

NATIONAL PEOPLE'S TRIBUNAL

LIVING WAGE AS A FUNDAMENTAL RIGHT OF INDIAN GARMENT WORKERS

Petition

We, as representatives of Indian garment workers employed in the global garment industry petition the Peoples' Tribunal on "Minimum Living Wage and Decent Working Conditions as a Fundamental Human Right" to hear the workers' testimonies, experts' evidence, and presentations from different parties and to render a recommendation for redressing the deficit in decent labour standards in the garment industry in India.

The multinational brands and retailers that source garment from Asia are responsible for grave exploitation and human rights violations of Asian garment workers, and in this case, in India. Such violations in producing countries have robbed the workers of a basic humane existence and Asian countries and industry of their due revenue. We thus seek a remedy to this situation.

The Petitioners are:

The members consist of 20 organizations representing garment workers across India, defending the need for a living wage to be implemented in the garment industry as a fundamental human right of workers. The members are:

Hind Mazdoor Sabha (HMS)
Indian National Trade Union Congress (INTUC)
All India Trade Union Congress (AITUC)
Centre of Indian Trade Unions (CITU)
Hind Mazdoor Kisan Panchayat (HMKP)
New Trade Union Initiative (NTUI)
Garment and Allied Workers Union (GAWU)
Garment and Textile Workers Union (GATWU)
Karnataka Garment Workers Union (KGWU)
Garment Labour Union (GLU)
Garment and Fashion Workers Union (GAFWU)
Society for Labour and Development (SLD)
SAVE
CIVIDEP
FEDINA
Alternate Law Forum
Vimochana
Maraa
Asia Floor Wage Alliance

Our Vision : Workers in India must have decent work and conditions, and live with dignity and freedom.

Preamble

According to the International Labour Organisation (ILO), "Wage employment and wages are central to the world of work. Approximately half of the global labour force works for a wage. Living standards and the

livelihood of wage earners and families depend on the level of wages, when and how they are adjusted and paid. Wages are a major component of overall consumption and a key factor in the economic performance of countries. The enormous expansion of the labour force participating directly and indirectly in the international exchange of goods and services and the growing interdependence of low-, middle- and high-income countries has squarely placed wages at the centre of the debate on globalization” (Global Wage Report 2008).

In 1944, the International Labour Organisation (the ILO) adopted the *Declaration of Philadelphia*, as an addition to the ILO’s constitution. The *Declaration* articulated key principles: labour is not a commodity, freedom of expression and of association are essential to sustained progress, poverty anywhere constitutes a danger to prosperity everywhere, and that all human beings have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

In June 2008, the International Labour Conference adopted an *ILO Declaration on Social Justice for a Fair Globalization*, based on the principles in the *Declaration of Philadelphia*. The *Declaration on Social Justice* supports “policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all...” The 2008 Declaration recognises the importance of “full employment and the raising of standards of living, a *minimum living wage* and the extension of social security measures to provide a basic income to all in need...” In other words, social security, a decent wage, and formal and full employment are essential for a minimum living standard.

The importance of setting a *minimum wage* is to signal that not all conditions of work, or of life, are subject to negotiation or coercion. The significance of setting a *living wage* is that it makes concrete the idea that work should provide for one’s life – that a working person should never, despite their efforts, be unable to support themselves and their families.

The Universal Declaration states in Article 23 (3) that “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

The International Covenant on Economic, Social and Cultural Rights (ICESCR) has two articles related to wage. Article 7 defines remuneration as providing workers at a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work;
- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

- (iii) Safe and healthy working conditions;
- (iv) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 11 (1) of ICESCR defines “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The Convention on the Elimination of All Forms of Discrimination Against Women’s Article 11 articulates the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; it prohibits, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

Unfortunately the universal body of human rights instruments and standards only imply rather than assert a positive “Right to Wage.” Based on the ILO’s standard on wage as described above, the India’s National Peoples’ Tribunal, as part of the Asia Floor Wage Campaign seeks to assert a “Right to Minimum Living Wage.”

The relationship of wage to survival raises questions about the consequences of denial of wages. The growing gap between rich and poor and the increasing impoverishment of the majority of the working poor in Asia give rise to great economic inequality.

Denial of a minimum living wage is not only a grave injustice that perpetuates social, political and economic inequalities but jeopardises the entire global economic well-being, where the productive forces are deprived of the means of basic survival and of opportunities for development. Denial of a *minimum living wage* as a right directly impacts on the realization of universal and indivisible human rights, as illustrated herein:

Right to life: The insecurities that arise when workers are paid less than minimum wage make it impossible to actually satisfy the right to life, as it denies access to medical care in case of illness or accidents; it prevents the household from purchasing necessary nutritious food on a day to day basis; it removes the means to provide education to children towards improving their living standards; it means outright starvation for those without access to emergency assistance and relief goods in times of calamities or natural or man-made disasters.

