

2008

Examining the Role of Companies in the Realization of Human Rights: The Case of Gap Inc.

Monica J. Oberkofler

Recommended Citation

Monica J. Oberkofler, *Examining the Role of Companies in the Realization of Human Rights: The Case of Gap Inc.*, 26 BERKELEY J. INT'L LAW. 392 (2008).

Available at: <http://scholarship.law.berkeley.edu/bjil/vol26/iss2/2>

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of International Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

Examining the Role of Companies in the Realization of Human Rights: The Case of Gap Inc.

By
Monica J. Oberkofler, Ph.D.*

I would like to begin by saying thank you to the *Berkeley Journal of International Law* and the University of California, Berkeley Law School for inviting me to speak with you today. It is an honor to be here among such distinguished company. As you know, this is a topic that is close to my heart, not only because I spent time earlier in my career examining the role that law plays in driving political and economic objectives, but also because the role of corporations in addressing human rights is an issue that I now grapple with every day in my job at Gap, Inc. I hope that I can offer some interesting thoughts this afternoon on this timely topic from the perspective of one company.

I would like to begin my remarks by asking you a question: how many of you have ever bought something on sale? Do you know that when you buy something on sale, for example, when you “bargain-shop,” you are having an impact on global human rights and that impact probably isn’t a positive one?

I ask this not to make you feel guilty, but because I want to highlight the complexity of the challenges that we are here to talk about today. When consumers bargain shop, they put downward pressure on prices. This pressure en-

* Director of Social Responsibility at Gap Inc. Ms. Oberkofler oversees policy development and public reporting on labor standards for Gap Inc. She was a key player in the development of the company’s 2003 and 2004 Social Responsibility Reports. Oberkofler works closely with several multi-stakeholder groups, including the Ethical Trading Initiative (ETI) and Social Accountability International (SAI), as part of her policy and public reporting responsibilities. She also represents Gap Inc. on the Global Reporting Initiative’s (GRI) working group to develop common reporting standards for the apparel and footwear industries. Oberkofler has a PhD in European politics and law from Oxford University and an AB in history, summa cum laude, from Dartmouth College. She joined Gap Inc. in 2003.

courages companies to negotiate lower prices with their suppliers, which, in turn, may have a negative impact on the human rights of the workers making those products if supplier factories do not have sophisticated production and compliance programs in place to protect workers.

The global system that we are here to discuss today is extremely complex. Yes, companies have tremendous potential to help facilitate the realization and protection of human rights around the world. Much of my talk today will focus on the way that Gap, Inc. has chosen to embrace that potential, as well as the challenges it has faced along the way. And yes, there is a critical role that law must play—whether it is in the form of legislation, litigation or judicial oversight. The distinguished members of today’s panels will examine the different roles that lawyers can play. But this issue is bigger than international companies and the legal profession. In our globalized world, every single one of us—as consumers—also has an impact on human rights. And I believe that it is only when we all begin to realize and embrace our potential and our responsibility—as companies, as lawyers, as governments and as consumers—that we will begin to make meaningful progress toward the protection of human rights around the world.

THE GAP INC. EXPERIENCE

So let’s turn for a moment to the Gap Inc. experience. Gap Inc. has had the luxury—although it has taken us a long time to see it that way—of having to address the issue of human rights in our global supply chain earlier than many other multinational companies.

We first faced allegations of labor rights abuses back in 1995 at the Mandarin International factory in El Salvador. Negative allegations and campaigns against the company continued throughout the late 1990s.

However, there was a positive side to this public attention. The allegations forced us to take a hard look at ourselves and what we could be doing differently as a company. We were extremely concerned by these allegations and the conditions that our ground-level investigations revealed, and wanted to find an effective way to address them. As a result, when most apparel brands and retailers doing business with the Mandarin International factory in El Salvador cut ties and left, we decided to stay and try to become part of the solution. We began collaborating with three non-governmental organizations (NGOs)—Business for Social Responsibility (BSR), the Center for Reflection, Education, and Action (CREA), and the Interfaith Center on Corporate Responsibility (ICCR) to form the Independent Monitoring Working Group (IMWG). The IMWG engaged the *Grupo de Monitoreo Independiente de El Salvador* (GMIES), a group of representatives from Salvadorian civil society who sought to help workers in the *maquila* sector. The effort marked the beginning of the first independent monitoring program in El Salvador and in the apparel industry globally.

