their suppliers' performance generally don't reveal the scoring methodology. Given that labour conditions are only one of the many criteria in the overall assessment—and given that issues like freedom of association make up a yet smaller sub-component—a factory supplier that fully

respects workers' right to freedom of association may gain very little scoring advantage over suppliers that fail to respect that right. Indeed, if the factory that respects freedom of association then has to deal with a more empowered union which achieves changes that result in higher labour costs, then the increased score on the factory's 'balanced scorecard' from allowing the union to operate may be outweighed by a lower score on cost. Without greater transparency from brands on the way in which their balanced scorecards are weighted, and further evidence of how the labour rights component in that weighting is influencing buying practices, it is difficult to know how effectively such scorecards are promoting improved labor rights compliance.

Interaction between informal and formal strategies for seeking redress

The role of international support networks

In all of the cases discussed in this report, contact between local unions and international civil society organisations or networks was a precursor to the use of any international complaints mechanisms. In lieu of additional support, most Indonesian unions do not have the internal capacity to engage with international complaints forums. Even where unions know how to lodge direct complaints to brand representatives or through company grievance mechanisms, they usually lack the capacity to leverage support from global consumer markets and investor groups, and such support is often necessary to prompt a more proactive brand response. For this reason, many worker representatives seek to build relationships with international labour advocates and networks that may provide support in accessing formal complaints mechanisms and ensuring that buyers respond to their grievances. These international civil society organisations, such as the Clean Clothes Campaign, are usually in a better position to influence global brands due to their ability to mobilise global consumer pressure. Parto, from KASBI, notes that with grievances raised in relation to the Freedom of Association Protocol (analysed in detail in the companion report) brands respond more proactively in the presence of international NGOs than where cases are only discussed between local stakeholders:

NGOs are necessary because brands really notice when Oxfam is present. It's like that because Oxfam will put pressure on them internationally. That's the image seen by brand and image seen by supplier. (Interview, September 2013.)

Chris Wangkay of Oxfam in Indonesia believes international campaigning and pressure, particularly via consumer networks, was key to getting companies to respond to labour issues. Wangkay stated that:

[Brands] see us as credible, when Oxfam brings alleged cases to them, more so than if workers or local unions do so themselves. (Interview, September 2013.)

However, Wangkay acknowledged that international NGO influence is not just about having credibility, it also because brands perceive that when NGOs with international campaigning experience are involved, the risks of international reputational damage are increased. For instance, one strategy commonly employed by international campaign groups is to publicly expose sweatshop abuses in a manner designed to undermine the marketing messages upon which these brands' business models significantly rely (Connor and Haines, 2013). Brands spend millions

of dollars building their markets through advertising and other forms of promotion, frequently adopting glossy, euphoric and glamorous images in association with their products. When such images are juxtaposed with grim and mundane realities faced by workers who make their products, brands struggle to maintain the flawless marketing façade. Senior management from one large export-oriented supplier in West Java was candid about the influence that international NGOs have in escalating cases of labour violations. Senior management reported that the fact the case was exposed to an NGO increased leadership's attention on the issues, in terms of both the brand and the company. He felt that while the issue may have been resolved in a similar manner either way, the involvement of the international NGO significantly hastened response times.

Yet many unions have difficulty in accessing international networks and not all unions have strong links with international NGOs. In some unions there are very few representatives with English language skills, which limits their ability to communicate and coordinate strategy with potential allies, while few international labour NGOs have staff members that speak Indonesian. Further, support from NGOs can often waiver depending on internal priorities, funding and political dynamics. International NGOs operating within Indonesia are also constrained in the ways that they can engage with workers' rights issues. In recent years the Indonesian government has taken an increasingly narrow approach to how foreign NGOs may operate in the country. Foreign NGOs are expressly prohibited from engaging in activities deemed 'political' in nature under the Civil Society Organisation Law (Law no. 17/2003). The Government recently refused to renew its MOU of the Friedrich Ebert Stiftung Foundation (FES), which has had a long history of funding trade unions in Indonesia and has had to close its Indonesian office. Other foreign NGOs that have traditionally supported workers' rights are nervous that they may be forced to change their program focus or shut down their Indonesian operations.

