

To: International Brands and Retailers Sourcing from Bangladesh
From: Scott Nova, Jessica Champagne, and Laura Gutierrez
Re: Misconceptions Regarding Mass Arrests and Terminations in Bangladesh
Date: February 4, 2016

Based on numerous conversations with apparel brands and retailers, we are writing to address some significant misconceptions about the legal and factual basis for the recommendations of the WRC and other international NGOs regarding the repressive crackdown by the government of Bangladesh.

As we write, the situation has continued to deteriorate. At least 24 labor activists in the country have now been detained, most for more than 40 days. The family of one detainee reports that he has been kept chained in leg shackles around the clock; the wife of another detainee reports that his cell is kept too dark to see even his own hands.

This is the most severe crackdown on workers' rights in Bangladesh since the Rana Plaza building collapse. As the *New York Times* observed in an editorial calling on global brands and retailers and the international community to hold Bangladesh accountable, the purpose of this campaign of repression by factory owners and the government is very clear, "to intimidate workers and keep Bangladesh a low-wage country," with the worst-paid garment workers of any major apparel exporting country.¹

As you know, this crackdown has involved the dismissal of some 1,500 garment factory workers and the detention of at least 24 workers and worker rights advocates on the basis of complaints filed by factory owners, in retaliation for recent wage protests in the Ashulia industrial district of Dhaka. We are urging you take prompt action to require suppliers who have engaged in such acts of collective punishment to withdraw all criminal complaints and offer reinstatement to all workers were suspended, terminated, or pressured to resign following these wage protests.

¹ Editorial Board, "Bangladesh's Crackdown on Labor," *New York Times* (February 1, 2017), <https://www.nytimes.com/2017/02/01/opinion/bangladeshs-crackdown-on-labor.html?ref=opinion&r=0>.

The remainder of this memorandum addresses misconceptions held by some brands and retailers concerning: (1) the criminal complaints filed by factory owners which form the pretext for detentions of garment worker leaders and advocates; (2) factories' mass suspensions and terminations of employees, and (3) mass resignation of workers from their jobs as a result of coercion by factory owners. We are available to discuss these issues with you further and would appreciate your prompt response.

1. Criminal Complaints as Pretext for Retaliatory Detentions

Some brands are under the impression, perhaps because of information provided by their supplier factories, that the individuals who have been arrested based on factories' complaints are employees of the respective factories. In fact, the primary use of these complaints has been to justify the detention of regional labor leaders not connected to these factories, some of whom have proved beyond doubt that they were not present or involved in the protests at these factories, let alone guilty of criminal behavior.

Most of the complaints filed by Ashulia factory managers allege the involvement of dozens, and in some cases hundreds, of unnamed people in criminal behavior. More than half of the 21 individuals being held under these complaints are union leaders not employed by any of the complainant factories.

Like most of the other detainees, these union leaders were not identified by name in any of the complaints. Jahangir Alam, for example, whose case was discussed by the *New York Times*,² is a garment worker and the president of the factory-level union at the factory Designer Jeans, Ltd. During the Ashulia protests, he was not present in any of the factories that filed criminal complaints. Yet he has been imprisoned for more than 40 days under charges from nine factories alleging his involvement in misconduct at their buildings.

As Alam's case demonstrates, the factory owners' complaints do not represent an attempt to hold legally responsible specific individuals who were directly involved in specific acts of misconduct. Rather, they reflect an attempt to collectively punish garment workers and union leaders for recent protests over low wages suppress further associational activity.

² Abrams, Rachel, and Maher Sattar, "Protests in Bangladesh Shake a Global Workshop for Apparel," *New York Times* (January 22, 2017), <https://www.nytimes.com/2017/01/22/business/bangladesh-protest-apparel-clothing.html? r=0>.

For example, a criminal complaint filed by the management of That's It Sportswear, a major manufacturer owned by the Hameem Group, accuses 400-500 individuals of engaging in unlawful assembly, criminal trespass, "voluntarily causing hurt," assault towards women, theft, extortion, intimidation, and property damage. Several of these charges, notably unlawful assembly and criminal trespass, in this case represent the criminalization of workers' freedom of association, as the crime of which workers have been accused is protesting at their own workplaces. For other charges, such as theft, extortion, intimidation, and assault towards women, no evidence has been presented. The sole piece of material evidence cited by any factory owners regarding these alleged crimes is a video presented by That's It Sportswear's parent company, Hameem Group; the company claims that this video shows criminal offenses justifying these criminal charges, as well as the termination of nearly 100 workers, yet refuses to publicly release.

Yet this complaint, and similar ones filed by other factories – Windy Apparels, NRN Knitting & Garments, Dekko Design Ltd, Fountain Garment Manufacturing Ltd, Sharmin Apparels/Sharmin Group, Cathay Apparels, and The Rose Dresses – are being used as the basis for detaining Alam and other union leaders who had nothing to do with the protests at these factories. Whether or not any criminal activities occurred at these factories, there is no basis for owners to claim that these individuals were criminally responsible.

As far as the WRC is aware, only in the case of two factories have workers been detained based on the criminal complaints. In the weeks that have passed since these individuals were detained, no evidence has been presented publicly by these two factories to indicate that these individuals engaged in criminal activity beyond, in some cases, exercising their associational rights by engaging in collective protest.

