

To The Ministry of Finance

Recommendation of 15 November 2005

(Unofficial English translation)

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1 Introduction

The Council on Ethics for the Norwegian Government Petroleum Fund decided at a meeting 27 June 2005 to consider whether the business of Wal-Mart Stores Inc. (Wal-Mart) might entail complicity by the Fund in serious or systematic violations of human rights under Point 4.4 of the Ethical Guidelines.

As of 31 December 2004, the market value of the Government Petroleum Fund's shareholding in Wal-Mart was NOK 1,656 billion and in Wal-Mart de Mexico S.A. NOK 72.9 million. The market value of the Fund's bond holding in Wal-Mart was NOK 668.6 million.

Wal-Mart is alleged to run its business operations in a manner that contradicts internationally recognised human rights and labour rights standards, both through its suppliers in a number of countries in Asia, Africa and Latin America, and in its own operations. There are numerous reports alleging that Wal-Mart consistently and systematically employs minors in contravention of international rules, that working conditions at many of its suppliers are dangerous or health-hazardous, that workers are pressured into working overtime without compensation, that the company systematically discriminates against women with regard to pay, that all attempts by the company's employees to unionise are stopped, that employees are in some cases unreasonably punished and locked up, along with a number of other allegations which will be subject to further discussion below under section 4.

The Council has, in accordance with Point 4.5 of the Ethical Guidelines, (through Norges Bank in a letter dated 14 September 2005), asked Wal-Mart and Wal-Mart de Mexico S.A., to comment on the above allegations and the background for them. These enquiries were not answered.

In order to ascertain any risk of complicity in serious or systematic human rights violations there must, according to the Council's understanding of the Ethical Guidelines, exist a direct link between the company's operations and the relevant violations. A further criterion is that the violations have been committed to serve the interests of the company and that the company has been aware of the violations, but has omitted to take steps to prevent them. There must be an unacceptable risk either that the violations are presently taking place or will take place in the future. The Council considers that all these conditions are met in the case at hand.

The Council's conclusion is that the Ethical Guidelines, Point 4.4., first alternative, provide a basis for recommending exclusion of Wal-Mart because of the risk of complicity in serious or systematic violations of human rights.

2 Background

Wal-Mart is the world's largest retailer with a turnover in 2005 in excess of 285 billion USD. In Mexico, the company operates through its subsidiary Wal-Mart de Mexico S.A. Wal-Mart's stake in Wal-Mart de Mexico S.A. is about 62%.¹

Wal-Mart runs stores and shopping centres under the names *Wal-Mart Stores*, *Supercenters*, *Neighborhood Markets* and *Sam's Club*. The company sells, *inter alia*, garments, footwear, foodstuffs, household appliances and electronic goods. Wal-Mart also profiles itself through low price sales and has sales outlets in the USA, Canada, Argentina, Brazil, Germany, Mexico, Korea, the United Kingdom and Puerto Rico.² The company also runs sales operations in China through joint venture agreements. Wal-Mart imports products from 70 countries around the world.³ The Council has been apprised of a large number of allegations that parts of Wal-Mart's business operations are run in an ethically unacceptable manner. These refer in part to working conditions of employees at the company itself and in part to unacceptable working conditions at the company's suppliers.

The Council's secretariat has been investigating these conditions since medio 2005. In order to distinguish between unacceptable conditions connected with the company's own operations and conditions linked to the supplier chain, the two are considered separately in the following:

- Conditions in the company's global supplier network. Examples are given in section 4.1.
- Conditions referring to the company's own operations, mostly in North America. Examples are given in section 4.2.

A large amount of information on various allegations regarding Wal-Mart's operations are available. The present recommendation presents a selection of examples. The selection has been made to show the breadth of cases, both in terms of conditions within the company and its supplier chain, and in terms of the large geographical spread and the large volume of cases related to Wal-Mart.

Publicly available sources such as newspapers and magazines have been relied upon, as well as information emerging in connection with a number of lawsuits against Wal-Mart concerning conditions in the supply chain in poor countries as well as conditions in the company's own business operations in North America. On commission from the Council, information has also been obtained from lawyers, various organisations and individuals. Certain parts of this source base will, at the request of the sources involved, not be made public.

The Council's task is to establish whether there exists an unacceptable *risk* of complicity in violations of international standards. In other words, the Council does not consider it necessary to find proof of the veracity of each individual claim emerging from the material available to the Council.

¹ http://www.hoovers.com/wal-mart-de-m%C3%A9xico/--ID_42411--/free-co-factsheet.xhtml

² Wal-Mart Stores SEC Filing, <http://investor.walmartstores.com/>

³ Wal-Mart Stores Inc., "Factory Certification Report: March 2003 – February 2004," page 23. Entire report: www.walmartfacts.com/docs/131_NewsDeskFactShtSourcingarticle_1161280340.pdf.

3 The Council's considerations

The Council has to consider whether the Government Petroleum Fund can be said to contribute to unethical acts or omissions through its ownership in Wal-Mart. Point 4.4., second paragraph, first bullet point of the Ethical Guidelines states:

“The Council shall issue recommendations on the exclusion of one or more companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to: Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation.”

The Council will consider the question of excluding Wal-Mart under this provision. The other alternatives in Point 4.4., regarding violations of individuals' rights in war or conflict, severe environmental damage, gross corruption or violation of other ethical norms, are considered less relevant to the case at hand.

3.1 Point 4.4., second paragraph, first bullet point

Point 4.4., second paragraph, first bullet point contains a general reference to human rights. NOU (Norwegian Official Report) 2003: 22, which is the basis on which the Ethical Guidelines were drafted, states: *“Companies' contributions to serious or systematic violation of human rights and labour rights should, in the Committee's opinion be encompassed by the proposed exclusion mechanism.”*⁴ Where the scope of the terms *human rights* and *complicity* are concerned, the Council stated the following in its recommendation regarding Total S.A., issued on 15 November 2005:⁵

“The Council takes as its point of departure that the reference to human rights pertains to internationally recognised human rights and labour rights. It is clear from the wording of this provision that the specific human rights violations listed are examples of such violations and not an exhaustive list.

*Not all human rights violations or breaches of international labour rights standards fall within the scope of the provision. Point 4.4. states that human rights violations must be “serious or systematic”. The Graver Committee recommends “fairly restrictive criteria for deciding which companies should be subject to possible exclusion ...”.*⁶ *The Council assumes that a determination of whether human rights violations qualify as serious or systematic needs to be related to the specific case at hand. However, it seems clear that a limited number of violations could suffice if they are very serious, while the character of a violation need not be equally serious if it is perpetrated in a systematic manner.*

Only states can violate human rights directly. Companies can, as indicated in Point 4.4., contribute to human rights violations committed by states. The Fund may in its turn contribute to companies' complicity through its ownership. It is such complicity in a state's human rights violations which is to be assessed under this provision.

⁴ NOU 2003: 22, page 166.

⁵ The recommendation concerning Total S.A can be found in full at www.etikkradet.no.

⁶ NOU 2003: 22, page 34.

[...]

The acts or omissions must constitute an unacceptable risk of complicity on the part of the Fund. This means that it is not necessary to prove that such complicity will take place – the presence of an unacceptable risk suffices. The term unacceptable risk is not specifically defined in the preparatory work. NOU (Norwegian Official Report) 2003: 22 states that “Criteria should therefore be established for determining the existence of an unacceptable ethical risk. These criteria can be based on the international instruments that also apply to the Fund’s exercise of ownership interests. Only the most serious forms of violations of these standards should provide a basis for exclusion.”⁷ In other words, the fact that a risk is deemed unacceptable is linked to the seriousness of the act.

The term risk is associated with the degree of probability that unethical actions will take place in the future. The NOU states that “the objective is to decide whether the company in the future will represent an unacceptable ethical risk for the Petroleum Fund.”⁸ The wording of Point 4.4. makes it clear that what is to be assessed is the likelihood of contributing to “present and future” acts or omissions. The Council accordingly assumes that actions or omissions that took place in the past will not, in themselves, provide a basis for exclusion of companies under this provision. However, earlier patterns of conduct might give some indications as to what will happen ahead. It is hence also relevant to examine companies’ previous practice when future risk of complicity in violations is to be assessed.

