



The Freedom of Association Protocol

A localised non-judicial grievance mechanism for workers' rights in global supply chains

Dr Tim Connor
UNIVERSITY OF NEWCASTLE
Dr Annie Delaney
RMIT UNIVERSITY
Sarah Rennie
MELBOURNE UNIVERSITY

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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This report is authored by Tim Connor, Annie Delaney and Sarah Rennie.

Correspondence concerning this report should be directed to Tim Connor, tim.connor@newcastle.edu.au.



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Acronyms

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 Organisation.
KASBI:	Kongres Aliansi Serikat Buruh Indonesia (Indonesian Congress of Allied Unions
Perbupas:	Perkumpulan Buruh Pabrik Sepatu (The Association of Footwear Workers) — an affiliate of the GSBI union, Perbupas changed its name to SBGTS in 2007.
The Protocol:	The Freedom of Association Protocol.
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).

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Krittika Wutthipat Arree and Lilis Mahmudah signing the FOA Protocol in June 2011.

Source: Clean Clothes Campaign

Executive Summary

This report examines the contribution of a non-judicial mechanism designed to encourage respect for freedom of association within Indonesia's export-oriented apparel and footwear sector. The Freedom of Association Protocol (the 'Protocol') is a multi-party agreement created by Indonesian unions, factory owners ('suppliers') and global brand-owning companies ('brands'), including Nike, Adidas, Puma and New Balance. In Indonesia freedom of association is protected by legislation and union busting constitutes a criminal offence; however, implementation of these laws is weak and routine violations continue to occur. The Protocol establishes specific standards for freedom of association in participating factories, as well as grievance resolution procedures for violations of those standards. It currently applies to approximately 300,000 factory workers employed in industrial districts throughout Java, most of whom are young women. It was developed in the context of a long-running global campaign by trade unions and labour rights organisations to persuade sportswear brands to uphold workers' rights in their supply chains.

The Protocol has a number of features that make it an important case study in terms of the operation of non-judicial human rights grievance mechanisms. Significantly, the Protocol provides a model for ways that non-judicial mechanisms can enhance the influence and voice of vulnerable peoples who are impacted by the activities of transnational business. Worker representatives have been active decision makers and participants in the design, dissemination, implementation and governance of the Protocol. This has contributed to relatively high levels of local stakeholder ownership of the Protocol compared with other initiatives studied in this project, and to the active use of the Protocol as a bargaining tool within individual workplaces. The involvement of Indonesia-based unions and suppliers in Protocol negotiations has also resulted in provisions more tailored to the Indonesian context. Achieving local participation has required a flexible approach and a significant commitment of time and resources, and it would not have been possible without a skilled third party facilitator to maintain ongoing engagement by all parties.

The Protocol's development to date illustrates the potential advantages of locally designed redress models based on facilitated negotiations. While the Protocol has not prevented suppliers from seeking to suppress trade union rights, it has shifted the balance of power between unions and employers in the factories we researched in several important ways. In several of the factories we researched trade union leaders reported that their ability to claim the rights negotiated through the Protocol had given them more confidence to challenge discrimination against them as union leaders. For example, in one such factory, union leaders who had been subjected to violent intimidation (including in one case being subjected to electric shocks) reported that the Protocol's processes had helped bring that violent intimidation to an end and that they are now able to organise freely and negotiate with factory management.

Many of the workers interviewed for this report also reported that the Protocol has enhanced their ability to achieve positive changes on the factory floor by establishing specific standards, broad support networks and a new forum to raise grievances directly with factory management and brand representatives about workplace violations via union representatives. One of the clearest examples of concrete benefits for workers stemming from the Protocol's focus on



Cover: During 2010 the trade unions involved in negotiating what became the FOA Protocol held demonstrations to call for an agreement that would effectively protect freedom of association. *Photo: Play Fair Indonesia.*

trade union rights relates to wage negotiations. Unions in a number of factories reported using the Protocol's processes to help them stand firm against efforts by their employer to gain government exemptions from annual increases in the local legal minimum wage. After several disputes on this issue in Nike supplier factories, Nike adopted a policy not to allow its first-tier suppliers to seek minimum wage waivers from the government (Adidas had earlier adopted the same policy). This has brought important benefits to many thousands of workers, since in recent years there have been significant annual legal minimum wage increases in many of the relevant provinces.

Notwithstanding these achievements, the Protocol has a number of limitations. The mechanism is largely voluntary, which presents significant challenges. A number of brands and suppliers have exhibited significant commitment to the Protocol process; however, its implementation has been far from uniform. Although the Protocol has facilitated the informal resolution of a number of grievances, in many factories the formal workplace committees that are supposed to have been established to monitor the Protocol's implementation and resolve disputes have not been functioning effectively. Although in some factories the terms of the Protocol have been incorporated into collective bargaining agreements, at this stage the Protocol is primarily viewed as a non-binding initiative and many suppliers appear to be resisting its full implementation in their workplaces. As such, without sustained monitoring, particularly from international labour rights networks (whose history of labour rights campaigning targeting the sportswear sector laid the groundwork for the Protocol), the incentives for some brands to stay involved and to persuade their suppliers to continuously improve compliance may diminish.

There is evidence that the Protocol's effectiveness may be undermined by the lack of sufficient incentives to persuade suppliers to comply. Currently several different measures are adopted by brands to persuade suppliers to cooperate, including compliance scorecard incentives, business case arguments and the implied threat of limiting or reducing orders. However, positive financial incentives are not clearly articulated. This is problematic because the implementation of the Protocol can result in additional costs for suppliers, since democratically unionised workers are likely to demand higher wages and better working conditions, which may or may not be accompanied by increased productivity. If brands are not willing to cover these potential costs there is a risk that suppliers will continue to develop strategies for avoiding the Protocol or even relocate production to other countries, as frequently occurs within the sector. Certainly there was concern among union leaders we interviewed that implementation of the Protocol's rules regarding trade union freedoms may have been part of the motivation for at least one factory to close and move to another country and for another supplier to move the orders of brands who had signed the Protocol to another part of its corporate group, away from the subsidiary where freedom of association violations were alleged to have been taking place.

Realising the potential benefits of the Protocol also depends on unions having good internal communication, accountability to their members and a systematic approach to socialising the protocol. Partly for this reason, the realisation of the Protocol's benefits has varied between unions and, in some cases, within unions, depending on the extent to which regional union officials were aware of the Protocol and were sharing information and progress reports between factory-level union leaders and the National Committee of the Protocol.

As an institution, the Protocol is also relatively fragile and at the time of writing its future is uncertain. There is significant frustration among the unions involved that the global brands are refusing to negotiate further protocols on living wages and job security, insisting instead that further work needs to be done on implementing what has been agreed in relation to freedom of association. For their part the brands involved are keen that the unions and their international allies should focus instead on persuading other global companies to join the Protocol initiative. Tension between the two sides over this issue is significant and has presented a challenge to further progressing implementation of the Protocol agreement. Furthermore, despite the fact that the financial resources committed to the Protocol's institutional processes have been relatively modest (consisting mainly of the time of an Oxfam Indonesia staff member who has acted as a facilitator and some money from Oxfam to support meeting costs), Oxfam has signaled that it plans to withdraw these resources in order to focus on other priorities. At this stage it is unclear whether any other organisation is able to step in to play that role.

Despite this fragility and uncertainty, and despite its inconsistency in implementation, in the context of other non-judicial mechanisms operating in labour-intensive global supply chains the Protocol's achievements have been quite remarkable. Our wider research project (documented in other reports in this series) has involved studying nine other cases where prominent non-judicial mechanisms have sought to respond to human rights grievances in Indonesia and India. Although many of these other mechanisms include trade union rights among the rights they seek to protect, in relation to those other cases we found numerous examples of trade union rights violations and scant evidence of the other mechanisms being able to either reduce those ongoing violations or provide redress. In contrast, most worker representatives we interviewed

regarding the Protocol ascribed various tangible benefits to the introduction of the Protocol in their workplaces. Through its focus on worker empowerment and more robust factory-level industrial relations, the Protocol offers an important and unique model for strengthening labour conditions and factory-level grievance resolution in the manufacturing sector.

This report also makes various recommendations to improve the effectiveness and sustainability of the Protocol. If strengthened, the Protocol has the potential to significantly improve respect for freedom of association within the supply chains of participating companies. In the context of today's global garment and footwear sector, in which freedom of association remains marginalised and barriers to organising remain significant, the Protocol represents an important, albeit imperfect, innovation.

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Table 1 : Freedom of Association Protocol case summary

<i>Business Activity/Project</i>	Footwear and apparel production for transnational brands in Indonesia.
<i>Companies (including domicile)</i>	Adidas AG (Germany), Asics Corp (Japan), New Balance (USA), Nike Inc. (USA), Pentland Group PLC (UK), Puma SE (Germany), 73 Indonesia-ba sed suppliers (mostly Korean and Taiwanese owned).
<i>Key Stakeholders</i>	<p>More than 300,000 factory workers employed in the Indonesian supply chains of participating global brands. Around 80% of these workers are young women.</p> <p>Indonesian unions: SPN (National Workers Union) KASBI (Indonesian Congress of Allied Unions), Garteks-SBSI (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, LIPS (Sedane Labour Information Institute), AKATIGA, Clean Clothes Campaign, Maquila Solidarity Network.</p>
<i>Human Rights Abuses</i>	<p>Cases include violations of:</p> <ul style="list-style-type: none"> • Freedom of association and the right to negotiate or bargain collectively (ILO Conventions 87 & 98, Article 20 Universal Declaration of Human Rights); • The right to job security and protection against irregular/ precarious work arrangements (ILO Convention 158); • The right to just and favourable remuneration (Article 23(3) Universal Declaration of Human Rights).

Introduction

The principle that all business enterprises have a responsibility to respect human rights is now firmly recognised in international agreements such as the United Nations' Guiding Principles for Business and Human Rights. However, due to considerable inequalities between different stakeholders in global supply chains, weak legal protections for human rights and major gaps in the regulation of transnational business, communities whose human rights are adversely impacted by global business have limited means to access justice. In response to this problem, a number of non-judicial mechanisms have been established as an alternative means to provide human rights redress. This report examines the effectiveness of one such mechanism, the Freedom of Association Protocol (the 'Protocol'), which is a negotiated agreement by global footwear and garments brands, Indonesia-based suppliers and trade unions.

The Protocol emerged in the context of a long-running global campaign by trade unions and workers' rights activists to persuade apparel brands to improve labour practices in their supply chains. The Protocol aims to increase respect for workers' rights by establishing specific standards on freedom of association that must be upheld in participating factories; it provides a framework for monitoring and dispute resolution via workplace and national committees. The fact that local unions have been involved in the design, operation and governance of the Protocol makes it relatively unique in the context of supply-chain grievance mechanisms. This has resulted in the local trade unions having a sense of ownership of the Protocol: from their perspective the Protocol has a legitimacy that most private governance instruments lack. The unions' involvement in the design and administration of the Protocol has also resulted in a relatively accessible and accountable grievance mechanism. The Protocol also covers concerns that are particularly relevant to the Indonesian context, in contrast to more general, top-down human rights mechanisms. Several participating brands believe the Protocol has been beneficial from a business case perspective. In particular, they highlight that promoting more robust and transparent union-management relations at the supplier level is a more sustainable and efficient approach to managing labour issues than over-reliance on brand representatives and compliance programs. Some brands also expressed hope that the Protocol could lead to a more stable and productive workforce in the long term.

The barriers that prevent Indonesian factory workers from accessing their fundamental rights are significant, including the repression of labour activism and collective bargaining, serious social and economic inequalities and weak legal enforcement of workers' human rights. Alongside articulating specific standards and obligations, the Protocol initiative attempts to address the challenge of improving access to justice by providing a specific framework for worker organisations to engage with management to resolve grievances at a factory level. Where those grievances cannot be resolved, it provides an additional platform for worker delegates to raise grievances directly with representatives of global brands. The Protocol has delivered some important positive outcomes in a number of factories, including increased recognition and respect for collective bargaining. However, its implementation is far from complete; in a number of participating workplaces, violations of freedom of association, below-minimum wages and precarious contracting arrangements continue to be the norm.

In analysing the Protocol this research identifies a number of key strengths, including its focus on worker empowerment and emphasis on the participation of factories and workers in its design, implementation and monitoring, as well as its concrete, context-specific obligations for participating factories and brands. However, it also identifies some key weaknesses: parts of the Protocol's formal dispute resolution system are not yet functioning effectively and external incentives for compliance are limited because public monitoring has so far failed to distinguish between poorly performing companies and those that are taking their commitments more seriously.

