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WORKER RIGHTS  
CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT  
re: GENDER-BASED VIOLENCE AND HARASSMENT AT  
NIEN HSING TEXTILE CO., LTD (LESOTHO)**

**FINDINGS, RECOMMENDATIONS, AND STATUS**



**August 15, 2019**

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5 Thomas Circle NW ■ Fifth Floor ■ Washington, DC 20005  
(202) 387-4884 ■ Fax: (202) 387-3292  
wrc@workersrights.org ■ www.workersrights.org

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## I. Executive Summary

This report details the findings of the Worker Rights Consortium (“WRC”) concerning gender-based violence and harassment (GBVH)<sup>1</sup> and violations of associational rights at three garment factories in Maseru, Lesotho and the ground-breaking commitments made by the owner of the factories, and the leading apparel brands that produce there, to remedy these violations.

The WRC’s findings are based on an extensive investigation of labor practices at these facilities, including in-depth, offsite interviews with workers conducted during the fall of 2017, the summer of 2018, and in early 2019.

The three garment factories are owned by the Taiwan-based global jeans manufacturer, Nien Hsing Textile Co., Ltd. (“Nien Hsing”) and collectively employ roughly 10,000 workers. The factories are known as C&Y Garments (“C&Y”), Nien Hsing International, and Global Garments. Nien Hsing also operates a textile mill in Lesotho, Formosa Textile Company, and has recently opened a fifth facility, called Glory International.<sup>2</sup> All of the facilities are located in the Thetsane Industrial Area in Maseru, the capital of Lesotho.

C&Y, Global Garments, and Nien Hsing International, supply denim garments to Levi Strauss & Co. (“LS&Co.”), The Children’s Place (“TCP”), and Kontoor Brands (“Kontoor”).<sup>3</sup>

The WRC identified sexual harassment and coercion of women workers by male managers, supervisors, and co-workers, across the three factories. The WRC found, based on our analysis of the evidence, that these abuses were extensive, affecting many of the women working at the factories. The gender-based violence and harassment identified at these facilities violated workers’ rights under Lesotho’s labor laws, international standards, and the codes of conduct of the brands whose products these employees produce. Specifically, the WRC found that:

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<sup>1</sup> The term Gender-based Violence and Harassment is adapted from the recently adopted ILO Convention concerning the Elimination of Violence and Harassment in the World of Work (No. 190). According to the Convention 190, Article 1 (a)(b), “[V]iolence and harassment in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment [...] [G]ender-based violence and harassment means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment,” available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190).

<sup>2</sup> Nien Hsing website, [www.nhjeans.com](http://www.nhjeans.com).

<sup>3</sup> In 2019, VF Corporation officially separated VF’s jeans wear operation into an independent, publicly traded company. The new company, named Kontoor Brands, Inc., includes the following brands: Wrangler, Lee, Rock & Republic, and the VF Outlet stores. During the WRC’s initial investigation, both LS&Co. and VF Corporation publicly listed the Nien Hsing Lesotho factories among their suppliers. Although The Children’s Place does not publicly disclose its supplier factories, US Customs data documented shipments of garments to The Children’s Place from these factories. The WRC notes that not every brand buys from all three of the factories.

- Managers and supervisors coerced many workers into sexual relationships. They did so by conditioning the maintenance of employment contracts and/or provision of more favorable working conditions on a female worker's willingness to engage in such a relationship.
- Women workers faced sexual harassment from both managers and co-workers, and management often failed to take disciplinary action against offenders.
- This tolerance of harassment by Nien Hsing created a culture of acceptance of GBVH in the factories and a fear of reporting among women workers.

The vulnerability of women workers at these factories to GBVH was exacerbated by Nien Hsing's suppression of workers' associational rights, which left employees unable to act *collectively* to raise concerns about, and demand an end to, these abuses. The WRC found that Nien Hsing, in violation of Lesotho's laws, international standards, and buyer codes, denied employees the right to be represented by their chosen union; attempted to interfere with internal union matters; unilaterally terminated a memorandum of understanding with one of the unions representing workers at the factories; and engaged in acts of discrimination and retaliation against employees for exercising their associational rights.

It is important to emphasize that the WRC, upon documenting these violations, did not ask Nien Hsing's brand customers to stop doing business with the company. We asked the brands to maintain the business relationship and use their leverage to convince Nien Hsing to change its practices—consistent with the best interests of the workers. The labor unions representing the workers, and their partners at Lesotho's leading women's organizations, strongly supported this approach. While it is necessary, ultimately, for brands to condition orders for their suppliers on respect for human rights, termination of the business relationship should be a last resort, given the economic consequences for workers.

The brands have responded appropriately, engaging with Nien Hsing's CEO and requiring reforms. As a result, shortly after the findings were surfaced, and in accordance with remedies prescribed by the WRC to reduce the vulnerability of women workers and increase their capacity to defend their rights, Nien Hsing signed memoranda of understanding with the three unions representing workers at the factories and significantly limited the use of short-term contracts, which had made workers especially vulnerable to abuse.

Most importantly, as discussed in detail below, Nien Hsing has committed to accept an independent oversight mechanism with the power to protect women workers from harassment and abuse, and the brands have agreed to condition business with Nien Hsing on the company keeping its commitment.

## II. Recommendations for Corrective Action and Brand and Employer Response

In developing proposals for corrective action to address GBVH at Nien Hsing in Lesotho, the WRC was informed by 1) our recognition of the fact that the management responsible for the existence of a culture of sexual harassment and coercion in a workplace does not suddenly develop the will and capacity to eliminate the problem through its own managerial efforts; 2) our experience with the generally inadequate approach of global brands to improving labor conditions at their contract factories, via their existing auditing systems; and 3) the promising track record, by contrast, of *enforceable* labor rights agreements between brands and organizations representing workers in their contracted supply chains. These include the Accord on Fire and Building Safety in Bangladesh (which has transformed the physical infrastructure of Bangladesh’s enormous garment industry and radically improved safety protection for more than 2.5 million workers) and the Fair Food Program in Florida (which has largely eradicated sexual harassment and coercion, and many other labor rights abuses, in an industry that is among the most poorly regulated in the United States).

