

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

To Norges Bank

7 May 2018

**Recommendation to place Nien Hsing Textile Co Ltd under observation by
the Government Pension Fund Global (GPF)**

Summary

The Government Pension Fund Global (GPF) recommends that Nien Hsing Textile Co Ltd (Nien Hsing) be placed under observation due to working conditions at its textiles factories.

Nien Hsing produces yarn, fabrics and apparel (jeans and leisurewear). The company has nine production facilities in Taiwan, Vietnam, Lesotho and Mexico, and employs a total of 25,000 people. The company produces largely for US brands.

The Council on Ethics has considered whether there is an unacceptable risk that Nien Hsing contributes to or is itself responsible for systematic violations of internationally recognised human rights and labour rights.

To qualify as systematic, the human rights violations must be substantial in scope, ie that they are large in number, that different types of rights are infringed or that abuses take place in several of the company's operating units. The Council takes the position that "systematic" implies that violations do not appear as isolated incidents; but that they constitute a pattern of behaviour. Furthermore, in its capacity as employer, each company has an individual and direct responsibility for its workforce and for preventing their employees' labour rights from being infringed at its own operations. The Council takes the position that, with respect to norm violations perpetrated within a company's own operations, the threshold for what can be accepted must be lower than when a company contributes to norm violations perpetrated by a third party.

In its assessment of the risk of further human rights violations, the Council attaches importance to how a company has responded when norm violations have been uncovered, and what it has done to prevent their reoccurrence.

This recommendation is based on the Council on Ethics' own investigations into working conditions at Nien Hsing's factories in Lesotho and Vietnam in the period 2017–2018. The Council considers that, in particular, the norm violations at the factories in Lesotho appear to be serious. The Council's investigations indicate that female employees at all three factories are subjected to widespread sexual harassment by managers and supervisors. The Council considers this to be a serious violation of ethical norms.

The Council also notes that the women fear dismissal should they become pregnant and report verbal and physical abuse when they make mistakes in their work or fail to meet their production quotas. The Council's investigations also indicate poor air quality, temperatures that are unpleasantly hot or cold, high noise levels in places, hazardous use of chemicals and inadequate protective equipment. It also appears to the Council as though the company restricts freedom of association in a number of ways.

Furthermore, violation of labour rights has been reported at Nien Hsing's factory in Vietnam, though on a smaller scale. Issues here relate to working conditions, such as high temperatures inside the factory, dust, hazardous use of chemicals and inadequate personal protective equipment, as well as involuntary overtime, unlawful restrictions on sickness absence and company interference in trade union activity.

Nien Hsing confirms some of the norm violations, but denies allegations relating to others. The company has initiated efforts to prevent verbal abuse of employees in Lesotho, and has dismissed workers involved in sexual harassment. In the Council's opinion, this demonstrates that the problems exist and that the company has to some degree taken steps to address them. Nien Hsing has also launched its own inquiries into working conditions and reports that it will take further steps to prevent harassment, including the dismissal of those involved in such

acts. Nien Hsing recognises that it must improve its information, training and communication with employees and managers in many areas.

The Council notes that the company's board and management have taken steps to put management systems in place that can reduce the risk of human rights violations. The company has told the Council that it is implementing measures and changes to its management system, which the company believes will, over time, improve working conditions at its factories. It has also disclosed that the factories are now measured on their compliance with the company's standards. Nevertheless, the Council notes that the company's description of its new systems and policies does not address compliance with national legislation and requirements or important labour rights, such as freedom of association or the protection of whistleblowers.

An important point for the Council is that several of the factory managers in Lesotho have held these positions for many years. The reported sexual harassment is of such a scale that managers must have, or should have, been aware of it. Harassment and other occupational health and safety issues at the factories in Lesotho were reported as far back as 2001. In the Council's opinion, the seriousness of the harassment, as well as the scale of other norm violations, prompt expectations that Nien Hsing will make significant changes in the factories' managements and rapidly implement effective measures to reduce the risk of harassment and other human rights violations.

The GPF's ethical guidelines permit the Council on Ethics to recommend that a company be placed under observation if there is some doubt about whether the conditions for exclusion have been met or about its development going forward. In this case, the Council considers that there is no doubt that the conditions for exclusion have been met. The Council deems that the company's practices in several areas violate both internationally recognised labour rights and national legislation. These practices comprise both serious norm violations which, by themselves, could constitute grounds for the company's exclusion, and systematic norm violations. The Council's decision not to recommend that the company be excluded from investment by the GPF at this time rests on the fact that Nien Hsing is currently implementing changes and measures which could improve working conditions, even though their implementation so far has been weak. In the Council's view, the fact that the company is now providing the Council with information and, furthermore, acknowledges that it must take steps to address the most serious issues, could reduce the risk of future norm violations. The Council will monitor developments at the company and if the most serious norm violations are not materially curtailed within a short space of time, the Council will consider recommending Nien Hsing's exclusion.

Contents

- 1 Introduction 1**
 - 1.1 Matters considered by the Council 1
 - 1.2 Sources 3
- 2 Investigations at Nien Hsing’s factories in Lesotho 3**
 - 2.1 Working hours 3
 - 2.2 Occupational health and safety 4
 - 2.2.1 Harassment 4
 - 2.2.2 Air quality 5
 - 2.2.3 Other occupational health and safety issues 6
 - 2.3 Discrimination 7
 - 2.4 Freedom of association 7
 - 2.4.1 The right to free collective bargaining 7
 - 2.4.2 The right to represent members in connection with workplace disputes 8
 - 2.4.3 Discrimination of trade union members 8
 - 2.5 Previous norm violations at Nien Hsings’ factories in Lesotho 9
- 3 Investigations into Nien Hsing Ninh Binh Co Ltd, Vietnam 9**
- 4 Information provided by the company 10**
 - 4.1 The Council on Ethics’ contacts with the company 10
 - 4.2 Steps taken by the company to improve working conditions 11
 - 4.3 Steps taken by Nien Hsing to reduce the risk of norm violations 12
- 5 The Council on Ethics’ assessment 13**
- 6 Recommendation 15**

1 Introduction

Following a number of serious accidents and reports of poor working conditions in the textiles industry in certain countries, the Council on Ethics has commissioned a series of investigations into working conditions at textiles factories in countries in which the violation of labour rights is presumed to be particularly common. Nien Hsing¹ is one of the companies to have been examined.

