



Sexual Harassment and Garment Manufacturing in the Mekong: Legal Frameworks

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It starts with equal

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It starts with equal



ABSTRACT

This report highlights: (i) the legislative or regulatory frameworks on or related to sexual harassment in the workplace, both at national and international levels; and (ii) access to remedy requirements as they apply to multinational enterprises operating in Cambodia, Laos, Myanmar and Vietnam.

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Introduction

Human rights and labour abuses remain prevalent throughout the global garment supply chain. Risks of harm from these abuses, in particular, the well-documented prevalence of gender-based violence, differ for men and women.¹ Women are more likely to be paid lower wages; to be in precarious, informal or irregular employment; and to face gender-based discrimination, including sexual harassment. CARE's research in Cambodia found that almost one in three women had been sexually harassed at work, and almost one in four men.

The garment manufacturing sector employs millions of workers, the overwhelming majority of them are women: more than 80% of the labour force is made up by women; mostly hired as unskilled and semi-skilled workers performing cutting, sewing, packing and ironing. (CARE International, 2017). In Cambodia, of the 600,000 workers employed by the garment sector, 85% are women (CARE International, 2017). The vast majority of workers have moved from rural locations to take jobs in the city making them vulnerable to exploitation (CARE International, 2017). The demographics of workers in the Cambodian garment sector are typical of those across the Mekong with young female internal migrants -represented in workforces in Laos, Myanmar, and Vietnam (CARE International, 2017).

Globally, multinational enterprises are under increasing scrutiny regarding practices in their supply chains, amid calls for greater accountability, transparency and progressive reforms across the sector. The characteristics of modern global supply chains can create challenges for meeting human rights responsibilities. The spread in the stages of production, short lead times and short-term buyer-supplier relationships reduce visibility and control over an enterprise's supply chain and can create challenges for meeting human rights responsibilities.

At the same time, national and international regulatory frameworks are evolving to recognise that effectively responding to human rights challenges in business activities requires addressing the gendered nature of the garment manufacture industry globally. International regulatory frameworks also set standards of obligations on businesses and protections for workers. Complying with international standards related to preventing violence, harassment, and discrimination requires enterprises to take a gendered approach – one that understands the relationship between gender, power and inequality. Multinational enterprises are taking positive steps in spite of this complexity: adopting codes of conduct and global framework agreements to ensure that women's rights are protected and promoted in the global supply chain.

The business case for action is clear. Research by CARE has shown that sexual harassment in the garment industry alone results in millions of dollars of lost productivity every year through turnover costs, absenteeism costs, and presenteeism costs (CARE International, 2017). Beyond productivity, there are physical and psychological costs to those who experience and witness harassment.

¹ Examples of research conducted on the prevalence of gender-based violence in the garment sector include; International Labour Organisation (2012). *Action-oriented research on gender equality and the working and living conditions of garment factory workers in Cambodia*, CARE Australia (2017) *'I know I cannot quit.'* *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, Asia Floor Wage Alliance (2018) *Gender Based Violence in the GAP Garment Supply Chain*, in addition to two similar reports produced by Asia Floor Wage Alliance in relation to H&M and Walmart global supply chains.

Gender Responsive Approaches to Sexual Harassment in the Global Supply Chain

In a highly feminised workforce, a gender-responsive approach is essential for effectively addressing the risks to worker wellbeing and safety. A gender-responsive approach recognises the different circumstances faced by women and men – shaped by gender norms – and builds a response to address both immediate concerns and underlying causes. It also recognises that other attributes, such as economic hardships, age, sexual orientation, ethnicity, disability and so forth can impact on the opportunities and challenges encountered by workers.

To adequately address sexual harassment, and mitigate the risks and costs to businesses and workers, an effective approach involves recognising how gender and other inequalities make some workers more vulnerable to certain abuses, and less able to access support and resolve complaints and issues. It involves establishing a workplace culture, through leadership, policies, and procedures that promote and enforce a 'zero-tolerance' approach to sexual harassment and other forms of gender-based discrimination.

At an international level, global standards are continuing to evolve to be more gender-responsive. For example, the International Labour Organization (ILO) is nearing the adoption of a new *Convention on Violence and Harassment in the World of Work*. In 2017, the Organisation for Economic Co-operation and Development (OECD) released due diligence guidance for the garment and footwear sector which included a module dedicated to sexual harassment and gender-based violence in the workplace. The potential severity, prevalence combined with under reporting and significant negative effects of sexual harassment means due diligence assessments will be more likely to identify this as a risk, reputational and legal, in supply chains.

