Short-term Contracting in the Asian Garment Industry
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In the Asian garment sector, short-term contracting is the main form of employment. The garment industry works on a just-in-time model, which means that production fluctuates according to the season. Factories accommodate the seasonality of their production by employing workers with short-term contracts that can be terminated during low season. Additionally, short-term contracting can be used by employers in an attempt to reduce costs, obligations to workers, or to undermine the influence of trade unions.

The use of short-term contracting in the garment sector in Asia has been facilitated by the existence of a large labour surplus, mostly comprised of young women workers (15-24 years old) with little training, education and skills. Their working conditions are precarious, with long hours and low wages; they often lack social protection or cannot join a union.

Most of the existing provisions for Asian contract workers’ rights in national labour laws apply only to regular workers. Moreover, enforcement of labour laws is weak and short-term contract workers are often the first in line to suffer the consequences. Short-term contracting is therefore a major obstacle to the achievement of decent work and creates uncertainty in the life of ALL workers.

**What needs to be done?**

Firstly, short-term contract workers need good and effective national legislation that protects them, given their vulnerable situation. Several international instruments exist to improve legislation in this regard. It is of the utmost importance that this legislation is also effectively implemented.

Secondly, short-term contract workers need to be informed about their rights and must organise themselves collectively. Trade Unions and other workers’ organisations need to be strengthened in order to reach out to these workers and negotiate better collective agreements at factory,
industry and national level. Short-term contract workers need to be part of the bargaining process: they should be represented during the social dialogue and collective bargaining process so that collective agreements take their needs into account.

This policy paper was written in order to support an Asian campaign on the need for equal treatment of short-term contract workers and regular workers. The campaign “Equal Treatment for Short-term Contract Workers” will be launched in 2010 by several workers organisations in Cambodia, Indonesia and Sri Lanka, respectively C.CAWDU, Garteks, NWC Sri Lanka and YCW Sri Lanka. World Solidarity facilitates and coordinates the campaign and advocacy activities.

The main objectives of the campaign are to:

- Raise awareness on the problems of short-term contracting in the garment sector towards the garment sector workers, employers and buyers, as well as towards national governments and other policymakers;
- Organise short-term contract workers in the garment sector in Cambodia, Indonesia and Sri Lanka and protect them from exploitation;
- Promote equal treatment of long and short-term contract workers in national legislation and labour policies, in line with the ILO Recommendation no. 198/2006 and the Declaration on ‘Social Justice for a Fair Globalisation’ of the International Labour Organisation (ILO), and ensure this legislation is implemented;
- Put short-term contracting on the political agenda by engaging in advocacy work towards international institutions, such as the International Labour Organisation and the World Bank.

At the end of this policy paper, policy recommendations at national and international level are formulated in order to improve the situation of these vulnerable workers. A signature card is developed in order to raise awareness amongst all workers, and will be used in advocacy work towards national and international policymakers. A symbolic amount of signatures, together with this policy paper, will be handed over to the International Labour Organisation (ILO) in June 2010 during the ILO Conference.

1. Other campaign materials are: a campaign guide (explaining the campaign); a signature card, a banner, stickers, t-shirts, ... The material exists in different languages, such as English, Kmer, Bahasa, ...
Three quarters of global clothing exports originate from the garment and textile sector of developing countries. In these sectors, short-term contracting is the main form of employment. Unfortunately, comprehensive data on short-term contracting in the garment industry in the Asian continent is not available. In recent years however, unions and labour rights organisations have reported an increase in the use of successive short-term employment contracts in the Asian garment sector. In many cases, there is no written contract at all.

What does short-term contracting entail?

Defining short-term contracting is not an easy task. Many people refer to this phenomenon by using different concepts: casual work, precarious work, temporary work, flexible work, working with a definite time contract, etc. In this paper we will use the word short-term contracting. Short-term contracting can be best defined by what it is not: regular or standard employment.

Criteria of standard employment are:

- Full time work (living wage implied),
- Social protection coverage,
- Contracts with unlimited duration,
- Work under the supervision of an employer

If one or more criteria are not met, the employment relationship is considered to be non-standard. This type of employment therefore diverges from the criteria mentioned above with regard to working time, social protection coverage, stability of employment relationship, other rights connected to an employment relationship such as labour laws. This type of employment therefore diverges from the criteria mentioned above.

Forms of non-standard employment are:

- Short-term, temporary or fixed-term employment (any employment with a fixed period of time or a specific task to complete),
- Part-time employment (any employment with less than a standard working week)
- Casual employment (any irregular employment),
- Apprenticeship (employment under training),
- Seasonal employment (employment at a specific time of the year),

The many aspects and dimensions mentioned above pose a variety of different problems. These will be dealt with in the coming chapters.
1. **Seasonality of the garment production**

It used to be considered normal that in return for profits, a company would offer its workers employment security. Today, companies are sharing their business risks with workers by flexibilising the employment relationship. The garment industry works on a just-in-time model, i.e. to deliver goods when they are needed in retail stores. This increases the seasonality of production, creating high and low seasons for factory orders, with great seasonal fluctuations. In the high season, a factory needs increased capacity and a larger workforce to meet order deadlines. During the low season, there may not be enough work to sustain a large workforce. Factories accommodate this seasonality in a number of ways:

- Demanding excessive overtime of all workers during the high season
- Subcontracting excess production to other factories during the high season
- Employing workers with short-term contracts which can be terminated during the low season
- Using dispatched labour that can be dismissed during the low season

As long as the global production chain system in the garment sector remains volatile, employers will use short-term contracts as a means to share their business risks with their workforce while competing for business and orders. By spreading the risk throughout the production chain, workers at the bottom of the chain are worst affected by the instability of the system.

