

# Acknowledgements

*This report is dedicated to workers who fight exploitation*

*and change the consciousness of society.*

We would like to thank the women workers who have come forward and shared their stories with us. We are also grateful to members of the Chinese Staff and Workers Association and the National Mobilization Against Sweat Shops for bringing to our attention sweatshop conditions in New York City. We would like to express our gratitude to the translators and the interviewers who helped make this report possible. Special thanks to James Hsi and Michelle Travis for helping with the background research and to Mark Charette for his help. The report was written and edited by Shahbano Aliani and Sarah Zaidi.

We gratefully acknowledge the generous financial support of the Ford Foundation and the John D. and Catherine T. MacArthur Foundation.

This preliminary study, based on interviews with several workers who were employed in the Choe factories producing garments for Donna Karan International, Inc., is part of a larger project on sweatshop conditions in the United States. The views expressed in this report are those of the Center for Economic and Social Rights and do not necessarily represent views of other contributors or organizations.

# Colophon

Established in 1993, the **Center for Economic and Social Rights** (CESR) is one of the first organizations to challenge economic injustice as a violation of international human rights law. Through its projects abroad and in the U.S., CESR has developed an effective strategy that combines research, advocacy, collaboration, and education. The basic aim of our work is to use human rights to hold decision makers – be they governments or corporations – accountable for their actions. CESR is a 501©(3) organization.

**The U.S. Program** challenges domestic impoverishment and exploitation as human rights violations. Despite being the wealthiest nation in the world, the U.S. is the only industrialized country to reject economic and social rights and suffers the greatest disparity between rich and poor of any industrialized nation. Furthermore, the assault on the rights of working people in the U.S. is evident in the prevalence of a domestic sweatshop system that particularly affects women and immigrant workers. Currently CESR is documenting sweatshop conditions in New York City as part of its Workers Rights Project to expose and challenge violations of workers human rights.

**Cover quotation from an East Point Factory worker.**

**Cover photo from the DKNY flagship store at 655 Madison Avenue, New York, New York.**

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# I. Introduction

This preliminary report<sup>1</sup> examines violations of women workers' human rights in the Choe factories<sup>2</sup>, located in the heart of New York City (NYC). The contractor, employing Chinese and Latina immigrant women workers, had been producing garments exclusively for Donna Karan International under extremely abusive and exploitative conditions for an estimated 12 to 13 years. A combination of monitoring through surveillance cameras, constant abusive supervision, restrictions on movements and bathroom use, coupled with forced, unpaid overtime created conditions that one worker equated to slavery.

This report finds that most of the human rights of workers under international law – namely the rights to: (1) organize, (2) fair wages, particularly for women, (3) overtime wages, (4) reasonable limitations on working hours, (5) rest and leisure, (6) vacation and holidays with pay, (7) special care and assistance before and after pregnancy and (8) safe and healthy working conditions – have been violated in the Choe factories. These violations are in addition to the violations of domestic labor laws governing overtime, minimum wage, family leave and health and safety standards.

The retailer-manufacturer, Donna Karan, the contractor, Chung Suk Choe, the federal New York State (NYS) Departments of Labor and the Union of Needletrades Industrial and Textile Employees (UNITE) are all responsible for human rights violations. *Since Donna Karan International reaps the most profit and exerts the most influence on working conditions, we find the corporation bears the greatest responsibility for human rights abuses in the Choe factories.*

This report is divided into six sections. Section II describes the sub-contracting system, which by its very structure leads to sweatshop conditions. Section III describes conditions in New York City garment factories. Section IV gives a brief background on Donna Karan International and describes the study results, based on standardized questionnaires administered to workers from the Choe factories. Section V discusses the Human Rights Framework, highlighting workers' human rights and describing human rights violations in the factories. Section VI discusses responsibilities for violations and lists some preliminary recommendations.

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<sup>1</sup> The Center for Economic and Social Rights, along with independent NYC-based workers' centers, is documenting sweatshop conditions in NYC as part of a workers rights project.

<sup>2</sup> Chung Suk Choe operated three different factories at 330 West 38<sup>th</sup> St., 6<sup>th</sup> Floor. East Point International, started in May 1986, was in business for the longest time and the workers in this study were employed for the greatest length of time in this factory. East Point was shut down in 1996 after the Department of Labor investigated it. Ms. Choe then created Couture Ltd. and moved East Point workers to the new factory. She also created Choe Ltd. in April 1997 and Choe Ltd. and Couture Ltd. operated simultaneously until one of the Choe Ltd. workers filed for backwages. The contractor shut down Choe Ltd. in December 1998, laid off the worker who had filed for backwages and moved some of the other Choe Ltd. workers to Couture Ltd. Finally, when workers filed a suit against the contractor and Donna Karan, Inc., the owner shut down Couture Ltd. also. All three factories operated in the same building and according to the workers, terms and conditions in all three factories were identical.

## II. The Sweatshop System in the Apparel Industry

The United States (U.S.) clothing industry began to develop in the eighteenth century after the Civil War. Prior to that most clothing was made in homes. Currently, the textile and apparel manufacturing industries employ an estimated 1 million workers. Production workers (those involved in cutting, stitching and packaging) make up about 85% of the workforce and women make up an estimated 70% of these workers, compared to 31% women in all manufacturing. "Hispanic" workers make up 24% of garment workers, as opposed to 10% in all other industries.<sup>3</sup>

According to the American Apparel Manufacturers Association (AAMA) the number of domestic apparel manufacturing employees in 1998 was 779,000, which is a 43% decline in the workforce since the seventies.<sup>4</sup> In the past three decades, apparel production has steadily been moving offshore as retailers and manufacturers have sought cheaper, more flexible labor abroad, while escaping responsibility for working conditions and consolidating their leverage in relation to local contractors. Increasing trade liberalization is only expected to intensify this trend. For instance, since the passage of the North American Free Trade Agreement (NAFTA), Mexico has become the largest importer to the U.S., and offshore sub-contracting of garments has been shifting from Asia to Mexico and the Caribbean. Trade associations predict an increase in offshore sub-contracting with the replacement of trade agreements like the General Agreement on Trade and Tariffs (GATT) by agreements at the World Trade Organization (WTO).

### A. The Sub-contracting System

Sub-contracting allows businesses to "contract" out discrete services and production requirements to independent sub-contractors. In the U.S. apparel industry, almost none of the retailers or manufacturers currently produce, at their own factories, any of the garments they sell. All apparel sold in the U.S. is produced in facilities owned by independent contractors/sub-contractors. Many industries, including apparel, use this system to keep their workforce fragmented and flexible. In other words, by sub-contracting, companies do not have to hire and assume legal responsibility for the large number of workers required for their production/service needs. The sub-contracting system in the garment industry has evolved into the present-day apparel pyramid described below.

The **garment workers** who stitch, cut and dye the clothing that consumers buy in retail stores are at the base of the apparel pyramid. Although they constitute the majority in sheer numbers, they have the least wealth and control over terms and conditions in the industry. The workers are separated from the retailers, who are the smallest in number but exercise the most control in the industry, through several layers of sub-contractors, contractors and manufacturers.

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<sup>3</sup> American Encyclopedia of Industries. Vol.1, 1997

<sup>4</sup> Standard and Poors Industry Survey of the Apparel Industry. July 1999

## The Role of the Union

Even though the Union of Needletrades Industrial and Textile Employees (UNITE) is not directly part of the apparel pyramid, it plays a pivotal role in any unionized factory and often serves as an intermediary between the contractor and the workers. In theory, the union is supposed to represent the interests of the workers by ensuring that contracts are enforced.

In reality, most garment workers in NYC never see their union contracts and three quarters of unionized shops in NYC are sweatshops by UNITE's own admission.

Robert Fitch, the New York University Labor Historian, argues that UNITE is unwilling to organize and represent the interests of its mostly female immigrant rank-and-file as it agrees to contractors' sweatshop conditions in exchange for the right to "represent" the workers (that is, collect their relatively high membership dues).

In some respects, the union's interests are in direct conflict with those of the workers. Since 1987, UNITE has received close to billion in "liquidated damages" from companies that have sent jobs overseas, none of which is shared with its members. In fact, labor violations occur as frequently, if not more often, in unionized shops as in non-unionized shops.

Sources: Robert Fitch, NMASS organizing school, summer 1999; "Behind the Union Label," Robert D. Novak, June 11, 1998; "Labour-US: Garment Union Under Attack From All Sides," Farhan Haq, Inter Press Service, June, 12, 1999; "Labour-US: Chinese Garment Workers Fight for Lost Wages," Farhan Haq, April 10, 1999

**Retailers**, situated at the top of the apparel pyramid, order and buy clothes from manufacturers and resell them to individual consumers. Manufacturers try to out-bid each other for orders from retailers, and since there are a few large retailers, they are able to dictate prices to manufacturers. Mega-retailers like Federated Department Stores (includes Macy's and Bloomingdales) and large-volume discount stores such as Wal-Mart and Kmart, which have consolidated their grip on the industry by producing garments under private labels as well, have complete control over apparel pricing.

Under current labor law, however, retailers are not responsible for any labor law violations in the manufacturing process, even though they have the most control over working conditions as they are able to dictate the prices and the pace of work performed in factories. This control, plus their protection under current labor laws, is used to rake in 50% - 80% of apparel sale prices while imposing sweatshop prices for "piecework" to factory sub-contractors, who in turn squeeze the workers to produce high volume at low wages.