Definition of Sexual Harassment

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which could be expected to make a person feel humiliated, intimidated or offended (Australian Human Rights Commission, 2008). Sexual harassment is on a continuum of behaviours that may vary in severity; it can be verbal or physical, targeted or general (e.g. sexually explicit images on noticeboards), and a one-off incident or repeated.

The intent of the harasser is irrelevant in determining whether a behaviour, or a pattern of behaviour, is sexual harassment. (Victorian Equal Opportunity and Human Rights Commission, 2014). Sexual harassment is disproportionality perpetrated against women and by men. However, men can also experience sexual harassment, and sexual harassment can take place between members of the same sex.

There are two major forms of sexual harassment (ILO, 2018):

1. Harassment which creates a hostile working environment i.e. conduct of a sexual nature that creates an intimidating, hostile or humiliating working environment; and
2. Harassment that is quid pro quo i.e. requests of a sexual nature which are a determining factor in future employment or work-related benefits.

Examples of sexual harassment include:

- Sexist or derogatory comments based on a person's gender
- Staring or leering
- Unnecessary familiarities, such as deliberately brushing up against a person or unwelcome touching
- Insults or taunts of a sexual nature
- Displaying posters, magazines or screen savers of a sexual nature
- Sending sexually explicit emails or text messages
- Requests for sex or repeated unwanted requests to go out on dates
- Behaviours that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, or stalking.

Laws Governing Sexual Harassment Across the Mekong

Complying with international regulatory standards, requires enterprises to abide by the national laws of the countries in which they operate (OECD, 2011). The following provides a summary of the key legislation and policies in Cambodia, Laos, Myanmar and Vietnam. The focus of this report is on laws related to sexual harassment, noting that these laws may sit within broader legislative and policy frameworks on gender-based violence which are beyond the scope of this summary.

The promotion of women's rights, including addressing sexual harassment, is increasingly featured in labour and criminal law reform in the Mekong. Significant efforts to increase legal protections in relation to violence at work, and, to implement national action plans for the prevention of violence against women, demonstrate an increasing vigilance towards sexual harassment across the region.

Cambodia

Cambodia's criminal and labour laws prohibit sexual harassment.

Sexual harassment is an offence under the *Criminal Code (2010)*. Article 250 defines sexual harassment as 'the abuse of one person of the authority conferred by his or her functions against another person for the purpose of applying pressure repeatedly in order to obtain sexual favours.' The offence is punishable by six days to three months imprisonment and a fine from one hundred thousand to five hundred thousand Riels. The *Criminal Code* does not expressly provide for, nor prohibits, its application to the workplace. Prosecutions under the *Criminal Code* are based on legal procedures stipulated in the *Criminal Procedure Code of Kingdom of Cambodia (2007)*. Article 6 provides that alleged victims may file complaints, potentially initiating a process which may lead to a criminal charge.

Under the *Labor Law (1997)*,² Article 172 states that 'all forms of sexual violation is strictly forbidden.' The *Labor Law* advises 'all employers and managers of establishments in which child labourers or apprentices less than eighteen years of age or women work, must watch over their good behaviour and maintain their decency before the public.' Since there is no definition of 'sexual violation', it is possible that some forms of sexual harassment may fall within the purview of this article.

² The officially titled *Labor Law (1997)* uses the spelling "labor" and "labour" interchangeably throughout.

The Ministry of Labour and Vocational Training (MoLVT) is primarily responsible for enforcing the *Labor Law* and works with the Ministry of Interior (Police) on investigations of serious offences by an employer. The law defines a serious offence at Article 83 as, 'abusive language, threat, violence or assault' as well as a 'failure to implement labour health and safety measures in the workplace as required by existing laws.' These provisions within the *Labor Law* imply that sexual harassment, as a form of violence, is against the law. However, the law does not define sexual harassment. The only mechanism for prosecuting sexual harassment is through the *Criminal Code* which also lacks a robust definition of what constitutes sexual harassment.

