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TIME FOR A REBOOT:
MONITORING IN CHINA'S ELECTRONICS INDUSTRY

INTERNATIONAL LABOR RIGHTS FORUM

BUSINESS, HUMAN RIGHTS AND THE ENVIRONMENT RESEARCH GROUP SCHOOL OF LAW, UNIVERSITY OF GREENWICH

SEPTEMBER 2018

The International Labor Rights Forum is a Washington, D.C.-based human rights organization founded in 1986. ILRF is dedicated to advancing dignity and justice for workers in the global economy.

The Business, Human Rights and the Environment Research Group was created in 2013 under the leadership of Dr Olga Martin-Ortega. It is based at the School of Law, University of Greenwich, United Kingdom. It brings together the expertise and research interests of several leading academics in the field of business and human rights, international environmental law and international criminal law.

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EXECUTIVE SUMMARY

Two decades ago, exposés of child labor, forced labor, and other worker rights violations in subcontracted systems of production gave rise to global corporations recognizing the need to commit to corporate social responsibility (CSR) principles, which in turn led to extensive programs and policies and supply chain monitoring programs. Many brands have since recognized the shortcomings of these CSR initiatives, which have been mostly voluntary, confidential schemes developed by corporations themselves or by multi-stakeholder initiatives lacking meaningful involvement from the workers whom the initiatives purport to serve. In response to the widely documented failures of this billion dollar CSR industry[1] to protect workers' rights, workers and their organizations have been exploring new models for engaging global brands to negotiate enforceable agreements and advance worker-driven social responsibility[2] — ones that are not confidential, self-regulating, or management-driven. Our vision for more effective corporate accountability is one that ensures a meaningful role for the impacted workers in both the implementation and oversight of the initiative.

This new approach to supply chain accountability — one that relies on and fosters the leadership and participation of workers and their representatives — is essential because it corrects for fundamental design flaws in previous monitoring initiatives. CSR systems that treat workers as survey subjects rather than agents of change have effectively replaced workers' valuable input with technical reports from for-profit auditors who parachute into the community, with no vested interest in those people. This has undermined the social structures necessary to enabling workers to effectively communicate and be heard about the conditions they face at work. This is particularly problematic for migrant workers who come in from the countryside, such as the millions of workers in China's electronics industry.

In today's global economy, the prices and purchasing practices of corporations, whose names workers may never know, have a disproportionate influence over working conditions and a deeply negative impact on workers' lives and livelihoods. As a result, workers who attempt to solely negotiate a contract between a workplace level union and the management at that site will be limited in their ability to make and sustain change. The situation for the hundreds of millions of workers in China, the world's largest producer of manufactured goods,[3] is particularly challenging as independent trade unions are effectively banned in the country and grassroots labor groups face harassment and repression.[4] It is precisely because of this repression of human rights that brands need to engage in worker-driven monitoring and help chart a new course for worker-manager relations in China.

Large buyers and brands can do much more to advance workers' rights by engaging in supply chain compliance programs that are negotiated with workers, which meaningfully represent workers' interests and that are structured to be more directly responsive to their complaints—enabling more effective access to remedy.

Global buyers and brands can also further aggregate their clout for change by adjusting their purchasing practices to better incentivize supplier participation and by pooling resources for compliance activities in their shared factories.[5] If brands and retailers are committed to workers' rights in the electronics industry, they should work towards engaging representative worker organizations in independent factory inspections and worker interviews. This engagement needs to be designed carefully, however, with adequate transparency and effective governance to prevent any efforts to coopt local

groups and ensure worker organizations are able to report findings without fear the brands will walk away. The goal is *not* to have brands contract local organizations to help improve their worker communications. Brands need to make a contractual commitment to the process, so that the program both supports and strengthens the capacity of these groups and improves workers' access to remedy.

The UN Guiding Principles on Business and Human Rights are fueling a growing number of incentives for global corporations to improve their human rights due diligence and remediation programs in their supply chains.[6] Additionally, government agencies and other public institutions funded with taxpayer money, such as schools and hospitals in North America and Europe, can advance improvements in working conditions in their supply chains by including enforceable compliance requirements in their procurement contracts with electronics companies. Pooling resources for investigations in response to worker complaints of code violations leads to a greater ability to affect positive change on the factory floor as well as reduced cost for each institution.

