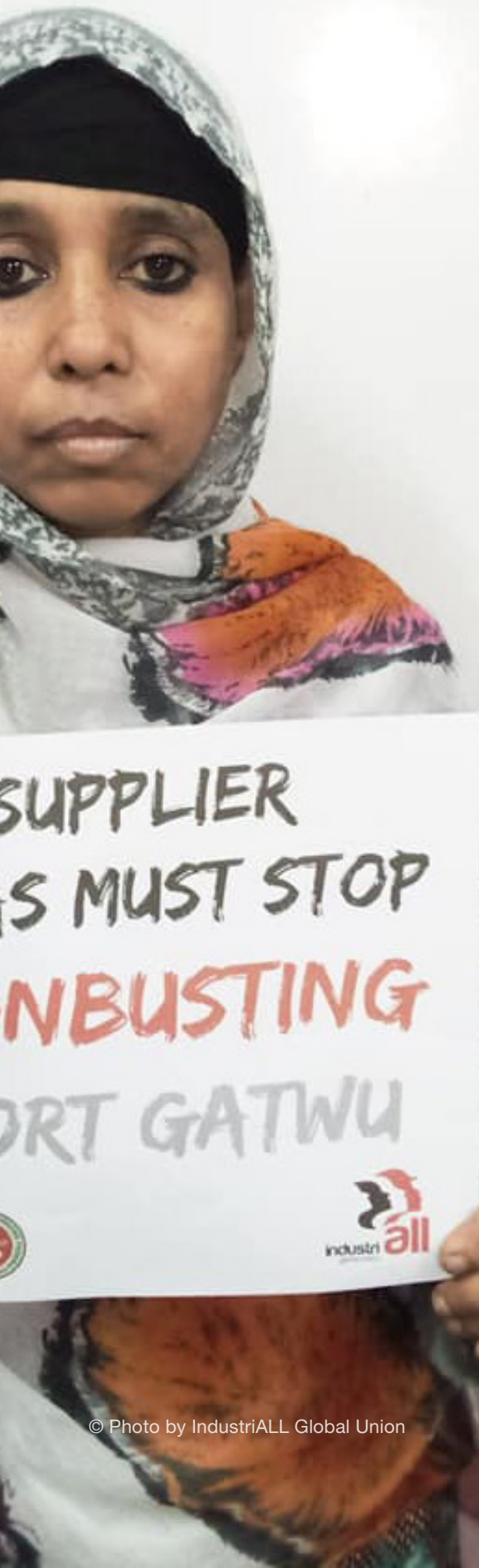
A close-up photograph of two garment workers. The woman in the foreground is wearing a red headscarf and has a serious expression. The man in the background is wearing a teal headscarf and is slightly out of focus.

**Union busting &  
unfair dismissals:**  
Garment workers  
during COVID-19

# Table of contents

Executive summary .....	<b>03</b>
1. Background .....	<b>05</b>
2. Case studies of union busting and unfair dismissals .....	<b>07</b>
3. Analysis of brand policies and responses .....	<b>15</b>
3.1 Non-engagement .....	15
3.2 Engagement, but with limited transparency or accountability .....	16
3.3. Gap between company commitment to freedom of association and implementation in factories .....	17
3.4 Deference to local labour laws that fall short of international standards .....	18
3.5 Non-transparent dialogue with suppliers often without meaningful engagement with unions or workers .....	19
3.6 Lack of resolution in six out of nine cases .....	19
4. Freedom of association – enforcement challenges .....	<b>21</b>
5. Conclusion .....	<b>24</b>
6. Recommendations to brands .....	<b>25</b>
Key recommendations during the COVID-19 pandemic .....	25
Increase transparency .....	25
Conduct labour rights due diligence .....	25
Actively implement worker-centred policies .....	26
Appendix .....	<b>27</b>



# Executive summary

## Garment factories supplying major fashion brands are using COVID-19 as a cover to crackdown on trade unions

More than 4,870 unionised garment workers have been targeted for dismissal by nine factories supplying for major fashion brands. Suppliers cited reduced orders and economic impacts of COVID-19 as the reason for dismissals while workers say they have been disproportionately targeted due to union membership and organising.

## Analysis of brand responses reveals a stark gap between human rights policy and practice

Six brands responded to cases of union busting in their supply chain by citing policy commitments to respect freedom of association and trade union rights. All six also said they are investigating or in dialogue with suppliers yet months later, most cases remain unresolved. Three brands did not respond to a case that remains unresolved.

## Brands have a duty to actively respect the rights of the workers that produce their clothes

When threats to freedom of association arise in their supply chains, brands must ensure workers and unions are directly and meaningfully engaged as part of their human rights due diligence and work quickly to ensure just resolutions.

Millions of vulnerable workers in the garment industry have been laid off or have lost wages as a result of order cancellations and non-payment by apparel brands in the context of the COVID-19 pandemic. Recent reports from worker groups and media show that in many of these cases, layoffs disproportionately target unionised workers and labour activists, suggesting that apparel factories are using the pandemic as a cover to attack workers' freedom of association. This report analyses the response by global apparel brands to allegations that factories they source from have unfairly dismissed unionised workers, focusing on nine case studies.

In tracking the emerging and widespread pattern of supplier factories appearing to target unionised workers for dismissal, we note a stark gap between brands' responses and policy commitments, and the lived realities of workers in their supply chains. All six brands that responded to us have policies and codes of conducts that aim to protect freedom of association and collective bargaining. At the time of publication however, six of the nine cases covered here remain unresolved. In one of the cases where a resolution was found, workers say the deal "falls far short" of expectations.

From March to July 2020, Business & Human Rights Resource Centre (BHRRC) collected 15 responses from nine brands – **H&M, Primark, Inditex (Zara), Levi Strauss & Co., MANGO, BESTSELLER, Michael Kors, Tory Burch and Kate Spade (Tapestry)** – to allegations that

garment factories are using COVID-19 as a cover to target and dismiss over 4,870 unionised workers and labour activists in nine factories across India, Bangladesh, Myanmar and Cambodia. Michael Kors, Tory Burch and Tapestry did not respond. Among the nine factory cases featured in this report, seven cited reductions in orders or economic impacts due to COVID-19 as the reason for the mass dismissals. However, in all seven cases workers report that layoffs disproportionately targeted unionised workers, and in two cases workers report the factories made new hires of non-unionised workers shortly after. In one case, workers were dismissed just hours after union representatives had requested factory management increase protections for workers against COVID-19 infection; and in another, workers were dismissed three days after registering a new union. In six of the cases, dismissed workers continue to call for reinstatement and have been without income for over two months. Discriminatory targeting of labour activists, dismissals, and blacklisting are among the most common reprisals garment workers face for speaking up about violations of their rights, and frequent tactics used by factory employers to stifle union organising and collective action by workers.