The WRC therefore asked LS&Co., TCP, and Kontoor to enter negotiations with worker representatives for a *binding, enforceable agreement* to root out GBVH at Nien Hsing—an agreement committing the brands to condition future business with Nien Hsing on its cooperation with an independent oversight body empowered to investigate complaints from workers and order disciplinary action, including termination, against any manager found to have committed acts of sexual harassment or coercion. In the WRC’s view, providing workers facing abuse with the ability to bring their complaints to an independent body, charged with protecting their safety and defending their rights and beholden in no way to factory management, is the only way to correct the imbalance of power that enabled managers, supervisors, and others to harass workers with impunity.

The WRC recommended that the apparel brands sourcing from Nien Hsing’s Lesotho factories participate in a program:

- Established via a binding, enforceable agreement among key stakeholders—the brands, worker representatives from the Lesotho trade unions with members among the factory employees, and local and international labor rights and women’s rights advocates, including the WRC and local organizations in Lesotho with expertise in combating sexual harassment;
- Implemented by an independent complaint-handling and fact-finding body that would receive and investigate complaints, determine the remedial measures that are necessary, and have the power to direct Nien Hsing to promptly implement these remedies, up to and including the dismissal of managers who have harassed or coerced employees;
- Publicized to factory workers, supervisors, and managers through a program of education and training on sexual harassment directed by the independent

complaint-handling and fact-finding body, by the unions representing workers at Nien Hsing, and by leading Lesotho women's organizations; and

- Enforced by the brands' binding commitment to condition continued business with Nien Hsing on the latter's cooperation with and implementation of the directives of this body.

The WRC also asked Nien Hsing to remedy its violations of workers' right to organize by signing memoranda of understanding (MOUs) with the three unions representing workers at the factory—the Independent Democratic Union of Lesotho (IDUL), the United Textile Employees (UNITE), and the National Clothing Textile and Allied Workers Union (NACTWU)—ensuring their ability to gain access to the factories and represent their members.

Recognizing the severity of the problem of sexual harassment and coercion at these facilities, LS&Co., TCP, and Kontoor agreed to initiate negotiations with the unions and with two leading Lesotho organizations working to address sexual and gender-based violence in the country: the Federation of Women Lawyers in Lesotho (FIDA) and Women and Law in Southern Africa Research and Education Trust - Lesotho (WLSA).

Acting on the WRC's findings and identified remedies concerning freedom of association, the brands also moved expeditiously to urge Nien Hsing to sign MOUs with the three unions, which the company has done.

Negotiations then began to create a comprehensive program to address sexual harassment and coercion at the factories. The Lesotho organizations asked Workers United and the Solidarity Center to act as advisors during the negotiations. The WRC acted as a facilitator, advising all parties on the necessary elements of an effective agreement and urging the brands and Nien Hsing to recognize the vital importance of achieving one. The WRC also provided, to all parties, a draft agreement text to serve as a departure point for negotiations.

Discussions between the unions, nongovernmental organizations (NGOs), and the brands resulted in a decision to pursue separate, paired agreements: an agreement between the NGOs and each brand, committing the brand to condition business with Nien Hsing on the latter's compliance with a program to eliminate and prevent GBVH, and an agreement between the NGOs and Nien Hsing, enumerating the elements of that program. The text of the brand agreements was finalized in June 2019. Negotiations for an agreement with Nien Hsing were completed in July 2019. All agreements were signed in August of 2019. In addition to the brands, Nien Hsing, and the Lesotho unions and women's organizations, the WRC, the Solidarity Center, and Workers United are signatories.

The agreements include the essential elements of an effective program to combat GBVH. They establish an independent entity ("the Office for the Prevention and Elimination of Gender-Based Violence and Harassment") to receive complaints from workers,

investigate those complaints, and direct discipline against harassers and abusers, up to and including termination, where necessary—with strong protections to ensure there is no retaliation against complainants or witnesses. The independent entity will have an Oversight Committee comprised equally of representatives of the Lesotho unions and women’s organizations and the brands, with a neutral voting chairperson (the WRC and Nien Hsing will serve on the body in an observer capacity). The operations of the independent entity will be supported by a comprehensive training program, utilizing intensive small group and worker-to-worker training methods, delivered by the Lesotho unions and women’s organizations. The women’s organizations will also operate an information and complaint line to handle complaint intake and provide counseling and other support to workers—so that workers at the Nien Hsing factories will always have a place to turn to for support and for recourse.

The agreement with Nien Hsing also protects associational rights by prohibiting any form of anti-union retaliation or interference with workers’ exercise of their right to organize. This is crucial, because workers’ ability to act collectively to protect their rights and interests in a workplace provides them with a powerful and essential tool to combat sexual harassment and coercion—restrictions on the ability of Nien Hsing employees to exercise their right to collective action was a major contributing factor to the high incidence of GBVH at these facilities.

Under the brand agreements, each brand is obligated to reduce orders to Nien Hsing if the independent oversight body determines that Nien Hsing has materially failed to comply with the terms of its agreement—the purpose is to ensure that Nien Hsing has a powerful economic incentive to comply. The brand agreements are legally enforceable in the United States, by the Lesotho organizations and by the WRC, via binding commercial arbitration.

Under the agreements, the Solidarity Center will play a central role in supporting the Lesotho organizations and the independent entity in program administration and implementation. The WRC will also advise the parties on implementation.

The agreements cover the three factories assessed by the WRC (C&Y, Nien Hsing International, and Global Garments) and the two other factories operated by Nien Hsing in Lesotho: Formosa Textile and Glory International. We believe that, if faithfully implemented, these agreements will radically reduce, if not completely eradicate, sexual harassment and coercion in these factories.