[...]

The following appears under the heading “Complicity and delimitation of companies’ liability”:

In order (for an investor) to be complicit in an action, the action must be possible to anticipate for the investor. There must be some form of systematic or causal relationship between the company’s operations and the actions in which the investor does not wish to be complicit. Investments in the company cannot be regarded as complicity in actions which one could not possibly expect or be aware of or circumstances over which the company has no significant control.”⁹

The above describes, first, the Fund’s complicity. The company’s unethical conduct must be expected by the investor. Moreover, there must be a link between the company’s operations and the unethical actions. It is explicitly stated that circumstances beyond the company’s control cannot entail complicity on the part of the investor. This must indirectly also be taken to mean that the company itself cannot be considered to be complicit in violations of norms that are beyond the company’s control or which the company could not possibly expect or be aware of.”

⁷ NOU 2003: 22, page 35.

⁸ NOU 2003: 22, page 35.

⁹ NOU 2003: 22, page 164-165.

3.2 Complicity in human rights violations with regard to the relationship between states and companies

Complicity in an act may be taken to presuppose that another party is the *main perpetrator*. As already mentioned only states can in principle be held liable for human rights violations. It may consequently be asserted that a company's complicity can only be established in cases where it is determined that the main perpetrator of the same violations is a state. However, it is entirely possible under both Norwegian and international criminal law to sentence someone for complicity in an act without having established another party as the main perpetrator. The Council presumes that it was hardly the intention that the Council, as a precondition for establishing companies' complicity in human rights violations, should be required to determine whether states violate such rights. NOU 2003: 22 states:

“Since international law expresses a balancing of interests between states it is difficult to derive norms of action for market actors from sources of international law. On the other hand, international conventions give concrete form to the content of an international consensus on minimum requirements which should be imposed regarding respect for basic rights worldwide.”¹⁰

In other words, international standards and norms can be indicative of which acts or omissions are deemed unacceptable, without asserting that companies are legally responsible for violations of international conventions. The Council accordingly assumes that the wording of Point 4.4. of the Ethical Guidelines does not require the Council to consider whether individual states violate human rights or labour rights standards each time it assesses a company's conduct in relation to this provision. It is sufficient to establish the presence of an unacceptable risk of companies acting in such a way as to entail serious or systematic breaches of internationally recognised minimum standards for the rights of individuals.

3.3 Wal-Mart's possible liability for violations of standards

The Council takes internationally recognised human rights conventions and labour rights conventions as its point of departure when assessing possible violations of standards on the part of Wal-Mart. Firstly, it must be assessed whether alleged violations of these standards take place and, secondly, whether they are serious or systematic. Furthermore, based on the Ethical Guidelines' preparatory work, the Council lists the following criteria which constitute decisive elements in an overall assessment of whether an unacceptable risk exists of the Fund contributing to human rights violations:¹¹

- There must exist some kind of linkage between the company's operations and the existing violations of the Ethical Guidelines, which must be visible to the Fund.
- The violations must have been carried out with a view to serving the company's interests or to facilitate conditions for the company.
- The company must either have contributed actively, or had knowledge of, the violations, but without seeking to prevent them.

¹⁰ NOU 2003: 22, page 96.

¹¹ Recommendation regarding Total SA, issued on 14 November 2005.

- The violations must either be ongoing, or there must exist an unacceptable risk that such violations will occur in the future. Earlier violations might indicate future patterns of conduct.

The specific acts and omissions of which Wal-Mart is accused will need to be considered in light of these criteria.

4 Wal-Mart's complicity in violations of standards

4.1 Alleged violations of standards at Wal-Mart's suppliers

4.1.1 Extent of the alleged violations

Wal-Mart has for some time been, and remains, the target of numerous campaigns directed at unacceptable working conditions at the company's suppliers. This involves both conditions falling far short of the standards Wal-Mart itself requires of its suppliers and complicity in violations of ILO labour standards and human rights standards.¹²

Violations of human rights standards among Wal-Mart's suppliers are alleged to take place in a large number of countries. The violations include employment of minors, working hour violations, wages below the legal minimum, health-hazardous working conditions, unreasonable punishment of employees, prohibition of unionisation and extended use of a production system that fosters working conditions bordering on forced labour.

4.1.2 Wal-Mart's supplier network

The company probably has the largest supplier network in the world. It has not been possible to determine the exact number of suppliers, but it clearly runs to tens of thousands worldwide.

In 2003, Wal-Mart imported goods valuing more than USD 15 billion from China, and is the world's largest individual importer from that country.¹³ Wal-Mart's annual turnover is equivalent to about 2 % of the Gross Domestic Product of the USA, making it larger than the GDP of 161 of the world's states.¹⁴

In Wal-Mart's own report, "Factory Certification Report" for 2003-2004, the company states that it imports products from factories and suppliers in 70 countries.¹⁵ The origin of the company's products is described as "*tens of thousands of factories*".¹⁶ In 2004, the company claimed it had 5,300 suppliers with which it dealt directly. According to the company's annual report for 2004, "*We depend on over 68,000 suppliers*".¹⁷ This is assumed to include both domestic and international suppliers. Moreover, a single supplier can be assumed to have

¹² Wal-Mart Stores Inc. – Standards for Suppliers. Internal Code of Conduct. www.walmartstores.com/Files/SupplierStandards-Revisions12.2.04.pdf .

¹³ Anderson Sarah, and Williams, Spain, MarketWatch.com, 13 January 2005 and Goodman, Peter S. & Pan, Phillip P, "Chinese Workers Pay for Wal-Mart's low prices," Washington Post, 8 February 2004, page A01.

¹⁴ According to the World Bank, see <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf> .

¹⁵ Wal-Mart Stores Inc., "Factory Certification Report: March – February 2004," page 23. The entire report at: www.walmartfacts.com/docs/131_NewsDeskFactShtSourcingarticle_1161280340.pdf .

¹⁶ Wal-Mart Stores Inc., "Factory Certification Report: March 2003 – February 2004," page 8.

¹⁷ Wal-Mart annual report, page 8 http://library.corporate-ir.net/library/WAL-MART_final.pdf

several factories, implying that the number of production sites is substantially higher than the number of suppliers.

Wal-Mart distinguishes between “direct” and “indirect” suppliers. A “direct” supplier is one that Wal-Mart deals with directly. The substance of the term “indirect” supplier is less clear. Wal-Mart states that the company also deals with indirect suppliers, and all manufacturers within the so-called “*high-risk*” merchandise segments (footwear, garments, toys and sports equipment) are regarded as indirect suppliers.¹⁸ “*High-risk*” signifies that the risk of unacceptable working conditions is regarded by Wal-Mart itself as greatest in these sectors.

4.1.3 Wal-Mart’s monitoring regime

Wal-Mart operates a monitoring regime designed to ensure acceptable working conditions at 5,300 direct suppliers. The monitoring is said to encompass a further 2,300 indirect suppliers within the above-mentioned risk sectors.¹⁹

In 2004, Wal-Mart published a report giving the following information on conditions which the company itself describes as unacceptable.²⁰ Figures are stated as percentages of the 5,300 investigated suppliers:

Minimum wages and benefits not paid	46%
Wage payments unverifiable	31%
Violations of working hour provisions / working hours not registered	36%
Seven-day working week	21%
No documentation of employees’ age	31%
Unlawful employment contracts	10%
No fire protection	35%

Is not clear how inclusive this monitoring regime really is, given the fact that Wal-Mart itself reports that a “(...) *vast assortment of merchandise found in our stores is sourced from tens of thousands of factories in some 70 countries around the world.*”²¹ Nevertheless, it is safe to assume that the number of suppliers that are monitored is far lower than the total number of suppliers used by Wal-Mart.