Through our analysis of the content of brand responses and rejoinders from the worker groups concerned, we observed the following approaches by companies: 1) Non-engagement; 2) Engagement with the issue, with limited transparency or accountability; 3) Gap between company commitment to freedom of association and implementation in factories; 4) Deference to local labour laws that fall short of international standards; and 5) Non-transparent dialogue with suppliers often without meaningful engagement with unions or workers.

The perspectives of the unions and labour groups seen alongside responses from brands illustrate the stark power imbalance that define this industry: where workers and unions face many threats to collective action and livelihood, but have no effective avenues for recourse or remedy, and enjoy almost no active support from brands, despite the latter's policies on freedom of association.

It is also worth noting that many of the brands hailed as rights-respecting leaders in their [COVID-19 response](#) because they are honouring payments with suppliers are also linked to factories facing allegations of union busting during the COVID-19 pandemic. Of the nine brands linked to reports of union busting in this report, three – **H&M**, **Inditex** and **Levi Strauss & Co.** – have committed to paying suppliers for all in-production and completed orders.

Impediments to organising collectively are numerous, and the ability of workers to exercise these enabling rights are inextricable from the broader political context as well as the purchasing practices of lead brands that in turn have a direct impact on labour abuses. Freedom of association and collective bargaining are fundamental enabling rights – restriction of them has significant implications for garment workers' ability to improve their safety at work during a global pandemic and to ensure wages, benefits and severance are paid – critical for workers who are in a permanent state of financial insecurity due to a lack of living wages. There are mounting fears among unions that the industry will use the pandemic and reduced economic activity as an opportunity to reduce or even get rid of unionised workforces and intimidate workers from organising in the future. Our recommendations to brands urge for these core rights to be respected and protected both in policy and in practice, and for workers and unions to be placed at the centre of all strategies to protect human rights in supply chains.

# 1. Background

As the COVID-19 pandemic struck and retail stores shut down, many global brands responded by cancelling billions worth of orders, passing the financial burden of the disruption to the most vulnerable people at the bottom of their supply chains: garment workers. As a result of order cancellation, textile shortages, and other disruptions caused by the pandemic, millions of garment workers were quickly laid off or suspended as factories reduced or ceased operations. They now face destitution as a result of unpaid wages and severance compounded by financial insecurity and debt.

As workers face an uncertain future, union leaders have accused factory owners of targeting unionised workers for dismissal in an effort to reduce unionised labour on the factory floor and intimidate others from organising. The Collective Union of Movement of Workers (CUMW) in Cambodia informed BHRRC that as of July 2020, over 3,000 of their officials and members have been laid-off from garment factories since the COVID-19 pandemic broke out.<sup>1</sup> The Bangladesh Garment Workers and Industrial Federation (BGWIF) report [trade union repression](#) in a third of the factories where their union operates. Without union leaders on the factory floor, remaining workers are more vulnerable to exploitation and have little leverage to demand fair wage payment and decent working conditions if they are unable to organise collectively.

Garment workers are not facing attacks on freedom of association and collective bargaining for the first time during the pandemic. From January 2015 to March 2020, BHRRC sought **220 responses** from fashion brands to allegations of abuse of freedom of association in their supply chains, including at least **39 responses** specifically to allegations of mass dismissals involving tens of thousands of labour activists in connection to their organising efforts. Many of these cases involve the dismissals of thousands of workers – a trend that has persisted for years and that at times involves use

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<sup>1</sup> Notes from conversation on file with BHRRC

of force or violence against workers by the State, as well as criminalisation of workers by jailing them or bringing cases against them. In January 2019 for example, approximately 12,000 garment workers in [Bangladesh](#) were dismissed following mass protests over low minimum wages, and thousands had criminal charges filed against them by factories producing for international brands. Thousands of the dismissed workers have also been blacklisted and many still have [outstanding criminal cases](#) against them.

These cases and figures are not representative of the scale of attacks on labour rights and are just the tip of the iceberg; most cases of attacks on freedom of association go unreported and when they are, it is difficult to trace the buyers due to opacity of garment supply chains. In the small number of cases where tracing of the supply chain allows the link to be made with the global brands, we have seen workers take action with increasing risks to themselves, such as a case in Dhaka in May 2020 where [police used tear gas](#) and water cannons against garment workers protesting over unpaid wages.

These attacks to freedom of association and collective bargaining in the garment industry are taking place within a context of the rolling back of protections of fundamental worker

rights under national labour laws in garment producing countries in Asia. A forthcoming report by Asia Floor Wage Alliance highlights the trend of Asian governments like India and Cambodia proposing deregulating labour and employment law by replacing all or most of the existing laws, with *“sweeping changes that reduce worker power at every opportunity.”* These legislative changes include provisions that attack workers' freedom of association, permit minimum wages at a poverty level, reduce protections against wage theft, and offer limited health and safety and social security protections. Emergency measures introduced by governments during the pandemic risk further accelerating this rollback of labour rights protections. Unions are [particularly concerned](#) that labour law changes may be implemented unilaterally during the crisis, without consultation with unions.

While garment workers have faced long-standing repression against organising, many global brands have explicit commitments to protection of freedom of association and collective bargaining in their supplier codes of conduct. It is this gulf between policies and practices by brands that is apparent in our analysis of their responses to the nine case studies presented below.

## 2. Case studies of union busting and unfair dismissals

This section demonstrates the emerging practice of garment factories using COVID-19 as a pretext to target and dismiss unionised workers, by highlighting cases from nine factories in Myanmar, Cambodia, Bangladesh and India. In each of these cases workers, local unions, and international labour rights groups were central to resolving or continuing to work to resolve these cases.