Currently, a worker-driven monitoring initiative in the electronics retail market does not exist. In this report, the International Labor Rights Forum (ILRF) and the Business, Human Rights and the Environment Research Group at the University of Greenwich (BHRE) aim to identify key components for how monitoring of working conditions in China's electronics industry could be designed to be more responsive to labor rights groups' visions for change. Our analysis draws on perspectives from a range of studies, including our own consultations with representatives from thirteen Chinese labor rights organizations, which are working closely with migrant workers in China's export manufacturing industries and input from Electronics Watch, the main non-profit independent monitoring organization dedicated to protecting the rights of electronics workers in public procurement supply chains. The identities of the participating Chinese groups are anonymous in order to protect the individuals consulted.

The Chinese labor groups identified the prices and purchasing practices of the companies whose branded products are made in the factories as a root cause of the dismal working conditions. They argued that the brands and retailers have failed to protect against the exploitation of workers and to ensure remedy for human rights and labor rights abuses. They identified factory-level concerns that are in line with those previously exposed by civil society reports and academics.[7] In summary, these concerns included low wages and excessive overtime, unfair dismissal, failure to provide the legally-required compensation for contract termination and factory relocation, underpayment to social insurance schemes, sexual harassment and gender discrimination, occupational disease and injury, and forced student labor.

Over the twenty years that company-driven CSR initiatives have been operating in mainland China, Chinese labor groups have repeatedly voiced concerns based on their observation of the initiatives. These programs have been conducted without their involvement and leadership from the start and they generally perceive these programs as an ineffective interference. Their concerns with CSR indicate the need for a new approach, one where workers are the agents of change, driving it themselves — not the objects of change driven by others.

Many of the Chinese labor groups we spoke with are involved in documenting rights violations in factories and assisting workers on individual factory-level complaints or legal cases. They would value opportunities to strengthen and scale up their capacity building for this work. In addition, they would like to see buyers commit to enforceable agreements within which the buyers would: invite and respond to worker complaints; support and ensure their suppliers provide remediation for labor rights violations; support ongoing worker-driven monitoring; and address root causes to prevent future violations. Such an agreement would require brands to make adjustments to their pricing and purchasing practices in order to ensure reforms are sustainable. Brand purchasing practices that prioritize price, quality, and timely delivery without ensuring workers' rights, only serve to perpetuate suppliers' disregard for these rights. It is important that any monitoring initiative partner with these Chinese labor groups because of their independence, their experience with documenting violations and addressing complaints, and the trust that workers have in them to represent their interests.

WORKING CONDITIONS & LABOR DISPUTES

The electronics market is one of the fastest growing markets in the world. Electronics are produced in long and complex supply chains, from the mining of minerals, to the production of components, to final assembly of goods. Ten years ago, Shenzhen, a city in Guangdong province in southeastern China, became known as the world's hub of electronics production as foreign direct investment poured into China and relocated production from other East Asian economies to China.[8] Today, electronics are also manufactured in other regions of China.

To compete for foreign direct investment, local authorities are often lax in taking the necessary measures to prevent labor rights violations and enforce labor laws, especially those directly relating to production, such as excessive overtime.[9]

Foxconn, which supplies Apple, Dell, HP, and Microsoft, and became infamous in 2010 for a spate of worker suicides at its massive Shenzhen facility that housed 500,000 workers, remains the largest private sector employer in China.[10] It has 1.3 million people on its payroll worldwide and boasts huge new facilities in Henan and Sichuan provinces.[11] But the problem is much bigger than one company: indeed, worker suicides could affect up to twenty percent of electronics suppliers.[12]

Although wages in China grew above the rate of inflation and at more than ten percent each year from 1998 until 2012, the growth rate has decreased in recent years despite cost of living increases.[13]

This year, Guangdong province froze the minimum wage last year with the intention to keep it fixed for three years.[14] The minimum wage in the electronics industry across the country continues to fall short of a living wage[15] and work pressure under exceedingly high quotas makes work just as stressful as ever.[16]

Common worker complaints in the industry, often linked to harsh managerial methods, include verbal and physical abuse, the exploitative use of student interns, discrimination against women, the failure to pay the overtime premium according to the legal rate, and poor implementation of occupational health and safety standards.[17] Workers may even be denied their right to resign, which is illegal and a form of forced labor, while others are unfairly terminated.[18]

