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Still Waiting
For Nike To Do It

**Nike's Labor Practices in the Three Years Since
CEO Phil Knight's Speech to the National Press Club**

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Global Exchange is an international human rights organization dedicated to promoting environmental, political, and social justice around the world. Since our founding in 1988, we have worked to increase global awareness among the US public while building international partnerships.

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Executive Summary

On May 12, 1998, Nike's CEO and founder Mr. Phillip Knight spoke at the National Press Club in Washington, DC and made what were, in his words, "some fairly significant announcements" regarding Nike's policies on working conditions in its supplier factories.

The announcements received favorable treatment from the press, with a *New York Times* editorial suggesting that Nike's new reforms "set a standard that other companies should match."

Nike's critics were more cautious, expressing concern that Knight's promises represented an attempt to sideline their demands for decent wages and rigorous factory monitoring and replace them with a significantly weaker reform agenda.

This report represents a comprehensive examination of Nike's labor performance in the three years since that speech was made. That performance is first assessed against the commitments Knight announced and is then compared with the human rights standards and independent monitoring practices labor rights organizations have demanded of the company.

Knight's May 12 Promises: What Have They Meant for Workers?

Knight made six commitments:

1st Promise: All Nike shoe factories will meet the U.S. Occupational Safety and Health Administration's (OSHA) standards in indoor air quality.

Nike was the subject of considerable scandal in 1997 when it was revealed that workers in one of its contract factories were being exposed to toxic fumes at up to 177 times the Vietnamese legal limit. Although Nike claims that its factories now meet OSHA standards, it gives factory managers advance notice of testing, giving them considerable scope to change chemical use to minimize emissions on the day the test is conducted. Nike is also not yet willing to regularly make the results of those tests available to the interested public. Rights groups have challenged Nike to put in place a transparent system of monitoring factory safety standards involving unannounced monitoring visits by trained industrial hygienists.

2nd Promise: The minimum age for Nike factory workers will be raised to 18 for footwear factories and 16 for apparel factories.

Nike was severely embarrassed on the child labor issue in 1996 when a major story in *Life* magazine featured a photograph of a very young Pakistani boy sewing a Nike soccer ball. Evidence continues to emerge of young persons under the age of 16 employed in Nike contract factories. In the absence of economic development in their

communities, however, excluding children from factories may force them into even more dangerous and degrading work. Global Exchange believes that payment of a living wage to adult workers would be by far the most effective means of benefiting children in areas in which Nike's goods are made.

3rd Promise: Nike will include non-government organizations in its factory monitoring, with summaries of that monitoring released to the public.

As far as rights groups are concerned, this was the most important of Knight's promises. Three years after it was made, Nike has contracted one non-profit organization to conduct one audit of one factory and is able to list a number of other NGOs with which it has held discussions which it claims will improve its monitoring program. What the company is still unable to say is which NGOs, if any, will be allowed to regularly monitor factory conditions and when summary statements of that monitoring will be released.

4th Promise: Nike will expand its worker education program, making free high school equivalency courses available to all workers in Nike footwear factories.

The education program has expanded, but wages paid in Nike factories are so low that the great majority of workers cannot afford to give up overtime income in order to take one of the courses. Payment of a living wage would give Nike workers with an interest in achieving a high school education the time and the means to do so.

5th Promise: Nike will expand its micro-enterprise loan program to benefit four thousand families in Vietnam, Indonesia, Pakistan, and Thailand.

It is much cheaper for Nike to give micro-loans to several thousand individuals outside Nike factories than to ensure that the 530,000 workers producing the company's product are paid a wage that would allow them to live with dignity. Nike's first responsibility is to the workers in its production chain. The company should commit to a living wage before it seeks public relations kudos by funding charitable programs like this.

6th Promise: Funding university research and open forums on responsible business practices, including programs at four universities in the 1998–99 academic year.

The company has refused reputable academics access to Nike factories to conduct research, and that research it has funded seems geared to providing private information to Nike rather than stimulating academic debate and increasing knowledge. If Nike is genuinely interested in investing in credible academic research into responsible business practices, the company should establish an independent committee made up of reputable and independent academics to determine which research should be funded.

Sins of Omission: What Labor Rights Groups Wish Knight Had Promised

The demands which rights groups have made of Nike but which Nike has deliberately ignored can also be grouped into six categories:

1st Demand: Protect workers who speak honestly about factory conditions.

Nike's track record in protecting workers who blow the whistle on sweatshop conditions is very poor. The company has turned its back on individual workers who have been victimized for speaking to journalists, and has cut and run from other factories after labor abuses have been publicized. Until this changes, Nike workers will have good reason to keep silent about factory conditions for fear that speaking honestly may result in them and their fellow workers losing their jobs.

2nd Demand: Regular, Transparent, Independent and Confidential Procedures for Monitoring Factories and Investigating Worker Complaints.

Activists have repeatedly asked Nike to allow rights groups to educate workers about their rights and to ensure workers can make confidential complaints to independent monitors when those rights are infringed.

Instead, Nike has made it the responsibility of each factory to educate workers about Nike's code of conduct and to establish a complaint mechanism. This deliberately ignores the interest factory owners have in keeping workers ignorant of their rights. All independent research indicates that the overwhelming majority of Nike workers do not understand their rights under Nike's code and do not believe factory owners can be trusted to resolve worker grievances.

Rights groups have also called for a factory monitoring program which is independent and rigorous. In response Nike has set up an elaborate array of different schemes for monitoring and factory assessment. While this variety of programs looks impressive in a public relations sense, Nike has deliberately set up each of these programs so that they fail two or more of the key tests of effective monitoring: independence, transparency, regularity and a relationship of trust with workers.

The quarterly program of S.A.F.E. (Safety, Health, Attitude, People, Environment) assessments, conducted by Nike staff, is obviously the least independent. There is no evidence that Nike staff actually interview workers as part of these assessments let alone attempts to establish a relationship of trust with them.

Nike's program of annual factory monitoring by PricewaterhouseCoopers also lacks independence. PwC was selected by Nike, reports to Nike and conducts a monitoring program designed by Nike. To the extent that independent observation of PwC's monitoring practice has been allowed, it indicates that PwC auditors fail to establish a relationship of trust with workers and that the quality of their monitoring can be extremely poor. Dara O'Rourke (an assistant professor at MIT) recently observed several PwC factory audits first hand and concluded that they had "significant and seemingly systematic biases" in favor of factory owners and against the interests of workers (O'Rourke 2000).

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While there are elements of the Fair Labor Association's (FLA) proposed monitoring program that represent important improvements on Nike's current very poor system, the Association's ability to ensure that workers' rights are respected will be significantly undermined both by the questionable independence of its external monitors and by the long delays between factory monitoring visits—which will on average occur in each factory only once every ten years.

The Global Alliance for Workers and Communities is an attempt by Nike to shift focus away from the human rights agenda promoted by the company's critics. The Alliance deliberately avoids investigating key human rights issues and its research methodology does not allow time for researchers to create a relationship of trust with workers.

Nike has vigorously opposed the Workers' Rights Consortium, a factory monitoring program that is independent, transparent and makes it a priority to build relationships of trust with workers. In contrast, Nike's monitoring and factory assessment programs are not independent, lack full transparency and have so far made very little effort to win workers' trust so that they can speak honestly about factory conditions without fear of reprisal.

3rd Demand: Decent Wages

Nike has rejected demands that it ensures that Nike workers are paid a living wage—that is, a full time wage that would provide a small family with an adequate diet and housing and other basic necessities. Instead, the company has used statistics selectively and in a misleading fashion to give the false impression that wages currently paid to Nike workers are fair and adequate. Meanwhile those workers struggle to survive on wages that are barely enough to cover their individual needs, let alone those of their children.

4th Demand: Reasonable Working Hours

Independent research indicates that in many factories Nike workers are still being coerced into working up to 70 hours per week and are being humiliated in front of other workers or threatened with dismissal if they refuse. Nike workers also frequently report that it is extremely difficult to obtain sick leave and that the annual leave to which they are legally entitled is often refused, reduced or replaced with cash without the worker having any choice in the matter.

5th Demand: Safe and Healthy Workplaces

Nike has made important progress in reducing the use of toxic chemicals in sportshoe production. Unfortunately, on the few occasions in recent years that genuinely independent health and safety experts have been allowed access to Nike contract factories, they have found serious hazards including still dangerously high levels of exposure to toxic chemicals, inadequate personal protective equipment, and lack of appropriate guards to protect workers from dangerous machinery. There is also considerable evidence of workers suffering stress from spending large amounts of time in high pressure and frequently abusive work environments.

6th Demand: Respect for Workers' Right to Freedom of Association

So far Nike's promise to protect this right has been largely empty. A considerable proportion of Nike's goods are made in countries like China where independent unions are illegal. Nike has refused to call on the Chinese government to allow workers to organize and has actively opposed calls for trade pressure to be put on the Chinese government to encourage it to improve its record in this area.

Nike has abjectly failed to prevent the suppression of unions in a number of its contract factories, including the PT Nikomas Gemilang and PT ADF factories in Indonesia, the Sewon and Wei Li Textile factories in China, the Formosa factory in El Salvador, the Natural Garment factory in Cambodia, the Savina factory in Bulgaria and factories owned by the Saha Union group and the Bangkok Rubber group as well as the Nice Apparel, De-Luxe, Lian Thai and Par Garment factories in Thailand.

On those few occasions when Nike has taken any steps to advance this right in specific factories, it has done so grudgingly and after considerable public pressure. While elements of Nike's eventual response to the current dispute in the Kuk Dong factory in Mexico have been positive, Nike's actions on the issue been characterized by unnecessary delays, lack of follow through and failure to actively promote the urgent need for a free and fair union election.

Conclusion

Thus far Nike has treated sweatshop allegations as an issue of public relations rather than human rights. The promises made by Phillip Knight in his May 1998 speech were an attempt by the company to switch the media focus to issues it was willing to address while avoiding the key problems of subsistence wages, forced overtime and suppression of workers' right to freedom of association.

The projects Knight announced have been of little benefit to Nike workers. Some have helped only a tiny minority, or else have no relevance to Nike factories at all. The most significant promise, to allow NGOs to monitor its factories and release summary statements of that monitoring, has simply not been fulfilled.

Health and safety is the one area where some improvement has occurred. But even here the company is not willing to put in place a transparent monitoring system involving unannounced factory visits. On the few occasions when independent safety experts have been allowed to visit Nike factories, they invariably have found very serious hazards.

The inaction of the last three years shows that rights groups are justified in treating the company with suspicion and demanding that factory monitoring be both genuinely independent from Nike's control and publicly reported in full. While Nike touts itself as an "industry leader" in corporate responsibility, Nike workers are still forced to work excessive hours in high pressure work environments, are not paid enough to meet the most basic needs of their children, and are subject to harassment, dismissal and violent intimidation if they try to form unions or tell journalists about labor abuses in their factories. The time has come for the company to adopt the reforms which rights groups have advocated. It is indefensible that activists, consumers and most importantly Nike factory workers are still waiting for Nike to do it.

Introduction

On May 12, 1998 Nike's CEO and founder Mr. Phillip Knight spoke at the National Press Club in Washington, DC and made what were, in his words, "some fairly significant announcements" regarding Nike's labor practices. Noting that the controversy over sweatshop conditions had made his company's product "synonymous with slave wages, forced overtime and arbitrary abuse" he announced that Nike would be adopting new labor policies with regard to health and safety, child labor, independent monitoring and workers' education. He also announced an expansion of Nike's micro-loan program to poor families and a new program to fund academic research into responsible business practices. Later he would describe the speech as a "watershed event" which signaled "a sea change in the company culture" (Emerson 2001).

The announcements received mostly favorable treatment from the US and international press. A New York Times editorial argued that the new reforms "set a standard that other companies should match" (New York Times 1998) and the Washington Post's E. J. Dionne Jr. called them a "breakthrough for American and international human rights campaigners" providing evidence that "public shaming and consumer pressure can have a mighty impact on mighty manufacturers" (Dionne 1998).

Nike's critics were more skeptical. Campaign for Labor Rights (CLR) opened its response to Knight's announcement by suggesting that Nike's "Asian workers already enjoy the highest standard of empty promises of any in the industry" (CLR 1998). While recognizing that some of the new promises "represent a breakthrough", CLR and other labor rights groups expressed concern that Knight's announcement was short on detail and that he had avoided the key issues of wage levels and workers' right to organize. Global Exchange's Founder and Director Medea Benjamin told the New York Post: "We see one big gap. A sweatshop is a sweatshop is a sweatshop unless you start paying a living wage" (cited in Cushman 1998).

These critics had proposed clear reforms to Nike, urging that workers be allowed to form their own unions, be paid a full-time wage that would meet the basic needs of a small family, receive appropriate training in their rights and be given access to credible, independent complaint mechanisms if those rights were abused. They had also called for transparent, independent and regular factory monitoring by groups with appropriate expertise. They were concerned that Nike's promises represented an attempt to sideline these demands and replace them with a significantly weaker reform agenda.

Three years have now passed since Knight made his speech. His company has had ample time to prove that his announcements were more than a public relations ploy, that they signaled the beginning of an honest, good faith attempt to confront labor abuses in Nike's international production chain.

This report represents a comprehensive assessment of Nike's labor performance since those promises were made. First it will consider the extent to which Nike has lived up to the commitments made in Knight's speech, then it will assess Nike's performance against the human rights standards and independent monitoring practices which labor rights organizations have demanded of the company.

A great deal is at stake. If Nike has genuinely reformed its labor practices then it

demonstrates that transnational corporations can be responsive to consumer demands for better social performance. Nike could set a standard which activists could pressure other companies to follow, suggesting that globalization need not lead to an undercutting of labor standards, but could instead result in their enhancement. Alternatively, if Nike's 'reforms' are disingenuous then the company's tottering credibility must fall even further and anti-sweatshop campaigners have a great deal of work to do before they even reach first base.

Part 1

Knight's May 12 Promises: What Have They Meant For Workers?

Knight made 6 key commitments in his May 1998 speech.

1. OSHA Standards in Indoor Air Quality

The Promise:

After four years of extensive research and hard work with our partners in Asia...we have developed and put into practice water-based cements, which allow shoes to be cemented without the use of the most harmful solvents, including toluene. Today we use water-based cements in 80 percent of all our shoe production. We still haven't figured out a way to bond the plastic-soled pleated shoes, the baseball, football, and soccer pleats, but they represent less than 15 percent of our production. And so what we say, is that with that major breakthrough in footwear manufacturing, that by the end of this calendar year, all Nike shoe factories will meet OSHA standards in indoor air quality.

Philip Knight, National Press Club, 12 May 1998.

The History:

Nike was the subject of considerable scandal in 1997 when one of the company's own factory monitoring reports, conducted by accounting firm Ernst and Young, was leaked to *The New York Times* (Greenhouse 1997). The report documented serious health and safety issues in the Tae Kwang Vina factory in Vietnam, including exposure to dangerous levels of toxic fumes from organic solvents. Particularly concerning was exposure to Toluene at between 6 and 177 times the Vietnamese legal limit (TRAC 1997). Toluene is a chemical solvent that can cause central nervous system depression, damage to

the liver and kidneys and skin and eye irritations. There is also a body of scientific evidence linking exposure to Toluene vapors with miscarriages.¹ The leaked report noted that exposure to Toluene and other chemicals had resulted in “increasing number of employees who have disease [sic] involving skin, heart, allergic, throat” (TRAC 1997).

Has Nike Done It?

While Nike’s technical innovation in introducing “water-based” cements has significantly reduced the need for organic solvents, it has not stopped their use altogether. According to Nike’s web site, the new procedures have enabled the company to reduce usage of those solvents from 340 grams/pair to slightly more than 50 grams/pair (Crosbie 2000). There is therefore still potential for workers to be exposed to dangerous vapors from these chemicals.

In preparation for this report Global Exchange wrote to Nike and asked whether there has been independent monitoring of air quality in Nike contract factories and, if so, who had conducted this monitoring and whether the monitoring reports were available to the public. In response, Nike’s Todd McKean stated that all its footwear factories have been tested by “independent health and safety experts, contracted through Reliance Insurance” and where non-compliance was found it has been addressed and the factories in question retested. McKean claimed that: “All of the factories initially meet (sic) the requirements that we set for them, although we continue to monitor them to address those factories that may from time-to-time slip back” (see Appendix 1).

Global Exchange then again asked whether the reports from this indoor air quality testing could be made available to the public. Nike’s Dusty Kidd replied that the methodology and results of air quality testing were shared in a public forum in Hong Kong in November 1998, but avoided the question of whether subsequent reports are now available to the interested public. Sharing air quality results with participants in a one-off forum is very different from an ongoing program of transparency. If Nike wants consumers to have confidence that workers in its factories are not being poisoned from exposure to toxic chemicals then it should release each new round of test results.

Just as important is the need for air quality testing to involve unannounced factory visits. Workers frequently report to independent researchers that before Nike’s inspectors arrive they are instructed to clean up the factory, and in some cases to adopt health and safety practices not usually in place (Connor 2000). In August 2000, a worker from the glue line at a Nike contract factory in Indonesia told Leslie Kretzu and Jim Keady of the Living Wage campaign that when factory monitors visit she and her workmates are instructed by factory supervisors to lie about which chemicals they usually work with. The worker also told Keady and Kretzu that she was infertile and that her doctor had told her that there is a strong possibility that this has been caused by exposure to the glue compound the factory is using.²

¹ Information regarding the dangers of Toluene is summarised in the *Toxicological Profile for Toluene*, Updated, published by the U.S. Agency for Toxic Substances and Disease Registry (Atlanta: ATSDR, 1998).

² Keady J. 2001, pers. comm., April 12.

Kidd's letter admitted that factories know in advance that testing is going to take place, but argued that unannounced visits were unnecessary because Nike's inspectors are in the company's factories each day and are able to observe the solvents in use, the state of ventilation and the personal protective equipment in use.

The inspectors Kidd described are Nike's quality control staff who are there to monitor product quality. To the very limited extent that independent health and safety experts have been allowed to visit Nike factories and report publicly on their findings, their reports indicate that if Nike staff do monitor these issues, then they do a poor job. In March 1999, Dara O'Rourke and Garret Brown completed an independent report into health and safety conditions in the Tae Kwang Vina factory. O'Rourke is now assistant professor of environmental and labor policy at MIT and Brown is coordinator of the Maquiladora Health & Safety Support Network. They found that although the factory had considerably reduced worker exposures to toxic solvents and other chemicals, exposure levels to a number of those chemicals still contravened both OSHA and Vietnamese government standards. O'Rourke and Brown also documented a number of other health and safety concerns in the factory, including excessive noise and heat, poor ergonomics, misuse of protective equipment and poor tracking of the causes of illness (O'Rourke and Brown 1999).

When Professor O'Rourke visited another Nike factory on 1 July 2000, this time a garment factory just outside of Jakarta in Indonesia, he found that workers were being exposed to the dangerous chemical benzol in contravention of Nike's stated policies. Workers at the factory had not been informed that the chemical was dangerous, were not wearing appropriate safety equipment and were working with the chemical in an area with inadequate ventilation. Other safety issues in the factory included excessive noise and lack of appropriate guarding to protect workers from dangerous cutting machinery (O'Rourke 2000).

Following extensive media scrutiny of conditions at the Kuk Dong factory in Mexico in 2001, Nike arranged for the independent monitoring agency Verite to conduct an audit of that factory. Verite found serious health and safety violations which Nike's staff had missed, including (again) use of the dangerous chemical Benzol without appropriate safety equipment or proper training for workers (Verite 2001).

Over the past ten years, independent research has repeatedly found conditions in Nike factories to be very different from what Nike claims them to be. While Global Exchange believes health and safety is one area where Nike has made some improvements, consumers cannot have confidence that Nike products are made in a safe environment until the company is willing to put in place a transparent system of monitoring factory safety standards involving unannounced monitoring visits by trained industrial hygienists.

What Should Nike Do?

The standard which Nike has set itself is also flawed. Strong corporate lobbying in the US has kept OSHA's permissible exposure limits for volatile organic compounds extremely weak. There has been virtually no change in these standards since 1968, and

Table 1. Has Nike kept its promises?

In his 12 May 1998 speech to the National Press Club, Nike CEO Phillip Knight made six commitments.

Knight's Six Promises	The History	Has Nike done it?	What should Nike do?
Adherence to U.S. Occupational Health and Safety Administration (OSHA) standards in factory air quality.	Leaked 1997 audit showed workers in Nike supplier Tae Kwang Vina were being exposed to toxic gases at up to 177 times the Vietnamese legal limit.	Nike Gives factories advance notice of testing, allowing them to change chemical use on the day the test is conducted. Nike is not yet willing to regularly release the results of those tests.	Ensure that health and safety monitoring includes unannounced factory visits. Fully disclose the methodology and results of its air quality testing program.
Raising the minimum age for factory workers to 18 for footwear factories and 16 for apparel factories.	1996 story in <i>Life</i> magazine on child labor in the soccer ball industry in Pakistan embarrassed Nike.	There is some evidence of workers younger than this still working in Nike contract factories.	When families cannot afford to feed their children, enforcing factory age limits can force those children into even more dangerous and degrading work. Nike workers should be paid enough to provide their children with food, shelter and basic education
Involving non-government organizations in factory monitoring, with summaries of that monitoring made available to the public.	Nike's reliance on for-profit firms to monitor its factories has drawn consistent criticism. As far as rights groups were concerned, this promise to include NGOs in factory monitoring was the most important announcement in Knight's speech.	Nike has held discussions with a number of NGOs which it claims will improve its monitoring program. It will not say which NGOs, if any, will be allowed to regularly monitor factory labor standards, or when summary reports will be released to the public.	To be genuinely independent, factory monitors should be selected by an independent body such as the Workers' Rights Consortium, in which unions and human rights groups are strongly represented.
Expanded education programs making free high school equivalency courses available to Nike sportshoe workers.	Nike's own initiative.	The education program has expanded, but wages are so low that only a very small proportion (2%) of Nike workers can afford to give up overtime income in order to take one of the courses.	If Nike workers were paid a full time wage that covered their basic needs (including basic education), then they would have the time and the means to take after hours high-school courses, or choose to improve their lives in other ways.
Increased micro-enterprise loan program to a thousand families each in the countries of Vietnam, Indonesia, Pakistan, and Thailand.	Nike's own initiative.	Nike has announced which organizations are implementing these programs and that loans have been made to 5,000 individuals, but has declined to say in which regions they are operating or how much the program costs.	It is far cheaper for Nike to give micro-loans to 5,000 individuals outside Nike factories than to ensure that the 530,000 workers producing the company's product are paid a wage which would allow them to live with dignity. Nike should commit to a living wage before it seeks public relations kudos by funding charitable programs like this.
Funding university research and open forums on responsible business practices, including funding four programs in United States universities in the 1998-99 academic year	Nike had funded some research prior to 1998 but that research had been heavily criticized for lacking academic rigor.	Nike held one open forum on health and safety in November 1998. The company has refused reputable academics access to Nike factories to conduct research, and the research it has funded seems geared to providing private information to Nike rather than stimulating academic debate.	Set up an independent committee made up of reputable academics to assess funding applications and determine which should be funded. Ensure that the results of all research is released publicly.

they have failed to keep pace with the last 30 years of research into the dangers these chemicals can present to workers' health. In particular, OSHA standards fail to take into account the impact of these chemicals on women's reproductive health, especially important given that women make up 80 percent of the workers making Nike products.

On March 15, 2000, a number of labor rights groups wrote to Knight pointing out the inadequacy of OSHA standards and requesting that the company instead adopt the US National Institute of Occupational Safety and Health (NIOSH) "Recommended Exposure Levels" (RELs). These exposure levels are based on current scientific research and hence more accurately reflect the dangers these chemicals represent to workers' health. The letter noted that the new "water-based" solvents Nike uses are completely untested and that research is urgently needed to determine their health impact and to ensure they are used safely. The labor rights groups also requested that Nike investigate how many Nike workers had been permanently injured by exposure to toluene and other dangerous gases in the past, so that those workers could be properly compensated (Bissell et. al. 2000). Nike ignored all of these requests.

If Nike is unwilling to commit to NIOSH standards, at the very least it should release all information on the health impacts of all the new glues and solvents being used, fully disclose the methodology and results of air quality tests, and agree to a transparent monitoring system involving unannounced factory visits by trained health and safety experts.

2. Raising the Minimum Age for Factory Workers

The Promise:

We have raised the minimum age of all footwear factories to 18. In all apparel and equipment factories, the minimum age is 16, the same as it is in the United States. And I really do have to add this, that there never has been a time in Nike's history where child labor has been a problem. And I also say that it really hasn't been a problem in the shoe industry as a whole.

Phillip Knight, National Press Club, 12 May 1998.

The History:

Nike was severely embarrassed on the child labor issue in 1996 when a major story in *Life* magazine on the exploitation of child workers in Pakistan featured a photograph of a very young Pakistani boy sewing a Nike soccer ball (Schanberg 1996). Knight himself added to Nike's poor image on this issue when, while being interviewed for the film *The Big One*, he told filmmaker Mike Moore that it didn't bother him that children as young as 14 were employed making Nike products.

Has Nike Done It?

In response to a request for information from Global Exchange in preparation for this report, Nike's Todd McKean wrote that, "Our contract factories have largely embraced these standards and instance of non-compliance appear to be isolated."

But several recent reports by journalists and non-government organizations have suggested that there are still workers under the age of 16 employed in Nike's production chain.

In October 2000, the BBC program Panorama investigated conditions at the June Textiles factory in Cambodia that made clothes for Nike and the Gap. The journalists interviewed several underage workers in the factory, including one who was twelve years old. In response, Nike made a commitment to ensure that all underage workers will be removed from that factory and will receive their base salary while they attend school until they reach the age of 16. While this will benefit those workers, it raises questions regarding why the BBC journalists could discover underage workers when Nike's monitoring program had failed to do so, and how many other children are working in other Nike contract factories without being discovered.

In January 2001, the Worker's Rights Consortium interviewed approximately 30 workers at the Kuk Dong factory in Mexico as well as factory managers and other key persons and reported that even the factory management admitted that the factory "has employed children aged 13 through 15 for workdays of nine to ten hours" (WRC 2001). Nike subsequently arranged for the monitoring organization Verite to audit the factory, and 12 of the 29 workers interviewed by Verite reported that juvenile workers younger than 16 years of age are employed at the factory, although Verite could not find evidence of this in factory files (Verite 2001).

Child labor is, however, a notoriously difficult area to monitor. Poverty is so dire in many of the areas in which Nike factories are located that young people will forge age certificates in order to get work. Nike could best contribute to the wellbeing of children in Nike production areas by ensuring that adult Nike workers are paid enough to provide for the basic needs of their families.

What Should Nike Do?

Many groups involved in the campaign to persuade Nike to improve its labor practices are uncomfortable with the draconian enforcement of factory age limits. These groups abhor child labor and believe that children and young people in all countries should have the opportunity to go to school. However, in the absence of steps to alleviate poverty in poor communities, preventing children in those communities from working in particular factories can simply result in them working in other factories or can force them into even more dangerous and degrading employment, such as prostitution or begging.

In 1996, Nike became involved in a program under which the company's soccer ball production in Sialkot in Pakistan takes place in controlled stitching centers with a minimum age of 16. A number of other soccer ball producers run similar centers in Sialkot and the International Labor Organization (ILO) is involved in monitoring compliance with age limits. In 1999 the International Labor Rights Fund (ILRF) produced

a report on the program, detailing the way in which many stitching centers were evading ILO monitors and continuing to employ children. It also suggested that as a result of the program some children may have moved from production of soccer balls to the production of surgical instruments (Athreya 1999).

The most effective way Nike could contribute to the welfare of children in the areas in which its contract factories are located is by guaranteeing a living wage. If adult workers were paid enough to provide for the basic needs of their children then those children would not be forced to work from a young age. Other children in the area would also benefit from the increased wealth in their local community. Unfortunately, Nike has refused to consider a living wage standard.

3. Involving Non-government Organizations in Factory Monitoring, With Summaries of That Monitoring Made Public

The Promise:

Number three, we publicly recognize the need for expanded monitoring, to include NGOs, and the need for a summary statement about this monitoring. We are not ready to announce how that will be done, but our current guess is that it will include a CPA firm, as well as health and social auditing by an NGO—one, two, or three. The specifics of this obviously will come sometime down the road, but we are working hard to put this into effect.

Phillip Knight, National Press Club, 12 May 1998.

The History:

Since 1994, Nike has employed selected accounting firms, first Ernst and Young and then PricewaterhouseCoopers, to monitor its factories. But this reliance on for-profit firms has drawn extensive criticism from labor rights groups. Organizations involved in the campaign to persuade Nike to improve its labor practices have consistently questioned whether for-profit accounting firms selected by and accountable to Nike have the necessary independence, motivation and expertise to effectively investigate factory conditions. Those groups have instead argued that local non-profit, non-government organizations (NGOs) which workers have some reason to trust should be heavily involved in factory monitoring and in educating workers about their rights.