The remainder of this report summarizes the WRC’s findings concerning GBVH and freedom of association at C&Y, Global Garments, and Nien Hsing International.

The abuses outlined herein are grievous—and it must be noted that the brands sourcing from Nien Hsing’s Lesotho factories did not detect them via their voluntary codes of conduct and monitoring programs, which allowed the abuses to continue. It is relevant to note, in this regard, that workers, in offsite interviews, testified that Nien Hsing managers concealed their actual conditions and treatment from brand auditors, including by pressuring employees not to speak truthfully to brand representatives who visit the factory.

It must also be noted that Nien Hsing and the brands have responded to the exposure of these abuses by making sweeping commitments to combat the problem. These are commitments no other factory owner, and no other apparel brands, have made, though abuses as severe exist at other factories in other brands' supply chains—some previously reported,<sup>4</sup> some as yet unexposed. Given the ubiquity of sexual harassment in the global workplace, the most meaningful measure of corporate responsibility is not whether the problem exists in a company's operations but whether the company is, or is not, pursuing bold and innovative means to address it. To their credit, LS&Co., TCP, Kontoor, and Nien Hsing are doing so.

### **III. Methodology**

#### **A. Sources of Evidence**

The WRC's findings at the three Nien Hsing facilities in Lesotho are based on offsite interviews conducted with 140 workers. Sixty-three of these interviews involved in-depth, multi-hour interview sessions, while 77 were more limited in scope. The majority of the workers interviewed had been in the company's employment for at least five years at the time they were interviewed. The WRC interviewed workers from a broad range of the factories' operations, including sewing, quality control, cutting, ironing, packing, washing, and hand-sanding departments.

It is important to note that workers, in these offsite interviews, testified that Nien Hsing managers concealed their actual conditions and treatment from brand auditors, including by pressuring employees not to speak truthfully to brand representatives who visit the factory. One worker at the C&Y factory told the WRC, "We are demanded to lie on behalf of the company...The people that buy the product of the company were on the site, and we were threatened that if some tell the truth of what really happens on the site, it might jeopardize their jobs."

The WRC also interviewed seven union leaders and staff representing the three unions that have members across the three facilities and reviewed relevant documents including employment contracts, paystubs, and agreements signed between Nien Hsing and the unions representing its workers.

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<sup>4</sup> See, Human Rights Watch, "Combatting Sexual Harassment in the Garment Industry," February 12, 2019, available at: <https://www.hrw.org/news/2019/02/12/combatting-sexual-harassment-garment-industry>; CARE International, "'I know I cannot quit.' The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry," March 2017, available at: [https://insights.careinternational.org.uk/media/k2/attachments/SHCS\\_Full\\_Technical\\_Report\\_March\\_2017.pdf](https://insights.careinternational.org.uk/media/k2/attachments/SHCS_Full_Technical_Report_March_2017.pdf); Yulya Truskinovsky, Janet Rubin, and Drusilla Brown, "Sexual Harassment in Garment Factories: Firm Structure, Organizational Culture and Incentive Systems," March 2014, available at: <https://betterwork.org/global/wp-content/uploads/DP-14-final.pdf>.



## B. Terms of Reference

The WRC assessed the labor practices and working conditions at the three Nien Hsing-owned facilities in relation to the company's obligations under Lesotho labor law and regulations, international labor standards, and the vendor codes of conduct of its principal buyers. These terms of reference include, among others:

- Lesotho Labour Code Order, 1992;<sup>5</sup>
- Lesotho Labour Code (Amendment) Act, 2000;
- Conventions of the International Labour Organization (ILO) ratified by the Lesotho government;<sup>6</sup> and
- Codes of vendor conduct of LS&Co., Kontoor, and TCP.<sup>7</sup>

## IV. Findings

### A. Gender-based Violence and Harassment

#### 1. Findings

As detailed below, the WRC found that across all three Nien Hsing factories women workers were regularly coerced into sexual activity with supervisors as a condition of gaining or retaining employment or job promotion and were otherwise harassed sexually, via both verbal statements and unwanted sexual contact, on a persistent basis.

It is important to note that most workers at the three factories were initially hired on a probationary basis, following which they were or were not offered a permanent position, or on short-term contracts, which might or might not be renewed. In a number of cases described by the workers, managers or supervisors pressured workers to have sex with them in exchange for permanent and/or continued employment.

A measure of the pervasiveness of GBVH at the factories is that nearly two-thirds of the women workers (24 out of 38) with whom the WRC conducted in-depth interviews

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<sup>5</sup> Lesotho Labour Code Order of 1992, Order Number 24 of 1992 ("Labour Code Order"), available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/31536/64865/E92LSO01.htm>.

<sup>6</sup> Lesotho has ratified 23 Conventions of the ILO, including all eight of the Fundamental Conventions: 29 ("Forced Labour"), 87 ("Freedom of Association and Protection of the Right to Organise"), 98 ("Right to Organise and Collective Bargaining"), 100 ("Equal Remuneration"), 105 ("Abolition of Forced Labour"), 111 ("Discrimination (Employment and Occupation)"), 138 ("Minimum Age"), and 182 ("Worst Forms of Child Labour"). More information on the ILO Conventions ratified by Lesotho is available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103188](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103188).

<sup>7</sup> Levi Strauss & Co., "2017 Sustainability Guidebook," available at: [http://Levi'strauss.com/wp-content/uploads/2017/12/2017-Sustainability-Guidebook\\_December2017.pdf](http://Levi'strauss.com/wp-content/uploads/2017/12/2017-Sustainability-Guidebook_December2017.pdf);

Kontoor Brands, "Global Compliance Principles," available at: <https://s3.amazonaws.com/content.stockpr.com/kontoorbrands/files/pages/ca-supply-chains-act/Kontoor+Brands+Global+Compliance+Principles+-+Apr+3+2019+with+logo+%281%29.pdf>;

The Children's Place, "Supplier Code of Conduct," available at: [https://www.childrensplace.com/wcsstore/GlobalSAS/images/tcp/common/2014\\_TCP\\_Supplier\\_Code\\_of\\_Conduct.pdf](https://www.childrensplace.com/wcsstore/GlobalSAS/images/tcp/common/2014_TCP_Supplier_Code_of_Conduct.pdf).

reported having experienced sexual harassment or abuse or having contemporaneous knowledge of harassment or abuse suffered by co-workers. Overwhelmingly, and without prompting from interviewers, women workers from all three factories identified GBVH as a central concern for themselves and other female employees. Given workers' general reluctance, in the WRC's experience, to talk about this subject matter, the high percentage of workers testifying to have experienced GBVH, or having knowledge of GBVH, is a powerful indicator of the depth and breadth of the problem.