While workers are careful about how they raise concerns over their working conditions because they lack protection from reprisals, the persistent labor abuse in the industry has led workers to file a massive number of cases over labor rights violations. China's Ministry of Human Resources and Social Security reported 1.56 million registered labor dispute cases in 2014 across sectors nationwide.[19] While China has passed a new Labor Contract Law and Labor Dispute Mediation and Arbitration Law to offer protection to workers, access to legal representation remains problematic for most workers.[20] Other workers have resorted to protest and strikes when legal remedy is not possible. Since 2011, China Labour Bulletin has recorded 3,025 worker strikes in manufacturing, of which electronics is a major sector.[21]

FAILURE OF
CORPORATE SOCIAL RESPONSIBILITY

Fifteen years of corporate-driven supply chain auditing[22] has failed to substantially improve working conditions for the millions of Chinese workers who make electronic machinery and equipment for domestic consumption and global export. Despite the fact that supply chain auditing is a billion dollar industry, many egregious violations consistently go undetected, unreported, or unaddressed.[23] The problems in the approach of most auditing initiatives are structural flaws that need to be reoriented to support workers and their organizations. Continuing to use a top-down auditing approach, while workers' rights to organize and bargain collectively are restricted by law, has repeatedly sidelined workers' voice, essentially undermining the stated rights-based goals of most workplace codes of conduct. There are four areas of structural flaws that need to be addressed in these programs: the lack of a meaningful role for workers, inadequate reporting and transparency, limited access to remedy, and purchasing practices that undermine compliance goals.

Lack of a Meaningful Role for Workers

The industry's own sustainability initiatives do not engage with workers and their representatives on a systematic basis.[24] As a result, they may not detect a whole range of code non-compliances. Issues often missed in audits include violations of freedom of association,[25] gender-based violence and harassment, and occupational illness.[26]

Electronics Watch, an independent non-profit monitoring organization, regularly finds serious labor rights problems that social auditors have failed to detect. For example, an Electronics Watch investigation in China found that neither the employer nor the brand buyer appeared to be aware that workers' eyesight deteriorated after even just a few weeks of checking electronics screens for blemishes under bright lights.[27] While the deterioration of eyesight was common knowledge among the workers in the factory, when these claims were put to the brand it said that, because it was not a "code violation," their own audit had not reported on the problem.

Despite the public attention to the issue of worker suicides in Chinese electronics factories, the issue may not come up in the course of audits as an area of concern that would need brands' attention. If a brand does not even hear about this serious issue, it will not be in a position to identify, much less address, the underlying causes of the suicides, which include high work pressure, lack of respect from management, and workers' inability to seek solutions to their concerns.[28] The typical assumption of employers and brands is that suicides are related solely to individual psychological issues and are not connected to employment conditions, so if they do hear of cases of suicide or attempted suicide they often shrug off responsibility.

It is common for factory managers in global supply chains to carefully curate information in preparing for audits. Auditors themselves have estimated that the majority of the factories they visit in China are forging some of the records they provide to auditors, meaning that in many cases brands' assurances that they are abiding by labor laws are based on false information.[29] The fabricated documents include time cards and payroll records to provide the appearance of compliance with the local labor law and brands' codes of conduct.[30] In fact, in many cases the human resources staff generating these documents are trained by "falsification engineers" who, according to journalist Alexandra Harney, "teach companies how to outsmart auditors."[31]

Another way in which information about the reality of working conditions in factories is carefully curated before reaching the eyes and ears of auditors is by workers themselves, whether out of fear or because management will award them with bonuses.[32] Electronics workers have reported to ILRF that managers brief them on what to say if an auditor questions them on the production line or brings them into a separate room for an interview.[33] Because the practice of management selecting the workers who will be interviewed by auditors has been widely critiqued, it is now more common for an auditor to randomly point to particular workers on the production line to request them for the interview. This is insufficient for ensuring a safe interview environment for workers, however, given that they may worry that management is observing and tracking who was selected for the interviews. Even if a worker trusts that the auditor might not report back to management about what they shared, they fear it will be easy for management to deduce which workers spoke negatively about the conditions if the factory receives a less-than-positive audit report. Therefore, when worker interviews are conducted on the premises of the factory, workers may often not raise any significant concerns over working conditions. The fact that such approaches to worker interviews continue in China is also an indication of auditors' deep lack of understanding of workers' situations, how precarious their lives are, and the levels of intimidation they experience, especially as migrant workers.