A further question concerns the effectiveness of the monitoring regime in bringing to light unacceptable working conditions in the supply chain. A pertinent case in this connection concerns the dismissal of a Wal-Mart employee, *James W. Lynn*, who was responsible for auditing the company’s suppliers in Latin America. Mr. Lynn claims he was dismissed because he truthfully reported on the working conditions at these suppliers. Wal-Mart denies that he was dismissed on this basis. Mr. Lynn has brought an action against Wal-Mart for

¹⁸ Wal-Mart Stores, Inc., “2004 Report on Standards for Suppliers,” page 2 and 6. See footnote 11.

¹⁹ See footnote 14.

²⁰ Wal-Mart Stores, Inc., “2004 Report on Standards for Suppliers,” page 15-19. See footnote 11.

²¹ Wal-Mart Stores Inc., “Factory Certification Report: March 2003 – February 2004,” page 8.

wrongful dismissal.²² Mr. Lynn explains in an interview how Wal-Mart planned its inspections with a view to revealing as few norm violations as possible.²³

In the lawsuit *James W. Lynn vs. Wal-Mart stores Inc.*, it is stated that the company's inspection system, previously called the "Factory Certification Program"²⁴, was designed only to create the impression that working conditions at the suppliers are acceptable.²⁵ These claims accord with an earlier, extensive article in the magazine *Business Week* about working conditions at Wal-Mart's suppliers.²⁶

A key objection to the company's monitoring regime is that inspections are generally announced well in advance, enabling the suppliers to temporarily improve orderliness and cleaning, construct false lists of hours worked, remove minors and coach employees in replying to questions if interviewed.²⁷ In 2003, Wal-Mart reported that 1% of the inspections were carried out without prior notice. In 2004, this figure rose to 8%, with the aim of raising it to 20%.²⁸

Another objection to Wal-Mart's monitoring regime is the absence of third-party verification. A majority of the inspections, 85 %, are conducted by Wal-Mart's own employees, the remainder by third-party inspectors approved by Wal-Mart.²⁹

In *James W. Lynn vs. Wal-Mart Stores Inc.*, the plaintiff contends that Wal-Mart's management exerts pressure on company employees who conduct inspections at suppliers to get them to modify the results. The plaintiff also claims that someone in Wal-Mart's local management in Honduras received bribes from factory owners in that country in order to have the factories approved as suppliers.³⁰

A class action lawsuit has been brought against Wal-Mart, *Does vs. Wal-Mart Stores Inc.*, in which employees of Wal-Mart's suppliers in several countries hold the company responsible for unacceptable working conditions.³¹ Wal-Mart is among other things alleged to have specific knowledge that a large number of its suppliers are acting in violation of the law and in violation of Wal-Mart's own Guidelines.³²

²² James W. Lynn vs. Wal-Mart Stores Inc. page 3. www.nlcnet.org/faxes/lawsuit/index.html. See also Greenhouse, Stephen, "Fired officer is suing Wal-Mart," *New York Times*, 1 July 2005.

²³ National Labor Committee: "Wal-Mart whistleblower speaks out: Working for Wal-Mart as a monitor" http://www.nlcnet.org/news/james_lynn.shtml

²⁴ Wal-Mart now calls the system "Ethical Standards Program (ES)." Prior to January 2005 it was called "Factory Certification Program" Wal-Mart Stores Inc., "2004 Report on Standards for Suppliers," page 5.

²⁵ In the lawsuit it is contended that the monitoring regime is "... designed only to create the impression that Wal-Mart was producing its goods under human working conditions when, in fact, working conditions at the factories were terrible," see www.nlcnet.org/faxes/lawsuit/index.html page2.

²⁶ *Business Week*, 2 October 2000., "A Life of Fines and Beatings": Indications that products for Wal-Mart, and other firms, continue to be produced in China under sweatshop conditions".

²⁷ Goodman, Peter S and Pan, Phillip P., "Chinese Workers Pay for Wal-Mart's Low Wages," *Washington Post*, 8 February 2004, page A01.

²⁸ Wal-Mart Stores Inc., "2004 Report on Standards for Suppliers," page 21. See footnote 11.

²⁹ Wal-Mart Stores Inc., "2004 Report on Standards for Suppliers," page 26. Wal-Mart uses two external companies to audit suppliers: Global Social Compliance, and Intertek Testing Service. Wal-Mart states that it will use a further four audit companies in 2005.

³⁰ See www.nlcnet.org/faxes/lawsuit/index.html, page 7.

³¹ See <http://www.laborrights.org/projects/corporate/walmart/WalMartComplaint091305.pdf>

³² See footnote 30, page 19.

4.1.4 Wal-Mart's influence on working conditions within the supplier network

Wal-Mart's size gives it substantial market influence in the supplier industry. In fact, the company makes no secret of the fact that it imposes very stringent requirements on its suppliers to get them to cut their prices, enabling Wal-Mart to resell at low prices to the consumer.³³ Wal-Mart generally employs a tender arrangement involving a reverse auction whereby a number of suppliers are invited to deliver a particular item, and, after several rounds of competitive bidding, the supplier who bids the lowest price wins the contract.³⁴ Wal-Mart is also inclined to renegotiate agreements with its existing suppliers; earlier this year the company reportedly asked suppliers to cut their prices by 12 % to ensure contract renewal.³⁵

Suppliers who are unable or unwilling to cut prices may find that Wal-Mart cancels the contract, preferring to find alternative suppliers elsewhere. In the case of suppliers who cut their prices, the result will in many cases be longer working days and pay reductions for employees, and a general worsening of working conditions. In connection with the investigation conducted for the Council, the manager of a supplier factory stated "*Wal-Mart is dominating buying and selling, therefore you have to match their demands ... Big size and cheap price*".³⁶ To the *Washington Post*, a representative of the Chinese labour authorities stated: "*Wal-Mart pressures the factory to cut its prices, and the factory responds with longer hours or lower pay... And the workers have no option.*"³⁷

Wal-Mart has introduced a system of production quotas which must be filled by suppliers. This system, along with the company's constant insistence on lower prices, forms the background for several of the violations of standards taking place in the supplier chain. A number of cases of working conditions bordering on forced labour have been documented, where employees are required to work very long days, seven days a week, without overtime compensation and without being allowed to leave the production site.

4.1.5 Examples of alleged norm violations by Wal-Mart's suppliers

*Nicaragua*³⁸

At the *King Young S.A.* factory, having Taiwanese owners, 80 % of the output is for Wal-Mart, above all Wal-Mart's apparel brand "*Athletic Works*".³⁹

³³ See for example Hansen, Chris and Greenberg, Richard, *NBC Dateline* – Primetime Report, "Human Cost behind Bargain Shopping: Dateline hidden camera investigation in Bangladesh – Human Cost Behind Bargain Shopping: Part 3," 17 June 2005. www.msnbc.msn.com/id/8243331/

³⁴ Oxfam International, "Trading Away Our Rights: Women working in global supply chains," *Oxfam International*, 2004, page 55. www.maketradeair.com

³⁵ *Fortune* (Asian Edition), 16 May 2005, Quoted by The National Labor Committee (NLC) "How Can Wal-Mart Sell a Denim Shirt for \$ 11.67?", 20 June 2005. www.nlcnet.org/news/denim_shirt.pdf

³⁶ This reference is in the Council's archives.

³⁷ See footnote 26.

³⁸ The Council has obtained information on working conditions in Latin America from the National Labor Committee. For more information on the National Labor Committee (NLC), see <http://www.nlcnet.org>. The enquiries made are documented by film, interviews and reports and form part of the Council's archives. Uberculture, an NGO in Montréal, Canada, has, on commission for the secretariat, independently scrutinised and updated the NLC material and supplemented it with its own film and interview material.