If the Protocol is to achieve wider reaching, more sustainable improvements in respect for workers' rights it will require a number of further reforms. Brands identify a number of 'business case' motivations for participating in the Protocol, such as greater capacity within factories for effective bipartite relations and the 'in-house' resolution of labour concerns. Some brands are optimistic that such initiatives can result in a more stable, efficient and productive workplace. However, while the Protocol may deliver some efficiency gains, it is also likely that more empowered unions will challenge existing dynamics and demonstrate increased ability to successfully demand higher wages and enforcement of other standards, which may increase production costs. In this context, while the Protocol has provided Indonesian workers with a potentially powerful platform to influence the behavior of their employers by leveraging the involvement of international buyers, levels of influence will remain limited unless those buyers provide suppliers with sufficient incentives to uphold workers' rights. This seems unlikely to happen unless Indonesian workers' organisations increase strategic collaboration with global campaign networks, which have far greater capacity to leverage consumer and investor pressure to influence the practices of global brands. Even then, worker representatives did not view the Protocol as a long-term substitute for better legal recognition and enforcement of workers' rights by the Indonesian state. Whether initiatives like the Protocol create space for more rigorous state enforcement of workers' rights or, conversely, diminish state responsibility remains to be seen.

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 grievance mechanisms, namely those that are mandated to receive complaints, but are not empowered to produce legally binding adjudications.

The 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 that 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.

Field research for the project as a whole has focused on human rights grievances in the garment and footwear, agribusiness and extractives sectors, with case studies for each sector drawn from two jurisdictions: India and Indonesia. Ten case study reports examine specific human rights grievances experienced by communities and workers and the strategies employed in their attempts to gain redress in the context of these specific sectors and regulatory environments. Five mechanism reports in this series have been developed to provide a better understanding of the effectiveness of individual non-judicial human rights mechanisms governing transnational business. In addition to these individual case study and mechanism reports, the project's overall findings are presented in four cross-cutting reports which provide broader comparative analyses across the various case studies we examined.

This mechanism report focuses on the Freedom of Association (FOA) Protocol in Indonesia, and is the companion to another report in this series, *Non-judicial mechanisms in global footwear and apparel supply chains: Lessons from workers in Indonesia*. This mechanism was selected for study because it provides an interesting example of a non-state non-judicial grievance mechanism whose design has been negotiated in the country where the business activity is primarily conducted. It was also of interest because it prioritises freedom of association, a human right that is rarely prioritised by non-state non-judicial mechanisms.

This report's findings are based on extensive primary and secondary source research. The report is informed by extensive semi-structured interviews and focus group discussions with more than 60 workers and factory-level worker representatives, 14 business representatives, one national labour ministry representative as well as 22 national-level union representatives and NGO representatives, 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 in March 2016 one of us attended as an observer a meeting between representatives of the unions and brands involved in the Protocol and international trade unions and labour rights organisations. In addition to the formal research interviews conducted specifically for this report, information is drawn from relevant research, monitoring reports, online media articles as well as civil society organisation and company websites. The draft conclusions of this report were shared with key research participants and their comments were considered when preparing the final version. We prioritised investigating the impact of the Protocol on respect for the right to freedom of association in a number of factories where trade unions participating in the Protocol reported that this right was being breached. The scope of our research in this case is therefore limited, in the sense that we did not conduct a detailed investigation of the operation of the Protocol in relation to every factory that it covers, and for those factories that we focused on, we prioritised assessing respect for freedom of association, rather than a wider range of human rights, although evidence in relation to some other human rights did emerge over the course of the research.

Background to the protocol

Developments in global outsourcing and the labour rights campaign response

Large-scale globalisation of the footwear and apparel industry is no longer new. From the 1960s companies pioneered the now dominant model: in-house development of brand, product design, marketing and sales, with product manufacturing outsourced to lower-cost

suppliers in regions with cheaper labour markets, mostly in Asia. Outsourcing production has enabled brand companies to dramatically reduce costs. For example, in 2001 Nike reported that the labour cost component of a shoe retailing at USD\$65 was only USD\$2.43 (Brown et al., 2004). The outsourcing model has meant there has been more capital to invest in increasingly sophisticated marketing strategies and brand image (Locke, 2002). This model has assisted a number of leading apparel companies to achieve unprecedented growth in profit margins.

However, since the early 1990s, civil society organisations, including both trade unions and non-government organisations (NGOs), have been highly critical of global outsourcing practices due to the risk that such practices perpetuate low wage rates and poor working conditions. Of particular concern was the sectors' impact on women in developing countries, as while women stand to benefit from employment opportunities, certain gender constraints can make them particularly vulnerable to exploitation. Global apparel brands have been targeted in several long-term labour rights campaigns, generally under the banner of 'anti-sweatshop' activism. These campaigns have been generated by labour and human rights advocacy networks. Key actors and networks have included: IndustriALL, the ITUC, Oxfam, the Clean Clothes Campaign, Asia Monitor Resource Centre, China Labor Watch, Workers' Rights Consortium, United Students Against Sweatshops, Maquila Solidarity Network and LabourStart as well as a number of organisations and trade unions based in producing countries such as Indonesia. This movement has adopted a variety of strategies to try to influence company behavior, mainly through generating heightened consumer awareness regarding the conditions faced by workers producing for their household brands. Although most brands initially denied any responsibility for the rights of workers beyond their own company employees (Spar, 2002), these attitudes began to shift from the mid-1990s and today many companies publicly acknowledge, to varying degrees, responsibility for conditions throughout their overseas supply chains. Nike, Adidas and other sports brands have been major targets of these campaigns since the mid-1990s. The mainstream approach that most brands adopt to monitor working conditions in their supply chains is an internal compliance model based on the use of 'social auditing'. This auditing aims to assess suppliers' performance against indicators based on host-country legal regulations, the relevant brand's code of conduct and other international standards, identifying any breaches in need of remediation. There is evidence that increased monitoring has brought some limited benefits for workers in first-tier suppliers (those with whom brands have a direct supply contract, as opposed to second-tier suppliers, which are subcontracted by direct suppliers). In particular, increased monitoring in the first tier has brought some improvements in compliance with some health and safety standards and reduced incidence of forced or child labour (Barrientos and Smith, 2007; Clean Clothes Campaign, 2005). However, auditing can only ever provide a 'snapshot' of conditions and in many areas, such as wages and freedom of association, social auditing has resulted in few improvements, especially for workers beyond the first-tier suppliers (Clean Clothes Campaign, 2005; Locke et al., 2009; AFL-CIO, 2013). There is a significant body of evidence indicating that factory managers often train workers to lie to social auditors and warn them that reporting labour violations could result in lost orders and lost jobs (AFL-CIO, 2013; Clean Clothes Campaign, 2005; Adam et al., 2005).

Many transnational companies recognise that audits alone are insufficient (see, e.g. Nike Inc., 2009) and have sought to use other means to identify and manage grievances within their supply chains, such as Complaints Hotlines or SMS services. Increasingly, strengthened industrial

relations and union-management communication is acknowledged amongst brands as another important means to ensuring effective resolution of grievances within the supply chain. In fact, several brands now adopt business-case arguments for supporting enhanced workplace relations, viewing such initiatives as a means ‘to reduce conflict and misunderstandings, improve industrial relations and to facilitate freedom of association rights, rather than reverting issues back up the chain to brands for their resolution’ (Adidas, 2014) or to ‘better engage the worker force in improving factory performance’ (Nike Inc., 2014)). However, other brand representatives have been willing to admit that protecting their reputations is an important motivator for participating in initiatives like the Protocol.

To summarise, recent decades have seen both growing civil society pressure on brands to more effectively uphold workers’ rights and increasing acknowledgement amongst some brands of the importance of engaging unions and promoting robust employer–employee relations. It is in this broader context that the Protocol has emerged.

Weak local protections for workers’ human rights

Local conditions for labour organising in Indonesia are also important when seeking to understand the role of non-judicial mechanisms such as the Protocol. Despite the legal recognition of freedom of association in Indonesia since the year 2000, the barriers that prevent workers from organising for their rights remain significant (Caraway, 2010). Around 80% of Indonesians employed in the manufacturing sector do not belong to a union (van Klaveren et al., 2010). Extensive interviews with factory workers and their representatives reveal that strategies employed to undermine worker attempts to organise are diverse, ranging from the subtle to the overt. For example: factory policies and procedures are used to prevent union leaders from meeting or communicating with their members; union members are harassed and intimidated; outspoken union leaders have found themselves locked up on dubious charges; worker representatives are offered bribes and other privileges in exchange for resignation or cooperation with management.

The potential for multiple unions in a single workplace, which is not uncommon in unionised factories in Indonesia, and for inter-union conflict creates additional challenges. The continuing dominance of legacy unions—that is unions established during the pre-democratic era—creates particular challenges. Prior to the downfall of the authoritarian Suharto regime workers could only join the official state-backed union, SPSI (*Serikat Pekerja Seluruh Indonesia* / the All-Indonesia Workers’ Union). Indonesia did not recognise freedom of association and left-leaning organisations were largely decimated amidst the anti-communist massacres of the mid-1960s, orchestrated as part of the annihilation of the Indonesian community party (Hadiz, 1997). This climate fostered factory-level SPSI leaders who were more closely aligned to management than the interests of their members (Schwarz, 1994). Today legacy unions commonly (although not always) work in concert with factory management to prevent workers from forming more representative unions and genuinely organising for better conditions.

While Indonesia’s labour laws are recognised as relatively progressive or pro-labour (Caraway, 2009), the monitoring and enforcement of those laws remains weak. Local labour departments play a pivotal role in regulating compliance with labour laws and mediating labour disputes, yet are poorly resourced and often lack staff with industrial relations expertise (Tjandra, 2009).

The number of labour inspectors in Indonesia remains vastly inadequate, while Indonesia's industrial relations courts have been criticised as slow, unprofessional and expensive (Tjandra, 2007, 2009; ILO, 2012). There are indications that industrial relations courts also suffer from endemic levels of corruption found elsewhere in the Indonesian court system (Caraway, 2012; Pompe, 2005). Although union busting constitutes a criminal offence under Indonesian law, there have been very few prosecutions and police rarely investigate, let alone prosecute, allegations of anti-union violence.

Weak rule of law has led Indonesian unions to look for alternative strategies to seek redress, including the use of non-judicial mechanisms that seek to highlight the responsibility of international buyers. In fact, buyers are often viewed as having more influence over working conditions in the factories in their supply chains than local regulatory authorities, with potential to provide more rapid and favourable outcomes compared to pursuing formal modes of legal redress.

Evolution of the protocol

The Protocol is the result of a negotiation process between Indonesian national-level unions, global brands and Indonesia-based suppliers. The background to the initiative was a long-running global campaign targeting labour conditions in the sportswear industry, including campaigning by the Play Fair Alliance of labour unions and NGOs (including IndustriALL, Maquila Solidarity Network and the Clean Clothes Campaign) and Oxfam. In April 2008, members of the Play Fair Alliance published a report titled *Clearing the hurdles*, which documented poor working conditions in sportswear manufacturers in China, Vietnam, Indonesia and India and called on brands to demonstrate progress on wages and working conditions in the global sportswear industry (ITGLWF et al., 2008). In response to the report and the broader campaign, in June 2008, during a meeting between the Play Fair Alliance and major sportswear brands in Hong Kong, Adidas representative Bill Anderson proposed a pilot national-level dialogue in Indonesia on factory labour practices as a way to make some practical advances, and engaged support from other brands, including Nike. Play Fair and Oxfam convened a meeting in Jakarta in November 2009 involving representatives of sports brands, Indonesian suppliers, Indonesian and international trade unions and local and international NGOs. The Indonesian unions proposed that the pilot would need to address the issues of job security, wages and freedom of association. At that stage participating brands were only willing to commence negotiations on freedom of association, so eventually it was agreed to begin discussions on this issue and to defer negotiations on job security and wages. Oxfam, together with a number of local Indonesian NGOs, including the Jakarta Legal Aid Institute, agreed to support and facilitate the process.

Once parties agreed to focus on freedom of association, negotiations ensued for 18 months until the Protocol was signed on 7 June 2011. It then took a further 18 months to finalise the formal monitoring and dispute resolution procedures. Negotiations were time consuming due to various challenges, including a high level of initial distrust not only between the parties but within stakeholder groups. The unions participating in the process had diverse political standings and were not accustomed to cooperating with other unions. Four of these unions were independent unions established during the post-Soeharto Reformasi era, while one broke away from the official government-mandated union in 1998. Several unions were also

skeptical about whether company personnel would view them as equals at the negotiating table. Under these circumstances establishing trust amongst participants, though time consuming, was crucial to the success of the negotiation. As such, the facilitator (an Oxfam in Indonesia employee with several years' experience working with Indonesia's labour movement) played an important role in managing tensions between the parties and creating a supportive climate for the negotiations. Of the brands, Adidas in particular displayed strong leadership throughout the protocol process. Its Indonesia-based representatives played a crucial role in facilitating the brand caucus and leading negotiations. Adidas' Head of Social & Environmental Affairs for the Asia-Pacific region, Bill Anderson, also provided considerable support at key moments, for instance engaging in bilateral discussions with unions to resolve differences when a deadlock arose in negotiations.