Further, the dynamic between local unions and NGOs is not always straightforward. Many unions themselves are wary of NGOs that purport to represent workers' interests but do not sufficiently respect the importance of worker empowerment and collective bargaining. Unlike union representatives, NGOs are not representatives of workers or accountable to workers and therefore are not as familiar with their needs and do not have as much legitimacy. According to KABSI representative, Parto:

[NGOs] are still needed as a support system—a support system only. Policy-making decisions must be handed over to the unions. Because if the NGO holds the reins then the unions will be sterile and can't do much at all. The implementation will be hollow as well. So, they are still needed as a support system, to maintain the dynamics of discussions within unions, but the decision making must be controlled by the unions. (Interview, June 2011.)

Clearly there are complex dynamics between representative trade unions, which are accountable to their members, and NGOs, which are largely accountable to donors, as well as between local and global civil society organisations. International grievance mechanisms that preclude (due to formal or practical constraints) the direct engagement of local unions need to be particularly alert to these dynamics.

The role of strikes, protest and local media campaigns

In lieu of effective state-based enforcement of labour protections, all the unions interviewed for this research viewed informal strategies, particularly industrial action and demonstrations, as a crucial means to influence company behaviour and augment existing formal grievance processes. Strikes provide a potentially powerful form of protest: by strategically withholding their labour, workers seek to leverage their direct bargaining power over employers by impacting on their profit margins. However, as several union leaders emphasised, strikes are only effective in improving conditions in individual workplaces when they are strategic and combined with collective bargaining through bipartite negotiations with management. The strategy can be undermined when management dismisses workers who join a strike (as happened in the case of 33 Perbupas representatives dismissed from Factory C in October 2005), or, in extreme cases, relocates them to jurisdictions where the freedom to engage in collective organising and strike action is more restricted.

Some unions also use mass demonstrations (which may or may not also constitute strikes) in individual cases to apply pressure to local labour department (*Disnaker*) officials to respond to their grievances or even to the IR Courts and Komnas HAM. It is not uncommon for workers with a grievance to hold demonstrations or protests at the local labour office with the hope of obtaining a letter of support or formal recommendation. While not legally binding, the local labour office is seen as a source of authority and their support can strengthen the position of aggrieved workers since the *Disnaker* is formally responsible for monitoring labour conditions in the region.

Former union activist and Ministry of Labour representative Dita Sari believes that unions may be over relying on demonstrations, to the neglect of other grievance strategies. Dita Sari believes that demonstrations are an important strategy but they were more relevant during the downfall of Suharto, whereas now there are many more avenues available for workers to address their grievances (interview, June 2013). However, those still active within the union movement argue that demonstrations continue to be one of the most useful tools available to workers, and to civil society movements in Indonesia more generally. A number of interviewees, for instance, attributed the recent significant minimum wage rises across many industrial regions to the increased political activism of Indonesian trade unions, including their mass strikes and demonstrations. The capacity to attract large numbers can intimidate political opponents and union leaders frequently end up meeting directly with local politicians and leaders to negotiate during mass rallies (Juliawan, 2011). Major reforms in social security laws have been attributed to mass organising of the largely union-based coalition KAJIS, which successfully engaged broader civil society support and forged strategic political partnerships (Cole, 2012). Mass labour demonstrations have also been associated with government decisions to cancel unpopular policies, including a proposal to roll back various labour law protections in 2006 (Juliawan, 2011).

According to Indonesian Metal Workers Union Federation representative Judy Winarno:

Workers still rely significantly on demonstration or protest at this point in time. This is because government law enforcement remains weak so we must find ways to demand it, whether that's from the government or the private sector...It's not just the bureaucrats that aren't upholding the laws, it's also our parliament as a whole. They have never expressed anger at violations by the government or private entities, whereas they are the ones that created the laws... We find it very

difficult to meet with them when we submit grievances, there are only very few who are prepared to meet with us. For this reason there is no other avenue for workers other than to rally their strength to push for better policies by conducting protests or demonstrations and strikes, even though there are some who will suffer as a consequence... (Interview, April 2014.)

