IMPROVING LABOR CONDITIONS THROUGH DISCLOSURE, VERIFICATION, AND SANCTIONS

DRAFT PROPOSAL

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The past several years have brought an incredible groundswell of awareness and action in both the developing and developed nations against sweatshop working conditions. The struggle that brought us to this point began in well worn ways, as political battles waged by workers, students, communities, and even ethically-sensitive consumers against multinational corporations and their collaborating suppliers in developing countries.

This struggle has brought many victories, some of them quite surprising. Most critical, of course, is the shift of some large corporations from a position of denial and callous indifference about these problems, to a willingness to talk, and in some cases even change their practices. This shift is manifest in voluntary codes of conduct, agreements to permit third party monitoring, facility location disclosure, and independent initiatives such as ethical sourcing and supply chain management. Equally important are the victories at universities across the country and the new pledges to guarantee that university labels are not tainted by sweated labor. The significance of these victories is two-fold. The market power of universities and thus the suasion they have over major producers is widely recognized. Also pivotal for both political and symbolic reasons, however, is the shift in the disposition of universities from resistance to cooperative alliances in the anti-sweatshop project.

Against this background, the WRC might continue to wage these fights using exactly the same tactics that have brought these substantial victories. As a partisan for labor, it might continue to demand measures that reinforce labor's political efforts in this area: stronger codes of conduct, inspections and exposes to reinforce corporate campaigns, and funds to build labor organizations. There is no doubt that measures such as these are useful and much needed.

However, in choosing this strategy, the WRC would squander much greater strategic opportunities to (i) entrench the gains made thus far by building solid institutional foundations, and (ii) expand the anti-sweatshop alliance beyond labor to include sympathetic universities, consumer groups, developing country NGOs and others. The ultimate benefit of this more inclusive and institutional course for the workers of the world would significantly extend the former strategy.

In the pages that follow, we propose that the WRC should seize this opportunity by becoming an **agent of transparency and systematic public disclosure**. At this moment in history, the WRC could become the world's leader in demanding that corporations (beginning with those that do business with universities) open themselves to public inspection and discussion of labor standards. In doing so successfully, the WRC would overturn the ages-old prerogative of

multinational corporations to do as they please without the public's knowledge, much less its thoughtful consideration or influence.

The effects of illuminating these dark places cannot be overstated. Detailed information about the sweatshops of the world would focus the targeting of unions, other advocates, and national governments on the worst producers. It would create a base of knowledge about what works and what doesn't in the area of labor practices. Facing both sticks and carrots, firms would have much greater incentives to improve their treatment of workers and ultimately eliminate sweatshops.

This strategy would also serve to strengthen and solidify the position of the WRC:

- As an advocate of transparency, the WRC would **seize the moral high ground**. The public rightly suspects those who oppose transparency of having something to hide. Who, unless they are doing something wrong, could be against it?
- In the long run, a fight for transparency will be **easier to advance** than demands for particular labor standards.
- It will also be **more effective** than direct action, negotiation, or corporate campaign strategies. If the WRC were to use its leverage and resources to force corporate disclosure and make this information publicly accessible, it would find many allies in the media, NGO community, and general public who would use that information to wage their own anti-sweatshop campaigns. Using this indirect strategy, the WRC would multiply its power and influence many times over.
- It would generate **credibility** where credibility is due. Currently, stakeholders and consumers alike are baffled by claims and counter-claims by activists and corporations about socially-responsible programs, codes of conducts, and effects. Because there is very little information with which they can evaluate these claims, they are right to be confused. The transparency program that we propose would be a tool to increase the credibility of effective and sincere programs, and expose ones that are not.
- Finally, this transparency and disclosure system would generate much more relevant **information about practices and possibilities**. As is clear to most administrators working on sweatshop concerns, we currently lack information on what is actually going on in the factories that produce university licensed goods (both the best practices and the worst practices), what types of monitoring can access reliable information in different contexts, and what mechanisms can successfully influence firms to improve working conditions. Put simply, we know very little about what works, where, and how. Much more information is needed to evaluate the best systems of monitoring and evaluation, and the most effective means for universities to improve the conditions in the factories that produce their goods.

THE IDEA OF TRANSPARENCY AND PUBLIC DISCLOSURE

The WRC and its members can address the challenges faced by current monitoring initiatives - the problems of baseline information, effectiveness, and credibility - through one simple principle: **transparency**. The only solution to the credibility gap faced by the FLA, SA8000, and

other programs in fact, is greater transparency. And the best strategy for resolving questions of effectiveness and baseline information also returns to greater transparency.

By transparency we mean both fuller public disclosure of factory conditions and fuller disclosure of monitoring methods. By systematizing and institutionalizing processes that force out performance criteria from factories and from monitors, this program will allow the WRC, university administrators, students, broader stakeholders, and workers themselves, to assess factory performance and monitoring methods. The goal of this program is thus to significantly deepen public disclosure procedures, and to allow stakeholders to measure, compare, rank, learn, and ultimately refine strategies on these issues.