As part of its enforcement responsibilities, the MoLVT has issued a ministerial regulation, Prakas on Working Conditions, Occupational Safety and Health Rules of Entertainment Service Enterprises, Establishment and Companies. While this regulation is limited to the entertainment service industry, Article 8 provides that 'violence or sexual assault' shall not be committed against workers. Similar to the Labor Law, there is no definition of sexual assault, but some forms of sexual harassment may fall under the purview of this article. The Prakas reflects a changing regulatory environment to better protect workers in industries where women are overrepresented.

Beyond legislation, Cambodia is currently implementing its second *National Action Plan to Prevent Violence Against Women (2014-2018)*, developed by the Ministry of Women's Affairs. The Ministry of Women's Affairs can receive complaints from survivors of gender-based violence (including sexual harassment in the workplace) and provides legal advice and support. There is a lack of data on the number and nature of complaints received.

Laos

Provisions under Laos' *Labor Law (2013)*³ and laws on violence against women provide opportunities to address sexual harassment.

The *Labor Law* was amended in 2013 to add new articles broadly promoting gender equality and women empowerment.⁴ The Ministry of Labour and Social Welfare and the Labour Administration Authority are responsible for administering the obligations under this law. Although cases of inspection and fines for non-compliance are rare, there is a trend towards stricter enforcement.⁵ In addition, Article 5 was revised to strengthen the implementation of international agreements to which Lao is a party, including certain ILO conventions.

Although not expressly mentioning sexual harassment, Article 141 prohibits employers from 'violating the personal rights of employees, particularly female employees, through speech, sight, text, touch or touching inappropriate areas'. Article 83 expressly mentions sexual harassment stating that employees have the right to request a cancellation of their contract and compensation 'in the event there is... sexual harassment on the part of the employer or the employer ignores the occurrence of such actions'.

³ In Laos, the terms "labor" and "labour" are often used interchangeably in official documents.

⁴ For example, Article 96 provides that, "female employees have the right to employment and professions in every sector that do not conflict with the law, including production, business and management, and may participate in training, labor skills improvement and providing expertise. Female employees shall receive a Unofficial translation of Labor Law, salary or wages equal to that of male employees, excepting some forms of work that has negative effects upon the reproductive health of women, which must be protected in every case."

⁵ Labor Law Articles 64 and 65 require the employer to adopt an internal grievance mechanism and disseminate this information to all employees. The *Decision on the Operation of the Labor Inspection Committee (2016)* prescribes financial penalties of 1,000,000 LAK per instance of non-compliance for employers with less than 100 employees. Repeated non-compliance may be referred to a relevant Court.

The amendment of the *Labor Law* in 2013 introduced a requirement for employers to adopt internal regulations to protect worker's rights,⁶ and strengthened Section XIII on the resolution of labour disputes, providing a range of options for dispute resolution including administrative resolutions and court proceedings.

The *Law on Preventing and Combating Violence Against Women (2014)* does not expressly mention sexual harassment, but the definition of 'sexual violence' at Article 15 includes acts such as 'rape, forced sex, any act of obscenity, sexually indecent assault, unwanted sexual comments or sexual touching'. The scope of application includes 'private organizations, including domestic and foreign organizations' which would include workplaces, including those operated by foreign companies.

Regarding reporting and redress, Article 29 obligates organisations to immediately report incidences of violence against women to the relevant authorities. According to Article 75, organisations that violate the provisions in this law 'shall be re-educated, disciplined, and be liable for fine, civil compensation or criminal punishment according to the nature and degree of severity of the violation'. Despite the potential of the law to address sexual harassment, most prosecutions under the law have focused on other forms of gender-based violence such as rape, prostitution and human trafficking.

A range of government ministries, including the Ministry of Justice, Ministry of Labour and Social Welfare, Lao Women's Union and National Commission for the Advancement of Women, among others, are responsible for implementing the *Law on Preventing and Combatting Violence Against Women (2014)*.

Myanmar

Law reforms in Myanmar are gradually addressing sexual harassment in the workplace, such as through new dispute resolution laws and a pending law on violence against women.

The *Penal Code (1860)* contains several provisions prohibiting gender-based violence such as 'assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty' (Article 354), and words, gestures and exhibiting objects that may 'insult the modesty of any woman' (Article 509). While sexual harassment is not expressly prohibited, the broad scope may result in some forms of sexual harassment, falling under these articles. The *Code of Criminal Procedure (1898)* governs prosecutions of violations of the *Penal Code*.