### **a. C&Y Garments**

At C&Y Garments, which employs approximately 3,000 workers, the WRC identified egregious cases of sexual harassment and coercion. The incidents described by workers included situations in which supervisors<sup>8</sup> coerced women workers to engage in sexual activity as a condition of retaining their jobs or receiving a promotion. Women workers also testified that the conduct of these supervisors contributed to an environment where some of their male co-workers also engaged sexual harassment.

Worker testimony concerning sexual abuse and harassment from workers at C&Y included the following statements:

- “Many supervisors demand sexual favors and bribes from prospective employees. They promise jobs to the workers who are still on probationary contracts. [...] 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. [...] Nine out of ten women have said yes to the supervisor, even those who are married. He takes some of the women to a nearby guesthouse for sex.”
- “[The supervisor] always propose[d] [sex] to me every month, [and] when I den[ie]d the proposal he made the work intolerable. I was disturbed, and I didn't know what to do [...] He used to shout at me to show the other workers that I can't do the work properly. One time, I was doing my job as usual, and he took me to the H[uman] R[esources] [office], [to complain about me].”
- “Around June [2018], my supervisor called me to tell me he was coming over to my home. When I asked him why, he said to have sex and that he would promote me. I thought it is better to stay in the same position.”<sup>9</sup>

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<sup>8</sup> It should be noted that workers use the term “supervisor” broadly, to indicate both their direct supervisors and more senior personnel performing managerial functions, such as hiring and firing employees. The sexual coercion and harassment at these facilities was perpetrated by both managers and supervisors.

<sup>9</sup> When asked if she had reported this incident to the factory's human resources office, the employee quoted here told the WRC, “I will only report this if the supervisor tries to dismiss me.”

## **b. Global Garments**

At Nien Hsing's Global Garments factory, which likewise employs approximately 3,000 workers, workers also testified to serious incidents of sexual harassment and abuse. As at the C&Y factory, women workers were pressured to engage in sexual activity with supervisors or managers to retain their employment. Women workers also testified that the conduct of these managers and supervisors contributed to an environment where some of their male co-workers also engaged in sexual harassment.

Examples of testimony provided by workers about incidents of sexual abuse and harassment at Global Garments include the following:

- “There was a supervisor who was discovered touching one of the workers who was still on her probationary contract. He promised her permanent work. They were hiding behind the boxes. They were found having sex behind the boxes. She confessed to other workers and said that the supervisor had promised to make her contract permanent and that is why she agreed [to have sex with him].
- “[A] male supervisor was proposing [sex] to me, [and] he told me [that he would not] give up until he sleeps with me...He makes the workplace very difficult for me [...] Those who have slept with him get overtime and other benefits, [but] [i]f things go sour [between the supervisor and one of these workers], he makes the lives of these workers difficult to the point of dismissal.”
- “When I first arrived [at the factory], I was in the packing department ... [and after another employee left] I was [promoted]. The supervisor would approach me and say he wanted to have a relationship with me. ...[S]ometimes [when other employees were not present] ... he would touch my breasts, and I would just step back [away from him]. ... There was a point I decided to go tell personnel what he was doing. I explained what he was doing, and they said they would fix it. No action was taken. Then I just let it go because they didn't do anything about it.”<sup>10</sup>
- “[A male worker] put [one of] his hand[s] on my breast and [the] other [hand] on my private parts. I reprimanded him. This is common practice, because it is a male-dominated department [i.e., the washing department]. They [the male workers] usually claim that they are ‘playing.’”

## **c. Nien Hsing International**

At the Nien Hsing International factory, which employs approximately 3,500 workers, employees also reported serious incidents of sexual harassment and abuse. In particular, workers testified that supervisors and managers required women workers to engage in sexual relationships with them as a condition of retaining employment or in exchange for other benefits. Women workers also testified that the conduct of these managers and

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<sup>10</sup> The worker quoted was dismissed in April 2018 based on a complaint made against her by the same supervisor. According to other workers, the supervisor was moved to the packing department in the factory.

supervisors contributed to an environment where some of their male co-workers also engaged in sexual harassment.

Testimony from Nien Hsing International workers concerning incidents of sexual abuse and harassment at the factory include the following:

- “[W]hen a woman worker is passing by ... the supervisor [will] start talking about her body and saying, ‘she is nice’ to other men standing nearby, [then] they start talking about the worker’s body [too].”
- “The foreign national managers slap women’s buttocks and touch their breasts. They sometimes take them home for sex. One time we caught [an expatriate] manager having sex with a female ... worker in the factory [...] The women in these relationships get promoted easily and get a lot of bonuses.”
- “Around March [2018] I heard ... [that] [t]he supervisor in the sewing office [had] promised to give a girl a job if she sleeps with him [...] He arrange[d] with her to come to his house while his wife is away, but the wife f[ound] out[,]...she f[ound] them at the house. [The wife] threatened to beat [the other woman] up at work. [Another] ... supervisor...took the matter to the H[uman] R[esources] [department] but ... [the] HR [department] didn’t do anything. The supervisor was not dismissed.”
- “Male workers like touching females in a way that is not appropriate.”