However Winarno admits that demonstrations are not without their dangers and gives an example of a strike in October 2013 in which groups hired to disperse the strikers allegedly stabbed several participating workers. Two workers sustained cuts to their heads and were critically wounded. Union representatives at Nike supplier Factory A also reported that levels of intimidation and violence against the union increased after it announced it would organise a demonstration to demand compliance with the minimum wage. The risks of dismissal or legal action against strikers are also high. Under Indonesian law, while workers have the right to strike, the procedural framework for conducting a legal strike is quite complex and the timeframe is narrow. Courts have taken a generally strict approach to upholding procedures necessary to conduct a legal strike, but have differed in their interpretations of 'failed negotiations' (Caraway, 2010), meaning that workers who are threatened with dismissal for participating in strikes have narrow and uncertain grounds for disputing that dismissal. An additional problem is that although strikes can be powerful in targeting decision makers at national and local levels, strike actions in Indonesia are generally not an effective tool for influencing the behaviour of global buyers. Indonesian strikes rarely attract a global audience so even if international brands are targeted (e.g. in signage) it has limited reputational impact. It is also difficult to predict the way that global brands may react to strike action. On one hand, the need to limit associated delays in production provides an incentive for global brands to pressure suppliers to respond reasonably to worker demands. On the other hand, frequent strikes may dissuade brands from investing more in countries that allow workers the freedom to engage in public demonstrations.

Media coverage is also another tool that worker organisations use to increase pressure on employers to respond. However, the media is not necessarily sympathetic to the labour movement. In fact, one union leader complained of corrupt journalists, who he claimed would only publish negative stories about employer practices if the factory refused to pay them off. However, unions are increasingly savvy users of social media, which is extremely popular throughout Indonesia, and has become a very important means of organising as well as spreading news about particular violations. Garteks union has established a YouTube channel (FSB Garteks, 2012) and reported that their videos had become important campaign materials. The Secretary General of Garteks, Ary Joko (interview, September 2014), mentioned that one of its videos, which provides an account of trade union violations at an Adidas and Mizuno supplier and names those personnel allegedly complicit in the violation, had been successful in increasing pressure on police and management to respond, contributing to the reinstatement of an unfairly dismissed union leader.

The extensive use of strikes, protests and social media campaigns suggests that informal strategies are still viewed as the most important tools available to workers to increase their leverage in achieving improved working conditions. Until workplace bipartite bargaining becomes more mature and labour regulations are more effectively enforced by legal institutions, it is likely that demonstrations will remain the mainstay of labour activism in Indonesia. While the local non-judicial mechanisms observed in this report have created some increased pressure on domestic institutions to perform, they have not resulted in any significant transformation in levels of respect for labour rights amongst local stakeholders.

Promoting more effective human rights grievance mechanisms in footwear and apparel supply chains: key lessons

The above analysis illustrates that in pursuing human rights grievances within globalised industries Indonesian worker organisations are engaging with a variety of local and international mechanisms, producing a complex interplay between multiple state-based institutions as well as various non-judicial accountability mechanisms and campaign networks at local and international levels. In most of the cases we researched the unions involved sought to get their grievance addressed by simultaneously engaging with multiple redress mechanisms, with their expectations of what each mechanism could contribute to the possibility of redress having been influenced by previous experience. In doing so, the unions often used some of those mechanisms to achieve purposes that would not necessarily have been envisaged by those who designed the mechanisms' grievance handling procedures. For example, grievances were sometimes lodged with state non-judicial mechanisms such as the Human Rights Commission, not because the union expected that the Commission would have sufficient resources to investigate but because they have found that if local police know that there is a possibility the Commission *might* investigate then the police will be more likely to act on a complaint.

In each case this complex strategic engagement with multiple grievance mechanisms was supplemented by efforts to generate local and/or international media coverage of the grievance, using demonstrations, connections with national and global activist networks and social media. The unions' experience has been that if they can activate sufficient interest in their dispute through engagement with both traditional media and new social media then it can not only increase the pressure on local and international brand-owning companies to take their grievance more seriously, in the context of relatively weak commitment to the rule of law it can also influence the way state institutions (such as the police and the courts) respond to their grievance.

