

Report

Exploring common approaches to Corporate Accountability and Workers' Rights

A forum jointly organized by the Institute for Work and Employment Relations, MIT and the (Jo-In) Joint Initiative on Corporate Accountability and Workers Rights'

July 11th and 12th, 2005
MIT, Boston, USA

1. Introduction

The purpose of the meeting was to further examine those priorities that had been determined for the project (freedom of association and collective bargaining, wages and hours of work) and consider:

- jurisprudence in respect of relevant International Labour Standards and the current state of research relevant to provisions on wages and hours of work in codes of conduct;
- key issues in Turkey when implementing these standards;
- questions for the experimental trials.

The list of participants is attached as Annex 1.

This report highlights the key issues that emerged from the discussions.

2. The draft Jo-In Code of Labour Practice

Participants reviewed the key differences in the six organizations' codes of conduct. There was general agreement that the differences in the workplace standards were not that significant, with some notable exceptions, such as the living wage.

There was however no consensus on what these standards implied in respect of the responsibilities of brands and factories in the supply chain. For example, what does it mean for businesses to take a positive attitude toward trade unions?

A Code of Labour Practice merely spelt out the commitment that companies made. The specific actions that needed to be taken to fulfill this commitment should to be spelt out in guidelines for implementation.

Jo-In aimed to develop guidelines in respect of three workplace standards that had been identified as priorities:

- Freedom of Association and Collective Bargaining
- Wages
- Hours of Work

3. Freedom of Association and the right to Collective Bargaining

The focus of the discussion in this session was on the obstacles to freedom of association and the right to collective bargaining in Turkey. What did this imply in respect of the responsibilities of brands implementing codes of conduct with suppliers in Turkey?

The following issues and obstacles were considered to prevent the free exercise of these rights in Turkey:

- **Unregistered workplaces and workers:**

Trade Union Law in Turkey requires workers to be registered in order to join a trade union for the purposes of negotiating a collective bargaining agreement. Only 500,000 of an estimated 3.5 million workers in the textile and garment sector were registered.

- **Thresholds and registration procedures:**

Workers face a number of costly administrative procedures when attempting to join a trade union.

Trade unions need to comply with certain representation thresholds in order to be recognized by the Department of Labour as the legitimate collective bargaining agent. The ILO considers these thresholds to be inconsistent with relevant ILO conventions.

Companies in Turkey have been known to challenge applications to the Department of labour by trade unions, delaying the recognition of the trade union as the collective bargaining agent. Some companies have arranged for the recognition of a preferred trade union in the interim.

- **Lengthy legal proceedings and no implementation of court decisions:**

Workers that are dismissed on the grounds of their union membership or organizing activities often face lengthy court proceedings as they attempt to challenge these dismissals and apply for reinstatement.

Companies in Turkey are known to appeal labour court decisions that award reinstatement. This appeal to the Supreme Court delays the process even further.

There are instances where companies have refused to implement Supreme Court decisions which upholding Labour Court orders to reinstate workers.

Legal remedies and sanctions for anti-union discrimination and protection of employee representatives in law have been deemed as insufficient by the ILO.

- **Anti-union sentiment:**

There is widespread anti-union discrimination and companies in Turkey generally have a negative attitude toward the organizing activities of trade unions.

- **Weak industrial relations system:**

There is no mediation service and relations between unions and companies tend to be adversarial.

- **Trade union practices:**

There is rivalry and competition between unions. A few companies in Turkey are known to have exploited this, playing one trade union off against another.

There have also been historic instances where a trade union directly appointed shop stewards instead of these being freely chosen by the workers.

- **Undue legal restrictions on the right to strike:**

Waiting periods, the definition of essential services, the definition of "political" strikes, the regulation of picketing and penalties for strike action have been deemed as prohibitive by the ILO.

There was general agreement that it was the responsibility of the brands in this context to ensure that suppliers were not engaging in practices which prevented the free exercise of these rights and/or taking advantage of the many obstacles that prevented the exercise of this right. One clear example of such interference is the use of legal proceedings to delay matters or the non-implementation of a Labour or Supreme Court decisions.