³⁹ The NLC's report "*King Yong, Nicaragua: A major test case for the Central American Free-Trade Agreement, July 2004*" page 3. See <http://www.nlcnet.org/campaigns/kingyong/>

As is the case at a number of other production sites, there are reports of a system involving production quota requirements that are so stringent that employees invariably have to work overtime in order to fill the quotas. Moreover, employees are reported to be locked inside the factory premises and subjected to various forms of abuse.⁴⁰

Nicaraguan labour authorities have identified violations of working hour provisions, non-payment for overtime and a number of violations of work environment and safety regulations. When the management learned that employees were in the process of unionising, the employees concerned were dismissed. More than 400 employees have been dismissed for this reason, in violation of national laws. Nicaraguan authorities have ordered the factory to reinstate the dismissed employees, to no avail.⁴¹

As regards Wal-Mart's inspections, Wal-Mart representatives are stated to have inspected the factory on several occasions, but there is no evidence that Wal-Mart has taken any action vis-à-vis the factory's management to address the poor working conditions.⁴²

Working conditions at the *King Young S.A.* and *Presitex S.A.* factories are included in the grounds for the class action *Does vs. Wal-Mart Stores Inc.* These factories manufacture textiles for sale in Wal-Mart stores in the USA. It is alleged that employees at the factories are required to work overtime without adequate compensation and that wages are below the legal minimum. One of the plaintiffs also claims to have been dismissed because she tried to form a trade union.⁴³

El Salvador

Hanchang Corporation of Korea has factories in El Salvador, Sri Lanka, the Dominican Republic and in China. In El Salvador, the production for Wal-Mart takes place at the *Oriental Tex* factory which manufactures textiles under the brand names *Bobbie Brooks* and *Puritan*.⁴⁴ According to the information at hand, the most common type of norm violation at this factory is that employees are required to work 14-27 hours overtime per week without compensation.⁴⁵ The employees tell of threats, abuse and physical punishment and of a highly stressful physical work environment.⁴⁶

Honduras

When visiting Wal-Mart's suppliers in the Honduras, persons previously responsible for Wal-Mart's own inspections found a series of violations of wage and working hour provisions, padlocked fire escapes, poor physical work environment and various other conditions that were contrary to Wal-Mart's own Guidelines for suppliers.⁴⁷ The National Labor Committee

⁴⁰ See footnote 38. Also confirmed by the work of Uberculture, ref. footnote 37. In the Council's archives.

⁴¹ See footnote 38.

⁴² See footnote 38.

⁴³ See footnote 30, section II E, page 9-10.

⁴⁴ NLC's report: "*Hanchang Textiles/Oriental Tex: El Salvador*," 17 December 2003, see <http://www.nlcnet.org/campaigns/ca03/hanchang/report.body.pdf>.

⁴⁵ According to the National Labor Committee's representative for Latin America, Serigo Chavez. In the Council's archives.

⁴⁶ See footnote 39.

⁴⁷ *James W. Lynn versus Wal-Mart Stores Inc.*, page 7, and Greenhouse, Steven, "Fired officer is suing Wal-Mart," *New York Times*, 1 July 2005.

has subsequently confirmed (by inspections conducted in April 2005) that these conditions have not been rectified.⁴⁸

Lesotho

There is information at hand regarding unacceptable working conditions at 21 of Wal-Mart's suppliers in Lesotho. They involve extensive use of unpaid overtime, low wages, various forms of physical maltreatment and harassment, a poor work environment and a ban on unionisation. There are also reports of a widespread practice of ordering employees to work on Sundays without this being registered or paid for, thereby ensuring that Wal-Mart's standard of one rest day per week is ostensibly observed.⁴⁹

Kenya

Oxfam International has reported similar conditions at suppliers in Kenya.⁵⁰ There are reports of very long working days with unpaid overtime, various forms of abuse and employees afraid to complain for fear of losing their jobs. The Council has also received information that employees at three factories in 2003 complained to the authorities over poor working conditions, long working days etc., and then went on strike. As a result, the factories were closed, only to reopen with a new workforce.⁵¹

Uganda

Unacceptable working conditions have been brought to light at the *Tri-Star* factory in Uganda, in this case prompting a complaint to the ILO that the authorities are not enforcing work environment legislation or employees' right to strike.⁵²

Namibia, Malawi, Madagascar

The main suppliers to Wal-Mart in these countries are Asian-owned textile factories. The Council is aware of a report dealing with working conditions at such factories in these countries. Here too there are consistent accounts of long working days, low wages, injuries due to lack of protective equipment and various forms of abuse and discrimination.⁵³

Swaziland

Information from several sources recounts unacceptable working conditions at Wal-Mart's suppliers in Swaziland.⁵⁴ In the class action *Does vs. Wal-Mart Stores Inc.*, working conditions at the textile factories *Leo Garments* and *Hong Yein* are included in the grounds for the lawsuit.⁵⁵ Both factories manufacture textiles for sale in Wal-Mart stores in the USA. It is alleged that the employees are required to work unpaid overtime and that wages are below the legal minimum.⁵⁶

⁴⁸ [New York Times](#), 1 July 2005.

⁴⁹ The source of this information is in the Council's archives. The allegations are wide-ranging and refer to all 21 suppliers. The allegations are confirmed by the Lesotho Clothing and Allied Workers Union (LECAWA) and by the African Office of the International Textile, Garment and Leather Workers Federation.

⁵⁰ See footnote 33.

⁵¹ The source of this information is in the Council's archives.

⁵² See <http://www.itglwf.org/displaydocument.asp?DocType=Press&Index=821&Language=EN>.

⁵³ As yet this report is unpublished. A copy exists in the Council's archives.

⁵⁴ As yet this report is unpublished. A copy exists in the Council's archives.

⁵⁵ See <http://www.laborrights.org/projects/corporate/walmart/WalMartComplaint091305.pdf>

⁵⁶ See footnote 54, section II D, page 8.

Bangladesh

A report made for *NBC Dateline* using a hidden camera deals with working conditions at some of Wal-Mart's suppliers in Bangladesh.⁵⁷ The report, broadcasted on 17 June 2005, showed working conditions at a number of textile factories in Bangladesh. Consistently poor working conditions with very long working days are shown, along with various forms of abuse and practices falling short of Wal-Mart's own requirements on its suppliers. The documentary also shows a production quota system requiring the employees to produce a specific number of garments per day, and that the employees cannot leave work until the quota is filled. There is no payment for overtime, and the report shows employees compelled to work from 0800hrs to 0300hrs the next morning, only to start work again at 0800hrs. Wal-Mart's comment on the report is said to be that the norm violations shown are commonplace: "...the labor violations depicted on 'Dateline NBC' are common."⁵⁸

A report is also available from the National Labor Committee containing further documentation of working conditions at Wal-Mart's suppliers in Bangladesh. This alleges use of child labour (a 13 year-old girl) and the death of a young woman after working non-stop for 38 hours despite being ill.⁵⁹

A further report describes how 6-7 employees at a textile factory outside Dhakar lost their lives and many were injured when the management called in the police after the employees had gone on strike. They went on strike because they were ordered to work five hours unpaid overtime per day, seven days a week. The police beat the employees with batons and opened fire with handguns. One of the injured in the shooting was a 13 year-old girl.⁶⁰

Working conditions at Wal-Mart's suppliers in Bangladesh are described in the class action lawsuit *Does vs. Wal-Mart Stores Inc.*,⁶¹ in which attention is drawn to conditions at the *Western Dresses* and *Lucid Garments* factories in Dhaka. Both these factories manufacture textiles for Wal-Mart's outlets in the USA. It is described how the factory management routinely engages private security forces, called "*Mastans*", to terrorise employees who complain about working conditions or attempt to unionise: "*Mastans routinely assault, rape and in some cases kill workers who complain even about the most minute labor rights or who attempt to form trade unions.*"⁶²

China

Wal-Mart is regarded as the largest individual importer of goods from China,⁶³ and 80% of the production sites for so-called direct suppliers are Chinese.⁶⁴ There is, in addition, an unknown number of production sites for the indirect suppliers, possibly amounting to several thousand factories.

⁵⁷ Hansen, Chris and Greenberg, Richard, *NBC Dateline* – Investigatory Report, "Human Cost behind Bargain Shopping: Dateline hidden camera investigation in Bangladesh," 17 June 2005.

www.msnbc.msn.com/id/8243331/

⁵⁸ Ellis, Kristi, "Wal-Mart Rebutts 'Dateline' Flap," *Women's Wear Daily*, 21 June 2005, www.wwd.com.