Nien Hsing produces yarn, fabrics and apparel (jeans and leisurewear). The company has nine production facilities in Taiwan, Vietnam, Lesotho and Mexico, and employs some 25,000 people in total.² The company produces largely for US brands.

Nien Hsing is listed on the stock exchange in Taiwan. At the close of 2017, the GPFG owned 1.8 per cent of the company's shares, with a market value of NOK 27 million.

1.1 Matters considered by the Council

The Council on Ethics has considered whether there is an unacceptable risk that Nien Hsing may “contribute to or be responsible for serious or systematic human rights violations” as set out in the Guidelines for Observation and Exclusion from the Government Pension Fund Global (ethical guidelines).³ The Council's assessment builds largely on the result of investigations into working conditions at Nien Hsing's factories in Lesotho.

The Council bases its assessment of what constitutes serious or systematic violations on internationally recognised conventions and authoritative interpretations thereof. Of particular relevance in this case are the labour rights encompassed by articles 23 and 24 of the UN's Universal Declaration of Human Rights, and set out in article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), whose provisions include the right to a fair wage, safe and healthy working conditions, the reasonable limitation of working hours, periodic holidays with pay and equal opportunities. The Committee on Economic, Social and Cultural Rights (CESCR) has elaborated on how article 7 should be interpreted, and has made it clear that health, safety and the environment are fundamental elements in the right to safe and healthy working conditions.⁴ Article 8 of the ICESCR encompasses the right to form trades unions and join the trades union of one's choice, and the right to strike. In addition, the ILO's core conventions lay down minimum standards for several areas of working life, including freedom of association⁵ and equal pay.⁶ Conventions covering occupational health and safety are also relevant.⁷

¹ Issuer Id 129587.

² The company's website, <http://www.nhjeans.com/en/about.html>

³ Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPFG), <https://lovdata.no/dokument/INS/forskrift/2014-12-18-1793?q=retningslinjer+++pensjonsfond+++utland>.

⁴ The UN Committee on Economic, Social and Cultural Rights (CESCR) is an independent committee of experts, which monitors states' implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx>. In April 2016, the committee published “General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)”, in which it elaborated in more detail how article 7 should be interpreted, see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/087/51/PDF/G1608751.pdf?OpenElement>

⁵ ILO Conventions 87 and 98.

⁶ ILO Conventions 100 and 111.

⁷ Inter alia, ILO Convention 155 on Occupational Safety and Health.

Although international human rights conventions bind states not companies, companies can be said to contribute to human rights violations. The Council on Ethics takes no position on the extent to which the state is responsible for any human rights violations that may occur. It is sufficient to establish that the company in question acts in a way that contributes to serious or systematic violation of internationally recognised human rights.⁸ This applies irrespective of whether the state in which the violations take place has signed the conventions against which the actions are assessed.

This case relates to violations of human and labour rights in the company's own operations, where Nien Hsing is the employer and therefore has a direct responsibility for its workforce and for ensuring that their labour rights are not infringed. The Council has considered whether conditions at Nien Hsing's own factories must be deemed to constitute *systematic* human rights violations pursuant to the GPFG's guidelines. The Council has previously taken the position that a small number of human rights violations may be sufficient for a company to be excluded from the GPFG if the abuses are of a serious nature. On the other hand, individual violations do not need to be as serious if the abuse is systematic.⁹

To qualify as systematic, the human rights violations must be substantial in scope. This could mean that they are numerous in quantity, that different types of rights are infringed or that abuses take place in many entities within the company. The Council takes the position that "systematic" implies that violations do not appear as isolated incidents; but that they constitute a pattern of behaviour. In previous recommendations, the Council has attached importance to the existence of a "systematic and planned practice on the part of the company to operate at, or beyond, the boundaries of what are accepted standards for the working environment".¹⁰

With regard to assessing the risk of new human rights violations occurring in a company's own operations, the Council holds the view that previous norm violations could provide an indication of future patterns of behaviour. The Council attaches importance to how a company has responded when norm violations have been uncovered, and what it has done to prevent their reoccurrence. The UN Guiding Principles on Business and Human Rights articulates an expectation that companies will respect human rights, prevent the risk of their abuse and take action to remedy any human rights violations that do occur.¹¹ The company has a duty to comply with national legislation and norms even when these are not enforced by the authorities. It is expected that a company assess the actual and potential negative impacts that its operations have on those affected by them, and demonstrate that it has strategies and procedures in place that help to prevent human rights violations. Companies must also consider whether the measures implemented are effective, and make whatever changes are necessary to prevent violations happening again. The company must also publish details of what it is doing to prevent human rights violations in its own operations. The Council on Ethics takes the position that it is up to the company concerned to substantiate that it is working adequately to prevent human rights violations.

⁸ This is discussed in more detail in the Council on Ethics' recommendation to exclude Wal-Mart Stores Inc, section 3.2, 15 November 2005, and the recommendation to exclude Monsanto Co, section 5.1, 20 November 2006.