**Manufacturers** form the next level of the apparel pyramid. Manufacturers design and register product lines, purchase fabrics and receive orders from retailers. They contract out the actual clothing production to contractors who run garment factories. Going through the manufacturer enables the retailer to avoid dealing directly with contractors and garment workers. However, larger manufacturers like Donna Karan International, have been entering the retail business directly, consolidating their control over the industry and increasing revenues and profits. For example, sales at the recently

established (August 1999) 16,000 square foot DKNY flagship store on Madison Avenue, have been ranging between ,500 to ,000 per square foot compared with slightly over 0 for other DKNY full-price locations.<sup>5</sup>

**Contractors** are responsible for producing and sending garments to the manufacturer. This is the group directly responsible for the daily working conditions of workers within each factory.<sup>6</sup>

**Sub-contractors** often work with contractors in producing specific portions of the garments. This is because few contractors have all the means of production in their factories. Cutting, dying and sewing can be performed by different sub-contractors. The semi-finished garments are then sent to the contractor. Like contractors, sub-contractors deal directly with the garment workers in their own factories. Because numerous sub-contractors may be involved in the production of even one apparel item, monitoring conditions and establishing visible links between retailers and manufacturers is difficult.

## **B. Bringing the Sweatshops Home**

*Retailers and manufacturers exert near total control over their contractors... When retailers and manufacturers squeeze contractors, contractors squeeze their workers – and the modern sweatshop is born. This system of independent contracting provides tremendous flexibility for retailers and manufacturers. It also results in unstable work, impoverishment and harsh conditions for workers.*<sup>7</sup>

Retailers and manufacturers together start a "race to the bottom" between contractors, who compete with each other to produce more garments for less money. Unlike manufacturers and especially retailers – who spend millions in creating brand names, company image and clientele – it is very easy for a contractor/sub-contractor to close up shop (when faced with claims for back-wages and other labor law violations) and re-open under a different name, but with the same or similar list of clients.<sup>8</sup> Sub-contracting, therefore, also weakens attempts by workers to organize, with or without a union.

Richard P. Appelbaum and Leonard I. Beerman argue that, "This pyramid structure is no accident: It was created by retailers and manufacturers to reap the benefits of cheap labor, without having to assume legal or moral responsibility for sweatshop conditions that can result."<sup>9</sup> There are over 22,000 contractors and sub-contractors in the U.S. alone and an even greater number overseas, while there are less than 1,000 major manufacturers in the U.S. and only a handful of major retailers like Federated, Walmart, K-Mart and Sears.<sup>10</sup> Manufacturers and retailers, who are not held accountable for working conditions and labor claims under current labor laws, have a great deal of

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<sup>5</sup> Merrill Lynch Bulletin. Donna Karan International, Inc. October 6, 1999

<sup>6</sup> Kwong, Peter. The New Chinatown. 1996

<sup>7</sup> Appelbaum, Richard P and Leonard I. Beerman. Sweatshops Continue, But Nobody Is To Blame. Los Angeles Times Opinion Desk. October 24, 1999

<sup>8</sup> Examples of contractors and sub-contractors include Hua Great Procetech, Choe Limited (330 West 38<sup>th</sup> Street), Wai Chang Fashions, RPP (86 Forsythe Street), Laura and Sarah Sportswear Inc., etc.

<sup>9</sup> Appelbaum, Richard P. and Leonard I. Beerman. Sweatshops Continue, But Nobody Is To Blame. Los Angeles Times Opinion Desk. October 24, 1999

<sup>10</sup> Fraser, John. U.S. Department of Labor. Testimony before the US House Education and the Workforce Committee. 1998

flexibility in choosing contractors. To maximize profits, they can impose production pace and prices that contractors must meet in order to get business. A combination of immense influence and wealth along with no legal accountability by definition creates a system in which retailers and large manufacturers extract the most labor from workers at the minimum cost.

The embodiment of this system is the current day sweatshop – workplaces characterized by extreme exploitation, poor working conditions, absence of a living wage or benefits, extremely long hours, intense pace of work imposed through constant supervision and the piece rate system, violation of labor laws, and arbitrary discipline. The sub-contracting system has exacerbated and spread sweatshops conditions in the U.S., especially in industries such as apparel manufacturing in New York City (NYC) and Los Angeles.

# III. “Taking Advantage” of Immigrant Women: The NYC Apparel Industry

## A. NYC: The Fashion Capital of the U.S.

### Location of Garment Factories

Most (registered) garment factories are located in Chinatown and the Garment District in Manhattan; Sunset Park, Williamsburg and Bushwick in Brooklyn; and Ridgewood, Long Island City, and Flushing in Queens. All of these areas have major Asian and Latina/o populations, many of whom are first-generation immigrants. Factories are almost non-existent in the Bronx, Staten Island and northern Manhattan.

Source: NYS Department of Labor Standards, Albany, NY.

The billion apparel industry is NYC's largest, and considered "the backbone of New York City's industrial base."<sup>11</sup> NYC currently produces an estimated 18% of all women's outerwear manufactured in the U.S. and over 25% of all dresses made. The sector employs 93,000 in manufacturing, 47,000 in wholesale and 85,000 in related businesses, with a citywide payroll of billion.<sup>12</sup> The industry is made up mostly of small, family-owned businesses. Eighty percent of apparel businesses in the Fashion District employ 20 or fewer people.<sup>13</sup> The size of establishments corresponds to retailers' and manufacturers' needs for flexible, fragmented labor. The Department of Labor conservatively estimates that over 60% of NYC's 7,000 to 7,500 garment factories are sweatshops. As many as 80% to 90% of garment shops in Chinatown can be considered sweatshops, even though close to 90% of them are unionized.<sup>14</sup>

The garment industry has some features that have persisted, historically, around the world. One common attribute of garment factories worldwide, including the U.S. (but with the exception of some countries like Pakistan), is that women make up the overwhelming majority – anywhere from 60% to 90% – of the production workforce. Additionally, despite increased mechanization in other industries, apparel manufacturing remains a highly labor-intensive production process, even in industrialized countries.

Due to the labor-intensive feature of this industry, women have continued to be the preferred labor force. Firstly, garment manufacture or "stitching" has been consistent with the stereotypes of women's work, as women were the original seamstresses in Europe, including England – where the modern garment industry originated. And, like all industries segregated by gender, garment workers have continued to receive wages below the average wage in manufacturing industries as a whole.

Describing the apparel sector, the Encyclopedia of American Industries (EAI) explains that NYC has evolved as the "center of the women's apparel business for a variety of

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<sup>11</sup> Fashion Center fact sheet. 1999

<sup>12</sup> Fashion Center fact sheet. 1999

<sup>13</sup> Fashion Center fact sheet. 1999

<sup>14</sup> Barnes, Edward. *Slaves of New York*. Time Magazine, November 2, 1998



reasons. For example, manufacturers were able to *take advantage of the inexpensive labor found in newly arrived immigrants* [emphasis added] ... most of those working in the industry during the first half of the 20<sup>th</sup> century were young Jewish and Italian women. New York City also formed an ideal location for the industry due to its position as a port city and its proximity to the textile mills in New England and the South."<sup>15</sup>

## Women and Work

Traditionally, women have been segregated into jobs that correspond to gender stereotypes. For instance, women continue to be concentrated in service, clerical, domestic work and garment manufacture. Not only are women segregated into “women’s jobs,” such work is also devalued and considered un-/low-skilled because women are expected to have the ability to perform these tasks “naturally” (due to biological endowments) and not have acquired them through effort and experience. That is why women’s work at home is still not recognized as work, but considered natural or biological. As such, industries where women are concentrated have the lowest average wages. Domestic work, performed almost exclusively by women, for example, is considered the lowest “status” and is the lowest paid work in the U.S.

By the 1960s, the older base of Italian and Jewish women garment workers had mostly retired, and rising levels of public aid made working in sweatshops unattractive while a great deal of manufacturing moved first to the South and then offshore. These workers were replaced shortly by black and Puerto Rican women, before Chinese and other Latina immigrants arrived in large numbers due to the 1965 Immigration Reform Act, which removed quotas and increased immigration from Asia and Latin America.