Has Nike Done It?

Nike's Global Director for Labor Practices Mr. Dusty Kidd addressed this question in a letter to labor rights groups in October 1999 (Kidd 1999). He suggested a number of

ways in which he believed Knight's promise was being met:

Our labor practices staff has discussed this with a number of individuals in the NGO community. We have begun working through the process of building trust between Nike and some in the NGO community who have expressed an interest in this work... We are also engaged in discussions with others in the NGO community on enhancing local NGO expertise in areas of monitoring that require considerable training (Kidd 1999).

Seventeen months after Knight announced that Nike was "working hard" to involve NGOs in monitoring its factories, the company had only managed to reach the stage of initial discussions. Evidently the process of building trust between Nike and NGOs takes time. A further 19 months have passed since Kidd sent this letter, and we are still waiting for an announcement regarding which NGOs, if any, will be involved in monitoring Nike factories.

Kidd also pointed to Nike's "active participation in the Fair Labor Association, which will involve NGO participation and oversight." The Fair Labor Association's monitoring program, which is likely to begin operation soon, is assessed in detail in a later section of this paper. US NGOs are involved in setting the FLA's monitoring standards and in accrediting factory monitors. They are not, however, involved in monitoring factories, nor in selecting which organizations do that monitoring. FLA-accredited monitors, which can be for-profit companies, are required to consult with local NGOs when conducting factory audits. While consulting in good faith with local NGOs would of course be positive, it falls well short of actually allowing NGOs to monitor Nike factories, which was what Knight's 1998 speech seemed to promise. He suggested, for example, that Nike's expanded program might include "health and social auditing by an NGO."

Finally, Kidd noted that Nike had "begun the process of NGO participation in the assessment of worker attitudes and issues through the Global Alliance for Workers and Communities." Kidd's use of language here is important. He talks about the Alliance's involvement in "assessment of worker attitudes" rather than in factory monitoring. The Global Alliance does not aim to monitor labor standards in Nike factories and has made this very clear when asked by labor rights groups about its position on particular human rights abuses in those factories. As such, Nike cannot claim that the Alliance represents involvement by NGOs in its monitoring program.³

In preparation for this report Global Exchange again asked Nike whether any NGOs had been included in its factory monitoring program and, if so, when summary reports of their findings would be made available. In response Nike's Todd McKean suggested that Phil Knight's 1998 commitment had been to "the cooperation or inclusion" of

³ The main non-government organization involved in the Global Alliance is the International Youth Foundation, a non-profit group based in the US which works with and for big corporations to promote the welfare of young people. It has no expertise in labor rights and as such is somewhat different from the NGOs which Nike's critics had in mind when they called for Nike to involve local NGOs in the company's monitoring program. The Global Alliance has employed local universities rather than local non-government organizations to conduct its research and has required university researchers to sign confidentiality agreements preventing them from publicly discussing the research process.

NGOs. This is much less specific than what Knight actually promised, which was the expansion of Nike's monitoring to "include" NGOs. McKean's list of NGOs that Nike has cooperated with or included in that process added a few more names to those provided in Kidd's letter. McKean also mentioned Espiral, the BSR Factory Monitoring Program, the CESAIS focus group program, and "programs with other small local NGOs" (see Appendix 1).

It is ironic that McKean mentioned the Business for Social Responsibility (BSR) Factory Monitoring Program, since the result of that study was a report by Professor Dara O'Rourke detailing the complete inadequacy of Nike's monitoring scheme involving the accounting firm PricewaterhouseCoopers (O'Rourke 2000). That analysis is considered in detail later in this report.

C.E.S.A.I.S. is the social research group of the University of Economics in Ho Chi Minh City, and it conducts ongoing focus group discussions with workers from Nike contract factories in Vietnam. Despite a number of requests that it do so, Nike has refused to release any information regarding what questions workers are asked in these focus groups and has released no reports on what this research has found. State owned universities in Vietnam and other communist countries have very little scope to act contrary to government policy, and since January 1999 the Vietnamese government has made it clear that it does not approve of organizations which criticize Nike's labor practices.⁴ Even privately owned, for-profit universities in Vietnam must be very careful not to act contrary to government policy. As such, working with a Vietnamese university is very different from working with a non-government organization and Nike cannot argue that this program amounts to a fulfillment of its commitment to work with NGOs.

Nike has employed an organization called Espiral to advise it how to improve its monitoring processes and evidently another organization, Program for Appropriate Technology in Health (Path) has advised Nike on health issues. Again taking advice from NGOs is different from allowing them to monitor factories and report on conditions.

Recently Nike responded to the controversy over conditions in the Kuk Dong factory in Mexico by employing the US non-profit organization Verite to conduct an audit. This was a one-off response to the situation at Kuk Dong, however, and Nike has given no indication that it intends to involve Verite in its monitoring program in a systematic way.

As far as rights groups are concerned, this was the most important of Knight's promises. Three years after it was made, Nike has contracted one non-profit organization to conduct one audit of one factory and is able to list a number of other NGOs with which it has held discussions which it claims will improve its monitoring program. What the company is unable to say is which NGOs, if any, will be allowed to regularly monitor factory conditions and when summary statements of that monitoring will be released.

⁴ See the section of this report titled "Nike and suppression of dissent in Vietnam — the Joseph Ha letter".

What Should Nike Do?

Nike should work with international unions and human rights organizations to establish a program of worker education and factory monitoring by credible organizations which are independent of (i.e. not selected by) the company. The monitoring organizations should instead be selected by an independent body in which labor rights groups have majority representation.

The Workers' Rights Consortium (WRC) is a monitoring system with these characteristics. It was established by students, academics and unions in the US in cooperation with unions and labor rights groups in Asia, Africa and Latin America. It focuses on working with local unions and NGOs to conduct worker education programs and establish effective and independent grievance procedures for workers (WRC 2000).

Unfortunately, Nike has attempted to discredit the WRC and Knight himself responded to the University of Oregon's decision to join the monitoring group by canceling an expected US\$30 million donation to his alma mater (Knight 2000).

4. Expanded Education Programs

The Promise:

Number four, we are expanding our education programs near our footwear factories. It began this year in Vietnam, and it includes middle- and high-school equivalency course availability for all workers in Nike footwear factories.

Phillip Knight, National Press Club, 12 May 1998

The History:

Lack of education among Nike workers has not been an issue for activists nor a concern of the press. It is an area that Nike itself has decided to focus on.

Has Nike Done It?

In a recent letter to Global Exchange, Nike's Todd McKean reported that 85 percent of Nike's footwear factories now provide these educational opportunities "and the balance have programs planned to start in the next several months" (see Appendix 1). He also indicated that 10,000 workers have participated in these programs. Given Nike's own estimate that on any given day approximately 530,000 workers are employed making Nike clothes and shoes,⁵ this represents a relatively small percentage (1.9 percent) of the global Nike workforce.

⁵ Phillip Knight, speech to US National Press Club, 12 May 1998.

A recent (February 2001) report funded by Nike gives an idea why the participation rate is so low. The report was conducted for the Global Alliance for Workers and Communities and was based on interviews with workers in nine Nike contract factories in Indonesia. Although 92 percent of the workers interviewed felt that the availability of education programs is “quite important”, 88.6 percent of those workers had never participated in the programs. Workers indicated that the capacity of the education classes is limited and that course demands are such that those who participate miss out on overtime work, which workers depend on for an adequate income (GAWC 2001, pp. 34–5).

What Should Nike Do?

Although it is impossible to fault the principle of making education available to people living in poorer communities, it is also important to critically examine the motivation of corporations like Nike for adopting some corporate responsibility programs and not others.

In a public relations sense, education programs present better value for money for Nike than would a commitment to a living wage. It is considerably cheaper to provide free education classes for a small proportion of the global Nike workforce than to ensure that all workers making Nike product are paid wages which would allow them to meet the basic needs of a small family.⁶

Payment of a living wage would, however, give workers themselves the opportunity to decide how to improve their lives. According to research which Nike itself has funded, most Nike workers in Indonesia report that their full time wage is insufficient to meet their needs, forcing them to rely on overtime income (GAWC 2001, pp. 23–4). If they were paid a living wage, Nike workers would not be forced to work excessive hours and those workers with an interest in achieving a high school education would have the time and the means to do so. Other workers may choose to save so that their children can get an education. Others still may spend it on other needs. Payment of a living wage would respect Nike workers' ability to make up their own mind regarding what is best for them. It would allow them to live with dignity.

⁶ Global Exchange's recent letter to Nike also asked how much the education programs cost Nike (see Appendix 1), but Nike declined to reveal this. If 530,000 workers are employed making Nike products each day then a wage increase for each worker of \$US2 per day would increase labor costs in Nike's production chain by more than \$US300 million per year. It is extremely unlikely that Nike's education program costs anywhere near this amount.

5. Increased Micro-enterprise Loan Program to a Thousand Families Each in the Countries of Vietnam, Indonesia, Pakistan, and Thailand

The Promise

And number five, increased support of our current micro- enterprise loan program to a thousand families each in the countries of Vietnam, Indonesia, Pakistan, and Thailand. These micro-enterprise loans are used for small businesses, such as pig farming and the making of rice paper. The limited amount of experience we've had in doing that in Vietnam, has shown that they've been extremely well received, and also extremely successful.

Phillip Knight, National Press Club, 12 May 1998.

The History

Micro-loan schemes as an approach to development have been popularized by the Grameen Bank and other development organizations. They are relatively cheap to administer (people who receive the loans must repay them) and enable people living in poverty to borrow money without paying the high rates of interest often charged by local money lenders.

Has Nike Done It?

According to Nike's web site, the program is implemented by the Vietnamese Women's Union and the US organization Friendship Bridge in Vietnam, by Opportunity International in Indonesia and by the Population and Community Development Association in Vietnam.⁷ Evidently the plan to extend the program to Pakistan has been shelved.

In preparation for this report Global Exchange wrote to Nike asking in which areas these micro-loan programs were taking place and how much they were costing Nike (see Appendix 1). Nike's response evaded these questions, emphasizing instead that under the program 5,000 people have received loans and started small businesses.

Nike's reluctance to reveal where these programs are taking place so that their value can be independently assessed is odd, but it is to be hoped that they are bringing benefits to the individuals involved.

What Should Nike Do?

It is important to note that these programs are not designed to benefit Nike workers and are not relevant to the debate about whether conditions in Nike contract factories are decent. While the principle of supporting local communities with micro-loan programs cannot be faulted, it is curious that Nike chooses to allocate resources to benefit

⁷ Refer to: nikebiz.com/labor/micro.shtml

5,000 individuals outside its factories when the 530,000 workers producing the company's product are unable to provide for the basic needs of their children.

Nike declined to reveal the price of the micro-loans program, but it is likely to be costing the company far less than would a commitment to a living wage. Nike's responsibility is to the workers involved in the company's production chain. Until those workers are paid a wage that would allow their families to live with dignity, Nike should not seek public relations kudos by spending far smaller amounts on micro-loan schemes and other charitable programs.

6. Funding University Research and Open Forums on Responsible Business Practices, Including Independent Monitoring

The Promise:

And number six, we'll fund industry research—we'll fund university research—and open forums to explore issues related to global manufacturing and responsible business practices, such as independent monitoring and health issues. We will begin by funding four programs in United States universities in the 1998–99 academic year, and we will have our first public forum in October of this year in Hong Kong.

Phillip Knight, National Press Club, 12 May 1998.

The History

Nike had funded some academic research before 1998, but that research had been heavily criticized for lacking academic rigor. In 1997, Nike funded MBA students from the Amos Tuck School of Business at Dartmouth College to investigate wage levels for workers making Nikes in Indonesia and Vietnam. The report suggested that workers' wages were adequate to meet their needs, but the students' methodology was heavily criticized by academics with expertise in conducting research in those countries. Dr. Peter Hancock of the Centre for Development Studies at Edith Cowan University wrote a damning critique of the methodology used in the Indonesian section of the report (Hancock 1997), and Dara O'Rourke (now an Assistant Professor at MIT) was equally critical of the research methods employed in Vietnam (O'Rourke 1998). Professor David Boje from New Mexico State University was able to obtain the students' original data set and do a re-analysis of the empirical results. His conclusions were very different from those reached by the students, and suggested that workers in Nike contract factories were facing serious economic hardship.⁸

⁸ For a copy of the Dartmouth students' report see www.rpi.edu/~huntk/tuck/dartmouth.html. For a copy of Boje's analysis of the student's data see cbae.nmsu.edu/mgt/handout/boje/bnike/index.html.

Has Nike Done It?

At the time Knight made his announcement Nike put information about a grant program called “Rising Tides” on its website, and invited interested academics to apply. In preparation for this report Global Exchange wrote to Nike asking what university research Nike has funded since Knight made this announcement, who conducted the research and what the conclusions were.

McKean’s reply was extremely vague. He provided no names of academics Nike had funded, instead listing only the names of universities “that we have directly funded, or with whom we have cooperated on research or case studies.” According to McKean, those universities include Harvard University, Dartmouth University, University of North Carolina, St. John’s University, Asian Institute of Management and the University of New South Wales. McKean declined to indicate what this research had found or whether the results had been published, noting only that in broad terms the research has included “wage studies, research in labor laws, health and safety practices in factories, studies focused on monitoring practices and the effectiveness of third party monitoring,” and “that this work has proven invaluable to us as we look at how we may need to improve our standards or the way we approach this work.”

Of the universities mentioned, Dartmouth’s Amos Tuck School of Business, which was responsible for the widely discredited Nike wage study in 1997, is being paid by Nike to do further wage research. At this stage Nike has made no announcements regarding what these further wage studies have found. According to Nike’s web site, the University of North Carolina’s School of Public Health is working with the company to develop a long-term study of health standards and training in footwear factories. Again there have been no announcements regarding what this research has found.

St. John’s University has received considerable criticism for requiring former assistant soccer coach Jim Keady to wear Nike clothes while working for the university, despite his moral objections to doing so. Representatives of St. John’s assisted Nike in arranging for a number of university students to observe PwC’s monitoring program in March 2000. This program is considered in detail in later sections of this report. It smacked of a public relations exercise rather than serious academic research, as the students selected by St. John’s had no background or expertise in factory monitoring or labor rights.

As for Harvard University, the Asian Institute of Management and the University of New South Wales, Nike has made no announcements regarding which academics it is working with from these institutions or what research they are conducting. The websites of these institutions make no reference to any research program involving Nike factory conditions.

Late in 2000, Professor David Boje of New Mexico State University, together with 45 other academics, drafted a proposal to conduct research into Nike’s code of conduct and conditions in Nike contract factories.⁹ Boje and the other academics were not seeking funding, only access to Nike factories to conduct the research. In January

⁹ See: cbae.nmsu.edu/~dboje/AA/aa_index_links.htm. The author was involved in this proposal.

2001 he was told by Nike's Amanda Tucker that there was no way he would be given permission to enter any Nike factories as he was "too biased" against Nike. Tucker suggested that the 45 other academics should approach Nike directly. Boje believes that Nike will "permit academic apologists for Nike to do study after study" but that the company will not allow "critical" study of their factories.¹⁰

At this stage, Nike's relationships with universities seems more geared to providing confidential information to the company rather than stimulating rigorous academic debate regarding responsible business practices.

Nike did hold a public forum in Hong Kong in November 1998, which focused on sharing the company's new water-based cement technology with its competitors (Crosbie 2000). In October 1999, Nike's Dusty Kidd wrote to labor rights groups indicating that Nike was "working on second and third forums, which will involve discussions of women and their rights in the workplace". Kidd invited the groups to let Nike know if they would be interested in participating (Kidd 1999). The groups indicated strong interest (Bissell 2000) but never heard from Kidd again on the issue. To the best of the author's knowledge Nike has made no public announcements regarding further forums.

What Should Nike Do?

If Nike is genuinely interested in investing in credible academic research into responsible business practices the company should set up an independent committee to assess funding applications. That committee should be made up of reputable and independent academics with appropriate expertise and should have complete discretion to determine which research should be funded.

¹⁰ Boje, D. 2001, pers. comm., 10 April.

Part 2

Sins of Omission: What Labor Rights Groups Wish Knight Had Promised

Knight's May 1998 speech was very narrowly focused. His comments on health and safety were confined to the narrow area of factory air quality, and he deliberately avoided the key issues of wages, working hours and workers' right to organize, issues which are among the most important for workers and rights groups that advocate on their behalf.

Global Exchange and other labor rights groups advocate a broader reform program. We believe that exploitation thrives on powerlessness and we are therefore asking Nike to take concrete steps that will give workers more power. We want workers' right to form unions respected so that they can increase their negotiating power by bargaining collectively. We want the company to increase workers' economic power by ensuring they are paid full time wages that are adequate to meet the basic needs of a small family. These are fundamental rights enshrined in the United Nations Declaration of Human Rights (Article 23: iii and iv).

To ensure that these rights are respected, campaigners have repeatedly asked Nike to become part of a monitoring system that is genuinely independent, in the sense that monitors are not selected by Nike itself but rather by an independent body with strong representation by unions and human rights organizations. Campaign groups have emphasized that worker interviews need to be conducted confidentially, away from the factory and facilitated by organizations or individuals which workers have a reason to trust. We have argued that workers should be educated about their rights by independent groups with appropriate expertise and that there should be confidential mechanisms for them to report to independent monitors when their rights are being abused. We have asked Nike to ensure that no worker is punished for speaking openly about conditions in their factory.

This section of the report will assess Nike's labor practices performance in the light of these demands.

1. Overcoming the Culture of Fear: Protecting Workers Who Speak Honestly About Factory Conditions

Essentially, those critics will hang around restaurants, outside factories, in the pubs, to get those anecdotes, to tell how dreadful this whole globalization process is in general, and how evil Nike is in specifics. We have about 530,000 workers working on Nike shoes and clothes on a given day. There are going to be incidents. There have

What Labor Rights Groups Wish Knight Had Promised

been some in the past, and there certainly will be more in the future. There are too many workers, too many interactions daily...That there have been as few as you've read about, I think in many ways is remarkable.

Phillip Knight, Speech to the National Press Club, 12 May 1998

(We) believe that labor abuses are the norm in your suppliers' factories and not isolated incidents as Nike has frequently suggested to the media...We have the resources only to research conditions in a very small number of [Nike's] factories and in many countries where Nike chooses to source production it is difficult and dangerous to meet with workers...Human rights organizations in several countries are in contact with workers suffering as a result of labor abuses in Nike factories but those organizations are unwilling for those concerns to be made public in case those workers are dismissed for passing on the information.

*Letter from Labor Rights Groups to Phillip Knight, 15 March 2000
(Bissell et. al. 2000)*

Nike has often sought to represent reports of labor abuses in its suppliers' factories as occasional events that are blown out of proportion by the media.

Labor rights groups believe the opposite. They contend that Nike is part of a system of global clothing and footwear production that relies on the systematic suppression of workers' rights. Like many transnational corporations, Nike contracts out its production to those factories that can most cheaply, reliably and quickly fill its orders. Much of this production takes place in extremely poor countries in which workers' human rights, in particular their right to freedom of association, are brutally repressed in order to attract foreign investment.

In all those Nike contract factories that have been independently investigated the dominant culture is one of fear. Workers are afraid to speak out about labor abuses because of concerns that they will be fired or that their factory will lose orders. As bad as their jobs are, the fear of unemployment in countries with no social security system and very high unemployment rates makes them reluctant to openly complain about their conditions.

Researchers who have interviewed Nike workers have frequently noted this fear. Thuyen Nguyen of Vietnam Labor Watch produced a detailed report on conditions in Nike factories in Vietnam in 1997 (Nguyen 1997). He reported that it took two weeks of secret meetings with Nike workers before they trusted him enough to speak honestly about the conditions they faced.¹¹ According to Dr. Peter Hancock, who conducted extensive interviews with Nike workers in Indonesia in 1996 and again in 1998:

Workers in Indonesia...live in fear of their own state and factory management who

¹¹ Nguyen, T. 1999, pers. comm., 10 September.

can dismiss them without reason. I found that many workers lied about many questions out of fear of reprisal and it was only after in-depth interviewing of workers that I found out the reasons for their dubious answers. For example, all the workers I sampled provided the same answers to questions about working conditions, wages and their working age. I found after polite and intensive investigation that the Nike workers I sampled were commonly underage, underpaid and treated illegally (Hancock 1997).

Mike Pierantozzi spent August 2000 in Indonesia interviewing shoe workers for the Living Wage Campaign. While there he wrote the following:

We sat down with some Nike workers last week. They sang us a lovely song about Nike... It went something like this:... Nike takes care of me. They take care of my family. They adhere to the code of conduct, they pay us a generous wage, and they give us adequate health care. They treat us with dignity and respect.

... this particular group of workers thought we worked for Nike... They thought we were just another independent monitoring group... They didn't trust us. And rightfully so. No monitoring group had ever talked to them as individuals, much less given them reason to trust. They said when the monitoring groups roll into town, they only talk to the managers, and if they do speak with the workers, there is always a manager present at the interview.

After some coaxing and reassuring... the workers opened up a little. But they were still holding back. They were careful with the words they chose and with the issues they chose to discuss. I watched them look back and forth at each other nervously with each question, as if searching each others' faces for the right thing to say, to do. You could see the truth wanted to come out. But something was keeping them from giving the whole story. Fear. They were terrified. Scared we were going to take our video and run right to their managers. They wanted reassurance that...they weren't going to end up unemployed, or worse.

We went home, unsatisfied that we had gotten the whole story. So we had our interpreter translate a couple of articles ... and we brought this and some other information to the same group a few days later. When they realized that we were on their side they changed their tune. They talked about how they were grossly underpaid. How they were afraid to speak up about how they were treated for fear of termination, for fear of the Mafia. And they told us that it's not just the workers who are afraid, but that the entire factory is run on fear. The workers are afraid of their line managers. The line managers are afraid of upper management. And upper management is afraid of the factory owners, who are afraid that if their factory doesn't make quota, or has workers that organize, Nike will take their business to some other poor country where people will kill themselves for a dollar a day.¹²

Given the dangers that individual workers face if they speak honestly about conditions in their factories it is crucial that companies like Nike ensure that such workers are protected from victimization.

The other major fear that workers have is that media exposure of poor conditions in a particular factory can lead companies like Nike to "cut and run," leading to large

¹² See: www.nikewages.org/journal_mike.html

scale job loss and potential factory closure. Managers frequently warn Nike workers that speaking negatively about their factory to the press or to monitors will damage the factory's future (Connor 2000). Much as they would like to work in factories with decent conditions, widespread unemployment in Asia and Latin America makes workers desperate for whatever job they can get. Fear of unemployment can keep them silent about labor abuses even in circumstances where it is not possible for the factory owner to know which worker has spoken to the press. Instead of leaving factories once labor conditions are out in the open, Nike should work with the factory to bring about improvements. Cutting and running sends a clear message to other Nike workers—keep quiet about labor abuses in your factory or your job will also be in danger.

Unfortunately Nike has done just the opposite of what is needed. The company has cut and run from some factories following negative press reports and in other cases has ignored the plight of individual workers who have been victimized for speaking out.

The June Textiles Factory in Cambodia

In October 2000, the BBC's flagship documentary program *Panorama* screened an investigation into the operation of Nike's code of conduct. The report focused on the June Textiles factory in Cambodia. The journalists interviewed workers from the factory who told of being forced to work seven days per week and one worker described how she had been sworn at and had her hair pulled by a supervisor when she refused overtime. The workers reported that their full-time wages were barely adequate to cover rent and food. As mentioned previously, journalists also interviewed several underage workers in the factory, including one who said she was twelve years old (BBC 2000).

Nike knew in advance what the BBC journalists had found. Several weeks before the documentary was screened it announced that it was ending its relationship with June Textiles, citing failure to meet the standards in the company's code. Nike's withdrawal from the factory had the potential to cause significant job loss at June Textiles, and to anti-sweatshop activists it looked very much like an opportunistic attempt to minimize negative publicity associated with the BBC story. Anti-sweatshop groups urged Nike to instead stay at June Textiles and work with the factory to improve conditions. Nike responded by claiming that its monitoring program had already discovered labor abuses at the factory and it had been on probation at the time that the BBC journalists conducted their interviews. Labor rights groups have asked Nike to release the factory monitoring reports for June Textiles so that the company's claims can be verified,¹³ but this request has been ignored. Nike's reluctance to provide evidence to back up its story raises suspicion that the company's primary motive in leaving June Textiles was to protect its image.

Workers from a number of other Nike contract factories in Cambodia were willing to talk to the BBC journalists off the record about sweatshop conditions in their factories, but only the workers at June Textiles were willing to be interviewed on camera

¹³ See for example Appendix 1.

and to have their factory named (BBC 2000). Nike's reaction to the report suggests that the caution of workers in the other factories was well justified. As long as workers have evidence that speaking openly will put their jobs in danger they will good reason to keep quiet about labor abuses.

The Sam Yang Factory in Vietnam

At the time that Knight made his 1998 speech, Vietnam Labor Watch and other labor rights groups were vigorously lobbying his company to take action to protect a worker at the Sam Yang factory in Vietnam who had suffered severe harassment after speaking to US journalists about factory conditions.

In February and March 1998, the sports channel ESPN interviewed several workers from the factory, including Ms. Lap Nguyen. The workers described violence by security guards towards workers and other problems at the factory.

Ms. Lap was a section leader with three years experience who had received factory awards for her skill and commitment, but this did not protect her from retribution for speaking to the journalists. While working overtime on Sunday, March 29, she became sick and took one and a half days sick leave. On her return to the factory, she presented her supervisor with the doctor's certificate, but her supervisor shouted at her and demoted her from team leader to sewer on the grounds that "section leaders can't take sick days." In the next few days, she was switched from one job to another and deliberately humiliated in front of other workers. She was also interrogated about her interview with ESPN three times. She was then demoted to cleaning the toilets. Eventually she was asked to sign a letter of resignation and decided that she could no longer take the harassment and intimidation and signed.¹⁴

Ms. Lap then appealed her case to the Salaried Labor Court in Ho Chi Min City. The court heard her case in July 1998. Although the factory manager did not appear at the first court date, he did appear for the rescheduled date, where a settlement was reached. As part of the settlement, he made a formal apology to Ms. Lap for the harassment that she received at the hands of his subordinate, Ms. Bek (Lap's supervisor). Despite this apology he asserted his right to hire and fire at will. Ms Lap contested this, but the factory refused to rehire her. The settlement between Ms. Lap and the factory was recorded in an agreement authenticated by the court, which she and the factory manager signed. Some weeks after the court settlement she received a cash payment of approximately 700,000 dong (\$US50) from the factory to satisfy its outstanding financial obligations to her.¹⁵

Nike claims to have investigated Ms Lap's case and determined that she was fired because of "work performance issues" (Kidd 1999). Given that before she was interviewed by ESPN the factory had singled out her work performance for special praise and that the factory manager has formally admitted that she was harassed and victim-

¹⁴ Please see the following URL for a transcript of an interview with Ms Lap Nguyen conducted by Thuyen Nguyen (no relation) of Vietnam Labor Watch: www.maquilasolidarity.org/campaigns/nike/lap.htm

¹⁵ This information is based on an interview which Vietnam Labor Watch conducted with Ms. Lap in May 2001 (Nguyen, T. 2001, pers. comm., May 7).

ized, this would seem extremely unlikely. Nike has refused to either release the report of its investigation or provide the evidence on the basis of which it has determined that Ms Lap's testimony is untrustworthy.¹⁶

In December 2000 the ESPN journalists who interviewed Lap Nguyen went back to Vietnam for its tenth anniversary episode to find out what had happened to her.¹⁷ She told them that after the factory complained of her attempt to take medical leave she was diagnosed with tuberculosis. She is currently unemployed.

In May 2001 a representative of Vietnam Labor Watch met with a security guard who had recently been fired from the Sam Yang factory. He claimed that Nike recently sacked the two key managers at Sam Yang and replaced them with Nike direct hire staff, who are Vietnamese nationals, so that Nike is now directly managing the factory. He told her that workers are now hired for three months only and then fired so new staff can be hired and that workers at the factory must pay a company middle man almost a month's salary, 500,000 VND (\$US30) just to get hired for the three months. For reasons detailed in the following subsection of this report, it is extremely difficult for Vietnam Labor Watch to conduct further interviews to substantiate the guard's story. Nike should allow independent monitors into the factory to investigate whether conditions at Sam Yang have improved since Ms. Lap was fired.

Ms. Lap's case sends a clear message to other workers at the Sam Yang factory—keep quiet about labor abuses or suffer the consequences. Nike should either present evidence that she was treated fairly or else ensure that she is offered a job back at Sam Yang or another Nike contract factory in Vietnam.