Right to equal opportunity: The global gender division of labour, where female dominated industries are characterized by lower than minimum wages and exploitative practices, sustains the global manufacturing industry, and is central to their profit-driven survival. Thus violating the right to equal opportunity and the right to minimum wage is the norm for those industries which seek to be so-called globally competitive.

Right to equal protection of the law: Propelled by globalisation, countries have created legal and political environments where it will be more difficult to petition the government to protect the right to minimum wage. Workers that have unionised and waged struggles on wage issues find that they lack the necessary protection against arbitrary dismissals or terminations. Many companies simply do not allow the formation and registration of unions.

Right to decent working hours: As a result of both challenging industrial relations and the need to satisfy their most basic necessities, garment workers are compelled to work overtime hours when their wages are below minimum wage. This subliminal form of coercion may be concealed, but its consequences clearly are visible in the daily struggles of workers who have succumbed to lengthy working hours to earn that scant extra revenue for survival. In light of such, the AFW grasps the need to establish a *minimum living wage*, as a means to impede forced labour and to ensure a liberating, not limiting society.

Right to a standard of living adequate for himself and his family: Without a decent *minimum living wage*, by no means are workers able to meet their basic needs of food, shelter or clothing. Based on pragmatic accounts of what is to be considered as decent, the AFW would ensure that their wages are capable of satisfying such basic necessities.

The proliferation of various public and private institutions, the increasing levels of mediation, and the growing complexity of the global economic structure have made accountability for the denial of wage difficult and elusive. In order to make “Right to Minimum Living Wage” justiciable, both public and private institutions would need to be identified and mechanisms implemented for the delivery of this right.

Conditions in the Indian garment industry

Introduction

The Indian textiles industry, according to the government, is valued at US\$ 55 billion at current prices, and 64% of this industry serves the domestic demand. The textiles industry accounts for 14% of industrial production,

which is 4% of GDP; and employs 35 million people and accounts for nearly 12% share of the country's total exports basket¹.

As per the WTO data on international trade, India ranked as the third largest exporter in the global export of textiles (just behind China and EU 27), and 6th largest in global export of clothing (behind China, EU 27, Hong Kong, Bangladesh, Turkey). During the year 2010-11, Readymade Garments account for almost 45% of the total textiles exports and apparel and cotton textiles products together contribute nearly 70% of the total textiles exports.

The textile exports to top 10 countries in the year 2011-2012 stands at 20497.52 million USD and this registers a 24.13% growth over the previous year². Total export to European Union in the year 2011-2012 stands at 9311.63 million USD against the 8172.99 million USD in the previous years. The foregoing data shows that the textile sector, especially the export oriented sector, in India is reviving fast from the recent global economic crisis which engulfed most of India's export markets.

Brief Profile of Textile and Clothing Manufacturing and Exporting Hubs in India

According to the 2009 Study of Apparel Export Promotion Council of India, National Capital Region, Tirupur and Bangalore alone contributes anywhere between 55% to 60% of the total exports from India. Tirupur, NCR, Bangalore, Chennai, and Jaipur are found to be clusters where more than 70% of the manufactured products are exported. Brief profiles of a few clusters are below

Tirupur, Tamil Nadu: Tirupur came into the scene of apparel manufacturing with the production of 'baniyans' in 1970s. As per the 2009 data, Tirupur tops all hubs in terms of turnover (Rs 13450 crore). There are a total of 2599 manufacturing units in Tirupur and the direct and indirect employment generation in the textile and garment sector in Tirupur is estimated at 6 lakh. 74% of the total production is exported and EU is the largest market of followed by USA. The total annual capacity of the cluster is estimated at 200 crore pieces; however, the actual production for the year was 144 crore pieces and thus the industry is operating at 72% capacity utilisation³. Average export price per piece of garment was calculated as Rs 100 in 2009. Tirupur focuses mainly on knitwear and hosiery.

Bangalore, Karnataka: The total turnover of Bangalore cluster is calculated to be Rs 5000 crore in 2009. There are 850 manufacturing units engaged in producing garments in Bangalore and the direct and indirect employment generation in the cluster is estimated at 4.5 lakh. The total number of garment pieces made annually in Bangalore stood at 32 crore in 2009. 80% of the workforce in Bangalore cluster is women. Bangalore focuses on gents wear with over 75% products being gents wear. Cost of production is relatively lower than that in NCR but higher than that of Tirupur and Chennai.