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2. Flexibility in order to attract investment

The use of short-term contracting was for a long time discouraged by legal constraints. Nowadays, reduction of legal requirements over short-term contracting and employment termination has been the main feature of the labour law reform agenda of numerous governments (not only in Asia). Following the changing role of the State in industrial relations and the widespread perception that flexibility in the labour market is needed to attract foreign investment and create economic growth, many countries have relaxed the regulatory and administrative controls on employment termination. They did so by including flexible forms of employment, as well as abolishing trade union consultation and governmental approval. Consequently, in the past two decades short-term contracting has grown in most countries and expanded to all economic sectors.

This call for greater flexibility in employment legislation and protection comes from employers but it is also driven by the World Bank and the International Monetary Fund. A good example can be found in the Doing Business Report of the World Bank. In that annual report, countries are ranked based on the regulations that enhance business activity and those that constrain it. One of the most controversial issues is the ranking based on the “rigidity of employment”. This “Employing Workers” Indicator does not include the ILO core labour standards (the 8 conventions covering the right to collective bargaining; the elimination of forced labour; the abolition of child labour and equitable treatment in employment practices). By excluding these core labour standards, the World Bank is promoting precarious employment and undermining the collective efforts to create a sustainable and fair globalisation for all. Therefore, it is vital that this indicator be revised. This revision is necessary in order to give a better ranking to countries that comply with the letter and spirit of the ILO core labour standards, recognising that well-designed worker protections are of benefit to the society as a whole.

5. Doing Business 2010 is the seventh in a series of annual reports of the World Bank. The Employing Workers Indicator is comprised of the difficulty of hiring index; the rigidity of hours index; the difficulty of redundancy index, the redundancy cost. According to this index, Cambodia and Sri Lanka are not prohibiting the use of short-term contracting for permanent tasks. In Cambodia it is relatively easy and cheap to fire workers (which is rated as a positive element); in Sri Lanka it is quite difficult and expensive. In Sri Lanka, there is no maximum duration of short-term contracts.
3. **An employer’s attempt to reduce costs and obligations**

Short-term contracting, subcontracting and dispatched labour can be exploited by employers in an attempt to reduce costs and obligations to workers or to eliminate trade unions in order to maximise profits or increase competitiveness irresponsibly. The employer has this power, since the garment sector in Asia in recent years has been facing the dramatic increase of factory closures. With the demise of the apparel and textiles import quota system (due to the phase-out of the international Multi Fibre Agreement), companies are restructuring their global supply chains and manufacturing networks with little regard for the negative impact on workers, their families, communities and countries. Closures not only impact the thousands of workers and their families who lose their income, they also generate fear and insecurity amongst workers who are employed in the factories who may be afraid of speaking out about their working conditions and claiming their rights, for fear of losing their job.

Motivation of the employer to use short-term contracts:

- **It is cheaper**: e.g. no severance pay, no bonus, no social security, no overtime pay, no wage increase, ...
- **Better control over the workers**: (often short-term contract workers cannot join a union)
- **Flexibility**: hire people when needed, fire when needed
- **No responsibility in case of accident**: (pay some money and/or dismiss worker)
- **Prevent workers to know more about the company**: (no transparency, ...)
- **New workers are more obedient**: (more afraid to lose their jobs)

4. The existence of a large labour surplus

Short-term contracting in the garment sector in developing countries has been facilitated by the existence of a large labour surplus, composed mostly of young women workers (15-24 years old) with little training, education and skills. In Asia, as opposed to other regions, a high proportion of female-dominated occupations in the garment industry are in the category of production, particularly jobs such as spinners, weavers, knitters, fibre preparers, tailors and sewers, embroidery workers, textile machine operators, and sewing machine operators. It is interesting to note that in the region, the proportion of women among production workers is above world averages. Gendered ideas relating to flexibility suggest that women are merely supplementary earners, who will therefore accept lower wages, and less formal working arrangements. In Indonesia, the International Confederation of Free Trade Unions (IFCTU) reports that “one major reason for employing women as casual labourers is because they are not liable to pay benefits such as maternity pay”.

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Short-term contracting has been identified by the Global Union Federations (GUF) and the International Trade Union Confederation (ITUC) as a major obstacle to the achievement of decent work. Therefore, together with ILO ACTRAV\(^\text{10}\) they held the forum “Towards Social Justice: applying labour standards to precarious workers” (October 3, 2008). The participants of the forum urged the ILO to address the issue of short-term contracting because it undermines the very basis of various international labour standards and workers rights.

**IV: Implications for short-term workers**

Short-term contract work often entails:

- Lower quality jobs, less favourable working hours and working conditions
- Workers with often low skills and qualifications, it is difficult for them to find another job
- Job insecurity – limited opportunities of re-employment
- No or less training and promotion opportunities
- Over-representation of women and young workers
- Individualisation of employee – employer relation, no collective “power” or representation
- Lack of solidarity amongst the workers because workers don’t know each other
- More safety and health risks
- No or limited social protection rights or other statutory benefits

10. ILO ACTRAV is the Bureau for Workers’ Activities. It is the main link between the International Labour Office and the workers. ACTRAV coordinates the activities of the Office related to workers and their organisations, both at headquarters and in the field. The International Labour Office is the executive secretariat of the International Labour Organisation (ILO).
1. Bad working conditions and low wages

Short-term contracting as a form of flexible employment is usually accompanied by flexibility in income payment, organisation of work, working time and composition of the workforce. These employees endure precarious working conditions, with long working hours and low wages. Today, the wage of a garment worker in the developing world is only 0.5 to 4% of the final retail cost of a garment product. So, not only have workers at the bottom of the supply chain been forced to suffer the consequences of the risks associated with the industry’s volatile supply and demand they have also been forced to bear the costs associated with consumer demands for low prices.

Under a short-term contract, workers are being employed with insufficient knowledge of the job as they are only hired for a period of time and receive little or no job training. Workers suffer from work-related stress and fatigue as a result of their precarious position. This includes:

- fear of dismissal or unemployment
- changes in working time patterns
- irregular or less predictable working hours (whether very limited hours or excessively long involuntary overtime)
- piece-rate salary
- job demand
- intensification of work
- flexible organisation of work
- the demand for workers to learn fast in order to perform new tasks

This precarious position makes those workers more prone to work accidents and many different diseases. Different forms of employment can also complicate the management of health and safety at work; it can create uncertainty and misunderstandings about responsibilities and tasks.