⁵⁹ The National Labor Committee (NLC), "Testimony of Masuma: Factory Working from Bangladesh," www.nlcnet.org/campaigns/bangtour/maksuda.shtml.

⁶⁰ The National Labor Committee (NLC), "Testimony of Sk Nazma: President of the Bangladesh Centre for Worker Solidarity (BCWS), www.nlcnet.org/campaigns/bangtour/maksuda.shtml.

⁶¹ See <http://www.laborrights.org/projects/corporate/walmart/WalMartComplaint091305.pdf>

⁶² See footnote 60, section II B, page 5-6.

⁶³ See footnote 12.

⁶⁴ See footnote 26.

The Council bases itself on documentation in the form of a report⁶⁵ and film footage⁶⁶ on working conditions at a small number of Chinese factories.⁶⁷

Supplier “X” supplies Wal-Mart from two factories in Guangdong. There are reports of very long working days, a seven-day working week, no guaranteed minimum wage, unpaid overtime and a system for providing false information at inspections. The latter includes manipulation of lists of hours worked, coaching and bribery of employees to give favourable answers to inspectors’ questions, temporary change of accommodation to give the impression of less cramped conditions, and temporary removal of minors or illegal employees from the factory site.⁶⁸

Supplier “Y” is a Korean company with factories in Guangdong that produce toys for Wal-Mart. Unlawfully long working days, no guaranteed minimum wage and production plans imposing unreasonable workloads on the employees are also reported at this supplier. However, inspections have brought to light some improvements evidenced by less manipulation of lists of hours worked and the like, and the employees are now paid somewhat higher wages.⁶⁹

He Yi Electronics and Plastics Productions Factory (also operating under the name *Foreway Industrial China Ltd.*) manufactures toys for Wal-Mart and other companies. The factory has between 600 and 2,100 employees, depending on the season. There are reports of employees having to work 18-20 hour shifts, seven days a week, of wages below the legal minimum, of the absence of written contracts, and of a system for manipulating inspections. The Council’s secretariat has received copies of checklists containing answers on working conditions that the employees are required to give at inspections, along with lists of hours worked showing 20 hour working days. The share of the factory’s output going to Wal-Mart is said to be up to 20%.⁷⁰

In the class action *Does vs. Wal-Mart Stores Inc.*,⁷¹ it is alleged that employees at two of Wal-Mart’s suppliers in Shenzhen have been compelled to work without taking days off, holidays or rest breaks. The employer has withheld three months’ wages to stop employees quitting. Moreover, mandatory overtime work has routinely been introduced without adequate compensation as well as health-hazardous working conditions.⁷²

Indonesia

Working conditions at some of Wal-Mart’s suppliers in Indonesia are also described in *Does vs. Wal-Mart Stores Inc.* This involves the factories *PT Citra Bumilang Admitra* and *PT Busunaremajaja Agracipta*, both of which manufacture textiles of the “George” brand for sale

⁶⁵ The Council takes its basis in a report from the organisations SwedWatch, Fair Trade Centre and Hong Kong Christian Industrial Committee, see www.swedwatch.org, www.fairtradecenter.se and www.cic.org.hk/. The report is entitled “Easy to Manage: A report on Chinese toy workers and the responsibility of the companies,” English version from May 2005, www.fairtradecenter.se/index.php/ftc/content/view/full/436.

⁶⁶ The findings are also documented by film footage. The factory managements have consented to filming, provided the names of the factories were not stated. Some of the footage is included in SwedWatch’s film “*Santa’s Workshop*” from 2004. Some additional material from SwedWatch is also used.

⁶⁷ The factories’ names are not stated.

⁶⁸ See footnote 64 and 65.

⁶⁹ See footnote 64 and 65.

⁷⁰ Documentation is available in the Council’s archives. See also the report *Toys of Misery 2004*.

⁷¹ See <http://www.laborrights.org/projects/corporate/walmart/WalMartComplaint091305.pdf>

⁷² See footnote 70, part II A, page 3-4.

in Wal-Mart stores in the USA. It is alleged that employees are compelled to work unpaid overtime, that wages are below the legal minimum and, in general, that employees who seek to join a trade union are subject to violence, threats and harassment.⁷³

4.2 Alleged violations in connection with the company's own operations

Allegations have been brought against the company for violation of labour law provisions at its operations in the USA and Canada. This refers, *inter alia*, to extensive use of unpaid overtime, breach of rules governing the employment of minors, employment of illegal labour, extensive discrimination of female employees and measures to actively obstruct unionisation.

4.2.1 Discrimination of female employees

A number of civil lawsuits are pending against the company on a variety of grounds, among them *Dukes vs. Wal-Mart Stores Inc.*, in which 1.6 million current and former female employees are bringing a class action lawsuit to seek compensation for discrimination.⁷⁴ A number of allegations are put forward against Wal-Mart, among them that the company discriminates against female employees in pay, training and promotion.⁷⁵ It is also reported that female employees who attempt to complain about such discrimination have lost their jobs.⁷⁶

In *Dukes vs. Wal-Mart Stores Inc.*, the plaintiffs base their case on alleged consistent discrimination of female employees in the company. This is supported by statistical analyses showing a pattern of discrimination in promotion and wages at Wal-Mart's operation in the USA.⁷⁷ According to the analyses, females have earned less than males in the same position, for virtually all positions, each year since 1996. The findings are confirmed in another analysis which similarly concludes that females are subject to a significant margin of wage discrimination, and that this cannot be put down to chance.⁷⁸

A court ruling has been delivered permitting *Dukes vs. Wal-Mart Stores Inc.*, to be conducted as a class action. The federal judge⁷⁹ found that it is possible for a corporate culture that pervades an organisation to result in discrimination, although the company claims to counteract discrimination of its employees.⁸⁰

4.2.2 Active obstruction of the employees' right to unionise

A spokesperson for Wal-Mart is quoted with the following statement about employees who wish to join a union: "*Our philosophy is that only an unhappy associate⁸¹ would be interested in joining a union ... so that's why Wal-Mart does everything it can to make sure that we're*

⁷³ See footnote 70, part II C, page 6-7.

⁷⁴ The Economist, "Trial by Checkout: Facing a giant sex-discrimination suit," *Economist*, Vol. 371, Issue 8381, 26 June 2004, page 64, and Serwer, Andy, "Bruised in Bentonville," *Fortune Magazine*, 18 April 2005, page 45.

⁷⁵ *Dukes versus Wal-Mart*, see <http://news.findlaw.com/wp/docs/walmart/dukeswalmart61901.pdf>

⁷⁶ Of the National Organization for Women (NOW), "Wal-Mart Designated "Merchant of Shame," www.walmartlitigation.com/current.htm

⁷⁷ Analyses conducted by Dr Richard Drogin, Professor Emeritus of Statistics, California State University, see also footnote 74.

⁷⁸ Analysis conducted by Dr Marc Benedic Jr, see also footnote 74.

⁷⁹ Judge Martin Jenkins, 22 June 2004.

⁸⁰ The Economist, "Trial by Checkout: Facing a giant sex-discrimination suit," *Economist*, Vol.371, Issue 8381, 26 June 2004, page 64.