“ *In the past, factories couldn't do this. But COVID has given them the opportunity.* ”

| CUMW union leader **Pav Sina**

Publicly available supplier data show that these nine factories supply or have supplied to nine global fashion brands; many brands source from multiple factories. For example, **Inditex** has links to five of the factories, **H&M** has links to four, and **BESTSELLER** has links to two. **MANGO**, **Primark**, **Levi Strauss & Co.**, **Michael Kors**, **Tory Burch** and **Kate Spade (Tapestry)** all have links to one of the factories examined in these case studies. In total, we collected 15 responses from the brands to the allegations referred to below. **Michael Kors**, **Tory Burch** and **Kate Spade (Tapestry)** did not respond.

## Case Study 1: Myan Mode Yangon, Myanmar



**520** union workers affected



Buyers:  
**Inditex & MANGO**



Status:  
**Partially resolved**

On 28 March 2020, 571 workers – including all 520 members of the factory union – were dismissed from Myan Mode garment factory. While the factory cited a decrease in orders due to COVID-19 as reason for the dismissals, they were conducted only hours after union representatives requested increased protections for workers against the risk of COVID-19 infection. Myan Mode has since dismissed a further 50 workers who walked out of the factory to protest against the dismissal of the union members. On 30 May, Myan Mode reached an agreement with the union to reinstate 75 of the affected workers and recall hundreds of other dismissed union members when operations return to normal as the pandemic eases. According to the agreement, factory management commits not to discriminate against the union. In their responses to BHRRC, **Inditex** and **MANGO** indicated they had engaged in mediatory discussions with the factory and were pleased the dispute had been resolved, however labour groups remain concerned that the brands have not pushed for the reinstatement of all dismissed union members.



*The bosses used COVID as an opportunity to get rid of us because they hated our union... They thought we caused them constant headaches by fighting for our rights and those of our fellow workers.*

| **Maung Moe**, factory union President, Myan Mode

*I worry for the future of garment workers here without representatives. But for now, I worry about providing for my family and getting food on the table.*

| **Ohnmar Myint**, union member, Myan Mode



## Case Study 2:

# Superl Cambodia

### Kampong Speu, Cambodia



**1** union worker affected



Buyers: **Michael Kors, Tory Burch, Kate Spade**



Status: **Unresolved**

On 2 April 2020, garment factory worker and union leader Soy Sros was arrested in Cambodia after posting a message on social media criticising the planned dismissal of union members, including a pregnant woman, from Superl Cambodia Ltd. The factory produces luxury handbags for brands including **Michael Kors, Tory Burch** and **Kate Spade (Tapestry)**. Soy Sros – local president of the Collective Union of Movement of Workers (CUMW) – wrote about the company’s actions on Facebook, stating it violated an appeal from the Cambodian government that the pandemic should not be used as a pretext to discriminate against union members. After spending 55 days in jail in conditions which Amnesty International [describes as “inhumane”](#), Sros was released on bail on 28 June suffering from a deterioration of her health. She has been charged with ‘provocation’ under the criminal code and faces up to three years in prison and a maximum fine of six million riel (approx. US\$1,500). Unions are calling on the brands and factory to ensure all charges against Sros are dropped, for her to be immediately reinstated and to receive compensation and backpay for her time spent in jail. Unions are also calling for assurances that Sros will not face retaliation and that freedom of association is fully respected.

“ *What’s shocking in this case is how apparently unresponsive and inattentive the major luxury brand houses that buy from this factory owner have been, allowing this worker to be imprisoned at their supplier’s behest for 55 days* ”

| **Ben Hensler**, Workers Rights Consortium

In its response to BHRRC, Superl Holdings said it is engaging with CUMW to find a resolution and has committed to Sros’ reinstatement without retaliation and paying her wages for the period she spent in detention. Superl Holdings has since dropped the charges against Sros, however the charges filed by the Cambodian government remain. **Michael Kors, Tapestry** and **Tory Burch** did not respond to our inquiries.

## Case Study 3: Rui-Ning Yangon, Myanmar



**298** union workers affected



Buyers: **Inditex, BESTSELLER, MANGO**



Status:  
**Resolved**

In early May 2020, Rui-Ning factory laid off 324 workers – 298 of whom are union members – citing COVID-19 related reasons for the dismissals. Union leaders have accused Rui-Ning of targeting them for dismissal due to their union affiliation, and report having since observed the factory hiring new workers who are not affiliated with a union. In their responses to BHRRC, the three buyers indicated they had made inquiries with the factory, while **Inditex** and **MANGO** said they had also engaged with local unions. From their inquiries, **Inditex** and **BESTSELLER** concluded the dismissals were made in accordance with local law but said they would continue to monitor the situation closely. BHRRC received a [rejoinder](#) from the workers' unions at Rui-Ning and Myan Mode factories who said the brands ignored their requests for help as their members and leaders were targeted, and initially refused to meaningfully engage with them, instead favouring the factory management's version of events. We received an additional [rejoinder](#) from Clean Clothes Campaign, who said the brands' responses do not address the core problem of discrimination against trade unionists and concluded they have failed in their due diligence by not engaging with the workers' unions to provide effective remedy.



*I see the firing as clearly union busting under the pretext of the pandemic. The factory fired most of the union members, including myself.*

**Kyaw Thu Zaw,**

a worker at the Rui-Ning factory for about 10 months and president of the union

*Any 'solution' failing to involve the trade union represents a violation of the right to collective bargaining, a right enshrined in the Universal Declaration of Human Rights.*

Clean Clothes Campaign, in their [rejoinder](#) to the response from brands

On 17 July after months of struggle, the Rui-Ning factory union [won the reinstatement](#) of the 298 fired union members, including the union's president. According to [Clean Clothes Campaign](#), brand engagement was vital to reaching the agreement – **Inditex** met with the union president and factory management on 2 July and played a leading role in negotiations.