A strategy of greater and deeper public disclosure fits well with the mission of universities. The program is designed to focus on information gathering and dissemination, and most importantly, on learning. The building blocks of this system obviously rest on information. It is clearly no longer enough to simply expose problems one company at a time, or to count on internal consulting monitoring to convince the public that industry is improving. Instead, it is necessary to construct a systematic process for reporting, evaluating, and benchmarking the performance of companies producing for universities (and later other sectors).

The proposal outlined below, which will establish a program for publicly comparing firm performance, seeks to force much more information about production practices into the public sphere, foster public debate about acceptable labor standards, enlist a wide range of actors in evaluating factory performance, build the capacity of workers, local NGOs and unions, and use multiple mechanisms to pressure firms to improve their performance. This initiative can be thought of as a first phase (possibly lasting three to five years) in a multi-phased campaign to transform university licensees and the apparel industry at large.

Perhaps the biggest benefit of this strategy is that it is feasible. Through a program of disclosure, verification, and pooling information, it will be possible for the WRC and its members to evaluate different strategies in different parts of the world. This program does not lock in one code of conduct or one certification system. Instead it creates a process that will allow all stakeholders (including companies themselves) to benchmark good performers, identify and target the worst performers, and motivate improvements by enlisting multiple stakeholders in verifying conditions.

THE WRC PROGRAM

1.   FULLER PUBLIC DISCLOSURE

The first step in this program is for the Worker Rights Consortium to establish a central coordinating office to standardize, collect, collate, quality check, and compare information on subcontractor performance for member universities. The WRC would be responsible for assessing sanctions and for keeping records on licensee compliance. The WRC would also register local NGOs and worker organizations to conduct independent verifications of factory conditions.

Universities would need to do several things:

1)   Revise their code of conduct to include fuller disclosure requirements;
2)   Require firms to publicly disclose locations of factories and key performance criteria (outlined below);
3)   Require licensees to monitor the compliance of their subcontractor factories;
4)   Require licensees to report performance criteria in a standardized format;
5)   Participate in a pooling process, so that firms can be compared across universities;
6)   Participate in a learning process around standards, monitoring, and enforcement. This would include open discussions about appropriate performance criteria and monitoring methods.
7)   Motivate licensees to improve performance to match the best practices identified in the industry;
8)   Agree to a system of sanctions which will motivate improvements while protecting against negative impacts on workers.
9)   Support the building of the capacity of groups in the producing countries to verify reporting.

This program would require that all university licensees and subcontractors report information on issues of concern to the WRC once per year. (The frequency of reporting could be increased gradually over time.) This requirement would explicitly place the burden of proof on industry to show that its subcontractors are in compliance with each university's code of conduct. Firms that do not fully report will, after a predetermined period, have their license revoked. This system presumes that firms that do not have anything to hide will report, and that those that do not fully report will be assumed to be out of compliance with the code.

Required information would include: name of factory owner, location, industry identification code, products produced, number of workers, form of worker representation, age distribution of workforce, current legal minimum wage, average employee wage, other benefits provided to workers (such as health care, meals, etc.), normal working hours per day, average hours worked per day over last three months, overtime policy, workplace conditions (health and safety, heat and noise conditions, bathroom breaks, access to water, etc.), number of citations issued by local labor inspectors, number of worker complaints, reported strikes or other labor disputes, performance on environmental criteria, training programs in place, planned improvements and timeline for actions, etc. Much of this information is already being collected through internal auditing programs and participation in the FLA and SA8000.

The first cut of data would come from industry "self-reporting" of information into the central coordinating organization. A simple two-page survey would be sent to all licensees and their subcontractors. All manufacturing facilities would be required to submit the survey (eventually in electronic form) by a certain date.

The WRC would then establish a central database called the Facility Performance Inventory (FPI) accessible over the Internet which contains key performance information on licensees and subcontractors, and simple means for comparing firms along selected criteria, such as wages, health & safety, labor practices, or environmental performance.

2.   PUBLIC COMPARISON

The FPI will establish the information necessary to have a wide-ranging discussion on the performance of industry, on the criteria upon which firms are evaluated, and then on ways to revise the criteria. Discussions will occur in an open, transparent, and honest way.

The public database would not be used to "certify" compliance with one code or standard (as there are already a number of different codes being used throughout the industry), but rather would allow university stakeholders to compare different firms against a baseline standard of their choosing. For instance, stakeholders who believe the university should only source from union shops can use the database and independent verification to develop lists of companies that meet this requirement. Licensees could then be directed towards these subcontractors. Multinational firms may also use the benchmarking tools to choose between subcontractors, and to identify the best producers in a specific country. This benchmarking would likely create competition between producers to increase their performance and to meet the demands of concerned stakeholders. It would also open the topic of standard setting to a wide ranging and highly public debate that would increase the visibility of the movement on one hand and assure that any standards that result from it enjoy broad public support and agreement on the other.