The company has learned a lot since that initial effort, and our work has

evolved accordingly. Let me take you through a few milestones from the past decade. In 1996, Gap Inc. revised its Sourcing Principles into a comprehensive Code of Vendor Conduct (COVC) based on international principles, including the International Labor Organization (ILO)'s core labor standards. More importantly, we developed a mechanism to enforce this Code. We hired our first Vendor Compliance Officer (VCO) in 1996, and quickly built up one of the largest internal monitoring teams in the apparel industry.

Today, Gap Inc. has a team of approximately ninety people based in twenty-four countries around the world who are dedicated to improving the lives of garment workers. I have the privilege of being part of this team, and it is truly an extraordinary group. My colleagues are as diverse as the factories from which we source. Most are from the country or communities in which they work, and their local knowledge greatly enhances their ability to detect issues and communicate with factory managers and workers. Many of them are VCOs, who serve as the company's "eyes and ears" within factory walls. VCOs spend their days visiting factories, conducting inspections, documenting violations of our COVC, and working with garment manufacturers and external stakeholders to help build capacity within the industry for greater compliance.

To give you a sense of our team's scope, we conducted 4,316 inspections in 2,053 third-party contract garment factories around the world in 2006, reaching approximately 99.4 percent of factories that had been approved for Gap Inc. production for the entire year. We also rejected 18 percent of the new factories that we evaluated (which meant that they would not be approved to receive Gap Inc. production orders), and revoked our approval of approximately twenty-three garment factories for compliance violations. In addition, we conducted 1,498 formal and informal meetings with factory managers and workers to help address the root causes of compliance issues, develop effective corrective action plans and provide training sessions.

BECOMING MORE TRANSPARENT

Over the years, Gap Inc. has become quite open about the challenges that we face, although that, too, has been a learning experience for us.

When I joined the company, one of the first projects that I took on was the development of Gap Inc.'s first Social Responsibility Report in 2003. Having come from the academic world, I felt strongly that the company had a lot to gain by being open and honest about both our successes and our challenges. The company had a great story to tell, despite the complexity of the issues and the fact that much more work remains to be done. So my team and I set about writing the inaugural report content, which included the development of a chart that provided detailed data disclosure on the types of compliance violations that our monitoring team had found in Gap Inc.-approved garment factories.

And I remember getting into a long debate with our General Counsel at the time as to whether the company should publish such detailed information on

compliance violations in its supply chain. Gap Inc.'s legal team—quite understandably—was looking for assurance that this disclosure would not place the company at legal risk. While we strongly believed that transparency was the best approach for the company, we had no way of knowing with one hundred percent certainty that we had mitigated all risk. What we did know is that while no garment factory is perfect, we had a strong system in place to help factories improve their working conditions. The entire Gap Inc. leadership team was ultimately convinced that we had much more to gain from being honest about the challenges that we faced—and what we were doing to address them—than we did by remaining silent.

In the end, the company published its 2003 Social Responsibility Report in May 2004 with the comprehensive data disclosure—and the response was overwhelming. Articles detailing the company's efforts to strengthen labor standards in the supply chain ran on the front page of the *Wall Street Journal* and the *Financial Times*. Numerous other media outlets also carried stories about our work following the report's release. One of the most surprising aspects of the coverage was that the content was overwhelmingly positive. You have to remember that, up until this point, Gap Inc. had received mostly negative coverage about labor standards in its global supply chain. Yet when we totaled up all of the media coverage, it equaled about eighty million positive media impressions—the highest ever in company history at that time. To put that into perspective, it was equivalent to approximately two Super Bowl commercials.