Nike and Suppression of Dissent in Vietnam: The Joseph Ha Letter

Since January 1999, it has been extremely difficult to obtain independent information about conditions in any Nike contract factory in Vietnam. In that month Nike vice-president Joseph Ha sent a letter to Vietnamese labor officials claiming that Nike's critics had a secret agenda to overthrow the Vietnamese government and "create a so-called democratic society on the U.S. model". Vietnam Labor Watch, the main rights group monitoring Nike factories in Vietnam, vigorously denied this allegation and labeled Ha's letter "a crude attempt to stop the on-going cooperation between Vietnam Labor Watch and labor organizations in Vietnam...[by attempting to] paint anti-Nike activists as Americans harboring a hidden agenda to change Vietnam's political system."¹⁸

Ha's letter was published in the official Laodong newspaper, indicating that the Vietnamese government endorsed his comments and regarded cooperation with Nike's critics as an act of treachery. Since then it has been politically dangerous for Vietnamese citizens to talk to outside organizations about conditions in Nike factories, and people who were formerly happy to pass on such information are no longer willing to do so.

¹⁶ Nike also claims that the Vietnamese Labor Bureau investigated Ms. Lap's case and found it to be without merit. For reasons detailed in the following subsection, Nike's critics do not have confidence that the Vietnamese government would carry out such an investigation in an objective manner.

¹⁷ See www.cs.earlham.edu/~hyrax/labor.html for a transcript of the program.

¹⁸ See: www.saigon.com/nike/pr14.html

The human rights groups in the Fair Labor Association (of which Nike is also a member) wrote to Nike calling on the company to “undo the damage this [letter] has done to factory monitoring in Vietnam.” The FLA wrote of the letter: “It has served to undermine the fragile cooperation between Vietnamese Nike workers and NGOs seeking to assist them to secure the rights your company pledged to afford them by adopting your Code of Conduct...In Vietnam, it has created a cloud of unfair suspicion over all organizations that engage in much-needed advocacy for universal human rights. And the expression of anti-democratic and authoritarian values by a senior Nike official raises serious questions about Nike’s commitment to the principles embodied in the Fair Labor Association.”

One of those human rights groups, the International Labor Rights Fund, proposed to Nike that it should invite representatives of Vietnam Labor Watch to visit its factories in Vietnam, in order to send a clear signal to Vietnamese authorities that Nike did not regard the company’s critics as political subversives. Nike refused to do this.

Nike instead claimed that Ha’s letter was a personal one and did not represent the views of the company. According to Nike’s director of labor practices, Dusty Kidd, Nike sought to clarify the company’s position to the Vietnamese government by sending another letter and asking the Laodong newspaper to publish it, but the paper refused to do so (Kidd 1999). Nike officials have been asked several times to provide a copy of that letter (in both English and Vietnamese) and evidence that Laodong refused to publish it, but the company has ignored these requests. Until Nike is willing to release this information, rights groups have good reason to suspect that the company vice-president’s letter did represent Nike’s position and that the company approves of the resulting suppression of independent information. As long as it is regarded as a traitorous for Vietnamese citizens to pass on information about conditions in Nike contract factories, it will be very difficult to find out whether workers’ rights are being respected there.

Nike’s track record in protecting workers who blow the whistle on labor abuses is very poor. Until this changes, Nike workers will have good reason to be afraid of what might happen to them should they speak honestly about conditions in their factories.

2. Regular, Transparent, Independent and Confidential Procedures for Monitoring Factories and Investigating Worker Complaints

The key test of a company’s commitment to ethical practice is the extent to which it is willing to allow independent and transparent monitoring. Promises are easy to make. It is monitoring that indicates whether they have any meaning.

Global Exchange and other rights groups have asked Nike to ensure that workers are aware of their rights and are able to make confidential complaints to independent monitors when those rights are infringed. They have also asked for a monitoring program which is regular, independent and transparent and which works to establish relationships of trust

with workers so that they can speak honestly about conditions without fear of retribution.

Nike claims to have “the industry’s most elaborate system of internal and external monitoring.” (Nike Inc. 2000a). While Nike’s system is certainly elaborate, Global Exchange and other rights groups have very serious reservations about its effectiveness. Putting together a range of different programs may look good in a public relations sense, but it will be of very little benefit to workers unless at least one of those programs operates to discover and rectify labor abuses.

Since 1994 professional accounting firms, first Ernst and Young and then PricewaterhouseCoopers have conducted annual audits in each factory, assessing performance against Nike’s code of conduct.¹⁹ This is supplemented by quarterly S.H.A.P.E. (Safety, Health, Attitude of Management, People, Environment) assessments by Nike staff.

Nike is also a member of the Fair Labor Association (FLA). The FLA began its life in August 1996 as the White House Apparel Industry Partnership. The then US Secretary of Labor, Robert Reich, convinced Nike and a number of other US apparel and footwear companies to join a number of trade unions and NGOs to negotiate a code to promote humane working conditions in the US and overseas. In April 1997 a Workplace Code of Conduct was agreed to and the companies still involved in the Partnership became the initial signatories.²⁰

It took a further 18 months of “difficult”²¹ negotiations before, in November 1998, a sub-group of the Partnership comprising four of the companies (Liz Claiborne, Nike, Patagonia and Reebok) and four of the human rights groups (the International Labor Rights Fund, the Lawyers Committee for Human Rights, the Robert F. Kennedy Memorial Center for Human Rights and the National Consumers League) negotiated a preliminary agreement on establishing the Fair Labor Association to oversee monitoring of the code. Two US unions in the apparel and retail sectors (UNITE and RWDSU) and the Interfaith Center for Corporate Responsibility (ICCR) had been involved in the negotiations up until November 1998 but rejected the proposed monitoring system as unacceptably weak and pulled out of the process.

In July 2000 the FLA released its “Benchmarks and Guidance” document which provided some further clarity regarding how the monitoring program will work. In 2001 the FLA has approved Nike and six other companies to participate in its program and has accredited three non-profit organizations to be “independent external monitors.” It is not yet clear how many other organizations will be approved as monitors, which monitors Nike will select, or when the process of “independent, external” monitoring will begin.

Nike has also joined with the International Youth Foundation, the World Bank and clothing company Gap Inc. to form the Global Alliance for Workers and Communities (GAWC 2001). The Alliance is not monitoring whether human rights and labor standards are respected in Nike contract factories. Instead it represents an attempt by Nike and Gap to switch the focus to a development model that sits more comfortably with

¹⁹ See Appendix 2 for a copy of Nike’s code.

²⁰ See Appendix 3 for a copy of this code.

²¹ See (Harvey 1999).

their corporate priorities. The Alliance is currently working with a relatively small number of Nike's more than 700 contract factories²² and is conducting a program "identifying workers' aspirations and developmental needs" (GAWC 2001). The Alliance will then put in place training and development programs to assist workers to improve their "life skills, work environment and communities" (Nike 2000c). Nike will spend \$US7.7 million on the Alliance over a five year period.

Given that the Alliance's factory assessment program deliberately avoids key human rights issues including workers' right to freedom of association,²³ it is inappropriate for Nike or the Alliance to refer to it as evidence of the acceptability of conditions in Nike factories. Unfortunately this has not stopped them from doing so. In September 2000 the Alliance's Director, Kevin Quigley, told the Associated Press that conditions at Nike factories had improved in the previous three years and that criticisms about "sweatshop"-type conditions were outdated (Hughes 2000). In the same month Nike's general manager in Vietnam, Lalit Monteiro, told the Associated Press he hoped that the Alliance's report on factories in Thailand and Vietnam "will cause some to reconsider their criticisms" and that the report "gives people a chance to make up their minds based on how the workers feel and what they want" (Tran 2000). At the press conference in which the Global Alliance report on Indonesia was released Nike spokesperson Maria Eitel said that the Global Alliance process brings the "concerns of workers...to Nike...in a form and methodology that allows us to address them aggressively and comprehensively" (Nike 2001d). Evidently a methodology which deliberately avoids asking workers whether they are allowed to form unions is comprehensive enough for Nike's purposes.

This section will analyze Nike's monitoring program in the context of the criteria that rights groups have established for effective factory monitoring. Given that Nike is referring to the Global Alliance in the media as if it were measuring the acceptability of factory conditions, that initiative will also be considered. Analysis will focus on how effectively Nike's program protects workers' right to organize, a right which has been part of the company's code of conduct since 1997 and which for many workers and labor rights groups is the most important element in that code.

An Informed Workplace

Making sure workers are aware of their rights is the first step in ensuring that those rights are protected. Campaign groups have urged Nike to allow local unions or rights groups to visit factories and educate workers about their rights under local law and

²² The Alliance is working with 21 Nike contract factories in Thailand, Vietnam and Indonesia. It is not yet clear how many factories it will work with in China.

²³ In a meeting in June 2000 the director of the Global Alliance, Kevin Quigley, told me that the Alliance will not be monitoring the protection of workers' right to organize or other labor standards in Nike contract factories (Quigley K., pers. comm., 1 June 2000) but will instead assess workers' needs and life aspirations and set up training and development programs to help them meet those needs and aspirations. For the Global Alliance assessment of Indonesian factories Nike asked researchers not to conduct interviews with union representatives in order to "avoid confusion between the role of GA versus Nike's compliance staff" (GAWC 2001).

relevant codes of conduct. Nike has instead focused on providing factory managers and supervisors with training in its code, and has made it the responsibility of factory owners to provide training to workers (Nike 2000b).²⁴ This deliberately ignores the direct interest which factory owners have in keeping workers' ignorant of their rights. If workers organize unions it gives them the power to take industrial action and press for higher wages, which could significantly increase the factory's costs. Making it the responsibility of factory owners to ensure that workers understand they have the right to form unions is thus completely irrational and it is not overly cynical to suspect that in giving factory owners this responsibility Nike is being deliberately obtuse.

Nike does have a policy that its code of conduct should be posted prominently in all its suppliers' facilities and that workers should each have a copy of a small pocket card which summarizes the code. Investigations by journalists and activist groups have suggested that in some factories workers do not receive the pocket cards (Devick and Bruyns 2000, NLC, 1998), and in those factories where they do, reference to union rights in Nike's code is often translated using language that workers cannot understand (Austermuhle et. al. 2000 pp. 9,12,22,40).

When I interviewed workers from three Indonesian Nike contractors in March 2000 they told me that workers regard the Nike code poster and pocket cards as something the factory does to keep Nike happy but that they had no relevance to factory conditions.²⁵ Research conducted in Thailand by Junya Yimprasert and Christopher Candland suggested that Thai Nike workers have the same attitude (Yimprasert and Candland 2000).

In March 2000 Nike allowed a number of US students to observe PricewaterhouseCoopers' audits of factories in eleven countries. The students reported that in almost all of the Asia and Latin American factories they visited the workers didn't understand their right to freedom of association (Austermuhle et. al. 2000). In each case Nike's disingenuous response was to advise "factory management to conduct further training to ensure workers fully understand their rights" (Nike 2000b).

S.H.A.P.E.

As part of the quarterly SHAPE audits, Nike staff check whether the code and local labor laws are prominently posted in the appropriate languages and whether there are documents detailing training for workers in these rights (Nike 1999). There is no evidence, however, that Nike staff interview workers to find out whether the documented training actually explained to them what their rights are.

²⁴ There are two exceptions to this. Following the recent controversy at the Kuk Dong factory in Mexico Nike arranged for the International Labor Organization to conduct training for workers in their union rights. Nike has arranged for similar ILO training for in Indonesia, but this program was only for union organizers, not all workers. The program at Kuk Dong was a one-off initiative which has not been extended to other factories.

²⁵ The cards and poster provide workers with no independent party to whom they could complain to if the code is not met. The card does tell workers to contact their factory supervisor or staff representative for more information, but few Nike factories have independent unions and workers said that going to factory supervisors with complaints would be completely useless.

PricewaterhouseCoopers

Nike has so far refused to release the list of questions that PwC auditors ask workers, but the small amount of information that Nike has made available under its “Transparency 101” program suggests that ensuring that workers understand their rights is a low priority. Under that program Nike has released two “compliance grids” summarizing the results of PwC audits of 53 factories in North America and 22 factories in Central and South America. Unlike “Management Knowledge of Code”, workers’ knowledge of Nike’s code does not even appear on the grid.

Nike has also released PwC reports for 11 factories. Two of these reports mention that workers do not properly understand Nike’s code but this information seems to have been discovered incidentally while asking other questions. There is no indication that PwC auditors systematically ask workers whether they understand their rights under the code.

Fair Labor Association

The FLA also makes it the responsibility of “contractors and suppliers” to “inform their employees about the workplace standards orally and through the posting of standards in a prominent place.” There is also a vague requirement that factory owners “undertake other efforts to educate employees about the standards on a regular basis” (FLA 1999).

It will be up to the FLA’s external monitors to verify that these procedures have taken place. How effectively they do this will depend on their independence and professionalism and on the regularity of their monitoring visits—issues which are considered below.

Global Alliance

As it is not a monitoring system, the Alliance does not investigate whether workers understand their rights under Nike’s code.

Independent Monitors

Where factory monitors are selected and paid by a company, they have a direct incentive to conduct their investigation in a manner that will serve the company’s interests rather than those of workers. For this reason campaigners have argued that factory monitors should be independent of Nike’s control and influence and should instead be selected by an independent body with at least majority representation by unions and rights groups. It is not necessarily inappropriate for companies such as Nike to pay for the monitoring, but the company should not be able to influence which monitor is selected.

S.H.A.P.E.

The least independent of the various layers of monitoring of Nike’s code are the S.H.A.P.E. inspections, which are conducted quarterly in each factory by Nike staff.

When staff responsible for ensuring quality of product and speed of delivery are also asked to monitor labor standards there is a significant conflict of interest. If ensuring that a particular labor standard is met in a factory might increase costs or slow production then the temptation will be very strong for them to discount that standard in favor of Nike's interest in cheap and speedy fulfillment of orders. Nike also has final control over what is considered during the SHAPE assessments and has left out key issues such as wages, working hours and whether or not workers are allowed to organize.²⁶

PricewaterhouseCoopers

Nike has vigorously promoted the program of annual factory audits by PwC as "independent monitoring" (Nike 2000b). In his May 1998 speech Knight said:

We've been criticized for using a firm that we are paying for this review. And I think this is really pretty funny. The only reason that a CPA firm has for its very existence, is its independence, and if in fact that it was not independent, we'd have a problem much bigger than Nike foreign factory relations: the whole New York Stock Exchange is built on a fraud.

Phillip Knight, National Press Club, 12 May 1998

It is of course true that when a CPA firm conducts a financial audit and publicly declares whether a company's financial records meet auditing standards then that firm's public reputation for independence is on the line. The factory auditing PwC provides for Nike is significantly different from a financial audit, however, and there is reason to believe that both Nike and PwC are treating it as a private rather than a public service, more akin to PwC's private consultancy work. Unlike financial audits, the standards and procedures associated with factory audits are yet to be properly established and hence it is Nike which has control over the procedures which PwC follows. The factory monitoring program also differs from financial audits in that PwC is not required to indicate publicly whether the factory conditions are acceptable; the company only makes private reports direct to Nike.

Independent research suggests that the quality of PwC's factory monitoring is patchy at best. In September 2000 Dara O'Rourke, an assistant professor at MIT, released a report based on direct observation of PwC's monitoring of factories in China and Korea and on an assessment of PwC's findings for a factory in Indonesia²⁷ (O'Rourke 2000). He noted that the PwC auditors knew he was observing them and

²⁶ As part of a SHAPE inspection Nike staff have to determine whether or not there is a worker-management communication system. While a union is given as an example of one possible kind of communication mechanism there is no evidence that Nike staff actually ask workers whether they are prevented from organizing.

²⁷ The Indonesian factory produced for Nike and Reebok. It is not clear from the report whether or not the Korean and Chinese factories produced for Nike, but in any case O'Rourke's analysis gives insight into the independence of PricewaterhouseCoopers' factory auditing.

hence their audits were likely to have been more rigorous than usual. Despite this, their auditing methodology and practice were radically flawed. The report commented that “the most striking finding from analyzing PwC’s monitoring protocols is not what they found, but rather what their monitors missed in their factory audits” (O’Rourke 2000). What they missed included hazardous chemical use and other serious health and safety problems, barriers to freedom of association and collective bargaining, violations of wage and overtime laws, and timecards which appeared to have been falsified (O’Rourke 2000).

The PwC auditors reported that both factories were “in compliance with Freedom of Association and Collective Bargaining standards”, but they made no serious attempt to investigate these standards. The Korean PwC auditor ignored the relevant questions in the questionnaire:

The auditor skipped entirely the sections on Freedom of Association and collective bargaining, and often omitted questions on discrimination, forced labor, and child labor (O’Rourke 2000).

In the Chinese factory:

The PwC auditor did not explain what a union is, or what role workers might play in it. Because the factory has a management run union, the PwC auditors found no problems on freedom of association. Questions regarding collective bargaining were skipped entirely (O’Rourke 2000).

Professor O’Rourke noted that “Factory managers have incentives to cover up or hide problems”, and that PwC auditors give them “ample opportunity to do just that”. In both Korea and China the PwC auditors advised the factory owner how they could circumvent local overtime laws (O’Rourke 2000, pp. 11–13). O’Rourke concluded that:

These problems go beyond the level of poorly trained auditors and flawed audit protocols. The significant and seemingly systematic biases in PwC’s methodologies call into question the company’s very ability to conduct monitoring that is truly independent (O’Rourke 2000).

The sixteen US students that Nike sent to observe and report on PwC monitoring in March 2000 also provided some important insights into the quality of that monitoring. Again, the PwC auditors knew they were being observed, so the quality of their auditing is likely to have been higher than usual. The students were selected by representatives of St. John’s University, which was itself under fire on the Nike sweatshop issue for insisting that one of the University soccer coaches, Jim Keady, wear Nike gear even though he objected on moral grounds. This was not therefore a selection panel likely to choose students who they could expect to be critical of Nike and PwC. The students who were selected tended to have a limited background in labor rights or monitoring issues and their report reflected this.

Nike has made much of the fact that in the introduction to that report the students refer to PwC's monitoring as "effective and well-designed" and "rigorous" (Austermuhle et. al., 2000, p. 4). While this is true, many of the observations which the students make in the body of the report dramatically undermine this assessment, and it is unlikely that they would have been so positive had they had a deeper understanding of monitoring issues. With regard to union rights, for example, the students reported that in a number of countries questions about workers' union rights are phrased in language workers cannot understand²⁸ (Austermuhle, 2000 pp. 7,9,12,22,40,46). They noted that PwC auditors do not interview union leaders to ask if their members are suffering any discrimination—an obvious component of any serious investigation into whether those rights are protected (Chakravarty 2000, p. 9). Shubha Chakravarty, the student who observed PwC's monitoring in Bangladesh and Indonesia concluded that although Nike's Code of Conduct "supports freedom of association and collective bargaining...I did not see evidence of any systematic investigation into these rights" (Chakravarty 2000, p. 8).

Subsequently some of the students involved in this program have questioned Nike's motivation in allowing them to observe the PwC monitoring program. Martin Austermuhle of Penn State University observed a PwC audit of the Kuk Dong factory in Mexico, which in the early months of 2001 became the subject of media scrutiny because of very poor working conditions.²⁹ At the time of that media coverage he wrote:

I cannot deny that all the student monitors who went on that trip praised Nike, but then again, we have to look at the situation comprehensively. All the student monitors had no real background in monitoring, labor conditions, or the understanding necessary to carry out audits. We were sent to factories that expected us, and made to believe that the factories we saw were representative of all factories. Needless to say, much of what we said was based on not enough info and a tight schedule. I did say that Nike was doing a good job then, but I know that the trip was essentially a PR move for situations like the one we are experiencing today.³⁰

Despite Nike's claim that PwC's monitoring program is independent, it is more accurate to describe it as "company controlled monitoring" (Eijk and Zeldenrust 1997, p. 32) since PwC is selected by and accountable to Nike and implements a monitoring program which Nike has designed. The only Nike factory audit by a CPA firm that has been leaked to the press in its entirety, a 1996 audit by Ernst and Young, ended with comments that encapsulate the relationship between Nike and its 'independent' monitors: "The procedures we have performed were those that you specifically instructed us to perform. Accordingly, we make no comment as to the sufficiency of these procedures for your purposes" (TRAC 1997).

²⁸ In response Nike indicated that it would work with PricewaterhouseCoopers to redraft these questions, but is yet to release the questions so that this can be verified (Nike 2000b).

²⁹ There is a detailed analysis of the situation at Kuk Dong in section 6 below (on Freedom of Association).

³⁰ Cited in email from Eric Brakken, staff person of United Students Against Sweatshops, 19 Jan 2001.

Fair Labor Association

Under the FLA's monitoring program participating companies will select "independent external" monitors from a pool of monitors which have been accredited by the FLA. In a prize-winning article in the *Journal of Law and Policy in International Business*, Robert Liubicic argues that such an arrangement renders monitors "neither independent nor external", since "third-party agents, operating for profit and paid by the MNCs they are charged with monitoring, are subject to...vested interest problems" (Liubicic 1998).

Human rights groups involved in the FLA disagree. In research interviews Pharis Harvey of the International Labor Rights Fund and Jim Silk of the Robert F. Kennedy Center for Human Rights recognized that in an ideal system "independent" monitors would not be selected and paid by the companies whose performance they are monitoring. They nonetheless argued that if companies are not willing to accept such a system then one in which monitors must be accredited and overseen by a group like the FLA (which includes significant representation of human rights groups) is an acceptable and workable compromise.³¹

While the FLA's monitoring procedures and accreditation requirements for independent monitors are relatively stringent, there are still significant grounds for concern that companies wary of having to deal with a unionized workforce may act in bad faith and may seek to employ independent monitors who have the skills to pass the accreditation procedures but are not motivated to rigorously investigate whether workers' rights to form unions are protected and other labor standards upheld. Although the FLA has thus far only accredited non-profit monitors, it is likely that for-profit monitors will also be accredited, and companies are more likely to favor commercial auditing firms over local NGOs because the former are likely to be less familiar with or committed to labor rights (MSN 2001). The poor auditing practices of Nike's current "independent" monitor, PricewaterhouseCoopers, does not instill confidence that Nike will be seeking to select a motivated and rigorous monitor under the FLA's external monitoring program.

FLA staff will oversee the monitoring program, but they will conduct no factory investigations of their own. Hence if an investigation has been poorly conducted it will only become apparent to FLA staff if the paperwork appears unacceptable or else a local group makes a formal complaint to the FLA about the factory.

It will not be possible to comment authoritatively on the effectiveness of this monitoring until Nike has selected an FLA accredited monitor and the FLA's monitoring program has begun. Nonetheless, Nike's right to select which accredited monitor will visit its suppliers' factories gives rights groups good reason to be skeptical about the independence of this program.

Global Alliance

The Global Alliance has limited independence from Nike. The NGO that Nike selected to work with on the project, the International Youth Foundation (IYF), has no expertise in labor rights. Its background is in working with large corporations to con-

³¹ Harvey, pers. comm. 1 Oct. 1998; Silk J., pers. comm., 6 Oct. 2000.

duct development programs for young people. Although the money that Nike has put into the Alliance is held by a separate trust so that Nike cannot withdraw it, one of Nike's vice-presidents, Maria Eitel, sits on the Alliance's Operating Council, giving the company an important role in governance of the project.

The local universities the Alliance has selected to conduct its factory assessments must follow a research process determined by the Alliance. The author has spoken with one of the data collectors involved in that research program.³² According to that person, many of the questions in the Alliance's survey were of little relevance to workers' situation and many workers found them confusing. The university research center raised this with Alliance staff but the Alliance was not willing to replace them with questions that were more relevant to the issues workers face. While interviewing workers, some of the data collectors wrote down additional comments made by workers about problems in their factories. The Alliance did not include these comments in its public report because they went outside the scope of the questions asked in the survey. The Alliance cannot therefore claim that the university centers conducting its research are independent from the Alliance's control.

A Relationship of Trust Between Workers and Monitors

The section of this report titled "Overcoming the Culture of Fear" has already considered the dangers Nike workers face when they speak honestly about labor abuses in their factories. Before Nike representatives or PwC monitors visit, Nike workers are commonly warned not to speak about problems in their factory for fear of endangering orders.³³ And in most cases workers know they have little effective legal protection if they are fired or discriminated against for telling monitors what is really going on. Independent researchers with experience in interviewing factory workers in industrializing countries argue that it is crucial that monitors put in the time and energy needed to create a relationship of trust in which workers have confidence that any information will remain confidential and that reporting on labor abuses will not lead to loss of orders and loss of jobs (Hancock 1997, O'Rourke 2000, Bissell et. al. 2000). In the absence of this trust, workers will commonly pretend that they are happy with factory conditions in order to protect themselves and their fellow workers.³⁴ For this reason rights groups have questioned the credibility of the largely positive reports on factory conditions released by Nike and the Global Alliance.

Since at least 1995, anti-sweatshop groups have attempted to persuade Nike that workers need to be interviewed confidentially in safe venues away from factory sites and that these meetings need to be facilitated by organizations or individuals which

³² That data collector asked not to be named for fear of losing future research contracts and out of concern that public statements would result in being sued for breaching the Alliance's confidentiality agreement. The author subsequently verified with Kevin Quigley, director of the Alliance, that researchers were free to comment on the Alliance's research program, but was not able to inform the data collector of this before the report went to print.

³³ See for example Connor 2000 and Chakravarty 2000.

³⁴ See the section entitled "Overcoming the Culture of Fear" above.

have earned workers' confidence. Stanford University student Shubha Chakravarty was allowed by Nike to observe PwC interviews with Nike workers in Bangladesh and Indonesia in March 2000. She also independently arranged with local independent NGOs to meet with workers from the same factories at confidential venues away from the workplace. Her comments on the contrast are significant:

The difference in their eagerness to talk was astounding. Quite literally, the women spoke more loudly outside of the factory. They were much less scared and nervous. Inside the factory, I got the sense that the workers were uneducated about their rights and did not know what to complain about; I sometimes concluded that they were confused by some of our questions. Outside of the factory, workers were not only aware of what needed improvement in their factories, but they were also very eager to share their complaints with me (Chakravarty 2000, p. 2).

S.H.A.P.E.

It is not clear from the material Nike has released regarding the SHAPE investigations whether Nike staff interview workers at all, let alone whether those interviews are conducted confidentially.

PricewaterhouseCoopers

The monitoring program Nike has set up is not conducive to establishing a relationship of trust between workers and PwC auditors. Those auditors commonly spend only one day each year at each factory.³⁵ Whereas factory managers know in advance when the monitors are coming and frequently warn workers not to criticize factory conditions (Chakravarty 2000, p. 2), little attempt is made to explain to workers the significance of the monitoring visit. In the audits in Korea and China which Professor O'Rourke was allowed to observe there were no opening or closing meetings with workers, no protocol to explain the program to them and no strategy to help them collect accurate and verifiable information (O'Rourke 2000).

In some cases PwC auditors do not interview factory-line workers at all. In March 2000 the author interviewed workers from three Nike contract factories in Indonesia, each of which had been supplying Nike for at least five years. In two of those factories workers insisted that PwC limiting their interviews to factory supervisors and did not speak to line workers. This extract from one of the interviews is typical:³⁶

Worker (through interpreter) — PricewaterhouseCoopers? Once a year they visit—always accompanied by supervisors. Only ask things to supervisors, never to workers.

³⁵ Unless it is determined that a follow up audit is needed.

³⁶ For fear of reprisal the worker interviewed here asked that both her name and the name of her (Nike contract) factory be kept confidential.

Tim Connor — What is workers' attitude to PricewaterhouseCoopers? Do they think they could trust them?

Worker (through interpreter) — They don't feel anything because they've never been asked. Anytime any visitors want to come, they are informed that tomorrow there will be some people come here, so be careful, it is for our own company's progress, so be careful and then they are told to clean up everything.

Connor — What does the company mean by careful?

Worker (through interpreter) — Don't say anything bad because it is for the company's progress.

Connor — So if they say something wrong it might damage the company's progress?

Worker (through interpreter) — Yes. And they've never been asked, just the supervisors, and it's impossible that the supervisors tell the bad things.