Inadequate Reporting and Weak Transparency

While auditors are not well-equipped to detect code non-compliances that only workers can report, the information on the non-compliances that they do detect may not always make it into the report delivered by the auditing firm to the buyer reading the report. According to Garrett Brown, "[t]he for-profit consulting companies providing CSR audits have every incentive — if they want to keep their clients in a very competitive market — of providing audit reports that meet their clients' needs."[34] In many cases, the factory is responsible for financing the audit, so there is a direct incentive for the auditors to tread lightly and avoid offending management. The auditors know the factory's failure could lose them the contract.

In addition to the problem of inaccurate or watered down findings, workers are usually left in the dark about the non-compliances that auditors do detect and report to brands. In fact, the Responsible Business Alliance, formerly the Electronic Industry Citizenship Coalition (EICC), does not provide any requirement or guidance that findings from audits conducted under its Validated Audit Program[35] are disclosed to workers. In the case of chemical hazards or fire safety violations, this could mean that brands are knowingly leaving workers' health and safety, and often even their lives, at risk.[36] According to Electronics Watch, "from workers' perspective transparency is not complete when social audit findings are proprietary to either employers or buyers and hidden from all others who could take action on the findings to improve their working conditions."[37] In many countries, this lack of transparency is even against the law, including in China, where Right-to-Know laws cover workers' right to know about chemical hazards in their workplace. Although, implementation of these regulations needs to be improved,[38] brands and retailers serious about protecting workers should ensure respect for this right in production facilities throughout their supply chains, including in countries where workers are not protected by Right-to-Know laws or those laws are not implemented.

No Access to Remedy

The World Bank notes that factory owners' "incentives are to offer the most competitive price and pay little attention to compliance, if not forced to do otherwise."[39] If factory owners will not address non-compliances on their own, however, then the buyers or brands that contract with them need to make compliance a contractual requirement. Buyers have the economic power to require compliance, but they most often tend to exercise this power by threatening or ending business with non-compliant suppliers.[40] However, brands and retailers should only do that as a last resort. Ending contracts with too much haste when violations are discovered usually means that the working conditions in the facility remain poor. Although the buyer may feel they were correct to wash their hands of the problem, such irresponsible behavior means evading accountability and the workers will remain at risk while working for other brands. It is for this reason that the most

effective compliance initiatives have secured a contractual commitment from the brands that ensure their engagement results in remediation for workers.

The Responsible Business Alliance (RBA) appears to measure its success largely by the number of audits that it has closed.[41] This approach is problematic, however, because it can give a false sense of achievement, particularly in a context where workers never see the audit results or reports about the types of complaints filed and resolutions agreed and there may not be ongoing monitoring to ensure that factory management does not return to violating workers' rights once they are no longer under the scrutiny of an auditor. It is also a highly problematic approach because the auditing system is heavily predicated on factories fixing the problem when in most cases it is brands that have the most economic power to enable the factory to make and sustain the changes.

No Change in Brands' Purchasing Practices

Unless and until brands change the pressures and demands their pricing and purchasing practices place on factories, they will do little to make sustainable change in labor conditions in the industry. Brands' demands for quick turn production and competitive pricing is an open contradiction to their demand for labor rights compliance. A program that has serious

intentions of detecting, correcting, and remediating non-compliances must address brands' purchasing practices in order to make a sustainable difference. This includes the prices paid by the brand to the factory, order volume, last minute changes to orders, and the length and nature of their commitment to maintaining business with a particular factory.[42]

When brands do not address underlying causes of non-compliance and the obstacles to compliance, then factories will continue to skirt compliance with their codes and the applicable laws. Common stories include increasing the hourly production target, keeping workers in the factory under forced and unpaid overtime until they have reached that quota, and harassment and retaliation against vocal labor organizers.[43] Cutting corners to meet brands' demands (and still operate the factory with a profit) can also involve shifting production to unauthorized subcontractors with worse working conditions. For example, one labor rights group reported that a small Chinese supplier to an electronics brand had complained to them that the factory had received price quotes from brands that were so low that the factory was considering outsourcing production to a prison without telling the brand.[44]

ENVISIONING WORKER-DRIVEN MONITORING

Partnering with Worker–Centered Organizations

To achieve improvements in working conditions in China's electronics factories, monitoring must identify labor rights violations and secure elimination of those abuses. Given the severe inadequacies of audits conducted by corporations themselves, their contracted third-parties, or by voluntary multi-stakeholder initiatives in which they participate, it is clear that a different type of monitoring is needed to help achieve this change.[45] Such a monitoring system will have the best chance at success in detecting problems and realizing improvements if workers are involved in its design and development, if it is governed independently from brands and employers or jointly by brands and worker representatives, and if financing can be set up so as to ensure the monitoring system is rigorous, objective, and fair.