Since 2013, the Ministry of Social Welfare, Relief and Resettlement has worked with civil society organisations on the *Prevention and Protection of Violence Against Women Bill* which is currently being reviewed by parliament.

Regarding labour law, there is currently no legislation in force covering sexual harassment in the workplace despite significant progress in labour law reform in recent years. Discussions regarding legal reform in occupational health and safety laws have canvassed inclusion of sexual harassment at work. A significant development was the introduction of the *Settlement of Labour Dispute Law (2012)* which mandated employers to establish Workplace Coordination Committees to address labour disputes, including sexual harassment. The law prescribes that the Committee is responsible for handling complaints and referring the matter to the Arbitration Council if the issue cannot be resolved at the workplace level.

Since the introduction of this law, the garment and textile industry has been overrepresented in disputes referred to the Arbitration Council. An estimated 30 per cent of all disputes brought to the Arbitration Council, and 52 per cent of all workers involved in published Council decisions were from

⁶ The content for internal regulations is prescribed by Article 64 to include: working hours, break times, rest days, occupational health and safety measures, procedures for conflict resolution or disciplinary action, and employee benefits.

the textile and garment sector (Ediger & Fletcher, 2017). Over 60 per cent of published cases involved foreign-owned factories and a 2015 report suggests that these are often 'cultural misunderstandings', and an explanation from the Arbitration Council of the legal or cultural context was sufficient to settle the dispute (Ediger & Fletcher, 2017). The Arbitration Council has advised employers to follow legal procedures and keep better records, particularly about misconduct and dismissals (Ediger & Fletcher, 2017).⁷

As garment factories receive increasing attention from international buyers regarding Workplace Coordination Committees, some factories are making an effort to establish Committees (Ediger & Fletcher, 2017). Currently, available data suggest that Workplace Coordination Committees seem to be functioning more effectively in workplaces where external organisations (e.g. trade unions, NGOs) are assisting the Committees to handle grievances effectively (Ediger & Fletcher, 2017).

Vietnam

In Vietnam, three legal codes, the Labour Code, Civil Code and Penal Code cover forms of sexual harassment in the workplace. In some circumstances under the law, employers may be held vicariously liable for sexual harassment done by employees and subject to pay compensation to victims.

Article 8 of the *Labour Code (2012)* expressly prohibits 'maltreating a worker, committing sexual harassment at the workplace' but sexual harassment is not defined. According to Article 37, an employee has the right to terminate their employment contract unilaterally if they are sexually harassed. The sexual harassment of domestic workers is specifically prohibited under Article 183, and domestic workers are obligated to report acts of sexual harassment to the competent authority (Article 182). Chapter XIV provides for the resolution of labour disputes including mediation and arbitration. In the resolution of disputes, the *Labour Code* provides a role for trade unions (Article 195) and the Labour Arbitration Council in matters involving collective disputes (Article 199).

While not expressly prohibiting sexual harassment, the *Penal Code (2015)* does criminalise sexual abuse (Article 143) and distribution of pornographic materials (Article 326), which may include some forms of sexual harassment. Similarly, the *Civil Code (2015)* does not expressly reference sexual harassment, but it may fall under Article 34 on the right to the protection of honour, dignity and reputation. Various criminal and civil procedures may be pursued for alleged violations of penal *and* civil codes.

In 2015 a voluntary *Code of Conduct on Sexual Harassment in the Workplace for Viet Nam* was launched by the Minister of Labour, Invalids and Social Affairs (MoLISA), Viet Nam General Confederation of Labour (VGCL), and Viet Nam Chamber of Commerce and Industry (VCCI). Article 123 of the *Labour Code* stipulates the required elements of a grievance mechanism for workplaces generally, and the *Code of Conduct* has specifically adapted this mechanism to be more gender-responsive and specialised to sexual harassment complaints.

The *Code of Conduct* provides recommendations on developing, implementing and monitoring a sexual harassment workplace policy, including grievance procedures. Nonetheless, the Code is voluntary and, as it supports the implementation of the *Labour Code*, it is limited to the provisions in the law.

At the time of writing, a revision of the *Labour Code* is underway. The revised draft will broaden the definition of sexual harassment. CARE is currently working with government and NGO stakeholders in Vietnam to ensure that the definition is reflective of international best practice. The revised *Labour Code* is expected to be finalised by October 2019.