## Case Study 4: Roo Hsing Garment Phnom Penh, Cambodia



**3** union workers affected



Buyers: **H&M,**  
**Levi Strauss & Co.**



Status:  
**Unresolved**

On 7 May 2020, Cambodia's Department of Labour Disputes [authorised](#) the dismissal of three unionised garment workers at the request of a factory, Roo Hsing Garment Co. Ltd. The three workers are: Kon Soch, a shop steward and union activist; Ek Sarun, the vice-president of the local factory union; and Sok Kong the secretary of the local factory union. All three are members of the Cambodian Alliance of Trade Unions (CATU) and are accused of inciting a work stoppage to pressure the factory to allow them to take leave over a public holiday that had been cancelled due to COVID-19. Roo Hsing Garment said the employees violated Article 83 of the Labour Law, which prohibits employees from engaging in punishable actions including making threats, committing fraud, stealing and inciting other workers to commit offences. CATU has said the workers were unfairly dismissed as they were not involved in the stoppage and is calling for their reinstatement.

We invited buyers **H&M** and **Levi Strauss & Co.** to respond. In its response, **H&M** said it is engaged in dialogue with all parties involved, including the supplier, unions and other brands sourcing from Roo Hsing Garment. **Levi Strauss** said it is also discussing the situation with the factory but did not provide further detail or indicate whether it had engaged with the union. In a [rejoinder](#), CATU called on the brands to use their influence to press for the reinstatement of the three dismissed union leaders, who are unable to support themselves and their families without income. In the meantime, CATU is preparing to appeal the Ministry of Labour's decision.



*In Cambodia, collective organising is very important because existing resolution mechanisms are not effective. So, workers are very much dependent on the support and assistance from independent unions to protect their rights, working conditions and wages – without unions, workers are powerless.*

*Brands and suppliers should not use COVID-19 as a cover-up to discriminate against or dismiss union members or unionised workers. During the crisis, brands should show accountability for the workers that have long produced products for them. Brands should use their leverage over suppliers to cease the practices of discrimination against union members and other acts of union busting and to constructively participate in resolution processes. Also, brands must honour their contracts and they cannot use the COVID-19 to divert their accountability and liability from realising the contracts.*

## Case Study 5: Huabo Times Patheingyi, Myanmar



**28** union workers affected

**81 workers** openly supportive of the newly formed union



Buyers: **Inditex, BESTSELLER, Primark**



Status:  
**Resolved**

On 14 May 2020, just three days after workers registered a new union due to fears that Huabo Times would make dismissals in response to COVID-19, factory management dismissed 26 unionised workers – including four union leaders – and a further 81 workers openly supportive of the newly formed union (107 workers in total). Workers report the factory used the impact of COVID-19 and the need to downsize as justification for the dismissals, however a few weeks later transferred workers from another factory into Huabo Times. In its response to BHRRC, **Inditex** said it had carried out an investigation and was in regular contact with the factory to encourage a resolution. **Primark** said an investigation was underway, including dialogue with both the union and the supplier, and if a breach is identified it would work with the supplier on remediation.



*On 18 May 200 workers from another factory were brought into our factory. This shows that the workforce reduction is not due to COVID-19. But it is union busting purposefully.*

| **Nwe Ni Linn**, President of the Huabo Times factory union

*The employers don't want the union here because they think they will demand workers' rights.*

| **Thitsar**, worker at Huabo Times

At the end of July, the local union at Huabo Times succeeded in signing an agreement with the factory, which stipulated the reinstatement of 26 dismissed union members at previous positions with backpay and the offer to rehire the 81 co-workers who had taken compensation at the time of their dismissal. The reinstatements are due to take place in the first two weeks of September 2020. According to international labour groups, **Inditex** played a critical role in facilitating a space for the union and factory to directly engage, and along with Primark reportedly ensured an outcome that was seen as satisfactory by the union and workers.

## Case Study 6: Euro Clothing Company II Karnataka, India



**900** union workers affected



Buyer:  
**H&M**



Status:  
**Unresolved**

On 6 June 2020, Euro Clothing Company II (ECC-2) in Karnataka, India, laid off all its 1,200 mostly women garment workers, citing a lack of orders during the COVID-19 pandemic. ECC-2 is owned by Gokaldas, which owns over 20 other garment-making units in Karnataka, all of which remain open. The President of the Karnataka-based Garment and Textile Worker Union (GATWU) – which has a membership of over 900 female workers in ECC-2 – [alleges](#) the factory was targeted for a reason: *“The factory management shut this one down only because it was unionised. No other units of this supplier have unions.”* The affected garment workers have since staged protests outside of the factory over the dismissals – which unions say were made without the mandatory one-month notice period – and over unpaid wages.



*I have sweated here for the past 10 years for 348 rupees (\$4.60) a day.*

*They wanted to get rid of the union for a long time, and now they're using COVID-19 as an excuse.*

| **Padma**, [garment worker](#) formerly at ECC-2 and local union leader

According to reports, ECC-2 produced primarily for **H&M** for the past two years. **H&M** has [responded](#) saying it is fulfilling its order payments as per agreed terms and is in contact with both the trade union and supplier to help them reach an agreement to the dispute, which it says is about different interpretations of the law in India. However, [labour groups insist](#) that **H&M** should take responsibility for labour abuses in its supply chain. Negotiations between the factory, workers and labour department officials have been taking place for [over a month](#), however a resolution has yet to be reached. Meanwhile, workers report that factory officials have been trying to intimidate them, urging them to resign and defaming the unions involved. At the time of publication, workers continue to protest outside the factory.

## Case Studies 7, 8, 9:

# Three Windy Group Factories: **SAYBOLT TEX, Tanaz Fashion and Windy Wet & Dry Process** Gazipur & Dhaka, Bangladesh



**3,000** union workers  
affected



Buyers:  
**H&M, Inditex**



Status:  
**Unresolved**

In June 2020, 3,000 garment workers were reportedly dismissed as part of an alleged union busting exercise from three factories owned by the same company: SAYBOLT TEX, Tanaz Fashion and Windy Wet & Dry Process factories in Gazipur and Dhaka, Bangladesh. The three unionised factories are owned by the Windy Group (which owns an additional five non-unionised factories) and according to media reports and workers, supply to **H&M** and **Inditex**. According to unions, 1,600 workers were fired from SAYBOLT TEX, 1,200 from Tanaz Fashion and 200 from Windy Wet & Dry Process.