Community-based labor rights organizations in China, which operate independently of the government and companies, have for years taken on identifying rights violations and supporting workers in remediation in the electronics industry.[46] They equip workers with legal knowledge and rights awareness, build confidence and skills in resolving labor disputes, and support democratic worker participation and negotiation. Workers are centrally involved in bringing cases to their attention and asking for legal counsel, participating in the mediation and arbitration processes, attending legal rights trainings, and seeking strategic support in their negotiations with management. These grassroots labor rights organizations are currently in the best position to guarantee workers' voice, and it will strengthen any worker-driven monitoring initiatives in China's electronics sector to explore partnerships with them.

Developing a Shared Concept of Worker-Driven Monitoring

Worker-driven monitoring means that workers, their organizations, or organizations of their choosing are in the driver's seat in envisioning, developing, and implementing the monitoring system.[47] An independent monitoring organization should have as a key tenet the belief that workers themselves are the best monitors of their working conditions.[48] It recognizes that workers know the reality of their daily conditions—they can recite the epithets yelled at them when they are told to speed up production, describe the sexual harassment they face in detail, and recount when they are paid late — and have the ability to help drive changes if given the right tools and protections to act and to speak up and defend their rights.

The idea of "worker-driven monitoring," however, may be unfamiliar among China's grassroots. Labor rights organizations do not generally use this or other similar terms to describe their practices. Furthermore, few of these grassroots organizations have had experience working with electronics brands or international independent monitoring organizations on monitoring programs. Others have had negative experiences relating to CSR initiatives and are skeptical of programs that involve brands, given the lack of positive impacts for workers resulting from those programs. Several groups consulted expressed interest in independent monitoring with an enforceable mechanism to ensure compliance, but such programs are still unknown to them. Based on our interviews, it is clear that it will be both a challenge and an important first step for stakeholders to clearly build a shared understanding of "worker-driven monitoring." The practice of China's labor rights organizations is

Electronics Watch[56]

The mission of Electronics Watch is to help public sector organizations work together and collaborate with local monitoring partners to protect the labor rights and safety of workers in their electronics supply chains.

Electronics Watch organizes public sector buyers and gives them the essential tools to create effective market demand for decent working conditions in their ICT hardware supply chains, which includes portable and desktop computers, printers, display screens and media storage. Public sector affiliate members pool resources through Electronics Watch to obtain reliable intelligence about working conditions at significantly reduced cost. They insert the Electronics Watch Contract Conditions[53] or equivalent conditions in ICT hardware contracts, requiring their contractors to exercise due diligence to achieve respect for labor rights and safety standards in factories that assemble or make the components of the goods they purchase. When public sector buyers in many countries take action together, based on the same supply chain intelligence and the same enforceable contract requirements, working conditions can improve.

Electronics Watch operates on an affiliation basis, rather than a fee for service.[54] An affiliation relationship is more sustainable, and implies an organizational commitment to socially responsible public procurement.

Each public institution affiliated to Electronics Watch has access to an extensive international network of monitoring organizations that conduct worker-driven monitoring, with the goal of strengthening workers' own voices to report on and address labor and safety issues in their factories.

Each affiliate commits to take the following steps:

- Incorporate the Electronics Watch Contract Conditions or equivalent clauses into electronics contracts with new suppliers or when contracts are renegotiated to enable Electronics Watch to monitor on its behalf.
- Appoint a liaison to serve as the primary point of contact between Electronics Watch and the organization.
- Pay annual affiliation dues to Electronics Watch based on annual purchasing volume of electronics products.[55]

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already largely consistent with many of the essential elements of "worker-driven monitoring" outlined below. These organizations design their work in ways that support and empower workers and center their voices in monitoring and remediation efforts. Moreover, many understand monitoring to be as much about addressing specific labor rights violations as about building connections with and mobilizing workers and promoting workers' participation in workplace management. They also emphasized the need for effective monitoring mechanisms within the workplace, such as workers' committees. This provides a solid foundation to develop a shared concept of "worker-driven monitoring" among stakeholders within China's electronics industry and it is essential that any such initiative would be built on the existing work of the local grassroots labor rights groups from the ground up, taking seriously their understanding, practices and concerns.