⁸¹ Wal-Mart consistently applies the term "associate" to all their employees.

providing our associates what they want and need".⁸² Officially, Wal-Mart has an "open-door policy" towards its employees, *i.e.* employees are free to raise questions and problems with the management. The company cites this as a reason why unionisation is not necessary.⁸³

There is no employee unionisation at any of Wal-Mart's approximately 3,600 stores in the USA, and the same applies to Canada.⁸⁴ A complaint is reported to have been filed with the US *National Labor Relations Board*⁸⁵ against Wal-Mart⁸⁶ for breaking federal law by encouraging employees to inform against colleagues who wish to join a union. Another source (*Bloomberg*) has reported similar instances of the company actively seeking to identify and obstruct employees who wish to unionise.⁸⁷ A number of news media, including the *Wall Street Journal*, have also reported Wal-Mart's former vice-president Thomas M. Coughlin's so-called "*union project*" in which company funds were used to obstruct the formation of trade unions and to pay employees to pass on information about fellow employees who attempt to form such unions.⁸⁸

Several of Wal-Mart's internal company documents, including a book entitled "*Wal-Mart: A Manager's Tool Box to Remaining Union Free*,"⁸⁹ are the object of a ruling by Canada's Supreme Court, in which the court ordered the company to surrender the book to the Labour authorities in Saskatchewan province.⁹⁰ The book refers to the company's managers as "*the first line of defence against unionization*". The book also describes how managers should contact the company's "*union hotline*" if they suspect that employees wish to unionise.⁹¹ Wal-Mart has refused to turn over the book to the Canadian authorities referring to it as an internal document intended for use in the USA which has never been used in Canada.⁹²

4.2.3 Violation of provisions concerning the employment of minors in the USA

Although it is not the worst forms of child labour that have been reported with respect to the company's operations in North America, there is information at hand on a number of violations of provisions governing the employment of minors.

⁸² Goldman, Abigail and Cleveland, Nancy, "*An Empire Built on Bargains Remakes the Working World: Wal-Mart is so powerful that it moves economies of entire countries, bringing profit and pain. The prices can't be beat, but the wages can,*" *Los Angeles Times*, 23 November 2003. Pulitzer Prize Winner:

www.pulitzer.org/year/national-reporting/works/walmart1.html

⁸³ Jo Lynn Sheane, "Documentary on the move to unionize Wal-Mart," CBC News: Dateline, August 2003, http://winnipeg.cbc.ca/regional/servlet/View?filename=mb_walmartdecision20030819

⁸⁴ Weinberg, Paul, "Labour: Closure of First Unionized Wal-Mart Sends Signal," *Inter Press Service News Agency (IPS)*, 15 April 2005, also at *CorpWatch*, 1 May 2005, www.corpwatch.org/article.php?id=12194

⁸⁵ "*The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the National Labour Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers or to refrain from all such activity.*" See <http://www.nlr.gov/nlr/home/default.asp>

⁸⁶ Barbaro, Michael and Joyce, Amy, "'Union Files Wal-Mart Complaint,'" *Washington Post* 13 April 2005.

⁸⁷ Woolner, Ann, "Let me Count the Ways People Don't Love Wal-Mart," *Bloomberg*, 13 February 2004.

⁸⁸ Bandler, James and Zimmerman, Ann, "A Wal-Mart Legend's Trail of Deceit," *Wall Street Journal*, 8 April 2005.

⁸⁹ A copy of the book is posted at <http://reclaimdemocracy.org/walmart/antiunionman.pdf>.

⁹⁰ Brieger, Peter, "Wal-Mart loses fight over 'union prevention' book – Supreme Court Ruling: Tried to shield documents from Sask. labor probe," *Financial Post*, 8 April 2005.

⁹¹ Described inter alia by Jo Lynn Sheane, "Documentary on the move to unionize Wal-Mart," CBC News: Dateline, 15 August 2003 http://winnipeg.cbc.ca/regional/servlet/View?filename=mb_walmartdecision20030819

⁹² Weinberg, Paul, "Labour: Closure of First Unionized Wal-Mart sends Chilling Signal," *Inter Press Service News Agency (IPS)*, 15 April 2005, www.ipsnews.net/africa/print/asp?idnews=28317

In 2000, the company was fined⁹³ for violations of child employment provisions at all 20 Wal-Mart stores in the state of Maine.⁹⁴ In 2004, it was reported that Wal-Mart's own audit showed, after scrutiny of 128 stores, 1,371 instances of minors working too late in the evening, working in school hours or working too many hours per day. Earlier this year 2005, Wal-Mart decided to conclude a settlement in the lawsuit to avoid prosecution for violations of federal laws governing child employment in the states of Connecticut, New Hampshire and Arkansas.⁹⁵ The settlement encompassed 24 different instances in which employees under the age of 18 had operated dangerous implements and machines. As part of the settlement, Wal-Mart has undertaken not to employ persons under the age of 14 and not to allow employees under the age of 18 to operate cutting machines.⁹⁶

4.2.4 Mandatory overtime without compensation

Wal-Mart is involved in a number of civil lawsuits in the USA. According to the *Wal-Mart Litigation Project*, the company currently faces 38 different lawsuits in 30 states.⁹⁷ A recurrent theme of the lawsuits is that the company systematically compels employees to work unpaid overtime. Wal-Mart is alleged to have withheld overtime payments to increase the company's earnings.⁹⁸ Moreover, a lawsuit against Wal-Mart in the state of Oregon is reported to have established that the company had coerced hundreds of local employees into working unpaid overtime, and that it did so after pressure by the company's central management.⁹⁹

4.2.5 Use of illegal labour in the USA

It is reported that in 2003, the US authorities arrested 250 immigrants without valid residence permits who were working illegally in 60 Wal-Mart stores in 21 states in the USA.¹⁰⁰ These illegal immigrants, all of whom were engaged in cleaning, were chiefly employed by suppliers who apparently have also violated other laws and regulations governing work conditions.¹⁰¹ In *Zavala, et al. vs. Wal-Mart Stores Inc.*, some of these immigrants brought action against Wal-Mart alleging that the company, together with its contractors, was "engaged in and profited from a nationwide fraudulent scheme",¹⁰² and that "Wal-Mart is and was fully aware of and acted to aid and abet the rampant violations of federal and state law

⁹³ The fine was USD 205,000.

⁹⁴ Greenhouse, Stephen, "Wal-Mart agrees to pay fine in child labor cases," *New York Times*, 12 February 2005.

⁹⁵ See footnote 94.

⁹⁶ See footnote 94.

⁹⁷ The purpose of *Wal-Mart Litigation Project* is to assist lawyers who institute proceedings against Wal-Mart on behalf of clients. This is done by gathering and exchanging information on the legal aspects and the outcome of actions brought against the company. See www.wal-martlitigation.com.

⁹⁸ The Council has gained access from a US law firm to case documents of a forthcoming lawsuit against Wal-Mart. In the Council's archives.

⁹⁹ Goldman, Abigail and Cleeland, Nancy, "An Empire Built on Bargains Remakes the Working World: Wal-Mart is so powerful that it moves economies of entire countries, bringing profit and pain. Prices can't be beat, but the wages can," *Los Angeles Times*, 23 November 2003. Pulitzer Prize Winner: www.pulitzer.org/year/national-reporting/works/walmart1.html

¹⁰⁰ Greenhouse, Stephen, "Illegally in U.S., and never a day off at Wal-Mart," *New York Times*, 5 November 2003.

¹⁰¹ See footnote 97.

¹⁰² The Council has gained access from a US law firm to case documents of a forthcoming lawsuit against Wal-Mart.

by the Contractor Defendants.”¹⁰³ The case ended in a settlement in March 2005 in which Wal-Mart agreed to pay USD 11 million.¹⁰⁴

5 Other investors’ exercise of active ownership

Several of the company’s shareholders, in the first instance pension funds and other institutional investors, have for several years sought to achieve improvements in the company by exercising active ownership. This has primarily been a matter of initiatives designed to improve Wal-Mart’s monitoring regime in order to prevent norm violations within the company’s own organisation and at suppliers.