⁷ The Arbitration Council stated, 'If the employer made the records and gave the warnings step by step...and dismissed the worker by giving notice letter, [the] employer would not need to be in the settlement process and ... [would not] ...need to pay'

Selected International Normative and Regulatory Frameworks

Key instruments applicable to the garment sector include:

1. ILO Fundamental Conventions
2. The proposed new ILO Convention on Violence and Harassment in the World of Work
3. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
4. UN Guiding Principles on Business and Human Rights
5. OECD Guidelines for Multinational Enterprises
6. OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
7. UN Global Compact
8. G20 commitments on supply chains
9. Multi-stakeholder Initiatives, e.g. Foreign Trade Association, Ethical Trading Initiative, Fair Wear Foundation and Global Framework Agreements

The remainder of this summary will focus on ILO Conventions, UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

ILO Fundamental Conventions

The table below outlines which fundamental ILO Conventions have been ratified in the Mekong region.

ILO Convention	Cambodia	Laos	Myanmar	Vietnam
1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	●		●	
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	●			
3. Forced Labour Convention, 1930 (No. 29)	●	●	●	●
4. Abolition of Forced Labour Convention, 1957 (No. 105)	●			
5. Minimum Age Convention, 1973 (No. 138)	●	●		●
6. Worst Forms of Child Labour Convention, 1999 (No. 182)	●	●	●	●
7. Equal Remuneration Convention, 1951 (No. 100)	●	●		●
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	●	●		●

The Discrimination (Employment and Occupation) Convention (No.111) defines discrimination as:

‘Any distinction exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation’.

The ILO Committee of Experts on the Application of Conventions and Recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the *Convention (No. 111)*.⁸ In addition, the ILO’s *Indigenous and Tribal Peoples Convention (No. 169)* also specifically prohibits sexual harassment in the workplace. There are existing obligations under international law relevant to addressing sexual harassment in the workplace. In particular, the *Convention of the Elimination of all forms of Discrimination Against Women (CEDAW)* directs governments to take appropriate measures to eliminate discrimination against women in all aspects of public and private life, with specific mention of the workplace.

There are a number of international instruments and standards supporting the right to freedom from gender-based discrimination, including sexual harassment in the workplace. Some of these include:

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- 1998 ILO Declaration on Fundamental Rights and Principles at Work (1998)
- Convention on the Elimination of All Forms of Discrimination against Women (1979)
- Declaration on the Elimination of Violence against Women (1993)
- CEDAW Committee, General Recommendation 35 on Gender-based violence against women (2017)
- Beijing Declaration and Platform for Action (1995)
- ILO Maternity Protection Convention 2000 (No. 183) and its Recommendation (No. 191)
- ILO Indigenous and Tribal Peoples Convention 1989 (No. 169)

The proposed new ILO Convention on Violence and Harassment in the World of Work

A new Convention on eliminating violence and harassment in the workplace is currently under negotiation at the ILO. This new Convention reflects not only the momentum created by the #MeToo⁹ movement but is also a testament to dedicated campaigning by trade unions, women’s organisations and NGOs globally.

In August 2018, following consultation with workers and employers, the draft text of the Convention was released to governments for comment. If an agreement is reached, the new Convention may be adopted at the International Labour Conference in June 2019. Once adopted, States will begin the

⁸ See ILO (2009) *Gender Equality at the Heart of Decent Work*, International Labour Conference, 98th Session, at pg 96. Retrieved from https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf

⁹ #metoo is a social media movement looking to share and respond to individual instances of sexual harassment. A primary part of the campaign was to highlight the prevalence and scope of sexual harassment, providing opportunities for solidarity around the world. The movement has grown to capture stories from particular industries (#aidtoo #metoomilitary). While confined to social media with a focus on promoting empowerment through empathy (as articulated by founder Tarana Burke), the attention given to sexual harassment through the campaign is resulting in changes to workplace policies and practices.

process of ratification. Once ratified the Convention creates a legally binding obligation on the Member States to adopt a gender-responsive approach to the elimination of violence and harassment in the world of work.