Workers reported that supervisors at the factories who were found to have engaged in sexual harassment, bribery, or other forms of misconduct were often transferred among the departments, rather than being disciplined. One worker stated, “The [supervisors charged with harassment] are usually rotated to other departments.” Since these supervisors remained employed at the factories and they are still able to sexually harass workers in their new assignment, the practice of rotating them contributed to the atmosphere of impunity around this issue.

#### **d. Violations of Lesotho Law and Buyer Code Standards**

The acts and pattern of harassment and coercion identified in all three factories constituted violations of Lesotho’s labor law, which states that “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.”<sup>11</sup> These practices also violated brand codes of conduct, which, likewise, prohibit sexual harassment, as well as verbal and physical harassment and abuse.<sup>12</sup>

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<sup>11</sup> Labour Code Order, Article 200.

<sup>12</sup> See, e.g. Kontoor Brands, “Global Compliance Principles,” Principle 9 on Harassment.

## 2. Factory Response

Nien Hsing provided the WRC with a written response to our findings concerning sexual harassment and coercion in the three Lesotho factories. In this response, Nien Hsing asserted that no cases of sexual harassment or abuse had been reported to the company from these factories in the 24 months prior to the issuance of the WRC's findings and that no manager or supervisor at these factories had been disciplined for sexual harassment since 2005. Nien Hsing also claimed that it conducted its own investigation in response to the WRC's findings and was unable to verify them.

In the face of credible testimony from dozens of workers, the company's denials were unpersuasive.

Despite these formal denials, Nien Hsing acknowledged, in verbal communications with the WRC, the need to improve policies and practices and outlined actions it intended to take. In addition to eliminating most short-term contracts and signing MOUs with the unions, as requested by the WRC, Nien Hsing cited ongoing implementation of a "Fair Hiring Policy," prohibiting exchange of favors of any kind for employment. Nien Hsing stated that it was implementing this policy through trainings for hiring personnel and a new "HR interview system" through which newly hired employees and those signing permanent contracts are encouraged to report any sexual harassment or coercion they have experienced during the hiring process. The company also reported that it was introducing an "abusive behavior hotline and mailbox" for workers to report any abusive behavior, including sexual harassment.

Interviews the WRC conducted with Nien Hsing workers through early 2019 indicated that the effectiveness of these policies and actions was limited and that incidents of sexual harassment and coercion continued to occur. The elimination of most short-term contracts did reduce the vulnerability of workers who had been employed on those contracts and the MOUs with the unions enabled them to assist workers in bringing complaints about some specific incidents of abuse. However, the company's approach suffered from the understandable reluctance of workers to trust management to solve the problem. For example, workers at the Global Garments and Nien Hsing International factories had heard about the company's hotline, but with few exceptions had not used it and doubted that management would respond adequately to employees' complaints. While one worker did report to the WRC that some newly-hired female employees had been asked if a supervisor tried to coerce them into a sexual relationship to secure their jobs, the same worker indicated that none of the new employees had answered in the affirmative, even though some had suffered such coercion, because they feared retaliation.

For reasons discussed earlier in the report, effectively addressing the problem of sexual harassment and coercion at Nien Hsing's factories requires moving beyond management-led trainings and policy announcements and establishing an independent complaint mechanism that workers can trust. This is the kind of program that Nien Hsing, its brand

customers, and the unions and their partners at the women's organizations have now agreed to create.

## **B. Violations of Freedom of Association**

### **1. Findings**

Workers at the three Nien Hsing Lesotho factories have sought to exercise their right to freedom of association and collective bargaining by joining and being represented by trade union organizations.

In February 2016, Nien Hsing and the Independent Democratic Union of Lesotho (IDUL), at the time the only labor organization with members in the three factories, signed an MOU committing, at all three facilities, to certain forms of recognition from the company for representation of workers by that union. Nien Hsing had, since 2002, been party to prior MOUs with predecessor unions to IDUL at the three factories. However, later in the same year, Nien Hsing informed IDUL that the company was unilaterally terminating the MOU.

Nien Hsing took a number of actions, particularly between 2016 and 2018, that constituted violations of its workers' associational and collective bargaining rights including, but not limited to, the company's unilateral termination of its MOU with IDUL and withdrawal of its recognition of IDUL. These actions, some of which involved retaliation against workers for the exercise of associational rights, had the impact of chilling the environment in the factories for freedom of association—and thereby exacerbated the vulnerability of women workers in the factories to the sexual harassment and abuse discussed above.

#### **a. Unilateral Termination of Collective Agreement**

Under Lesotho's system of labor relations, employers are legally obligated to negotiate collective bargaining agreements when a majority of workers in a given workplace have chosen to be represented by a union.<sup>13</sup> Where only a minority of workers have chosen to join a particular union, employers may, but are not required to, negotiate an MOU with that union, governing, for example, union representatives' access to the workplace, leave for workers to participate in union activities, election of shop stewards, and a procedure for handling disputes.

In fall 2016, Nien Hsing's Administration Manager wrote to the IDUL stating that the company was providing one month's notice that it was terminating the MOU the parties had signed earlier that year. The company cited as its rationale the fact that there were now other unions with members among the factories' employees that "request to be treated fairly, in exactly the same manner we do to your Union," and that this made it

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<sup>13</sup> Labour Code Amendment Act of 2000, Section 198A.

“impracticable for us to handle [the MOU] and still to be seen as non-discriminatory [*sic*] and unbiased.”

In other words, rather than negotiate additional MOUs with the other two unions in its factories, Nien Hsing chose instead to unilaterally terminate its sole existing MOU with worker representatives. The union sought government mediation of the issue through the country’s Directorate of Dispute Resolution and Prevention (DDPR), but the parties failed to reach a resolution through this process.<sup>14</sup>

Nien Hsing’s unilateral termination of the MOU represented a violation of the terms of this agreement, which states that the agreement may only be terminated “on good cause.”<sup>15</sup> An employer’s unwillingness to negotiate MOUs *with other unions* does not constitute a good cause to unilaterally terminate an existing MOU, as this attitude on the part of the employer is irrelevant to its relationship with the union which is party to the MOU.