In 2001, a coalition of 38 investors in the USA and Canada proposed that Wal-Mart should employ third-party inspections in its regime for monitoring suppliers. Interfaith Center on Corporate Responsibility (ICCR),¹⁰⁵ which coordinated the initiative, negotiated with Wal-Mart to get the company to try introducing independent, third-party inspections at one of its suppliers in Latin America. The initiative was unsuccessful since Wal-Mart concluded that the company’s own monitoring regime was sufficient.¹⁰⁶

In 2003, a group of investors proposed, at Wal-Mart’s general meeting, that the company should introduce independent monitoring of its suppliers.¹⁰⁷ The proposal sought to: “...commit the company to the full implementation of human rights standards by its international suppliers and in its own international production facilities, and to commit to a program of outside, independent monitoring of compliance with these standards.”¹⁰⁸

In May 2005, the institutional investors F&C and USS, which together own about 11 million of the company’s shares, wrote a letter to Wal-Mart expressing deep concern about “*the potential contingent liabilities and negative effects on the company’s stock price and reputation*” in relation to the situation for employees in the company.¹⁰⁹ In 2005, the ICCR, on behalf of several investors, put forward a proposal for a resolution at the company’s general meeting requiring Wal-Mart to prepare a report on what steps the company was taking too maintain employees’ rights. The proposal states, among other things that “... *there has been no stated commitment for the company to develop a public sustainability report on its efforts to protect human rights, worker rights, land and the environment*”, and further, “*in the*

¹⁰³ See footnote 97.

¹⁰⁴ “Wal-Mart Agrees to \$ 11 Million Settlement in the Illegal Foreign Janitors’ Glass Action Lawsuit Holding Wal-Mart Liable for its Contract Janitorial Firms’ Violations of Federal Immigration and Labor Laws” (*Zavala et al. v. Wal-Mart Stores Inc.*, U.S. D.Ct. N.J.), settlement reached on 18 March 2005. The illegal immigrants were employed by Wal-Mart’s supplier of janitor services. Wal-Mart was co-responsible for their illegal employment relationships. The company which had hired the personnel was prosecuted for criminal activity and fined USD 4 million. See also <http://www.contingentlaw.com/>.

¹⁰⁵ Interfaith Center on Corporate Responsibility (ICCR) is an international coalition of 275 institutional investors with varying religious orientation which inter alia manages the assets of pension funds, foundations and institutions. Overall assets under management total about USD 100 billion. More information at www.iccr.org.

¹⁰⁶ See http://www.iccr.org/news/press_releases/pr_walmart.htm.

¹⁰⁷ Supported inter alia by New York City Employees Retirement System, New York City Teachers Retirement System, New York City Police Pension Fund, New York City Fire Department Pension Fund.

¹⁰⁸ Letter to Wal-Mart Board of Directors, 31 January 2003, www.uusc.org/news/walmartres013103.html.

¹⁰⁹ Joined shareholder letter to Wal-Mart Inc., F&C and USS Ltd., 25 May 2005, in the Council’s archives.

*absence of open transparent public reporting, it is reasonable to conclude that the company has not addressed these issues adequately.*¹¹⁰

6 The Council's assessment

The Council is to assess whether there is an unacceptable risk of Wal-Mart acting in a way that may constitute complicity in serious or systematic violations of internationally recognised standards for human rights and labour rights. An assessment thus has to be made on whether the relevant acts or omissions by Wal-Mart fall within the scope of such norms or standards.

A distinction is drawn between violations of labour standards that take place at the company's suppliers, and violations within the company itself and vis-à-vis its own employees. The first-mentioned category largely comprises violations taking place in parts of Latin America, Africa and Asia. The second category comprises violations of standards in the USA and Canada.

6.1 Violations of standards in the supplier chain

There is no doubt that working conditions at textile factories in Asia, Africa and Latin America can be abysmal, and that Wal-Mart purchases a number of products that are manufactured under unacceptable conditions. There are numerous reports of child labour, serious violations of working hour regulations, wages below the local minimum, health-hazardous working conditions, unreasonable punishment, prohibition of unionisation and extensive use of a production system that fosters working conditions bordering on forced labour, and of employees being locked into production premises etc. in Wal-Mart's supply chain.

All of the above examples represent violations of internationally recognised standards for labour rights and human rights.

All forms of harmful child labour are expressly forbidden. For example, Article 32 of the UN Convention on the Rights of the Child states that children shall be protected from performing *"any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development."*¹¹¹ ILO Convention 182 on the Worst Forms of Child Labour, 1999, also explicitly prohibits all forms of harmful child labour.¹¹² Both these conventions enjoy broad international support. The UN Convention on the Rights of the Child has as many as 192 state parties, while the ILO Convention on the Worst Forms of Child Labour has 156. Both these conventions have been ratified by all the states mentioned in this recommendation, with the exception that USA has not ratified the UN Convention on the Rights of the Child. Since the standards prohibiting harmful child labour apply to the great majority of states, including the states mentioned in this recommendation, there exists, in the view of the Council, a risk that companies which avail themselves of such labour are contributing to serious human rights violations.

¹¹⁰ Sustainability Report to Shareholders – Wal-Mart Stores, Inc., Proposal for Shareholder Action, ICCR, see http://www.iccr.org/shareholder/proxy_book05/

¹¹¹ Convention on the Rights of the Child.

¹¹² ILO Convention 182, Worst Forms of Child Labour, 1999.

Circumstances that border on or constitute forced labour also constitute serious violations of fundamental standards. The International Covenant on Civil and Political Rights, Article 8 (3) states that “*No one shall be required to perform forced or compulsory labour.*”¹¹³ The same prohibition is enshrined in the ILO Conventions prohibiting forced labour.¹¹⁴ Forcing persons to work beyond working hours without compensation may, depending on the circumstances, fall within the scope of the prohibition of forced labour.

Locking workers into production premises may also fall under the prohibition against forced labour. Such acts will in addition constitute a clear violation of the right to personal liberty. The International Covenant on Civil and Political Rights, Article 9, states: “*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*” Punishment and harassment are also violations of labour rights. Physical punishment in particular is a serious violation. The right to physical integrity and personal liberty are fundamental human rights and examples of international norms that lie clearly within what was categorised as “*an international consensus on minimum requirements regarding respect for basic rights worldwide*” by the Graver Commission.¹¹⁵

The violations mentioned here represent the most serious cases. It is recognised that violations of labour rights take place on a general basis in many states in the developing world. Point 4.4 of the Ethical Guidelines requires that the violations that may lead to exclusion must be serious or systematic and thus entails that not *all* violations of labour rights will be contrary to the Guidelines. The Council considers that the examples mentioned in this recommendation meet the criterion.

6.2 Violations of standards in Wal-Mart’s own operations

It is relatively well documented that Wal-Mart pursues a consistent practice of gender discrimination, *inter alia* by pursuing a wage policy in which women and men receive different pay for the same position and work. The documentation in *Dukes vs. Wal-Mart stores Inc.*, appears to show that discrimination of women is widespread in the organisation. Such practice is contrary to both special and general human rights norms. The International Covenant on Civil and Political Rights¹¹⁶ and the International Covenant on Economic, Social and Cultural Rights¹¹⁷ contain explicit provisions (in Articles 2 and 3) that prohibit discriminatory differential treatment of women. The Convention on the Elimination of All Forms of Discrimination Against Women¹¹⁸ further elaborates this prohibition.¹¹⁹ The same principle is established in ILO Convention No. 100, Equal Remuneration.¹²⁰ Since the USA is party to the International Covenant on Civil and Political Rights, there is, in the Council’s

¹¹³ See for example the International Covenant on Civil and Political Rights, Article 8 (3).

¹¹⁴ ILO Convention 29, Forced Labour, 1930 and 1957.

¹¹⁵ NOU 2003: 22, page 96

¹¹⁶ International Covenant on Civil and Political Rights (ICCPR) 1966.

¹¹⁷ International Covenant on Economic, Social and Cultural Rights (ICESR) 1966.

¹¹⁸ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979.

¹¹⁹ According to Article 11 women shall have “*the right to the same employment opportunities, including the same criteria for selection in matters of employment.*” and, further, that women are entitled to “*the rights of equal remuneration, including benefits, and to equal treatment in respect of work of equal value..*”.

¹²⁰ ILO Convention no. 100, Equal Remuneration, 1951.

view, a risk that the Fund may be complicit in possible violations of this Convention's standards regarding equal treatment of women and men.