Though the racial/ethnic identities of NYC’s current workforce have changed, they still continue to be immigrant women – mostly Chinese and Latina. Factory locations (see box on page 5) correspond to the profile of the workforce – most factories, with the exception of those located in midtown Manhattan’s fashion district, are concentrated in neighborhoods that newly arrived immigrants make their homes. Since the 1960s, manufacturers and other garment-business related firms have provided financial aid to Chinese contractors to help them start up factories, indicating that those with influence in the industry have deliberately targeted immigrants in NYC for garment production in factories. Consequently, the number of Chinese-owned garment factories in Chinatown increased from 8 in 1960 to 500 in 1984. Between 1969 and 1982 the number of Chinese women working as garment workers in Chinatown increased from 8,000 to 20,000.<sup>16</sup>

## **B. The Immigration Reform and Control Act (IRCA)**

With the passage of IRCA by Congress in 1986, working conditions in NYC garment factories have steadily declined and the employment of immigrant, especially undocumented immigrant workers, has gone up. Under the employers' sanctions provision of IRCA, the employer is theoretically responsible for the monitoring and hiring of undocumented workers and can be sanctioned for up to ,000 if caught

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<sup>15</sup> Encyclopedia of American Industries. Vol.1. 1997

<sup>16</sup> Kwong, Peter. The New Chinatown. Hill & Wang Pub., 1996

employing undocumented workers. The employers' sanctions provision operates on the principle that employers, rather than the government, have the responsibility to determine the "eligibility" of applicants, thereby giving employers another tool to impose low wages and poor conditions on workers. In practice, therefore, IRCA has enabled employers to hire undocumented workers as a "favor" in return for their compliance, made easier by minimal oversight from government agencies, unions and the media. Contractors tell workers, whether documented or undocumented immigrants, that they should be grateful for the job and not complain about conditions, as there are many people looking for work. When possible, contractors try to hire undocumented workers because employers find they can pay undocumented immigrants less and not fear complaints.<sup>17</sup>

In contrast to the stated objective of the act, IRCA has *increased* employment of and the resulting flow of undocumented workers to NYC. The employer sanctions law has "helped employers to create a larger army of surplus labor and forced the immigrants to work for whatever rates they can find"<sup>18</sup> while pushing down wages and lowering conditions for all workers.

The effects of IRCA were exacerbated on June 2, 1992 with a "Memorandum of Understanding" between the U.S. Labor Department and the Immigration and Naturalization Service (INS), according to which the two agencies agreed to share and exchange information in their investigations, thereby facilitating deportation of undocumented workers. Thus, even if the Labor Department or the National Labor Relations Board (NLRB) finds an employer guilty of withholding back wages, an undocumented immigrant cannot collect on the judgement without risk of deportation. "The failure of federal agencies to protect undocumented workers' rights on the job means that illegals will not complain of violations and that they will be left at the mercy of the employers... The government is enforcing employer sanctions in ways that undermine U.S. labor standards."<sup>19</sup>

### **C. Terms and Conditions in the Apparel Industry**

*"Sweatshops are most prevalent in New York because employers there know they can break the law with impunity."*<sup>20</sup>

-- Peter Kwong

Despite a relatively high rate of unionization,<sup>21</sup> the U.S. Department of Labor estimates that 4,500 of NYC's 7,000 garment factories are sweatshops<sup>22</sup> and that 80% to 90% of the unionized garment shops in Chinatown may be considered sweatshops. As described above, the passage of IRCA has resulted in deteriorating conditions in the industry for all workers.

### **Wages**

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<sup>17</sup> Barnes, Edward. *Slaves of New York*. Time Magazine. November 2, 1998

<sup>18</sup> Kwong, Peter. Forbidden Workers. The New Press, 1997

<sup>19</sup> Ibid

<sup>20</sup> Kwong, Peter. Forbidden Workers. The New Press, 1997

<sup>21</sup> According to Robert Fitch, a labor historian at New York University, NYC has one of the highest union density rates in the country.

<sup>22</sup> Barnes, Edward. *Slaves of New York*. Time Magazine. November 2, 1998

## Snakeheads

Working conditions for many recent Chinese immigrants, brought in by human smugglers or "snakeheads" are made worse by the alliances between the smugglers, the Chinese Mafia (Tongs), the NYC Chinese press and the Chinese garment bosses. Workers have been harassed, beaten and even killed by snakeheads for protesting poor working conditions and/or not working hard enough to repay their "debt." Immigrants from China's Fujian province sometimes owe as much as 35,000 to the snakeheads for being smuggled to the U.S. They are forced, therefore, to work at whatever jobs are given to them within their community. And, as explained above, IRCA forces both undocumented and documented workers to accept sweatshop conditions without protection for speaking out.

Source: Peter Kwong, *Forbidden Workers*.

Real wages have continued to decline in NYC garment factories in the 1990s, a trend that started in the 1970s and accelerated in the late 1980s with the passage of IRCA. Wages in Chinatown have fallen about 30% in the past 5 years. The federal minimum wage is .15 per hour and the official UNITE minimum wage is between .72 and .15 per hour. However, garment workers make between and per hour and older, slower workers make even less. Nearly all manufacturers pay by piece rate. In turn, many contractors, even in unionized shops, pay their workers by piece rate, which is reduced if the worker produces fast. The piece rate system is known to intensify the pace of work and impose longer hours on workers. Nonpayment of wages and overtime is extremely common in NYC garment factories, and contractors often shut down shop and re-open under another name to escape liability for labor claims.<sup>23</sup>

## Hours

In the past two decades, working hours in NYC garment factories have steadily increased, especially in Chinatown and Brooklyn factories. This trend, again, coincides with the passage of IRCA. Many workers work 6 to 7 days a week, 10 to 12-hour days and 80-hour weeks are not unusual. In addition, home-work and child labor have become more common. During busy-order, rush periods, "owners even ask workers to put in 24 hours straight or face lay-off."<sup>24</sup> Officially, workers are entitled to overtime if they work over 40 hours a week (or 35 hours a week if they are unionized) and one day of rest if they work six full days a week. In practice, however, overtime is rarely paid, whether factories are unionized or not.

## Health and Safety

Long working hours under stressful and unhealthy working conditions combine to create numerous health problems for workers including blindness, bronchial asthma, dizzy spells, sore joints, swollen feet, headaches and repetitive stress. Workers who have been forced to work extremely long hours are also more prone to accidents in factories. In addition, many garment factories are physically unsafe fire hazards with barred windows and without proper heat and ventilation. Equipment is old and dates back to the 1960s or earlier, thus creating more hazards in the workplace.

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<sup>23</sup> Testimony by Peter Kwong before the U.S. House Education and the Workforce Committee; March 31, 1998

<sup>24</sup> Ibid

Despite the numerous occupational health problems that workers suffer, many insurance companies and the Workers Compensation Board reduce, delay or refuse benefits and the workers have no recourse to an independent review process for claims denied. Once ill, "workers are slowed down and cannot earn enough to be eligible for medical insurance."<sup>25</sup> Injured and ill workers, whose claims are denied, are forced to work without rest or medical attention until they are completely disabled.

One of the greatest occupational health problems that is not even recognized under labor law is injury and illness brought on by extremely long hours of work that are imposed on workers<sup>26</sup> through a combination of low-wages, constant supervision and the piece-rate system. Domestic labor laws do not recognize long working hours as an occupational health hazard despite the damage they do to workers' health.

### **Harassment, Abuse and Blacklisting**

In addition to the sweatshop conditions described above, workers are subject to intimidation and harassment by supervisors and bosses, who control the workers' pace and movements in order to extract the maximum amount of effort from them. Workers are also threatened with "blacklisting" if they speak out. Often bosses do not hire workers who are identified as "troublemakers" for speaking out against conditions in one factory – a practice that coerces workers to accept conditions without seeking recourse. This tactic is especially effective against non-English speaking workers, who are forced (due to language barriers and racism) to seek employment in and through their own ethnic communities in which they can be more easily identified and labeled.

The conditions described above are prevalent in NYC garment factories. Exact wage rates, hours and the method of payment (hourly or piece rate) differ from one factory to another, but due to the nature of the sub-contracting system, conditions in most factories are in violation of labor laws. The following section describes conditions faced by women workers in midtown Manhattan factories, which produced garments exclusively for Donna Karan International.

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<sup>25</sup> Ibid

<sup>26</sup> Chinese Staff and Workers' Association Health and Safety Committee

## IV. Conditions in the Choe factories

### A. The Retailer-Manufacturer: Donna Karan International, Inc.

Donna Karan International, with annual revenues of over 0 million, is among the top twenty women owned businesses in the world and among the top five in the U.S.<sup>27</sup> A leading international design house, Donna Karan's high-end garments are worn by celebrities such as Susan Sarandon, Barbara Streisand and Hillary Clinton.

#### The Donna Karan Brands

"Donna Karan International, Inc. is one of the world's leading international fashion design houses. The Company designs, contracts for the manufacture of, markets, retails and distributes collections of men's and women's clothing, sportswear, accessories and shoes under the DONNA KARAN NEW YORK and DKNY brand names. The Company also selectively has granted licenses for the manufacture and distribution of certain other products under the DONNA KARAN NEW YORK, DKNY, DKNY JEANS, and DKNY ACTIVE brand names, including beauty and beauty-related products, jeanswear, activewear, hosiery, intimate apparel, eyewear and children's apparel. The Company's mission is to build and maintain a balanced company through the right combination of wholesale, licensing, and retail operations."

Source: Donna Karan Annual Report 1998

Donna Karan, founder of Donna Karan International and current chief designer and chairman<sup>28</sup> of the board of the company, began her design career at Anne Klein in 1971. She started Donna Karan International in 1988 and ran the company as chairman of the board and CEO until 1997, when John Idol replaced her because the company was making losses despite high sales. With her husband, Stephen Weiss, Donna Karan owns almost half the stock of the company, thus giving her and her husband (who does not hold an active position) control over all decisions made by the company.

With annual women's apparel sales of over half a billion (U.S.\$), Donna Karan International is among the top five women's apparel sellers in the U.S.<sup>29</sup> This makes her one of the largest manufacturers of women's clothing in the U.S., which is the largest segment of the apparel industry. Donna Karan International's entire image is aimed at a chic, upscale, urban audience especially those located in NYC, the "Fashion Capital" of the U.S.