The negotiation process was highly participatory in nature and this also demanded a flexible, more time-consuming approach. Indonesian unions wanted the Protocol to reflect local circumstances and ambitions and as such did not adopt the model language initially proposed by the ITGLWF (International Textile, Garment and Leather Workers' Federation, now amalgamated under IndustriALL). Prior to preparing the initial draft, a number of national union delegates conducted research, including surveys and focus group discussions with their members, to better understand the barriers to organising and to identify their members' priorities. The unions then agreed upon a proposed draft and negotiation strategy, which they then revised numerous times throughout the negotiation process. Union delegates conducted updates and consultations with their members throughout the negotiation process. Oxfam staff members (from Indonesia and Australia), together with lawyers from the Jakarta Legal Aid Institute, provided considerable support to the process but did not participate directly in negotiations or determine the contents of the draft.

Following the finalisation of the Protocol, parties to the initiative commenced various socialisation efforts, such as information and training sessions. These have included: socialisation carried out by brands to supplier management, socialisation carried out by the core team of unions with union leaders at a number of workplaces ('socialisation roadshows') and socialisation carried out by individual unions involving officials, members or both.

The protocol's substantive provisions and procedures

The resulting Protocol comprises a detailed set of obligations on how signatory suppliers should implement freedom of association in the workplace. It regulates such matters as special dispensation for participation in union activities, access to facilities, the provision of a secretariat, the right to receive visitors and freedom to distribute information. It also gives unions the right to display their flag and a union noticeboard—rights that go beyond what is generally covered in international human rights instruments or even national labour laws. The right to fly a flag may sound trivial, but in the context of often severe anti-union repression, the practical and symbolic value of being visibly and officially recognised within the workplace is significant.

Signatory brands are expected to ensure the Protocol applies to all tier-one suppliers at the initial stage as well as any other suppliers where the brand conducts or commissions audits. They must also 'encourage' its implementation amongst tier-two suppliers and other

subcontractors in their supply chains. Suppliers are required to implement the Protocol as a minimum workplace standard, unless a higher standard already exists in the factory's Collective Bargaining Agreement, in which case the higher standard applies. At May 2014 the Protocol had been adopted by six international brands (Adidas, Nike, Puma, New Balance, Pentland and Asics), 73 supplier factories, six national-level unions (SPN, KASBI, Garteks-SBSI, FSPTSK, GSBI and KSPSI) and dozens of workplace unions. Based on the supplier lists of participating brands, the Protocol covers up to 300,000 workers, more than 80% of whom are young women.

Table 2: Summary of several of the Protocol's key substantive provisions

Articles 4(4)(5) and (6)	The right for union representatives to obtain dispensation from their line duties for the period of organisational leadership, together with union duty officers on a roster basis (numbers set out in accordance with the size of the workforce).
Article 4(10)	Union members and representatives must be free from intimidation, including demotions, transfers, wage reductions, criminalisation, suspension or dismissal.
Article 5 (1)(a)(b)(c)	The right to access, on special request, meeting rooms, communication and transport facilities.
Article 5(1)(d)	The right to display the union's flag and name placard.
Article 5(1)(f)	The right to receive visitors from outside union organisations.
Article 5(2)	The right to an appropriate office space and basic office facilities.
Article 5(3)(4)	The right to participate in union activities both within and outside the company premises.
Article 6(2)	The right to carry out surveys and data collection to support collective bargaining agreement negotiations and to access information concerning company finances.
Article 7	The right to distribute information and to use a noticeboard for union announcements.

The oversight and dispute resolution framework consists of two levels: factory-level committees and a national-level committee. The formal complaints process requires that the factory-level committees supervise implementation and investigate any complaints, reporting outcomes to the National Committee. Where a complaint cannot be resolved at the factory level within 40 days, the factory committee may refer the case to the National Committee. The National Committee must then jointly investigate the case and agree (via consensus) on the relevant facts, on whether a violation has occurred and on appropriate recommendations. The Committee's recommendations for the resolution of a complaint must be implemented by the supplier within 30 days. If the recommendations are not implemented within that time, the responsible brand is required to apply sanctions or other corrective measures and report those measures back to the parties within three weeks.

Figure 1: The Protocol's Governance Structure



Impact and use of the protocol

While the substantive contents of the Protocol were finalised in June 2011, the Protocol's monitoring and dispute resolution procedures were ratified only in October 2012. The structures necessary for its operation, such as factory-level committees, have also been slow to develop. Partly for these reasons, the official dispute resolution process is yet to be utilised at the national level, although one complaint is in the process of being resolved at the time of writing. While this creates some limitations, this research examined outcomes arising from the overall use of the Protocol and not only its role as a formal grievance mechanism. This makes it possible to assess the Protocol's impact despite the fact that it has so far functioned more as an advocacy tool and as a means for facilitating informal resolution of grievances rather than as a formal structure for human rights redress.

The Protocol has been widely, though not universally, adopted by the first-tier suppliers of participating brands. It is important to note that compared to the manufacturing sector norm, even prior to the introduction of the Protocol there was a relatively high level of unionisation within these suppliers. According to Oxfam, by April 2014 the Protocol had been signed by 48 Adidas suppliers (56% of total participating suppliers), 27 Nike suppliers, three ASICS suppliers, two Puma suppliers, nine New Balance suppliers and one Pentland supplier. Of participating factories approximately 80% were unionised, which represents a significantly higher proportion than many other parts of the manufacturing sector. Most brands have carried out trainings to encourage or compel their suppliers to implement the Protocol. Adidas has conducted the most extensive socialisation and training amongst its suppliers and reports that 82% of its first-tier suppliers were making positive progress in implementing the Protocol. Nike has partnered with the Fair Labor Association to provide training to its suppliers on the contents of the Protocol. In June 2013, 46% of Nike's first-tier suppliers had signed and Nike representatives were hopeful that it wouldn't be long before all suppliers formally adopt the Protocol.

As of May 2014 eight cases had been raised within the National Committee forum by union representatives on an informal basis, as part of general 'information sharing' on implementation progress as well as in discussions between individual union and brand representatives. Some national committee union representatives have chosen to relate complaints directly to brand



Lilis Mahmudah of the SPN union speaks at a Play Fair alliance campaign event in London in the lead up to the 2012 London Olympics. *Photo: Rod Leon*

representatives before raising them within the committee, to give the representative an opportunity to take action before taking the issue to the open forum. This is not a requirement of the dispute resolution process, but more a strategy adopted by union participants to seek a swift resolution of grievances raised by their members. Some of this communication takes place outside formal National Committee meetings, for instance via SMS. While this strategy is outside of the formal structures of the Protocol and some union-brand contact well pre-dates the Protocol process, the negotiation of the Protocol has helped develop stronger relationships, create clear communication channels and shared normative expectations between the unions and some of the participating brands.

In 2015 Oxfam commissioned three researchers, Halida Nufaisa, Ulfi Nur Arsa Putri and Nanda Oktaviani, to conduct an independent evaluation of the Protocol. The research was comprised of a baseline survey conducted between March and June 2015 involving 80 participants from 24 suppliers, followed by series of qualitative interviews and focus group discussions carried out

in November to December 2015. Some indications were positive: 73% of survey participants reported that worker representatives had been provided with full dispensation to enable them to administer union affairs and that others workers were able to access dispensation on an occasional basis; 84% reported that their union had been provided with an office in a strategic location within the factory grounds. However, only 25% of surveyed worker representatives believed that their former positions were guaranteed after the end of their union appointment. The report noted that while brands expressed a strong commitment to the Protocol, this was not reflected in the conduct of their suppliers and it recommended stronger incentives to promote its implementation. The evaluation found that while the Protocol was functioning from a structural and procedural perspective, few suppliers could demonstrate full substantive compliance with its principles. The study also found that awareness of the Protocol amongst workers was uneven and that the National Committee was far from proactive in addressing such challenges. It recommended that the National Committee better organise and update supplier data to enable better communication channels between workplace unions and those involved at the national level, as well as to invest in a more frequent evaluation processes. The evaluation concluded that for the Protocol to have an ongoing impact it requires full commitment from all stakeholders and that without fuller commitment, the Protocol 'remains vulnerable' (Nufaisa & Oktaviani, 2016; Nufaisa & Putri 2015).

In an overall sense, our research findings were consistent with those of these researchers. However, while there is no doubt that implementation of the Protocol has been inconsistent and partial, in the context of the significant barriers to exercising trade union rights in the garment and footwear sector in Indonesia (and globally), we found it remarkable that many of the trade union leaders we interviewed were able to point to ways in which the Protocol has brought important positive changes to a number of participating factories. SPN (*Serikat Pekerja Nasional* / National Workers' Union) has approximately 430,000 members and a presence in around 20 participating factories. A national representative of SPN reported that the Protocol has enhanced the ability of unions to organise and recruit new members and has been incorporated into a number of collective bargaining agreements (interview, September 2013). She observed that since the Protocol came into force it has become much easier for SPN worker representatives in participating suppliers to obtain dispensation to carry out union activities as well as access a secretariat, noticeboard and other facilities. She also reported that the Protocol has made factory management more responsive and respectful in their dealings with unions because they know that workers have increased means to communicate directly with brands. SPN's national representative believes it has given workers more confidence to build their advocacy networks and knowledge of global commodity chains.

Emelia Yanti, secretary general of GSBI (*Gabungan Serikat Buruh Indonesia*/ Indonesian Association of Trade Unions), which represents approximately 12,000 members, perceives several positive outcomes arising from the Protocol. Yanti (June, 2013) cites the example of an affiliate union at a tier-two supplier that was approached by its management following a Nike socialisation event. Management invited the union to discuss how they would jointly implement the Protocol obligations and subsequently committed to a three-month plan for gradual implementation. The union is now able to use the factory training center for organising activities and to socialise the concept of organising with non-unionised workers.

KASBI (*Kongres Aliansi Serikat Buruh Indonesia* / Indonesian Congress of Allied Unions) is a national union confederation of around 150,000 official members and has affiliates actively organising in several factories that are participating in the Protocol. National KASBI leader Parto (interview, September 2013) reported that the Protocol provides more concrete standards and a mechanism to overcome some of the more practical barriers to achieving redress, such as knowing the right person to contact from a particular brand and having a means to communicate with them. At the factory level, Parto reports that the Protocol has been used by worker representatives as an advocacy tool during bipartite negotiations, including in supplier factories that had not yet signed the Protocol. However, the Protocol hasn't automatically resulted in better resolution of the disputes and KASBI members in at least four factories that were signatory to the Protocol alleged ongoing discrimination. Parto was initially critical about the slow pace of implementation, pointing to the example of Adidas supplier PT Dada, where requests for union facilities have been raised for more than two years, yet despite 'many promises' he observed little progress. However, these concerns have been allayed after a secretariat was provided in October 2013, three months after PT Dada established its factory-level FOA committee in July. In one of the cases researched in detail for this report (Factory A) the KASBI union has been able to use the Protocol (among other grievance strategies) to substantially increase respect for freedom of association. This case is summarised below.

Several union representatives felt that the Protocol strengthened their ability to influence brands because brand representatives could be contacted more directly and had agreed to specific, measurable commitments. However, union representatives reported that translating these commitments into changes on the ground remains challenging. Almost all national union representatives expressed frustration at the slow pace of implementation, particularly where problems had been raised directly with brand representatives over extended time periods. KASBI representative Parto expressed disappointment that despite the time and effort invested in the Protocol process, brands often failed to treat union allegations seriously—too readily accepting the supplier's version of events rather than conducting a genuine, independent investigation. For similar reasons, a number of union representatives still questioned the extent to which brands are really committed to implementation.

The strength of brand commitment to implementation will not be fully tested until the Protocol's formal dispute resolution mechanism is finally put to test, which relies on unions initiating a formal complaint at the national level. Until recently, however, no unions had brought an official grievance to the national level, either resolving issues directly with management within the bipartite forum, or preferring to raise cases on an informal basis in direct discussions with the brand representative. In some cases this may also be due to the lack of functioning factory level committees (which must handle the initial stage of complaints process) as well as union leaders having limited time and resources. The lack of access to factory-level committees is also a problem for worker organisations that encounter discrimination when trying to initially establish themselves within a factory. In other cases, communication between national union representatives and factory level affiliates has been poor or non-existent, preventing worker representatives from coordinating a formal complaint. In fact, the overall level of awareness amongst factory level union representatives regarding the Protocol and its complaints mechanism is highly variable between different unions depending on organisational culture and levels of commitment amongst individual representatives and organisational leadership.

The Protocol dispute resolution process also suffers from a few limitations that may deter workers from pursuing a formal complaint. As described above, the National Committee currently relies on consensus-based decision making to establish the facts of a case and whether a violation has occurred and thence to make appropriate recommendations. In the event that the National Committee fails to reach consensus on one or all of these matters there is no alternative decision-making mechanism. This poses a difficult challenge because facts surrounding freedom of association violations are often complex and highly disputed. Furthermore, brands are sometimes unwilling to insist their suppliers take corrective actions where there remains disagreement around what actually occurred (Connor, 2008). Another potential problem is that company representatives on the national committee may be reluctant to agree to make negative findings against other companies due to fear of creating a precedent that may apply to issues within their own companies or supply chains. At least two participating unions also doubt whether they can rely on other unions involved in the Protocol to fairly evaluate the cases that they raise, as other unions may perceive their own unions as competitors. These examples all highlight the inherent limitations in applying consensus-based decision making to labour disputes. To avoid a stalemate situation and instill greater faith in the dispute resolution process, it may be necessary for the Protocol to incorporate an alternative, independent means of determining cases, as discussed below.