2. **Limited or no benefits and social protection**

Workers with short-term contracts are often ineligible for basic protections and statutory benefits or they receive significantly less social protection. Many factories prefer to employ workers on a short-term contract basis, because they are not bound by law to provide these workers with the same benefits as regular workers, such as a pension fund, maternity leave and health insurance. As a result, millions of workers in this sector are excluded from decent social protection.

3. **Individualised labour contracts**

The global increase in short-term contracting goes hand in hand with the increase of individualised labour contracts (e.g. piece rate contracts). The implications for employment services and for regulations are significant. Standardised contracts and collective contracts are being replaced by more individualised contracts based on individual bargaining between employer and workers. Since the bargaining strengths of employers and individual workers differ enormously, a shift to a more decentralised and individual employment relationship would tilt the balance in favour of the employers.

Under almost any system of collective bargaining, workers who do not have a specific agreement with an employer are nevertheless usually covered, whether by a system of judicial awards or by sectoral agreements. On the other hand, with this shift towards individual employment relationships, a growing number of workers in some countries may find themselves without any contractual protection. The decline in collective bargaining may result in more workers having contracts of little or no value. This is clearly the case in Asia, where 70% of the workers have no contract at all, and it is a major problem for the Asian short-term contract workers in the garment sector. It is a reality that urgently needs policy responses. Having a copy of the contract is of the utmost importance in order to identify the workers’ entitlements and enforce them (cfr. infra).
4. **Negative impact for the unions**

Workers with short-term contracts cannot - in most instances - form or join unions. Short-term workers who try to improve conditions can easily - and legally - be dismissed at the end of their contract, making them especially vulnerable. Short-term contract workers are often not covered by Collective Bargaining Agreements and are therefore often a cheaper source of labour than regular workers.

From the union perspective, short-term contracts entail a decreasing union membership density, undermining collective efforts and weakening bargaining positions of all workers and the union itself. Not only are short-term contract workers difficult to reach and organise, trade unions also fear that the rise of short-term contracting puts pressure on all workers, threatening job security and deteriorating the working conditions for all.

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**The difficulties trade unions face with short-term contracting are:**

- Short-term contract workers are difficult to organise
- Unions lose members
- The workers do not see the need to unionise as their contact is often only 3 months
- Difficulty to provide good services due to fluctuations in employment
- Difficulty to organise collective actions due to individualised contracts
- Difficult to collect membership fees for the Trade Union

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5. **Less protection by labour law**

Short-term contract workers often enjoy less protection by labour law. Ambiguity occurs in labour law regarding the use and working conditions for these workers. On the one hand, national legislation does not explicitly exclude these workers. On the other hand, the legislation often has no specific regulation that addresses the working conditions of these workers, and if it does, the regulation is often not implemented. In the next chapter, we will take a closer look at the labour law regulations concerning short-term contracting in three countries: Cambodia, Indonesia and Sri Lanka.
1. **Short-term contracting in Cambodia**

No other country depends on its garment industry as much Cambodia does and no other garment producing country depends so heavily on the United States for its exports (US buys two thirds of Cambodia’s products). In 2007, the total value of garment exports was 3.7 billion USD, representing 80% of the country's total export earnings. Today, 540 garment factories are operating in Cambodia; they employ approximately 370,000 workers. It is estimated that around 2 million people benefit indirectly from the garment industry as many workers send money home to support their families. In those 540 factories a total of 26 Trade Union
Federations and 1,100 local unions exist\textsuperscript{13}. More than 90% of the garment factory employees are young (18 to 25 years old), rural, females with limited education.

Due to the phase-out of the Multi Fibre Agreement, the global economic recession and the fall in consumer expenditure in the US and Europe, job creation in the garment sector has slowed down. In January 2007, jobs grew by 16.8\% compared to the previous year. In January 2008, annual job growth reduced to 3.7\%. 30 clothing factories closed their doors and 50,000 people lost their job. An increasing number of garment factories use temporary workers instead of regular workers as part of their effort to cut labour costs (wages, severance pay, pensions) and avoid the demands of organised workers. Wages in the garment sector are nevertheless low. In 2006, the minimum wage of textile and garment worker increased to 45 US$ a month for temporary workers, and 50 US$ a month for regular workers (from 40 US$ and 45 US$ respectively)\textsuperscript{14}. However, what should be noticed is that the cost of living, the price of basic goods, utilities, and transportation also increased. According to the ILO, the average wage of garment workers is roughly 70-73 US$ per month, including overtime and bonuses.

\textsuperscript{13} A lot of these unions are yellow unions (supported or even created by the regime/government). \textsuperscript{14} Decree of the Minister of Labour and Vocational Training, issued on 23 October 2006. There is no minimum wage in Cambodia, except for the garment sector.
According to the Coalition of Cambodian Apparel Workers’ Democratic Unions (CCAWDU), the use of temporary contracts began primarily in larger knitting factories (employing 3,000 to 10,000 workers) in Kandal province. In this province, unionisation rates are the highest. This trend then spread to smaller knitting factories and garment assembly factories of all sizes. Contract workers are usually working in the cutting and quality control section. They work side by side with regular workers, but have a different coloured name-tag or uniform as a clear form of separation in work units.

**Although there are some provisions for contract workers’ rights in the Cambodian labour law, most of the worker rights and statutory benefits apply only to regular workers.** What are the regulations on short-term contracting in the Garment sector? How are the workers protected, and how is misuse prevented by law and in practice? The current Labour Law of Cambodia (1997) distinguishes two types of contracts (art. 66): a fixed-duration contract (FDC) and an undetermined duration contract (UDC). FDCs are contracts for a fixed period of time or clearly indicate which well defined task need to be accomplished. Any FDC needs to be written, if not the contract will be considered an undetermined duration contract. A worker with a fixed-term contract will receive an employment card, which details the nature of the work, the duration of the contract, the amount of successive contracts, his wage and the method of payment (art. 32).