The legally binding obligations include (ILO, 2018a):

- prohibiting in law all forms of violence and harassment;
- ensuring that relevant policies address violence and harassment;
- adopting a comprehensive strategy to implement measures to prevent and combat violence and harassment;
- establishing and strengthening enforcement and monitoring mechanisms;
- ensuring access to remedies and support for victims;
- providing for sanctions;
- developing tools, guidance, education and training, and raising awareness; and,
- ensuring effective means of inspection and investigation of cases of violence and harassment through labour inspectorates or other competent bodies.

In its definitions and scope, the proposed Convention defines both 'violence and harassment' and 'gender-based violence and harassment' as follows:

'The term 'violence and harassment' in the world of work should be understood as a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.

Gender-based violence and harassment should be understood as violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.' (Page 4)

The proposed Convention covers all persons in the world of work, in both the formal and informal economy and irrespective of their contractual status. Further, targets and perpetrators of violence and harassment can be employees, employers, and third parties.

The 'world of work' is interpreted broadly to cover a wide variety of activities within, and outside, the factory walls. The world of work includes public and private places where work takes place and rest areas, including sanitary facilities; commuting to and from the factory; work-related trips, training, events and social activities; email and phone communications; and employer-provided accommodation.

Following ratification, Member States must take appropriate measures to identify high-risk sectors and occupations. The International Labour Conference (2018) highlighted the vulnerability of female garment workers as a specific concern (ILO, 2018b). The Conference identified that a great number of women are vulnerable to violence and harassment to obtain or keep their jobs, to be paid their salaries, to be promoted, and, when commuting to and from work.

Additionally, Member States will be obligated to adopt national laws and regulations requiring employers to take steps to prevent all forms of violence and harassment. The obligations include requiring employers to: adopt a workplace policy on violence and harassment; identify risks of violence and harassment; and take measures to prevent and control risks.

UN Guiding Principles on Business and Human Rights

The *UN Guiding Principles on Business and Human Rights* (OHCHR, 2011) are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. The UN Human Rights Council endorsed the *Guiding Principles* in 2011.

The *Guiding Principles* clarify existing principles under international law, so are not simply 'voluntary' – rather, the *Guiding Principles* are derived from international human rights obligations already in effect. Traditionally, the responsibility to fulfil obligations contained in key human rights instruments (such as UNCHR, CEDAW, CRC etc.) has fallen exclusively upon governments. However, the introduction of the *Guiding Principles* acknowledges that businesses have human rights responsibilities that exist independently of States (OCHCR, 2011).

The *Guiding Principles* are structured around three pillars of 'Protect, Respect and Remedy'. These consist of the State duty to protect against human rights abuses by businesses; the corporate responsibility to respect human rights, and, the right to access to remedy (judicial and non-judicial) for victims of human rights abuses. This second corporate responsibility to protect invokes the obligation to carry out human rights due diligence. This requires private enterprises to assess their actual and potential human rights impacts, take action to avoid and address any adverse impacts relevant to their business operations, and provide affected individuals with legitimate processes for remediation (OHCHR, 2011).

The *UN Guiding Principles Reporting Framework* was launched in 2015 by Shift and Mazars to support human rights due diligence. It is the world's first comprehensive guidance for companies to report on how they respect human rights. UNGP Reporting Framework has strong backing from experts, governments, investors and civil society organizations and is being used by global companies. Regulations including the UK's Modern Slavery Act, the French 'plan de vigilance' law, and the EU non-financial reporting Directive are all calling for disclosure that aligns with the UN *Guiding Principles* and its expectations for human rights due diligence.

OECD Guidelines for Multinational Enterprises

The *OECD Guidelines for Multinational Enterprises* (OECD, 2011) are a set of non-binding principles for responsible business conduct consistent with internationally recognised standards. Forty-six countries have signed the Guidelines, which are the only *multilaterally agreed* code of responsible business conduct developed and signed by governments. The principles apply to multinational enterprises headquartered in the signatory country regardless of where their operations take place.

The *OECD Guidelines for MNEs* include the duty to protect human rights in business operations. Enterprises should abide by 'the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations.' The duties draw upon the 'Protect, Respect and Remedy' framework of the *UN Guiding Principles*.