Building Independent Monitoring Capacity

Most of China's grassroots labor rights organizations are not professional monitoring organizations with extensive monitoring protocols. What they do have, however, is workers' trust, which is built on their deep understanding of worker perspectives. For the last decade, many of these groups have become increasingly adept at casework. Working closely with workers in their locality, they help document abuses and gather worker testimony and evidence to support their legal cases. Some organizations have further developed the skills and expertise to carry out off-site surveys, analyze the data and publish reports on the working conditions and labor rights violations of local factories. Because they possess a grounded understanding of the applicable local labor and legal context, these groups are well-placed to scale up their monitoring capacity.

Of the grassroots Chinese labor rights organizations consulted, many expressed interest in developing professional skills and staff capacity to hone their research methods and expand their ability to investigate and document systemic violations at the factory or industry level. Trainings for staff to conduct interviews or design surveys and supervise others, such as students of local universities or worker volunteers, can considerably strengthen their monitoring capacity. For cases where they lack on-site access, training could focus on how to identify violations through off-site interviews. More challenging is that on-site visits by qualified industrial hygienists and engineers are needed to identify workplace hazards stemming from toxic chemicals and fire and building safety violations.[49] Capacity building could focus on building partnerships with technical experts and enabling systematic training on how to document these hazards.

Facilitating Collaboration Between Chinese and International Groups

A critical first step prior to active collaboration on field based monitoring will be to establish direct communication and linkages between Chinese and international organizations in order to build trust and confidence. International organizations need to clarify their roles and responsibilities in their collaborations with local labor rights organizations. They should focus on strengthening local groups' capacity and support their leadership, avoiding any unintentional displacement of local labor rights groups.

To begin with, international labor rights and monitoring organizations could take steps in creating secure and confidential channels of communication and submission of information. Groups will need to overcome language barriers by designing Chinese-language resources accessible to local organizations and workers. Additionally, local Chinese groups will need to review examples of successful cases of worker-driven monitoring in order to analyze how and in what way it could be adapted to the Chinese context.

International organizations need to be prepared to respond with support in cases where serious rights violations are unaddressed and require immediate response and action. These include worker injury or death, dangerous occupational health and safety hazards, or factory closure without payment of the full compensation to which workers are legally entitled.[50] International groups can also assist labor rights defenders at risk by engaging with brands and international media in seeking public attention to serious violations. While such collaboration is no substitute for systematic monitoring in the context of an enforceable agreement, it is useful for exposing violations, highlighting the need for monitoring and deepening connections among groups.

Mitigating Risks for Workers, Chinese Groups and International Organizations

Groups involved in developing the proposed initiative will need to assess and develop plans to mitigate risks relating to independent monitoring and collaboration between local and international labor rights groups in order to protect workers and labor rights groups. Risks have always existed for Chinese civil society groups, and they are experienced in assessing and managing risks arising from their work. The level of risk varies depending on the nature of collaboration and the groups involved, and should be evaluated accordingly. For example, risk is low for off-site monitoring and individual remediation by Chinese labor rights groups and higher for on-site monitoring and remediation of collective disputes. Involvement of labor rights groups in collective disputes, in particular, has been highly restricted

and increasingly so since the crackdown on labor rights organizations in the southern Chinese city of Guangzhou in December 2015, which led to arrests and forced closure of a number of organizations, with chilling effects on the rest of civil society.[51]

Collaboration with international groups in capacity-building and scaling up monitoring practices entails a higher level of risk, and should be assessed seriously. The adoption of the "Law on the Management of Foreign Non-Governmental Organizations' Activities within Mainland China" in 2017 requires international organizations to register their offices in China, or their Chinese counterparts to file for temporary activity permits for conducting activities in China, including labor rights monitoring and trainings.[52] Both options are complex and restrictive, and local and international groups should become familiar with the implications of the Law and the possible options for collaboration under the Law. Notwithstanding, short of formalized partnerships, there remain a myriad of ways in which ongoing communication and exchange may contribute to developing worker-driven monitoring work in China.

Moving Toward Enforceable Brand Agreements

Effective worker-driven monitoring needs to be embedded in a program that addresses the structural flaws identified above. Whereas "auditing takes power away from workers," as one labor rights organization that conducts monitoring in China told the authors, worker-driven monitoring is built on genuine and meaningful participation by workers. A full-fledged worker-driven monitoring system must be embedded in an enforceable brand agreement or within an independent monitoring program used by government purchasers that entails enforceable contractual obligations on the companies.