⁹ Council on Ethics recommendation to exclude Total SA, section 3.1

¹⁰ Council on Ethics recommendation to exclude Wal-Mart Stores Inc, p. 21.

¹¹ UN Guiding Principles on Business and Human Rights:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

1.2 Sources

This recommendation is based largely on investigations into the company's factories in Lesotho and Vietnam in the period 2017–2018.

The investigations were carried out with the help of consultants and are based on offsite interviews with Nien Hsing factory workers, at locations where they would be safe and able to speak freely. Documents which the employees and trade union representatives have shared, including employment contracts, payslips and agreements that the company has entered into with local trade unions, have also been examined.

After receiving a draft recommendation, Nien Hsing has provided information relating, among other things, to policies, procedures and measures to prevent violation of labour rights. A teleconference with the company has also been held.

2 Investigations into Nien Hsing's factories in Lesotho

The Council on Ethics has investigated Nien Hsing's three jeanswear factories in Lesotho: C&Y Garments (C&Y), Nien Hsing International, and Global Garments. The factories are located in the Thetsane Industrial Area in Maseru, the capital of Lesotho, and employ a combined total of 10,000 people. This corresponds to 27 per cent of all the employees working in Lesotho's garment industry. Production includes cutting, stitching and some finishing. Finishing involves the jeans being washed and treated with chemicals, scrubbed and abraded with sandpaper, and ironed to achieve the desired look.

Nien Hsing also has a factory in Lesotho that produces denim, the Formosa Textile Company.¹² According to media reports, the company is planning to open a knitwear factory in Lesotho in 2018.¹³

2.1 Working hours

The right to rest, leisure time and a reasonable limit on working hours is set out in Article 7d of the International Covenant on Economic, Social and Cultural Rights. This is further defined in a number of ILO conventions,¹⁴ including ILO Convention No. 1, which establishes the principle of an 8-hour working day and a maximum 48-hour working week.

Lesotho's labour law caps the working week at 45 hours.¹⁵ Work in excess of 9 hours a day for five days is counted as overtime. Overtime is limited to 11 hours a week. All overtime must be compensated at the rate of at least time-and-a-quarter.

Employees at Global Garments and Nien Hsing International said that they regularly work 12–13 hours of overtime per week. At all three factories, workers said that they had to start work half an hour before their ordinary start time or work through part of their lunchbreak in order to meet their production targets. This work was unpaid. One employee at C&Y described the

¹² The company's website, <http://www.nhjeans.com/en/about.html>

¹³ Kuo Chia-erh, "Nien Hsing makes moves toward knitwear in Africa," *Taipei Times* (10 November 2017), <http://www.taipetimes.com/News/biz/archives/2017/11/10/2003681955>.

¹⁴ A total of 22 ILO conventions have been adopted, 18 recommendations and a protocol on working hours. This includes ILO Convention No. 1 on working hours, Convention No. 14 on weekly rest days and Convention No. 132 on paid holidays.

¹⁵ Lesotho Labour Code Order, Order Number 24 of 1992, Article 118, <http://www.ilo.org/dyn/natlex/docs/WBTEXT/31536/64865/E92LSO01.htm#p15>

situation thus: “Sometimes I come to work at 6:30 a.m. and work during lunch to complete my score. I do not get paid for this time. I get paid for completing my score. We get this money the following day. It’s usually about 6 Maloti [USD 0.51]. Sometimes the manager will not give me this money if I made a mistake in the work. The score is very hard to complete and every day we are sweating to make it.” According to workers at C&Y, they are given a written warning or have their employment contracts terminated if they repeatedly fail to reach their production targets.

2.2 Occupational health and safety

The right to a safe and healthy working environment is laid down in international norms and defined by the Committee on Economic, Social and Cultural Rights (CESCR) thus: “Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work, and is closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health.”¹⁶ The committee also states that freedom from violence and harassment, including sexual harassment, is part and parcel of a safe and healthy working environment.

2.2.1 Harassment

Sexual harassment

Lesotho’s labour law prohibits sexual harassment: “Any person who offers employment or who threatens dismissal or who threatens the imposition of any other penalty against another person in the course of employment as a means of obtaining sexual favours or who harasses workers sexually shall commit an unfair labour practice.”¹⁷

Many employees at all three factories reported widespread sexual harassment of female workers, who are often coerced into having sex with supervisors and managers in order to keep their jobs or obtain promotion. At C&Y, it was reported that HR department staff were also involved in such behaviour.

New-hires normally undergo a three-month probationary period before they are offered permanent employment. One Global Garment employee recalled: “There was a woman in the marker department. The supervisor proposed that they engage in sexual activity and the worker refused. The supervisor dismissed this worker. [...] She was on a probationary contract and they did not renew her contract. The supervisor promised to make her contract permanent if she would have sex with him. [...] This happens a lot. Some women agree to it and I know that some others are dismissed.”

Employees at C&Y and Nien Hsing International reported similar incidents, saying that it was common for managers to ask for sexual favours and bribes from temporary staff in return for permanent employment. “All of the women in my department have slept with the supervisor. For the women, this is about survival and nothing else. [...] If you say no, you won’t get the job or your contract will not be renewed.”¹⁸ “The male supervisors in the washing room propose sex to female workers. If the workers refuse to date or have sex with them, it will cost the female workers their jobs. This happens often to these women.” And further, “The supervisors

¹⁶ CESCR General comment No. 23 (2016) On the right to just and favourable conditions of work, section 1.

¹⁷ Lesotho Labour Code Order, Order Number 24 of 1992, Article 200.