Though Donna Karan International is an "international design house," more than 60% (62% in 1998) of its annual revenues are earned through sales in the U.S. alone. However, like all major retailers and manufacturers, most of its production is carried out overseas. The company does not operate its own production facilities, but uses between 440 and 500 contractors in the U.S. and worldwide for the production of its garments.

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<sup>27</sup> Source: the National Foundation of Women Business Owners

<sup>28</sup> All of Donna Karan Inc.'s public documents, including proxy statements and annual reports, refer to Donna Karan as the *chairman* of the board.

<sup>29</sup> Apparel Industry Magazine. *Top 100 Sewn Products Companies* (annual). June 1996, pp. 26; cited in US Industry Profiles: USIP: Leading 100. 2<sup>nd</sup> Edition. Joseph C. Tardiff, Editor. Gale Research: Detroit, 645 Griswold St., Detroit, MI 48226; 1998

According to the company's 1999 annual report, "None of the contractors engaged by the Company accounted for more than 10% of the Company's total production during 1998." Although the Choe factories produced garments solely for Donna Karan, the garments produced by each factory were less than 10% of all garments produced for the company. In the classic retailer – contractor relationship, typified by the number of contractors Donna Karan utilizes, plus the share of production of each contractor, the company dominates all aspects of the relationship, including prices, and has considerable influence on the contractor.

**JOHN IDOL, CEO DKNY, COMPENSATION AGREEMENT** • Base salary: 900,000 for 1998 and 1999; 950,000 thereafter. • Performance bonus: up to 0,000. • Incentive Bonus: up to million. • Total compensation: up to 3,700,000. • In the event of termination without "cause" or if Idol leaves for "good reason" before June 2002, he is entitled to a total of up to 8,340,500 (2.99 times his base salary, plus twice his total bonus compensation for the past year).

Source: Donna Karan International Proxy Report, 1998

Donna Karan is like many retailers who have deliberately moved overseas to areas where labor law enforcement is lax and human rights abuses are common. Close to 60% of Donna Karan's production is contracted to Asian facilities and about 20% is contracted to European factories. Only about 20 to 22% of Donna Karan Inc.'s production is subcontracted to U.S. contractors.<sup>30</sup> Even within the U.S., the company's garments have been produced in sweatshops in NYC and the Northern Mariana Islands, a protectorate of the U.S., where sweatshop abuses are rampant and labor law enforcement nearly non-existent. Earlier this year, Donna Karan International was among several major apparel manufacturers to settle a class-action lawsuit brought against them by garment workers in Saipan.<sup>31</sup>

A few NYC garment workers have come forward this year to expose sweatshop conditions typical of the sub-contracting system, while stitching exclusively for Donna Karan International in mid-Manhattan factories.

## **B. The Choe factories**

Chung Suk Choe operated the Choe factories in Manhattan's fashion district at 330 West 38<sup>th</sup> Street, 6<sup>th</sup> Floor. The contractor stitched exclusively for Donna Karan International, Incorporated. The workers, about 70 Chinese and Latina women, sewed high-end evening gowns, jackets and coats for 9 to 11 hours a day, six-days per week, under extremely oppressive conditions. Despite the fact that the factories were unionized, with Local 89-22-1 of UNITE, the workers were never paid overtime. They were not allowed to use the phone or receive calls, even during emergencies, or go to the bathroom unless they had finished stitching their quota. They faced a constant barrage of verbal harassment from the supervisors to stitch faster and were forbidden from looking up. When one of the workers stood up to challenge the conditions after enduring them for seven years, she was fired.

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<sup>30</sup> Donna Karan International. Annual Reports, 1997 – 1998.

<sup>31</sup> Donna Karan International also settled in a class-action lawsuit along with other large retailers, who were involved in producing their labels under sweatshop conditions in Saipan. Source: *The New York Times*. October 7, 1999. Ironically, however, Donna Karan's latest annual report says that the company has "not had any employee complaints in the last several years."

Although with assistance from members of a NYC community-based organization, the Chinese Staff and Workers Association (CSWA), this worker managed to fight successfully against the contractor for overtime wages and was eventually reinstated, six weeks later she was fired again because the contractor claimed that there was no work available. However, the contractor changed the name of the factory and continued to stitch for Donna Karan. When the worker returned in February 1999 to collect her W-2 form she noticed that most of the old employees were still there and when she inquired "Why is it that other people have work, but I don't?" she was told to get out<sup>32</sup>. She retained a lawyer who filed a suit against the contractor. Subsequently, the contractor shut down all operations and is suspected to have left the U.S. The Local 89-22-1 chapter of UNITE has not supported the worker and other workers who lost their jobs in their efforts to organize and to hold the retailer-manufacturer and the contractor accountable.

### **C. Study Design<sup>33</sup>**

A total of eight workers, including the worker who was fired, reinstated and fired again, have come forward to expose the brutal conditions they were forced to endure in the Choe factories, stitching garments for Donna Karan. The Center for Economic and Social Rights in collaboration with CSWA designed a questionnaire to examine work conditions, health problems, and home lives of garment workers. The questionnaire, translated into Spanish and Cantonese, was used to interview five Latina workers and one Chinese worker who had worked until recently at the Choe factories. We were unable to interview a former supervisor and a worker who is in a shelter with her 11-month-old epileptic infant.

Of the six workers who were interviewed, three are currently working in different factories that are worse or as bad as the Choe factories. Of the three who are unemployed, two were pregnant at the time of the interview. The five who are not working are on unemployment, which was about to run out at the time of the interview.

### **D. Study Population**

Of the six women who were interviewed, five are of Latin American origin and one emigrated from Hong Kong. Most have been in the U.S. for more than ten years and are legal residents. Three of the six had worked for the Choe factories stitching Donna Karan clothing for more than 10 years; two others worked for over six years and one for 4 years. During these years they had held various jobs such as pressers, machine operators and seamstresses (i.e. stitching by hand). The workers' ages range from 31 to 48 years, and earnings ranged from to per hour for a 57 to 66 hour workweek.

### **E. Study Results: Conditions in the Choe factories**

The main results of the study are summarized on the following page. The Choe factories were unionized and five of the six workers were aware of that fact. They had all spoken with their union representative at some point during their tenure. They had

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<sup>32</sup> NMASS. *Punching the Clock*. Issue 2. Summer 1999 p. 8

<sup>33</sup> Although workers currently working in factories that stitch for Donna Karan International, Inc. have reported that their conditions are similar to those at the Choe factories, we have not interviewed them using the standardized questionnaire and therefore have not included their information.

difficulty communicating with the union representative and none of them had ever seen the union contract. While some felt that the communication problems with union representatives might have been due to a language barrier, others did not find the representative accessible or approachable. All six workers reported regular visits from a Donna Karan representative who came to the factories every day to check on the garments being produced for Donna Karan.

Workers reported that unpaid holidays were a major benefit of belonging to the union, *even though they were not paid for the days they did not work*. One worker reported health insurance as a benefit she received through the union, but she qualified her answer by adding that she had to pay 0 per month for it. The other union members did not pay for the union health plan and were either on Medicaid or did not have health insurance.

The workers received no benefits such as sick days, paid vacation, paid holidays or maternity leave from their unionized factories. They all reported that taking a sick day or maternity leave could jeopardize their job since the boss and supervisors would scream at them and threaten to fire them on the spot.

All six women reported working a minimum of 9 to 10 hours per day and an average of 11 hours per day for 0 to 0 per week. On Saturdays, they worked 7 to 8 hours. They were allowed one half-hour for lunch at 12:30 p.m. and another 10-minute break at 3 p.m. While the physical conditions, such as ventilation, lighting, emergency exits and temperature control, for the most part were considered adequate, constant monitoring via surveillance cameras, restrictions on bathroom use and telephone use, and the constant harassment by supervisors to work faster made the factories seem like a prison. Air conditioning or fans were available during the week, but not on Saturdays or holidays. The provision of heat was similar. Three workers felt that the lighting was adequate but the other three reported poor lighting. Since the floor space was large and accommodated various tasks, the condition of lighting changed from area to area. Although there were informational posters on the floor, they were in English and most of the workers were unable to read them. There was a separate room with a large table for lunch. All workers brought their own lunch and water since the water fountain did not work. There was a kitchen, but it was only accessible to the owner and the supervisors.

All six workers reported that the contractor deducted some amount from their paychecks. Two of the six reported a deduction of five percent. The paychecks ranged from 0 to 0 per week, and the Latina workers were paid less than the Chinese workers were paid for the same job. According to one of the workers, who had been at one of the Choe factories for 12 years, the contractor paid workers in cash for the first six years, then switched to a combination of cash and check, and had paid by check only for the last six months (after workers had been interviewed by the Department of Labor).