Most union representatives felt disappointed by the limited scope of the Protocol in that it only creates a direct obligation for brands to implement the Protocol in the first tier of their supply chain. Worker representatives were adamant that the greatest number of violations take place beyond the first tier. The limited scope of implementation also creates the risks that orders from some brands are shifted away from suppliers that have signed the Protocol to suppliers with lower compliance standards and hence lower compliance costs (e.g. second-tier suppliers). Examples of this problem are discussed in greater detail below.

Case study: Workers use Protocol forum to combat repression at footwear factory in West Java

Factory A* is managed by a large Korean manufacturer and produces athletic footwear for Nike, the world's largest sportswear brand. In July 2012 workers at Factory A formed an independent union and this union formally affiliated with KASBI in March 2013. The factory had worked with the existing (legacy) union to obtain a waiver from the government in relation to a recent increase in the regional minimum wage. When granted, such waivers allow employers to delay implementing increases in the legal minimum wage for a negotiated period of time (often for 12 months), so that they are effectively always behind in paying any annual increase in legal minimum wages. However, the new union actively called on the factory to forego the waiver and comply with the new minimum wage. From April 2013 organisers of the new KASBI-affiliated union experienced extreme forms of intimidation and violence, perpetrated largely by local thugs who they believe had support from people within the existing workplace union and within the factory's human resources department. Worker representatives received death threats and beatings, some were even abducted and, in one instance, an organiser was subjected to electric shocks to his knee.

KASBI raised the issue with the international brand's two Indonesian representatives responsible for labour rights compliance in late April 2013. According to KASBI (interview, September 2013) local Nike representatives were not initially responsive and did not take the complaint seriously to begin with, although Nike denies that this was the case and maintains that internal inquiries were underway. The union again raised the issue at a meeting of the national committee of the Protocol on 13 May 2013 and sent a written testimony to the Oxfam representatives in attendance. Oxfam immediately contacted compliance staff personnel at Nike's international headquarters and relayed an English translation of the testimony, urging immediate redress. At this point Nike personnel responded quickly by initiating an extensive investigation and corrective action process, which aimed to provide a safe work environment and personal security and to improve the factory's approach to employee management and industrial relations. The process resulted in staffing changes within the factory and formal recognition of the independent workplace union. The factory also agreed to forego the waiver and pay the full legal minimum wage

In a follow-up research meeting in June 2014 the union members at the factory shared that they no longer felt under any immediate physical or psychological threat. They were confident to come to work in their union uniforms, the union's flag was being flown at the factory and they did not feel the need to hide their union affiliation. The union had been invited to negotiations with management and had met with the factory's Korean owners. It also had access to office space within the factory (as required under the Protocol) and could engage in organising more actively within the workplace. The union reported that it was still encountering some discrimination, including difficulty in having new members recognised and in communicating with members within the factory. However, representatives of KASBI expressed the belief that only certain individuals in the HR department were responsible for that discrimination and that it was not reflective of the factory's policies as a whole. The union's main concern at that time was that it was difficult to raise these problems with senior management due to language barriers (not all managers speak Indonesian) and the lack of an independent interpreter. While workers were wary that the situation might revert should the international brand cease to monitor the situation, overall they believe Nike's response to the complaint has significantly improved their members' welfare. Subsequent contact with the national KASBI union representative in 2015 and 2016 confirmed that the union has been able to continue functioning effectively in the factory without fear of violence or other forms of intimidation.

The following section analyses the extent to which key characteristics of the Protocol, including both its formal and informal features, have contributed to grievance resolution.

Analysis of the protocol's key features

This section outlines the key attributes of the Protocol that interviewees viewed as important in making it a relatively effective and responsive grievance mechanism. Our research showed that various parties who are involved in the Protocol have differing views about the purpose

⁸ Business Social Compliance Initiative (BSCI) is a voluntary mechanism established to address labour issues in their member and global supply chains. They work with Europe-based brands, agents, importers, and host-country suppliers.

of the Protocol and its benefits, so perspectives on its most important attributes were not uniform. However, most concurred that the participation of the representatives of workers in industrial districts of Java, for whose use the mechanism is intended, in the design, operation and governance of the Protocol carries multiple benefits. These benefits include:

- Enhanced legitimacy and trust in the Protocol in the eyes of workers and their representatives (as compared with non-judicial mechanisms developed overseas).
- Willingness amongst worker representatives to use the Protocol as a tool in workplace negotiations and as a forum to directly contact international buyers about alleged violations. This was less common under existing buyer-controlled complaint processes and codes of conduct.
- The supplementation of universally recognised human rights standards with approaches appropriate to the local context.

The Protocol's effectiveness was found to be limited by patchy implementation of factory-level monitoring committees, the absence of any formal fact-finding function, the absence of any requirements that brands ensure implementation is supported by financial incentives and the lack of independent oversight and periodic reporting on brand performance at an international level. Limitations on effectiveness arising from the confined scope of the Protocol are discussed further below .

Focus on freedom of association and worker empowerment

The Protocol's focus on freedom of association is significant because workers' ability to organise and collectively bargain is widely recognised as a crucial means to achieving sustained improvements in pay and working conditions generally (ILO, 2008). Indonesian unions view freedom of association as fundamental to workers' attainment of their other substantive rights. This was highlighted by several worker representatives. For instance, Emelia Yanti, Secretary General of GSBI, emphasised that:

Unions are the means for workers to protect their rights, to protect their interests, the means for them to push for better working conditions in the company, and to campaign for their individual and family welfare. For this reason the position or status of unions within workplaces is very important. (Interview, May 2011.)

Interestingly, some participating companies also acknowledge some of the benefits of more direct engagement with worker representatives. Adidas representative Adelina Simanjuntak believes that while the Protocol has not required a fundamental shift in how Adidas deals with alleged violations, it has supported better lines of communication between unions and brands:

This forum provides greater opportunity for [union representatives] to meet buyers and bring the cases in a more official way, as they can prepare prior to the meeting, make a list of what they are going to tell Adidas about their members' conditions in supplier factories...[T]he more you meet the more opportunity you have to discuss and report issues. In other words, the Freedom of Association Protocol is like waking everyone up to ensure they have their rights so they are more concerned in monitoring the factories' conditions. (Interview, June 2013.)

The CEO of a major Asian footwear manufacturer that owns a sport shoe supplier in Indonesia also claimed to be supportive of trade unions:

I don't agree with people who say that the unions are bad for business and things like that, because if the unions aren't there we wouldn't have a correct understanding of what the workers need...to hear the workers' voices better, what their needs are...I don't really care for someone who just says comforting words in your ears, what I really want is someone who may say some uncomfortable things. That is the only way to get better and improve the business. (Interview, June 2013.)

Most major multi-stakeholder initiatives focusing on labour rights in the apparel sector adopt standards that promote respect for freedom of association. However, few have demonstrated success in their efforts to strengthen worker participation and trade union rights on a sustainable basis (AFL-CIO, 2013; Barrientos and Smith, 2007; Connor, 2008). Ongoing engagement with local trade unions is not a mainstay of most company compliance programs and most companies continue to solely focus on more traditional audit-based compliance models. Whether the Protocol will achieve sustainable, significantly scaled improvements in respect for freedom of association remains uncertain, but to date it shows promise.

Emphasis on participation of Indonesia-based stakeholders

This research has found that the localised nature of the initiative has contributed to more effective grievance resolution in a number of ways. All Protocol meetings are held in Jakarta, rather than at a regional or global level, which enables worker representatives with restricted time and resources to attend. Further, the provinces immediately surrounding Indonesia's capital, West Java and Banten, are home to the majority of relevant footwear and apparel suppliers. The official language of the Protocol is Indonesian and committee meetings are conducted entirely in Indonesian—a language that all union leaders and factory workers can understand and speak. This has ensured that local union leaders, who usually have limited foreign (English) language skills, can participate actively in the negotiation, governance and implementation of the Protocol. Workers have also benefitted from local Protocol socialisation initiatives and having trusted local union representatives who can be contacted in their own language through their own organisation's networks to raise grievances.

The fact that the Protocol is an Indonesia-based initiative, which can be embedded in factory-level collective bargaining agreements, has also increased its perceived legitimacy amongst unions and workers. Worker representatives frequently emphasise the grassroots nature of the Protocol and express a feeling of ownership over the mechanism. Factory workers interviewed for this research were positive about its potential as a tool for concrete change. This perception of legitimacy is largely attributed to the fact that worker representatives were involved in the design of the Protocol from the outset and were able to obtain input directly from factory workers throughout the negotiation process. Parto, national representative of KASBI (*Kongres Aliansi Serikat Buruh Indonesia* / Indonesian Congress of Allied Unions), explains:

[T]his is the difference between the Protocol and a CoC—code of conduct. With the Protocol, we feel that we were involved in its design, so we can explain to workers

that the unions are involved in this, that workers can use this Protocol to force those companies to uphold their obligations and respect the Protocol. (Interview, June 2011.)

This sharply contrasts with worker perspectives on many other international mechanisms, which are often perceived as ‘elite’ and difficult to independently access.

Workers are often unaware of other potential complaints forums (such as the Fair Labor Association and other multi-stakeholder initiatives) or lack trust in the integrity of these mechanisms. A former Indonesian complaints handler for the Workers’ Rights Consortium, Frans Supiarso, stressed that it takes time and intensive engagement to build trust in a complaints mechanism amongst workers. Supiarso believes that unless he had gone to the trouble to talk confidentially with workers about the code and the complaints mechanism it would never have been used. Yet few complaints mechanisms systematically invest in this kind of time-consuming socialisation. Even fewer directly engage workers in design, governance and implementation.

The localised nature of the negotiations has also meant that the content of the Protocol could be tailored to the Indonesian context. As a result, the Protocol contains more specific and concrete rights than those covered in international human rights instruments—a benefit that union representatives widely acknowledge. Participating brands similarly acknowledge the usefulness of engaging in an initiative more tailored to Indonesia’s specific circumstances. In 2012 New Balance publicly indicated that it welcomed the Protocol as a clarification of the Freedom of Association principle in the New Balance Code of Conduct as applicable in the Indonesian context. Both Adidas and Nike also acknowledged the value of greater engagement with local stakeholders. Adidas also emphasised the involvement of supplier representatives as a key development, whereas many initiatives involve brands and global labour advocates, but exclude the factories and local unions that have the most at stake.

A further advantage of establishing a local forum for long-term, sector-wide change is the potential to achieve more sustained improvements for workers. Most cases that have engaged buyers in resolving freedom of association violations in supplier factories have been one-off interventions, whether handled directly by brands or via third party complaints handlers, such as specialists within the Workers’ Rights Consortium or commissioned by the Fair Labor Association. While these one-off interventions may result in positive outcomes, without a more permanent local monitoring and feedback system often these results were not sustained. Provided that momentum for its implementation is sustained amongst Indonesia-based suppliers and unions, the Protocol creates an opportunity to address structural issues that are common to the Indonesian context in a proactive and sector-wide manner.

One drawback from the local nature of the process was that not all participating companies had Indonesia-based representatives who were able to engage directly and consistently in local dialogue processes. For example, one worker representative mentioned that ASICS didn’t have anyone based in Jakarta or anywhere else in Indonesia and that, as a result, it was very difficult to communicate with them about the Protocol. Overwhelmingly, however, the national-level focus of the Protocol and the ongoing involvement of local worker representatives was a major strength of the initiative. This makes the Protocol a useful learning model, because although many CSR initiatives acknowledge the importance of local stakeholder participation, few manage to achieve it in a meaningful way.

Potential for mutual leverage and increased accountability

The stakeholders engaged in the Protocol each have some capacity to leverage pressure on other stakeholders, which—if effectively executed—can create incentives for all parties to ensure its implementation. To date the Protocol has delivered some significant outcomes for workers, including increased space to engage in organisational activities, increased recognition of workplace unions and better access to facilities. However, whether the scope of implementation can be increased and sustained depends on whether stakeholders remain committed and actively hold each other to account.

Commitment amongst brands and suppliers

One important factor is the commitment of participating brands and the extent to which they are willing to compel their suppliers to uphold Protocol obligations. Worker representatives we interviewed were adamant that pressure from brands was the key to the effectiveness of the Protocol model. According to an SPN national representative:

At the very least the factories producing for brands that have signed the Protocol are taking a more cautious attitude towards workers' rights...because since adopting the Protocol workers at the factory level have more courage to directly communicate grievances to the brands, the buyers. (Interview, September 2013.)