¹⁸ Interviews with employees at C&Y.

take advantage of the poverty situation in the factory. Many people are hungry and will offer sex in exchange for money for transportation and other benefits.”¹⁹

Physical abuse

Employees at all the factories reported many cases of physical abuse, including being struck or having a supervisor throw garments at them. This happens mostly when an employee makes a mistake in their work. It does not seem as though such conduct is met with sanctions by the company. “One time a Taiwanese manager used his fist to hit a worker. He assaulted this worker. The reason was that the worker had not checked the garments properly. After the manager checked the garment, he just hit him without even asking the worker what had happened. [...] No one was fired for this.”²⁰

Verbal abuse

Workers at all the factories reported widespread yelling and use of offensive language by supervisory staff, both in connection with production errors or when production targets are not met. Employees at C&Y also said they were monitored during visits to the toilet, and that supervisors or managers pursue them into the toilets and pressure them to return to work quickly. “The Taiwanese supervisors follow us into the restroom and shout at us that we are lazy. They call us out of the restroom by shouting, ‘I am not going to give you a bonus or overtime hours because you don’t want to work!’”²¹

2.2.2 Air quality

Lesotho’s labour law requires that employers ensure factory premises are adequately ventilated²² and take steps to prevent employees being exposed to harmful or irritating dust in the workplace.²³

In connection with denim finishing, the employees’ exposure to dust and chemicals is a particular problem. The methods used to give the jeans a worn look, including manual abrasion with sandpaper (hand-sanding), can generate high concentrations of airborne dust from the cotton fibres. Bleaching, which involves employees spraying the garments with bleaching agents, and washing exposes the employees to chemical substances. It is well known that long-term exposure to dust and chemicals can pose a health risk.²⁴ According to employees, all these methods, which individually constitutes a health risk unless remedial measures are taken, are used at Nien Hsing’s factories.

All the employees interviewed at the three factories reported high concentrations of airborne fabric dust. The dust covers the machines, floors and the workers themselves, and causes health problems. Employees at C&Y described the air quality as suffocating. They also said that they had complained to management, but that nothing had been done. The employees commented particularly on the dust from the black and blue denim fabric used at the factories. “The air quality is very poor in the factory because of the fabric dust that is visible in the air. I have

¹⁹ Interview with an employee at Nien Hsing International.

²⁰ Interview with an employee at Global Garments.

²¹ Interview with an employee at C&Y.

²² Lesotho Labour Code Order, Sixth Schedule Health, Safety and Welfare, Article 15(1).

²³ Lesotho Labour Code Order, Order Number 24 of 1992, Article 106.

²⁴ See, for example, Lai, P.S. and D. Christiani: Long term respiratory health effects in textile workers; in *Curr.Opin.Pulm.Med* 2013 (mar. 19(2) 152-157. Ahasan, M.R. Sk.A. Ahamad and Tp: Khan: Occupational Exposure and Respiratory Illness Symptoms Among Textile Industry Workers in a Developing Country; in *Applied Occupational and Environmental Hygiene* 2000 Vol 15(3) 313-320, Wang, X-R, et. al.: Respiratory symptoms and cotton dust exposure; results of a 15 year follow up observation; in *Occup Environ Med* 2003;60:935-941.

developed a chronic cough because I think the dust is building up in my system. It is everywhere, in the air and on the machines. Sometimes, when I blow my nose, my mucus is blue and this is the fabric dust from the jeans. I believe that this is affecting my respiratory system and people in my department seem to be susceptible to tuberculosis. Blue mucus is scary for anyone.”²⁵

Employees who carried out the sanding or chemical treatment of the jeans said that they suffered from chronic coughs, which were made worse by the use of certain chemicals. Employees at all the factories were concerned about the impact this was having on their health. They reported a large number of health-related complaints, such as allergies, chronic coughs, skin irritations and breathing difficulties.

There appear to be few fans or windows in the premises, which reduces the air circulation. According to employees at Nien Hsing International, the windows are usually closed to prevent workers from stealing from the factory. “We have complained about the closed windows, but management is not interested.”²⁶

Nien Hsing has shared occupational hygiene reports detailing measurements of the employees’ exposure to chemicals, dust, noise and air quality at C&Y and Global Garments. The reports show that the dust concentrations are lower than the statutory thresholds. However, the reports show such low values as to sow doubt about the correctness of the measurements. In practice, the measurements indicate that the factories are entirely free from dust. However, the Global Garment report points out that ventilation at the premises is inadequate, and that “the lack of fresh air causes employee discomfort”.²⁷

2.2.3 Other occupational health and safety issues

The workers interviewed described a number of other conditions at the factories, which do not seem to be in compliance with the labour law. This includes matters relating to fire safety, personal protective equipment, temperature regulation and the safe use of chemicals.

At all three factories, employees were concerned about fire safety. They reported that walkways between workstations and emergency exits were blocked by boxes and trolleys, and that emergency exits were locked.

Employees at all the factories are issued with personal protective equipment. However, the employees said the fabric masks that they are issued do not provide adequate protection against dust and are worn out long before they are given new ones. According to the occupational hygiene reports, it is not possible to determine whether these masks provide adequate protection against dust and chemicals.²⁸ Other items of protective equipment, such as gloves and shoes, that the employees are issued are also worn out long before they are replaced. The occupational hygiene reports also show that employees are exposed to harmful noise levels in certain areas of the factory, without adequate hearing protection equipment being issued to all of them.

²⁵ Interview with an employee at Nien Hsing International.

²⁶ Interview with an employee at Nien Hsing International.

²⁷ NOSA *Occupational Hygiene Serviced Report on hazardous chemical substances, noise for hearing conservation purposes, general ventilation and indoor air quality, and day time illumination at Nien Hsing C&Y Garments*, Maseru, Lesotho 12-14 January 2016, and NOSA *Occupational Hygiene Serviced Report on hazardous chemical substances, noise, illumination and general ventilation and indoor air quality at Global Garment Company PTY (LTD)*, Maseru, Lesotho 05-08 December 2016.