It also appears to be well documented that the company puts a stop to any attempt by employees to form trade unions. Freedom to form trade unions and to join a trade union is a fundamental human right. This right is enshrined in a number of both general and special conventions. The two International Covenants from 1966 (on civil and political, and on economic, social and cultural rights) clearly establish that everyone has the right to freedom of organisation, association and assembly.¹²¹ Article 8 of the Covenant on Economic, Social and Cultural Rights states that everyone has the right to “*form trade unions and join the trade union of his choice.*” Article 22 of the Covenant on Civil and Political Rights states “*Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*” The right to organise is also enshrined in ILO Convention no. 87, Freedom of Association, 1948,¹²² and in the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Even so, US legislation do not always assure actual implementation of the right to organise, and there is therefore a risk of the Fund being complicit in potential violations of this right. Freedom of organisation is a fundamental democratic right, and clearly within the scope of what the preparatory work refers to as *fundamental rights*.

As stated above, Wal-Mart is regularly being accused of violating, in its own operations, rules preventing the employment of minors in dangerous work and at hours when minors are not supposed to work. The Council finds it probable that such practices may be widespread in the company. Moreover, documentation indicates that the company systematically compels employees to work unpaid overtime.

The Council assumes that the company, in a number of cases, has utilised illegal labour in its operations in North America. Several hundred violations of provisions concerning the employment of illegal immigrants can be cited. They do not appear to be a matter of isolated cases, but of repeated and wide-ranging violations of ethical norms. Where employees are working illegally, allegations of a dangerous work environment, unpaid overtime, wages below the legal minimum, prohibition of unionisation etc., are far less likely to emerge than would otherwise be the case. Illegal employees are at the mercy of the employer's terms and conditions. Hence there is reason to assume that the working conditions for illegal employees may be just as poor as the working conditions for legal employees.

6.3 The company's responsibility

With regard to the violations of labour standards taking place at the company's own production facilities and stores in North America, it is clear that the company is directly responsible. Where the alleged violations by Wal-Mart's suppliers are concerned, the responsibility is of a more derivative nature. It would be difficult to demonstrate direct responsibility for all norm violations taking place in the supply chain around the world. However, the Council's mandate is not to provide proof of events that have taken place

¹²¹ See Article 8 in the International Covenant on Economic, Social and Cultural Rights, which establishes the right to form trade unions, and Article 21 and 22 in the International Covenant on Civil and Political Rights, which also establishes the right to form trade unions in addition to the right of assembly and organisation in general.

¹²² ILO Convention no. 87, Freedom of Association, 1948.

earlier, but to consider whether an unacceptable risk exists that the company is complicit in, and will continue to be complicit in, violations of ethical norms.

The Council will, based on the documentation set out above, consider the risk of unacceptable violations of labour standards in relation to the four bullet points summarising the preparatory work's criteria for establishing complicity in human rights violations, see above under section 3.3.

The first element in the assessment is whether there exists some kind of linkage between the company's operations and the existing violations of the Guidelines which is visible to the Fund. In the view of the Council, this is clearly the case. The violations of standards discussed above have taken place either in connection with the company's operations and activity in North America, or in connection with the manufacturing of goods for sale in Wal-Mart's stores. While it may be difficult to prove that Wal-Mart is directly responsible for violations of labour rights at its suppliers in the developing world, the Council considers there is an unacceptable risk that such a linkage exists. Where the violations of standards in the company's own business are concerned, the linkage between this business and the violations is relatively clear-cut. The linkage in this case is highly visible due to the keen public interest in Wal-Mart shown by the press and by a number of NGO's.

The second element in the assessment is whether the violations have been carried out with a view to serving the company's interests, or to facilitate conditions for the company. In the view of the Council, the type of violation focused on in this recommendation in Wal-Mart's business operations has been undertaken with the intention of increasing the company's profits. The Council considers that even though all companies aim at maximising their profits, it is ethically unacceptable to do so by committing, or tacitly accepting, serious and systematic violations of ethical norms. The Council finds that the violations have been undertaken with a view to facilitate or serving the company's interests.

The third element in the assessment is to consider whether the company has contributed actively to the violations, or has had knowledge of the violations, but without seeking to prevent them. Where the violations in North America are concerned, the Council considers that Wal-Mart is directly responsible for the reported violations, and must therefore be said to have actively contributed to them. Where the reported patterns of violations in the supply chain are concerned the Council assumes that Wal-Mart is largely aware of them and largely refrains from seeking to prevent them. The Council also recognises that Wal-Mart wields substantial influence in regard to working environment, wages etc., particularly in relation to the manufacturers which the company itself describes as direct suppliers. This is due not least to the company's size and widespread presence in many countries, and thus to its engagement in a large number of suppliers.¹²³ In this respect too, the Council therefore considers that the company's acts and omissions fall within the scope of this element of the assessment.

The fourth and final element in the assessment is whether the violations of standards are ongoing, or whether there exists an unacceptable risk that violations will occur in the future. Here, earlier violations might indicate future patterns of conduct. The Council assumes that the patterns of action reported where Wal-Mart is concerned are ongoing. To the Council's knowledge, there are no indications that the company plans to revise its approach in terms of seeking to prevent violations of labour rights at its suppliers, or as regards violations of

¹²³ See section 4.1.

standards for labour rights, including gender discrimination and prohibition of unionisation, within its own business operations. The Council has not received a reply to its enquiry to the company, nor do approaches from other investors appear to be prompting changes in the company's practices.¹²⁴ Hence in this case, it would seem that previous patterns of action may be an indication of future patterns of action. This implies, in the view of the Council, the presence of an unacceptable risk that serious and systematic violations of international standards are taking place today and may continue in the future.

The Council's point of departure is that the above four elements must constitute decisive factors in an overall assessment, and that it is not necessary that all four criteria be met in order for a company to be considered complicit in human rights violations. In the case at hand, however, all four elements together constitute an unacceptable risk of complicity in human rights violations.

As specified in Point 4.4 of the Ethical Guidelines, violations of standards must be serious or systematic in order to provide a basis for the Council to recommend exclusion. It seems clear that a number of the violations reported, particularly in the supply chain, are very serious. They include violations of fundamental international standards with regard to child labour, working conditions bordering on forced labour, serious violations of work hour provisions, wages below the local legal minimum, health-hazardous working conditions, and unreasonable punishment. Isolated occurrences of this type, even if serious, would probably not suffice to exclude a company since such events would not constitute sufficient grounds for establishing a risk of violation in the future. In the case at hand, however, not seeking to avoid such violations by its suppliers seems to constitute a pattern of action on the company's part. Concerning violations of working environment standards, prohibition against unionisation and gender-based discrimination, these too will probably not be sufficient in themselves to recommend exclusion, even in cases where they must be regarded as systematic. In the view of the Council, what makes this case special is the total sum of violations of standards, both in the company's own business operations and in the supply chain. It appears to be a systematic and planned practice on the part of the company to operate on, or below, the threshold of what are accepted standards for the work environment. Many of the violations are serious, most appear to be systematic, and altogether they form a picture of a company whose overall activity displays a lack of willingness to countervail violations of standards in its business operations. Although it is legitimate to take steps to hold down prices on its merchandise and increase the company's profits, it is not legitimate to do so by violating applicable minimum standards. Since Wal-Mart is such a large company, this practice has consequences for a very large number of people both in many poor countries of the world and in North America.

Several investors have sought through a variety of initiatives to improve the company's practices in the areas addressed by this recommendation. Nothing suggests that Wal-Mart has complied with any of these initiatives, or that they have brought about improvements. Nor does the Council have reason to anticipate any movement by Wal-Mart to reduce the risk of the Fund's complicity in violations in the near future.

¹²⁴ See above, section 5.

7 Recommendation

The Petroleum Fund's Council on Ethics accordingly considers that there is an unacceptable risk that the Fund, through its investments in Wal-Mart Stores Inc., and Wal-Mart de Mexico S.A., may be complicit in serious or systematic violations of human rights.

The Council recommends that Wal-Mart Stores Inc. and Wal-Mart de Mexico S.A. be excluded from the Petroleum Fund's portfolio.

Gro Nystuen
Leder

(sign.)

Andreas Føllesdal

(sign.)

Anne Lill Gade

(sign.)

Ola Mestad

(sign.)

Bjørn Østbø

(sign.)