(Connor 2000)

Independent research suggests that when PwC auditors do interview line workers in most cases they make little attempt to establish a relationship of trust. The US students Nike allowed to observe PwC's monitoring in March 2000 reported that in some countries worker interviews averaged only five minutes in length (Austermuhle et. al. 2000, p. 29). The student who visited Bangladesh and Indonesia, Shubha Chakravarty, noted that the monitors' expertise is usually in accounting and they tend to lack the skills needed to establish a rapport with workers (Chakravarty 2000). The PwC monitors Professor O'Rourke observed in Korea were also young accountants with limited training in social auditing. His description of the interviews in the Chinese factory gives a sense of the lack of empathy:

Each interview was based on a standard survey instrument. Interviews last 7–10 minutes per worker. By the end of the 3.5 hours of interviewing, the PwC auditor was extremely tired and asked the questions in a rote fashion. The auditor seldom looked up at the workers while reading the questions and recording the answers. The auditor did not attempt to build rapport with workers. She did not ask where they were from or how long they had been in the factory, or even which section of the plant they worked in...[she] answered some of the questions in the survey without asking the worker, assuming she knew the answer without asking. She did not follow-up on uncommon answers. She never supplemented the survey with additional questions... (O'Rourke 2000).

The PwC auditors Professor O'Rourke observed also failed to find interview venues that would make workers feel comfortable and give them confidence that they could speak confidentially. In the Chinese factory the interviews were conducted in a manager's office and in the Korean factory the interviews were conducted in a hallway just outside the manager's office. Karim Chrobog, the US student who Nike allowed to observe PwC monitoring in the Dominican Republic also commented on this problem:

The interviews in the first plant were conducted in the office of the company president. Hence, some of the workers were visibly uncomfortable in this setting. The interview conditions in the second plant were even more troubling. The interviews were conducted in a room that served both as a document storage facility and as a corridor to get to the company president's office. This resulted in the administrative staff constantly entering the room to fetch or return documents, and the management repeatedly interrupting us. Naturally, the workers seemed highly uncomfortable and appeared reticent to speak freely...some of the workers in the second plant appeared highly intimidated during their interviews, and some expressed fear of the Korean management. In addition, in both plants at least two workers were interviewed at a time, often while supervisors were present or also being interviewed (Austermuhle et. al., 2000).

In its response to the students' report Nike noted that following the students comments "PwC has emphasized to monitoring teams that extreme care should be exercised in the selection of the interview location and that privacy should be ensured" (Nike 2000b). It reflects badly on the monitoring program that Nike and PwC did not think to emphasize this to monitors before the students brought it to their attention.

A more widespread problem is the failure to keep the identities of workers who are interviewed secret from their managers and supervisors. The students reported that in every factory audit which they observed, factory managers knew or could easily find out which workers were interviewed (Austermuhle 2000, pp. 5–6, 18–19, 38, 52). Professor O'Rourke reported that in China and Korea the PwC auditors asked the managers to help them select workers to be interviewed, had the managers collect the workers' personnel files, and then had them bring the workers into the office for the interviews (O'Rourke 2000).

The problem with managerial staff knowing which workers are interviewed is that they can then call them up when the auditor leaves and cross-examine them in an attempt to discover whether any of them made critical or negative comments. An example of this was cited by workers from the third Indonesian Nike contract factory the author researched in March 2000, PT ADIS.³⁷ Workers from that factory said that in 1999 either Nike staff or PwC auditors (they were not sure which) had visited the

³⁷ Now known as PT ADF.

factory and had interviewed three line workers, but the factory supervisor knew which workers were interviewed and called them aside afterwards to try and discover what they said:

Tim Connor — Do you think the workers would have been confident to tell...the person from Nike about problems in their factory?

Worker from PT ADIS (through interpreter) — Probably they don't dare 'cause the interview was happening inside the factory and they are afraid after that if anything happen the supervisor will call them.

Connor — So they don't trust Nike to keep it confidential?

Worker from PT ADIS (through interpreter) — It is not that we don't trust Nike. We are just afraid that after the interview the supervisor will call and ask and there will be questions. So after that, it was true. The supervisor called the three of them...

In response to the students' report Nike argued that it is impossible to conceal the identity of employees selected for interviews from management because they must be excused from the production floor (Nike 2000b). The obvious solution would be to work with local non-government organizations to arrange confidential interviews after hours away from the workplace. The students who visited Nike contract factories in Asia made this one of their recommendations (Austermuhle et. al., 2000, p. 39). Nike's response to the students' report made no reference to this recommendation, although the company did repeat its familiar litany that it is "working hard on" involving NGOs in its monitoring program³⁸ (Nike 2000b).

Finally, the PwC monitoring scheme has failed to put in place a mechanism to protect workers from being disciplined or fired for reporting problems to PwC monitors or to other researchers. The student who Nike allowed to observe PwC's monitoring in Bangladesh and Indonesia, Shubha Chakravarty, reported that "it was evident to me in every worker interview that workers do not feel comfortable voicing complaints against management; in one Bangladeshi factory, workers openly admitted that they felt they would be fired if they complained" (Chakravarty 2000, p. 8). Workers in one of the factories in Bangladesh took considerable risks by telling her and the PwC auditors that "managers often screamed at workers who made mistakes or arrived late at work" and that they had "seen managers hit and kick workers" (Chakravarty 2000, p. 10). Subsequently in independent interviews Bangladeshi Nike workers asked her

³⁸ Nike also responded to the Global Alliance report on Indonesia with a remediation plan which included a promise to improve its social monitoring using local organizations with specific expertise in women's issues (Nike 2001e). It remains to be seen what will eventuate from this. Nike has been promising to involve local NGOs in its monitoring program since early 1998 but so far these promises have come to nothing. From the comments in the the remediation plan it sounds like it is only intended that local womens groups will only help to monitor sexual harrasment in Indonesia, whereas rights groups believe local NGOs should be involved in all aspects of worker interviews in all countries.

“whom they should contact if they were disciplined or fired for having spoken with me (if they were discovered), and I was disturbed to realize that I had absolutely no answer for them” (Chakravarty 2000, p. 8).

Fair Labor Association

A number of aspects of the FLA’s external monitoring procedures in this area are extremely positive. Independent external monitors will be expected to make both unannounced and announced factory visits, to work with local groups likely to have workers’ trust when arranging and conducting confidential interviews and to consult with any legally constituted union representing employees in monitored facilities [FLA, 1999 #265].

Global Exchange and other rights groups are concerned that these positive elements in the FLA’s monitoring scheme are likely to be dramatically undermined by other aspects of that program, in particular Nike’s power to select which FLA accredited monitors visit its factories. The FLA’s procedures leave a great deal to the monitor’s discretion, making the independence of monitors particularly important. Whereas campaign groups would argue that offsite interviews are always needed, the FLA leaves this decision up to the individual auditor. There is good reason to suspect that Nike will avoid selecting auditors who will rigorously use this discretion to the benefit of workers. As discussed below the other very significant limitation on the FLA’s external monitoring program is that on average external monitors will only visit each factory once every ten years.

Global Alliance

The Alliance has so far arranged for university researchers to complete factory assessment programs in Thailand, Vietnam and Indonesia and they are currently conducting a fourth assessment program in China. The primary research method for these factory assessments has been one-hour interviews conducted inside the factory, although focus group discussions are also held.

Independent research suggests that in Thailand at least the Alliance researchers failed to establish a relationship of trust with workers. In September 2000 the coordinator of the Thai Labor Campaign, Junya Yimprasert, released a report based on interviews with workers from the Lian Thai factory, one of the factories which the Alliance researchers had investigated. Workers at Lian Thai told her that:

The factory personnel staff introduced the researchers to all of the workers that were selected. Since the workers had to give their names in the questionnaires, they did not dare to give criticisms³⁹ (Yimprasert 2000).

³⁹ In the course of an extensive email correspondence the author has raised this finding (that workers were required to give their names) with the director of the Global Alliance, Kevin Quigley, on a number of occasions and requested a response. On each occasion these requests have been ignored.

The Alliance's factory assessments in Indonesia began at about the same time that Yimprasert's report was released and the methodology applied may have been influenced by her research. The Alliance's Indonesia report was released in February 2001 and the methodology section makes it very clear that "All of the interviews were conducted without the name or identity of the respondents" (GAWC 2001, p. 14). It may be that this partially explains why the Alliance report on Indonesia is much more critical than the Alliance reports on Nike contract factories in Thailand and Vietnam.⁴⁰ Whereas the latter reports were largely upbeat the Indonesian report found evidence of inadequate wages, forced and illegal overtime, denial of sick leave, menstrual leave and annual leave and unacceptable levels of sexual harassment and verbal abuse (GAWC 2001).

Even with workers' names concealed, a one-hour interview conducted inside the factory will in many cases not be long enough for researchers to convince workers that speaking critically will not bring negative consequences. Some of the focus group discussions were conducted outside the factory, but they were not facilitated by organizations that workers' knew or had any reason to trust. Cath Dwyer, a journalist with the Australian government's youth radio network, Radio jJJ, interviewed Indonesian Nike workers in January and February 2001 as part of her research for an ethics fellowship. She spoke to workers from factories that had been assessed by the Alliance and they told her that they were confused about the Alliance's nature and goals and were extremely unsure how to respond to it. She described the workers' attitude towards the Alliance as "very distrustful".⁴¹

This lack of trust is likely to have led many workers to avoid making negative comments about factory conditions when interviewed by the Alliance's researchers. As mentioned previously, the author has spoken with a data collector who was involved in one of the Alliance's worker assessment programs. According to that researcher, many of the workers interviewed were extremely "concerned and defensive" and appeared to deliberately avoid criticizing the factory. Evidently younger workers were "not so scared" and were more willing to voice criticism, but most workers who had been at the factory longer seemed afraid to do so. Workers who had children were particularly careful about what they said, perhaps because they were concerned about how losing their job might affect their ability to support their families. Although workers in these interviews were not required to write their names on the survey form itself, at the end of each interview they were required to sign a separate form excusing them from work on the factory floor for the period of the interview. This may well have raised workers' suspicions that the Alliance researcher might keep their survey form and their leave form together, allowing factory management to trace criticism to particular workers.⁴²

As with any factory investigation, the Alliance's research would be far more likely

⁴⁰ The Alliance's research partner in Indonesia, the Center for Societal Development Studies of Atma Jaya Catholic University, has considerable experience in researching labor rights issues and this may also have contributed to the more critical nature of the Alliance report on Indonesian Nike factories.

⁴¹ Dwyer C. 2001, pers. comm., 24 April.

⁴² Although this occurred at the end of each interview it is likely that most workers would have learned of it in advance from workers who had already been interviewed

to generate accurate data if it worked with local NGOs and unions to establish relationships of trust with workers in order to give them confidence that they can tell the truth about factory conditions without generating negative consequences for themselves or their fellow workers.

Confidential Procedures for Workers to Complain to Independent Monitors

A reliable, confidential and independent grievance process can be a powerful means for ensuring compliance with corporate codes of conduct. If workers can make complaints which initiate confidential but thorough investigations and if appropriate information from the reports of those investigations is released to the public, then it puts significant pressure on companies and their suppliers to ensure that human rights and labor standards are protected.

Rights groups have argued that workers should be able to make complaints to credible independent organizations. Nike's initial response was to focus on procedures that allow workers to complain to their factory managers.⁴³ More recently the company has promised to put in place grievance procedures which allow workers to make complaints to Nike itself (Nike 2001e). These are both poor alternatives to independent complaint mechanisms. Workers do not have good reason to trust that either Nike or their factory manager will handle a complaint appropriately.

S.H.A.P.E. and PricewaterhouseCoopers

Both the SHAPE and PWC auditing procedures specify that factories need to have confidential procedures by which workers can make complaints to factory management. This may be useful in the case of minor complaints that the factory would be happy to rectify. In the case of major issues such as denial of workers' right to organize it is of no use to workers to have a confidential means of complaining to the very management which is preventing them from forming a union.

Fair Labor Association

The Fair Labor Association's principles of monitoring require participating companies to develop "a secure communications channel...to enable Company employees and employees of contractors and suppliers to report to the Company on noncompliance with the workplace standards, with security that they shall not be punished or prejudiced for doing so" (FLA 1999). Again, workers have limited reason to trust that companies like Nike will handle their complaints appropriately and hence this kind of grievance procedure is of limited use.

What is needed is an accessible mechanism for workers to complain to a genu-

⁴³ The exception to this is Nike supplier factories located in the US. Evidently workers in these factories have for several years had access to a free phone number which they can use to call Nike to complain of Code violations (Chakravarty, S. 2000, pers. comm., 26 March).

inely independent body. The FLA does have a third party complaint procedure that theoretically allows workers and others to make a complaint directly to the FLA itself. The description of that complaint procedure in the ‘FLA Charter Agreement’ (FLA 1999) suggests that it is designed for US lawyers rather than Chinese factory workers. Any complaint must contain “sufficiently reliable, specific and verifiable evidence or information about the Alleged Noncompliance”—and if it doesn’t the FLA will send it back without investigating it. If the evidence does meet these criteria, it will be passed on to the company who, in cooperation with its accredited independent monitor, will be given 45 days to prepare a report for the FLA’s Executive Director. If this report fails to convince the Executive Director that any non-compliance has been addressed then he or she may appoint a mutually acceptable (that is acceptable to the company and the Executive Director) accredited independent monitor to investigate.

The Maquila Solidarity Network in Canada argues that this complaint procedure is particularly inappropriate for situations in which workers union rights are being suppressed:

Given the lengthy and bureaucratic nature of this process, it is unlikely that the FLA mechanism for reviewing complaints will be an effective tool for workers or their advocacy groups, particularly in cases in which violations of workers’ rights require immediate resolution, such as firings of workers for union organizing. As well, reports on violations of freedom of association, in which the violations are more difficult to quantify and the facts are often in dispute, are less likely to meet the FLA’s requirements for “reliable, specific and verifiable” information than are more measurable issues like factory lighting or air quality. (MSN 2001)

In personal correspondence Pharis Harvey of the International Labor Rights Fund has indicated that although its description in the FLA charter agreement sounds bureaucratic, it is intended that the FLA’s complaint procedure will be set up in such a way that it will be accessible for workers on the factory floor. It remains to be seen how effectively the existence of this procedure will be explained to them and whether they will have confidence in whatever systems are put in place to enable them to access it.

Global Alliance

As it is not a factory monitoring program the Global Alliance does not involve establishing a worker grievance procedure.

Transparent Reporting

Transparency is a key element of any effective code of conduct. If the methodology of a monitoring process is made public it makes it possible to assess that program’s likely worth in discovering labor abuses. If the addresses of the factories investigated are

also released it makes it possible for other researchers to independently investigate conditions in a sample of factories, allowing a fuller evaluation of the monitoring program's effectiveness. If the monitoring reports on each factory are released on a regular basis it informs the public whether those problems which the monitoring process has discovered have been fixed rather than ignored.

S.H.A.P.E.

Nike has released very little information regarding the methodology required of Nike staff conducting SHAPE audits.⁴⁴ In 1999 the company did make available a copy of a SHAPE inspection form (Nike 1999) and from this we know what kind of questions are considered. As noted previously, key issues such as wage levels, working hours and whether workers are free to organize are not considered.

More recently under its "Transparency 101" program Nike has made available copies of the reports on SHAPE inspections of eight factories in South and Central America.⁴⁵ These forms give very limited information. Nike staff effectively give yes/no answers to each of the 76 items in the inspection form and only occasionally make additional comments. With only 8 reports released and no commitment to release future reports for these factories it will not be possible to track whether or not the problems identified in these SHAPE inspections are fixed.

Nike has also released summaries of the SHAPE findings for 22 factories in South and Central America. These summaries only reveal what percentage of affirmative answers Nike staff gave to questions in each section of the form. Thus we are informed for example that Factory number 2 in El Salvador scored 72% on Safety, 47% on Health, 28% on Attitude of Management, 100% on People and 5% on Environment. We are not told what the particular problems there were with management attitudes or with impact on the environment at that factory, and unless Nike decides to release information about this factory in future we will not know whether these percentages improve.

PricewaterhouseCoopers

Nike's "Transparency 101" program has also involved the release of information regarding PwC's monitoring, but again the scope of this "transparency" is very narrow. Nike has more than 700 suppliers, but so far only 11 PwC factory reports have been released.⁴⁶ Reports for three factories in North America were released in June 2000, and eight more reports from Central and South America were released early in 2001. These "full reports" provide very limited information about PwC's methods. There is no information regarding how workers are selected for interviews, how workers' confidentiality is protected, how much time is spent interviewing each worker or whether any steps are taken to ensure that workers are not subsequently discriminated against for revealing problems in the factory. The reports indicate neither which questions PwC moni-

⁴⁴ As noted above it is not even clear whether Nike staff interview workers as part of the SHAPE audits.

⁴⁵ This is part of Nike's "Transparency 101" program and the reports can be found on the company's website: www.nikebiz.com/labor.

⁴⁶ Nike claims that eventually it will release information regarding all of its more than seven hundred factory suppliers.

tors ask workers nor how workers answer them, only brief summaries of the monitors' overall impression of what all the interviewed workers said on each issue are included. The name and address of the factory are concealed so it is not possible for independent researchers to check PwC's findings. And since there is no commitment to release future PwC reports from these particular factories, it will not be possible to verify whether those problems which are identified are rectified.

In addition to the full reports, Nike has released tables indicating the number of "non-compliances" with Nike's code found by PwC in each supplier country in the Americas in the course of 75 monitoring visits. Thus the tables indicate that PwC found one factory in the Honduras where there was a problem with child labor, 22 factories in the US where there was a problem with "documentation and inspection" and so on. These tables give even less idea of the extent and nature of the problems PwC discovered in each factory.

The first round of Nike's "Transparency 101" program also involved releasing a list of "action plans" that factories were being asked to implement as a result of PwC's monitoring of 53 North American factories. These "action plans" were not included in the information subsequently released regarding PwC monitoring of factories in Central and Southern America. While the action plans for North America only gave a small amount of information regarding what problems each action plan was supposed to address, it is disappointing that in this respect Nike is going backwards, towards less rather than more transparency.

Nike has not said how it selected those particular 53 North American factories to be included in the Transparency 101 program from among the 167 factories⁴⁷ that supply the company in North America. Nor has Nike explained why it can't regularly release all of the SHAPE and PwC reports for all of its 700 suppliers, so that researchers can track whether the problems identified by this monitoring are resolved.

Nike's program to allow students to observe PwC monitors (discussed above) gave important insights into the limitations of PwC's methodology. Unfortunately the program to allow students to observe the monitoring was a one-off so we have no way of verifying whether the recommendations the students made have been properly acted upon. The students noted for example that in many countries PwC auditors asked workers about their right to freedom of association using language workers could not understand. Nike promised to redraft these questions to make them comprehensible (Nike 2000b), but until the list of questions is made public or else further independent scrutiny of PwC's practices is allowed, we will not be able to verify whether or not this promise has been fulfilled.

Nike's "Transparency 101" program falls well short of the kind of transparency which rights groups have demanded. Nike has refused to release all but a small percentage of the addresses of its suppliers' factories and the information it has released regarding its monitoring system has been extremely limited and of little value in assessing the effectiveness of that system.

⁴⁷ Nike 2000.

Fair Labor Association

While the FLA's proposed monitoring system has greater transparency than Nike's current program, it still falls short of full transparency. Companies participating in the FLA are allowed to keep secret the addresses of their supplier factories and they will have some ability to influence what information from factory reports makes its way into the public domain.

When an accredited FLA auditor completes a factory assessment it must submit a standardized compliance report to the relevant participating company. The company is then expected to work with the supplier to ensure that conditions are brought into compliance with the FLA code. The accredited auditor will then verify that compliance has been achieved. Within 60 days of first submitting a compliance report to the company, the auditor must submit a report to the FLA Executive Director, including a description of instances of serious violations of the Code and steps taken to correct the problem and prevent its recurrence. These reports will all remain confidential documents (FLA 1999).

Every 12 months Nike and each of the other participating companies will be required to provide the FLA with a standardized report describing what it has done to implement the FLA Code and to address instances of serious noncompliance. The staff of the FLA will then use the company's annual reports and the auditor reports to prepare a standardized annual public report, which will have to be approved by the FLA Board before it is released to the public. The report will exclude information considered proprietary or confidential but will include summaries of any "significant and/or persistent patterns of noncompliance" found and an assessment of what was done to rectify them.

This process gives considerable discretion to FLA staff and to FLA board members (almost 50% of whom are corporate representatives) to determine what information will be made available to the public.

Global Alliance

The Global Alliance has made transparency one of its goals and it has released a considerable amount of information regarding the interview methodology employed by its researchers and the data produced by that research (see for example GAWC 2001). It has not, however, released the names and addresses of the factories which it works with.

Regularity of Monitoring

Even when factory monitoring visits are highly effective, long delays between those visits can allow labor abuses to go unchecked for sustained periods of time, particularly where there is no union in a factory and no independent grievance procedure.

S.H.A.P.E.

The regularity of the S.H.A.P.E assessments, which occur quarterly, is a positive feature of this program.

PricewaterhouseCoopers

PwC's auditors generally spend one day in each Nike factory each year. Twelve month gaps between monitoring visits might be justifiable if those visits were supplemented by accessible independent grievance procedures which workers could use to ensure that urgent issues are dealt with quickly. In the absence of such grievance procedures, annual visits leave serious factory issues unaddressed for far too long. As mentioned previously, the student who was allowed to observe PwC's monitoring of Nike contract factories in Bangladesh, Shubha Chakravarty, was told by workers in one factory that workers were hit and kicked by factory supervisors. She noted that:

In the previous audit of this factory (one year earlier), there had also been a finding of physical abuse of workers. The first year's finding was directed at upper-level Korean managers, while this year workers complained exclusively about lower-level Bangladeshi managers. As a result, this year's finding will not count as a repeat finding.
(Chakravarty, p. 10).

When workers are being hit and kicked by factory managers (irrespective of their level of seniority) a year is too long to wait for another monitoring visit.

Fair Labor Association

Perhaps the most significant problem with the FLA's monitoring scheme is the length of time between factory monitoring visits by FLA accredited monitors. Up to 15 percent of a participating company's suppliers may be "de minimis"—facilities that are exempt from monitoring altogether.⁴⁸ Only 30 percent of the remaining facilities must be externally monitored in the first three years, and after that only ten per cent of suppliers' facilities must be monitored each year. This can be increased to 15 percent of facilities per year or reduced to five percent by the agreement of two thirds of the NGO representatives and two thirds of the corporate representatives on the FLA board (FLA 1999). But it is unlikely that two thirds of the corporate representatives would vote to increase inspection requirements. Hence if a factory has recently successfully passed an FLA external monitoring audit, the owner can have reasonable confidence that the facility will not be subject to independent external monitoring again for something in the order of 10 years.

If there are particular issues at a factory, the FLA may direct that another monitoring visit takes place before 10 years pass, but this will count towards the company's 10 percent of facilities for that year (FLA 1999), making it even longer before other factories are monitored.

Nike and other participating companies also have some influence over which factories are likely to be monitored. They will send the FLA lists of factories that they believe should be given priority in terms of inspections by independent external moni-

⁴⁸ De Minimis facilities are defined as factories in which the participating company produces in for less than 6 months of a 24 month period or for which the participating company's production accounts for less than 10% of overall annual production (FLA 1999).

tors. The executive director of the FLA may ignore these lists, but subject to provisos regarding the proportion of factories on the company's lists which are likely to be at risk of non-compliance, there is a general presumption in favor of them (FLA 1999).

Global Alliance

As the Global Alliance is primarily a training and development program, its factory assessments will not be conducted on a regular basis. They are one-off programs to assist with the design of training and development activities. The exception to this is in Indonesia, where Nike has asked the Alliance to conduct another assessment within 12 months (Nike 2001e). The scope of this second assessment is not yet known.

Overall Assessment of Nike's Monitoring Program

It is instructive to contrast Nike's monitoring and factory assessment program with the Workers' Rights Consortium (WRC), a monitoring program Nike has strongly opposed. The WRC was established by student activists in cooperation with unionists and supportive academics in order to monitor factory conditions in the production of collegiate licensed apparel by Nike and other companies.

The WRC is fiercely independent of corporate influence, refusing to have any corporate representation on either its Advisory Council or its Governing Board. The Advisory Council is made up of academics, trade union leaders, and representatives of labor rights and religious groups from the US, Asia, Latin America and Africa. Under the WRC's program companies like Nike have no power to influence which monitors are selected to visit their factories (WRC 2000a).

Working with local unions and labor rights organizations to build relationships of trust with factory workers is a priority of the WRC program (WRC 2000a). The WRC plans to work with such groups to ensure that workers in factories covered by the WRC code receive appropriate education and training regarding their rights under the code. Rather than conducting regular monitoring visits, the WRC's primary focus is on working with local organizations to establish reliable and independent grievance procedures for workers and investigating any complaints workers make. An agency is to be formed which will in certain circumstances "coordinate proactive investigations with local, independent non-governmental organizations and human rights groups with experience in the region" (WRC 2000, p. 2). The nature and methodology of these investigations is in the process of being developed, but they must include both on-site inspections and off-site worker interviews and factory owners will not be warned in advance (WRC 2000, pp. 4-5).

The WRC is committed to "maximum" transparency. Companies will be required to release not only the addresses of each factory, contractor and sub-contractor but also all objective measures of working conditions covered by the code (WRC 2000, p. 4). Undertaking such programs on a limited budget will be a considerable challenge, but the WRC has begun building relationships with the key non-government organizations interested in labor rights in regions where it will be monitoring factories.

As discussed in section three of the first part of this report, Nike has been highly critical of the WRC. Nike's founder and director Phillip Knight cancelled an expected \$US30 million donation to the University of Oregon when he learned that the University had joined the WRC. In his statement on the issue he said that "...the university [has] inserted itself into the new global economy where I make my living. And inserted itself on the wrong side, fumbling a teachable moment" (Knight 2000).

In contrast to the WRC, Nike's various monitoring programs all fail two or more of the key tests of effective monitoring: independence, transparency, regularity and a relationship of trust with workers.

The quarterly program of S.A.F.E. (Safety, Health, Attitude, People, Environment) assessments, conducted by Nike staff, is the least independent. Where staff usually responsible for negotiating price, quality and deadlines for production are also given the responsibility of monitoring labor standards, there is a significant conflict of interest (Liubicic 1998). In any case, many of the key issues of concern to workers, including wages, working hours and whether they are allowed to form unions, are not even considered during the SHAPE assessments.

Nike's factory monitoring program involving PricewaterhouseCoopers also lacks independence. PwC is selected by Nike, reports to Nike and conducts a monitoring program designed by Nike. To the extent that independent observation of PwC's monitoring practice has been allowed, it indicates that PwC auditors fail to establish a relationship of trust with workers and the quality of their monitoring can be extremely poor, demonstrating a strong bias towards the interests of management at the expense of those of workers. PwC monitoring also fails the transparency standard.

While there are elements of the Fair Labor Association's (FLA) proposed monitoring program which represent important improvements on Nike's current very poor system, the FLA falls well short of what is needed. The Association's ability to ensure that workers' rights are respected will be significantly undermined both by the questionable independence of its external monitors and by the long delays between factory monitoring visits—which will on average occur in each factory only once every ten years.

Although spokespeople for the Global Alliance for Workers and Communities have been very clear that it is not a factory monitoring program, this has not stopped both Nike and the Alliance from using the Alliance's factory assessments as evidence that sweatshop allegations are outdated. The Alliance deliberately avoids investigating key human rights issues and its research methodology does not allow time for researchers to create a relationship of trust with workers. As such, both Nike and the Alliance should cease referring to these factory assessments as a measure of whether conditions in Nike contract factories are decent.

In short, whereas the Workers' Rights Consortium is independent, transparent and makes it a priority to build relationships of trust with workers, Nike's monitoring and factory assessment programs are not independent, lack full transparency and have so far made very little effort to win workers' trust so that they can speak honestly about factory conditions without fear of reprisal.

3. Decent Wages

Nike has rejected calls that it adopt a living wage standard, and instead insists that legal minimum wages are acceptable. Meanwhile Nike workers struggle to survive on wages which are barely adequate to cover their individual needs, let alone those of their children.

Nike is an extremely successful company. In the 2000 financial year the company's net income was \$579 million. It spends tens of millions of dollars on individual contracts with sport stars such as Tiger Woods and Michael Jordan.

Rights groups have argued that if any company can afford to ensure workers are paid enough to feed their children, Nike can. They have called on the company to ensure that full-time wages in its suppliers' factories are adequate to meet the basic needs (food, shelter, clothing, transport, basic education, basic health care) of a small family. This demand is in line with the Universal Declaration of Human Rights⁴⁹ which states that:

Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity... (Article 23 (3)).