²⁸ See footnote 27.

Employees at all three factories consistently reported indoor temperatures that were extremely low in the winter, while it was unpleasantly hot in the summer. They also said the temperatures affected their performance at work. One employee at Nien Hsing International described the situation thus: “The heat is so much during the summer and we do not have enough fans so people faint from the heat. In the winter, we have heaters, but the manager switches them on and off as he pleases so it is really cold. I am forever coughing during the winter because of the cold and that really affects my work performance.”

Workers at all the factories reported receiving inadequate information and training in the safe storage, handling and use of chemicals. They told of numerous injuries linked to the use and handling of chemicals, including corrosive chemical burns. Employees also told of chronic back pain as a result of poor workplace posture, which they linked to poorly adjusted chairs and long periods spent working while standing on hard floors

2.3 Discrimination

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights contain explicit provisions (in Articles 2 and 3) prohibiting discrimination and unfair treatment on the grounds of gender, birth or other factors. Several other conventions specify what this means in further detail.²⁹ Under Lesothan law, an employer cannot dismiss or discriminate against employees on the grounds of pregnancy.

Workers at C&Y said that they feared being dismissed if management found out that they were pregnant. Because pregnant employees have previously been dismissed, the women try to conceal their pregnancies – particularly those on short-term contracts. “It is common, especially for those workers who are on a probationary contract, to hide their pregnancy because if the supervisors and management become aware that they are pregnant, they may never be hired [on a permanent contract]. It is the company’s policy and practice not to hire pregnant workers at all and we all know this.”³⁰

2.4 Freedom of association

The right to organise is laid down in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as ILO Convention No. 87 on freedom of association (one of the ILO’s core conventions) and the ILO’s Tripartite Declaration on Multinational Enterprises and Social Policy.

2.4.1 The right to free collective bargaining

The ILO’s Committee on Freedom of Association, which deals with complaints relating to the rights of employees and employers to freedom of association, has concluded that “failure to implement a collective agreement, even on a temporary basis, violates the right to bargain collectively, as well as the principle of bargaining in good faith”.³¹

In Lesotho, employers must negotiate collective agreements with a trade union if it organises more than 51 per cent of the workforce. Employers are entitled to enter into a memorandum of understanding (MOU) with a trade union that organises a minority of the workforce. In 2016, Nien Hsing terminated a recently signed MOU with one of the trade unions, IDUL. The

²⁹ Convention on the Elimination of All Forms of Discrimination against Women and ILO Convention No. 100 on equal pay.

³⁰ Interview with an employee at C&Y.

³¹ ILO Digest of Decisions of the Committee on Freedom of Association, November 1, 2006, Paragraph 943.

agreement covered the rights and duties of elected union representatives, the employees' right to participate in trade union activity during working hours and a dispute resolution procedure, corresponding to previous agreements. Nien Hsing justified the termination of the agreement by saying that there were other trade unions at the factories which wanted similar agreements, which – according to Nien Hsing – would be “impracticable to handle”.³² The company did not explain why it could not continue its former practice and sign MOUs with several trade unions. IDUL did not want the agreement to end and considers that Nien Hsing's unilateral termination is a violation of the MOU's provisions. According to employees, IDUL's representatives are barred from the factory premises, nor does the company permit union representatives to represent employees in connection with workplace disputes.

2.4.2 The right to represent members in connection with workplace disputes

The ILO's convention on the right to freedom of association and to engage in collective bargaining establishes the trade unions' right to operate as such, including the right to represent their members, without interference from the employer.³³ The ILO Committee on Freedom of Association has determined that “workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.”³⁴ Under national law, moreover, an employer must “allow any officer of a trade union whose members include some of his or her employees reasonable facilities for conferring with the employer and/or his or her employees on matters affecting the employer and those members.”³⁵

All three of the trade unions³⁶ to which employees of Nien Hsing belong reported that their representatives were not permitted to enter any of the three factories, regardless of whether they wished to meet with management or speak with their own members. The unions also claim that Nien Hsing does not accept that the trade unions represent their members in connection with workplace disputes. This prevents the unions from representing employees who seek assistance. Employees are also under the impression that if they wished to ask for union representation during a workplace dispute, Nien Hsing would refuse, and they fear they could be penalised for doing so. A non-unionised employee at C&Y said: “It is useless to join the union now because they cannot speak on my behalf if I get fired.”

2.4.3 Discrimination of trade union members

Both ILO Convention No. 98 on freedom of association and national legislation prohibits the discrimination of employees on the grounds of trade union membership.

Most of the employees interviewed feared reprisals or that they would be discriminated against if management became aware that they had unionised. Many employees said that they would not be offered the chance to work overtime or that they would be more severely penalised for minor infractions or mistakes in their work than non-unionised employees. According to one union member at Nien Hsing International: “Once they discover you are from [a union], they will ill treat you and find a reason to dismiss you for something that is not usually a problem.”

Non-union members employed on short-term contracts feared that they would not be given permanent employment if they joined a trade union. Several workers reported that they had

³² Letters from Nien Hsing to IDUL 17 October 2016 and 3 November 2016.

³³ ILO Convention No. 98, article 2 (1).

³⁴ ILO Digest of decisions of the Committee on Freedom of Association, November 1, 2006, Paragraph 1102.

³⁵ Labour Code Order, Article 198.

³⁶ IDUL, NACTWU, UNITE.

been transferred to other tasks after management learned that they had taken part in trade union activity. One C&Y employee said that a supervisor had accused him of being too aggressive in raising issues in his role as union representative, and that he would therefore be transferred to a more strenuous position as punishment. Another unionised C&Y employee explained: “Life becomes very uncomfortable if you are involved with unions.”