The unions for Windy Group workers claim that each time workers from the three factories have attempted to form unions, they have been dismissed. Amirul Haque Amin, President of the National Garment Workers Federation (NGWF) in Bangladesh, said:

*“Targeting three factories out of eight of Windy Group and retrenching 3000 workers of these three factories is purposeful and similar to destruction of union.”*

The dismissed workers have been staging hunger strikes and other protests at Windy Group factory premises to call for reinstatement.

In their responses, both **H&M** and **Inditex** said the retrenchments at the factories had been made due to the economic impacts of COVID-19. The brands indicated that agreements had been reached between the three factories and local unions, and workers have been compensated in line with local labour law through digital payment on 3 and 4 June. However, workers continue to demand reinstatement, and on 21 June [staged a hunger strike](#) calling on Windy Group to reinstate the 3,000 workers. NGWF said the retrenchment had been done intentionally with the purpose of busting workers’ unions and said they had not been paid fully according to law and agreement with management.

## 3. Analysis of brand policies and responses

We collected 15 responses from nine brands to the case studies described. See Appendix for details and full responses.

**Through our analysis of the responses, five key approaches were identified:**

- Non-engagement
- Engagement with the issue, with limited transparency or accountability;
- Gap between company commitment to freedom of association and implementation in factories;
- Deference to local labour laws that fall short of international standards;
- Non-transparent dialogue with suppliers often without meaningful engagement with unions or workers.

While multiple trends have been identified in brand responses, ultimately six of the nine cases remain unresolved, and in one of the cases where a resolution was found, workers considered this to be inadequate.

### 3.1 Non-engagement

Of the nine brands linked to the reported cases of union busting covered in this report, three brands did not respond to our inquiries. In the case of the Superl factory and criminal charges against union leader Soy Sros in Cambodia, **Michael Kors**, **Tory Burch** and **Kate Spade (Tapestry)** did not respond. Their lack of engagement on this case, despite the significant international attention it has received, suggests a lack of responsibility being taken for abuses of freedom of association and collective bargaining in their supply chain.



None of the three brands have provisions that protect freedom of association or collective bargaining in their own policies or supplier codes of conduct, based on publicly available company information. **Michael Kors** scored 0 out of 100 on the [KnowTheChain](#) benchmark theme of “worker voice”, which assesses whether the company works with suppliers to improve supplier practices on freedom of association and collective bargaining. Non-engagement from the brands in the ongoing case against Soy Sros is reportedly [adding to fears](#) among labour rights advocates that COVID-19 is effectively providing cover for an industry-wide suppression of workers’ voices across the garment industry in Cambodia.

## 3.2 Engagement, but with limited transparency or accountability

Six of the brands – **H&M**, **Inditex**, **BESTSELLER**, **Primark**, **MANGO** and **Levi Strauss & Co.** – provided responses regarding these cases and confirmed they were aware of the allegations and were making inquiries with their suppliers. While it is encouraging that these brands have acknowledged their link to the eight cases – which have also received significant attention and international pressure – ultimately in six of the cases unionised workers remain in a precarious situation without jobs and income. Further, the level of disclosure in the responses varied greatly. While some brands provided detailed responses – for example, **Inditex** and **BESTSELLER** – to outline the actions they were taking and the outcomes, others provided very brief responses with scant detail. For example, **Levi Strauss & Co.** said in its [response](#) to the allegations at Roo Hsing:

*“In this instance, we are aware of the circumstances and are in discussions with the supplier about the right way to manage the situation.”*

We asked both brands to provide an update two weeks later, after receiving a [rejoinder](#) from CATU. **H&M** provided an update, **Levi Strauss & Co.** did not.

**Inditex** and **H&M** both have a Global Framework Agreement with the global union federation, IndustriALL, covering their entire supply chains, while all six brands explicitly require their suppliers to respect their employees’ right to freedom of association and collective bargaining in their supply chains through their policy commitments and supplier codes of conduct.

“ You promised to protect our human rights... during the pandemic... However, we were alarmed when it became clear you would not protect our rights when our factories used COVID-19 to attack our unions. We called on you for help but you ignored us as our union members and union leaders were targeted for permanent dismissal as a means to destroy our unions... Your descriptions of diligently upholding your codes of conduct are dishonest.

Worker unions from Rui-Ning and Myan Mode factories in their [rejoinder](#) to Inditex, BESTSELLER & MANGO



For example, **H&M's** [Sustainability Commitment](#) for its business partners states:

*“All workers, without exception or distinction, have the right to join or form a trade union of their own choosing and to bargain collectively. Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace...”*

In response to the labour rights impacts of COVID-19 in Myanmar, **H&M**, **Inditex** and **BESTSELLER** signed onto a [joint statement](#) which recognises the importance of freedom of association to address the impacts of the pandemic. Yet at the time of signing the statement until this report was published, Inditex is linked to cases of alleged union busting at its supplier factories that are yet to be resolved.<sup>2</sup>

### 3.3 Gap between company commitment to freedom of association and implementation in factories

Five of the brands – **H&M**, **Inditex**, **BESTSELLER**, **Primark** and **Levi Strauss & Co.** – specifically highlighted policy commitments to freedom of association in their responses to BHRRRC. For example, **Primark** [said](#):

*“Primark's Code of Conduct clearly states that all workers have the right to join or form trade unions of their own choosing and to bargain collectively – the current pandemic has not altered our commitment to this principle, or any others in our Code.”*

**BESTSELLER** referred to its commitment to the 2019 [Myanmar Freedom of Association guideline](#) (of which Inditex is also a signatory) which states, *“with regard to dismissals, all workers shall be treated equally irrespective of their involvement in trade union activities”* and that suppliers should consult with unions prior to undertaking dismissals. Even where brands' policy commitments on freedom of association and collective bargaining go further than broad one or two-line statements, the lack of provisions on enforceability and the non-binding nature of these commitments mean that their existence often means very little for workers. Similarly, there is little communication with workers on the nature of brand codes of conducts with factory suppliers – therefore the group best placed to enforce and monitor these provisions is not meaningfully engaged.