The following text box lays out some essential elements that should be incorporated into a wholly restructured approach to protecting workers' rights. Although by no means final or exhaustive, we identify four essential elements for an approach that aims to address the structural flaws to supply chain compliance programs identified above: the need for meaningful worker involvement, transparency, a contractual commitment by brands, and changes to brands' purchasing practices. It is important to consider, however, that some elements may be challenging to implement in the Chinese context.

Essential Elements of Worker-Driven Monitoring

A Meaningful Role for Workers and Their Organizations:

1. Workers and their organizations are involved in the formulation, development, and co-governance[57] of the initiative and in defining the issues to be covered and compliance requirements to be monitored

2. Regular off-site consultations and engagement with local grassroots labor rights organizations representing or supporting workers at the facility to develop knowledge of local contextual issues, as well as background on area industrial relations and information-sharing about particular factory-level grievances

3. Worker interviews are conducted in a way that secures workers' trust and confidence, with sensitivity to language, gender and other issues, e.g. workers are randomly selected, but without management interference or knowledge of which workers are interviewed and interviews are conducted off-site in a confidential setting that allows for anonymity in order to minimize risk of any retaliation against interviewees

4. If there is a worker-elected worker committee, such as an occupational safety and health committee, that is genuinely independent from management, include a member on the monitoring team

5. Workers have a guarantee of non-retaliation against those who participate in monitoring, are interviewed, or come forward with a formal grievance

Transparency and Integrity in Reporting:

6. Ensure that workers themselves have prompt access to detailed supplier-level audit/monitoring reports, including names and addresses of the suppliers as well as audit findings, made available in the predominant language of the workforce as well as in the language of the buyers/brands

7. Make the audit reports and findings publicly available, in consultation with workers, and in ways that ensure there are no unintended consequences for them

8. Brands publish their supplier factory names and addresses online, including the names of the parent companies, with increasing disclosure over time further down the supply chain

Ensuring Access to Remedy:

9. Time-bound corrective action plans developed for the correction and remedy of identified violations, incorporating recommendations from workers and factory-based worker committees, if they exist

10. Mechanisms for identifying the changes needed to address root causes of the violations, involving workers, management and buyers

11. The monitoring organization maintains regular contact with local worker organizations in order to ensure that improvements recommended as a result of the investigation are implemented and maintained, and that the management does not revert to the prior practices that had resulted in violations

12. Create and maintain an independent mechanism for complaints, in which workers can submit complaints directly and that guarantees non-retaliation against workers who access the complaint mechanism and provides complainants access to free independent legal aid

Brand Agreements to Guarantee Brand Purchasing Practices Enable Compliance:

13. Participating brands make a contractual commitment to adhere to the recommendations from the monitors and to work with the factories to achieve and maintain compliance

14. Brands make a contractual commitment to maintain business during a pre-determined period of time and/or to sever business relations in extreme cases in order to ensure their suppliers are able to fully remediate any problems identified

15. Brands commit to examining their purchasing practices as part of the root cause analysis of violations

CONCLUSION

The widespread exploitation of the workers who produce electronics and the failures of social auditing over the past fifteen years in the electronics industry call for the development of a new vision and model to advance corporate accountability – one with the interests and active participation of workers at its heart. To ensure that workers are central to this new paradigm and the resulting programs, independent, democratic worker representatives and labor rights organizations must have a lead role in developing it.

Our consultations with grassroots labor rights organizations supporting Chinese workers show that many of these organizations are frequently assisting workers with the documentation of labor violations and in seeking remedy. For these local organizations, the only way they would consider social auditing or monitoring as a legitimate activity in support of workers is if it were independent, worker-centered, and enforceable. Several of the organizations do not consider the professional auditors to be monitoring in credible ways and with the interests of workers at heart. In their view, monitoring by partnering with workers, as they do, is the only way to guarantee credible monitoring that supports workers. They believe that workers are the best monitors of their own conditions. Their challenge is thus how to translate workers' ability to identify violations of China's labor law and non-compliances with brand codes of conduct into change on the factory floor.