2.5 Previous norm violations at Nien Hsings’ factories in Lesotho

C&Y Garments was established in 1991 and Nien Hsing International in 2001. At that time, the factories employed some 7,500 people. In 2001, the Dutch organisation SOMO investigated working conditions at the factories and reported numerous labour rights violations.³⁷

According to the reports, Nien Hsing had employed a large number of day labourers at rates that were lower than the minimum wage. This was permitted for employment contracts lasting less than six months. Many of the day labourers at C&Y had worked at the factory for 10 years.

Employees described widespread verbal and physical abuse: “At C&Y, the supervisors, verbally assault (yelled and insulted) the workers, slap them and hit them with clothes hangers, and the garments are thrown in their face. Workers at Nien Hsing say the supervisors often swear at the workers, push them around, and otherwise humiliate them in front of other workers.”

A number of other health and safety issues were also reported, such as: “At C&Y, there are two fans for the entire plant which is not enough according to the workers. Workers in all but the sewing section work standing up all day, including pregnant women. In the sewing section, the chairs have no back support. The workers are provided with protective masks only once, but the workers report that after a month the masks are ‘useless’ and they stop using them. Accidents are common, but if workers are given medical attention, any costs incurred are deducted from their wages. Maternity leave is not paid at either plant.”

3 Investigations into Nien Hsing Ninh Binh Co Ltd, Vietnam

Nien Hsing Ninh Binh Co, Ltd produces and finishes denim clothing and is located in Ninh Binh, northern Vietnam. The factory employs around 3,300 people, the majority of whom are women.³⁸

The results of the investigation into working conditions at the factory are described in brief below. Many of the reported conditions contravene Vietnamese law.

Employees reported unlawfully large amounts of overtime in the factory’s laundry and packing departments, over twice the legal monthly limit. Employees said they found it difficult to refuse to work overtime, and that supervisors demanded to know the reason why if they did not wish to do so. Follow-up interviews indicate that the use of overtime has been reduced slightly, but that it remains involuntary.

According to the country’s labour law, experienced or skilled workers are entitled to be paid 7 per cent above the minimum wage, with a further 5 per cent supplement if they perform work

³⁷ SOMO 2002: *Made in Southern Africa*, <https://www.somo.nl/made-in-southern-africa/>.

³⁸ Xuang Hung, *Labor Confederation of Ninh Binh Province: New Year for workers and business gratitude*, Lao Dong, January 15, 2017, <http://laodong.com.vn/cong-doan/ldld-tinh-ninh-binh-tet-sum-vay-cho-cong-nhan-va-tri-an-doanh-nghiep-630392.bld>.

classified as dangerous.³⁹ Most of the 20 employees interviewed were paid barely above the minimum wage, while five were paid less than the minimum wage. Furthermore, many employees were not paid a statutory supplement when they were exposed to multiple risk factors. The interviews indicated that Nien Hsing had not introduced a pay scale, as it was obliged to do, since payslips showed that employees who had worked at the factory for more than eight years were not compensated for their long service. Nor did the payslips give any indication of how the individual's wages had been calculated.

According to employees, the company docked the entire month's attendance bonus even though the employee had taken legitimate sick leave. The law allows the employer to make pro rata deductions to the attendance bonus commensurate with the number of sick days. However, it is not permitted to dock the entire bonus for one day's sick leave.⁴⁰

Nien Hsing employees reported that it was extremely hot in the factory in the summer and cold in the winter, but they were unable to specify the actual temperatures inside the building. They also said that they were not issued with dust masks, even though the factory was visibly dusty. As a result, employees bought their own masks to protect against the dust. Nor were they issued with earplugs, even though the noise level was perceived to be high. Employees in the jeans finishing process said that they had not received any information about the chemicals they used. Employees also reported poorly adjusted chairs and awkward working positions, which left them with aching muscles.

In Vietnam, the formation of free and independent trade unions is not permitted. Nevertheless, the law does not prevent employees from nominating and electing trade union representatives. At Nien Hsing, the union leader was an employee who was paid by the company to perform that task. Follow-up interviews indicate that this is still the case. According to ILO Convention No. 98 on freedom of association, this is deemed to constitute interference by the employer and a violation of the right to freedom of association.

4 Information provided by the company

4.1 The Council on Ethics' contacts with the company

The Council first contacted Nien Hsing in June 2015 to request information about working conditions at the company's factories in Cambodia. Nien Hsing did not reply to this request, nor did it comment on a draft recommendation to exclude it, which the company was sent in November 2015. That recommendation was based on investigations into two of the company's factories in Cambodia (one of which was shut down after the Council had looked into working conditions there) in June–October of that year.

Following the sale of the factories in Cambodia, the Council investigated Nien Hsing's factory in Vietnam in 2017 and factories in Lesotho in 2017–2018. The company was sent a new draft recommendation to exclude it in March 2018, and responded the following month. The Council has subsequently communicated with Nien Hsing several times, and a teleconference with the company has been held.

³⁹ Decree 49/2013/ND-CP, Article 7(3), <http://staffing.vn/en/r600/Decree-492013NDCP--on-wages-of-labor-code.html>.

⁴⁰ Labour Code, Article 128.

4.2 Steps taken by the company to improve working conditions

In its April 2018 reply, Nien Hsing has commented on the norm violations at its factories as follows:

Working hours

All overtime is voluntary and all working hours are recorded and checked. With respect to working hours, no complaints have been received from employees. “Our investigation has proven no such practices in the last 3 months for 2018 and based on the feedback from the Council will monitor this situation.”