Given this, the WRC continues to urge brands and retailers sourcing from the relevant factories to withdraw all criminal complaints related to the protests and take all possible action to ensure that workers are released.

2. Mass Suspensions and Terminations of Workers

Several brands and retailers have expressed a mistaken belief that the suspensions and terminations that have taken place constitute legally acceptable terminations based on specific allegations against the suspended or terminated workers. In fact, these mass terminations constitute a form of collective punishment. None of the suspension letters reviewed by the WRC contained specific, individual allegations of wrongdoing by the workers being suspended.

At least 24 garment factories have suspended and initiated the firing of approximately 1,500 workers based on various allegations including “threatening workers,” “vandalism,” “indecent behavior,” hampering production, and “provoking” other workers to protest and stop work. Some of these workers are currently in the process of being terminated; others have accepted their discharges, in some cases pursuant to agreements between factories and labor unions that are discussed in the following section.

The WRC has reviewed a sample of the suspension letters issued by factories to workers on account of these charges. The letters we have seen do not cite any specific incidents of wrongdoing; rather, they allege general misconduct related to the protests. Some suspended workers have provided credible testimony that they did not even participate in the protests that were the supposed sites of their alleged misconduct.

These suspensions and terminations therefore constitute a form of collective punishment, in which factory managers are engaging in indiscriminate retaliation against a broad number of workers, based on only vague and general allegations of wrongdoing. Bangladesh’s labor law requires that, in order to legally discipline these workers, an employer must provide written notice of specific allegations of misconduct.³

Mass termination on vague and unsubstantiated charges represents a form of collective punishment of workers for exercising their associational rights. Given the retaliatory, indiscriminate nature of this punishment, the WRC concludes that all workers should be offered reinstatement to their previous positions with full back pay. If employers do in fact have specific knowledge and evidence of wrongdoing by some number of workers involved in the protests, they can, after undoing their mass retaliation, choose to pursue disciplinary action in these specific cases under their existing policies (assuming those policies are consistent with the law and international standards).

3. Coerced Mass Resignation of Employees

Brands and retailers have mistakenly concluded in some cases that these cases have been resolved by mass agreements in which workers accepted severance funds. Providing funds in lieu of reinstatement, however, is not an acceptable remedy in cases where workers have been wrongly terminated, particularly for reasons related to freedom of association.

³ See, Labor Act, 2006, Arts. 23 and 24.

In many cases, after factory owners suspended workers pending termination, employees accepted their discharge in return for severance payments, often pursuant to arrangements that had already been agreed to labor unions. By accepting these severance payments, factory owners argue, these workers waived any right to reinstatement to their jobs.

Workers have testified, however, that they agreed to take accept severance of their employment, not because they had engaged in any actual wrongdoing, but for two key reasons: First, they feared further collective punishment by their employers, including being arrested under the criminal complaints that have been used to imprison workers who were not involved in the alleged misconduct or even present at the times that these acts allegedly took place. In some cases, workers report being specifically told that they might face criminal charges if they did not accept their termination.

Second, workers faced significant economic hardship while suspended, and believed that these agreements offered them their only opportunity to receive any form of compensation from the factories. In some cases, workers were not paid their final weeks' wages until they signed these agreements.

These agreements do not relieve employers of their responsibility to rectify the retaliatory termination of these workers. Workers signed these agreements after the companies had already initiated their termination based not on any concrete evidence of specific acts of individual misconduct, but, rather, as noted above, as a form of collective, indiscriminate punishment. The fact that workers then felt compelled to accept these terminations as a result of economic necessity and the very real threat of further retaliation does not eliminate management's responsibility to remedy these serious violations of workers' associational rights.

Using severance to induce workers to renounce their rights is itself a violation of international standards protecting workers' associational rights. This basic principle has been upheld repeatedly both by the WRC and by other bodies, including at least one multi-stakeholder organization of which brands and retailers sourcing from Bangladesh are members.⁴

Given this, the WRC concludes that these agreements do not constitute an adequate resolution to the worker rights violation caused by the initial mass retaliatory dismissals. The WRC continues to recommend that workers must be offered reinstatement with back pay.

⁴ See, e.g., Fair Labor Association, *FLA Workplace Code of Conduct and Compliance Benchmarks*, (Revised October 5, 2011), ER.19.3 and FOA.9.

4. Conclusion

The government of Bangladesh and the local apparel factories have used the protests in Ashulia as an excuse to intimidate and punish workers and worker rights advocates in an indiscriminate, retaliatory manner that is out of all proportion to any incidents of minor misconduct reported during the Ashulia protests. The worker testimony, documentation, and other evidence that the WRC has gathered over the past six weeks has continued to underscore the extent to which workers launched the work stoppage out of desperation, seeing no other route to improve their situation, and the extent to which workers and unionists have been caught up in the companies' retribution without regard to their actual behavior during the strike.

It is our hope that this memo addresses common misconceptions regarding the violations of workers' most fundamental rights that have taken place in Bangladesh over the past six weeks. The damage to the detained, suspended, and terminated individuals, their families, and the associational rights of garment workers throughout Bangladesh continues to deepen every day that workers and advocates remain in detention or off the job. Again, we urge you to promptly require your suppliers to take the following actions:

1. Withdraw all criminal complaints against workers and worker rights advocates, whether named or unnamed, related to the Ashulia protests; and
2. Offer reinstatement to all workers were suspended, terminated, or pressured to resign following these wage protests.