## SUMMARY FINDINGS

<b>Donna Karan, Inc. and the Union</b>	<b>Unhealthy Working Conditions</b>
<ul style="list-style-type: none"> <li>• All workers reported daily visits by a Donna Karan International representative.</li> <li>• Though the factories were unionized, not a single</li> </ul>	<ul style="list-style-type: none"> <li>• No heat or cooling was available on Saturdays and holidays, when workers were forced to work.</li> </ul>



<p>worker had seen her union contract and one of them did not even know that she was represented by UNITE.</p>	<ul style="list-style-type: none"> <li>• Workers experienced stress and anxiety when asking for <i>unpaid</i> time off.</li> <li>• Workers frequently suffered neck, back, shoulder and leg pains due to work.</li> <li>• Workers experienced stress and anxiety during work.</li> <li>• Workers suffered from job-related depression for several days during the month.</li> </ul>
<p>Abuse, Intimidation and Harassment</p>	<p>Wages, Hours, Benefits</p>
<ul style="list-style-type: none"> <li>• Supervisors constantly shouted at workers to work faster.</li> <li>• Bathrooms were locked and workers could not use them unless they had finished their quota.</li> <li>• Workers were forbidden from looking up while working.</li> <li>• Workers were monitored with surveillance cameras.</li> <li>• Workers were forbidden from using telephones, even in cases of family emergencies.</li> <li>• Workers were afraid of losing their jobs if they needed to take time off for sickness or maternity.</li> <li>• Workers with small children in the U.S. felt they did not have enough time to spend with their children and could not ask for time off for family emergencies, as they feared losing their jobs.</li> </ul>	<ul style="list-style-type: none"> <li>• Latina workers were paid less than Chinese workers and subjected to racial slurs.</li> <li>• All workers were forced to work overtime and worked an average of 11 hours per day, but none received overtime payment.</li> <li>• The boss deducted money from all the workers' paychecks.</li> <li>• Workers received no paid vacation, no paid holidays and no maternity leave.</li> <li>• Wages ranged between - per hour and average weekly paychecks were 0-0 per week.</li> <li>• Only one worker had health insurance through the union, for which she paid 0 per month.</li> </ul>

The workers were asked to identify and rank the problems they faced at the workplace. They all identified telephone and bathroom restrictions and supervisor harassment as the worst problems. Supervisors screamed at them constantly to work faster and forbade them from looking up. Bathrooms were locked and workers could not use them unless they had finished their quota of garments. Since these workers were paid by the hour, the contractor intensified the pace of work through abusive supervision, restrictions and surveillance. Workers were not allowed to make or receive telephone calls even during emergencies without facing threats of being fired. One worker with a very sick child felt that this restriction was very isolating and in effect completely cut off the workers from their families. All these conditions were dehumanizing and made some workers feel like slaves.

Verbal harassment was a constant feature of work. There were 4 to 5 supervisors on the floor and they would yell at workers to stitch faster and to keep their heads down. The supervisors screamed at the workers if they received a phone call or needed to go to the

bathroom. All workers reported feeling stressed and anxious during work hours. They also reported experiencing immense anxiety if they were late for work or had to ask to for time off of work, even though they were not paid during that time.

In terms of health problems, all workers suffered from neck-ache, backache, shoulder-ache, and other work-related pains in the buttocks and legs, on a frequent basis. They all reported taking over-the-counter painkillers for their pain. They also reported that their general condition and monotonous daily toil resulted in several days of depression during the month.

Five of the six workers had young children and the sixth worker had sent her children back to her country of origin. These mothers felt that they did not have sufficient time to spend with their children or to engage in leisure activities. Most also expressed some difficulty in obtaining regular childcare and relied on daycare, baby-sitters, or a family member to look after young children. They felt that it was very difficult to ask for time off in case of emergencies such as family illnesses, since the likelihood of losing their job was very high. They would therefore rarely ask for time off and, whenever possible, schedule doctors' appointments on Sundays.

### F. The Sweatshop System at Work

Donna Karan International behaves like a classic manufacturer in the garment industry by using the sub-contracting system to exploit workers in order to produce high quality garments at low wages but refusing to accept responsibility for conditions. The company, Donna Karan International, denies responsibility for conditions even though it had a very close relationship with the contractor of the Choe factories and admits as much in public documents: "The company has had long-term relationships with many of its contractors" and "the production and sourcing staff in New York oversees all aspects of...apparel manufacturing, quality control, and production."<sup>34</sup> In fact, company representatives visited the Choe factories daily and could not have been unaware of all conditions in the factories. Thus, in this instance, Donna Karan International cannot plead ignorance of workers' rights abuses that took place at the Choe factories.

Donna Karan International's responsibility in perpetuating sweatshop conditions is further evident in the table below, which illustrates how much more Donna Karan – and now CEO John Idol – earn compared to the workers at the Choe factories. For instance, **a worker in the Choe factories (making on average 0 per week) would have had to work about 200 years to make what Donna Karan made in 1995 alone!** (See Table 1 below for details.)

**Table 1. Annual Compensation Comparisons by Year**

Name	1995	1996	1997	1998
Donna Karan, chief designer and chairman of the board*	,734,330	,746,154	0,384	0,000

<sup>34</sup> Donna Karan International, Inc. Annual Reports 1997 - 1998

Ratio to worker's annual salary**	195:1	125:1	35:1	36:1
Stephen Weiss (Ms. Karan's husband)	,583,333	,246,154		
Total received by Donna Karan and Stephen Weiss	,317,663	,992,308	0,384	0,000
Ratio to worker's annual salary	308:1	214:1		
John Idol, CEO***			,463,596	,650,000
Ratio to worker's annual salary			176:1	118:1

\*Does not include payments for licensing agreement for using the Donna Karan trademark, which Donna Karan owns.

\*\* Worker's average annual salary is calculated as 0/week for a 52-year week.

\*\*\*Includes dollar value of stock award for 1997; does not include stock options for Idol for 1997 and 1998.

The eight workers who are fighting for back-wages, including overtime wages over the past several years, are owed around 0,000 to 0,000 in contrast to the .3 million that Donna Karan and her husband received between 1995 and 1998 alone. Furthermore, even though the company was making losses in 1995 and 1996, Donna Karan and her husband made millions in both of those years.<sup>35</sup>

Although mere compensation comparisons do not reflect other aspects of the sub-contracting system, such as the harassment, abuse and dehumanizing conditions workers must tolerate, the huge disparity in what workers are paid versus what CEO's and chief designers are paid highlights why these conditions exist.

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<sup>35</sup> Donna Karan's salary decreased when John Idol replaced her in 1997 because the company had been suffering losses.

# V. Rights and Violations

Many of the conditions in the Choe factories violate numerous internationally recognized human rights, in addition to domestic labor laws. International human rights, based on universally shared notions of justice, are legally enforceable. An entire doctrine of human rights law, which falls under the rubric of the "right to work," has been created to protect and promote the rights of workers. The following section provides a brief background on the international human rights framework, describes the right to work and lists the violations of workers' rights that took place in the Choe factories.

## A. Human Rights

Human rights are rooted in notions of universal justice: All human beings are entitled to basic economic, social, political, cultural and civil freedoms that are necessary for a life of dignity. Rights are held universally by all human beings against all other persons and institutions.<sup>36</sup> The human rights framework defines both those who hold rights and those against whom rights are held. For example, since the 1600s the international legal framework has been based on the principle of individuals as holders of rights and states as the holder of duties. However, the narrow focus on states as duty holders ignores powerful non-state actors such as large wealthy corporations.

Fifty years ago most nations of the world participated in the drafting of international human rights norms. The International Bill of Human Rights, which includes the Universal Declaration of Human Rights (UDHR),<sup>37</sup> one of the most universally accepted documents by states and individuals, the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>38</sup> and the International Covenant on Civil and Political Rights (ICCPR) with its Optional Protocols,<sup>39</sup> began to represent the international community's efforts to elaborate, define and legally enshrine these rights. Subsequently, several declarations and treaties have been added indicating further international commitment to human rights. These rights, which are still being defined and elaborated upon, include the rights to an adequate standard of living, housing, work, education, health, collective bargaining, freedom from hunger, freedom of association, and elimination of all forms of slavery, servitude, and forced or compulsory labor. Although these rights are traditionally held against the state (that is, the state is held accountable if these rights are violated), given that powerful non-state actors around the world extend their control over the basic conditions of people's lives without responsibility, it is critical to hold third parties, such as corporations, accountable for human rights violations.

## Why Are Human Rights Important

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<sup>36</sup> See Donnelly, J. *Universal Human Rights in Theory and Practice*. Cornell University Press, 1993

<sup>37</sup> Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Session

<sup>38</sup> International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16, U.N. Doc. A/6316. 1966. (entered into force Jan. 3, 1976)

<sup>39</sup> International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21<sup>st</sup> Sess., Supp. No. 16, U.N. Doc. A/6316. 1966. (Entered into force Mar. 23, 1976).

Human rights serve to put the legal and moral force of international law behind the cause of social and economic justice. Economic Social and Cultural Rights (ESCR) promote greater awareness, accountability and activism at all levels of society. ESCR offer a new perspective and new legal mechanisms for addressing the common problems of poverty, homelessness, and exploitation of workers.

The real potential of the human rights framework lies in its ability to change the way people perceive themselves vis-a-vis the government and other actors. The rights discourse provides a mechanism for reanalyzing and renaming "problems" as "violations" and, as such, something that need not and should not be tolerated. Rights make it clear that violations are neither inevitable nor natural, but arise from deliberate decisions and policies.

Human rights law gives enormous moral and political legitimacy to campaigns for social justice and can help attract support from abroad, allowing those suffering a particular harm to bring their case before an international audience. Often, international pressure can be mustered to strengthen campaigns around particular domestic human rights issues.

Ultimately, human rights activism is not a legal pursuit. International treaties, declarations, legal precedents and the commentary of human rights bodies are important tools for human rights work, but they amount to little without public awareness and action. This is especially critical in the field of ESCR, many of which merely exist on paper and are routinely ignored by governments. The legal legitimacy provided by international human rights law must be combined with campaigns to build awareness and organize social pressure around these rights.