Implementing the Guidelines requires enterprises to eliminate discriminatory practices that may breach fundamental human rights or ILO conventions. The *OECD Guidelines for MNEs* make recommendations on carrying out due diligence on sexual harassment and gender-based violence in the workplace, both of which are forms of discrimination. In particular, the *OECD Guidelines for MNEs* reinforce the importance of risk management and access to remedy by requiring private enterprises to establish effective processes for remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

'Employers should provide for or contribute towards the provision of remediation to victims of sexual harassment and sexual and gender-based violence. In some contexts, employers may also be mandated by law through vicarious liability to provide for such remediation. For incidents of sexual harassment and sexual and gender-based violence, it is generally recommended that counselling be incorporated as an option into post-incident responses. Some victims, especially in the case of violent incidents, may need longer-term support.' (OECD, 2011)

The *OECD Guidelines for MNEs* have established National Contact Points in all signatory countries where an enterprise may be headquartered. National Contact Points contribute to resolving issues from non-observance of the Guidelines. Although the *OECD Guidelines* are considered 'soft law', National Contact Points in Denmark, Switzerland, France, the Netherlands and the United Kingdom have had cause to consider human rights due diligence obligations of companies with respect to their supply chains. These included cases related to the Rana Plaza building collapse in Bangladesh, the construction of facilities for the 2022 FIFA World Cup, a textile and mining operations and the use of child labour and, unfair dismissal claims at a subsidiary northern based subsidiary in the Congo (Norton Rose Fulbright and British Institute of International and Comparative Law (BICIL), 2018).

Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

Importantly, the OECD has developed *Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (OECD, 2017). Due diligence is defined as 'the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts.' The guidance contains a 'module' on sexual harassment and gender-based violence in the workplace, which is identified as a specific risk for the garment and footwear sector. The module encourages enterprises to 'adopt a zero-tolerance policy on sexual and gender-based violence and strict measures against sexual harassment in its own operations.'

Definition of sexual harassment

Sexual harassment is defined as 'unwelcome sexually determined behaviour [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. It is discriminatory when the victim has reasonable grounds to believe that his or her objection would disadvantage him or her in connection with employment, including recruitment or promotion, or when it creates a hostile working environment. Men, women, boy and girls may be victims of sexual harassment.'

OECD (2017) Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector

The *Due Diligence Guidance* outlines specific steps for enterprises to meet their obligations for preventing violence and harassment in the supply chain.



Benefits of conducting due diligence

- Increased ability to meet expectations of customers and markets on responsible supply chains
- Improved the reputation of enterprise and the sector
- Increased ability to manage global operations with consistency, supporting uniform operational outcomes and compliance, and in some cases leading to cost savings
- Decreased disruptions in operations and the supply chain, linked to reduced risks.

Multi-stakeholder initiatives

Global framework agreements and multi-stakeholder initiatives are gaining increasing traction among enterprises in the Global North, as are voluntary codes of conduct and corporate social responsibility. Nonetheless, the nature of these approaches can make them less authoritative than multilateral regulatory frameworks and international law.

Examples of multi-stakeholder initiatives that use auditing and accreditation to ensure compliance with international labour standards are: Ethical Trading Initiative, Fair Wear Foundation, Worldwide Responsible Accredited Production, and Business Social Compliance Initiative. Increasingly these initiatives are reflecting the gendered nature of garment manufacture in global supply chains. By working with trade unions, international NGOs, major brands and multinational enterprises, these initiatives work directly with garment manufacture factories to strengthen their response to sexual harassment in the workplace. Accreditation and auditing by these organisations involves analysing factory-based prevention programs and supporting the development and monitoring of effective complaint mechanisms for reporting sexual harassment.

Multi-stakeholder initiatives can be an efficient way of addressing the multiple auditing requests and requirements which may flow to suppliers in a supply chain. Alternatively, third party auditing can help streamline requirements and enable suppliers to show successful audit by one recognised group. Information can also be shared across supply chains, one example being Supplier Ethical Data Exchange (“Sedex”), which is a membership organisation that enables sharing of responsible sourcing data on supply chains (Norton Rose Fulbright and British Institute of International and Comparative Law (BICIL), 2018).

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About CARE

CARE works with poor communities in developing countries to end extreme poverty and injustice.

Our long-term aid programs provide food, clean water, basic healthcare and education and create opportunities for people to build a better future for themselves.

We also deliver emergency aid to survivors of natural disasters and conflict, and help people rebuild their lives.

We have 70 years' experience in successfully fighting poverty, and last year we helped change the lives of 72 million people around the world.