With respect to the factory in Vietnam, a shift arrangement has been introduced, which has reduced the use of overtime.

Harassment/abuse

The company has a zero-tolerance policy with respect to sexual and physical harassment, and employees who are involved in such acts are dismissed. To ensure that this does not occur at the factories, steps have been taken in recent months – including the provision of secure whistleblowing channels for employees. The company has also engaged external consultants to interview employees about sexual harassment. In its teleconference with the Council, the company intimated that the results of their investigations tallied with the Council’s.

According to Nien Hsing, no incidents of physical abuse have been recorded in the past 12 months. The company is currently in the process of developing and implementing training programmes to prevent harassment/abuse, particularly intended for expat managers. Over the past year, active efforts have been made to put an end to verbal abuse in Lesotho, and individuals have been dismissed on the grounds of sexual harassment.

All reports of verbal abuse are investigated and followed up. The company does not permit employees to be shouted at. The company denies that workers’ visits to the toilet are monitored.

Temperatures in the factory premises

Nien Hsing writes that it is not especially hot in the factory premises in the summertime. The company has identified areas where it is extremely cold in winter, largely the warehouse buildings. Employees here are issued with clothing to protect against the cold.

Air quality

The company uses an accredited firm of consultants to perform measurements of the air quality and the employees’ exposure to chemicals, every third year. Furthermore, all employees who handle and use chemicals undergo an annual medical check-up. None of these suffer from medical conditions, nor has their health worsened. The company will improve its training and communication with employees in this area. “We can unequivocally state our air quality and working conditions are not only on par, but exceeds the basic requirements in the industry.”

Personal protective equipment

The company says that it complies with the law and, following demands by buyers, has undertaken to offer personal protective equipment to employees. Nien Hsing will follow this up with the factories.

Employees in Vietnam are issued with protective equipment. The company will improve the training and information given to employees.

Fire safety

“The allegations on locked emergency exit doors are unfounded and not true.” The doors are opened when production commences. The Sustainability Department has checked fire safety precautions at the factory in the past six months and the doors are not locked. The company provides continuous training in fire safety and instructs that walkways and escape routes must not be blocked.

Other issues

According to Nien Hsing, chemicals handling has significantly improved and the use of chemicals reduced. The company keeps a check on its chemical use and the employees’ use of protective equipment.

With respect to ergonomics, the company writes that all operations take place in accordance with the buyers’ guidelines. Their own investigations have not uncovered any medical complaints among the workforce that are related to ergonomic issues.

Freedom of association

With regard to the termination of collective bargaining agreements, Nien Hsing states that the agreement with IDUL was terminated because it was no longer a representative union, since it organised less than 3 per cent of the workforce.

Nien Hsing writes that the employees were informed of their right to organise and that they would not be discriminated against on these grounds. “It is a massive erroneous statement that workers are not allowed to be represented by fellow employees during workplace disputes. This basic concept has never been infringed upon.” And further: “The company and all facilities in Lesotho operate as follows: workers are free to select anyone of their choice to represent them during hearings. There are not consequences and never will be for anyone who selects a worker who is affiliated with a specific union.”

The company also writes that managers receive training about freedom of association, and that the company has received no reports of workers being harassed, penalised or discriminated against because of their union membership. Nien Hsing adds that it must improve its information to and communication with employees to rectify their misperception with regard to this issue.

According to the company, freedom of association in Vietnam is “in compliance”.

Other issues in Vietnam

With regard to wages, the company will rectify incorrect payments as soon as they are discovered. Wage deductions do not encompass bonuses. “This was not able to be investigated, as bonuses vary from department to department and within department from section to section.”

4.3 Steps taken by Nien Hsing to reduce the risk of norm violations

According to Nien Hsing, changes have taken place in the company’s senior management over the past two years, with the replacement of the board chair and CEO. Under the new management, the Compliance and Sustainability Department was established in 2015. The department is responsible for developing policies and programmes, including those mentioned above, and for improving and monitoring “the facilities’ compliance and social sustainability performance.”

The company is in the process of introducing a three-step internal evaluation system to assess whether its own policies are being complied with. Step one is an assessment of the individual

factory, which is performed by the Sustainability Department. Step two comprises audits by buyers, and step three is a self-assessment that the factories perform in relation to key performance indicators (KPI).

In January 2018, the company introduced a “Compliance Accountability Directive” for all factories within the group. “This directive is a direct effort from top management not only to enforce proper compliance and sustainability at factory level, but also to publicly show the commitment from the company towards its seriousness in the protection of human rights, the communication, the environments, our buyers’ rights and properties, and our stakeholders interests.”

The directives that are relevant in this context are “Harassment & Discrimination by Supervisors” and “Occupational Health and Safety”, which have both been recently updated. The Harassment Directive states that all cases of harassment that are reported to factory management must be investigated, and sets out specific procedures for how this is to be carried out. “Factory management is deemed to be aware and informed of any allegation and report.”

With respect to occupational health and safety, the factories must perform risk assessments to identify health and safety risks, take steps to reduce these and give employees training to prevent injuries and health problems. Factory managements are responsible for implementing the directives.

Nien Hsing also writes: “All these directives bear consequences for offenders. The vision and commitment expressed by the chairman and the Sustainability Department towards our corporate social responsibility takes precedence over any individual that do not follow the directives or company rules and regulations.”

Over the past year, Nien Hsing has established several whistleblowing channels, through which employees can anonymously report incidents or file complaints. So far, the majority of complaints have been about the calculation of bonuses. In Lesotho, the company has also changed its routines for the hiring of day labourers, which was previously done by the departments. The number of day labourers has been reduced and responsibility for hiring them has been placed with Human Resources. These measures are intended to reduce the risk that bribes are demanded in return for work.