Source: Center for Economic and Social Rights, Manual on Economic and Social Rights Advocacy. (Forthcoming.2000)

## **B. The Right to Work**

The right to work guarantees individuals the opportunity to earn a living wage in a safe work environment and also provides for the freedom to organize and bargain collectively. Moreover, the right to work is more broadly defined and better protected in international law than in U.S. domestic law. However, unions such as UNITE have expanded the rights and protections of workers through union contracts and are theoretically responsible for the enforcement of these rights through organizing at the workplace. This section briefly describes international law, U.S. federal and New York State law, and UNITE provisions which covered workers in the Choe factories.

### **International Law**

There is an extensive international system set up by the United Nations and the International Labor Organization (ILO) to protect workers' rights in and out of the workplace. The norms and standards set by the International Bill of Rights (the Universal Declaration and the two accompanying covenants) that are directly related to work include the rights:

- to employment,

- to organize,
- to fair wages, particularly for women,
- to reasonable limitations on working hours,
- to rest and leisure,
- to holidays with pay,
- to special care and assistance before and after pregnancy,
- to protection against unemployment,
- to safe and healthy working conditions,
- to remuneration ensuring one's family an existence worthy of human dignity, and
- to join a trade union.

Table 2 summarizes the relevant articles relating to the right to work in various international documents.

The ILO labor standards are laid out in various conventions and recommendations. Of the 200 conventions, the ILO has labeled seven as fundamental human rights conventions. They include the rights to:

- organize and bargain collectively,
- equal pay for equal work,
- freedom from forced and compulsory labor,
- elimination of discrimination in the work place and
- abolition of child labor.<sup>40</sup>

However, it must be noted that these seven core ILO human rights standards are insufficient for improving working conditions, particularly those in the sub-contracting industry.

**Table 2. Summary of the Right to Work in the International Bill of Rights and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

**Universal Declaration of Human Rights (1948)**

*Article 23:* right to work, to free choice of employment, to just and favorable conditions, to protection against unemployment, to equal pay for equal work, just and favorable remuneration ensuring for the self and family an existence worthy of human dignity, and to form trade and to join trade unions for the protection of self interest.

*Article 24:* right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

*Article 25:* right to a standard of living adequate for the health and well being of family, including food, clothing, housing, and medical services, and the right to security in

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<sup>40</sup> These rights are based on the following ILO conventions: Freedom of Association and Protection of the Right to Organize, 1948 (Convention No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Forced Labor Convention, 1930 (No. 29); Abolition of Forced Labor Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention (No. 111); Equal Remuneration Convention 1951 (No. 100); Minimum Age Convention, 1973 (No. 138). All the conventions are available at the ILO website [www.ILO.org](http://www.ILO.org).

unemployment, sickness and disability. Motherhood and childhood are entitled to special care and assistance.

## **International Covenant on Economic, Social, and Cultural Rights**

*Article 6:* right to work, which includes the right of everyone to the opportunity to gain a living by work which is freely chosen and shall include technical and vocational guidance and training programs.

*Article 7:* right of everyone to the enjoyment of just and favorable conditions of work, which ensures, in particular, fair wages and equal remuneration for work of equal value, in particular, women being granted conditions of work not inferior to those enjoyed by men, a decent living for the self and family, safe and healthy working conditions, rest leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

*Article 8:* right to form trade unions and to strike.

*Article 10:* special protections should be accorded to mothers during a reasonable period before and after childbirth; working mothers should be paid leave with adequate social security benefits; children and young persons should be protected from economic and social exploitation.

## **International Covenant on Civil and Political Rights**

*Article 8:* no one shall be required to perform forced or compulsory labor.

*Article 22:* right to freedom of association with others, including to the right to form and join trade unions for the protection of self interests.

## **Convention on the Elimination of Discrimination Against Women**

*Article 11:* appropriate measures to be taken to eliminate discrimination against women in the field of employment; the right shall include equal remuneration, including benefits; the right to paid leave, to protection of health and to safety in working conditions; to maternity leave and to necessary supporting social services to enable parents to combine family obligations with working responsibilities and participation in public life.

## **Domestic Law**

In the U.S., federal and state laws govern labor conditions and these laws are enforced by the appropriate – federal or state – agencies like the Department of Labor (DOL). The federal minimum wage, which covers all workers working 40 hours in a week,<sup>41</sup> is .15 per hour. New York State (NYS) minimum wage law provides .25 per hour for a forty-hour workweek. Federal and state law require that any time over 40 hours per week is to be considered overtime and compensated at 1.5 times the hourly wage.<sup>42</sup> All

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<sup>41</sup> For domestic workers, the federal and state minimum wage comes into effect at 44 hours a week.

<sup>42</sup> Department of Labor. Employees Handbook. Downloaded from [www.dol.gov/asp/public/program/handbook/](http://www.dol.gov/asp/public/program/handbook/).

workers working 40 hours or more per week must receive one full day of rest in a week. There are no limits, however, on the number of hours workers can be required to work and no protection for workers who lose their jobs for refusing to work overtime or excessively long hours.<sup>43</sup> Benefits, including maternity leave,<sup>44</sup> are at the discretion of employers.

The federal DOL's Occupational Safety and Health Administration (OSHA) administers workplace safety. Job safety and health standards are the responsibility of the employer. For example, employers are responsible for the following: identification of all physical hazards, including safety signs and fire exits, regular inspection and maintenance of all machinery used on premises, clean sanitation facilities, and provision of potable water for drinking and washing. OSHA is authorized to conduct workplace inspections and can issue penalties of ,000 to ,000 for violations.

Given the recent burgeoning of sweatshops in NYC, the NYS DOL has set up an Apparel Industry Task Force "to help manufacturers and retailers identify and avoid sweatshops when seeking apparel contractors."<sup>45</sup> The Task Force has been responsible for disseminating information on sweatshops and pushing new legislation with the NYS DOL. According to the Task Force guidelines, workers should be paid the NYS minimum wage and an overtime pay at one and one-half times the hourly rate. There should be no deduction in the employee's wages, except for those authorized under state and federal law. Factories must comply with safety and federal occupational safety and health law and fire codes.

Since the mid 1990s, NYS has established two laws pertaining to sweatshops. In 1996, NYS enacted the "Hot Goods" law, which prohibits the sale or distribution of clothing produced in sweatshops.<sup>46</sup> In 1998, Governor Pataki signed the "Joint Liability" law that holds contractors and manufacturers jointly liable for any wages not paid to contractors' employees. According to Jay Mazur, the President of UNITE, this law recognizes the importance of joint responsibility: "We [UNITE] have long held that the manufactures who essentially control the garment industry should be held responsible for conditions in which their garments are made." This legislation is a weak tool, however, as in order for manufacturers to be held accountable under this law their intent to contract with a sweatshop must be proven. This law also makes it even more difficult to hold retailers accountable as retailers are specifically left out of this legislation. Workers, however, have already set precedents for manufacturer accountability.<sup>47</sup>

## **Rights and Protections of Unionized Garment Workers**

In addition, in the U.S. any reference to labor rights implies the freedom of association and collective bargaining, i.e. the ability of workers to form and join unions. In the case of the apparel industry, the Union of Needletrades Industrial and Textile Employees (UNITE) has a standard industry contract in which it represents all workers in unionized

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<sup>43</sup> The only limitation on hours is the requirement to allow 24 hours of rest for workers who work 6 continuous days in a week. There is no limit on the number of hours a worker can be forced to work in a day, however.

<sup>44</sup> Under the Family and Medical Leave Act, employers of 50 or more employees must provide up to 12 weeks of unpaid, job-protected leave to the employees for the birth and care of a child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or a family. 1993.

<sup>45</sup> Apparel Industry Task Force. Downloaded from [www.labor.state.ny.us/html/workprot/sweatshp.htm](http://www.labor.state.ny.us/html/workprot/sweatshp.htm).

<sup>46</sup> According to the Task Force, sweatshops are defined as illegitimate businesses that do not pay a fair wage, do not provide safe working conditions, do not pay taxes or contribute to the economy.

<sup>47</sup> See information produced by the National Mobilization Against Sweat Shops on the Campaign against StreetBeat.



garment shops.<sup>48</sup> The official union contract contains provisions that are very protective of workers' rights, namely:

Hours and Overtime: Regular week's work shall consist of thirty-five hours per week and overtime shall be *voluntary* [emphasis added] and shall be paid for at the rate of one and one-half time. All Saturday work shall be paid for at the rate of time and one-half.

Minimum Wage: Effective minimum wage, as of June 1996, was .15 with an increase of 3 percent thereafter.<sup>49</sup>

Health, Safety, and Sanitation: The employer is to provide drinking fountains, toilets and washrooms, and work areas that should be clean, well lit and adequately heated.

Moving Shop or Abandoning Work: The employer is prevented from moving its shop without giving just cause and at least a 30-day notice to the Union. In the event that the permanent contractor abandons or closes its operations through collusion or by other improper arrangement, "such contractor's workers shall be immediately be absorbed by the Employer."<sup>50</sup>

Despite this collective agreement, most employers with unionized shops violate workers' rights while producing under the union label. An unreleased study by the NYS DOL estimated that three-quarters of all union shops were sweatshops according to the union's own standards.<sup>51</sup>

## **C. Human Rights Violations in the Choe Factories**

In light of the provisions under international and domestic law and the UNITE contract, conditions in the Choe factories described in Section IV are clearly in violation of international and domestic law and the workers' union contract. The human rights violations in the factories are summarized in the following sections and accompanying tables.