However, while there is evidence that combining strategies in this way can enhance the responsiveness of particular mechanisms, in all cases the challenges facing the Indonesian unions were considerable and in the cases where some form of redress was achieved it was generally partial and the improvements in respect for human rights were not necessarily sustained. Further, some Indonesian unions that have previously worked effectively with networks of international trade unions and labour right organisations to leverage pressure on global brands and their suppliers are now finding these networks links are weakening, both because organisations campaigning on these issues in the Global North are finding it more difficult to fund their campaigns and because the Indonesian government is making it more difficult for international organisations that work on these issues to maintain a presence in Indonesia.

Regarding the particular contribution of non-judicial mechanisms, while many factors influence the efficacy of these mechanisms, the case studies for this research indicate that the following three factors have particular importance: first, the extent to which the mechanism provides for adequate access and participation to worker organisations; second, whether the mechanism is capable of conducting or supporting a credible investigation of conditions in the relevant workplace; and third, the capacity of the mechanism to influence companies to implement positive changes in working conditions and particularly to ensure that any proposed changes are supported by (or, as a minimum, are not undermined by) financial incentives within the company's

purchasing practices. It should be noted that many state-based grievance mechanisms are not designed to provide comprehensive redress to violations of workers' human rights, and have separate underlying aims, such as the protection of witnesses and victims of crime. Nonetheless the following factors are still important in considering the extent to which any mechanisms may *contribute* to effective redress.

Opportunities for union access and participation

It is virtually impossible for individual low-waged workers to access justice for violations of their rights without the support and collective strength of a representative organisation. Therefore, grievance mechanisms that fail to recognise the power imbalance between individual workers, their employers and global brands are unlikely to ever produce sustainable improvements in respect for human rights. As such, it is important that grievance mechanisms prioritise the empowerment of workers by promoting greater respect for their collective bargaining rights. It is also important that mechanisms have strategies in place to tackle inequalities regarding access to information and resources. Workers and their representatives rarely have access to the information they need to engage effectively in negotiations with their employers. Workers need more than just a local language copy of a buyer's code of conduct—they need concrete information about how buyers require their suppliers to comply with their codes, including the extent to which the price paid per good meets the costs of compliance with the code and applicable law.

Grievance mechanisms should therefore aim to facilitate the active and informed participation of workers' representative organisations by:

- Ensuring a formal representative role for worker organisations;
- Conducting communication in the complainants' local language;
- Providing local, accessible points of contact (e.g. local complaints handlers, responsive web-based communication in local language);
- Building trust through routine contact and transparent information sharing in a safe setting (i.e. in hostile situations not in front of workplace management);
- Tackling the power imbalance between complainants and companies by supporting workers with information about their legal and normative rights and requiring companies to disclose information about their business practices.

Support for credible fact finding

The report highlights significant gaps in existing regulatory systems and social auditing practices. In this context, a key function that non-judicial mechanisms can contribute is an authoritative assessment or verification of the facts in relation to a particular alleged violation. Without a credible fact-finding or verification component (i.e. follows basic good practice such as confidential, off-site interviews with workers facilitated by organisations with whom workers have established relationships of trust), the mechanism's ability to facilitate effective dialogue or provide robust recommendations is likely to be very limited. Encouraging the active involvement of trade unions in any fact-finding process is likely to further enhance its credibility.

Grievance mechanisms can therefore improve the credibility of the remediation process by:

- Independently investigating or verifying alleged human rights violations where there is dispute between the parties as to what occurred;
- Ensuring complainants and representatives can provide input into the investigation process in a way that mitigates risks to their employment status and personal security (e.g. off-site, confidential interviews with factory workers);
- Publishing the results of that investigation or verification process and where necessary developing recommendations for appropriate redress that can provide a basis for constructive dialogue between the parties.

Corporate purchasing practices and supplier noncompliance with human rights

International non-judicial mechanisms need to focus on the extent that brands actively support human rights compliance by their suppliers through their purchasing agreements. Sustainable improvements to respect for workers' rights in the manufacturing sector, particularly increased respect of freedom of association, higher wage rates and more secure employment contracts, must be supported by adequate financial incentives from global buyers, including pricing and order commitments based on demonstrated improvements. Threats by global buyers to cut orders from suppliers that violate human rights are less effective than incentives to comply, particularly if a supplier can find another customer relatively easily. It is crucial that any effective redress or remedy plan sets out not only the steps that the supplier is expected to take to correct the rights violation but also includes transparent and measurable commitments from the global buyers to use their purchasing power to reward the supplier for taking those steps.