A fixed-term contract can be renewed twice, but it can never exceed the maximum duration of 2 years. Any violation of this rule will render the contract a labour contract of undetermined duration. At the end of the contract, the employer needs to provide the worker with a severance pay (proportional to both the wages and the length of the contract). If the exact amount of the severance pay is not set by a collective agreement, it will amount to at least 5% of the wages paid during the length of the contract. A fixed-term contract in Cambodia can be terminated before the ending date mentioned in the contract, only in case of serious misconduct; or in case of “force majeure”. If this is not the case, the employer pays damages to the worker concerned in an amount that corresponds to the damage sustained. The employer needs to inform the worker prior to the expiration of the contract. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds two years.

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15. Eight hours work a day, WOMYN, May 2007.
16. Some exceptions are possible: replacing a worker who is temporarily absent; seasonal work; occasional periods of extra work.
When terminating the contract, the employer must not take into account the employee’s race; colour; sex; belief or religion; political opinions; trade union membership or activities.

**Unfortunately, the implementation of these legal provisions on short-term contracting is often lacking.** Many short-term contract workers do not possess an employment card or even a copy of their contract or salary slips (in order to prove he/she has worked for the company before); employers do not respect the maximum duration of 2 years and do not always pay a severance pay. Evidence that the implementation of the labour law is weak, can be found in an ILO Report “**Better Factories Project**”. In 2007, the ILO visited 44 exporting factories in Cambodia, and examined their respect for the Cambodian Labour Law and the core ILO standards. These factories employed 24,183 workers in total, of whom 21,932 were women and 2,251 were men. In its report, the ILO’s Better Factories Cambodia program noted a general increase in the use of short-term contracts for workers in Cambodian garment factories, expressing their concern that employers may be using short-term contracts to “undermine workers’ employment security”. The ILO reports that non-compliance on this issue has increased by 3% between April and October 2007 amongst factories monitored. Findings of non-compliance had already increased by 5% in the six months between November 2006 and April 2007.\(^{17}\)

**Some findings of the ILO report:**

- 31 companies (70%) did not explain the terms and conditions of the employment contract to the workers
- 7 factories did not specify the terms and conditions of the employment in the contract itself
- 17 factories concluded employment contracts that do not comply at all with the Cambodian labour law
- 8 factories failed to respect the core labour rights (e.g. the right to organise and join a union)
- one company did not pay the workers severance pay equal to at least 5% of the total wage
- only 3 factories changed the employment status from temporary worker to regular worker after two years (as foreseen by law)

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An interesting finding is that 4 companies are reluctant to recruit male workers because male workers would be more likely to complain about the working conditions or join a union. Therefore, the ILO asked the Cambodian government to address this gender imbalance and urged employers to employ more men.

From 2003 to early 2006, the percentage of the workforce on short-term contracts at PCCS Garment in Cambodia grew to 25%. PCCS produced goods for Adidas, Gap, and Puma. Contracts usually lasted two or three months; with some workers being on successive contracts for more than two years. When their contracts expired, workers were hired under new short-term contracts, losing seniority and benefits, such as maternity leave; annual leave; increases that would accrue with seniority at the factory.

A second interesting finding is that 17 factories didn’t pay their workers – mostly temporary workers- the minimum wage of 45$ per month for standard working hours (8 hours for 26 days a month). Although the Cambodian law stipulates that overtime work should be voluntary and limited to 2 hours per day, the ILO report states that half of the 44 inspected factories made overtime compulsory. Even when overtime is voluntary, workers are often forced to work overtime in order to earn enough money to survive. According to ILO, the use of flexible labour forms have been one of the major factors in the sharp increase in plant level strikes in Cambodia since 2006. Often these strikes at plant level have resulted in regular workers being sacked and replaced with flexible labourers.

In conclusion, the Cambodian law is not entirely respected in practice. Moreover, the Cambodian government intends to increase labour market flexibility by amending the labour law and removing all limitations in the use of fixed duration contracts. This amendment of Chapter IV on the Labour Contract, article 67 and 73 will enable employers to decide freely to renew or terminate workers contracts at their discretion. Workers will lose their right to obtain an undetermined duration contract after 2 years of working on a short-term basis, and will therefore never be entitled to all the legal benefits attached to it.


20. This reform was originally requested by the Cambodian Federation of Employers and Business Associations. They argued that articles 67 and 73 are the most contentious articles in the Cambodian Labour Law, because there have been different interpretations of these articles among parties.
2. Short-term contracting in Indonesia

In Indonesia, 75% of the workforce is employed with a short-term contract. This problem is present in all sectors, but the garment industry is most affected. The Indonesian labour law no. 13/2003 on employment has some provisions on short-term contracting, but the rights and protection of these workers are threatened. The Indonesian government wants to introduce more flexible employment forms, by relaxing the provisions made for short-term contracting. They argue it will foster economic growth and attract more foreign direct investment.

PT Flexia produced clothes for Yves Saint Laurent. 450 people worked in this company with contracts of unlimited duration. 400 of them joined Garteks, the Indonesian textile trade union federation affiliated with the Confederation of Indonesia Prosperity Trade Union (KSBSI). When the monthly bonus was not paid by the company, Garteks organised several demonstrations. Shortly after, the company closed its doors, only to reopen 3 months later with temporary workers. The company now has 450 employees all of whom are on a short-term contract. Nobody is affiliated with the union.