However, several unions believed that suppliers would only fully implement the Protocol if brands actively encouraged it and shared the burdens of compliance. To date brands have generally relied on disincentives, particularly the threat of reduced or suspended orders, to influence the conduct of their suppliers. While this may effectively discourage major violations of the Protocol, it is far less likely to achieve sustained improvements or best-practice compliance. In other words, local export-oriented manufacturers are unlikely to invest money in implementing sustainable improvements in wages and working conditions without assurances that their customers (international brands) are genuinely willing to meet at least part of those compliance costs. Brands have not articulated any specific rewards for suppliers who implement changes to comply with obligations under the Protocol, such as long-term order commitments or an increased purchase price. Further, the Protocol itself does not specify what steps brands should take in order to ensure compliance, other than to apply internal sanctions in accordance with that brand's own internal mechanisms where a supplier fails to implement the National Committee's recommendations.

This raises the question of who is expected to cover the price of increased compliance. Workers' human rights are not generally denied just for the sake of it—many labour rights violations have been found to stem from the cost pressures of shoe and apparel manufacturing (Anner et al., 2012; Plank et al., 2012; Barrientos and Smith, 2007). Stronger unions generally increase demands for higher pay, full compensation for overtime and an end to forced overtime. Active, outspoken unions may take industrial action, which could make it more difficult for suppliers to meet delivery deadlines. International brands increasingly work on 'just in time' production models and suppliers that fail to meet delivery deadlines can damage their relationship with their customers. A unionised workforce may also resist work intensification pressures and that resistance can also make it difficult to achieve delivery deadlines. All these changes can lead to higher costs, lower profits and the risk that their buyers might reduce orders and look elsewhere.

In this context, factories may be reticent to allow independent trade unions to organise in their factories without assurances that their customers (global brands) are willing to pay the higher price that comes with increasing worker welfare.

Nike, Adidas and New Balance state that their pricing models cover costs associated with labour rights compliance; however, it is difficult to ascertain the extent to which this is true. Each of these companies uses complex models to produce composite scores on overall supplier performance. Adidas uses what it calls a 'balanced scorecard' system for determining which suppliers are rewarded with additional orders and which suppliers receive fewer orders. It is 'balanced' in the sense that it includes several key performance indicators covering labour rights compliance, industrial relations and transparency in addition to the traditional business indicators such as quality, cost and delivery times. This system allows Adidas to 'reward factory partners and divest when necessary' (Fair Labor Association, 2008: 10). However, Adidas has not shared the weighting of their scorecard system so it is difficult to assess whether labour rights compliance in general and improvements in relation to trade union rights in particular are given sufficient weighting to overcome suppliers' concerns that assertive trade unions might increase their costs and slow down their production.

Nike measures supplier performance through a Manufacturing Index, which includes components on quality, cost, delivery and sustainability, each weighted at 25% (Porteous and Rammohan, 2013). The sustainability component is measured via a Sourcing & Manufacturing Sustainability Index, which includes labour rights indicators such as freedom of association, progressive realisation of a fair wage and an effective grievance process, as well as various indicators on health and safety and environmental issues. Suppliers must achieve a minimum of a bronze rating in order to receive consideration for priority orders. Factories that do not reach bronze are required to pay for additional audits, while higher performing suppliers qualify for access to training on issues such as waste and energy management (Porteous and Rammohan, 2013). New Balance reports that it actively reviews supplier compliance performance and wage rates when undertaking footwear cost negotiations.

There are challenges in using a scorecard approach as a means to create incentives to respect freedom of association, particularly if it fails to attribute sufficient weight to those measures that increase workers' empowerment. It is possible, for example, that factories that improve conditions for democratic organising achieve a lower overall compliance score. This is because workers who freely participate in trade unions are more likely to voice their grievances than unorganised workers within a repressive work environment. If auditing processes fail to address this paradox, a factory may be punished rather than rewarded for allowing trade unions to freely organise. A similar dilemma arises when better labour rights compliance may contribute to decreased performance under other indicators; for instance, higher wages may impact on price competitiveness, while an end to forced overtime may slow down delivery times.

Several sports brands involved in the Protocol claim that their pricing models incorporate increases in compliance costs. However, the way in which Indonesian suppliers have responded to recent increases in regional minimum wages in Indonesia suggests that many brands do not adequately provide for these costs. In 2013 there were significant wage hikes in many industrial districts throughout Java; for instance, wages in the West Java region of Karawang rose 54%. In accordance with Ministerial Regulation 231/2003, companies unable to afford the new

minimum wage can lodge an application for an official dispensation or waiver, which allows them to continue paying the old minimum wage for a negotiated period (which is often 12 months, meaning that the company is effectively always a year behind in paying increases in legal minimum wages). The application must include recent copies of financial statements to substantiate the claim that they cannot afford to pay the new legal minimum. During 2013 a number of suppliers participating in the Protocol successfully obtained dispensation, including factories supplying exclusively to Nike and New Balance. If these suppliers were assured that brands would cover increased compliance costs, it is difficult to understand why they would be eligible to receive a waiver. During one interview a supplier said that its international buyer was willing to cover some, but not all, of the increased costs associated with higher minimum wages. A number of union representatives found it difficult to assess the truth in suppliers' claims of economic hardship and expressed frustration that brands were not more transparent about their purchasing practices.

As of mid-2013, Adidas was the only brand in Indonesia that was proactively engaging with suppliers to ensure immediate compliance with the full legal minimum wage. However, during 2013 independent trade unions in a number of Nike suppliers (including in Factory A, described above) drew on the Protocol's processes to help them stand firm against efforts by their employers to persuade their government to waive their obligation to pay annual increases in the local legal minimum wage. After several disputes on this issue in Nike supplier factories, Nike adopted a policy not to allow its first-tier suppliers to seek twelve-month minimum wage waivers from the government. In 2016 a research assistant contacted trade union leaders in several Nike supplier factories and they all confirmed that this policy from Nike is still in place and that their suppliers are no longer applying for waivers. This policy change has brought important benefits to many thousands of workers, since in recent years there have been significant annual legal minimum wage increases in many of the relevant provinces. While proving causation is always difficult, it is unlikely this policy change would have occurred if the trade unions had not drawn on the Protocol's processes to assist them to draw attention to the issue.

In the event that brands do not cover increased costs of compliance there is a risk that suppliers will find strategies to avoid more onerous obligations. This might involve shifting production to non-unionised factories and to second- or third-tier contractors or relocating production to another jurisdiction. For instance, Converse (Nike) supplier PT Amara was cited in research interviews with several trade union representatives as an example of a factory whose owner had agreed to comply with the Protocol but subsequently closed and shifted production to another country. The official reason for closure was due to significant increases in the legal minimum wage; however, it is also possible that a desire to avoid a unionised workforce may have influenced the decision. Overall, brands are yet to demonstrate convincingly that their compliance programs are effective in providing positive incentives for genuine improvements in workers' freedom and welfare.

A further challenge is that brands only have a small percentage of the total orders in some of their supplier factories, so their ability to influence major changes in labour practices is more constrained. For instance, New Balance reports that one third of its Indonesian apparel suppliers continue to refuse to sign the Protocol:

In the case of apparel, we face practical challenges in that our apparel business is very small and, in any given apparel factory, we represent only a fraction of that supplier's volume.

Along with Adidas, Nike, Puma and Pentland, New Balance is one of 25 major brands participating in the ILO-IFC Better Work Indonesia Program, a multi-stakeholder initiative that aims to improve factory compliance with labour standards and promote competitiveness through independent assessments, advice, training and other capacity-building activities (Better Work Indonesia, 2014). New Balance hoped to use its networks through Better Work Indonesia to increase participation in the Protocol amongst other brands sourcing from many of the same factories (interview, September 2014). Unfortunately, no additional brands participating in the ILO Better Work program have signed up to the Protocol, despite several socialisation efforts by Oxfam, Adidas and other participating brands.

An additional challenge is that not all participating brands have been transparent about their implementation process. One hundred per cent of Adidas' first-tier suppliers and many of Nike's suppliers have signed the Protocol and both brands have conducted extensive factory-level socialisation processes. However, other participants have been far less proactive. For example, worker representatives at a New Balance footwear supplier, Factory B*, claim the brand's local representative took a 'hands-off' approach to grievances raised in association with the Protocol. New Balance denies this suggestion and points to the fact that its local representative responded to complaints with in-person meetings with both the local union representatives and management representatives and as grievances were brought to his attention and communicated with texts and emails. However, the union maintains that often the response of the New Balance representative was only to validate management's viewpoint. New Balance reports that it commenced a remediation process about various compliance issues from October 2012 and eventually escalated to meetings with the factory's owners, which resulted in the replacement of the General Manager in early 2014. However, trade union leaders at the factory interviewed in June 2014 had limited knowledge of this remediation process and did not report improvements in the factory's compliance with the Protocol. While the issue could be attributed to poor communication, worker representatives at the supplier remained unconvinced that New Balance has actively encouraged supplier management to respect the Protocol or its Code of Conduct. Some union representatives on the National Committee have also voiced concern that Asics and Pentland, which do not have Indonesia-based representatives, are not as committed to the Protocol's implementation as those brands with a more active presence in Indonesia.

Commitment amongst local unions

In addition to the role of companies and international civil society networks, the Protocol is unlikely to function unless unions are sufficiently organised and internally committed to the process, because national representatives need to coordinate with workplace representatives in order to raise grievances and highlight the responsibility of implicated brands. As such, unions must ensure their members are aware of the mechanism and respond effectively to their members' needs. Likewise national union representatives need to prioritise full attendance at Protocol-related meetings to continually strengthen the initiative and maximise their level of influence. While several unions have made extensive, systematic efforts to engage their members

with the Protocol and socialise its use, others have been more complacent. One workplace union representative was very disappointed that she was never informed by her colleagues how the complaints system functioned or that a factory-level committee had been established:

My union has also conveyed information in a very limited way. Because there's no coherent policy around 'well we need to share this information, so let's start with our officials and then move on to members, make that sure everyone knows.' That hasn't happened. We've never had any FOA socialisation...I am certain that 95% of employees wouldn't know what it was. (Interview, September 2013.)

By contrast, where unions have good internal lines of communication and accountability their members are far more likely to know about and benefit from the initiative. For example, KASBI union has a strong focus on grassroots labour education and both officials and members have taken copies of the Protocol to new members and explained its purpose. KASBI's national leadership believes that all of its officials and about half of its members at relevant suppliers are currently aware of the Protocol.

A further challenge is that more than one third of participating factories are organised by more traditional, legacy unions, many of which do not have a strong reputation for democratic representation (see, e.g., Caraway, 2008). These unions may be more likely to toe senior management's line than act in the interests of regular workers and on the whole have not embraced the Protocol, particularly since these unions were not engaged in its negotiation. The Protocol includes protections and support for the organising activities of all unions within a workplace, including larger more established unions and smaller, often more independent unions. In some cases unions that are more established, but not strongly representative, may view the Protocol as a threat, since newer more representative unions might use its protections to establish themselves within a factory. In fact, a number of worker representatives emphasised that the Protocol had been particularly useful in the context of unions initiating organising in new workplaces.

Overall the Protocol process has had mixed impacts on inter-union relationships. At the national level, there has been increased cooperation and collaboration between participating unions throughout the negotiating stage and the implementation process. National union leaders also acknowledged that working with other unions from diverse ideological positions led to more dynamic internal dialogue, which in turn strengthened their overall negotiation strategies and bargaining position. KASBI union representative Parto describes this dynamic:

[I]ndependent unions sat down together, discussed various issues together, negotiated compromises about their respective interests and foci. There was a process of debating back and forth, as could be expected there were those who were more aggressive, those who were able to moderate. It was a positive experience, which still rarely takes place—trade unions sitting down together to discuss what is important to them. (Interview, June 2011.)

Elly, national representative from Garteks, was also surprised at the solidarity that emerged at the national level:

The most beneficial aspect has been that while all parties have had very different demands, democracy has still prevailed. When one union says something, we discuss it properly, thoroughly, and it turns out that we can come to an agreement, and this is for our collective good. (Interview, May 2011.)

Conflict between unions at the factory level is very unfortunate in the context of Indonesia, where fragmentation is high and legacy unions remain entrenched, but it is difficult to avoid. Several worker representatives from SPN and KASBI expressed the view that a focus on joint socialisation processes may create better acceptance of the Protocol process amongst all stakeholders, including more dominant or legacy unions.

Commitment within international labour rights campaign networks

Several worker representatives believed that international labour rights networks play a crucial role in creating incentives for global brands to remain committed to the initiative. The potential to use leverage from international networks is a key strength of the Protocol; however, linkages between local Indonesian unions and global networks are dynamic and at times tenuous, so reliance on these networks can be a major vulnerability.

The fact that brands have been willing to commit to, and continually engage with, the Protocol process is significant, given its time-intensive nature. Alongside the brands' own internal motivations, which stem from business-case arguments—such as the perceived advantages of robust industrial relations, continued dialogue, the need for more efficient compliance models or human rights/reputational risk mitigation in share-holder and consumer markets—there was significant outside pressure for brands to uphold their commitments throughout the process. Oxfam, together with several members of Play Fair, sent public letters to each of the participating brands on a regular basis to encourage their ongoing engagement. According to KASBI union official, Parto, ongoing international NGO presence is important:

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 perception of brands and suppliers. Even though in terms of insight, in terms of debating, in terms of negotiating it's us, 100% labor unions that are responsible. But we need our international allies, as a tool to bring the brands into line. (Interview, June 2011.)