3.   VERIFICATION

Licensee factories would be required to allow independent monitors, such as WRC registered NGOs and unions, to gather data and to file independent reports in the FPI system. University research teams could also be registered to gather information on specific factories. Independent verification activities would increase as local groups and university researchers develop their capacities, but their right to inspect facilities would be assured from the outset by this system. The WRC would work with anti-sweatshop NGOs and unions to identify and support the capacity building of local groups. A systematic process would be developed for evaluating a sub-set of firms producing for the university or a multinational. In certain countries (such as China and Burma) it would be necessary to use external monitors such as international NGOs to evaluate conditions as there are no independent free trade unions or local NGOs to do this monitoring.

The WRC would also establish a process for ground-truthing factory performance information by workers themselves. Factory reports would be translated and sent back to the factory in question for workers to review and comment on. Reports (or at a minimum the basic information provided in the FPI) could be posted in the factory so workers know what is being reported, and how they can challenge a factory's assertions. This would create a systematic means for workers to be involved in evaluations. The information provided could also be used by workers to empower themselves on specific issues (such as their pay versus other local factory pay).

The WRC should also work to establish a "fire alarm" system in pilot countries. This would involve a simple and safe system for workers to report problems or incidents in factories such as through anonymous phone numbers or letter boxes. Worker complaints could then trigger independent verification.

The WRC will need to support capacity building programs so that local groups can play an effective role in these processes. And more broadly, the WRC should support multiple mechanisms for evaluating and pressuring firms to improve.

4.   SANCTIONS AND MOTIVATIONS

In the initial stage of this program, sanctions would be imposed on firms for three reasons: (1) not reporting or blocking verification, (2) mis-reporting, and, (3) failing to improve along the lines shown to be feasible by reported industry best practices.

Sanctions for mis-reporting would be set high enough to create an incentive for licensees to conduct internal monitoring in order to ensure that reports are accurate and to gather information about problems in subcontractor factories before they become public. Licensees would hire their own monitors to gather information and to verify the reporting submitted by subcontractors. This form of internal monitoring represents essentially the full extent of the monitoring which will be conducted through the FLA and SA8000. The WRC program would add to this a number of key steps to improve the quality, transparency, and credibility of information on factory conditions.

As the WRC cannot currently systematically monitor all the factories around the world producing for university licensees, it is impossible to equitably inspect and sanction firms for non-compliance. Uneven policing of licensees could actually drive firms to the countries where the WRC has no verification capacity (such as China). It thus seems to make more sense to place the burden of proof for compliance on the firms themselves rather than establishing a system that the WRC cannot currently police.

Such a system would condition eligibility for receiving a license on a firm agreeing to provide information on factory performance and to allow access by independent verifiers. In this first phase of the strategy, contracts would only be cut if firms failed to provide information and access. Non-reporting would be tantamount to non-compliance. Cases of actual non-compliance with a code or standard would lead to a stringent remediation process, but not to immediate cancellation of a contract. The intent of this system is to create incentives for opening the industry to inspection, maintaining employment, and promoting abatement, rather than creating incentives for the industry to hide, move, and cover-up its problems.

The real sanctions for non-compliance initially would come from public pressure and campaigns to force high-profile firms to clean up their subcontractors. As the information in the database will be publicly accessible, student groups and other stakeholders can target their campaigns based on reported information. After several years, it will likely be necessary to reevaluate the sanctions system, and to create a more stringent system of fines, penalties, and remediation procedures. Future NGO verification activities could be funded out of fines.

THE GOALS AND RESULTS

This information forcing strategy would create a clear list of criteria that all firms must meet, make these standards and producer compliance with them open to the public, develop a system of multiple monitors (including workers, NGOs, unions, consultants, and the public at large), and advance multiple incentives for firms to improve working conditions. The initial focus on information forcing would help build a large base of data about what production facilities around the world are actually doing. This data could then be used by trade unions, national and local regulatory agencies, NGOs, consumers, firm managers themselves, and others to increase the actual social performance of those production facilities. Unlike models that attempt to replicate national systems of regulation on the international level, the WRC and FPI would be part of an open system that invites all stakeholders to take part in continuous discussion about what the social standards should be, and then provides the tools to consumers, university administrators, journalists, and governments to continually enforce those standards through their market choices or conventional regulatory instruments.

By design, the FPI is a tool usable by many parties concerned with the social performance of global production facilities. Indeed, the democratic spirit of this strategy is to throw the door open to wide ranging and inventive social action. If it can be advanced for a coalition of universities, we believe the FPI would generate a richer base of information than alternative proposals for core standards or those that would "cite" facilities for egregious performance, it would cover more facilities than the existing proposals for social audits (such as the FLA and SA8000), and it would generate greater pressure on global production facilities to improve their social performance than any existing programs. The WRC and FPI would also lay the groundwork for a larger strategy for transforming industry, including: capacity building and support for workers' organizing and local NGOs; strengthening networks and information transfer between countries; advancing pilot projects on monitoring and verification; and building toward a system that is robust yet flexible, and which meets the needs of student advocates, university officials, NGOs, and most importantly, workers.