By violating the terms of the MOU, Nien Hsing violated the associational rights of its employees. The Committee on Freedom of Association of the ILO has held 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” (emphasis added).<sup>16</sup> After terminating the MOU, Nien Hsing denied IDUL’s representatives access to its factories and refused to allow union representatives to represent workers in discussion of workplace disputes. This withdrawal of recognition and representation rights from the union, not surprisingly, had a direct chilling effect on workers’ associational activities. One worker at the C&Y factory told the WRC, “I joined the union [before] because the union can speak on my behalf. Now, it [the union] is no longer available in the factory [so I am not a member].”

## **b. Denial of Union Representation to Employees**

International labor standards on freedom of association establish that employers must permit unions to represent their members within a workplace without interference,<sup>17</sup> including by permitting labor organizations “such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.”<sup>18</sup> Lesotho’s labor law likewise states that “employer[s] shall 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.”<sup>19</sup>

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<sup>14</sup> Memorandum of Understanding, Article 10(1)(i).

<sup>15</sup> *Id.*

<sup>16</sup> International Labour Organization, “Digest of Decisions of the Committee on Freedom of Association,” November 1, 2006, Paragraph 943, available at: <http://learning.itcilo.org/ilo/jur/en/bibl/Decisions.pdf>.

<sup>17</sup> ILO Convention 98, Article 2(1). Lesotho ratified both of the key conventions addressing freedom of association and collective bargaining, Conventions 87 and 98, on October 31, 1966.

<sup>18</sup> International Labour Organization, “Digest of Decisions of the Committee on Freedom of Association,” November 1, 2006, Paragraph 1102, available at: <http://learning.itcilo.org/ilo/jur/en/bibl/Decisions.pdf>.

<sup>19</sup> Labour Code Order, Article 198.

In practice workers in Lesotho who are union members exercise this fundamental associational right by being represented in meetings concerning discipline and other employment matters by their union's shop stewards at the workplace. Nien Hsing, however, denied workers this right, by refusing to allow any of the three unions with members at its Lesotho factories to represent these workers or even to permit union representatives to enter these facilities.

Both rank-and-file workers and union leaders testified that if employees requested union representation during a disciplinary procedure or other workplace dispute, this request was denied by the company, and the worker often faced retaliation from management as a result. One worker at the Global Garments factory reported that, "If something happens to me in the factory and I report it to the [union] shop steward, especially if it involves managers or supervisors, the HR manager becomes very angry."

Another worker at the same factory, who was also a known union member, testified that if she identified a discrepancy in her pay, her supervisor would tell her she was on her own and that he would not help her fix it because she had joined the union. An employee at C&Y reported, similarly, "When the management ... know[s] that you are a member of a union ... you then get very bad treatment."

Union leaders, likewise, reported that, Nien Hsing refused to recognize their elected shop stewards or permit them to represent other employees. NACTWU reported that, from 2014 onward, Nien Hsing repeatedly rebuffed the union's efforts to present its shop stewards to the company's management, on spurious grounds—including, in one case, citing the fact that the company had terminated a previous shop steward as a justification for refusing to recognize her successor.

All three unions with members at the Nien Hsing Lesotho factories also reported that their external representatives were not allowed to enter the three facilities, either to meet with the factories' management or to talk to the union's members.

Nien Hsing's denial of workers' right to union representation in case of discipline or other workplace disputes not only violated the specific requirement under Lesotho's labor law, which states that "employer[s] ... 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,"<sup>20</sup> but also had a chilling effect generally on the environment at the factories for freedom of association. One worker told the WRC, "It is useless to join the union now because they cannot speak on my behalf if I get fired."

### **c. Attempts to Interfere with Internal Union Matters**

The right of unions "to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes" is a fundamental

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<sup>20</sup> Labour Code Order, Article 198.



element of freedom of association protected by ILO Convention 87.<sup>21</sup> Nien Hsing, however, had violated this right by attempting to dictate which members of a given union's leadership it will permit to represent that union's members who are employed in the company's factories.

In June 2016, Bereng Molapo, the Human Resources Manager at the Nien Hsing International factory, told the NACTWU, "My concern [is] the choice of people you use in your office, such as the people who were dismissed within the Group for unacceptable behavior" and warned that "[while] you suggest improving the working relationships [between the company and the union] ... with this kind of people whom we both know very well, I am very doubtful [this will occur]."

Similarly, in July 2016, Abe Makara, Nien Hsing's Human Resource Manager at the C&Y plant, told NACTWU, "To initiate any relationship with your union, certain terms have to be met ... [and] we will not welcome you if you use FAWU [Factory Workers' Union] former shop steward Mr. Rantlhokoane Keresemese and others who were dismissed by our factory for misconduct ... we cannot welcome you into our premises as long as you use those above."

While an employer certainly has the right to terminate workers from its own labor force for misconduct, it does not have the right to dictate to a union who among its leaders may or may not be its representatives in dealing with that employer. Nien Hsing's interference with its workers' choice of their own union representatives constituted a further violation of workers' associational rights.

#### **d. Anti-union Animus, Discrimination, and Retaliation**

Both union members and non-members interviewed by the WRC, across all three factories, consistently reported that Nien Hsing's management was hostile to unions and expressed fear of retaliation if they participated in union organizing or sought union representation. One worker at C&Y stated, "We do not even try to organize, because we do not want to lose our jobs." An employee from Nien Hsing International, said, likewise, "Trying to organize will likely cost one a job. So, I have not even tried."

As discussed below, workers experienced this hostile and retaliatory posture towards exercise of associational rights through both their collective knowledge of prior incidents of mass terminations of workers for union activities and their personal experience of being threatened and discriminated against for joining or participating in a union. These anti-union practices by Nien Hsing's management further chilled the environment in the factories for workers exercising associational rights.