The provisions on short-term contracts in the Indonesian labour law Act No. 13 of 2003 are quite similar to the Cambodian provisions; e.g. concerning the definition, limitation, expiration and termination of fixed-term contracts; the obligation to have written contracts; the prior notice before the contract will expire; and the conditions of using fixed-term contracts, whereby any violation will change the contract automatically into an undetermined contract. Differences are:

- Like in Cambodia, the maximum period of a short-term contact in Indonesia is 2 years. However, in Indonesia this contract can be extended by an additional year, thus a maximum period of 3 years.
- The Indonesian labour law stipulates that if a worker has a period of rest in between two contracts, the counting starts from zero. Many employers use this provision to employ workers on a short-term basis successively.

The party who terminates the contract is obliged to pay compensation to the other party; this compensation is equivalent to the amount of the workers’ wage until the expiration of the contract.

A short-term contract cannot be applied to work which is permanent by nature (art. 65, point 4 and 8). Recently however, the Indonesian government added article 59, which makes an exception for the work associated with any new product, process or additional products that are on trial. Article 59 allows employers to use short-term contracts without limit.

At PT Busana Prima Global (BPG) facilities in Indonesia, new employees are hired only on a short-term contract basis. Contract workers do not enjoy the same rights as regular workers, such as annual leave and maternity leave. At BPG I, workers estimate that 40% of them are now on short-term contracts. At BPG III, which opened in 2001, workers reported that only one employee out of 1,097 has a permanent contract. BPG produces for well-known sportswear brands like Fila, Converse, and others.

Unfortunately, once again these labour law provisions are often not implemented. Rekson Silaban, president of K-SBSI and vice-president of the ITUC, explains how the situation has evolved: “In the past 5 years, the number of regular workers went down from 38 to 28 million. Today, three quarters of the workers have only a short-term contract. In the free trade zones, such as Batam, this amounts to 80% and in some companies even up to 90% of the workers. The garment sector is hardly hit by the financial crisis and this makes short-term contract workers even more vulnerable: a lot of companies close their doors; others try to survive by diminishing the number of personnel. Workers in the garment sector fear losing their job and fear joining a union. This whole situation undermines the bargaining power of trade unions, as trade union activists are first in line to be fired and/or harassed... In Indonesia, there is a very weak labour inspection and a lot of union busting. The few labour inspections that do occur often lack good organisation. The inspectors are badly trained, have to control too many companies, and corruption amongst inspectors and other law officials often occur.”

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23. KSBSI is the largest independent trade union confederation in Indonesia and stands for the Confederation of Indonesia Prosperity Trade Unions, http://www.ksbsi.or.id. ITUC is the International Trade Union Confederation.
3. **Short-term contracting in Sri Lanka**

Until today, short-term contracts are not regulated by national legislation in Sri Lanka. Furthermore, the national labour legislation explicitly excludes several groups of workers from their scope of application, such as casual and temporary workers. Some limited provisions can be found in the Termination of Employment of Workmen Act as well as in the different Ordinances or Decisions of the Labour Commissioners. Labour legislation in Sri Lanka is very complex as it consists of many different legal norms such as labour laws, labour regulations, decisions of the Labour Court and the Appellate Court, and many different collective agreements. Due to this complexity, Sri Lankan labour legislation is extremely difficult to comprehend and oversee. In 1994, the National Workers Charter of the Government of Sri Lanka tried to address this problem. In this charter, workers are classified into four categories: regular workers, temporary employees, probationers, and fixed-term contract workers. Defining the different statutes of the workers is needed in order to prevent workers from being recruited as temporary workers for permanent work. According to the charter, it is prohibited to use fixed-term contracts for any regular employment. However, this charter has not come into effect.
Legal tradition in Sri Lanka gives a major role to the Courts and Labour Commissioners in determining the scope and interpretation of the law. For example, in Sri Lanka it is very easy for a worker to be hired but it is quite difficult for a worker to be dismissed. A worker can not be dismissed except in the three following cases: in case of serious disciplinary issues; when the employee gives his written consent; or with the prior approval of the Labour Commissioner. There are no requirements at all that a contract should be in writing. If there is no written contract, the terms and working conditions of employment of the applicable labour law regulation(s) is (are) applied. The Labour Commissioner can approve any involuntary termination of a contract on a case-by-case basis, and determine the amount of compensation to be paid. The compensation is often equivalent to 169 weeks of salary. The wages in Sri Lanka are unusually low in relation to the GDP per capita, especially if you compare to other countries. Sri Lanka’s living wage has been estimated at LKR 12,504 (US$116) per month for garment workers living in free trade zones areas; and LKR 10,183 (US$94.46) for those living outside free trade zones. However, most workers in the garment sector earn an average of LKR 8,779 (US$81) inside the zones; and LKR 7,364 (US$68) outside (with bonuses, overtime, attendances included). The minimum wage of garment workers increased in 2006 to LKR 6,000 (US$56) per month. This is still less than half of the estimated living wage, especially given Sri Lanka’s high level of inflation.

In Sri Lanka, as in the other Asian countries, employers try to employ their workforce on flexible terms in order to circumvent the (social) protection and other statutory duties attached to permanent working contracts. As short-term contract workers are not protected by national labour law, there is a significant decline in permanent/full time employment and an increase in casual and fixed-term contractual labour. The employment relation in Sri Lanka is often characterised by the absence of a clear employer-employee relationship; a high incidence of home-based work; under-employment; and a lack of regular employment. Companies often use short-term contracts or hire workers through a labour contractor (third party).

In conclusion, short-term contract workers lack adequate protection from national legislation in many different ways, whether in Cambodia, Indonesia or Sri Lanka. This failure is due to several reasons: the labour law is not implemented or enforced; the labour law is not applicable to the workers or does not address the issues and problems faced by the workers (because they are women, migrant, or informal economy workers); or the labour laws are weak (far below internationally-accepted standards) and/or the solutions/mechanisms they provide are insufficient. In their useful overview of labour law in the region, the Asia Monitor Research Centre (AMRC) states that, “despite the wide variety of historical, economic and political circumstances there are a number of clear trends that emerge: regulations are contradictory or ambiguous, the law does not cover all workers, other laws or government policies may annul labour laws, current labour laws are under attack, governments do not implement or enforce the laws, or the historical circumstances of labour law formation deny workers access to rights.”