Nike does not see it that way. The most it has been willing to commit to is ensuring that workers are paid the relevant legal minimum wage or the local industry standard, whichever is higher.⁵⁰

Nike's lax monitoring system means that at times wages fall below even this standard. The Kuk Dong factory in Atlixco in Southern Mexico is bound by Mexican law to pay sewers at least 46.30 pesos (\$US4.95) per day. Late in 1999 management at the Kuk Dong factory signed a contract with a counterfeit union saying that it need only pay 38 pesos (\$US4) per day (Justiniani, 2001). This agreement was in place when PricewaterhouseCoopers monitors audited the factory in March 2000, but they either failed to notice it or else took no action. The factory then received considerable media coverage in January 2001 when workers organized a demonstration to protest low wages and other factory issues. Following the demonstration a number of independent investigations were conducted which highlighted the illegally low nature of those wages (Justiniani 2001, WRC 2001). One of those studies was conducted by the Workers Rights Consortium (WRC), which reported that:

Many workers at Kukdong are not paid the minimum wage mandated by Mexican law for the occupation of seamstress. The Kukdong wages are grossly insufficient to meet the barest needs of a family of three. (The Kukdong General Manager conceded that it would be difficult even for a single person to live on the wages of a Kukdong worker.) A worker with one dependent would fall below the commonly recognized line of "extreme poverty". Kukdong wages compare unfavor-

⁴⁹ Refer to: www.un.org/Overview/rights.html

⁵⁰ This commitment is in the FLA code, which Nike has signed (FLA 1999).

ably to wages earned by similarly situated workers in the apparel and textile industry in this region of Mexico (WRC 2001).

Nike responded to this report by questioning the WRC's independence and by arranging another audit by the US monitoring agency Verite. Before Verite had visited the factory, Nike put out a press release suggesting that Kukdong workers earned "more than the government wage for the region" and as evidence included copies of two Kuk Dong pay stubs (Nike Inc. 2001b).

The Verite audit confirmed that in Mexico garment workers should be paid a minimum of 46.30 pesos (US\$4.95) per day and reported that approximately one-third of the sewers on factory lists provided to Verite by the Kuk Dong company are paid a daily base wage below that legal minimum (Verite 2001). Nike responded to Verite's report by putting together a "remediation plan" for the factory (Nike 2001). Although Nike had promised to take Verite's findings "very seriously" (Nike 2001c), the remediation plan ignored Verite's finding that the wages are illegally low. It did specify that overtime work should be paid according to Mexican labor law, but it did not indicate that normal full-time work should be paid according to the legal minimum for sewers. Instead it states that the factory should "establish regular and overtime wages and communicate to workers at time of hire in accordance with the collective bargaining agreement currently in place" (Nike 2001). This is of course the agreement which Kuk Dong signed with the counterfeit union in December 1999 which allows the factory to pay the illegally low rate of 38 pesos (\$US4) per day.⁵¹ It is disturbing that even after considerable public scrutiny of conditions at Kuk Dong Nike is still unwilling to enforce its weak wage standard in the factory.

Kuk Dong is not unique among Nike suppliers in paying illegally low wages. On November 22, 2000, Rainy Hutabarat of the Urban Community Mission in Jakarta, Indonesia testified to members of the European Parliament that PT Tuntex, which supplied both Nike and Adidas, was paying illegally low wage rates for overtime hours (Osborn 2000). When the Urban Community Mission conducted its first round of research in 1999, full time wages at Tuntex were below the legal minimum. When this finding was publicized, the full time wages were raised to the level of the legal minimum, but as of September 2000 the factory was still paying illegally low overtime rates.

Even when wages in Nike factories do meet the local legal minimum, it does not follow that they are adequate to meet workers' basic needs. Industrializing countries tend to keep legal minimum wages as low as possible in order to attract foreign investment. Companies like Nike have reinforced this practice by regularly moving production to escape high wages and to find sites where wage costs are low and supply is reliable⁵² (Connor

⁵¹ In preparation for this report the author wrote to Nike asking which minimum wage Nike is requiring of Kuk Dong—the minimum specified in the collective agreement, or the legal minimum documented by Verite in their report? Nike declined to respond.

⁵² Nike has occasionally countered this argument by pointing out that it still has shoe factories in relatively high wage countries like Korea and Taiwan. The company has declined to indicate what proportion of its shoes are produced in these countries, but the proportion is likely to be small. Recent research by Junya Yimprasert indicates that sportshoe factories producing for Nike and other companies in Taiwan extensively employ migrant workers from countries like Thailand and pay them very low wages (Yimprasert 2000a).

and Atkinson 1996). Nike has not been above using veiled threats to leave in order to put pressure on governments to keep minimum wages low. In April 1997 the Associated Press quoted Nike spokesperson Jim Small responding to an increase in the Indonesian minimum wage by warning that Indonesia may be “pricing itself out of the market”.

Keeping minimum wages as low as possible often means too low to meet the basic needs of a single worker. In Indonesia the government specifically acknowledges this by regularly releasing estimates of what salary would be needed to meet the minimum physical needs of a single adult in each region. Labor rights groups argue that these figures significantly underestimate a minimum needs wage, but even so the governments’ minimum needs estimate is frequently significantly higher than its own legal minimum wages, making it clear that even government officials recognize that workers cannot meet their basic needs on the minimum wage.⁵³

Research in other countries confirms the inadequacy of legal minimum wages. Nike workers at the Lian Thai factory in Bangkok in Thailand only receive the minimum wage of 162 Baht for working an 8 hour day and say they need about 200 Baht just to cover the basics needs of one person (Bissell et. al. 2000, app. 3). Candland and Yimprasert report that factories owned by Nike supplier Bangkok Rubber located in Ayuttaya Province, just outside of Bangkok, need only pay a regional minimum wage of 130 baht (US\$ 3.50) per day. This is significantly lower than the Bangkok minimum even though living costs are similar in the two areas. Although living costs in Thailand have risen dramatically in the last several years, legal minimum wage levels have remained static (Yimprasert and Candland 2000).

Research conducted by the Interfaith Center for Corporate Responsibility in 1998 indicated that wages in Nike shoe factories in Vietnam were barely adequate to provide a nutritious diet. According to that research, a worker who bought food from the cheapest local market would still have to work for more than a full day to earn enough to buy one kilogram of chicken, and for half a day to buy a dozen eggs (ICCR 1998).

What this means in human terms is that Nike workers must work excessive overtime to meet their own needs and have any chance of saving money (Yimprasert and Candland 2000). Even then their living conditions are often extremely difficult. BBC journalists visited workers from Nike supplier June Textiles in October 2000 and reported that workers “can only afford to live four to a room in rat infested dormitories without running water” (BBC 2000). They interviewed a 12 year old worker, Sun Thyda, who was trying to save money to send back to her parents but was unable to; after rent and food there was nothing left (BBC 2000).

In August 2000, former US professional soccer player Jim Keady and fellow US activist Leslie Kretzu vividly illustrated how difficult it is to live on Nike wages. The pair traveled to Tangerang in Indonesia and spent a month trying to live on the full time wages paid to Nike workers in the area. In the process Keady lost 25 pounds and the experience left them both hungry and exhausted. Keady and Kretzu also docu-

⁵³ On 22 February 2000 the Jakarta Post noted that the legal minimum wage in Jakarta was only 81 percent of the government’s estimate of what is needed to meet the subsistence needs of one person. On 11 February 2000 the same paper had cited the Minister of Manpower, Bomer Pasaribu, as saying that in some provinces the legal minimum wage only covers two-thirds of the basic needs of a single worker.

mented prices of basic items in the cheapest local market and compared them with the wages Nike workers were receiving. They documented that a kilogram of sugar costs the equivalent of a third of a worker's daily basic wage and one (uncooked) chicken costs the equivalent of a full day's basic wage.⁵⁴

A number of Nike factories have also adopted a piece-work system, so that workers do not receive a full day's pay unless they meet their work quota, and the quotas are often extremely high. This process has been facilitated by Nike's own policy of setting the number of Standard Allotted Minutes (SAMs) it will allow for sewing each part of an item of apparel. Charles Kernaghan of the National Labor Committee found a copy of Nike's Standard Allotted Minutes in a garbage dump outside a Nike factory in the Dominican Republic and released them to the press in April 2001. The full allocation for sewing a child's sweatshirt was 6.6 minutes. The time allowed to stitch both shoulder seams was 30.35 seconds. Kernaghan calculated that the labor cost of the shirts, which sell in the US for \$22.99, was 11 cents (Skenazy 2001).

The pressure of trying to meet quotas means that workers must often work more than a standard day just to receive standard pay. This is from a November 1999 report by Piya Pangsapa and Karuna Durian on a confidential interview with a worker from Nike supplier Par Monthinee in Korat in northern Thailand:

A piece-work system has come to replace the former system of overtime. It has made the workload heavier and more stressful since fewer employees are now expected to carry the same workload. This kind of subcontracting system forces workers to work without taking bathroom breaks, snack breaks, breaks to drink water and so on which in turn leads to many health problems for the workers such as bladder and kidney problems and urinary tract infection. Overall physical exhaustion from this system of production has also caused some workers to actually cough up or vomit blood while they work and some suffer from repetitive strain injuries.

(Bissell 2000, App. 1)

In September 2000 a worker from Nike supplier PT Nikomas Gemilang in Indonesia, Julianto,⁵⁵ reported that in his factory:

Workers are under constant pressure to reach quotas—which are much too high. If they don't reach the quota they have to stay behind until they finish and they receive no extra pay. Workers are often punished for failing to reach quotas by being made to clean the factory and the toilets or are humiliated by having to stand in front of other workers while they work (Julianto 2000).

⁵⁴ Refer to: www.nikewages.org/

⁵⁵ Like many Indonesian Julianto only has one name.

Those Nike workers who have children find it particularly difficult to cope financially. In October 1998 the National Labor Committee arranged for a visit to the US by a worker who had just been fired from the Formosa factory in El Salvador. Julia Pleites reported that when she was working in the factory she could afford to buy milk for her daughter only once every month, even though she was working 12 hours a day and living in one tiny room with her mother and her daughter.⁵⁶

The recent Global Alliance for Workers and Communities report on Nike factories in Indonesia found that many Nike workers have to leave their children with relatives in their villages (often hundreds of kilometers from the factory) because they cannot afford for one of the parents to stay home and look after them and the factory does not provide childcare (GACW 2001). This means that those workers only get to see their children a couple of times a year, assuming that the factory allows them to take their annual leave. Nike's response to workers' suggestions that the factory should provide child care is to leave the decision up to the individual factory. To the best of the author's knowledge not one of Nike's Indonesian suppliers has decided to provide it.

It may be that inability to access child care has led to even more dire consequences. The most heart-rending story in the Alliance's Indonesia report is that of the Nike worker who killed her newborn baby and left it in a dumpster outside the factory. In focus groups workers also mentioned two other incidents of newborn babies being found dead in dormitory bathrooms with the cause of death unknown. The report notes that lack of economic means to bring up a child is a common cause of infanticide in Indonesia. It is unsurprising that "over half" of the workers who participated in focus groups as part of the Global Alliance study said their wages are "low and not sufficient" (GACW 2001). Even though Nike itself paid for this study, the results did not persuade the company to adopt a living wage standard.

Nike's Justifications For Its Wage Policy

Nike has put forward a number of arguments defending its decision to reject a living wage standard.

There is no widely accepted definition of a living wage

There is no common, agreed-upon definition of the living wage. Definitions range from complex mathematical formulas to vague philosophical notions. Using a whole range of studies and inputs, Nike will endeavor to ensure that factory workers making Nike products earn a fair compensation package, mindful always of the need to balance creation of jobs and fair compensation.

From Nike's website⁵⁷

⁵⁶ Refer to: www.nlcnet.org/nike/julia.htm

⁵⁷ Refer to: nikebiz.com/labor/faq.shtml

A wide range of formulas exist for calculating a living wage. Nike's critics are not tied to any particular formula, but they are committed to a process that involves consultation with Nike workers themselves, local labor rights organizations and academics with appropriate expertise. This consultation process would determine which is the most appropriate formula for calculating a living wage across the various regions where Nike products are made. Nike should commit in principle to a living wage so that this process of consultation can begin.

If Nike is indeed committed to ensuring that workers receive a "fair compensation package," then as a first step the company should publicly reveal what research process it has used to determine what constitutes a fair wage in each region where its products are produced. It should then require its suppliers to meet this fair wage standard rather than the current manifestly inadequate legal minimum wage standard. This would be a positive way to initiate a discussion with workers regarding whether Nike's conception of a "fair wage" is adequate to enable them to meet their families' basic needs.

Nike should not use the variety of possible formulas for calculating a living wage as a justification for maintaining wage standards that are manifestly inadequate.

Raising wages will hurt workers

Why couldn't Nike pay 22 cents for that sweatshirt and double its workers' wages? [Nike spokesperson Vada] Manager contends this would lead to disaster—for the workers! "If you exponentially increase labor costs, that impacts on the cost of production, which then means the retail cost may increase, which then reduces the amount of [items] sold"—and leads to worker layoffs (Skenazy 2001).

If raising workers' wages to a living wage level resulted in substantial increases in production costs and if those increases lead to increased retail costs (rather than being absorbed by Nike as reduced profits or reduced expenditure on advertising and promotion) then it is conceivable that the increased price may lead to less sales and as a result some workers may lose their jobs.

But would increasing workers' wages lead to a big jump in production costs? According to figures in Nike's website⁵⁸ the average breakdown for a Nike product that sells for \$65 looks roughly like this:

Consumer pays: \$65

Retailer pays: \$32.50 to Nike, and then doubles the price for retail.

Nike pays: \$16.25 and then doubles the price to retailers for shipping, insurance, duties, R&D, marketing, sales, administration and profits.

The \$16.25 price paid the factory includes:

Materials: \$10.75

Labor: \$2.43

Overhead + Depreciation: \$2.10

Factory Profit: \$0.97

⁵⁸ Refer to: nikebiz.com/labor/faq.shtml

Nike workers have argued that wages paid in Nike factories can be as low as half what they would need to meet the basic needs of a small family (Julianto 2000). So if all labor costs in the factory were doubled and those costs were passed on to Nike, then Nike would pay an extra \$2.43 for the product. There is no obvious reason why Nike need pass any more than this on to its retailers—paying workers better should not increase costs for shipping, insurance and marketing. So if the retailer paid Nike \$35 for the shoe and then doubled the price for retail, the \$65 shoe would become a \$70 shoe. It may well be that consumers would be willing to pay the extra \$5 for the assurance that workers who made the shoe were not being exploited. Even discounting that possibility, the number of Nike workers who lose their jobs because of reduced sales may well be offset by the number of small traders and tradespeople who gain jobs in areas where Nike's products are produced: On a living wage the Nike workers who keep their jobs would be able to afford to buy nutritious food for their families and purchase the necessary items to clothe and house them adequately.

Cost increases are, however, likely to be substantially less than this. Nike's figure for labor costs includes all people employed at a factory, including often-substantial wages paid to supervisors and expatriate managers. As noted above in Nike's own documentation on the "Standard Allotted Minutes," the amount of time workers are expected to spend on the production of each item of clothing reveals the production line labor cost for each item. Using this documentation, Charles Kernaghan of the National Labor Committee has calculated that for a sweatshirt that sells for \$23 the cost of production line labor is only 11 cents (Skenazy 2001). Doubling those labor costs to 22 cents could increase the price of the shirt to \$23.22, hardly enough to drive consumers away, particularly when it has the added attraction of being made by a worker paid a living wage.

Nike workers are paid wages above the legal minimum

Nike sets the cash wage for entry level workers using the standards set by local governments or trade unions in each country. In most cases, though, Nike's entry level contract workers make at least 25 percent more in cash and allowances than the local governments in each region require.

*From Nike's web site*⁵⁹

Nike makes this claim, but it has failed to release comprehensive factory data to back it up.⁶⁰ Independent research discussed above indicates that in many Nike factories workers are only paid the relevant legal minimum—and even when they are paid above that level their wages are still barely enough to meet the minimum physical needs of a single

⁵⁹ Refer to: nikebiz.com/labor/faq.shtml

⁶⁰ The Global Alliance has released some factory wage data for the Nike factories it works with, but it records "unverified workers' perceptions" of basic monthly salaries, rather than properly checked wage figures (GACW 2001). The Alliance also works in a relatively small number of Nike factories which have agreed to part of its program, so its wage figures may not be typical of Nike factories as a whole

adult and significantly below what would be needed to meet the minimum needs of a small family.

Recent wage rises for Nike workers in Indonesia have been very significant

Nike has substantially improved the work and home life of its workers by... raising wages in Indonesia over 70% for footwear workers during the last 20 months

Nike Press Release, April 2000⁶¹

Nike's frequent use of this statistic is deliberately misleading. Over the course of the relevant period (during the Asian Economic Crisis) inflation in Indonesia was substantially higher than 70 percent, and the real value of Nike workers' wages actually declined. Research by Dr Peter Hancock of the Center for Development Studies at Edith Cowan University indicates that in Banjaran in West Java (an area where Nike factories are located) the Asian Crisis caused prices of basic items such as food, cooking oil and transport to increase by 100–200 percent between 1996 and 1999. During that period the price of rice in the largest open market near Banjaran more than doubled from 1,008 Rp per kilo to 2,320 Rp per kilo (cited in Bissell et. al. 2000). The crash in the value of the Indonesian rupiah during the same period also meant that in US dollar terms Indonesian wage costs fell dramatically and so the cost to Nike of the wage increases was negligible.

Nike workers' wages are above national GDP per capita

In countries where the per-capita income is only a few hundred dollars each year, a salary of \$50–60 per month is actually a good income. One must always remember to judge salary and income status by the local environment. If you don't judge American or French living standards in terms of rupiah or dong, it also makes little sense to try to measure Indonesian or Vietnamese standards in dollars or francs.

From Nike's website⁶²

Again, it is highly misleading to compare Nike workers' wages in Indonesia or Vietnam with the Gross Domestic Product per capita in those countries. Most of the production and consumption of the great majority of Vietnamese and Indonesian citizens still occurs outside the formal economy, either as subsistence farming or as part of the informal economy, and hence that production and consumption is not calculated as part of the Gross Domestic Product. Nike factories are commonly situated in overcrowded industrial areas close to industrial transport facilities and hence living costs

⁶¹ Refer to: nikebiz.com/media/n_existing.shtml

⁶² Refer to: nikebiz.com/labor/faq.shtml

are dramatically higher than they are for the bulk of the population who still live in rural areas. A subsistence farmer living on land owned by her family or community may make almost no income in the formal economy but still have a higher quality of life than a Nike worker living in a shared rented room in a Jakarta slum and paying city prices for basic food items.

While it is true that jobs in factories producing for Nike and other big corporations are sought after in many countries, that is not because those factories pay good wages. It is because poverty in those countries is so extreme that a significant sector of the population will take whatever work they can get, even it means having to work 60–70 hours a week in order to meet their basic needs and save very small amounts of money.

Nike workers in Vietnam are paid more than doctors and teachers

Nike's presence in Vietnam is in many respects critical to the country's economy. The company is Vietnam's largest private employer, and factory jobs pay about twice that of teachers and considerably more than that of a young doctor.

*Los Angeles Times, April 18, 1999, p. C1*⁶³

Nike has promoted this statistic to the media on a number of occasions. The company claims this information is based on a comparative wage study it has conducted in Vietnam, but has declined to publicly release that study.

The author suspects that to make this comparison Nike has included the income Nike workers gain by working excessive overtime and has compared this with the base wage paid to doctors and teachers employed by the Vietnamese government. It is true that Vietnam is not a full market economy and that standard wages paid to doctors and teachers employed by the government are extremely low. Almost invariably government doctors and teachers supplement their income by taking on private students and patients, and by doing so they are able to earn wages substantially higher than those paid in Nike factories.⁶⁴

Workers receive other benefits which supplement wages

In addition to salary and meal and transportation allowances, most footwear workers also receive overtime pay, production, attendance and holiday bonuses, non-cash education subsidies and health care services.

*Nike press release, 14 March 2000*⁶⁵

In some Nike contract factories workers are provided with subsidized accommoda-

⁶³ Cited in Nike's website: nikebiz.com/labor/prlabor.shtml

⁶⁴ Source for this information is Thuyen Nguyen, coordinator of Vietnam Labor Watch.

⁶⁵ Refer to: nikebiz.com/media/n_indo.shtml

tion, transport and food. This of course should be factored into any calculation of whether a wage package is adequate, but on its own it should not be presented as evidence that compensation is sufficient. Nike's critics have asked the company to detail what benefits are available in each facility and how much they cost the factory, so that their benefit to workers can be properly assessed (see for example Connor and Atkinson 1996). Nike has declined to provide this information.

Independent research indicates that the benefits provided by Nike factories are usually of very poor quality. At the Kuk Dong factory the offer of free breakfasts and lunches is made as a way of enticing workers to the factory, to compensate for the very low wage. Workers from the factory told researchers from the Workers Rights Consortium that in light of their severe poverty they regarded the promise of free meals as a significant part of employment (WRC 2001). The very inferior nature of food provided was a major factor in motivating workers to organize a strike at the factory in January 2001. The WRC reported that:

On more than one occasion, workers developed rashes, fevers, and stomach disorders after eating rancid meat or other unhealthful food in the factory cafeteria (WRC 2001).

In those factories where accommodation is provided it also leaves much to be desired. According to Julianto, a worker from Nike contract factory Nikomas Gemilang in Indonesia:

Nike says accommodation is provided for workers. What they don't say is that workers are crammed 12 to a small room and sleep on wooden floors without a pillow or even a mat to sleep on (Julianto 2000)

Accommodation provided by Nike factories generally involves workers living 10 to 14 to a room in small dormitories with no privacy, no personal space, no capacity to conduct private relationships and with their "home life" extensively regulated by the factory. Workers should certainly be free to choose to live in this manner. But Global Exchange believes Nike workers' wages should at least be high enough to give them the option, should they want it, of renting a small basic room of their own with some privacy and some control over their personal life.

Attendance bonuses are generally very low—in the order of \$US1 per month in Indonesian factories—and operate as a further form of control over workers' lives. Under Indonesian law female workers are eligible for two days unpaid menstrual leave each month. Nike workers generally cannot afford medication to help them get through a bad menstrual period, and the strenuous nature of factory work means that they will often need to take this leave, particularly if (as is commonly the case) it is very difficult to get permission for medical leave in their factory. In a number of Nike contract factories in Indonesia, workers who take this leave lose their attendance bonus for that month (Connor 2000), so the attendance bonus operates as a disincentive to take leave to which they are legally entitled.

The other benefits listed by Nike are also less positive than they sound. Production bonuses, where they exist, operate as a further pressure to work harder and risk

injury. As discussed in the first section of this report, where educational opportunities are made available most workers cannot afford to miss overtime income by taking them. Factory medical clinics often operate as a further form of control over workers, with factory doctors often putting the factory's interests over that of the worker and seeking to dissuade workers from taking sick leave (Connor 2000). In Indonesia and other countries holiday bonuses are required under labor regulations and do not represent an additional benefit over and above what factories are legally obliged to pay. While workers can raise their income significantly by working overtime, Nike's critics do not believe that overtime wages should be included in the assessment of whether wages are adequate as they do not believe that Nike workers should have to work 60–70 hours per week in order to meet their basic needs.

Payment of a living wage would be far superior to these various “benefits” as it would give workers the freedom to make their own meals, choose to live in their own room, choose to see a doctor who is independent from factory control, choose which basic educational opportunities they would like to pursue and take leave to which they are legally entitled.

Legal minimum wages are adequate for entry level jobs

Steve Cannane:

One of the things that comes out of the [Global Alliance] report is that the workers actually want more money...their pay still isn't sufficient to meet the growing cost of living.

Maria Eitel:

Yeah, what's important to analyze is what do we mean in terms of “meet the needs”, and these are entry level jobs, much like entry level jobs in other economies, that are wages that support an individual, they're not structured to be wages that support an extended family. So it's depends on how you look at it and how you analyze that wage...

Nike's Maria Eitel interviewed on ABC radio 2jjj⁶⁶

There is nothing intrinsic about factory work that means it should not be performed by adults with some experience in the labor market and that they shouldn't be paid enough to provide for a small family. In the past, when much more clothing and footwear production occurred in unionized factories in industrialized countries, workers were commonly paid enough to meet the basic needs of their children. Given that the relative cost of living is much lower in countries where the bulk of Nike's production now takes place, it is hard to understand why Nike cannot now afford to ensure that a living wage is paid in those factories.

⁶⁶ Refer to: www.abc.net.au/triplej/morning/features/s251857.htm

Experienced Nike workers are paid substantially more than entry level workers

In the countries where we have studied wage issues in detail, the typical profile is as follows: approximately 35% of workers are minimum wage earners, usually in their first year of employment. The remaining 65% of the workforce earns substantially more than minimum wage. With other bonus incentives and related cash allowances added on, the typical minimum wage earner is actually taking home, in cash between 15% and 40% more than the minimum wage, before overtime is calculated.

From Nike's website⁶⁷

Again, Nike makes this claim without providing evidence for it. Independent research indicates that lack of seniority pay is a major grievance for Nike workers. In December 1999 the Urban Community Mission released a report based on a survey of 4,000 workers from 13 Nike contract factories in Indonesia. The survey indicated that the basic monthly wage of the great majority (84 percent) of the shoe workers interviewed was concentrated in a narrow band between 251.000 (\$US25) and 300.000 rupiah (\$US30) per month, even though the length of service of workers who earned wages within that band varied from one month to fourteen years (UCM and PFC 1999)

Research shows that Nike wages are adequate

Continued research into the well-being of the people making our products reveals that minimum wage earners are usually able to meet their basic needs as well as to assist in supporting other family members or building modest savings.

From Nike's website⁶⁸

Again, Nike makes this claim but provides no evidence to support it. If anything, what little information Nike has recently released on the issue suggests the opposite—that workers trying to survive on a minimum wage alone (i.e. without overtime) are unable to support anyone or save any money. The recent Global Alliance report on Indonesia reported that “more than half” of the focus group participants indicated that their before-overtime wage was too low to meet their living costs (GAWC 2001).

Even with overtime pay included, most workers struggle to have any discretionary income. The eleven PricewaterhouseCoopers reports that Nike has released indicate that PwC auditors ask workers what percentage of their salary (including overtime pay) they are able to save or spend supporting others.⁶⁹ For the eight factory reports from Central and South America, the percentages of workers interviewed who

⁶⁷ Refer to: nikebiz.com/labor/faq.shtml

⁶⁸ Refer nikebiz.com/labor/faq.shtml

⁶⁹ These reports were released as part of Nike's Transparency 101 program and can be found on Nike's website: www.nikebiz.com

spend all of their income on their own needs and cannot afford to use any of it either as savings or to support others are: 66%, 90%, 56%, 79%, not listed, 90%, 52% and 48%. In the seven factories reporting, an average of 68 percent of the workers—more than two-thirds of them—said they were unable to save or support others. If Nike genuinely believes that these wages are adequate, then it is not reading its own research.

4. Working Hours

As with wages, Nike's code of conduct has a weak standard in terms of working hours. Nike requires that compulsory work hours be no more than 60 per week, or less if local law requires it.⁷⁰

Although wages are so low that Nike workers will frequently choose to work more than 60 hours just to make ends meet, factory work is arduous and Global Exchange and other rights groups do not believe that factory owners should have the right to impose such a long working week. Workers should have the flexibility to refuse overtime if other issues in their lives mean that they need to do so.

One of the questions in the 1999 Urban Community Mission study asked Indonesian Nike workers what their major complaint was with conditions in their factory. Being compelled to work excessive overtime was overwhelmingly the issue which the largest number of Nike workers identified—1,555 of the 4,000 workers interviewed gave it as their most important complaint (UCM and PFC 1999).

Independent research into conditions in Nike factories has found considerable evidence of workers being required to work more than the 60-hour limit. In March 2000 the author interviewed workers from three Nike contract factories in Indonesia, PT Nikomas Gemilang, PT ADIS⁷¹ and a third factory which workers asked not be named for fear of reprisals. At the Nikomas Gemilang factory workers were frequently being required to work more than 70 hours per week. In some sections they were working from 7:00 a.m. until 10:00 p.m. Monday to Friday with only two breaks and then working half days on Saturdays and also on Sundays. Workers who refused overtime were humiliated in front of other workers:

Nikomas Worker (through interpreter)—Workers [are] often required to work more than 70 hours per week ... If female workers refuse they are generally shouted at or scolded. In some cases they have been forced to stand in front of all the other workers for a day to humiliate them, or can be forced to wash the toilets (Connor 2000).

Supervisors were also punished by being made to stand all day in front of workers if their work group did not reach its targets.

Workers from the two other Indonesian Nike factories investigated in March 2000 reported that if they refuse overtime, they receive a warning letter, and if they receive

⁷⁰ This commitment is part of the Fair Labor Association Code which Nike has signed (FLA 1999).

⁷¹ Now known as PT ADF.

three warning letters then they are dismissed. This system of three warning letters and then dismissal was also operating in the June Textiles factory in Cambodia when it was investigated by BBC journalists in mid-2000. The journalists spoke to workers who were being required to work from 6:15 a.m. in the morning until 10pm at night and were not allowed to take Sundays off (BBC 2000).