##### *i. Reported Past Retaliation for Associational Activities*

Workers cited numerous past instances of Nien Hsing managers expressing hostility towards, and threatening retaliation for, employees' union activities. Multiple workers

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<sup>21</sup> ILO Convention 87, Article 3.

recalled an incident in 2013-2014 when a high-level, Taiwanese manager threatened to close the plant if union members continued to press for improvements in their working conditions. Workers also recounted a mass dismissal of union shop stewards by the company around 2014.<sup>22</sup>

Workers recalled an earlier incident in 2009, reported in local news media, in which one Nien Hsing factory's entire workforce of 1,200 workers was dismissed for what the workers referred to as a lunchtime holiday celebration, with singing and dancing, and what the company referred to as an illegal strike.<sup>23</sup> According to court records, approximately 1,000 of these workers were quickly allowed to reapply for their jobs and return to work, while the remaining workers remained terminated, based on criteria that the workers alleged to be discriminatory. A portion of the latter group of workers appealed their terminations to the DDPR and subsequently to the labor courts, which eventually resulted in the reinstatement, in some cases with significant back pay, of several dozens of these employees.

While the WRC did not independently verify these past incidents, workers' reports were credible and detailed. It is clear that this history of taking disciplinary action against union leaders and workers who participated in associational activities had a chilling effect on the environment for freedom of association in the factories. One C&Y worker told the WRC, "[I]f you see [the union's] leaders dismissed, can you stand and say you are [a] union member? You can't."

#### *ii. Management Threats of Retaliation for and Warnings of the Futility of Associational Activities*

Workers reported that Nien Hsing's management repeatedly threatened that workers' associational activities would result in the loss of their employment. Managers also told workers that these associational activities were futile.

One worker at C&Y testified, "The [...] management always tell[s] us that there is no need to join a union, but, rather, we should [make] do with a committee because if we bring a union it will cause strikes and the company will be shut down." The worker reported that these threats were usually issued by high-level Taiwanese managers and continued to be made up to the present.

A Nien Hsing International worker reported that she had, in the past, observed a poster on the notice board that indicated that if workers unionized, all of the plant's employees would lose their jobs. Multiple workers also reported supervisors stating that, by joining a union, the employees would cause the company to close and workers to lose their jobs.

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<sup>22</sup> Workers may have been referring to an incident described in the local press as involving the termination of seven FAWU shop stewards at the C&Y factory. See, Mantoetse Maama, "Sacked workers accused union official of betrayal," *Sunday Express*, September 29, 2014, available at: <https://sundayexpress.co.ls/sacked-workers-accused-union-official-of-betrayal/>.

<sup>23</sup> *Lesotho Times*, "1,200 fired over Christmas party," December 16, 2009, available at: <http://lestimes.com/1-200-fired-over-christmas-party/>.

Company managers also reportedly warned workers that engaging in associational activity is futile because of the company's power to retaliate against them. A Global Garments worker recalled a supervisor taunting, "We'll fire you right away and see what that union of yours can do; if it can save you." Another worker at this plant reported that company officials "always tell us that the union is useless to us, because they could just fire us even if we are part of the union."

Threats that workers' associational activities will lead to loss of employment, and statements from managers that workers should not engage in them, represent forms of retaliation and intimidation that violate the right of freedom of association as protected under Lesotho law and international labor standards.

### *iii. Discrimination against Union Members and Union Activities*

Discrimination against union leaders or members or against workers' participation in union activities constitutes a violation of both Lesotho law<sup>24</sup> and ILO Convention 98.<sup>25</sup> Most Nien Hsing workers interviewed by the WRC, whether they were union members or not, reported that if managers knew that a worker was in a union, that worker would likely be subjected to discrimination and retaliation. One Global Garments worker summarized this by saying that while the managers might not openly say that a given worker was being targeted for his or her union activity, "They [the managers] have a way of making one's life a living hell at work." A C&Y worker similarly said, "Life becomes very uncomfortable if you are involved with unions."

A significant number of workers also reported that employees known to be union members would not be offered the opportunity to work overtime, which is valued by employees as a way to earn extra income. One worker told the WRC that, after participating in a union workshop on HIV/AIDS, "I was not allowed to work overtime. They [the management] don't talk about it [this retaliation] directly [...] they just act." Another worker reported that a supervisor had accused her of "gossiping" after discovering that she was attending union meetings and called her a "sellout." After this accusation was made, the employee reported that she was not offered further opportunities to work overtime.

Workers also frequently reported that employees who are union members received heavier penalties than do non-union workers for common infractions and production errors, up to and including dismissal. In the words of one Global Garments worker, "If a worker who is part of the union makes a genuine mistake, he is punished more severely." A Nien Hsing International worker said, "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." Workers who had been newly hired by the factories, which was typically done under short-term contracts, also stated that they feared they would not be given permanent contracts if they joined a union.

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<sup>24</sup> Labour Code Order, Article 196.

<sup>25</sup> ILO Convention 98, Article 1.

Several workers also reported that they had been subjected to what they saw as retaliatory job transfers after the company became aware of their union activity. One C&Y worker who was a union shop steward said that his supervisor told him that if he was too aggressive in “disputing issues,” he would be transferred to a more onerous job in the factory.

## 2. Factory Response

In responding to the WRC’s findings of violations of freedom of association, Nien Hsing contended that:

- Unions must demonstrate proof of a minimum number of members among the factory’s employees for Nien Hsing to officially recognize their shop stewards, and that the three unions had failed to meet this requirement;
- Nien Hsing already allowed full access to representatives appointed by workers; and
- WRC findings concerning the climate of fear in the factory related to the exercise of freedom of association were one-sided and biased.

Nien Hsing further stated that the company had conducted a number of training and awareness campaigns directed toward both management and workers on the issue of freedom of association.