Sujeewa Nalummali of the National Workers Congress (NWC) in Sri Lanka testifies: “Employers abuse the financial and economic crisis to demand lower wages or less favourable working conditions from employees. For example, in the garment sector companies outsource a part of the work to individual workers, who work at home. These workers are paid on a piece rate. They have no job security; get little or no social protection; are not represented and/or organised and thus easy to abuse. Outsourcing and increasing the number of short-term contracts generates more profit, makes retrenchment easier, and helps their strategy to undermine the influence of the unions and their demands for decent work.”

Employers in many countries have argued that the possibility to terminate employment easily and at low cost is a prerequisite for recruiting new employees. But more and more evidence shows that flexibility in employment alone does not automatically lead to higher productivity. **Employers themselves are also increasingly recognising the limits to the advantages they can draw from recourse to short-term contracting or dismissals.** Contract workers may save the company money in the short run, but poor skills and lack of experience can prove quite costly in the longer term. Short-term employment tends to increase the costs of training for workers and lead to lower commitment and skill levels among workers. At a time of global competition and the growing importance of quality as a factor of competitiveness, this is a serious drawback.

The question is: what needs to be done to improve the situation of short-term contract workers? **Urgent action is needed on different levels.** Firstly, short-term contract workers need adequate and effective national legislation that protects them, given their vulnerable situation. Secondly, short-term contract workers need to be informed about the importance of unionisation. Therefore, unions and other workers’ organisations need to be strengthened in order to fulfil this important task.
1. Develop and enforce national legislation on short-term contracting

An important factor in combating the abuse of short-term contracts is an adequate and effective national legislation. If provisions on short-term contracts are included in the national legislation, it will be applicable to all sectors. As indicated in the previous chapter, there are no national provisions for short-term contract workers in Sri Lanka, so there is a demand for such legislation to be adopted. A first step could be for the National Workers Charter to come into effect. In Cambodia and Indonesia, some provisions are included in the national legislation, at least in theory, but the law is not adequately enforced in practice. The major challenge is in maintaining and improving the provisions, since both governments want to make the existing labour legislation even more flexible. A second challenge is to ensure the effective implementation of national legislation. National governments have two tools to improve their legislation: the ILO Recommendation No. 198 on the Employment Relationship, and the ILO Declaration on Social Justice for a Fair Globalisation.

The tendency for more people to have an ambiguous work status increased international pressure to adopt a new labour standard, urging governments to put policies in place to ensure the protection of workers’ entitlements, distinguishing between employment and self-employment, while recognizing contractual responsibilities on both sides. This is important inasmuch that in many countries without an established employment relationship, workers cannot procure entitlement to social security or labour protection. This item was on the agenda of the International Labour Conference during the 95th session in June 2006 and resulted in the adoption of ILO Recommendation No. 198 on the Employment Relationship. This recommendation calls on member states to adopt a clear national policy and to determine the nature of any employment relationship. National policies should at least include measures to (art. 4):

- Provide guidance to employers and workers on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers;

28. In the ILO Recommendation No. 198, ILO uses the term temporary worker instead of short-term worker (being a person with a fixed-term or task related contract that both parties know will end).
• Combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status;
• Ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due;
• Ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein;
• Ensure compliance with, and effective application of, laws and regulations concerning the employment relationship.

The ILO Declaration on ‘Social Justice for a Fair Globalisation’ was adopted on 10 June 2008 and expresses the contemporary vision of the ILO’s mandate in the era of globalisation. The Declaration recalls the importance of the employment relationship as a means of providing legal protection to all workers. It also recalls the importance of developing policies in regard to:

• wages and earnings
• working hours
• working conditions
• gender mainstreaming
• in creating an effective system of labour inspection, as workers have the right to productive work in conditions of freedom, equity, security and human dignity (Decent Work Strategy of the ILO).

Unfortunately, at present there is no ILO Convention or Recommendation on short-term contracts itself29. The Declaration on Social Justice for a Fair Globalisation will be on the agenda of the next ILO Conference in June 2010. This presents workers’ organisations an excellent opportunity to address the problems related to short-term contracting and advocate for long-lasting and structural solutions. We have formulated some policy recommendations at national and international level which can be found on the next pages. We believe that such recommendations would improve the working conditions of short-term contract workers if they would be implemented in practice.

29. Other ILO Recommendations or Conventions where short-term contracting is mentioned are: Convention No. 181 and Recommendation No. 188 on the Private Employment Agencies; Convention No. 158 and Recommendation No. 166 on the Termination of Employment; Convention No. 94 on Labour Clauses; Convention No. 183 on Maternity Protection.
2. Support collective bargaining and strengthen workers’ organisations

Apart from adequate national legislation, other steps should be undertaken in order to improve the situation of short-term contract workers. We need to organise short-term contract workers, make sure they are represented by workers’ organisations and included in the collective bargaining process and collective agreements. If workers are sub-contracted or contracted on a short-term and individual basis, the rights of these workers are compromised. It is very difficult to organise these workers and therefore they often lose their bargaining power\(^{30}\).

The most effective way of reaching the optimal balance between economic efficiency and the protection of workers’ interests is collective bargaining and social dialogue at all levels, including bipartite and tripartite negotiations at national, sectoral and enterprise level. Consultation among government, employers’ and workers’ organisations, gives legitimacy to a certain degree of flexibility accepted by all parties. It is important that short-term contract workers are part of this process: they should be included in the collective agreements, and should be represented during the social dialogue and collective bargaining process. Collective bargaining needs the mutual recognition of workers and management as equal partners. Flexibility can be smoothly implemented only if workers are involved in the process as equal partners, and only if their views are taken into account in selecting the forms of flexibility to be introduced and in determining the ways in which they should be introduced.