Companies sourcing from regions with poor legal protections for workers and a culture of impunity for human rights violations are under a particular onus to demonstrate that they have sufficiently strong commercial incentives in place to promote respect for human rights. However, unless large consumer and investor groups demand fundamental change, global corporations themselves have limited short-term or long-term profit incentives for changing current purchasing practices. This reality points to the limitations of relying on voluntary human rights compliance for commercial entities and the need for greater consideration of legally binding interventions.

Grievance mechanisms can therefore strengthen the likelihood of effective redress by:

- Examining and identifying any purchasing practices that may have contributed to violations of workers' rights;
- Recommending sustainable purchasing practices that provide positive incentives for suppliers that uphold workers' rights as well as sanctions for ongoing non-compliance;
- Requiring that any agreed remediation process is properly monitored in collaboration with independent and credible labour rights organisations, and that genuine progress in remediation is rewarded by the global buyer's purchasing commitments;
- Publicly reporting on companies' purchasing practices and the extent to which they promote, or, at minimum, do not create disincentives for compliance with workers' human rights.

Strategic interaction with broader grievance processes

While individual non-judicial mechanisms may be limited in their capacity to bring about changes in corporate behaviour, such mechanisms are generally used in conjunction with a range of other strategies, which viewed as a whole can carry greater influence. Non-judicial mechanisms can contribute useful functions that may be absent from either formal legal grievance processes or more informal campaign strategies. As such, it is important that those involved in the development and management of non-judicial mechanisms are cognisant of their relative strengths and build on those strengths to fill gaps in the existing regulatory landscape.

Grievance mechanisms can therefore strengthen broader redress processes by:

- Focusing on developing strategic functions that may be missing from existing formal and informal grievance processes (e.g. ability to conduct credible, authoritative investigations);
- Engaging stakeholders that may be beyond the scope of existing domestic regulatory frameworks (e.g. facilitating dialogue or negotiations with international brand representatives beyond the jurisdiction of domestic laws);
- Providing information to complainants that is difficult to obtain from existing sources (e.g. information about international brands' human rights commitments and purchasing practices);
- Ensuring the mechanism's rules do not actively prevent or otherwise inhibit complainants from simultaneously pursuing other grievance strategies.

Endnotes

* If this symbol appears beside a name the first time that the name appears in this report then it indicates that the name is a pseudonym. Research participants interviewed for this research project were given the option of remaining anonymous.

1. In correspondence regarding an earlier draft of this report, Adidas distinguished brand companies in the sports goods industry from those in the wider fashion industry, noting that ‘there is higher concentration of orders and greater stability and longevity of supplier relations in the sports goods industry and certainly less mobility in capital than has been described here’. This is certainly the case. However, it is also true that Adidas’ and Nike’s dominant position in the global sport shoe market gives those companies substantial leverage in price negotiations. For example, in 2007 Adidas made a number of statements to the media outlet *Bloomberg* (2007a, 2007b) to the effect that purchasing rival brand Reebok had enabled Adidas to increase its profit by demanding more favourable prices from its suppliers. The larger question of how the purchasing practices of companies in the sporting goods industry impact on respect for workers’ rights is considered later in this report and in the companion report regarding the Freedom of Association Protocol.

2. Connor also held the position of Labour Rights Advocacy Coordinator at Oxfam Australia from 2002 until 2010 and Rennie held the position of Labour Rights Advocacy Officer in the same organisation from 2010 until 2013. In these capacities they conducted extensive research and advocacy in relation to respect for labour rights in sportswear and sports shoe factories in Indonesia, including Factory C, which is featured in the online supplement to this report.

3. As noted in the Online Supplement to this report, the Worker Rights Consortium is an independent organisation established by universities in the United States to investigate labour rights issues in factories supplying the collegiate apparel market.

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