In fact, regarding their motivations for participating in negotiations to establish the Protocol, a New Balance representative told Swedish researchers that one of their motivations was that 'as long as we keep talking, they [international labour campaigners] will lay off the campaigns' (Egels-Zandén and Bergström, 2013: 73). As outlined above, it was the long history of campaigns targeting major sportswear brands that laid the grounds for their participation in the Protocol process. It is also clear that the engagement of international civil society organisations impacts on how quickly and effectively companies are responding to alleged violations. In an interview in June 2013, a senior manager at one supplier was candid about the influence that international NGOs have in escalating issues. He said that as soon as violations were exposed by an international NGO, the implicated brand and supplier management paid far greater attention to the problem and significantly hastened their response. Without support from international NGOs like Oxfam, worker representatives also reported greater difficulties in obtaining commitments from brand representatives regarding the grievances that they raise.

While brands have acknowledged benefits stemming from their engagement with the Protocol, it is unclear whether brands will be willing to continue to implement the initiative on an ongoing basis in the absence of some form of international pressure. Some brands have highlighted that, regardless of international pressure, they do have strong internal motivations for implementing the Protocol. Adidas views the Protocol as a mechanism to support the local resolution of issues in such a way that reduces the likelihood that issues escalate and the burden on the brand's compliance team. Nonetheless, most worker and NGO representatives interviewed believed effective implementation will require that international trade union and NGO networks sustain some form of public monitoring of the participating brands, informed by the experiences of participating workplace unions. This would involve acknowledging good practice but also creating pressure for all participating companies to stay involved and continually improve performance. Otherwise there is a risk that poorly performing brands obtain undue kudos from very limited participation in the initiative. At present, however, there is no formal communication channel between national unions and international labour networks. Instead information sharing tends to happen on an ad hoc, individual basis and some unions have much greater access to international campaign networks than others. If stronger communication pathways between local and international labour advocates are not reestablished then the Protocol's 'accountability loop' is unlikely to function effectively.

At least within Indonesia, Oxfam is unlikely to take the lead in applying public campaign pressure on companies to improve implementation, since it has committed to playing a more neutral facilitation role within the process, which may preclude a more active campaign presence. Further the political space for international NGOs operating within Indonesia to engage in certain types of advocacy is narrow. For this reason, Oxfam in Indonesia has designed its work as facilitating constructive dialogue between civil society and the private sector, rather than adopting a campaign model.

Public monitoring requires some ongoing investment of time and resources. Nonetheless focusing international campaigning efforts and energy on a process like the Protocol, which aims to achieve systemic change, may be a more strategic use of resources than providing campaign support for individual workplace campaigns, particularly since improvements achieved in factories as an outcome of discrete international campaigns are often not sustained (Harrison and Scorse, 2010). Other international organisations such as IndustriALL and the Clean Clothes Campaign have actively supported the progress of the Protocol in the past. However, the relevant individuals have since left those organisations and it is currently unclear whether there is capacity within those organisations to continue that work. Given the importance of support from such organisations, the lack of ongoing involvement makes the future of the Protocol uncertain.

Regulatory Style

While the Protocol now has formal monitoring and dispute resolution procedures in place, to date practical use of the Protocol, at least at the national level, has been largely informal, which has both advantages and drawbacks. The present lack of formal case documentation, reliance on consensus-based decision making and absence of an authoritative investigation function is likely to have major limitations, particularly in instances where the parties disagree as to the fundamental facts of the case.

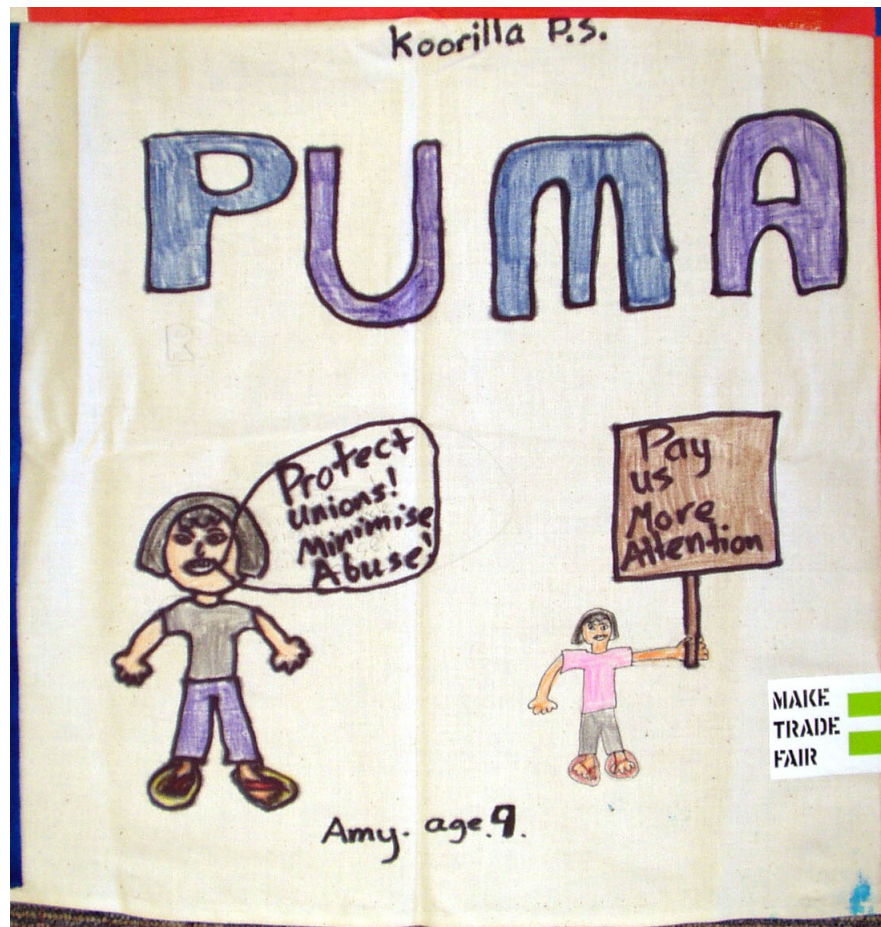
High level of informality in grievance resolution processes

As outlined earlier in this report, the Protocol has formal grievance resolution procedures but to date an informal complaints process has been favoured over the utilisation of the formal procedures. According to worker representatives this informal approach has both advantages and disadvantages. On one hand it allows for the speedy resolution of issues since complaints can be channeled directly to brand representatives rather than via factory-level committees. On the other hand, the preference for informal resolution means that grievances are not being documented and there are few clear precedents emerging from the initiative. According to SPN's national committee representative, brands prefer to settle cases on the sidelines because they would prefer that the problems in their supply chain are not aired in front of other companies that are essentially their competitors. Others reported that the Protocol was enabling more workers to resolve their grievances at the factory level by strengthening union participation in bipartite negotiations. Adidas reports that a number of factory level committees are functioning well and resolving FOA issues, reducing the number of cases making their way up to the national committee structure.

A challenge for a more formal approach to the Protocol is that many participating factories are yet to establish functioning workplace monitoring committees. Furthermore, many national union representatives are unaware of which committees have been established and there is a level of confusion around the membership of these committees. One union leader even cited concerns that there might be a concerted effort by factory management to co-opt factory-level committees. The main cause of confusion, however, appears to be poor communication between stakeholders and between factory-level union affiliates and national-level unions. This results in a major governance gap in the mechanism since issues can only be officially heard by the Protocol's national committee when they have been formally referred by a factory committee in accordance with the relevant procedures. One worker representative believed the best way to overcome this problem would be to invite factory committees to attend a joint socialisation meeting and discuss dispute resolution procedures. Several also voiced a preference for joint factory-level socialisation visits, as a way to avoid confusion and increase transparency between stakeholders on such matters. SBGTS union leader Sari Idayani explains:

By conducting joint socialisations between unions, buyers and factory management we can really assess whether or not the brand's commitment is genuine. Whether they are genuinely committed to socialising the protocol at the supervisor level... We shouldn't just involve workers at the operator level, but we need production line leaders to also understand. Because factory management usually uses production leaders to carry out those actions that hinder freedom of association, so it is not the HR Department but the production leaders, because they are the most involved with operators, with workers. (Interview, September 2013.)

According to Oxfam, this proposal has been endorsed by brands and suppliers and the national committee. Together with the National Committee, Oxfam has helped to coordinate a series of joint socialisations for suppliers located in West Java, Banten and Central and East Java. This is a positive development and should enhance levels of trust within the initiative, particularly since several worker representatives shared concerns that brands were reluctant to share data in a transparent way.



The negotiation of the FOA Protocol followed many years of international labour rights campaigns targeting the sportswear industry, including campaigning by the global 'Play Fair Alliance'. This cartoon was drawn by an Australian primary school child as part of Play Fair campaign activities in the lead up to the Athens Olympic Games in 2004. *Photo: Oxfam Australia.*

Facilitated dialogue

Another key characteristic of the Protocol is that it involves facilitated negotiations and dialogue. The facilitator, Chris Wangkay of Oxfam in Indonesia, has been largely successful in keeping stakeholders engaged despite challenging dynamics between various participants. The way in which both negotiations and committee meetings have been facilitated appears to have also contributed a sense of equal ownership amongst stakeholders, further contributing to perceptions of legitimacy. According to Wangkay being neutral, establishing trust and understanding the limits of the role is crucial to effective facilitation:

It's essential to be neutral; this is a foremost requirement, because while we might enjoy having a close relationship with the unions we need to provide equal participation to other parties...A facilitator really has to want to assist while also fully understanding the limits of their involvement. So wanting to help doesn't mean that you have to do everything...Because the fundamental element in this whole process is actually trust... by being professional, keeping a distance, being aware that workers themselves have great capacity and that we need to give them space. And if they feel like they don't

have capacity then we need to encourage them to develop it. And this creates trust. (Interview, September 2013.)

In playing the role of monitors and facilitators, none of the NGOs involved sought to control the process or dictate the contents of the Protocol. Rather the NGOs were highly cognisant that local union representatives were the most legitimate voice of worker interests. Had NGOs sought to exercise greater control it is doubtful whether a number of the unions would have continued with the process. Yet Chris Wangkay admits that the task of supporting and encouraging without dominating can be difficult:

It's certainly not easy...If we don't take care, then without even being conscious of it we can start to interfere with the process and it will be seen as 'Oxfam-driven'. (Interview, September 2013.)

Despite these challenges most stakeholders believed the role of the facilitator had been crucial in enabling the process and some expressed uncertainty as to whether the initiative could continue without it. This has implications for sustainability—the extent to which progress achieved throughout the process would continue after the NGO's involvement has ceased. International NGOs like Oxfam generally operate on annual program cycles based on changing thematic goals that often do not allow for long-term or indefinite commitment to community-driven change processes. In this context the fact that Oxfam has sustained support for the Protocol process for more than five years is remarkable, but as with all NGO activities the long-term security of funding can be tenuous.

Oxfam has stated that it hopes that in the coming years the Protocol becomes self-sustaining. If support from Oxfam were withdrawn it would be necessary to find an appropriate organisation or individual with the skills necessary to replace Oxfam's facilitation and coordination role. Otherwise the Protocol process might lose its credibility with stakeholders as a facilitated model of redress. Unless planned well in advance, it would be difficult and time consuming to find another trusted independent party willing and with sufficient resources to take over the facilitator role. Further, if the role were funded by participating brands, rather than an independent NGO, the initiative's independence would be compromised. As such, careful planning is necessary to guarantee the Protocol's integrity and effectiveness in the long term.

Consensus-based decision making

A consensus-based decision-making model has been largely successful in terms of establishing the Protocol. However, it is questionable whether the same model will function effectively in dealing with cases of violations. As presently drafted, the Protocol's dispute resolution process relies on consensus-based decision making alone, which, as the Protocol negotiations demonstrate, can be a very time consuming process. These disputes will not necessarily be confined to disputes between unions and companies; in particular factory cases different unions may have conflicting interests that could undermine the possibility of reaching consensus. Disagreement between National Committee members over accepted facts of a particular case, or the most appropriate remedy, could easily result in a stalemate position and may lead to a prolonged or ultimately ineffective dispute resolution process. In lieu of an alternative fact-finding mechanism the ability of the National Committee to effectively resolve contested cases may be limited and this has deterred some union leaders from lodging formal grievances with the National Committee.

As such it seems important that in cases where consensus cannot be achieved, the Protocol provides the option to request an independent investigator to make a determination of the facts and propose appropriate recommendations. The individual investigator or organisation responsible for fact-finding in such cases would need to be formally approved by all parties, possibly as an amendment or annex to the existing Standard Operation Procedure. However, the independent fact-finding and recommendations would not necessarily need to be binding, nor preclude alternative legal avenues of redress. The main function of an official fact-finder would be to contribute authority and credibility to investigation and dispute resolution processes and create greater incentives for parties to participate in good faith. A number of Protocol participants, including Adidas, acknowledge the importance of a fact-finding mechanism, but highlight that it will be challenging to find a party that is viewed as objective, fair and trustworthy by all parties.