Nien Hsing’s stated justifications for refusing to recognize the unions’ shop stewards had no basis in Lesotho’s labor laws. The country’s Labour Code Order of 1992 does not impose any requirement for a minimum percentage of employees in a workplace who must be union members before the management is required to meet its legal obligation to provide reasonable facilities for union representatives to confer with the employer on matters affecting those employees.<sup>26</sup> Under Lesotho’s Labour Code Amendment Act of 2000, the question of what share of employees in a given workplace are union members is only relevant to the issue of whether the employer is mandated to negotiate a formal collective bargaining agreement with a trade union, which is an entirely separate issue, legally, from whether the employer is required to recognize that union’s shop stewards.

In addition, under both Lesotho law and international labor standards, respecting the right of freedom of association requires allowing workers to freely choose which union will represent them. Nien Hsing violated this right by openly refusing to deal with certain unions with members among its employees, on the grounds of alleged past misbehavior by those unions’ in-plant shop stewards and officers. While Nien Hsing has the right to undertake disciplinary proceedings against particular employees if it believes they have violated company policies, the company cannot deny its workers’ collective associational rights through wholesale refusal to deal with an entire trade union and its membership based on the alleged misconduct of certain individuals.

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<sup>26</sup> Labour Code Order, Article 198 (requiring “employer[s] ... [to] 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”).

Union leaders from UNITE, IDUL, and NACTWU all stated that their representatives continued, into the summer of 2018, to be denied access to factory premises to meet with their members.<sup>27</sup> Union representatives described Nien Hsing as being hostile to the unions and reported that management at Global Garments would only meet union representatives at the factory gates to discuss issues concerning their members who worked at the factory. Workers also reported that union shop stewards were still not recognized by Nien Hsing’s management. A Global Garments worker, who faced sexual harassment from a supervisor and was later dismissed for allegedly violating company rules, described management’s attitude toward the shop steward who represented her during her disciplinary hearing, as “very dismissive of any questions posed by him [the shop steward].” She added, “The supervisor refused to answer any of [the shop steward’s] questions.”

Workers also continued to report fear of retaliation for associating with a union. According to a Nien Hsing International worker, “[I]f a worker reports [an issue] to a union, then the supervisors try to make a difficult work environment [for that worker]. Because they [the supervisors] don’t want the unions to represent the workers ...”

## **V. Summary of Remedial Action Commitments**

As discussed in Section II of this report, LS&Co., TCP, Kontoor Brands, and Nien Hsing have accepted, and acted upon, the WRC’s recommendation to address GBVH at Nien Hsing Lesotho; they have—via enforceable agreements with the factories’ unions, leading Lesotho women’s organizations, and US labor rights organizations—established a robust independent mechanism with the power to document abuses, punish perpetrators, and protect women workers. As also noted in Section II, Nien Hsing agreed to the WRC’s recommendation to address violations of associational rights by signing MOUs with IDUL, NACTWU, and UNITE that guarantee access and representation rights for the unions in accordance with the Lesotho law. Over the course of the last year, Nien Hsing has complied with the terms of these MOUs. The agreements concerning GBVH further protect associational rights by obligating Nien Hsing Lesotho to refrain from any form of anti-union retaliation or interference. Taken together, these commitments and measures are adequate, assuming they are honored over time, to address the violations identified by the WRC in the areas of GBVH and associational rights.

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<sup>27</sup> One Nien Hsing worker interviewed by the WRC mentioned that a union was permitted to conduct training on the exterior premises of the factory where this employee worked. However, this worker could not recall the name of the union that conducted the training or its subject matter, and no other workers provided corroborative testimony as to this training taking place. Therefore, the WRC continues to find that, as a general practice, Nien Hsing denied unions access to its factory premises for associational and representational purposes.

## VI. Conclusion: Combatting Gender-based Violence and Harassment

The details of the ground-breaking agreements to address gender-based violence and harassment referenced in this report, and the oversight and monitoring program they will create, are the subject of an announcement, made on the same day as the publication of this report. We believe that, if faithfully implemented, these agreements will radically reduce, if not completely eradicate, sexual harassment and coercion in these factories.

This optimism is based on precedent: the success of the Fair Food Program in addressing gender-based violence and harassment in the agricultural fields of central Florida. The Fair Food Program, spearheaded by a worker-based human rights organization, the Coalition of Immokalee Workers, was established by a series of binding agreements between that organization and leading food companies like McDonald's, Trader Joe's, and Yum Brands. These pacts obligate the corporations to condition continued business for their tomato suppliers on compliance with labor standards that include protection against sexual harassment and coercion and that are enforced by an independent oversight body, the Fair Food Standards Council, which has the power to investigate complaints and order discipline for perpetrators. The Fair Food Program has largely eliminated what had been rampant sexual harassment and coercion affecting a highly vulnerable population of immigrant workers.<sup>28</sup>

The abuses the WRC documented in Lesotho represent a severe incidence of a problem that is global in scope. However, while the problem of sexual harassment and coercion is by no means unique to these factories in Lesotho, the solution now in place *is* unique in the apparel industry. It is the first attempt in the industry to empower an independent body to protect women workers from abuse, and it is the first case in which global brands have made a contractual commitment to worker representatives that they will only do business with a supplier if it ends sexual harassment and coercion of women workers.

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<sup>28</sup> See, Gillian Thomas, “#MeToo hasn’t fixed the workplace. Here’s a playbook that can,” *Washington Post*, November 29, 2018, available at: [https://www.washingtonpost.com/outlook/metoo-hasnt-fixed-the-workplace-heres-a-playbook-that-can/2018/11/29/bb1de86e-e762-11e8-b8dc-66cca409c180\\_story.html](https://www.washingtonpost.com/outlook/metoo-hasnt-fixed-the-workplace-heres-a-playbook-that-can/2018/11/29/bb1de86e-e762-11e8-b8dc-66cca409c180_story.html); Alieza Durana and Haley Swenson, “Using the Power of Supply Chains to End Sexual Harassment,” *Harvard Business Review*, October 16, 2018, available at: <https://hbr.org/2018/10/using-the-power-of-supply-chains-to-end-sexual-harassment>.