In October 1998 a recently fired Nike worker from the Formosa factory in El Salvador, Julia Pleites, reported that workers at Formosa were required to work from 7 a.m. in the morning until 6:30 p.m. or 7 p.m. at night almost every day and were denied the entire day's pay if they refused to work overtime (NLC 1998)

Leave

In addition to being forced to work overtime, Nike workers frequently report that their annual leave is refused, reduced or replaced with cash without the worker having any choice in the matter. In all three Indonesian Nike contract factories investigated by the author in March 2000, workers were allowed to take Moslem religious holidays but it was very difficult for them to take any other annual leave, even though they were theoretically entitled to 12 days annual leave each year. Line supervisors put a great deal of pressure on workers not to take leave on days other than religious holidays. This is because supervisors are required to meet particular work targets and no allowances are made if one of their workers takes leave (Connor 2000). In the recently released Global Alliance study on Indonesia, Nike workers reported similar issues in seven of the nine factories investigated (GAWC 2001, p. 25). There have also been reports of Nike contract factories making it difficult for workers to take maternity leave and sick leave (See WRC 2001, Yimprasert and Candland 2000).

In short, Nike's monitoring system is failing to discover widespread flouting of its 60-hour limit on compulsory working hours. Until this monitoring system improves and wages are raised to a decent level, workers in many Nike factories will continue to be virtual slaves with no time to do anything but factory work.

5. Health and Safety

Health and Safety is one of the very few areas where independent researchers have found any significant improvements in Nike factory conditions. The company has made important progress in reducing the use of toxic chemicals in sportshoe production and has participated in some useful training programs.

Yimprasert and Candland's report on sportswear factories in Thailand producing for Nike, Reebok and Adidas includes the following passage:

One place where corporate codes of conduct have had a positive impact is in the area of occupation health and safety. The transnational corporations are particularly serious about fire safety. With every visit human rights coordinators must check fire exit and extinguishers (Yimprasert and Candland 2000).

As noted earlier, when Professor O'Rourke and Garret Brown were allowed to visit the Tae Kwang Vina factory in Vietnam they noted important health and safety improvements, although exposure to dangerous chemicals was still illegally high and excessive noise and heat, poor ergonomics and misuse of protective equipment continued to be issues at the factory (O'Rourke and Brown 1999).

Certainly that information which Nike has released regarding the PwC monitoring visits and the SHAPE assessments conducted by Nike staff suggest that health and safety is by far the biggest priority of these monitoring programs.

Despite this focus, Nike's failure to establish a transparent and rigorous monitoring system involving unannounced visits by health and safety experts means that various serious safety issues continue to go unaddressed. On those few occasions when independent experts have been allowed access to Nike factories, they have always found evidence of serious hazards. As noted earlier in this report (in the section analyzing Nike's promise to improve factory air quality) examples of this include Professor O'Rourke's assessment of conditions in a Nike contract garment factory just outside of Jakarta in Indonesia on 1 July 2000 (O'Rourke 2000) and Verite's assessment of health and safety conditions at the Kuk Dong factory in Mexico in 2001 (Verite 2001).

Yimprasert and Candland found similar issues with inadequate safety equipment and exposure to dangerous chemicals in the Thai sportswear factories they investigated. They concluded:

Many manufacturers still seem to think that it is acceptable for workers in stitching lines to have their hands cut by sewing needles, for workers in the pressing line to be struck by heavy machines, and workers in assembly lines to have solvent spit into their eyes. Every day, workers complain of rashes, headaches, stomachaches, and nausea. Medical check-ups attract queues of hundreds of workers. Serious accidents are also common. Most management turns a blind eye as they do with many other such occupational health and safety issues (Yimprasert and Candland 2000).

When Julianto,⁷² a recently fired worker from the Nikomas Gemilang factory in Indonesia, visited Australia in September 2000 he reported that serious accidents among the factory's 23,000 employees were very common. Almost every week at least one worker loses a part of his or her finger in the cutting machines or the hot press (Julianto 2000).

Factory Doctors Who Try to Persuade You to Keep Working When You Are Sick

Nike has frequently argued that access to free health care is one of the positive aspects of working in a Nike contract factory. Nike's critics argue that, in fact, where factory clinics are in place, one of their primary functions is to reinforce factory control over

⁷² Like many Indonesians he only has one name.

workers by preventing them from taking sick leave. Even the recent Nike-funded report by the Global Alliance on Nike contract factories in Indonesia recorded that between 60 and 90 percent of focus group respondents said it was very difficult to obtain sick leave or access to medical care and that often a worker must collapse or be severely ill before they are allowed such leave (GAWC 2001, p. 43). More than half of the workers in those groups reported that the factory clinics “stock only the cheapest generic medicines and tend to distribute the same drug regardless of the illness” (GAWC 2001, p. 44).

A worker from the Kuk Dong factory described her attitude to the factory clinic in a recent interview:

*My feet are getting varicose, and I have a strong pain in my hips. When I felt sick, I used to go to see the nurse, but now I don't. There is another nurse now, and I saw the way she treated a co-worker who was very sick. My supervisor asked me: 'Bring Nancy to the nursery, because she feels terrible.' So I brought her, and the nurse didn't believe she was sick. She (the nurse) told her: 'You are always sick. Am I going to believe it?' So the nurse didn't help her, and my co-worker had a fever for three days
(quoted in *Behind the Label 2001*).*

When the author interviewed workers from the PT Nikomas Gemilang and PT ADIS factories in March 2000 they described how management at both factories were discouraging workers from taking menstrual leave, which they are legally entitled to under Indonesian law. In both factories workers were being required to subject themselves to humiliating physical examinations in the factory clinic in order to prove they were menstruating before the factory would allow them to take this leave. This is from the audio tape of an interview with a female worker from the PT Nikomas Gemilang factory:

Tim Connor: What happens if workers try to take menstruation leave?

Worker (through interpreter): Intimidation. The workers can't just leave like that, they have to go to the clinic to get proof. The clinic is already in Nikomas. If they don't prove they can't take.

Connor: So it's quite a humiliating process?

Worker (through interpreter): Yes.

Connor: If they do prove it can they take the leave?

Worker (through interpreter): Yes. The workers have to take off their pants.

Connor: Are they male or female doctors?

Worker (through interpreter): Some women, some men.

The issue of menstrual leave in its Indonesian supplier factories was first raised with Nike by the Interfaith Center for Corporate Responsibility in March 1998 (ICCR 1998, pp. 9, 22). Nike had not addressed the issue by March 2000, and the recent report by the Global Alliance for Workers and Communities indicated that it is yet to bring this practice to an end (Nike 2001e)

Psychological Stress from Pressured Workplaces Characterized by Harassment and Intimidation

Another significant health and safety issue that workers face is the considerable stress they suffer from spending large amounts of time in high pressure and frequently abusive work environments.

The Urban Community Mission survey of 4,000 Nike Indonesian workers in 1999 confirmed that this was a major issue when 57 percent of Nike sportshoe workers and 59 percent of Nike clothing workers reported that they had seen workers being shouted at or subject to cruel treatment by their supervisors. The punishments include wage deductions, having their ears pulled, being pinched or slapped on the buttock, being forced to run around the factory or having to stand for hours in factory yards (being “dried in the sun”). The verbal abuse included the Indonesian equivalent of phrases like “Fuck You!” “You Whore!,” and “You Dog!” (UCM and PFC 1999).

When the UCM survey was released Nike tried to discredit it rather than address the issues it raised. But two years later a Nike funded study by the Global Alliance for Workers and Communities came up with very similar findings. That report indicated that 57 percent of the Indonesian Nike workers interviewed had seen fellow workers being subject to verbal abuse by their supervisors and 30.2 percent of workers had experienced it directly. In addition, 25.7 percent of workers had observed other workers receiving inappropriate sexual comments and 15.8 percent had observed inappropriate sexual touching. 13.7 percent had seen other workers being physically abused by their supervisors. Two workers in each of two different factories reported that workers’ job security or chance of promotion can be related to sexual favors (GAWC 2001).

During the author’s March 2000 field research in Indonesia workers from PT Nikomas Gemilang indicated that every day workers at the factory, particularly the female workers, were shouted at by supervisors and were called “dog”, “monkey” or “pig”. This verbal abuse was particularly extreme when high quota targets had to be met and there was pressure on supervisors to make workers produce quickly. Verbal abuse was much less common in the other two factories investigated.

According to a number of different sources, verbal abuse is also common in the Formosa factory that was until recently a Nike supplier in El Salvador. According to Julia Pleites who worked in the factory:

Everything is by piece rate. The supervisors scream at you to go faster. If they think you are working too slowly, they come up to you and smash your table with their hand, yelling at you to work faster (NLC 1998).

The independent monitoring organization Verite conducted an audit of the Formosa factory in El Salvador which confirmed that workers were being taken aside and shouted at by supervisors if they worked too slowly (Verite 1999).

In response to the controversy over conditions at the Kuk Dong factory in 2001, Nike paid Verite to investigate conditions at that factory. Twenty one of the 29 workers interviewed “reported incidents of abuse and harassment at the factory.” Examples of the harassment included a “sewing supervisor [who] slaps the female workers and pulls their hair” (Verite 2001).

As mentioned previously, the student Nike sent to observe its monitoring in Indonesia and Bangladesh, Shubha Chakravarty, reported that in one Bangladeshi factory managers often screamed at workers who made mistakes or arrived late at work and that managers hit and kicked workers (Chakravarty 2000, p. 10).

One of the young Nike workers from the June Textiles Factory interviewed by the BBC in 2000 reported that when she refused to do overtime, her supervisor swore at her and pulled her hair (BBC 2000).

These and numerous other independent reports suggest that Nike contract factories are not healthy work environments. Unless and until Nike adopts a rigorous and effective monitoring program, workers will continue to be subject to harassment and abuse and suffer from exposure to dangerous chemicals and other serious hazards.

6. Freedom to Organize

The right to freedom of association is enshrined in article 23 of the Universal Declaration of Human Rights. Global Exchange believes that this right is fundamental and inalienable. If all Nike workers were allowed to select their own representatives and negotiate collectively, then they would have more power to resist abusive and humiliating treatment and also to raise their wages.

In 1997 Nike made a public commitment to respect this right.⁷³ This section analyzes Nike’s response to independent reports of union repression in its suppliers’ factories since 1998. It raises serious doubts as to whether this commitment was made in good faith.

Nike in China—Total Repression of Independent Unions

The most significant country in this respect is China, which has an authoritarian political system that allows no civil society organizations to exist without government permission (AI 2000). Any unions independent of the official Communist Party union are implicitly outlawed and attempts at genuine union organizing are harshly repressed. Under the National Security Law, workers who attempt to form unions can be detained and imprisoned or sent to forced labor camps.

⁷³ This commitment is in the Apparel Industry Partnership Workplace Code of Conduct, which Nike signed in April 1997 (AIP 1997). Nike’s code of conduct also refers to this right. A previous section of this report concluded that the company’s factory monitoring program does not represent a serious effort to live up to this commitment.

In February 2001 China ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), but the official Xinhua news agency made it clear that this step would in no way change China's existing labor laws. Amnesty International described this restriction on the right to form trade unions as "very disappointing" and noted that:

Many individuals are currently imprisoned solely for exercising and promoting the economic, social and cultural rights enshrined in the covenant. These include the right to organize free trade unions, the right to strike, or simply for speaking out and organizing around livelihood issues. Some have been sent to re-education through labor camps or forcibly detained in psychiatric hospitals (AI 2001).

Amnesty International and other non-government organizations have documented numerous cases where workers in China have been subject to imprisonment and torture for independent union activity and it is likely that these cases represent only a fraction of the Chinese workers who have suffered in this way (See AI 2001, AI 1997a; Kernaghan 1998, pp. 83–85; ICFTU 1998a; ICFTU 1999).

With such blanket repression of union rights in China, companies like Nike can source production in the country with confidence that there will be minimal interruption to orders as a result of industrial action. Nike has ordering relationships with some 59 Chinese factories (Nike Inc. 2000), including the giant Yue Yuen shoe factory complex in Dongguan, which employs more than 40,000 workers. It has been estimated that China accounts for 40 percent of the production of Nike sportshoes (UNITE et. al. 2000). In other countries Nike workers are frequently warned by factory owners that if they engage in industrial action, their factory will lose orders and Nike will move that production to China (Connor 2000).

There has been a history of union rights being suppressed in Chinese factories producing for Nike. A 1997 report by the Hong Kong Christian Industrial Committee and the Asia Monitor Resource Center indicated that those factories either had no union or else had a branch of the national communist party union which was controlled by factory management. In the Wellco factory in Dongguan there were separate wildcat strikes in 1997 by workers in the assembly production department and the quality control department and the factory responded by instantly firing all the workers who went on strike (AMRC and HKCIC 1997).

With so much of the company's production coming from China, Nike has a direct interest in minimizing political interference in trade with the country. Nike has been actively involved in lobbying to ensure that the US government does not use trade policy to pressure China to respect workers' rights. During the Clinton administration's first term in office Nike was part of a coalition of transnational corporations that successfully dissuaded Clinton from acting on his election promise to link trade with China to human rights improvements (CMD 1997). In 2000 Nike executives made donations in support of David Dreier, the Republican whip involved in the successful push for China to be given Permanent Normal Trade Relations (UNITE et al. 2000).

Despite repeated requests from labor rights groups, Nike refuses to make public statements calling on the Chinese Government to allow workers to form unions in Nike contract factories. According to Maria Eitel, Nike's Vice-President for Corporate Responsibility, in countries like China where it is illegal for workers to organize, Nike instead seeks to establish "parallel means of workers expressing views and concerns to management and means by which grievances can be addressed...[including] worker-management committees [and] worker-management periodic open meetings" (cited in Connor 2000a). Nike refuses to indicate either in which factories these committees are supposed to be operating or whether workers' representatives on these committees are elected by workers themselves.

In April 2000 the National Labor Committee released reports on a number of factories producing for Nike, including the Sewon factory in Jiaozhou City and the Wei Li Textile factory⁷⁴ in Guangdong Province. The report noted that there is no union at Sewon and that workers who attempted to organize one would put themselves in danger of arrest and imprisonment without trial. There was a 'workers' committee' at Wei Li but the 'workers' representatives' on the committee were selected by factory management and not by workers themselves (NLC 2000). In its reply to the report Nike indicated that "Wei Li Textile and the Sewon factory are current partners that we are proud to work with" (Nike Inc. 2000a). No response was given to allegations that the "workers committee" at Wei Li is controlled by management and that workers' right to freedom of association is not respected at Sewon nor at any other Chinese factories producing for Nike.

For Chinese workers making Nike clothes and shoes, the company's stated commitment to protect their freedom to associate has proved meaningless. Instead the company has actively opposed attempts to pressure the Chinese government to allow this right to be exercised.

Nike in Indonesia—Union Organizers Face Harassment, Discrimination and Violent Intimidation

Nike has taken one very positive step to support the right to freedom of association in Indonesia. In September 1998 Haryanto (like many Indonesians he only has one name) was fired from the PT Lintas factory for his involvement in independent union activity. In October 1999 Campaign for Labor Rights (a NGO based in the US) arranged for Haryanto to tour the US to speak at universities about conditions in his factory. While he was in the US his mother received an anonymous phone call warning her that if her son valued his life he should stop criticizing the factory. On his return, however, Nike arranged for him to return to work at PT Lintas and has ensured that he subsequently did not receive any further discrimination or harassment for his union involvement. At the time rights groups expressed the hope that this would be a turning point in Nike's attitude toward union rights.

Unfortunately, they were overly optimistic. In September 2000 Oxfam-Commu-

⁷⁴ Also known as the WDI Supercap factory.

nity Aid Abroad released a report documenting extensive repression of union rights in Nike contract factories in Indonesia⁷⁵ (Connor 2000). Based on taped interviews with union organizers at the PT Nikomas Gemilang factory in Serang and two other Nike contract factories, the report documented how attempts by workers to set up new independent unions were being vigorously repressed. Workers involved in new unions reported receiving death threats and other threats of violence, being subject to more scrutiny and harassment than other workers and being discriminated against in promotion and job opportunities. They believed that most workers would have been interested in joining independent unions were it not for this harassment and intimidation. Some workers reported that they had been called away for private interrogation by factory managers and Indonesian soldiers, with warnings that if they don't stop organizing workers and publicizing conditions in their factory they would be attacked by 'Preman', the Indonesian term for hired hit men. All of the workers interviewed took these threats seriously and one worker indicated that he was afraid for his life (Connor 2000).

Oxfam-Community Aid Abroad also arranged for a worker from the Nikomas Gemilang factory to visit Australia in September 2000. Mr. Julianto (like many Indonesians he only has one name) had helped to organize a workers demonstration at the factory in December 1999, calling for better pay and conditions. He was subsequently subject to such extreme intimidation and harassment that he was unable to continue working at the factory. In his own words:

After the demonstration ended most of the workers who organized it were called by the company and were threatened that if they continued to organize workers they would have to resign or else they would be attacked by hired thugs. I was called away from my work and taken into an office and there were two managers and a soldier from the Indonesian army there. They were very angry. They shouted at me and slammed the table. They told me that we had to disband the workers committee. I told them that we did not want to. And then they said if you organize another demonstration we will take you to the police or you will be visited by hired thugs. The same thing happened to my friends (Julianto 2000).

On the day this report was released (September 4, 2001) Nike announced that it would investigate all of the allegations. The company subsequently ignored inquiries from Oxfam-Community Aid Abroad as to whether this promised investigation had taken place and, if so, what it had discovered.

A recent incident demonstrates that Indonesian Nike workers have good reason to take threats of violence seriously. Rakhmat Suryadi is a worker and union official from the PT Nikomas Gemilang factory. According to local Indonesian NGOs, on 21 March 2001 as he made his way to the factory gates to begin work, Mr. Suryadi was

⁷⁵ I was the author of that report.

attacked from behind by persons unknown and suffered machete wounds to his head and legs. He required 18 stitches in the back of his head and was hospitalized for a week before he was able to return home. Those involved in the attack said nothing to him and made no attempt to rob him (Forum Anti Kekerasan 2001).

The Urban Community Mission (a local Indonesian NGO) reports that Mr. Suryadi had been very active in advocating for workers' rights. He played an important role in recent campaigns to persuade the government to increase the legal minimum wage in West Java. His union work also involves representing workers at other factories as well as PT Nikomas, and early in 2001 he had been involved in representing workers in a dispute at the nearby PT Spindo Mills factory (Forum Anti Kekerasan 2001).

On 23 February 2001, he was quoted in the Indonesian newspaper Kompas describing labor abuses in Nike contract factories. Commenting on the Global Alliance for Workers and Communities' report into conditions in those factories (which had just been released), he told the Kompas journalist that it was normal for obscene words to be hurled at Nike workers by their supervisors and that there is also sexual harassment, toward both male and female workers. He claimed that the factory owners did not care about the fate of their workers because they only placed importance on maximizing production. He urged workers to be brave enough to demand their rights.

After investigating the attack on Mr. Suryadi, police have arrested five people who are suspected to have been involved.

At this stage there is no evidence that Nike's supplier PT Nikomas had anything to do with the assault. Nonetheless, in the context of a history of violent threats by managers against unionists at Nikomas, this attack can only increase Nikomas' workers fear that getting involved in union activity could put them in danger.

Nike staff should directly communicate to all workers at Nikomas and other Nike factories the company's commitment to ensuring that they are free to organize unions without fear of retribution. Nike should work with local labor rights NGOs and unions to ensure that those workers understand their union rights. The company should also establish a confidential procedure for workers to notify independent organizations if they receive any threats or discrimination for union activity. Workers producing Nike products should be able to freely organize unions for better conditions in their factories without fear that doing so may result in them being attacked by hired gangs with machetes.

Nike in Thailand—Union Organizers Dismissed and Blacklisted

Until relatively recently, very little was known about working conditions in Nike contract sportshoe factories in Thailand. In December 2000 this was rectified by the completion of a major new report on the Thai sportshoe sector by Junya Yimprasert and Christopher Candland.⁷⁶ Until now their report has not been promoted to or covered by the international media.

⁷⁶ Junya is the coordinator of the Thai Labor Campaign and Christopher is Assistant Professor of the Department of Political Science at Wellesley College.

Sportshoe factories

Two business conglomerates own Nike contract factories in Thailand—the Saha Union Group (which owns Union Footwear, Union Shoes, and Unisole) and the Sahapathanapibul Group (which owns the Bangkok Rubber Group and Pan Asia Footwear). According to Yimprasert and Candland, there are no unions in the entire Thai sportshoe sector because factory owners have crushed all attempts by workers to organize:

The Saha Union group is infamous in Thailand for its virulent anti-union activities. Several groups of workers in the Saha Union group who attempted to organize a union were dismissed as soon as the company learned of their intention to form unions. ...

Many workers in the footwear industry become terribly frightened when asked about union activities. In one interview with Bangkok Rubber workers, workers pretended that they did not know what a union was, and became afraid to talk to us. Later, they told us of their experience of seeing fellow workers dismissed and blacklisted for attempting to organize a union (Yimprasert and Candland 2000).

Clothing factories

There is also considerable repression of union rights by Nike clothing contractors in Thailand, although unions do exist in some of these factories. In 2000 a film crew from RTBF, the Belgian National Broadcaster, recorded a documentary on codes of conduct in Thailand (Devick and Bruyns 2000). They interviewed workers from a number of factories producing apparel for Nike.

At the Nice Apparel factory in Bangkok which produces for Nike, Adidas, Reebok and Puma, Nike personnel told the journalists that they should not ask the workers anything about unions as it was a “sensitive issue”, and will “upset the management of the factory”. When they interviewed the manager of the factory he told them that “these associations have no impact on the company’s strategy”, and that he doesn’t negotiate with them (cited in Devick and Bruyns 2000).

A woman who worked at the De-Luxe Company, which produces for Nike, Adidas and Reebok, was also interviewed:

Worker — If we don’t do overtime, then we get into trouble. We must go and see the manager. And if we really can’t do it, then we’re sacked.

Interviewer — Is it allowed to form trade unions, to organize meetings?

Worker — No, it isn’t. We are already afraid for our job when we say what we think.

(interview in Devick and Bruyns 2000).

At another Nike supplier, Lian Thai, there is a trade union, but the factory manage-

ment instructed the union not to speak to the documentary makers. Esther De Haan of the Clean Clothes Campaign in the Netherlands interviewed union officials at Lian Thai in November 1999. They described to her very serious labor issues, including that at times workers were required to work right through the night.⁷⁷ They did say that it had become easier for them to operate the union at the factory, but that there were still considerable difficulties. The management evidently threatens that if the union takes industrial action they will cut overtime altogether and sub-contract out any extra production. Wages at the factory are very low and hence workers rely on working overtime to make something of a living. This leaves very little room for the union to negotiate.

Yimprasert and Candland report that one of the union officials has been driven from the factory in suspicious circumstances:

The company accused the union treasurer of stealing a T-shirt from the company, reported her to the police, and had her imprisoned. The union collected 100,000 baht from workers for her bail. The case is still pending. The chairman of the union reported that the treasurer, who has worked in the position for several years, has an impeccable reputation. Usually the company fines or fires alleged thieves, but does not bring these cases to court. Lian Thai union committee members believe that the company wants to show its power over the union. The company knows that the union's resources can be easily exhausted in a legal defense (Yimprasert and Candland 2000).

The Lian Thai case demonstrates that even when workers are able to establish their own union, their employer can use a range of techniques to undermine legal union activity. Nike should ensure that the case of the union treasurer at Lian Thai is investigated by a credible and independent monitor and that she is reinstated if the resulting report determines that she was dealt with unfairly.

In the case of the Par Garment factory in Rangsit, Nike used the classic technique for avoiding a unionized workforce—move to another factory. Nike was a customer at the factory at Rangsit up until 1997. There was a union at the factory but its freedom to operate was severely hampered. A Par Garment worker described the situation to the journalists from RTBF:

Worker: It was difficult; when we met, there were cameras watching us. They prevented us from communicating with each other, they didn't let us talk together, they put us in different groups at work, they forbade us to talk.
(interview with Par Garment worker in Devick and Bruyns 2000).

Late in 1997 the Par Garment company attempted to crush the factory union by clos-

⁷⁷ See www.caa.org.au/campaigns/nike/appendix_15_March_2000.html#Appendix3

ing down the factory at Rangsit and moving the production to other Par Garment factories. This led to a sit-in protest by workers at the factory to prevent the factory from being sold. In April 1998 the Thai government stepped in and mediated a settlement and the factory reopened, but shortly afterwards all the union officials who organized the protest were fired and a number were blacklisted and were unable to get jobs in other factories. One of the factories which refused to employ them was the De-Luxe Company discussed above.

When the factory at Rangsit re-opened Nike did not resume its orders. According to Young Christian Workers (a local Thai NGO), management of the factory repeatedly told the workers that Nike did this because the union members tainted the image of Par Garment to the press. This reasoning was then used to hold the union members responsible for workers being laid off following the loss of the Nike contract.

Meanwhile Nike continued to order from Par Garment subsidiaries, including the Par Monthinee factory in Nakorn Rachasima (Korat). Those factories were not unionized and conditions were extremely poor.⁷⁸

In March 2000 a number of labor rights groups wrote to Nike alleging that the company had failed to live up to its code of conduct in the Par Garment case. They urged Nike to restore its ordering relationship with the factory at Rangsit and to work to ensure that all workers in the factory are freely allowed to engage in union activities (Bissell et al. 2000). Nike ignored this letter.

In May 2000 Junya Yimprasert interviewed workers from the factory at Rangsit and learned that an order for Nike apparel had arrived that week, subcontracted from another factory. Par Garment, like many clothing manufacturers in Thailand, both subcontracts extensively and takes orders from other factories in order to give it greater flexibility. Yimprasert reported that conditions at the factory at Rangsit continue to be extremely poor:

The Par Garment workers remaining in the factory have no job security since they are working under constant fear of uncertainty, not knowing when they will be laid off. They also work under deteriorated conditions in a poor working environment with cracked walls, no fire alarm system, no emergency lights, locked emergency exits, an electricity controller that occasionally explodes, dirty toilets, and the constant stench of animals near the factory area that permeates into the work area. Being confined inside a solid block building with poor ventilation makes the work environment unbearably hot, dusty and stuffy. The factory does not even provide clean and cold drinking water to the workers (Yimprasert and Kaewleklai 2000).

The Par Garment episode illustrates Nike's failure to respect workers' right to form independent unions. Companies like Nike should not cut orders from garment factories when workers try to stand up for their rights. This punishes those workers and sends

⁷⁸ See www.caa.org.au/campaigns/nike/appendix_15_March_2000.html#Appendix1

a clear message to workers in other factories that trying to form a union will lead to a loss of orders and will put their jobs in danger. Nike should re-establish a proper business relationship with the Par Garment company and ensure that workers' right to organize is respected.

Nike and the Formosa Factory in El Salvador—Any Worker Who Tries to Form a Union is Dismissed

Sweatshop conditions at the Formosa factory, which produces for both Nike and Adidas, first came to public attention in mid-1998 when a European television station did a story exposing labor abuses in the factory (Carisch et. al. 1998). In June 1999 Adidas responded to lobbying from European organizations involved in the Clean Clothes Campaign and employed the monitoring organization Verite to conduct an audit at Formosa. The audit found evidence of systematic humiliation and verbal abuse of workers by factory supervisors, as well as instances of physical and sexual harassment. Verite also found that workers' right to organize was strongly repressed in the factory and that any worker who tried to form a union was dismissed (Verite 1999).

In September 1999 a number of labor rights organizations wrote to Nike asking the company to “directly communicate to the workers at the Formosa factory Nike’s unequivocal support for their right to organize and commit your company to doing all it can to protect them from discrimination and dismissal for trying to organize a union.” In his reply Nike’s Director of Labor Practices Dusty Kidd ignored this request, saying only that “we have a copy of the report by Verite, which indicates there are continuing issues to deal with” and that “Nike is working with the management of that factory to make it a better workplace.”⁷⁹ Kidd also seized on an earlier claim by the National Labor Committee that Nike had cut orders from Formosa. This claim had been based on evidence from workers at Formosa that they had stopped producing Nike gear, but this turned out to be a seasonal fluctuation in orders rather than a complete end to the ordering relationship. Kidd wrote:

Nike would like the record corrected here: Nike has been a customer of Formosa for a number of years, has not left that factory, and has no intention of doing so. We will continue to work with its management to make that workplace better, including frequent on-site visits by our labor practices manager for Latin America, who is a native Spanish speaker. It is critical we work to improve factories rather than leave them.⁸⁰

Labor rights organizations wrote to Nike again in March 2000 and repeated their request that Nike communicate directly to workers at Formosa that the company will protect them if they try to organize a union (Bissell et al. 2000). Nike ignored this letter.