“ *Inditex must enforce decent and humane working conditions in the factories where they make their clothes. They make public statements about equality and sustainability, but here we are in the flesh suffering.* ”

| **Kyaw Thu Zaw**, President of Rui Ning factory union

<sup>2</sup> As of the time of publication

## 3.4 Deference to local labour laws that fall short of international standards

In addition to pointing to their policies and commitments, three brands – **Inditex**, **H&M** and **BESTSELLER** – referred to compliance with local labour laws, despite these laws falling short of international standards. In the case of Rui-Ning, both Inditex and **BESTSELLER** stated that they had been informed by the factory that the dismissals had been made in accordance with Myanmar’s labour law. In its response to the case at Roo Hsing in Cambodia, **H&M** also said that the dismissals had “*been done according to the law*”, while the conflict at ECC-2 between the supplier and trade union was “*about different interpretations of the law in India*”.

“All of you stated that the dismissals at Rui-Ning factory appeared legitimate since the employer assured you it was “done in accordance with Myanmar Labour Law”. This is hard to swallow since you are thoroughly aware that our country’s weak labor laws fail to fully comply with international labor standards and your codes of conduct.

| Worker unions from Rui-Ning and Myan Mode factories in their rejoinder to Inditex, BESTSELLER & MANGO

The practical utility of brands’ policy commitments to protect labour rights is dependent on their ability to be enforced in sourcing countries with weak labour laws and enforcement and low levels of unionisation. It is a commonly accepted standard, and affirmed by the UN Guiding Principles on Business and Human Rights, that where national laws fall below the standard of internationally recognised human rights, companies should respect the higher standard. In fact, the business model of the global fashion industry – based on rock-bottom wages, quick turnaround of production, and maximised profits for brands – relies on garment producing countries with weaker labour organising protections and enforcement. According to the 2020 ITUC global index, among the [worst countries](#) for workers to organise in are major garment producing countries, including Cambodia, Bangladesh and India. In Myanmar – a major sourcing country for European and US brands with [notoriously weak](#) labour law enforcement and where only 2% of garment workers are unionised – workers are left exposed to some of the worst forms of exploitation.

### 3.5 Non-transparent dialogue with suppliers often without meaningful engagement with unions or workers

All six brands that responded said they were engaging directly with their suppliers. These conversations are often non-transparent and treated as commercially sensitive, and unions are rarely involved or provided with details on the nature of the communication between brands and suppliers. Among the 15 responses in total, brands indicated in only five responses that they were also engaging directly with local unions involved in the cases. However, from the rejoinders provided by unions and workers, the quality of engagement is contested. Worker unions at Rui-Ning and Myan Mode factories said:

*“Your descriptions of due diligence and interactions with our unions are greatly misleading. None of you wished to talk to us or seek information from us about what happened...”*

The exclusion of unions from conversations between brands and suppliers is an issue that BHRRC has observed frequently from brands’ responses to rights abuses in their supply chain which is often the key factor in the lack of resolution to cases such as these.

### 3.6 Lack of resolution in six out of nine cases

Of the nine cases of union busting, six remain unresolved and thousands of dismissed union members are without jobs and income, with no access to remedy. In the case of Rui-Ning, all dismissed workers were reinstated after over two months of worker action and sustained international pressure. In the other case – Myan Mode – 75 out of 520 dismissed union members were reinstated in a resolution considered [inadequate](#) by workers who felt they had little choice but to accept this deal. In their responses to BHRRC, [Inditex](#) and [MANGO](#) indicated they were pleased that the dispute at Myan Mode had been resolved, however labour groups remain [concerned](#) that the brands have not pushed the factory to reinstatement all the dismissed



*You and the employer... initially offered reinstatement of 30 of our 520 union members with less than convincing assurances that the remaining union members would be rehired as the pandemic eased. It was only after great resistance from you that we could obtain a marginally better offer that resulted in our agreement at Myan Mode. But we must be clear that this agreement falls far short of your promise to respect freedom of association since more than 500 of our union members continue to suffer greatly from lack of income as they await recall at some unknown future date when at the same time all of the non-union workers continue their employment.*

Worker unions from Rui-Ning and Myan Mode factories in their [rejoinder](#) to Inditex, BESTSELLER & MANGO

union members. In the three Windy Group factories, the brands indicated in their responses that compensation was paid to workers on 3 and 4 June, however local unions say the workers were not paid fully according to the law and agreement with management, and garment workers continue to protest for reinstatement.

The resolution of the Huabo Times and Rui-Ning cases are exceptional as the agreements reached were in line with union demands. They represent the only two instances where brands played a key role in directly facilitating engagement between the union and the factory. In the case of Huabo Times, labour groups report that Inditex played a critical role convening a space for dialogue between the union and factory with the support of **Primark**. This is in stark contrast with the case of Myan Mode where brands did not directly engage to ensure workers had access to remedy and workers in turn felt that the outcome was not satisfactory. Brand engagement in this manner has proven to make a critical difference in pushing these cases towards a just resolution.

The lack of meaningful remedy in the majority of cases clearly demonstrates the need for brands to ensure their policies and global framework agreements truly protect garment workers in their supply chains.

*Unless there are strong and unified reactions from the labour movement and companies buying goods from factories where violations take place such actions will undoubtedly increase and undermine workers' rights.*

| Carrin Leffler, Clean Clothes Campaign

### **International unions and labour rights groups engaged systematically with the brands in each of these nine cases to work towards resolution.**

The Worker Rights Consortium is investigating and engaging with brands in six of the nine cases and several others. Rola Abimourched, Senior Program Director said:

*“Despite having codes of conduct requiring respect for freedom of association, brands have failed to respond swiftly and effectively. This contributes to an atmosphere of fear and acceptance of poor working conditions among garment workers who are struggling to provide for the basic needs of their families.*

*Where remedies have been won, pressure from the affected unions and global labour rights advocates has been necessary to drive the brands to action. This feckless response from the brands combines with the lawlessness of their suppliers to deprive workers of collective representation at a time when it is desperately needed.”*

## 4. Freedom of association – enforcement challenges

In response to the cases of labour rights abuses such as the nine explored in this report, remedy is sought with the involvement of many different stakeholders both locally and internationally. In spite of this, just two of the nine cases has seen a genuine resolution for the affected workers. In the other cases, for example for Soy Sros, where the three linked brands failed to respond or engage, there are few mechanisms to seek remedy.