Transparency

Brands have shared information about their Protocol socialisation programs with Oxfam and in their sustainability reporting, but according to participating unions brands are less transparent on what measures they are taking to ensure compliance. Both SPN and KASBI union leaders have expressed some frustration at the lack of information brands provide them regarding issues such as levels of production or whether the price paid for product takes into account basic compliance factors, such as payment of the minimum wage. In both of the case studies described in more detail in this report (Factory A and Factory B), union representatives reported that management, or more management-aligned unions, would often warn that by demanding basic legal compliance they were jeopardising the financial viability of the enterprise. Without better information from brands, the unions had limited ability to assess the truth of such claims, which made negotiations very difficult. To the best of our knowledge, at this time only Adidas and Nike have made public commitments to ensure payment of the full minimum wage and disallow waivers amongst Indonesian suppliers. Most stakeholders also acknowledge the need for better information sharing within the mechanism, particularly between the national committee and individual factories. As discussed above, several unions proposed that joint socialisation visits would be an effective way to address this problem.

The Protocol itself is reasonably transparent and does not create any limitations on the ability of its participants to engage in other forms of dispute resolution or advocacy, including public campaigning by participating unions. That said, in most instances unions have initially raised issues with brand participants and within the National Committee prior to engaging with the media or more public forms of protest. At present, although some companies have their own systems for reporting to the National Committee, there is no systematic reporting process for each company's overall performance under the Protocol. According to Oxfam, Protocol participants have begun designing a monitoring system and plan to launch public reporting on Protocol implementation, focusing on best practice examples. This may contribute to some further transparency and promote participation in the initiative more generally. However, as noted above, in the absence of some form of comparative public reporting on brand performance it will be difficult to avoid the 'free rider' problem (brands joining the initiative but failing to seriously implement it).

Current scope and limitations of the protocol

The Protocol sets out a process for grievance resolution in individual cases as well as tackling systemic problems by strengthening norms and practices around FOA more broadly and providing a tool for workers to organise. This is combination of specific and systematic redress makes the Protocol a particularly attractive initiative for worker organisations. Participating brands have also voiced support for this 'sector wide' approach. However, according to workers interviewed, the initiative's current scope has three main limitations: first, it is only being implemented in first-tier suppliers; second, only a small number of transnational apparel brands have signed up to the initiative; and third, it does not provide a formal forum for grievances in relation to other (non-FOA) violations of workers' rights.

Implementation beyond the first tier

Protocol implementation is currently focused almost solely on the first tier, whereas the most serious freedom of association violations often occur further down the supply chain. All unions involved in the Protocol are disappointed that brands have been slow to require implementation beyond their direct suppliers. There have been some positive examples where second-tier suppliers have adopted the Protocol, for instance a second-tier Nike supplier in Sukabumi has actively pursued implementation. But on the whole brands are maintaining focus on the first tier and few suppliers appear to be making significant efforts to encourage its implementation amongst their subcontractors.

A further problem with a narrow approach to application of the Protocol is the risk that suppliers sever the connections between organised labour and more responsible buyers by shifting production arrangements between various subsidiaries within a corporate group. For example, in 2012 workers at garment supplier PT Ricky Putra Globalindo successfully established a union affiliated with Garteks-SBSI (Garteks) and called for full implementation of the Protocol in the factory, whose customers included two companies that had signed the Protocol, Adidas and Asics. According to Garteks (interview, June 2013) the Protocol was a crucial organising tool because the workplace union faced serious discrimination and one of the union's leaders was threatened with dismissal and Adidas in particular put pressure on the supplier to ensure that it complied with the Protocol. However, by March 2013 PT Ricky had shifted the orders from Adidas and ASICS to a separate enterprise within the corporate group, thereby denying the newly formed union any protection under the Protocol. ASICS declined to be interviewed for this research. Adidas' position was that since it no longer had a direct relationship with factory management it could no longer pressure the factory to implement the Protocol. Adidas did not accept that the shift of orders was a deliberate attempt to avoid obligations under the Protocol, asserting that it was a business decision motivated by other factors. Garteks, by contrast, was highly skeptical of management's motivations.

A leading labour expert has reported similar problems in relation to other global apparel brands. For instance, in one case a supplier transferred active KASBI union leaders away from factories producing for more famous global brands (H&M, S. Oliver) in an effort to undermine potential international campaigning support. This problem suggests that brands need to carefully monitor whether suppliers are maneuvering production arrangements so as to avoid their obligations.

Limited number of participating global brands

The third limitation is that there are only a small number of participating brands, whereas potentially the Protocol could apply to all major footwear and apparel brands sourcing from Indonesia. Several brands acknowledged the value of having a sector-wide initiative. According to Puma (2013):

the Freedom of Association Protocol presented a significant means to engage with other brands as well as with other suppliers towards a collaborative approach to identify workable solutions related to FOA.

Nike representative John Richards also views the Protocol as lifting industry-wide compliance and claims to have serious expectations on its suppliers, but believes that some other brands are a long way from genuinely recognising FOA (interview, June 2013). A major challenge now faced by all the Protocol's stakeholders is how to encourage more global brands sourcing from Indonesia to adopt the initiative and influence sector-wide accountability norms. Unions believe the Protocol will have a far greater impact if it is adopted by other major brands sourcing from Indonesia, and have specifically mentioned brands such as Gap, H&M, Wal-Mart, Inditex, Marks & Spencer and Levis. Since 2012 Oxfam has privately corresponded with a number of brands about joining the initiative, to no avail. Adidas has also actively provided briefings and one-on-one presentations to other brands about the Protocol in order to encourage their participation but has had no success. In absence of the kind of public campaign pressure that helped to instigate the initiative, so far no other brands have ratified the Protocol.

Limited application to non-FOA violations

In most cases, grievances regarding freedom of association violations are raised in the context of grievances about denial of other substantive rights, often in relation to wages and job security. By strengthening Freedom of Association, the Protocol has given worker representatives greater capacity to negotiate for better conditions, as demonstrated by successful negotiations for the introduction of improved wages at Nike supplier, Factory A. However, issues on wages and conditions cannot be formally raised within the Protocol forum. Thus while respect for organising gives workers a greater ability to negotiate on wage and contract issues, it does not provide a specific guidance for resolving them. One key challenge is that unions are often disadvantaged during negotiations due to their not having reliable information about company finances or the extent to which buyers are willing to cover compliance-related costs. Another challenge is the threat of capital flight—that companies relocate to other districts, provinces or countries with lower wages as soon as substantive improvements in wages and conditions are achieved. If the Protocol were able to facilitate greater transparency between workers, buyers and suppliers on issues such as compliance costs and decisions on sourcing locations, it could become a more effective tool in enabling workers to successfully negotiate for better conditions. There is no reason why the Protocol initiative could not expand to incorporate these kinds of provisions. In fact, when the Indonesian unions agreed to negotiate the Protocol they did so on the understanding that it would be the first of three protocols, including one on job security and another on wages. The unions involved in the Protocol Process remain determined to address the latter two issues; however, it appears that both buyers and suppliers are not yet prepared to

hold national-level negotiations on wage and contract issues, highlighting that they had only committed to further discussions on those issues and citing the need to consolidate existing mechanisms first.

One of us attended a Protocol meeting in March 2016 and in that meeting the unions involved in the Protocol expressed considerable frustration that the global brands are refusing to negotiate further protocols on living wages and job security, insisting instead that further work needs to be done on implementing what has been agreed in relation to freedom of association. The brands involved, for their part, believe that trade unions and labour rights groups should be putting more energy into persuading other global companies to join the Protocol Initiative. Tension between the two sides over this issue is significant and will likely present a challenge to further progressing implementation of the Protocol agreement.

Case study: interrelated nature of labour disputes at factory B

According to local worker representatives, New Balance supplier Factory B*, a shoe manufacturer based in Tangerang, has routinely hired workers for core production activities with short-term contracts on an ongoing basis. Indonesian labour law strictly limits the conditions under which short-term contracts can be utilised and also stipulates a maximum number of two renewals and time-period limitations (see art 59, Law no. 13/2003). Yet several workers reported that their contracts were renewed more than five times, while some had never received copies of their contracts. In April 2013 several of these workers lost their jobs without severance pay. Workers were told that their contracts had expired; however, under Indonesian labour law most of these workers should have had permanent status. Factory B's union disputed these dismissals with factory management and raised a complaint with New Balance's local representative.

In contravention of the Protocol, Factory B union was prevented from communicating important information with its members in relation to the case; for example, information they posted about illegal contracting practices was torn down. The factory also successfully undermined collective negotiations in relation to the dismissals by secretly arranging pay-offs to individual workers in exchange for dropping the issue. Since that time, similar dismissals of union members on illegal contracts have continued to occur. Previously the union claimed it was denied the opportunity to participate in bipartite negotiations regarding the factory's application for a waiver from the minimum wage (although there is evidence that its objection to the waiver was formally recorded, despite being ultimately dismissed). The challenges faced by union officials at Factory B illustrate the fact that cases involving freedom of association violations are complex and frequently involve other major violations of workers' rights.

In September 2014 New Balance shared that it had undertaken a remedial process around contract issues with Factory B from October 2012. Following ongoing failure to improve performance, New Balance escalated the issues with factory ownership, resulting in the replacement of the General Manager in early 2014. According to New Balance, the factory remained unable to meet agreed compliance targets, leading New Balance to reduce orders by 30% in mid-2014. New Balance insists that its purchasing practices were not contributing to labour rights violations, since it takes the suppliers' costs of complying with minimum wage requirements and other obligations into account when negotiating prices.

Worker representatives were largely unaware of New Balance's remediation process and were not aware of its commitments to meeting all compliance costs, although they noted that a number of New Balance's other suppliers had largely full-time workforces and were paying in accordance with the minimum wage. Factory B representatives declined to participate in this research.

Interaction with other strategies for redress

As discussed in the companion report, *Non-judicial mechanisms in global footwear and apparel supply chains: Lessons from workers in Indonesia*, most worker representatives view the Protocol as one of several mechanisms and strategies that might increase their chances of achieving redress. In the context of ineffective labour monitoring institutions and weak rule of law, workers saw the ability to employ multiple strategies in tandem as a key advantage. For example, in some cases workers have used the Ombudsmen to put pressure on regional labour offices (*disnaker*) to carry out its regulatory functions in accordance with the law. Workers are also increasingly likely to look to international mechanisms as alternative ways to raise their grievances. Yet several worker representatives also emphasised that despite their current reliance on a range of other mechanisms, in the long term they hope that legal institutions can function fairly and independently. GSBI union leader, Emelia Yanti, explains:

Because we want to, as Indonesian people, Indonesian unions, we want to believe that our law can really work... We will always seek to use judicial processes because this is the legal procedure offered by our nation. We wouldn't ever stop trying to use the law. So why do we use non-judicial processes? Because these mechanisms can strengthen the judicial ones, whether it's protest, pressure, campaigning... this is really just to strengthen. (Interview, June 2013.)

Interactions with government

The Protocol was publicly endorsed by the Indonesian Ministry of Labour in 2011 as a constructive initiative to strengthen freedom of association; however, the Protocol is a non-state grievance mechanism and government representatives were not directly engaged in the negotiation or implementation process. Worker representatives believed the mechanism was most effective as a non-government initiative. They emphasised that the Protocol was filling a gap created by ineffective state institutions and law enforcement on the protection of workers' rights. According to Indonesian labour activist Lilis Mahmudah:

If the government was acting in good faith on this issue and its laws and ILO conventions were effective and in force, we wouldn't have to go to the trouble of creating a Freedom of Association Protocol in the first place. (Interview, September 2013.)

Brands had initially proposed that the ILO might be involved as an independent observer, but unions were reluctant to agree to this. The Protocol therefore developed in a closed-door setting, driven primarily by the local unions and their expectations. In the longer term, worker representatives expressed a desire to see the IR courts, government institutions and enforcement agencies play a more effective role in providing redress to workers, but for the time being few expressed faith that the state could play a constructive role.

Thus while the Protocol is a private initiative, none of the parties involved would deny the pivotal role played by government in protecting workers' rights. It is possible that initiatives such as the Protocol may embolden parts of the government to improve labour law enforcement. Indonesian economic and labour policy makers are often in a difficult position—on the one hand needing to satisfy demands of workers for decent conditions and strengthen the largely ineffective and under-resourced state-based enforcement mechanisms, and on the other under pressure to ensure that costs of manufacturing in Indonesia remain low (Oxford Business Group, 2013; Manurung and Purnomo, 2014) and to prevent flight of foreign investment, mass closures and unemployment. This challenge for government is illustrated by research on the impact of global anti-sweatshop campaigns on wages in Indonesia throughout the 1990s, which found that these campaigns contributed to significant wage increases for the lowest paid workers in manufacturing, but may also have encouraged some exporters to relocate elsewhere (Harrison and Scorse, 2010). Sectoral support for the Protocol, which has been promoted in Indonesian business news (Pencawan, 2013), suggests that there are ways to engage foreign investors in improving labour standards without compromising those investments, but only time will tell.