Although manufacturers and retailers deny responsibility for worker conditions, under human rights law they – as third party actors with tremendous influence in the industry – are responsible for the blatant violations of workers' human rights. In this case, clothes for working women designed by a working woman, Donna Karan, are made by denying women workers their human dignity.

### **Violations Related to Wages and Benefits**

The women workers who stitched the high-end fashionable clothing for the "working woman" labored 10 to 11 hours, 6 days a week, for to per hour, earning a weekly wage of 0 to 0. The workers worked more than the 35 hours specified by the union contract and the 40 hours specified by U.S. labor law. However, they did not receive the one

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<sup>48</sup> Dressmakers' Joint Council and International Ladies' Garment Workers' Union with Affiliated Dress Manufacturers' Inc. and Apparel Manufacturers' Association, Inc. Collective Agreement 1994-1997

<sup>49</sup> CESR staff left several messages over a two week period for the UNITE representative to discuss provisions within the contract as well as general sweatshop conditions. To date our calls have not been returned.

<sup>50</sup> Supra Note 12. Article 34. Clause 10.

<sup>51</sup> Fitch, Bob. 1999. Reinventing the Sweatshop. Seminar Delivered at the National Mobilization Against Sweatshops. Summer 1999

and one-half times pay specified in their union contract and provided under domestic and international human rights. The workers' annual earnings were below the federal poverty wage ,000 for a family of four, despite the long hours and intense pace of work they endured. In addition, Chung Suk Choe deducted 5% from their weekly earnings in direct violation of U.S. Federal and state law and the NY State Apparel Task Force guidelines. In addition, in clear violation of the right to non-discrimination, Latina workers were paid less than the Chinese workers.

Although benefits, such as paid vacation and national holidays are at the discretion of the employer in the U.S., workers in the Choe factories did not receive paid vacation, paid sick days, maternity leave or any paid national holidays. Moreover, none of the workers received maternity leave or special care before and after pregnancy and could not even take unpaid time off for doctors' appointments. Even though the contractor employed over 50 persons and the Choe factories were subject to the Federal Family Medical Leave Act (i.e. each employee had the right to 3 months of unpaid maternity leave without losing work) workers were afraid to take more than two weeks of unpaid maternity leave because they feared losing their jobs. In addition, workers were generally fearful of asking for any unpaid time off since they felt that they might lose their work. These are all violations under international human rights law and US domestic law.

**Table 3. Violations Related to Wages**

<b>Right To:</b>	<b>Violations Under International Law</b>	<b>Violations Under Domestic Law</b>
Non-discrimination in the workplace	<sup>b</sup> Latina workers at the Choe factories were paid less than Chinese workers were paid for the same tasks.	<sup>b</sup> Latina workers at the Choe factories were paid less than Chinese workers were paid for similar work.
Wage allowing workers to live a life of human dignity	<sup>b</sup> Workers did not earn enough to lead a life of human dignity.	
Minimum Wage		<sup>b</sup> Some of the workers received per hour, which is below the federal and state minimum wage.
Overtime Wage	<sup>b</sup> Workers at the Choe factories did not receive overtime wages, as provided under domestic and international law, even though they worked an average of 11	<sup>b</sup> Workers at the Choe factories did not receive overtime wages, as provided under domestic and international law, even though they worked an average of 11

	hours per day and 60 hours per week.	hours per day and 60 hours per week.
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b indicates that a violation occurred under the legal framework listed at the top of the column

### Violations Related to Hours and Forced Labor

Although U.S. domestic labor law does not recognize long hours of work as a human rights violation, work without sufficient rest is considered a violation under international human rights law. Long hours at work impact on all aspects of a worker's life. Long hours of work over a prolonged period are clearly detrimental to one's physical and mental health. They also take a toll on one's personal life, including infringing on time spent with family. In the case of the Choe factories, women were spending 10-11 hours a day, 6 days a week at work. Most of their time was spent working since they only received a 30-minute break for lunch and another 10-minute afternoon break. The workers felt that they were unable to spend sufficient time at home or with their children. These are clear violations of international human rights law.

Furthermore, the atmosphere of fear and intimidation, whereby workers were afraid to ask for time off even for emergencies and felt compelled to work overtime though they did not receive overtime pay, amounted to conditions of forced labor that are also in violation of international human rights.

**Table 4. Violations Related to Hours**

Right To:	Violations Under International Law
Reasonable limitations on hours	<sup>b</sup> workers labored an average of 11 hours per day and had to work Saturdays. Those with young children in the U.S. felt they did not have enough time to spend with their families.
Rest and leisure	<sup>b</sup> workers labored an average of 11 hours per day and had to work on Saturdays and holidays. They received only two short breaks during the workday. Long hours during work and insufficient amount of rest is a violation of workers' right to rest and leisure.
Freedom from forced labor	<sup>b</sup> the oppressive working conditions, including long hours, constant verbal harassment, abusive supervision, restrictions on movements, phone, bathroom use and inability to take time off without the fear of losing work created conditions of forced labor in the Choe factories.

b indicates that a violation occurred under the legal framework listed at the top of the column

## **Intimidation and Restriction of Bodily Functions<sup>52</sup>**

Workers at the Choe factories were not allowed to go to the bathroom until they had finished stitching their quota. They were forbidden from making and receiving phone calls. The supervisors were constantly yelling and screaming at the workers to speed up work and to stitch faster. The workers were afraid to ask for time off to treat a sick child or other family member. They were afraid to leave after eight hours of work even though they did not receive overtime pay. This atmosphere of intimidation and restriction on contacts with the outside world, including family, and the imposition of strict rules that control the workers' bodily function are all human rights violations of the worst sort.

## **Occupational Health & Safety Violations**

Although the workers at the Choe factories regularly experienced neck-aches, backaches, and other work-related physical aches and pains, most workers could not rest or take a break during the workday. Also, those not covered by the union health insurance (all except one worker interviewed) were without health coverage. Most workers took over-the-counter painkillers for their aches and pains. In addition, the constant harassment in the workplace affected workers' mental health. Most of the women workers suffered from anxiety and even experienced bouts of depression. Yet these symptoms are not currently recognized as occupational health problems under domestic and international labor law. Moreover, the restrictions placed on bathroom use may also have had adverse health impacts.

**Table 5. Health and Safety Rights Violations**

<b>Right To:</b>	<b>Violations Under International Law</b>	<b>Violations Under Domestic Law</b>
Safe and healthy working conditions	<sup>b</sup> restrictions on bathroom use, long working hours and the stressful work environment resulted in health problems for all workers.	<sup>b</sup> physical hazards were not identified and potable water was not available.

<sup>b</sup> indicates that a violation occurred under the legal framework listed at the top of the column

### **Worker response to the meeting with the UNITE lawyer and 3 representatives from Donna Karan, Inc.**

" We thought he [union lawyer] was a DKNY lawyer, not the union lawyer because he kept saying that DKNY wasn't responsible for any of the conditions and the union couldn't do anything to help [us] get our jobs back. They said that DKNY is free to contract to any shop and ours was closed because one of our co-workers complained about working conditions. According to the union people [representatives] the boss decided to close the factory on her own, but then they [union representatives] said that DKNY didn't want to do business with her anymore because she [factory owner] was

<sup>52</sup> Although the law surrounding these issues is not well-developed, these provisions are just as important to ameliorating working conditions as the freedom of association and the freedom to bargain collectively.

violating the law. Where does that leave us then? If we demand our rights, then they [factory owner, DKNY, and union] will close the factory and we'll be without jobs."

Source: interview with two Choe factory workers (who wish to stay anonymous) October 7, 1999.

## Violations of the Right to Organize and Bargain Collectively

The right to organize and bargain collectively is a basic principle of international and domestic law. Although the Choe factories were unionized under UNITE Local 89-22-1, workers were unwilling to speak out against the oppressive and exploitative working conditions for several reasons. First, they did not want to be labeled troublemakers. Second, they were afraid of losing their jobs. And third, they did not receive any support from their union. The workers, mostly immigrant women, had limited contact with the union representative. Most of the workers had never seen the union contract. Moreover, since the contract was in English most of the immigrant workers would not have been able to read the contract without translation assistance.

It is notable that for 12 years Chung Suk Choe was allowed to operate her unionized factories under conditions that were in complete violation of the union contract. When one of the factory workers began to protest against the telephone restrictions and long hours of work, she did not receive union support and was ostracized at the workplace.<sup>53</sup> Under the Fair Labor Standards Act the worker filed an independent case against the contractor and Donna Karan International. They have settled out of court with the worker. Even though the worker was a dues-paying union member covered by the contract and entitled to overtime compensation, the worker did not receive any support from her union.

When Chung Suk Choe suddenly closed down one of the factories, seven workers joined together and filed a lawsuit for overtime back wages against the contractor<sup>54</sup> and Donna Karan, Inc. The lawsuit was filed without the support of UNITE. In fact, the workers who have come forward reported that during negotiations with members from Donna Karan, Inc., the union lawyers have not responded to their complaints and grievances.<sup>55</sup>

**Table 6: Violations of the Right to Organize**

Right To:	Violations Under International and Domestic Law
Organize and Bargain Collectively	b Even though workers were supposedly organized with UNITE, they were fired for speaking out against the conditions at the Choe factories.