5 The Council on Ethics’ assessment

The Council has considered whether there is an unacceptable risk that Nien Hsing is contributing to or is itself responsible for systematic violations of internationally recognised human rights norms in connection with its production of textiles and garments. The Council’s investigations have been focused on the company’s garment factories in Lesotho and Vietnam.

The starting point for this case is that Nien Hsing, in its capacity as employer, is responsible for any norm violations at its own production facilities. The Council takes the position that, with respect to norm violations perpetrated within a company’s own operations, the threshold for what can be accepted must be lower than when a company contributes to norm violations perpetrated by a third party.

Violations of labour rights at Nien Hsing’s factories has been substantiated through investigations into working conditions at four of the company’s factories – three in Lesotho and one in Vietnam. The Council considers that the norm violations at the Lesotho factories in particular are serious, not least given the widespread nature of the sexual harassment to which female employees are subjected. This has been reported at all three of the factories, numerous

managers and supervisors are involved, and employees describe such behaviour as commonplace. The Council considers that this practice qualifies as a serious norm violation.

The Council also notes other norm violations, such as the fact that women fear dismissal should they become pregnant and reports of verbal and physical abuse should employees make mistakes in their work or fail to meet production quotas. The Council's investigations have also uncovered considerable health and safety issues, such as poor air quality, unpleasant temperatures within the premises and in some places high noise levels. Employees at all the factories report airborne dust in the factory premises, a lack of training in the use and handling of chemicals, and inadequate or non-existent personal protective equipment. Employees' statements about the prevalence of respiratory illnesses, skin irritations and injuries caused by the use of chemicals indicate that the company does not live up to its own standards. In the Council's opinion, all these norm violations constitute a clear infringement of the right to safe and healthy working conditions.

To the Council, it also seems as though the company restricts freedom of association in a variety of ways, including a refusal to allow trade union representatives to represent employees in workplace disputes. Furthermore, the Council notes the employees' perception that membership of a trade union would be met with reprisals from the company. The right to organise is deemed to be a precondition for the ability to improve working conditions and prevent the infringement of other labour rights.

Violation of labour rights has also been reported at Nien Hsing's factory in Vietnam, though on a smaller scale. Discounting the issue of harassment, the health and safety problems here are similar to the situation in Lesotho. This includes high temperatures inside the factory, dust, improper use of chemicals and inadequate personal protective equipment. The Council notes that overtime is not voluntary, that sick leave is restricted by means of the unlawful docking of bonuses and that the company interferes with the trade union by appointing and paying the salary of the trade union leader.

Nien Hsing confirms some of the norm violations, but rejects allegations relating to others. The company has started taking steps to prevent verbal abuse of employees in Lesotho, and has dismissed employees involved in sexual harassment. In the Council's opinion, this shows that the problems exist and that the company has, to some extent, done something to address them. Nien Hsing has also launched its own investigations into working conditions and says that it will take further steps to prevent harassment, including the dismissal of those involved in such behaviour. Nien Hsing also recognises that it must improve its information, training and communication with employees and managers in many areas.

The Council notes that following changes in its senior management in 2015, the company has taken steps to put management systems in place that can reduce the risk of human rights violations. The nature and scope of the reported violations prompt a clear expectation that the company's board and management are involved in this effort. Furthermore, the company has told the Council that it is in the process of implementing measures and changes to its management system that will, over time, improve working conditions at the factories, and that the factories are now measured on their compliance with the company's standards. Nevertheless, the Council notes that the company's description of its new systems and policies does not address compliance with national legislation and requirements or important labour rights, such as freedom of association. Even though the company has established whistleblowing channels, it says nothing about how it intends to protect whistleblowers.

An important point for the Council is that several of the factory managers in Lesotho have held these positions for many years. The reported sexual harassment is of such a scale that managers must have, or should have, been aware of it. Harassment and other occupational health and

safety issues at the factories in Lesotho were reported as far back as 2001. In the Council’s opinion, the seriousness of the harassment, as well as the scale of other norm violations, prompt expectations that Nien Hsing will make significant changes in the factories’ managements and rapidly implement effective measures to reduce the risk of harassment and other human rights abuses.

The GPFG’s ethical guidelines permit the Council on Ethics to recommend that a company be placed under observation if there is some doubt about whether the conditions for exclusion have been met or about its development going forward. In this case, the Council considers that there is no doubt that the conditions for exclusion have been met. The Council deems that the company’s practices in several areas violate both internationally recognised labour rights and national legislation. These practices comprise both serious norm violations which, by themselves, could constitute grounds for the company’s exclusion, and systematic norm violations. The Council’s decision not to recommend that the company be excluded from investment by the GPFG at this time rests on the fact that Nien Hsing is currently implementing changes and measures which could improve working conditions, even though their implementation so far has been weak. In the Council’s view, the fact that the company is now providing the Council with information and, furthermore, acknowledges that it must take steps to address the most serious issues, could reduce the risk of future norm violations. The Council will monitor developments at the company and if the most serious norm violations are not materially curtailed within a short space of time, the Council will consider recommending Nien Hsing’s exclusion.

6 Recommendation

The Council on Ethics recommends that Nien Hsing Textile Co Ltd be placed under observation due to the risk that the company is responsible for systematic human rights violations.

| | | | | |
|---------------------------------------|----------------------------|--------------------------------|----------------------------|-------------------------------|
| Johan H. Andresen Leder (sign.) | Hans Chr. Bugge (sign.) | Cecilie Hellestveit (sign.) | Trude Myklebust (sign.) | Brit K. S. Rugland (sign.) |
|---------------------------------------|----------------------------|--------------------------------|----------------------------|-------------------------------|