There was some discussion of what it meant to “adopt a positive approach” to trade unions in such a hostile anti-union environment. What is the responsibility of brands given the negative industrial relations climate in Turkey? There was discussion of the role of capacity building and awareness-raising in this effort. There was also discussion of brand responsibility and whether the issue with thresholds required brands to go beyond the legal requirements.

Two key issues emerged from the discussion. The first is how to assess whether or not a supplier complies with the code requirement given the challenges outlined above. The second is how to support remediation: what is the responsibility of the brand and what can be learnt from best practice? A number of questions need to be addressed during the trials in Turkey. These are listed in Annex 2.

4. Wages

While there are important instances where the implementation of a code of conduct includes assessment of compliance against a formula-determined 'living wage', the general practice in Turkey is to assess compliance with the legal minimum wage, sometimes including an expression of intent to move toward a 'living wage'. Assessment of the implementation of this standard is complicated by widespread double bookkeeping to avoid social security payments in Turkey.

There was general agreement that the best way to achieve a fair and decent wage was where workers were able to feely negotiate this with their employers. However labour market conditions in many countries and price pressure in the apparel sector meant even where collective bargaining agreements did exist, reference to these may not be sufficient to assess whether or not workers were indeed paid a 'living wage'.

The focus of the discussion in respect of Turkey was on the different methods by which to determine a 'living wage' (referring to collective bargaining agreements and/or using one or other formula). It was reported that there is significant information on the minimum cost of living available in Turkey. Should this be used to benchmark a living wage? Should certain figures, such as those in cba's in Turkey, be used as benchmarks?

A number of issues emerged from the discussion, such as whether the 'living wage' included overtime or not; what the gender differentials were and the significance of regional variations.

The first step would be to determine a figure. It would be important to begin with a comparison of figures obtained through different methods (e.g. using a formula or a wage agreed in a cba). It was most likely that the variation would not be so large. The next step would be to work with brands, suppliers, trade unions and workers to assess how these wages could be paid. How could the 'business case' be made? How should this affect the buying practices of brands and pricing of goods? These issues needed to be 'tested' in the trials in Turkey. Specific questions are detailed in Annex 2.

5. Work Hours

There was a lively discussion of this subject.

The legal limit of 270 hours overtime per year in Turkey is particularly stringent when compared with other countries. In reality, very few factories comply with this limit. While there is clearly an issue with excessive overtime, it does not appear to be as big an issue as in other countries such as China. This makes Turkey a good testing ground for intervention and remediation strategies.

A number of issues emerged from the discussions. Overtime is often not recorded and determination of actual hours worked is complicated by the widespread practice of double bookkeeping. Factories that are recording overtime are better able to control it. This suggests a central role for management systems in remediation strategies.

Management of the supply chain is not optimal. Factories are known to misreport their available production capacity to brands and brands are known to change the volume of their orders with short notice. Brands do not have sufficient information about the extent to which other brands are also producing at a particular factory and what the volume is. This makes it difficult to monitor and control production and overtime. It is not clear what impact this has on subcontractors or how this is managed.

A further issue relates to the production system. These are most often still linear production systems. Significant improvements in overtime have been achieved through improvements in the production system.

Assessment of whether or not overtime is truly voluntary is a challenging task. Workers often feel compelled to 'volunteer' for overtime to be kept on by the factory.

The implementation issues that need to be addressed in the trials are:

- facility management (administration, record keeping)
- management of the ordering process by brands
- nature of the production system
- nature of the commodity being produced

These issues are elaborated in Annex 2.

6. The trial methodology

There was limited discussion of the trial methodology. Many noted the need to refine the focus of the trials. The original project design was considered to be too ambitious and not achievable in the timeline. The issues involved were clear. The project needed to develop guidance on

how these issues could best be remediated and how improvements in working conditions could best be achieved through code implementation.