Effectiveness of collective bargaining as an instrument in protecting contract workers’ rights depends largely on the strength of workers’ organisations. Therefore, organising short-term contract workers poses challenges for workers’ organisations.

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We need to invest on three levels:

- **at company level**, we need to organise the short-term contract workers
- **at industry level**, we need to bargain and reach collective agreements which also cover short-term contract workers
- **at national level**, we will push for legislative reform and ensure the laws are correctly implemented.

**International** advocacy is needed to ensure the problem is dealt with at international level (since it is an international phenomenon). The organisations launching and participating in the campaign on “Equal treatment for short-term contract workers” will work on these different levels (national, sectoral and enterprise level) in their respective countries (Cambodia, Indonesia and Sri Lanka), and will join their efforts on the regional and international level.
3. **Policy recommendations at national and international level**

**I. Workers involved in the main production line should be employed on a permanent basis. This entails:**

- Employers should be obliged to inform short-term contract workers about vacancies, which become available in the company.
- Employers must facilitate access to appropriate training and promotion opportunities.
- A short-term employee should have the automatic right to permanent employment after two successive contracts or if employed by the same employer for two years (adding the periods of all the successive contracts and regardless of any breaks in employment).

**II. Precarious forms of employment should not be used to undermine the legal rights and benefits to which permanent employees are entitled.**

This means that:

- Governments must improve their policies and their implementation to ensure protection of workers’ entitlements. The mutual contractual responsibilities should be made explicit in a contract and the workers should have a copy of that contract and of their payslips (ILO Recommendation no. 198).

- Any use of short-term contracts should be in response to a clearly defined plan justifying their use. The use of these forms of flexible employment can only be justified for work that is clearly exceptional or goes beyond the ordinary day-to-day operations of the factory. Companies should be obliged, as is the case in the EU, to make their reasons for using temporary employees explicit. The number of short-term contract workers in the company should be limited, and employees’ representatives are to be consulted prior to the recruitment of temporary workers.
• All temporary workers should be provided with the same salary and benefits as regular workers performing the same tasks, as stated in the ILO Convention no. 100 on Equal Remuneration. Social protection benefits should be equal for ALL workers, as stated in ILO Convention no. 102.

• All temporary workers should have the right to join the trade union of their choice, including any union organising regular workers at the factory in which they work (ILO Convention no. 87 and 98). Fixed-term workers should be included in the collective bargaining agreement, and taken into consideration in calculating the threshold above which workers' representative bodies must be established. Employers must give the appropriate information to the workers' representative bodies about the short-term work available within the company.

• National labour law should prescribe all of the above requirements. Where requirements are stronger under local law, the higher standard should prevail.

• National labour law should be well enforced. Countries should invest more in labour inspection, i.e. more resources for the training of inspectors, increase the number of independent inspectors and perform more labour inspections in the field.
Policy recommendations at international level

I. Recommendations for international institutions

WORLD BANK: the policies of the World Bank must not undermine collective efforts to create a sustainable and fair globalisation. A first and crucial step, would be to revise the Employing Workers Indicator of the yearly Doing Business reports.

- The Employing Workers Indicator should take into account the ILO core labour standards: 8 conventions covering the right to collective bargaining, the elimination of forced labour, the abolition of child labour and equal treatment in employment practices. In doing so, the Doing Business reports would rightly give a better ranking to countries that comply with the letter and spirit of the ILO core labour standards, recognising that well-designed worker protections are of benefit to the society as a whole. The World Bank included them already in their policies but not in their project management and indicators.
- A (new) worker protection indicator should be established, as well as offering broader ideas on labour market and employment protection issues with a view to creating regulations that help build robust jobs.

INTERNATIONAL LABOUR ORGANISATION (ILO) needs to address the problems related to short-term contracting by:

- urging national governments to make sure in law and practice that the freedom of association and the right to collective bargaining (ILO Convention no. 87 and 98) as well as the right to social protection (ILO Convention 102) are applied to all workers, including short-term contract workers;
- increasing efforts for the effective implementation of the ILO Recommendation on Employment Relationship (nr. 198 of 2006). This recommendation calls on ILO member states to adopt a clear national policy and to determine the nature of any employment relationship.
• by inviting the constituents of the ILO to elaborate and adopt a convention on short-term contracting or non-standard employment;
• by calling on governments to use the Declaration on Social Justice for a Fair Globalisation as an important tool for national policy making;
• strengthening its work on collective bargaining and address the issue of short-term contracting in this process.

II. Recommendations for suppliers and buyers

• Suppliers and buyers should insist that the companies they work with implement the ILO Recommendation on employment relationship. They should demand from the companies of their supply chain that a formal employment relationship is established with all employees in the form of contracts, timesheets, payslips, etc. As recommended by the ILO Recommendation Nr. 198 (2006).
• Predictability: suppliers and buyers should where possible, give sufficient notice to factories regarding their orders, including possible changes to these orders; and establish long-term, stable supply chain contracts with the supply factories.
With this policy paper, we want to draw attention to the problems related to short-term contracting for workers in the garment sector. In order to improve the situation of these vulnerable workers, policy recommendations at national and international level are formulated. A signature card is developed in order to raise awareness amongst all workers, and will be used in advocacy work towards national and international policymakers. A symbolic amount of signatures, together with this policy paper, will be handed over to the International Labour Organisation (ILO) in June 2010 during the ILO Conference.

In the policy recommendations we demand that the basic labour rights of short-term contract workers are upheld. This entails that, for example:

- Short-term contract workers can join a union of their choice (as stated in the ILO Convention no. 87 and 98)
- Social protection is applied to all workers, including short-term contract workers (ILO Convention no. 102)
- Short-term contract workers receive the same salary and benefits provided to regular workers performing the same job (ILO Convention no. 100)
- Contracts and payslips are in line with national labour law and all workers obtain these fundamental documents. (ILO Recommendation no. 198)

Collective bargaining agreements should be applied to all workers, including short-term contract workers. These agreements must define the reasons for using short-term contracts and set clear limits. Collective agreements must ensure equal treatment for all workers, whatever their legal status, both to protect them and to prevent employers from using this type of employment to undermine permanent employment. The number of short-term contract workers in the company should be limited. Finally, applicable labour legislation should be adequately monitored and enforced.
These are just some of the policy recommendations that, if applied without delay, would improve the working conditions of temporary workers. These are not unreasonable demands but rather a call for the implementation of relevant ILO Conventions and Recommendations that have already been ratified by most of the Asian countries. Unfortunately, the implementation of these Conventions and Recommendations is often insufficient or threatened, as is the case in Cambodia, Indonesia and Sri Lanka.