⁷⁹ See www.nikeBiz.com/labor/cleancl_let.shtml

⁸⁰ See www.nikeBiz.com/labor/cleancl_let.shtml

In February and May 2000, Christian Initiative Romero (a non-government organization which is a member of the German Clean Clothes Campaign) commissioned a number of ex-maquila workers to interview workers at Formosa. According to that research, unions were still not permitted. Workers were also still given pregnancy tests in their first few weeks of employment and if they tested positive were not given contracts.

In January 2001 Christian Initiative Romero again investigated conditions in Formosa. The factory was still producing for Nike and conditions were still extremely poor. Workers were still being forced to work overtime in peak periods and were shouted at by supervisors when they worked too slowly. Both access to drinking water and access to factory toilets during work hours was being strictly controlled.⁸¹

In April 2001 Christian Initiative Romero received word from contacts in El Salvador that Nike had quit the factory the month before. As a result, 40 percent of the work force at Formosa lost their jobs just before Easter. Many received as little as 50 percent of the redundancy payments to which they were legally entitled under Salvadoran law.⁸²

The Formosa case again demonstrates Nike's failure to match its rhetoric with transparent action to protect workers' rights.

Nike and Harassment of Union Officials at the Natural Garment Factory in Cambodia

In September 1999 the Cambodian Labor Organization (CLO) released a report on the Natural Garment Factory in Phnom Penh. It described how, during a period when the factory was producing for Nike (April to July 1999), the president of the factory union, Miss Ken Chheng Lhang, suffered extensive harassment for trying to defend workers' right to have one day off in every seven. Miss Lhang was refused a time card, preventing her from working for several days. The factory criticized her for constantly making complaints to the labor ministry and put pressure on her to resign. The report also documented how on July 6, 1999 factory supervisors manufactured a problem with the work of the union treasurer, Chab Kunthea, as a pretext for firing her. The report concluded that "the case of Natural Garment demonstrates once again that the US footwear and apparel giant, Nike, is failing to take any pro-active steps to monitor or enforce compliance with its much-touted code of conduct, which provides that workers have the right to freely associate".⁸³

In March 2000 labor rights groups raised the case with Nike (Bissell et. al. 2000). They called on the company to ensure that Kunthea is reinstated and that all harassment of union organizers at the factory is brought to an end. Nike made no response to this request.

⁸¹ Pflaum, M. 2001, pers. comm., 12 April.

⁸² Pflaum, M. 2001, pers. comm., 25 April.

⁸³ For a copy of this report see www.caa.org.au/campaigns/nike/appendix_15_March_2000.html

Nike and the Savina Factory in Sadinski, Bulgaria—Workers Conceal Their Union Membership for Fear of Losing Their Jobs

In April and November 1999 representatives of the German and Bulgarian Clean Clothes Campaigns interviewed workers from the Savina factory in the Sandanski region.⁸⁴ At that time the factory was producing sportswear for both Nike and Adidas. They were told that workers had managed to establish a union (KT Podkrepa) and that following a strike at the factory in the Spring of 1999 they had negotiated a 9 hour work day, less half an hour for lunch. Unfortunately, work quotas at the factory were still “murderously high” and workers’ pay depended on fulfilling their quota.

The formation of the union had not been welcomed by factory management. The factory owner, Hristos Karanidis, angrily told one of the researchers that he was considering closing the factory and leaving Bulgaria because of the union presence. The researchers noted that many of the workers’ concealed their union membership from Karanidis for fear of losing their jobs.

In March 2000 labor rights groups wrote to Nike requesting that the company ensure that workers in the Savina factory were freely able to organize (Bissell et.al., 2000). Nike ignored the letter.

In mid-2000 the Bulgarian Gender Research Foundation, Bulgarian Trade Union and the government labor inspector visited the Sandanski area accompanied by a German representative of the organization Terre des Femmes. They found that following negative publicity both Adidas and Nike had cut and run from the Savina factory. The researchers reported that employers in the region had become even more repressive towards trade unions and that there was no longer a union at Savina or at any other factory in the area. The case is yet another example of Nike’s failure to support workers’ right to freedom of association.

Nike in the Dominican Republic—Rejecting the Findings of Its Own Monitor

When US student Karim Chrobog was allowed by Nike to observe PWC’s monitoring of factories in the Dominican Republic in March 2000, workers at both factories he visited told him “that past attempts to form or join a union have led to the immediate dismissal of workers” (Austermuhle et al. 2000, p. 18). They also reported that management annually fires the majority of the work force in order to avoid paying legally required seniority benefits. In its response to Chrobog’s report, Nike indicated that the company will address the latter problem but made no mention of the union repression.

In January 2001 Nike made public the PricewaterhouseCoopers report for a factory in the Dominican Republic. The auditors noted that “According to the 25 interviewed employees, management does not accept that employees create or join a union.” In its response to the report Nike rejected the testimony of the 25 workers, claiming

⁸⁴ For a copy of their report see the following page on the Clean Clothes Campaign site - www.cleanclothes.org/companies/savina99-11.htm

that “management does NOT prohibits (sic) Unions or attempts to form one, as long as the Union is formed according to law factory will recognize and respect it”.

In order to rectify the workers’ “misunderstanding” Nike indicated that “management will reinforce worker training on local labor rights so workers understand their rights to organize and if they choose to form a Union they can follow the government’s procedures” Education on labor rights is of course desirable, but it is nonsensical for Nike to make it the responsibility of factory management to provide this training. This is the same management workers say won’t let them form a union. If Nike were genuinely committed to ensuring that union rights are protected at this factory, it would ensure that an independent labor rights group was allowed to provide workers with training in their rights and the company would keep in regular contact with those workers to ensure that receive no discrimination for trying to form a union.

Nike in Bangladesh—Producing in Areas Where Unions Are Illegal

The US student who Nike allowed to observe PwC’s monitoring in Bangladesh, Shubha Chakravarty, also reported on repression of union rights. According to Ms. Chakravarty, one of Nike’s suppliers in Bangladesh not only has located its factory in the Export Processing Zone where unions are illegal, but is one of the companies most actively involved in lobbying the Bangladeshi government to ensure that unions remain illegal in that zone.⁸⁵ Chakravarty also reported that Nike’s monitors in Bangladesh are taking no steps to ensure that workers’ right to organize is protected. She wrote:

In countries or regions where unionization is not allowed, such as the Export Processing Zone (EPZ) in Dhaka (where one of my factories was located), PwC monitors do not ask the interview questions related to unions or freedom of association...Even in the Bangladeshi factory that was not in the EPZ, workers were rarely questioned about unionization; PwC auditors felt that unionization was almost a non-issue in Bangladesh, since so few garment factories are unionized (Chakravarty 2000, p. 9).

As with China, Nike appears to have no problem with its goods being produced in areas where workers who try to form unions are thrown into jail.

Nike and the Kuk Dong Factory in Mexico—Counterfeit Unions, Wrongful Dismissal and Violent Intimidation

Unlike most attempts by workers to establish their own organizations in Nike contract factories, the recent push to form an independent union at the Kuk Dong factory in Mexico has been subject to extensive independent scrutiny. No less than three independent monitoring reports on the factory have been published in 2001 and numerous

⁸⁵ Chakravarty S. 2000, pers. comm., 22 March.

demonstrations have been held on university campuses across the US in support of the new union. This makes the case particularly important and worthy of careful analysis. If Nike is not willing to protect workers' right to freedom of association at Kuk Dong, then it will not be willing to do so anywhere.

In Mexico, a number of the established unions have close ties with the former ruling party, the PRI. The primary purpose of these unions is not to represent workers' interests but to exert political control over them and use their union fees to further the interests of the party. It is common for such unions to negotiate deals with factory owners allowing them to operate in particular factories and to use violence and coercion to force workers to become members and to prevent them from freely choosing who will represent them.

One such union is Confederacion Revolucionaria de Obreros y Campesinos (CROC) which operates in a number of Mexico's maquilas. CROC is controlled by the PRI and hence has close links with local labor authorities and with a number of Mexican government representatives, including the governor of the State of Puebla in Southern Mexico, Melquiades Morales Flores (Boje, Rosile, and Carrillo 2001). CROC's presence in factories is used to further the PRI's political agenda rather than to serve workers' interests, and the union is notorious for its use of intimidation and bullying tactics. On March 4, 2001, for example, CROC was involved in intimidating workers during a union election at the Duro bag factory in Rio Brava. With the full cooperation of the factory owner and local government officials CROC brought automatic weapons into the factory, tore down all advertising for the independent union, physically accompanied each worker into the voting area, told them how to vote and took notes on how each worker voted (Pitkin 2001).

The Korean-owned Kuk Dong factory is located in Puebla, in the small city of Atlixco, and has been producing college licensed sweatshirts for Nike since March 2000. The shirts are licensed to carry the logos of a number of US universities, including Michigan, North Carolina, Oregon, Arizona and Indiana. Nike is Kuk Dong's primary customer, although Reebok also orders from the factory and purchases approximately 15 percent of production.

Late in 1999, before the factory had even opened its doors, it signed a collective contract with the CROC union. According to a report by widely respected independent labor lawyer, Arturo Alcalde Justiniani, Kuk Dong selected CROC to represent workers at the factory in accordance with the common practice of "choosing the leaders that would benefit their own business."⁸⁶ CROC's union delegates at the Kuk Dong factory have been selected by the CROC hierarchy rather than by workers at the factory, and from the outset CROC's attitude has been one of "absolute subordination to the company instead of representing the interests of the workers" (Justiniani 2001). The agreement states that the factory need only pay "the most minimum salaries valid in the local region" and gives CROC the right to fire and discipline workers who engage in what would otherwise be legal union activities. Justiniani's expert opinion is that

⁸⁶ Justiniani was asked to conduct this investigation by the International Labor Rights Fund, a member of the Fair Labor Association (FLA). Nike is also a member of the FLA.

the agreement is illegal and invalid because it does not incorporate a salary structure (Justiani 2001).

In March 2000 Martin Austermuhle of Penn State University accompanied Nike's monitor PriceWaterhouseCoopers (PwC) on an inspection of Kuk Dong. Austermuhle made some positive comments about the factory but noted that: "The workers had no real idea of their rights to organize collectively, and if they did, they seemed scared to exercise those rights due to fear of dismissal. If Nike truly wants to improve labor conditions...an important step is in educating workers in their most basic rights." Predictably, Nike responded by making it the responsibility of the factory to provide workers with more education in union rights, deliberately ignoring the fact that the factory had recently signed a contract with an undemocratic union in order to radically curtail those very rights.⁸⁷

Austermuhle noted that management took down the names of the workers he interviewed, and that may explain why they didn't tell him that wages at Kuk Dong were well below the prevailing industry wage in Mexico (Justiani 2001). Wages were so low that workers were reliant on eating the food served in the factory cafeteria even though it was occasionally rotten or rancid and was commonly of very poor quality. On December 15, 2000 frustration with this and other issues led five relatively senior workers (Marco Santiago Perez Mesa, Marcela Muñoz Tepepa, Josefina Hernandez Ponce, Mario Nicanor Sefina, and Eduardo Sanchez Velasquez) to protest by refusing to eat the factory food. Several weeks later those five workers were dismissed as punishment for this protest.

In response, workers at the factory put a list of demands to Kuk Dong, including the reinstatement of the dismissed workers, a change of union, and better wages and factory food. On January 9, 2001 these negotiations between the factory and the workers broke off and approximately 650 of the 860 workers at the factory staged a work stoppage to press their demands. They picketed the factory for two and a half days, during which time a number received anonymous threatening letters.

At around 10:30pm on Thursday January 11, 2001, the governor of Puebla sent 200 police in full riot gear to attack the 300 workers then guarding the factory. According to workers interviewed by United Students Against Sweatshops, the leader of the CROC union and other CROC representatives were at the scene and pointed out strike leaders to police (WRC 2001). When the workers saw the police officers approach, they threw their arms up in the air to indicate that they would not fight, and they attempted to leave through the exits. Instead police surrounded and cornered them and violently drove workers out of the factory one by one. A number of workers were beaten severely with police clubs and at least four workers were hospitalized as a result of injuries sustained. Evidently two of the women guarding the factory were pregnant and lost their babies as a result of being hit

⁸⁷ Nike also promised to work with PricewaterhouseCoopers to "re-word the employee interview questionnaire in order to ensure that all workers readily understand their rights of free association and collective bargaining". The PwC questionnaire is not a public document so it is not possible to verify whether this occurred. In any case, given that Nike apparently responds to workers ignorance of union rights by asking factory owners to provide "further training" it is hard to see how the PwC audits will lead to any positive change.

Table 2. Timeline of events in the Kuk Dong factory in Atlixco, Puebla in Southern Mexico

December 9, 1999	Before workers are employed at the factory, management at Kuk Dong International signs an illegal collective contract with the (yellow) CROC union. The contract states that the factory need only pay “the most minimum salaries valid in the local region” and gives CROC the power to fire workers for independent union activity.
March 2000	Kuk Dong begins producing sweatshirts for Nike. Martin Austermuhle of Penn State University accompanies PriceWaterhouseCoopers (PWC) on an audit of Kuk Dong for Nike. He recommends that workers receive training in union rights as they “seemed scared to exercise those rights due to fear of dismissal.” Nike ignores this recommendation.
September 2000	The CROC union starts to have a major presence in the factory. Workers are told to sign in support of the union or else they will be fired. Dues are deducted anyway from workers who do not sign.
December 15, 2000	Five workers refuse to eat the food served in the factory. This protest reflects ongoing concerns that food is poor and occasionally rancid. Since wages at Kuk Dong are well below the industry standard, workers are forced to rely on food provided by the factory.
January 3, 2001	The five workers are dismissed from the factory for their December 15 protest. As a result, workers at the factory deliver a list of demands to Kuk Dong, including the reinstatement of the dismissed workers, a change of union, and better pay and working conditions.
January 9	Negotiations break off and approximately 650 of the 900 workers stage a work stoppage to press their demands, picketing the factory for two and a half days.
January 11	At around 10:30pm police in full riot gear accompanied by CROC “enforcers” attack the 300 workers guarding the factory. Workers are beaten with police clubs. At least 4 workers are hospitalized and two pregnant workers involved in the picket have miscarriages as a result of police violence.
January 13	Workers agree to return to work and the factory agrees to rehire all workers except the five originally dismissed.
January 15–25	Workers who were active in organizing the strike are not allowed to return to work. The company presses criminal charges against a number of workers. Students across the US hold protests in support of the workers. The issue is covered by Associated Press, the Financial Times, the Oregonian and by numerous University newspapers. Mexican labor Lawyer Arturo Alcalde Justiniani conducts an investigation at the factory on behalf of the International Labor Rights Fund (ILRF). The Workers Rights Consortium (WRC) also sends a fact-finding delegation to the factory.
January 24	Reebok’s Doug Cahn presses Kuk Dong to allow workers to hold a free and fair election to determine who will represent them.
January 25	The WRC reports that there is “substantial, credible evidence” of serious labor rights violations at the factory. Nike’s Vada Manager questions the WRC’s objectivity. Justiniani’s report recommends that all workers dismissed as a result of the dispute be rehired “without any exception” and that a union election be held which is “free, universal and by secret ballot” so that workers can decide whether CROC should represent them. ILRF urges that this should take place quickly. Nike instead decides another investigation is needed.

Table 2. continued

January 29	Following a meeting between Kuk Dong, Reebok and the International Labor Rights Fund, Kuk Dong agrees to send cars into the local area with loud speakers encouraging workers to return to work.
January 30	A letter to Nike from the coordinating committee of United Students Against Sweatshops alleges that “the workplace has become a place of terror” and urges Nike to insist that Kuk Dong allow workers to elect who will represent them as soon as possible.
February 5–7	Nike arranges for Verite to conduct another factory investigation. Verite observes returning workers being forced to sign agreements accepting CROC as their representative. A factory manager tells Verite that workers who are known to “give headaches” will not be accepted back.
February 9	Nike’s Dusty Kidd writes to Kuk Dong asking the factory to take steps to ensure that workers involved in the strike are allowed to return to the factory.
February 13	CROC lodges 21 counts of unfair labor grievances with the local labor and reconciliation board. CROC alleges that Kuk Dong has interfered in CROC’s internal affairs by ordering the reinstatement of workers fired during the strike.
February 16	Nike announces that CROC and managers at Kuk Dong have agreed to take a number of steps to welcome former workers back to the factory.
February 19	39 workers involved in organizing the strike in January return to work. Nike and Reebok are involved in negotiations to ensure they are reinstated.
February 27	Nike arranges for a representative of the International Labor Organization-Mexico to conduct training in freedom of association rights at the factory. Workers report that the trainer repeatedly endorses CROC during the training.
March 14	Nike releases Verite’s report and Nike’s “remediation plan” for Kuk Dong. Like the ILRF report released seven weeks earlier, Verite recommends that all workers be allowed to return to work and that a union election be held “on the earliest possible date”. Nike’s remediation plan makes no mention of the urgent need for an election.
March 18	Workers at the factory hold a meeting to fulfill the legal requirements for forming a new independent union - SITEKIM.
April 4	A local Mexican labor rights group (Centro de Apoyo al Trabajador or CAT) reports that with the factory’s cooperation CROC is using intimidation and misinformation to dissuade workers from joining SITEKIM and that Kuk Dong is attempting to coerce some independent union leaders into becoming “trusted employees,” making it illegal for them to engage in union activity.
April 19	CAT reports that security guards at Kuk Dong have been illegally interfering with attempts by independent union members to disseminate information to workers about the union. Strike leader Santiago Perez continues to be locked out from the factory. At this stage neither Kuk Dong nor Nike have made any statement regarding whether, and if so when, a union election might take place.

with shields, clubs, and fists during the attack (Boje, Rosile. and Carrillo 2001).⁸⁸

In response to this attack, United Students Against Sweatshops organized protests outside Nike stores across the US. Regular protests in solidarity with workers at Kuk Dong continued to be organized in the ensuing months.

Following the violence, on Saturday, January 13, representatives of the striking workers signed an agreement with Kuk Dong management and the local labor board in Atlixco saying that they would return to work. The company committed to permit all striking workers to return to the factory except for the five workers whose dismissal had initiated the protest.

In the following weeks some workers were admitted back to the factory but some of those who were most active in the strike were refused based on a list that the representatives of the company and CROC kept with them at the factory entrance. Some of the strike organizers were allowed back into the factory, but in new office positions where they had no contact with other workers.

On January 17 a number of workers who had been reinstated were told they had been dismissed. Subsequently all workers were required to accept CROC as their bargaining representative before they returned to work. Lawyers for the company, with the support of local labor officials, put pressure on the rejected workers to agree to voluntary dismissal and accept compensation. The company also pressed criminal charges against a number of workers for damage caused to the factory and for illegal deprivation of freedom of movement. A number of these workers went into hiding and police searched workers' houses for them. Another 30 armed riot police were consistently stationed at the factory, successfully creating a climate of fear in which many workers were afraid to try and return to work.

During this period, both the International Labor Rights Fund (ILRF) and the Workers Rights Consortium initiated investigations into the situation. Both reported on January 25. The WRC found "substantial, credible evidence" of serious labor rights violations at the factory, including employment of children aged 13 to 15, violence against workers by managers and payment of wages below the Mexican legal minimum. The WRC report urged Nike and Kuk Dong to work with the WRC to ensure that all workers were allowed to return to work safely. It also called for a constant independent monitoring presence at the factory. Nike's Vada Manager responded by questioning the objectivity and veracity of the WRC report and urging the appointment of an independent investigator.

The ILRF investigation was conducted by the Mexican labor lawyer mentioned above, Arturo Alcalde Justiniani. At the time Justiniani was conducting his investigation he was described by Nike as "an expert in local labor law" and by the Fair Labor Association, of which Nike is a member, as "a well-respected Mexican labor lawyer, identified with the democratic trade union movement in Mexico." His report urged that all workers dismissed as a result of the dispute be rehired "without any exception" and that an election be held which is "free, universal and by secret ballot" so that

⁸⁸ This information is based on taped interviews by Professor David Boje of New Mexico State University with two workers and a labor lawyer who were present at the time that the attack occurred (Boje, Rosile. & Carrillo 2001 and Boje D. 2001, pers. comm., April 16)

workers can choose which union will represent them (Justiniani 2001). Bama Athreya from the ILRF emphasized that this needed to happen quickly. With regard to freedom of association, she noted, “justice delayed is justice denied.” (Athreya 2001).

The same point was made in a January 30 letter to Nike from the coordinating committee of United Students Against Sweatshops. The letter alleged that “the workplace has become a place of terror, with riot police stationed inside of the factory where there have been multiple reports of management screaming at and belittling workers for their attempts to come together to assert their rights.” The students demanded that Nike insist Kuk Dong implement the recommendations made by Justiniani and the Workers Rights Consortium as soon as possible, before fired workers were forced to take up other jobs and before CROC could intimidate workers further.

Nike did not see it that way. Apparently finding two independent reports insufficient, the company appointed the non-profit monitoring organization Verite to conduct another factory investigation. Verite’s investigations were conducted on February 5–7 but were not publicly reported on until March 14, six weeks after Justiniani and the WRC had made their recommendations. On the right to freedom of association Verite’s recommendations were almost identical to those in the earlier reports. Verite found that: “18 of 29 workers interviewed reported that the factory does not permit workers to form and join unions of their choice...[and that] most workers at the factory either do not want the CROC as their union or want no union.” Verite recommended that all workers who still wanted to return to work should be reinstated unconditionally and that workers should be allowed to hold an election to choose the union of their choice “on the earliest possible date deemed to be legally permissible and practically feasible.”

Nike did take some steps to encourage Kuk Dong to reinstate the fired workers, but in doing so it gave inappropriate legitimacy to the CROC Union. On January 30 Nike’s Dusty Kidd wrote to universities supplied by Kuk Dong indicating that “since January 29th, two independent observers have been on-site at the factory working solely to facilitate workers safe and fair passage back to their jobs.” However, the letter went on to mislead university administrators by suggesting that “Mexican labor law, and the current collective bargaining agreement signed by Kukdong and the CROC union, requires that in order for workers to return to their jobs at the factory, they must recognize CROC as their representative union.”⁸⁹ According to Mr. Kidd, workers only had the right to choose who would represent them after they had returned to work. In saying this Nike gave false legitimacy to an illegal and invalid “collective bargaining agreement” negotiated before production began at the factory by a violent and unrepresentative union which subsequently forced workers to become members.

Nike and Kuk Dong later gave further support to CROC on February 6 when they arranged for a representative of CROC to provide training to all workers on the “provisions of the collective bargaining agreement currently in place.” (Nike 2001). Verite’s auditors were present at Kuk Dong at the time and reported on the event. Far from

⁸⁹ Even if the collective bargaining agreement had been a legitimate one, Mexican labor law would only have required new workers to accept CROC as their bargaining agent, not workers returning from a strike.

being a training session as Nike has suggested, the talk was a request for workers to support the CROC union. The speaker from CROC also demanded that workers cease publicizing problems at the factory:

The factory has acquired a very bad reputation because of the media reports that have been circulating worldwide and through [the] Internet giving a lot of false information about what is happening here...So we ask you to tell the truth about what is going here and dismiss all the allegations according to which you are being beaten, the food you eat is rotten, etcetera. If this goes on, Nike, Reebok and other clients will stop using the factory and we will stay unemployed. (CROC Secretary General, Jaime Sanchez Juarez, cited by Verite 2001a)

Verite also observed workers attempting to return to work on that day and reported that they were being required to sign a document accepting CROC as their representative and committing them to respect decisions made by that union at all levels including state and national. Those workers willing to sign the forms were told they would receive a telegram within a week indicating whether they would be allowed back to work. A factory manager told the Verite team that from that day on returning workers would be treated as newcomers and would be assessed and judged suitable for re-employment accordingly:

When asked which criteria would apply, management told me that the Korean supervisors knew their people and would pick the “good” workers and not the “bad” ones (a good worker being one who “does not give headaches” and who is efficient). (Verite 2001a)

On February 9, Nike’s Vice President for Corporate Responsibility, Dusty Kidd, sent a letter to the President of Kuk Dong, asking that the factory reinstate all workers who wish to return at their previous level of seniority, take special measures to welcome back the five workers originally dismissed and publicize the fact that the company had dropped the charges against workers involved in the strike. On February 16 Nike put out a press release announcing that “in conversations with Nike, the factory management, in concert with the CROC union (which represents the Kukdong workers) has agreed” to take a number of steps to welcome former workers back to the factory.

Nike was apparently unaware that three days earlier CROC had lodged 21 counts of unfair labor grievances at Kuk Dong with the local government’s labor and reconciliation board. CROC alleged that Kuk Dong had interfered in CROC’s internal affairs by ordering the reinstatement of workers fired during the strike. Supporters of the fired workers expressed alarm that CROC might intimidate workers at the factory into striking in support of these grievances but so far this has not occurred.

On 19 February, 39 Kuk Dong workers, including two of the five whose illegal firings led to the original strike, returned to the factory to demand their unconditional reinstatement. In negotiations involving Nike, Reebok, CROC and the Korean House of International Solidarity, all workers except those whose firing had led to the initial

stoppage were reinstated unconditionally. The originally fired workers were allowed to return to work, but as operators rather than supervisors and were required to sign individual contracts with the company.

On February 27, Nike arranged for a representative of International Labor Organization (ILO) Mexico to conduct training in freedom of association rights for all workers. But according to workers interviewed by USAS the ILO representative repeatedly indicated his support for the CROC union (Pitkin 2001a).

On March 18, workers at the factory held their own meeting to meet the legal requirements for forming a new independent union—SITEKIM, Sindicato Independiente de Trabajadores de la Empresa Kukdong International de Mexico or the Independent Union of Workers at the Company Kukdong International of Mexico. CROC positioned three people with video cameras to tape the workers entering the meeting.

On March 22, Campaign for Labor Rights reported that although the new union is being allowed to represent its members, it is not being given the same access to factory resources (such as the factory loud speaker system) to which CROC has access (Pitkin 2001a). Apparently CROC is also intimidating independent union leaders—in one case a CROC “enforcer” has repeatedly been driving his car around the home of an independent union leader, although he lives nowhere near her place (Pitkin 2001a).

On April 4, David Ernesto Alvarado of Centro de Apoyo al Trabajador (CAT)⁹⁰ reported that some leaders of the independent union and other workers are being coerced by Kuk Dong management to sign papers accepting the status of “trusted employees,” which would make it illegal for them to participate in union activity (Alvarado 2001).

Alvarado also reported that CROC has been making announcements over the factory loudspeaker and distributing literature claiming responsibility for persuading Nike and Reebok to stay at the factory and suggesting that efforts to gain recognition for an independent union could drive Nike and Reebok away. CROC has also distributed literature attacking the independent union SITEKIM and on at least one occasion CROC union representative Jose Luis Ruiz shouted at an employee who put one of these flyers down on a table instead of reading it. While CROC representatives are allowed to freely make announcements and distribute literature during work hours, SITEKIM members have been expressly forbidden from doing so.

On April 4 and again on April 11, Alvarado reported that many workers are still being refused the right to return to the factory. This includes Santiago Perez, one of the five leaders whose firing prompted the strike in January, and Martina Morales, a former line supervisor who played a leadership role in that industrial action. These and other workers attempting to return are being told that the factory is already at full capacity, even though new workers continue to be hired (Alvarado 2001a).

Although Nike has taken positive steps to assist some of the fired workers to return to work, the company has side-stepped recommendations from both the International Labor Rights Fund and the monitor which Nike endorsed, Verite, that a secret ballot

⁹⁰ CAT is an organization of Mexican workers, students and labor activists established to support Mexican workers trying to assert their right to freedom of association.

union election needs to take place in the factory as soon as possible. Such an election is crucial, since it would give workers the power to force CROC out of their factory.

In its public statements Nike has suggested that it is up to workers, if they want to, to initiate the legal procedures which would lead to an election (Nike Inc. 2001b). Unfortunately, the close relationship between the CROC union, the managers of the Kuk Dong factory and local police and local government authorities makes it tremendously difficult for workers at Kuk Dong to ensure that a free and fair election takes place. The recent case of the “election” at the Duro bag factory demonstrates how effectively such an alliance can prevent workers from freely deciding who will represent them. There needs to be urgent and consistent pressure from Nike and Reebok on managers at Kuk Dong and on local authorities to ensure that a fair and open election by secret ballot takes place. Reebok’s Doug Cahn has publicly called on Kuk Dong to allow such an election as soon as possible, but Reebok needs to follow through this statement with consistent pressure on the company. Nike has made no public demands of Kuk Dong or of local Mexican authorities with regard to the need for an election.

Research by Professor David Boje of New Mexico State University indicates that ten other factories in the region produce for Kuk Dong under sub-contracts, and that conditions in these factories are significantly worse than in the Kuk Dong factory itself (Boje, Rosile. and Carrillo 2001). There is considerable danger that if the independent union is successfully established at the Kuk Dong factory, then factory management will punish workers by moving more production to these subcontractors and that as a result workers at Kuk Dong will be laid off. Independent and transparent monitoring of these ten factories is urgently needed to ensure that this does not occur.