<sup>53</sup> Isolating workers who speak out is common practice in many sweatshop industries, including garment manufacture. Employers tell other workers that it is best not to be seen with "troublemakers" if they want to keep their jobs.

<sup>54</sup> It is suspected that the factory owner, Chung Suk Choe, has left the U.S. and has opened factories in the Dominican Republic.

<sup>55</sup> While this case is not subject to the "Joint Liability" law in which the manufacturer and contractor are jointly responsible for payment of back-wage, it is important to note that UNITE's President Jay Mazur expressed that manufacturers should be held responsible.

**b** indicates that a violation occurred under the legal framework listed at the top of the column

The failure of the union to support workers in their efforts to organize and to bargain collectively is in direct violation of the UNITE contract, as well as international human rights law and domestic labor law.

# VI. Accountability and Recommendations

## A. Human Rights Responsibility

This section discusses issues of accountability for state and non-state actors. It identifies areas of human rights responsibility and failure to act upon that responsibility by the following actors:

### **Manufacture/Retailer responsibility: Donna Karan International, Inc.**

Large retailers and manufacturers use the sub-contracting system to exploit workers in order to extract the greatest amount of profit, while escaping responsibility for working conditions by pleading ignorance. Their position in the apparel pyramid and control over pricing makes them the most influential actors in determining conditions in garment factories where their goods are produced. The high-end apparel manufacturer-retailer Donna Karan, Inc., monitored and controlled product quality, developed a long-term relationship with the contractor of the Choe factories and dominated all aspects of production. In this particular case, therefore, Donna Karan, Inc. was not only made aware of conditions but must have known of them since the factories were stitching the Donna Karan label for at least 12 years. A Donna Karan representative visited the factories every day to check the quality of the stitching. Donna Karan, Inc. with East Point International, Inc. settled an overtime claim in 1998 with one of the workers who spoke out.<sup>56</sup> Yet the company continued to engage in business with the contractor of the Choe factories. The company was, therefore, responsible for all the human rights violations that took place at the Choe factories.

### **Contractor/Sub-Contractor responsibility**

Besides abiding by the minimum wage and overtime laws, it is up to the discretion of the employer to provide any other benefits and ensure certain job and safety standards.<sup>57</sup> The contractor/sub-contractor is directly responsible for workers' conditions and therefore most directly responsible for all the violations of international and domestic laws covering the workers.

Despite the complaints and the lawsuit against the Choe factories, the contractor did not change her practices. In fact, Chung Suk Choe closed down her factories and left without paying the workers any back wages or overtime.

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<sup>56</sup> Donna Karan International also settled on the Saipan class-action lawsuit. Saipan is an island in the Pacific annexed as a U.S. territory. American clothing companies were involved in producing their labels under sweatshop conditions. The New York Times, October 7, 1999).

<sup>57</sup> Under current U.S. labor laws, however, the contractor is legally permitted to operate a sweatshop since many of the established human rights abuses and violations other than minimum wage, overtime and some health and safety issues are not even recognized under domestic law.

## Government Responsibility: Departments of Labor

The Departments of Labor (DOL) – both Federal and State – have failed to monitor the garment industry adequately and to punish employers who break the law. While the state did pass a "Hot Goods" law in 1996, it has been slow in enforcing it and the law allows manufacturers to escape responsibility while focusing the blame solely on contractors. The NYS-DOL claims that it is understaffed and under-funded and that it is up to the workers to come forward. Yet, the language barrier between workers and DOL officials, the bureaucratic nature of the organization, workers' lack of time (including the inability to go to the DOL between 9 am and 5 pm), and the fear and intimidation that many workers experience, make it difficult for workers to bring forth their complaints. The memorandum of understanding between the Federal DOL and the Immigration and Naturalization Services (see section III above) has only made it more difficult for workers to come forward. Chung Suk Choe had been operating sweatshops for about 13 years without any monitoring or enforcement of labor law by the federal or state DOL. Since manufacturers continue to work with contractors who violate labor laws, there is very little incentive for contractors/sub-contractors to abide by the law unless the agencies responsible for the enforcement of the law perform their responsibilities.

## Union responsibility: UNITE Local 89-22-1

Under federal law, unions can negotiate a contract with sub-contractors on behalf of workers. The historical role of a union has been to fight on behalf of its members to make sure that the rights and protections agreed upon in the contract are enforced. Unions are supposed to strengthen workers' ability to defend their rights in the workplace and they are supposed to be an independent enforcer of labor law. Yet UNITE Local 89-22-1 failed to protect the workers from the Choe factories and has not even supported their claims. While the union rhetoric states that workers need to organize, it has failed to back them up when they have tried to do so. It is responsible for organizing its existing members and addressing the many problems that they face as immigrant women workers. However, the long-standing and well-documented violations of the union contract at the Choe factories clearly demonstrate the union's failure to enforce the rights of its own members.

Table 7. Responsibility for Human Rights Violations in the Choe factories

<b>Violations of the Human Rights to:</b>	<b>Responsibility for Violations</b>
<ul style="list-style-type: none"> <li>• Organize and Bargain Collectively</li> <li>• Minimum Wage, Overtime and Living Wages</li> <li>• Reasonable Limitations on Work Hours, including Rest and Leisure, and Holiday</li> </ul>	<ul style="list-style-type: none"> <li>• Donna Karan, Inc., as the manufacturer-retailer, has the most control over conditions in the sub-contracting relationship and, therefore, bears the most responsibility for creating sweatshop conditions at the Choe factories.</li> <li>• Chung Suk Choe, as the sub-contractor is directly responsible for the conditions that workers endured.</li> </ul>



<ul style="list-style-type: none"> <li>with Pay</li> <li>• Special Care Before &amp; After Pregnancy, including maternity leave</li> <li>• Safe and Healthy Working Conditions</li> <li>• Freedom from Forced Labor</li> <li>• Freedom from Discrimination in the Workplace</li> </ul>	<ul style="list-style-type: none"> <li>• UNITE, the union that was supposed to represent its members in the Choe factories, is responsible for failing to enforce its own contract with the contractor, and therefore party to the violations in the factories.</li> <li>• The Department of Labor, as the enforcer of domestic labor law, is responsible for failing to monitor conditions in the Choe factories, some of them operating under sweatshop conditions for over 12 years.</li> </ul>
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**B. Recommendations**

1. Retailers must be held accountable.

Since retailers make the most profit and have the most control in the industry, they must be held accountable for workers' rights violations and abuses. In order to do so, the subcontracting system must be dismantled or, at least, retailers must be held liable for sweatshop conditions in factories with which they subcontract. Retailers must not be allowed to hide behind excuses of ignorance.

2. Local production must be encouraged.

Clothes must be produced locally for local sale under just and fair conditions. Workers in local factories can monitor and expose human rights abuses and work with concerned citizens to hold retailers, contractors, the union and government agencies responsible for violations. Furthermore, factories in the U.S. must be prevented from closing down and leaving local communities without work while exploiting workers elsewhere, especially in the less developed countries. Instead, garment workers in NYC should continue to work in the garment industry but not under sweatshop conditions.

3. The law must provide more rights and protections for workers.

U.S. state and federal labor laws provide very few protections for workers and thus create and sustain sweatshop conditions. Changes in current domestic law are required to improve working conditions. Some concrete recommendations are as follows:

- There should be a federal law that holds retailers accountable for sweatshop conditions in factories where their garments are produced.
- The federal statute of limitations on claims for back wages (currently 3 years) should be increased to at least 10 years so that workers continue to have legal recourse for a significant amount of time against contractors who do not pay.
- There should be a legal cap on the number of hours a worker can be asked to work daily so that workers are not forced to work long hours.

- There should be protections for workers who refuse to work long hours/overtime as currently workers can be fired, without recourse, if they refuse overtime and excessively long hours.
- Employers must face higher penalties for not paying wages and overtime.
- Occupational health and safety standards must be expanded to include health conditions not currently recognized under the law, including health problems caused by long hours of work.
- Most importantly, workplace harassment and abuse, including restrictions and verbal abuse, must be recognized and punished.

4. Existing laws must be enforced faster and more aggressively.

Timely review of violations and aggressive enforcement of existing laws by government agencies would encourage workers to come forward and make contractors and manufacturers less willing to exploit workers due to fears of liability.

5. Apply existing international human rights standards to sweatshops.

Workers' rights are an integral part of human rights standards, and violations of labor standards are violations of human rights. Workers must be treated with dignity and their rights must be respected. Some groups and individuals are suggesting codes of conduct as a response to garment sweatshops. However, these codes are problematic since the sheer number of codes undermines the existing human rights standards as corporations can selectively choose to enforce some codes with some standards/rights over others. Under international law, however, *all* human rights must be enforced. More importantly, the implementation of these codes is generally voluntary, making it highly unlikely that manufacturers/retailers would comply with these codes of conduct, when they choose not to comply with internationally accepted human rights and domestic labor laws. These codes also undermine workers' efforts to organize by distracting attention away from workers' struggles and towards voluntary implementation and minor reforms undertaken by manufacturers/retailers.