NCR (Delhi, Haryana, UP): There are a total of 1675 manufacturing units in NCR and the total turnover in 2009 was Rs. 10300 crores. Employment generation in NCR is estimated to be about 3 lakhs. Most of the workers in NCR are migrants from Uttar Pradesh and Bihar and unlike other clusters over 80 % of the workforce

¹ http://www.texmin.nic.in/sector/note_on_indian_textile_and_clothing_exports_intl_trade_section.pdf

² http://www.texmin.nic.in/ermiu/stat_exports_top_10_ermiu_akb.pdf

³ Indian Apparel Clusters-An Assessment, AEPC Study 2009

is male. NCR is known for its skilled workforce. About 83% of the combined production in NCR is exported. NCR focuses on ladies fashion wear.

Chennai, Tamil Nadu: This cluster has 650 manufacturing units and the total turnover in 2009 was Rs 2500 crore and out of which 80% of this was for export. Chennai cluster generated a total of 2.4 lakhs employment in 2009, direct and indirect together. Most of the workers in this cluster are women.

Ludhiana, Punjab: Ludhiana enjoys monopoly in winter wear with 95% share of the total woollen/acrylic knitwear production in India. There are about 10000-12000 units including spinning, weaving, knitting, chemical processing and garment manufacturing in Ludhiana and the total turnover in 2009 was Rs. 7000 crores. Annual production is estimated to be 14 lakh pieces in 2009 and 20% this is estimated to be for export. Total employment (direct and indirect) generated in 2009 was 3.5 lakh.

Workers' Concerns

Wage: Wage has been a major issue in all these manufacturing hubs. The minimum wages in the industry is actually at the poverty level wage. On top of these poverty level wages, in most of the above mentioned manufacturing hubs, employers and contractors actively engage in wage theft in various forms: namely, illegal and unauthorised deduction from earned wages, non-payment of legal overtime wages, non-payment of wages according the skill level, inordinate delay in payment of wages.

The gap between the minimum wages and the living wage as calculated by AFW Alliance is given in the table.

Region	Minimum Monthly Wage (in Rs)	Minimum Wage as % of AFW
Bangalore	4472	37%
Gurgaon	4847	40%

Working Conditions: Employers practice various violations including illegal extension of working hours, practice of compulsory overtime, inhuman productivity measures, not providing adequate health and safety measures such as drinking water, hygienic and sufficient latrines and urinals and canteen facility. No creches are present, and no constitution of mandatory Works Committee, Sexual Harassment Committee and Occupational Health and Safety Committee. Various social security laws of Provident Fund, Employees State Insurance, Bonus and Gratuity are often violated by employers. Illegal retrenchment, lockouts, layoffs without following proper procedure along with indiscriminate use of contract labour is the norm of the day. Gender discrimination in terms of lower pay, sexual harassment etc. are also very common in many of these globally celebrated manufacturing zones.

Freedom of Association: Freedom of Association of garment workers is the least respected by employers. Collusion of the labour departments, police and anti-social elements is the major threat faced by workers in organising themselves for their rights. There have been many incidence of violence including kidnapping of union leaders in the northern region. Most of the employers invariably practice unfair labour practices listed in the 5th Schedule of the Industrial Disputes Act, 1947. The ILO Conventions on Freedom of Association and Protection of

the Right to Organise (C No:87) and Right to Organise and Collective Bargaining (C No: 98) are also violated by many of the employers.

The Petition

The Petitioner presents to the National Peoples Tribunal on Minimum Living Wage as a Fundamental Right of Indian Garment Workers the following testimonies:

1. Case studies from workers and women workers in the garment industry in across India from the manufacturing hubs described above.
 2. Expert testimony on India's garment industry
 3. Expert testimony on Indian Labour Laws
 4. Expert testimony on gender aspects of labour
 5. Expert testimony on Asia Floor Wage and its feasibility
 6. Government Presentation (Additional Labour Commissioner-Karnataka)
 7. Brand presentation (H&M)
 8. Brand statement (ADIDAS)
 9. Union Submissions from four major national federations (CITU, INTUC, HMKP, NTUI)
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- A. The Petitioner, through the People's Advocates, argues that there is a deficit in wages paid to workers and especially, women workers in the garment sector in India, that the wages paid to the workers falls far below a living wage standard that should provide adequate wages for basic food, clothing and accommodation, health, fuel and transport, education and communication and other expenses such as contribution to family, subscriptions such as to trade unions, care for children and parents, and other social functions.
 - B. The Petitioner argues that Freedom of Association is one of the most violated rights of workers, by their employers and that in the absence of such a right, it is impossible for workers to represent themselves democratically and have their human rights be respected and enforced.
 - C. The Petitioner argues that India is party to international standards including Core Conventions of the ILO, and has enacted laws and policies in line with these international standards. However there is a weak capacity and lack of political will on the part of the state and government to ensure implementation of and compliance with the international standards and national laws and policies, with lacunas that allow employers to circumvent the law.
 - D. The Petitioner argues that workers in the garment industry receive poverty wages, and in addition, are subjected to **wage theft**, excessive hours, underpaid overtime, and poor and stressful working conditions. In addition, there is lack of access to social security; a lack of protection for women workers especially

with regard to health and safety, sexual harassment, maternity and reproductive health, and child care. The workers are subjected to inhuman productivity targets which lead to the violations of core labour standards.

- E. The Petitioner argues that the contract labour system, practiced widely and illegally, facilitates a complex illegal system that allows for wage theft including the social security component, use of extra-legal disciplinary methods, and unfair labour practice. The contract labour system shifts the accountability and liability for legal responsibility and promotes a culture of impunity, contempt of law and corruption.
- F. The Petitioner argues that the existence of extra-legal punitive power of corporal punishment into industrial discipline undermines women's equality and capacity to organize and improve their working conditions.
- G. The Petitioner confirms that garment workers are mostly migrants, mothers, care-givers, young, and have a double burden in society because they are both homemakers and economic providers. This deficit denies their dreams: for education, for professional development, for marriage, to have children, to care for their parents, to provide for their families, to build their own homes.
- H. The Petitioner argues that this wage regime removes the capacity of garment workers and women garment workers to extricate themselves from the cycle of poverty, elevate their economic and political status, and maintain their dignity and self respect.
- I. The Petitioner will argue that it is the loss of living wage earnings for workers that correspond to a benefit in huge profits for the garment industry of today who have profited hugely from outsourcing production to low wage countries. This we will show in evidence gathered on the global supply chain and on working and living conditions that fall short of the decent labour standards.
- J. The Petitioner argues that the Corporate Social Responsibility (CSR) programmes of the brands have failed to achieve their claims as seen over a long historical period and that brands need to take immediate concrete steps to allow access to unionsation, promote collective bargaining, and negotiate with the representative unions of garment workers.
- K. The Petitioner argues that significant portion of the garment industry is organized for foreign market and is integrated into global production network where production is done in India and similar developing countries, exclusively for the sale and consumption in the Global North market. In view of this emergence of a global production system the capacity to pay wages has to be assessed in relationship to the global production network. It is argued that the global production network of the brands has the capacity to pay living wage to the garment workers in the producing country.

- L. The Petitioner argues that it is possible to provide a living wage and proposes that the Asia Floor Wage is a legitimate minimum living wage option that minimally meets the conditions for decent labour standards. Asia Floor Wage can be a solution to raising the wages of workers from the lowest rung of the industry, increasing their bargaining power throughout the supply chain, in attenuating women's unequal bargaining power, in addressing gender wage gaps and in improving workers' well being.
- M. The Petitioner argues that historical experiences as well as contemporary evidence shows that living wage cannot be provided by market but can be ensured either in a condition and practice of collective bargaining or, the state promoting and legislating minimum living wage. It has to be a part of wage policy of the government and it is in this aspect, that there is a **policy deficit** that has become more pronounced after 1991 when the government subordinated its regulatory and promotional instruments to the prerogatives of a "free market".

The Peoples Tribunal is asked to examine the evidence and find for the petitioner:

1. Is there a deficit in Decent Labour Standards in India's garment industry?
2. Determine the magnitude of workers, specifically women workers, in the Garment Global Supply Chain, working and living in conditions that fall far short of Decent Labour Standards
3. Is there a wage deficit for basic living standards?
4. What are the causes of the wage deficit? Who are responsible?
5. Can AFW address this wage deficit?
6. What are the criteria for a wage that is defined as a human right?

Prayer:

It is our prayer therefore to the Respectful Panel of the Tribunal to find that there are wage deficits in the Indian Garment industry, that these deficits violate human rights and labour standards, and that living wage is a redress to these violations if enacted and implemented, and adequate mechanisms are in place.

It is our prayer that the Respectful Panel of the Tribunal find that government, industry and trade unions have respective duties and responsibilities towards the fulfillment of workers' living wage.

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