In recent years, we have been encouraged to see other companies in the apparel and footwear industry publish comprehensive reports about their social responsibility activities as well. Nike, Adidas, Reebok, and Timberland have all issued reports that provide detailed information about the working conditions in their supply chains. Most recently, the retail giant Wal-Mart published a lengthy report that included considerable data about the contract factories in its supply chain. We applaud these companies' efforts, and hope that many more brands and retailers in our industry will begin to take similar steps towards greater transparency. When we all become more open and honest about the common challenges we face, we will be much better positioned to work together to develop collective solutions to address them.

THE POTENTIAL OF ONE COMPANY

So what is the potential of a company when it comes to protecting human rights? As I mentioned earlier, the topic of today's symposium is timely because we have also been wrestling with this question at Gap Inc.

We know that we're a big company with significant global reach. As a US\$15.9 billion entity, we have considerable influence, particularly in countries where the garment industry is a key driver of the economy, such as Cambodia and Lesotho.

As a specialty apparel retailer, we have also had a long time—perhaps

longer than a number of other companies—to face the challenges of a globalized economy. In our industry, it is the norm for cotton to be grown in the United States or Brazil, then milled into fabric in China or South Korea, and then shipped to Bangladesh, Guatemala, or Lesotho to be cut and sewn into garments. Given this level of interconnectedness, social crises and ecological disasters present a very real risk to the stability of our supply chain.

Why do we focus on human rights? Put simply, we believe that it brings a sustained, collective value to our shareholders, our employees, our customers, and our society. I want to repeat that statement because it is extremely important and lies behind everything we do: we believe that a focus on human rights in our supply chain helps to bring a sustained, collective value to our shareholders, our employees, our customers, and our society.

How does it do this? Well, first and foremost, it helps us to manage our risk. When we know what is happening on the ground in supplier factories, we can address problems as they arise—before they turn into crises. But this focus on human rights also does much more for us. Not only does it help to drive social and economic progress in the countries from which we source, but increasingly we’re learning that it can help us reach new heights as a creative company as well.

We’ve already seen incremental improvements over the past decade in garment factories around the world. In many countries, the worst abuses of child and forced labor in the multinational garment industry are thankfully rarer today than they were a decade ago. While we still have a long way to go, these small steps are an encouraging sign of progress.

Over the years, we’ve also learned that social responsibility is good for our business. When factories treat workers well, these factories also produce higher-quality products and deliver them on time. When we respect and empower our own employees, they are more inspired, engaged and creative in their work. And when we weave social responsibility attributes into our products, we open up new ways to differentiate our brands in the marketplace. The launch of Gap (PRODUCT) RED™ is a recent example of this. Socially responsible products provide us with new ways to introduce exciting and inspiring options to an emerging group of consumers who care deeply about these issues.

So imagine that—social responsibility is actually good for business.

REALIZING OUR POTENTIAL

How are we working today to realize this potential? Well, first, we’re continuing to focus on our vast global supply chain. We’ve gained a lot of experience over the years from monitoring garment factories, and we are now putting that experience to work by helping these factories learn how to recognize and address the root causes of these compliance issues. This means introducing training programs to help managers and supervisors become more effective leaders, and to help workers better understand their rights and responsibilities. It

also means helping factories build management systems so that they implement policies and procedures that support a compliance-oriented culture. And it means using our leverage as a buyer to help factories around the world understand that respect for human rights will not only influence where we place our production, but will also help them build more efficient and productive businesses.

We're also taking a hard look at our own practices—and identifying ways in which we may need to change internally in order to facilitate compliance in our supply chain. Our product pipeline process from design to production to retail sale is very complicated. If we miss our design specification or production order deadlines along the way, it may have a negative impact later on the factories and workers who have to make up for lost time. So we're looking at ways that we can educate our own employees as well about the impact of their decisions.