One of the biggest challenges for the government in ensuring just outcomes for workers is not just increasing state resources for labour monitoring but also tackling the endemic corruption that exists at all levels, often enabling those with financial means to buy their way out of compliance. Indonesia's performance on Transparency International's Corruption Perceptions Index has only improved minimally from a score of 2/10 in 2004 to 3/10 in 2011 and improvements on the World Bank Institute's 'corruption control' indicator have been similarly modest (Schütte, 2012: 39). As long as good governance is undermined by corrupt practices it is likely that workers will continue to need alternative mechanisms in order to access justice.

Key lessons for non-judicial grievance mechanisms

Analysis of the Protocol reveals some important lessons about the factors that can contribute to the increased effectiveness of non-judicial mechanisms. It demonstrates that there are clear advantages to grievance mechanisms that seek to empower aggrieved individuals or communities to have an active role in claiming their rights. In particular, ensuring that affected stakeholder groups, together with international stakeholders, can play an active role in the design, operation and governance of a grievance mechanism creates enhanced legitimacy and trust amongst potential complainants. It also promotes approaches to grievance resolution that are appropriate within the local context, yet still involve international corporate stakeholders who possess the capacity to influence change.

Facilitating this meaningful stakeholder participation at the local level requires practical accessibility (e.g. language, location of meetings, socialisation) as well as building adequate trust, which calls for considerable investment in terms of time and resourcing. It also calls for high-level interpersonal skills. Grievance mechanisms like the Protocol are based on negotiations between actors with very different interests, priorities and perspectives. While it is by no means all that is needed, our research indicates that a skilled facilitator with the capacity to establish positive trust-based relationships grounded in open communication with

very different parties can significantly increase the likelihood that the mechanism will be able to provide effective redress.

Mechanisms also need to be designed in such a way that they compel brands to be more transparent about whether their financial decisions either support or undermine adherence to human rights within the supply chain. Unless mechanisms can prompt companies to enact changes to their terms of trade that provide clearer incentives for human rights compliance, voluntary grievance mechanisms are unlikely to have substantial and sustained impact. Voluntary mechanisms also need to have adequate means to keep sustained pressure on participants to meet their commitments. For instance, a mechanism's monitoring and reporting requirements could require international companies to disclose what financial incentives they offer to suppliers that improve their human rights performance. This in turn could be conveyed to stakeholders who are able to exert positive influence over the brand—whether concerned consumers, ethical investors or civil society groups. Unless monitoring is sufficient and pressure on companies to comply is sustained, voluntary mechanisms can easily become impotent and ineffective. It is possible that effective grievance mechanisms become self-sustaining once they are perceived as successful from all perspectives, but this requires significant investment and time in developing trust and engagement, which is unlikely to take place in the absence of external pressures.

Mechanisms can also benefit from clear procedures for fact-finding or verification because without a definitive understanding of whether a violation has occurred it is difficult to determine appropriate redress. While mechanisms can play a useful role in facilitating dialogue or problem solving between stakeholders, these functions only work effectively where parties have some level of agreement on the basic facts. Therefore mechanisms that lack provisions for investigation tend to have more inherent limitations.

Finally, the Protocol is an example of a private mechanism that operates independently of government agencies, but such mechanisms should not be read as denying or precluding the crucial role of government in regulating business and human rights. Instead, provided that such private initiatives complement and strengthen, rather than diverge or detract from, existing state legal frameworks, they can be viewed as a means to create new policy space and embolden government actors to advocate for, and better legislate, more rigorous human rights protections and stronger implementation. In particular, by obtaining commitment from foreign investors, local employers and workers to engage in sustained improvements to industrial relations and working conditions, such initiatives can be used to demonstrate that states can raise the bar on human rights without compromising their reputation as an investment destination.

Recommendations

The Protocol provides a useful model of redress for labour rights issues in the manufacturing sector. To optimise its effectiveness, stakeholders may consider adopting the following recommendations:

Protocol participants

- Continue joint socialisation efforts (including interactive presentations by brands, supplier management and unions involving workers and worker representatives at the factory level) in order to improve both awareness and the transparency of the initiative.
- Adapt the Standard Operating Procedure to include an independent investigation option for instances where the National Committee is unable to reach a consensus on the facts or appropriate remedies for a particular complaint.
- Negotiate complementary Protocols on the issues of job security and wage issues, with a focus on obligations for greater transparency and information sharing.

International footwear and apparel brands

- Join the Protocol initiative and require all Indonesia-based suppliers to commit to its implementation.
- Provide suppliers with clear, specific incentives to improve implementation of the Protocol and ensure the price paid for products adequately covers costs associated with legal and code of conduct compliance. More generally, supplier scorecard or incentive schemes should place the greatest weight on practices that empower workers, including full respect for freedom of association.
- Publish detailed information about how the brand's purchasing practices support compliance with the Protocol as well as the brand's legal and code of conduct requirements more generally.
- Monitor suppliers to ensure suppliers do not manipulate order arrangements so as to avoid compliance obligations.
- Maximise the potential positive impact of the Protocol by working with suppliers to require implementation by their subcontractors.
- Prioritise engagement in similar local worker/community negotiation initiatives throughout global supply chains; for instance, partner with global unions to pilot Protocol initiatives throughout key supply chain hubs.

Suppliers

- Ensure the Protocol is fully implemented within operations, support the formation of and actively participate in the factory-level monitoring committee.
- Ensure that all relevant supervising staff, not only senior HR managers, are aware of Protocol obligations.
- Promote compliance with the Protocol in related enterprises, including subsidiaries and subcontractors.
- Demonstrate greater transparency by sharing data on customer (brand) buying practices and company finances.
- Ensure all subcontractors sign and implement the Protocol.

International trade unions and NGOs

- Maintain support for the ongoing facilitation of the Protocol initiative.
- Establish an official channel for communication and campaign strategy coordination between international campaign networks (especially Play Fair) and the core team of unions participating in the Protocol. In doing so, as much as possible, provide language support so non-English-speaking representatives can give input.
- Actively encourage and pressure other apparel and footwear brands to join and support the Protocol initiative.
- Provide brands already participating in the Protocol with incentives for further progress by publicly reporting on the extent to which participating brands are seriously implementing their commitments under the Protocol. This reporting could be based on the Protocol Committee's approved public reporting but should also take into account independent information sources, including any data on implementation supplied by participating unions. These reports should include information on whether participating brands are increasing or decreasing orders to Indonesia.
- Promote public reports on Protocol implementation amongst consumers and investors.
- On request, seek to provide strategic campaign support where cases that are formally raised as violations of the Protocol are not resolved by the companies involved in accordance with the initiative.
- Call on companies to release more information about their purchasing practices and the extent to which these support and incentivise compliance.
- Consider focusing international solidarity efforts and energy on processes like the Protocol, which aims to achieve systemic change in hundreds of factories, as a potentially more efficient strategy than providing international campaign support to individual workplace campaigns.
- Promote the Protocol as a useful model for more responsive and accountable redress for supply-chain human rights violations at the local level and encourage other multi-stakeholder initiatives to adopt a similar model.

Trade unions

- Ensure internal organisation supports sustained participation in the Protocol and that the mechanism is socialised amongst both national and sub-national union leadership as well as amongst members. Avoid situations where all the knowledge and network connections reside with only a handful of individuals.
- To reduce dependency on international NGOs, include protocol socialisation and monitoring as part of the union's annual program and allocate sufficient resources to support its implementation.
- Ensure union representatives have sufficient time to attend Protocol-related meetings so as to continue to strengthen the initiative and maximise its potential.
- Build cross-union understanding of benefits of all unions participating as a way to address the potential of union conflict at the factory level.
- Prioritise increased incorporation of Protocol standards into Collective Bargaining Agreements.
- Given that by far the majority of workers employed in the industry are women, ensure women members are given every opportunity to participate in and benefit from Protocol processes and to take on leadership roles within trade unions.

Indonesian government

- Recognise and endorse the Protocol as a positive initiative as part of the Indonesian government's National Action Plan for implementing the UN Guiding Principles on Business and Human Rights.
- Consider reforming Indonesian employment regulations to incorporate some of the standards included in the Protocol.
- Ensure Indonesian law reflects global human rights principles and ILO Conventions and make further progress in enhancing implementation.

Conclusion: future challenges and opportunities

The preceding two sections of this report have summarised what we believe to be the key lessons emerging from the operation of the Protocol to date and have drawn on those lessons to recommend actions that we believe would further enhance its effectiveness. Those lessons include the value of local stakeholder involvement in the design and implementation of non-state, non-judicial mechanisms; the need for skilled facilitation to build trust between parties with very different interests and values; the value of independent fact-finding in resolving disputes; the need for non-judicial mechanisms to strengthen, rather than detract from, state enforcement of human rights; and the value of focusing on those human rights, such as the right to freedom of association, that increase the capacity of vulnerable people to assert and pursue their other human rights.

While we believe that the Protocol's achievements, albeit imperfect, are remarkable when compared with those of other non-judicial mechanisms studied in our wider research project, we are conscious that we are making these observations and recommendations at a time when the future of the Protocol is quite uncertain. Recent communication with trade unions and brands involved in the Protocol indicate that there is significant frustration among the unions that the

brands are refusing to negotiate further protocols on living wages and job security. For their part the brands involved are keen that the unions and their international allies should focus instead on persuading other global companies to join the Protocol initiative. Tension between the two sides over this issue is significant and has presented a challenge to further progressing implementation of the Protocol agreement. Furthermore, despite the fact that the financial resources committed to the Protocol's institutional processes have been relatively modest (consisting mainly of the time of an Oxfam Indonesia staff member who has acted as a facilitator and some money from Oxfam to support meeting costs), Oxfam has signaled that it plans to withdraw these resources in order to focus on other priorities.

In this context it is thus unclear whether the various stakeholders listed in the previous section will have the capacity and motivation to implement the recommendations we have made. However, the events that resulted in the development of the Protocol initiative demonstrate that with sufficient, sustained pressure from civil society and consumer networks, companies have been willing to invest increased time and resources in improving respect for workers' rights. The experience of the Protocol to date shows that companies can be persuaded to move beyond self-regulation based on code of conduct compliance towards cooperating with local worker organisations to empower workers themselves to negotiate for better wages and conditions.

Of course our research also demonstrates that significant and sustained improvement in respect for workers' human rights requires that companies adapt their purchasing practices in order to provide their suppliers with genuine incentives to cooperate in human rights initiatives. Yet companies are ultimately motivated by profit and are unlikely to voluntarily increase their costs of doing business unless they can be convinced that the advantages of doing so will outweigh the costs, for instance via increased consumer demand or access to cheaper capital from ethical investors.

There is evidence that the decisions of a growing number of consumers, investors and investor groups are influenced by information regarding the human rights conduct of particular companies. For example, increased concern amongst consumers about the 'social footprint' of the goods they buy is demonstrated by the growth in the 'ethically made' market. It is also reflected in the public outcry over company-made tragedies such as the Rana Plaza factory collapse in Bangladesh, and negative media portrayal of brands implicated in such violations. This culminated in a campaign urging brands to sign up to the Accord on Fire and Building Safety, a legally binding agreement mandating independent safety inspections of apparel factories, public reporting, workplace safety training and significant union participation. Using a combination of naming and shaming, as well as praising signatories to the Accord, civil society organisations have convinced more than 150 apparel companies from 20 countries to join the initiative, demonstrating the significant potential of media attention and consumer pressure to leverage meaningful industry-wide change. Similarly, investors are also increasingly tracking labour and human rights risks. A growing number of investment funds now engage in negative screening practices that exclude companies that have been embroiled in human rights violations, as well as positive screening where companies are selected based on best practice in terms of human rights and environmental risk management.

However, at present almost all of that screening is based on companies' self-reporting and/or on commercial social auditing, both of which are problematic sources of data. Transforming consumer and investor interest into pressure on individual companies to undertake specific actions relies

on international networks having access to credible and compelling information about company performance. For this reason, one of the most crucial tests for the future of the Protocol will be the ability of international campaign networks and Indonesian unions to cooperate in devising appropriate communication strategies. At present the extent of strategic collaboration between Indonesian unions and these international networks is significantly less than it has been, making the Protocol's sustainability tenuous. Renewing that networked collaboration would require a significant commitment from individuals and organisations in a context of limited time and constrained resources. If civil society groups, such as members of Play Fair Network (including the global union Industriall and members of the global Clean Clothes Campaign network), which have considerable experience in developing effective campaign strategies, were to commit to (and attract sufficient resources to pursue) sustained, strategic monitoring and campaigning to improve the Protocol, there would be reasons for cautious optimism that the recommendations in this report may be adopted in the future. It is uncertain at this stage whether the capacity and enthusiasm exist for this level of coordination, but if they can be achieved then the benefits for garment and footwear workers in Indonesia would likely be significant.

Endnotes

* If this symbol appears beside the name of a person or organisation 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 anonymity, both for themselves and their organisation or employer.

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