National governments have two important tools to improve their legislation: the ILO Recommendation No. 198 on Employment Relationship and the ILO Declaration on Social Justice for a Fair Globalisation. This latter expresses the contemporary vision of the ILO’s mandate in this era of globalisation, and short-term contracting is mentioned in this declaration. It recalls the importance of developing policies with regard to wages and earnings, working hours, working conditions, gender mainstreaming, and in creating an effective system of labour inspection.

One of the agenda items of the International Labour Organisation’s Conference in June 2010 is a discussion on the strategic objective of employment, as a follow-up to the 2008 Declaration on Social Justice for a Fair Globalisation. The workers’ organisations involved in this campaign on short-term contracting will attend the international labour conference, to advocate for decent work for short-term contract workers and call for long-term solutions.
Coalition of Cambodian Apparel Workers’ Democratic Unions (C.CAWDU), Cambodia

Workers in the garment industry in Cambodia are often exposed to unreasonable working conditions. Even today, the core international labour standards are not respected. The freedom of association is not enjoyed by all workers, this is certainly the case in the free trade zones. In these difficult circumstances, C.CAWDU became the main trade union in the garment industry in Cambodia. In a society which is hostile towards union work, C.CAWDU is a consistent and reliable support for workers in the clothing industry. Their work and services provided for the members have proven successful, because today the union has more than 50,000 members and is continuously growing. Unfortunately, only half of these members are able to pay a membership fee, due to the very unstable employment situation, very low wages and the high percentage of temporary contracts. The actions of C.CAWDU receive broad national and international recognition and support, mainly because C.CAWDU has the full confidence of its members, who rely on C.CAWDU to put an end to their difficult working and living conditions. C.CAWDU has been a partner of WSM since 2007.

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The Garment and Textile Federation of Indonesian Prosperity Trade Union (Garteks), Indonesia

Garteks started up in 1998 as the garment trade federation of the Confederation of Indonesia Prosperity Trade Union K-SBSI. Since then, they have consistently been fighting for the rights of garment workers throughout Indonesia. Their work has been very challenging in the face of globalisation, the labour law on outsourcing, and the use of military forces to protect companies.
The clothing industry in Indonesia used to be one of the most prominent in Asia, but companies have gradually moved to other regions within Indonesia or to other countries in Asia. This is due to the higher salaries in Indonesia and little access to natural resources (such as wool, cotton and silk). Around 2 in 10 companies move to China or Korea. The remaining 80% tend to relocate within Indonesia, something that does not promote job stability. “It’s hard to negotiate since there’s the constant threat of relocation: if we bargain too hard, then a company will pack up its belongings and move 100 km away, with lower salaries in many cases and a whole new playing field of workers” (Elly Rosita of Garteks). For several years Garteks has had an active partnership with the international Clean Clothes Campaign. Garteks is also a member of the International Textile Garments and Leatherworkers Federation (ITGWLF). At present Garteks has about 18,000 members. They are active in the regions of West-Java, Bandung, Central Java, East Java and Jakarta. Garteks has been a partner of WSM since 2008.

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National Workers Congress (NWC), Sri Lanka

The National Workers Congress (NWC) is a non-political independent and democratic trade union movement, which is regionally affiliated to the International Trade Union Confederation - Asia Pacific (ITUC-AP) and internationally to the International Trade Union Confederation (ITUC). NWC was established in 1947 and is registered under the Trade Union Ordinance of 1920. The main objective of the NWC is raising the quality of life of the worker socially, economically and spiritually, not only as a Trade Union Movement but as a Trade Union social movement as well. Protection of workers rights, social security mechanisms, decent work agenda, social dialogue, worker education, eradication of poverty, are some of the major concerns of the NWC. The NWC has a nation wide networking system with permanent centres situated all over the country (except in the North and in the Free Trade Zones). All over the country, it has established federations in the different sectors. NWC is also active in the garment industries of three major Free Trade Zones,
namely in Katunayake Negombo, Biyagama in Kelaniya, and Koggala in the Galle District. NWC negotiates Collective Bargaining Agreements with garment factories in these Free Trade Zones; contacts the workers and has dialogues with them on various labour problems affecting the workers in the garment industry, and educates them on labour laws in order for them to have the capacity to represent the workers in their place of work.

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Young Christian Workers (YCW), Sri Lanka

The Young Christian Workers (YCW) Sri Lanka is a national organisation, and is affiliated with the International Movement (IYCW). YCW Sri Lanka receives support from the Catholic Church in Sri Lanka and organises young workers in the informal sector, and young women workers. Their mission is to improve the lives of these young workers and to create better working conditions for them.

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World Solidarity (WSM), Belgium

Everywhere in the world, people are working hard to improve their living conditions and those of their families. However, in the South, these efforts are not rewarded in the same way as in the North. Workers in the South do not earn decent wages, are often forced to work in very difficult circumstances, live in extreme poverty and do not have access to health care or social protection.

World Solidarity wants to address this injustice in a structural way, through sustainable solutions. World Solidarity aims to achieve this by giving people in the South every opportunity to organise themselves in, for example, a trade union, a women’s organisation, a movement for young people or for the elderly, as well as health insurance schemes and cooperatives. By organising themselves, they can better defend their rights. World Solidarity is the North-South movement of the Christian Workers’ Movement in Belgium.

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