7. Conclusion

There was significant convergence during the meeting on the issues to be addressed in the experimental trials. There was also a clear need for the Steering Committee to revisit the original project design and refine the focus of the trials, concentrating on best practice in remediation strategies.

When discussing the different topics, the importance of tackling issues related to the use of extensive subcontracting in Turkey was raised time and again.

The Steering Committee undertook to give this further consideration and communicate back to participating brands and suppliers, trade unions and NGOs over the coming months.

Annex 1: Participants

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Annex 2: Questions to address in the experimental trials

Freedom of Association

1. How to assess whether or not a factory is engaging in anti-union practices?
2. How to assess that factory is not exploiting legal procedures to obstruct freedom of association?
3. How to assess that the company has adopted a 'positive approach' toward the activities of trade unions and an open attitude towards the organizational activities of workers?
4. How to assess if the union is a "freely chosen representative" of the workforce?
5. How should factories demonstrate that they respect workers' rights to join a trade union and bargain collectively (e.g. free access for union representatives, public statements)?
6. How should companies exceed legal minimum requirements in order to comply with conventions 98 and 87 (since the thresholds do not comply with these conventions)?
7. What tools can be used to promote a positive climate toward freedom of association and constructive labor-management relations (e.g. training)?

Related Issues

1. What mechanisms and institutions are needed for a viable **complaint system**?
2. How to build local capacity for mediation?
3. What is the role of the **management system**?
 - How is compliance integrated into the management system?
 - How do you develop compliance in a subcontracting system?
4. What can be done to improve the **industrial relations environment** in Turkey?
5. What are the respective responsibilities of brands, unions, NGOs, the government and suppliers?

6. What is the value of MSIs and brands coming together on this issue in Turkey?
7. How do factories and brands apply the code to unregistered workers and suppliers and subcontractors?

Wages

1. What is a living wage for workers in the Turkish garment sector?
 - How do we develop a consistent methodology and approach to calculating a living wage that is gender sensitive?
 - What are the different methods / formula's used by MSIs around the table to calculate a living wage? What figures do these yield?
 - How can we use the wage rates in collective agreements to assess the level of living wages in Turkey?
 - How should we address regional differences?
2. How to achieve a living wage?
 - What are the gender differentials in wages, their sources, and means for addressing them?
 - What challenge does the living wage standard pose for factories and how can the business case be made?
 - What technical assistance can brands, NGOs, Unions, and MSIs give factories to support their ability to pay a living wage?
 - What commercial strategies would support factories' ability to pay living wages (e.g. pricing, sourcing, profit-sharing)?
 - What is the impact of double bookkeeping what can be done about it?
3. How are wages paid in practice e.g. (what information is provided to the worker, are wages and benefits paid in full, in cash, regularly, etc.)?

Hours of work

1. How can we establish whether overtime is voluntary or involuntary?
2. How can we assess the magnitude of excessive overtime in Turkey?

Key challenge is non-implementation / enforcement of regulation. Clear there is non-compliance. Key question is how this can be remediated.

1. What is best practice in remediation of excessive OT?
 - What is the role of facility management (administration, record keeping)?
 - How can management of work hours, remuneration, and OT be better integrated with strategies to improve productivity, quality, safety and other operational aspects of the business?
 - How can the management of the supply chain—buying and ordering processes, reward and incentive systems, contractor capacity assessment, etc., be managed to reduce OT pressures on factories?
 - What is best practice in management of subcontractors?
 - How is the issue of double bookkeeping best remediated?
2. How can a business case be made to reduce OT?
 - How do the production system and the nature of the commodity influence the prevalence of OT?
 - How can factories improve production efficiency and capacity planning?
 - What are the relationships between working hours, OT, safety, productivity, and quality?

Trial to either look at best practices and study them in depth or we try to set up a trial to test certain implementation strategies (possible variables):

- facility management (administration, record keeping)
- management of the ordering process by brands
- nature of the production system (linear or team work, report production capacity in minutes or volume)
- nature of the commodity being produced

Draw out generalizable lessons.