The global supply chains of the fashion industry are structured to insulate brands from any direct accountability of the lead brand for labour violations which occur in the production of the clothes they sell. While the staff at retail stores and offices of brands are considered direct employees, the millions of workers in export-oriented factories are not considered employees of lead brands which leaves brands with limited or no liability for labour abuses that workers face.

Lead brands have long, complex supply chains with a single brand such as **Primark** producing clothes in [30 different countries in 1,033 factories at the time of publication](#). With many factories engaged in subcontracting to smaller factories or home-based workers, estimates for the number of garment workers in the export industry varies between 60 – 80 million worldwide.

The relationship between brands and suppliers is often characterised as being fundamentally unbalanced, with the brands in the powerful position to dictate prices and time-frames and the ability to move production to other factories and countries in search of the most favourable conditions – cheap, fast and high-quality production – while all employer responsibilities fall on the supplier.

According to [Human Rights Watch](#),

*“Brand approaches to sourcing and purchasing are not merely a threat to a factory’s financial bottom line. They incentivize suppliers to engage in abusive labor practices... This means that brand practices in these areas directly undercut their own efforts to insist on rights-respecting working conditions across their supply chains.”*

COVID-19 has highlighted the fundamental inequities of the supply chain model that allow risk and liability to be shifted quickly down the supply chain, allowing profits to be protected at the top while workers face a humanitarian crisis. While there are leaders and laggards in the brand responses, the absence of accountability structures in this global system have ultimately left workers bearing the brunt of the pandemic’s effects without effective recourse.

Businesses rely on existing voluntary principles in addressing freedom of association and collective bargaining in their supply chains.

**The UN Guiding Principles for Business & Human Rights** establish the duty of states to protect and the responsibility of companies to respect human rights, and the need for greater access to effective remedy for those facing business-related abuse. This framework, though voluntary and non-binding, has provided the pathway to understand that businesses have a responsibility to respect rights across their operations; including avoiding causing or contributing to adverse human rights impacts through their own activities, addressing impacts when they occur, and seeking to prevent or mitigate impacts that are directly linked to them or by their business relationships.

In interpreting the application of the UN framework to the core rights of freedom of association and collective bargaining, a joint [Global Union Federation and Clean Clothes Campaign publication](#) states that,

*“Business enterprises cannot respect the right to collective bargaining by merely refraining from doing harm. Respecting the rights of workers to bargain collectively means accepting that there is a duty to bargain where workers want to exercise this right.”*

There is also broad agreement that implementation of the third pillar of access to remedy has lagged behind the protect and respect pillars. [According to IHRB](#),

*“one of the greatest challenges within the business and human rights agenda remains ensuring effective remedies for victims of business related human rights abuse.”*

Effective remedial mechanisms can be powerful tools to ensure that policy statements and due diligence efforts actually translate to better protections for workers.

**The OECD Guidelines for Multinational Enterprises** are recommendations addressed by governments to multinational enterprises operating in or from adhering countries for promoting responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The National Contact Points (NCPs) serve as a mechanism for resolving complaints lodged regarding breach of the Guidelines, though recommendations are non-binding.

Our research of the OECD Watch database showed 10 complaints against apparel companies for labour rights violations lodged with NCPs in the 17 years between 2001 and 2018. Of these, four cases were rejected, one was withdrawn, five were concluded, and in only one case were workers reportedly satisfied with the outcome.

**Membership in Multi-Stakeholder Initiatives (MSIs)** and other voluntary corporate membership and accreditation groups are also prevalent in the industry. Many of these are focused on guiding companies to understand how to respect rights and conduct human rights due diligence, with much of this work taking place privately. Membership initiatives such as the Ethical Trading Initiative (ETI), Fair Wear Foundation, Fair Labor Association, and long-term membership-based agreements like ACT (Action, Collaboration, Transformation) focused on living wages, or even the recent ILO COVID-19 Call to Action, all provide a space for brands to indicate commitment to respecting rights but have not provided a sufficient pathway towards holding them to account when abuses occur. Reflecting on a decade of research and analysis into [international standard-setting MSIs](#), MSI Integrity concludes *“that this grand experiment has failed in its goal of providing effective protection against abuse”*. The group notes that,

*“while MSIs can play important roles in building trust and generating dialogue, they are not fit-for-purpose to reliably detect abuses, hold corporations to account for harm, or provide access to remedy”*.

Ongoing labour rights abuses in spite of the plethora of voluntary, non-binding initiatives to guide responsible business conduct have contributed to the global call for binding legislation that hold lead brands responsible for conducting due diligence for the rights abuses that occur in their supply chain. While this is not a silver bullet solution, a system that pushes liability for rights abuses back towards the top of supply chains has been hailed as a key force in rebalancing the power dynamic in industries like fashion where workers have few pathways for recourse as demonstrated in the lack of resolution in seven of nine cases that we explored here.

Surya Deva is a member of the UN Working Group on Business and Human Rights, and responding to this report stated that,

*“Independent trade unions are indispensable to protect all labour rights of workers in supply chains and address various imbalances of power between companies and workers, including in remedying abuses of such rights. In fact, brands will not be able to discharge their responsibility to respect human rights under the UN Guiding Principles on Business and Human Rights unless they proactively work with their suppliers globally to create an environment in which independent and gender-responsive trade unions can flourish.”*

## 5. Conclusion

While it can be perceived as encouraging that many brands have policies and global framework agreements that explicitly protect fundamental labour rights in their supply chains, the emerging and widespread pattern of supplier factories targeting unionised workers for dismissal highlights the stark gap between policy commitments and the lived realities of workers in their supply chains.

Beyond policy commitments, brands need to improve direct engagement with workers, provide access to effective remedy, and also overhaul their own purchasing practices which [increase factories' hostility to unions](#) – for example, by paying prices that take into consideration the financial costs of labour and social compliance. Even where policies protecting freedom of association and collective bargaining do exist, these are also under threat in the current context. The ITUC recently [found](#) that at least 53 countries have brought in restrictions to human and labour rights under the guise of their response to the pandemic. These restrictions, compounded by heightened fear of dismissal and the risk of infection is likely to have a chilling effect on the labour movement in the industry, making it harder for workers to speak out, organise and protest against abuse and exploitation.