Although by no means final or exhaustive, in this paper we identified four essential elements for an approach that aims to address the structural flaws to confidential, nonbinding supply chain compliance programs: the need for meaningful worker involvement, transparency, a contractual commitment by brands, and changes to brands'

purchasing practices. While some of these elements may be challenging to achieve and implement in the Chinese context, any program short of encapsulating these elements will fall short of adequately addressing the Chinese labor groups' concerns.

To have the commitments and clout needed to make change, the practice of worker-driven monitoring must be embedded in an enforceable agreement and accompanied by sufficient funding, staff and resources. In order to enforce such agreements public institutions could also be brought in. For example, agreements can be enforced through a contract between a public institution and a brand or retailer. Another option, which has been piloted in Bangladesh's garment factories through the Accord on Fire and Building Safety, but has yet to be explored in the electronics industry, is for brands to sign enforceable co-governance agreements with worker-representative organizations. If such an enforceable brand agreement is eventually developed then public institutions could adopt requirements to only contract with electronics brands that have signed the agreement, product availability permitting.

In the meantime, an immediate action that brands and retailers can implement is to publicly disclose their supplier factory names and addresses (and the names of the parent companies) and the products and components made in each factory.[58] Over time, brands can advance transparency by increasing their disclosure to the raw materials level. The *Challenge to the Global Electronics Industry to Adopt Safer and More Sustainable Products and Practices, and Eliminate Hazardous Chemicals, Exposures and Discharges*,[59] with endorsers from over 40 countries, includes key points related to materials disclosure, prevention, worker compensation, and remediation.

Brands and retailers should continuously review and adapt purchasing practices to ensure that the brand is not responsible for contributing to or causing harm through low pricing, short turnaround orders, last-minute order changes, or cutting and running from non-compliant facilities – and to develop long-term relationships with compliant suppliers.

Among the many immediate actions that employers could take to make improvements in factories, is to use safer chemicals and provide the proper safety equipment and require its usage, as per Chinese law. Also, employers should take the necessary steps to remediate the problems found in audits, involving workers in the solutions, and brands when necessary. They can also share information with brands about the effects of their purchasing practices. They can support supply chain transparency by providing workers with regularly updated information about which brands the factory is supplying. When audits take place, employers should welcome unannounced visits and allow free access to all areas where workers are present, and they should not provide preparatory coaching for workers, interfere with or be present during worker interviews, track which workers auditors speak with, or retaliate against workers who speak with auditors.

Public institutions are key players in supporting the model we propose. Public bodies that procure electronics should commit to only support monitoring that is worker-driven. Public institutions will need to allocate sufficient annual funding for monitoring and engage electronics brands to ensure remediation when the monitor reports violations at suppliers. In their contracts with electronics brands, they should include contract performance clauses that continue to apply throughout the contract. Purchasers could also use award criteria to provide preferences for those bidders (if any) that verifiably demonstrate compliance.

We have laid out the case for why brands' current practices are not enabling sustainable change or securing remedy for workers' rights violations in their supply chains. Securing global electronics brands' commitments to the new approach to corporate accountability proposed in this paper will require a mix of pressure and incentives, and will require support from investors and government purchasing agencies, which have tremendous buying power in electronics.

ENDNOTES

1   For figures on CSR auditing industry size, see, for example, Garrett Brown, "The corporate social responsibility mirage," Industrial Safety and Hygiene News, May 1, 2017, https://www.ishn.com/articles/106349-the-corporate-social-responsibility-mirage, and Genevieve LeBaron, Jane Lister & Peter Dauvergne, "Governing Global Supply Chain Sustainability through the Ethical Audit Regime," Globalizations, Volume 14, Issue 6, 2017, https://doi.org/10.1080/14747731.2017.1304008

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5   The Accord on Fire and Building Safety in Bangladesh is an example of brands coming together, signing a binding agreement between with worker organizations, and making a time-bound commitment to strengthen monitoring and collaborate on remedies in shared factories.

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56   The text in this sidebar consists primarily of direct quotes from Electronics Watch's website (accessed August 26, 2018), apart from minor copyediting for US style, and is used with approval from Electronics Watch. See http://electronicswatch.org/en/our-mission_2459916 ; http://electronicswatch.org/en/worker-driven-monitoring_2460012, http://electronicswatch.org/en/how-to-affiliate_95184, http://electronicswatch.org/en/the-electronics-watch-contract-conditions_2459984 and http://electronicswatch.org/en/the-electronics-watch-contractor-guidance_2525835.

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