Finally, we're also looking at new ways that we can engage and inspire our customers on human rights issues. Gap (PRODUCT) RED™ was our first foray into this space, but I hope and anticipate that you will see more from the company in the future.

LIMITS TO OUR POTENTIAL

It's important to note that there are also limits to our potential. Gap Inc. is a big company, but we are not the entire apparel industry. We are powerful, but we are not all-powerful. And the apparel industry is not a level-playing field. In recent years, we've faced some challenging sale results and the company is currently in the midst of a business turnaround. Yet many of our competitors with whom we are compared for financial results have invested far less in programs to address these issues.

National and international law have not kept pace with globalization. Because governments in developing countries are often unable or unwilling to enforce their own laws, some companies can get away with ignoring these issues. The fact that customers are fond of bargain shopping and analysts are focused on monthly sales and earnings makes it that much more difficult to maintain a long-term perspective.

In addition, it's not clear how far our obligations extend. As a company, we have clearly embraced our responsibility to work with garment suppliers, and this makes sense given that we have a direct contractual relationship and business leverage with these factories. But how far down the supply chain should we go? For example, many of our products are made from cotton, but we don't buy cotton directly. Who is responsible for the labor and environmental standards in the cotton fields around the world?

International human rights law doesn't give us much guidance here. The United Nations' Universal Declaration of Human Rights was written for governments, not for corporations. I currently represent Gap Inc. on the Business

Leaders Initiative for Human Rights (BLIHR), a group of leading companies chaired by Mary Robinson that is focused on just this issue. BLIHR is examining ways to translate these international obligations into a language and scope that works for companies. While we have made progress, we still have a long way to go.

Finally, companies are not democratically elected institutions. While companies can and should protect human rights within their sphere of influence—and even work to promote human rights—they cannot and should not be a substitute for governments. It is critical that we remember this point as we move forward with this work.

LOOKING AHEAD

So where does this leave us? At Gap Inc., we believe that the best way to protect human rights around the world is to encourage all players to start embracing their responsibilities and to come together to begin working on collective solutions. By all the players, I mean companies, governments, lawyers, multi-lateral institutions, NGOs, trade unions—and yes, even consumers.

Clearly, the solutions are going to vary depending on the situation at hand. Sometimes they may take the form of innovative trade agreements like the 1999 U.S.-Cambodia Bilateral Textile Agreement (USCBTA) that successfully made respect for labor standards a prerequisite for increased apparel trade between the U.S. and Cambodia. In other cases, we may need to develop frameworks to help hold companies accountable. In 2005 and 2006, I represented Gap Inc. on the Global Reporting Initiative (GRI)'s multi-stakeholder working group to develop reporting indicators for the apparel and footwear sector. This apparel and footwear "sector supplement" was recently published, and provides companies with credible guidance on what information they need to report about their human rights activities within the supply chain. However, the framework is voluntary, and thus far, most other specialty apparel retailers have yet to utilize it.

I think what is clear here is that there is no single silver bullet solution. However, there are many creative ones, and the sooner we all stop working in our own silos and start working with each other to develop them, the sooner we will make meaningful progress toward greater protection of human rights around the world.

I'd like to close by returning to the question that I asked at the outset about the role of all of us as consumers. For protection of human rights to take hold in a lasting way, we also need to see a shift in consumer attitudes—or, at the very least, a recognition of the part that we all play as consumers within the global supply chain. Consumers have incredible buying power—and I can tell you as a company representative that companies listen to their customers. That means that each of us sitting here in this room has the power start bringing about change. We need to think about what we're buying, and ask questions of the companies that are selling us these products. We need to start educating our

friends, and encourage them to ask the same questions. And we need to let our elected officials know that we care about these issues and that they need to take them into account as they go about their work in the legislatures, the state houses, and the White House.

When we each become fully aware of the potential that we have—whether it's as a company, a lawyer, or as an individual consumer—and when we are willing to work together to address our common challenges, we will be much better positioned as a society to ensure the protection of human rights around the world.