Brands have a duty to actively respect the rights of the workers that produce their clothes. The COVID-19 pandemic is being used as an opportunity to dismiss unionised workforces, thereby weakening rights protections and exposing garment workers to further risk of unaddressed exploitation – brands must urgently respond. When labour disputes and reports of union busting arise in their supply chains, brands must engage directly and meaningfully with unions and worker groups as part of their due diligence and work with them to support adequate resolutions.



## 6. Recommendations to brands

### Key recommendations during the COVID-19 pandemic

- Play an active, transparent role in negotiations between suppliers and workers in industrial disputes. Seek the reinstatement of unfairly dismissed union members and leaders -- proactively ensuring that this takes place, even in the absence of pressure from the international labour movement and consumers
- Workers and trade unions must be actively engaged as parties on decisions regarding workers at the earliest possible time including furlough, dismissals, changes to safety provisions. Joint decisions should be made wherever possible.
- Actively promote freedom of association by prohibiting the discrimination against unionised workers in COVID-19 related dismissals. Suppliers must be required to furlough or lay off workers based on total length of service (including any maternity or sick leave time) to prevent discrimination against workers on any grounds, including whether they are a union member, or whether they are pregnant . All retrenchment proposals must be monitored by brands to ensure workers do not face discrimination.
- Ensure that suppliers guarantee recall rights to workers furloughed or laid off due to temporary workforce reductions or factory closures, so that if and when business resumes, workers jobs are guaranteed

### Increase transparency

- Brands should ensure consistent and full visibility over supplier factories, and publish a list of these in accordance with the [Transparency Pledge and the Open Data Standard for the Apparel Sector](#).
- Publish information demonstrating the implementation of policies and codes of conducts: factory audit reports, workplace monitoring results, performance (usage and resolution results) of grievance mechanisms like hotlines.
- Publish information regarding purchasing practices: payment terms and costing policies to demonstrate ringfencing of non-negotiable labour costs.

## Conduct labour rights due diligence

- Conduct due diligence for the right to form or join a trade union – identify and prevent anti-union policies and practices with suppliers, and mitigate the adverse impacts on the ability to exercise this right that arise from changes in operations (such as a global pandemic).
- Due diligence for the right to bargain collectively should recognise that brands and their suppliers must be prepared to bargain under a wider range of structures in countries where the law and practice does not provide a well defined framework for bargaining and therefore provide a clear, implementable framework for this in such contexts.

## Actively implement worker-centred policies

- Provide dedicated funding for independent third-party training on labour rights to ensure workers in supply chains understand and can exercise their rights.
- Codes of conduct and contract clauses relevant to labour rights should be translated and made visible to workers in factories who are best placed to understand and ensure these are being respected. Changes to policies should be communicated to workers.
- In countries where freedom of association and collective bargaining is restrained, create a policy for alternative forms of organising and worker leadership, and monitor implementation.
- Alongside suppliers, commit to a zero tolerance for retaliation against labour organising.
- Publicly support stronger state protections for freedom of association and collective bargaining, including ratification and implementation of all ILO conventions.
- Ensure effective grievance mechanisms that meet the UNGP effectiveness criteria are in place and communicated to both suppliers' workers and external stakeholders such as local NGOs. Demonstrate their effectiveness by disclosing data on the operation and use of the mechanism by suppliers' workers or their representatives.



*Brands should apply pressure on their suppliers to reinstate all dismissed union workers without conditions and provide indemnity and relevant benefits to those workers. Brands should not use COVID-19 as an excuse and that their suppliers also should be held accountable for the workers without using COVID-19 as an excuse because workers have now struggled to support their livelihood without jobs.*

■ **Mr. Preap Monysovann**, Secretary-General at CUWM, Cambodia

# Appendix:

## Links to company responses and union rejoinders

Fourteen of the responses (and the three non-responses) were gathered through BHRRC's [company response mechanism to human rights abuses](#): brands were invited to respond publicly to address allegations of freedom of association violations in their supply chains. Additional responses were collected through company statements made in the media.

Factory	Country	Responses from identified past or present buyers	Number of unionised workers and labour activists affected	Rejoinder to brand responses
<a href="#">Myan Mode</a>	Myanmar	<a href="#">Inditex (Zara)</a> , <a href="#">MANGO</a>	520 (+ 50 workers who protested against the dismissal)	<a href="#">Rejoinder</a> from worker unions <a href="#">Rejoinder</a> by Clean Clothes Campaign
<a href="#">Rui-Ning</a>	Myanmar	<a href="#">Inditex (Zara)</a> [+update], <a href="#">BESTSELLER</a>	298	<a href="#">Rejoinder</a> from worker unions <a href="#">Rejoinder</a> by Clean Clothes Campaign
<a href="#">Huabo Times</a>	Myanmar	<a href="#">Inditex (Zara)</a> [+update], <a href="#">BESTSELLER</a> , <a href="#">Primark</a>	26 (+ 81 workers openly supportive of the new union)	<a href="#">Rejoinder</a> by Clean Clothes Campaign
<a href="#">Superl Cambodia Ltd.</a> (Superl Holdings response)	Cambodia	Michael Kors, Tory Burch, Kate Spade (Tapestry) – <a href="#">did not respond</a>	1	
<a href="#">Roo Hsing Garment Co.</a>	Cambodia	<a href="#">H&amp;M</a> [+update], <a href="#">Levi Strauss &amp; Co.</a>	3	<a href="#">Rejoinder</a> from the Cambodian Alliance of Trade Unions
<a href="#">Euro Clothing Company II</a>	India	<a href="#">H&amp;M</a>	900	
<a href="#">SAYBOLT TEX</a>	Bangladesh	<a href="#">Inditex (Zara)</a>	1,600	
<a href="#">Tanaz Fashion</a>	Bangladesh	<a href="#">Inditex (Zara)</a> , <a href="#">H&amp;M</a>	1,200	
<a href="#">Windy Wet &amp; Dry Process</a>	Bangladesh	<a href="#">Inditex (Zara)</a> , <a href="#">H&amp;M</a>	200	



## Business & Human Rights Resource Centre

August 2020

[Business & Human Rights Resource Centre](#) is an international NGO that tracks the human rights impacts (positive & negative) of over 8,000 companies in over 180 countries making information available on its eight language website. We seek responses from companies when concerns are raised by civil society. The response rate is 73% globally.

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