When assessing the steps which Nike has taken in this case, it is important to remember that in 2001 Kuk Dong has been subject to more independent scrutiny and protest action than perhaps all of Nike’s other 700 suppliers put together. We are not observing Nike’s ordinary monitoring procedures at work here, but rather Nike’s response to a well organized and resource-intensive campaign highlighting labor abuses at a particular factory.

Nike’s ordinary monitoring procedures took place at Kuk Dong in March 2000, when PricewaterhouseCoopers (PwC) visited the factory. PwC either failed to notice that Kuk Dong had negotiated an illegal agreement with a counterfeit union that radically restricted workers’ union rights, or else they reported this to Nike and Nike ignored it. Martin Austermuhle, a student who was allowed to observe PwC’s March 2000 audit of Kuk Dong, reported to Nike that workers at the factory were either ignorant of or afraid to exercise their union rights and recommended that they receive training in these rights. Nike ignored this recommendation. Workers at Kuk Dong only received training in freedom of association and collective bargaining a year later, on February 27, 2001, following three publicly reported independent factory investigations, six weeks of extensive protests in the US and considerable media scrutiny of the situation at Kuk Dong.

After sustained pressure from United Students Against Sweatshops, Nike representatives did take steps to ensure that some of the workers dismissed for their involvement in the strike in January were allowed to return to work, but they did so only after extensive and unnecessary delays. These delays meant that by the time there was

significant progress in facilitating workers' return it was too late for many workers—they had been forced to return to distant villages or to find other employment. By mid-April only approximately half of the 650 Kuk Dong workers involved in the strike in January had returned to work and many who wanted to return were still being refused. Nike should take steps to ensure that Santiago Perez and Martina Morales and other workers who wish to return are allowed to do so as soon as possible.

The situation within and outside the factory continues to be tense and the CROC union, with the cooperation of security guards and factory owners at Kuk Dong, is using intimidation and misinformation to attempt to drive the new independent union SITEKIM from the factory. A properly conducted union election by secret ballot is urgently needed, so that workers can decide whether or not the CROC union should have any presence in the factory at all. Although Nike's own monitor Verite emphasized that such an election should take place "on the earliest possible date," Nike's remediation plan for the factory makes no direct mention of this recommendation and Nike has so far declined to use its influence with Kuk Dong to support workers' call for an election.

Nike should cease referring to the CROC union as the representative of the Kuk Dong workers, cease giving inappropriate legitimacy to CROC's illegal "collective bargaining agreement" and cease encouraging CROC to provide "training" in that agreement to workers. Instead Nike should work with other buyers, factory management, independent observers and members of both unions at the factory to ensure that the necessary conditions detailed by Verite and others are met for a secret ballot union election to take place in the factory as soon as possible.

It is absolutely imperative that Nike does not "cut and run" from Kuk Dong, but instead works with the factory to ensure that the above steps are taken. If Nike were to leave the factory, it would represent the strongest indication yet that the company's stated commitment to respecting workers' right to organize is a cruel joke.

Extensive independent research (much of it contained in this report) indicates that repression of union rights at Kuk Dong is no different from repression of those rights at other Nike factories in Asia and Latin America. What is different at Kuk Dong is that workers have taken great risks to seek to assert their rights and anti-sweatshop campaigners in Mexico, the US and Europe have worked hard to support them.

Conclusion

Even as he announced factory reforms in his speech on May 12, 1998, Phillip Knight refused to concede that Nike had a sweatshop problem. “We don’t have abusive labor conditions in our factories,” he told journalists “and really never have” (Ramjug 1998). He criticized Doonesbury cartoonist and Nike critic Gary Trudeau for having no interest in finding out the truth and claimed that “one of the few absolutes of this business” was that conditions in those factories today were “far, far better” than conditions in Japanese shoe factories when Nike had first started out 26 years before.

This begged the question: If Nike didn’t have an issue with conditions in its suppliers’ factories, why was Knight announcing labor reforms? What problem were those reforms designed to address? Knight himself hinted at an answer. In replying to questions at the end of his speech, he noted that Nike had arranged for Tiger Woods’ father Earl Woods to visit some Nike factories in Thailand and that on his return Mr. Woods Senior had commented that “Your problem isn’t with factories; your problem is with public relations.” Knight agreed, commenting that Woods “just basically confirmed what we already know—those are really quite good factories.”

A recent (12 March 2001) *Newsweek* article fills out the story. Titled “Swoosh Wars,” the article details how Knight himself decided in late 1997 that Nike needed to seize the initiative in its public relations battle with anti-sweatshop protestors. Working from a “war room” in Nike’s head office in Beaverton, a team of Nike executives formulated a plan to set the “industry standard” for sweatshop reform and to promote it aggressively. Knight’s speech to the National Press Club was the public launch of this new approach and from then on the “war room team” became a standing operation. Following a Nike tradition of employing people with expertise in public relations to work on human rights issues,⁹¹ Knight employed “longtime Washington operative” Vada Manager to provide “political insight and strategy.” Manager was given “broad power to assemble ‘virtual teams’ of executives and outside consultants to respond to any challenge.” The article documented how Manager used “direct intelligence” from student networks to arrange for a strong “security and police presence” to thwart a planned series of demonstrations at Nike stores across the US. The article quoted Manager as saying “Nike approaches this as it approaches everything, as competition. And we aim to win” (Emerson 2001).

If Nike had taken effective steps to ensure respect for human rights in its contract factories, this approach might be justifiable. Sweatshop allegations represent a major threat to the value of a company’s brand and if those allegations are false a company has every right to vigorously contest them. But do Nike’s labor practices match their spin? They talk the talk, but do they walk the walk?

Recently Nike’s claim that conditions in its suppliers’ factories are “really quite good” was dramatically called into question by research the company had itself paid

⁹¹ Nike’s Global Director for Labor Practices Mr. Dusty Kidd was originally employed to do public relations work for Nike. The company’s Vice-President for Corporate Responsibility, Ms. Maria Eitel has previously worked in this capacity for the Microsoft Corporation and for former President Ronald Reagan.

for. In February 2001, a factory assessment program conducted by the Global Alliance for Workers and Communities and sponsored by Nike forced the company to admit that serious labor abuses do exist in its suppliers' factories in Indonesia. Researchers employed by the Alliance found evidence of inadequate wages, forced and illegal overtime, denial of sick leave, menstrual leave and annual leave and unacceptable levels of sexual harassment and verbal abuse. By its own admission, the Alliance's factory assessments do not attempt to investigate human rights issues, and the organization's research methods are unlikely to have discovered the full extent of labor abuses in those factories. Nevertheless the report forced Nike to briefly interrupt its campaign to discredit the considerable body of independent evidence indicating that workers making its product are exploited and that their human rights are abused.

Unfortunately, this admission did not lead Nike to embrace the independent and transparent human rights monitoring advocated by its critics. Anti-sweatshop activists have proposed a clear agenda for action, demanding wage levels that would allow workers and their families to live with dignity, respect for workers' right to freedom of association and transparent, independent and regular factory monitoring by organizations committed to establishing a relationship of trust with workers. Measured against these criteria, Nike's program fails badly. The company has dodged the wage issue; failed to keep its word on freedom of association; put in place monitoring programs that lack independence, regularity or full transparency; and selected monitors who have failed to create a relationship of trust in which workers can be confident that they will be protected from victimization or job loss if they tell the truth about factory conditions.

Even measured against Knight's May 1998 promises, the company's performance has been poor. Three years after Knight announced that Nike was "working hard" to involve non-government organizations in factory monitoring, the company has only arranged one factory audit by one non-profit organization—and that audit followed substantial media scrutiny of conditions in the factory. Despite promising to meet OSHA air quality standards in all its factories, Nike gives factory owners advance notice of testing, giving them the opportunity to change chemical use to minimize toxic emissions on the day the test is conducted. Evidence continues to emerge of young people under the age of 16 employed in Nike contract factories, and in any case, payment of a living wage to adult workers would bring much greater benefit to children in Nike production areas than enforcement of factory age limits. Knight's promised education schemes have only benefited a tiny minority of Nike workers and the micro-loan programs were never intended for workers, representing instead an attempt to distract attention from factory conditions. The program to fund academic research seems primarily geared towards funding research that serves Nike's public relations agenda rather than stimulating rigorous academic debate on responsible business practices.

Thus far Nike has treated the sweatshop issue as an issue of public relations rather than human rights. The only area in which the company has made any significant progress, health and safety, is the area with the potential to do the most damage to the company's image. The 1997 *New York Times* front page story revealing that Vietnamese Nike workers were being exposed to toxic gases at up to 177 times the Vietnamese legal limit (Greenhouse 1997) represented a nightmare for Nike's image builders. A

major fire in a Nike contract facility has the potential to be far worse. It is not too cynical to interpret the company's focus on air quality and fire safety as a response to the media-sensitive nature of these issues. Unfortunately, Nike's refusal to adopt an independent, rigorous and transparent monitoring system means that even in this area advances have been limited. On the few occasions that genuinely independent health and safety experts have been allowed access to Nike factories, they have found serious hazards including dangerously high exposures to toxic chemicals, inadequate personal protective equipment, poor ergonomics, excessive noise and lack of appropriate guards to protect workers from dangerous machinery.

In other areas of key concern to workers and human rights organizations, Nike's overriding preoccupation has been with image management. It has used statistics selectively and in a misleading fashion to make the wages paid to Nike workers seem far better than they are. It has consistently attempted to undermine the credibility of its critics by painting them as either uninformed or as motivated by political agendas tangential to the sweatshop issue. It has turned its back on Nike workers who have suffered intimidation, harassment and dismissal for telling journalists about labor abuses, knowing that their example would dissuade other workers from speaking out.

It has put in place an elaborate "monitoring program" which looks good on paper but which operates to conceal systematic repression of workers' right to freedom of association.

It has arranged for its staff to conduct quarterly "factory assessments" which deliberately avoid key issues like wages, working hours and union rights.

It has employed an accounting firm, PricewaterhouseCoopers, to make annual factory monitoring visits and has played on that firm's reputation for independence in conducting financial audits. It has made this comparison in the full knowledge that Nike's factory monitoring program is radically different from financial auditing—it doesn't involve publicly agreed upon assessment practices but rather confidential procedures designed and controlled by Nike; it doesn't involve public declarations that a firm's accounts are acceptable, but rather private reports to Nike alone, released only at the company's discretion.

It has attempted to draw the focus away from the human rights agenda advocated by its critics by putting substantial resources into the Global Alliance for Workers and Communities, a program that avoids investigating workers' right to freedom of association and other labor standards and instead works in a relatively small percentage of Nike's contract factories to assess workers' "needs and aspirations" and put in place "development and training" programs to help them meet them.

It has, in cooperation with other companies, spent almost five years wrestling with the unions and rights groups involved the Fair Labor Association in an attempt to persuade them to lend their credibility to a weak and circumscribed monitoring system. The unions and religious groups originally involved in the FLA negotiations abandoned the process in 1998 because of the companies' refusal to make genuine reforms, and those rights groups still involved have been forced to make very substantial concessions. When the FLA's monitoring system eventually begins operation, it will have a number of significant advantages over Nike's current very poor program. But these

advantages will be undercut by the questionable independence of FLA monitors and the extended delays between external monitoring visits, which will on average occur in each factory only once every ten years.

Rather than expose this monitoring program to expert independent scrutiny, Nike has instead sought to use publicity stunts to shore up its credibility. Thus in 2000 Nike didn't allow academics and human rights experts with appropriate expertise to observe PricewaterhouseCoopers monitors in action; it sent US students with no background in the issue. To the extent those students made constructive and useful suggestions Nike either ignored those recommendations or promised to act on them but has prevented independent assessment of whether those promises have been kept.

On those few occasions when Nike has taken steps to protect human rights in individual cases, it has only done so grudgingly and as a result of sustained public pressure. The current dispute at the Kuk Dong factory in Mexico illustrates Nike's approach. The company's standard monitoring of the factory in March 2000 failed to reveal illegally low wages, poor safety standards and systematic suppression of workers' union rights. It was only in 2001, when workers at the factory took considerable risks to bring conditions at the factory to public attention and US students put considerable effort into keeping them there, that Nike was moved to respond. While elements of that eventual response have been positive, Nike's actions on the issue have been characterized by unnecessary delays, lack of follow through and failure to actively promote the urgent need for a free and fair union election.

Nike's response to labor issues continues to do substantial damage to the company's credibility. The promises made by Phillip Knight in his May 1998 speech represented a limited and partial response to labor abuses in Nike factories. They were an attempt by the company to take the initiative by switching the media focus to issues it was willing to address while avoiding the key problems of subsistence wages, forced overtime and suppression of workers' right to freedom of association. Given that these promises have brought very little benefit to workers, rights groups are justified in treating the company with suspicion and demanding that factory monitoring be both genuinely independent from Nike's control and publicly reported in full. Nike has mislead consumers and let down the workers who make its product and who continue to suffer extreme injustice while Nike touts itself as an "industry leader" in corporate responsibility.

Global Exchange's recommendations regarding each of Knight's May 1998 promises are summarized in Table 1. If Nike genuinely wants to ensure that conditions in its suppliers' factories are decent, it should go beyond those promises and take up the solutions which labor rights groups have proposed. That is, Nike should:

- Make a public commitment to, at minimum, a full time wage that would allow workers to provide themselves and their families with an adequate diet and housing and to pay for basic necessities. Work with international unions, labor rights groups, academics and workers themselves to determine what that wage would equate to in each area in which Nike's goods are produced.
- Publicly release the names and addresses of all its suppliers' factories.

- Regularly release information regarding the value of orders from each of these factories and identify which of these factories have democratic unions. This would allow labor rights groups to verify that workers are not being punished for organizing by having orders from their factories moved to non-union factories.
- Send a clear and unequivocal message to workers making Nike products that the company will ensure that their right to freedom of association is respected. As a first step, Nike could demonstrate that this commitment is genuine by bringing to an end those examples of abuse of that right documented in this report. That is, the union repression occurring in: the Kuk Dong factory in Mexico, the Nikomas Gemilang factory in Indonesia, the Sewon and the Wei Li Textile⁹² factories in China, the Formosa factory in El Salvador, the Natural Garment factory in Cambodia, the Savina factory in Bulgaria, and factories owned by the Saha Union group and the Bangkok Rubber group as well as the Nice Apparel, De-Luxe, Lian Thai and Par Garment factories in Thailand.
- Publicly call on the Chinese government to allow workers in Nike factories in China to form their own unions.
- Cease its campaign to discredit the Workers' Rights Consortium (WRC) and instead work with the WRC to ensure that workers in all Nike factories understand their rights and are able to access a confidential, independent complaint mechanism if those rights are abused.
- Work with international unions and human rights organizations to establish a program of regular and transparent factory monitoring by organizations with appropriate expertise which are independent of (i.e. not selected by) the company. This monitoring should include unannounced factory visits and confidential worker interviews conducted away from the factory and facilitated by organizations or individuals which workers have reason to trust.

For too long Nike has skirted around the edges of the sweatshop problem rather than tackle it head on. Compared to ten years ago, workers in today's Nike contract factories may be somewhat less likely to be poisoned by dangerous gases or burned to death in factory fires. But they are still forced to work excessive hours in high pressure work environments, are not paid enough to meet the most basic needs of their children, and are just as likely to be subject to harassment, dismissal and violent intimidation if they try to form unions or tell journalists about labor abuses in their factories. The time has come for the company to bring an end to evasion and pretence and adopt genuine reforms. It is indefensible that campaigners, consumers and most importantly Nike factory workers are still waiting for Nike to do it.

⁹² Also known as the WDI Supercap factory.

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Appendix 1. Correspondence with Nike in preparation of this report

Monday, March 19, 2001

Ms. Maria Eitel
Mr. Dusty Kidd
Mr. Vada Manager
Nike, Inc.
One Bowerman Drive
Beaverton, OR 97005-6453

Dear Ms. Eitel, Mr. Kidd, and Mr. Manager,

I am writing to let you know that Global Exchange is interested in assessing the extent to which Nike has met the promises made by Phil Knight during his National Press Club Speech in May 1998.

We would be very grateful if you would send us a prompt response to the following questions (if at all possible by April 5, 2001).

- In his 1998 speech Philip Knight announced that all Nike shoe factories would meet OSHA standards in indoor air quality by the end of that year. Has there been independent monitoring of air quality in Nike factories? Who conducted this monitoring, and are the monitoring reports publicly available?
- Mr. Knight also announced that Nike was working hard to put into effect a monitoring program involving NGOs, saying that he recognized "the need for a summary statement about this monitoring." Which NGOs has Nike involved in its monitoring program, and when will summary statements of this monitoring be released?
- Mr. Knight announced an expansion of Nike's education programs. What percentage of workers in Nike footwear and clothing factories are now able to access middle and high school equivalency courses? What percentage of workers takes advantage of these courses? Are these education programs available to workers free of charge? How much does this program cost Nike?
- Mr. Knight announced increased support of Nike's micro-enterprise loan program to a thousand families each in the countries of Vietnam, Indonesia, Pakistan, and Thailand. Has this occurred? In which areas? How much does this program cost Nike?
- Mr. Knight also made an announcement regarding funding university research and open forums to explore issues related to global manufacturing and responsible business practices, such as independent monitoring and health issues. He announced Nike would begin by funding four programs in United States universities in the 1998-1999 academic year, and would have the first public forum in October 1998 in Hong Kong. What university research has Nike funded? Who conducted that research and what did it conclude? Who attended the open forums and how many have been conducted? Could you send us copies of the reports from those forums?
- In March 2000, a number of labor rights groups wrote to Nike with a several requests and questions (a full copy of the letter can be found on the internet at www.caa.org.au/campaigns/nike/dialogue/

contents_15_March_2000.html). Nike has never responded to this letter. Could you now answer the questions raised in that letter? In particular, is Nike still a customer of the Formosa factory in El Salvador, and have conditions in that factory improved?

- In September 2000, Community Aid Abroad-Oxfam Australia released a report documenting suppression of workers' right to organize in Nike contract factories in Indonesia. On the day the report was released Nike announced it would investigate the claims made in the report. Has Nike conducted that investigation and would your company be willing to make the report of that investigation public?
- In October 2000, there was a BBC report into conditions in the June Textiles factory in Cambodia. Nike responded by announcing that orders to the factory would be brought to an end. Has that occurred? Nike also indicated that before the BBC report the factory had already been on probation after several of Nike's monitors had indicated labor problems there. Is Nike willing to make the reports of those monitoring processes available so that this can be verified?

Thank you very much for your time and attention. I look forward to speaking with you soon.

Sincerely,

Medea Benjamin
Founding Director

April 25, 2001

Ms. Medea Benjamin
Global Exchange
#303 2017 Mission St.
San Francisco, CA 94110

Dear Medea—

Thanks so much for your recent letter. As you know, the work that we do with our contract factory partners is a work in progress. There are always more improvements to be made and more work to be done. That also means that we continually have the opportunity to positively impact the lives of workers all over the world.

As you note, in May of 1998, Phil Knight made several statements about Nike's commitment to corporate responsibility and about the expectations we have of our contract [sic] factory partners. We believe that these were significant statements about who we are as a company and where we wanted to go in raising the standards in not only the factories producing our products, but in the industry as well. Let me highlight some of the steps we have taken in the intervening 3 years. You will remember that we categorized these statements under three headings—Responsibility, Opportunity, and Transparency.

Responsibility:

Raise minimum age limits:

Nike committed to raising the minimum age of workers in Nike contracted factories to 18 in footwear factories and 16 in all other factories. Our

contract factories have largely embraced these standards and instances of non-compliance appear to be isolated. With the aforementioned age standards governing our contractors, the average age of the workforce is around 21 years old. As you note, we did make a commitment to end our relationship at June Textiles in Cambodia. This did happen. A more complete statement about the steps we have taken at June Textiles can be found on our website www.nikebiz.com.

Improved Health and Safety Standards—Indoor Air Quality to OSHA to Permissible Exposure Limits (PELs):

By December 1998 all footwear factories have been tested by third party independent and health and safety specialists, contracted through Reliance Insurance, and the samples analyzed by an OSHA-certified laboratory. Any initial instances of non-compliance were addressed and the factories in question re-tested. All of the factories initially meet the requirements that we set for them, although we continue to monitor them to address those factories that may from time-to-time slip back. To date, these results have not been posted publicly, but we have shared our methodology and solvent replacement technologies in an open forum. I will talk more about that below.

Additionally, we have participated in several other projects to improve the health and safety standards in our contract factories. Although not a comprehensive list, here are some of the highlights: Electrical Safety Training—Fall 1998, Ergonomic Testing—fall 1999, participation in and hosting of NGO Health and Safety Capacity building session conducted by Garrett Brown in Indonesia—June 200, Electrical Safety evaluations—2000, Health Care and Health Standards assessments—fall 2—, China Occupational Health and Safety Capacity Building Project organized by Garrett Brown and Dara O'Rourke—2001 ongoing.

Opportunity:

Factory Education programs—as you know, the most significant opportunity that all contract factories offers is the job itself. However, considering the length of employment of many factory workers and the fact that many live on site or in the immediate surrounding community, we felt it was important to explore ways of providing additional opportunities for workers. Phil Knight committed that by the end of 2001, Nike would not place orders with any footwear factory that did not provide for after hour's education. To date—85 % of our footwear factories do provide this opportunity and the balance have programs planned to start in the next several months. More than 10,000 workers have participated in these programs. Those who have participated see this as a definite advantage for them, not only while they are at the factory, but also later when they return to their hometown or move to a different type of employment.

Micro Loan programs— We currently have micro loan programs underway in Vietnam, Indonesia and Thailand. since 1997, more than 5000 people have received loans and started small businesses, with only a negligible default rate. These have ranged from small family sundry shops, to animal husbandry projects, to the production of rice paper for spring rolls and the development of rural stitching centers. Some results have been truly inspiring, including a woman in Indonesia who started a tofu cake business that now employs literally dozens of people.

Transparency:

Funding research and forums—Since 1997, we have funded approximately 2 research projects per year. These have included wage studies, research in

labor laws, health and safety practices in factories, studies focused on monitoring practices and the effectiveness of third party monitoring, to name a few. This work has proven invaluable to us as we look at how we may need to improve our standards or the way we approach this work. The universities that we have directly funded, or with whom we have cooperated on research or case studies, include Harvard University, Dartmouth University, University of North Carolina, St. John's University, Asian Institute of Management and the University of New South Wales. We have also sponsored and hosted a forum on "Solvent Replacement in the Footwear Industry" with all major shoe footwear brands in attendance. The forum was hosted in November, 1998 in Thailand and open to anyone in the industry. Additionally, several NGOs were invited, including Global Exchange.

Monitoring and transparency—Phil Knight's commitment to a more transparent process and the cooperation or inclusion of NGOs in that process has included our work with the Fair Labor Association, the Global Alliance for Workers and Communities, Espiral, the BSR Factory Monitoring Program, which included the participation of Dara O'Rourke, the CESAIS focus group program, and programs with other small local NGOs. In addition to the monitoring and workers assessment activities, which have included numerous NGOs, we have also made a significant amount of information public and transparent on our www.nikebiz.com website. This includes compliance monitoring reports, health and safety monitoring reports, Global Alliance Reports, the recent Kukdong Monitoring report (conducted by Verite) and Nike's remediation plan, as well as the locations of all the factories producing Nike collegiate licensed products. On this latter point we were the first company to publicly disclose this information before it was mandated by any university and is now a prerequisite of many companies that wish to produce collegiate products.

You asked about a letter written to Nike in March 2000 by a group of stakeholders who had asked for information in the Fall of 1999. We responded to that earlier set of questions at length. When we proposed a platform of mutually acceptable dialogue, that suggestion was declines. We believe companies have an obligation to respond to stakeholders, but in forums or processes that are sustainable. We have since endorsed principles for the Global Compact and CERES, both of which we believe provide opportunities to exchange information and provide reporting to global stakeholders who are also parts of those processes.

Regarding the Community Aid Abroad-Oxfam Australia report released in September 2000, we appreciate any information that can help us make our monitoring and compliance work better. We evaluate the information based on its content and its source.

Thank you once again for your ongoing interest in our work and for the feedback you have regularly provided us over the years. This has been beneficial to us, as we continue to develop the work that we do to improve the lives of hundreds of thousands of workers around the world. Take care and I look forward to talking with you soon. By the way, I never did get to see any pictures from our visit to YueYuen ... if you have any copies I would love to see them.

Best regards,

Todd McKean
Director of Compliance
Nike Corporate Responsibility

cc:
Maria Eitel
Dusty Kidd
Vada Manager

Monday, May 7, 2001

Mr. Todd McKean
Nike Inc.
Beaverton, OR 97005-6453

Dear Todd:

As you may know, or may have surmised, Global Exchange is preparing a complete, rigorously researched review of the commitments made by Phil Knight three years ago at the National Press Club. The review is an important part of Global Exchange's commitment to corporate accountability—that is, to ensuring that promises made by companies are fulfilled.

We would like to thank you for your April 25 reply to our requests for information. Your responsiveness is appreciated. However, we find several of the answers to be terribly vague. We are hoping you would provide an elaboration.

For obvious reasons of fairness and completeness we feel that is important to include Nike's entire record from the last three years. But because of deadline pressures we will not be able to include your responses to the questions below unless we receive them immediately. We are asking that you respond in the next 24 hours. If there is some reason why these questions cannot be answered today, please call us today and let us know why, and when an answer would be available.

Here are our questions:

- Is Nike willing to make all the results and methodology of the company's program for testing air quality (including whether the factory is given advanced warning of the testing) available to the public? If so, when?
- Which academics (names and positions) has Nike funded to research responsible business practices? When? What topics did each study investigate? Have the conclusions been published? If so, where have they been published?
- Your April 25 response to our letter mentioned an organization named Espiral. What is Nike's relationship with Espiral and how does it represent inclusion by NGOs in Nike's monitoring program? Your response/letter also mentions "programs with other small local NGO's." Which small local NGO's does Nike work with?

If you have any questions about these queries, please feel free to call me. I will be working from home on Monday, but you can easily reach me there at 415-861-1206. I will also be checking my email occasionally, jason@globalexchange.org.

Thank you once again for your attention.

All Best,

Jason Mark
Communications Director

Tuesday, May 8 (email received by Global Exchange)

Dear Mr. Mark,

Todd McKean is traveling this week and I understand you had some additional questions about our work against the goals Phil Knight laid out for us three years ago. I also understand you expect something within 24 hours. Let me see what I can do to help with your three questions:

-On methodology and results from indoor air quality testing: That was shared specifically with the public on Nov. 26, 1998 in Bangkok. I believe Global Exchange was invited to that forum. The people responsible for testing, from Reliance Insurance, walked through the methodology in great detail. We have also discussed it in other public forums. We have also discussed in some detail with health and safety professionals, including Garrett Brown, a California OSHA manager, and Dara O'Rourke, a professor at M.I.T. In that forum we also share testing results. The factory does know that testing is going to take place. There are basically three components that determine whether a worker is properly protected against solvent/vapor exposure: the solvents in use; the state of ventilation; and the personal protective equipment in use. Because our inspectors are in factories each day, we are able to observe these three parameters on an on-going basis. To carry out professional air quality testing requires close cooperation and training between management, worker and tester.

-On academics, and research, I don't have a list in front of me but would be happy to forward to you when I do. We have had research done on wages, compliance monitoring, health and safety, transfer of business and responsibility culture, interview-based monitoring and related topics, as well as a number studies done to try to gauge the overall program of supply chain responsibility. Institutions and individuals doing that work I believe were cited by Todd in his earlier message.

-On NGOs and monitoring, the cornerstone of our work in this area is through the Fair Labor Association. The most recent was through Verite, which performed a monitoring visit at Kukdong in Puebla, Mexico. Through the FLA we have also worked with the International Labor Rights Fund, the Lawyers Committee for Human Rights and others on monitoring protocol. Nike contracted Espiral to test and develop tools to improve our monitoring processes, specifically in the area of worker interviews. We intend to share these tools with other monitoring groups and with the FLA, as a contribution to the training and capacity-building of independent NGO monitors throughout Central and Latin America. Program for Appropriate Technology in Health (Path) has helped on health issues and peer education in factories. A group of Indonesian NGOs, working with Garrett Brown, used one on our footwear factories as a site for training on health and safety monitoring, which we expect will eventually make it possible for them to do that work for companies such as Nike in the future. A similar program involving NGOs and workers as well as factory managers is about to begin in China. We have worked with some NGOs who prefer to have that work remain private.

I hope this helps. Kind regards, DK [Dusty Kidd]

Appendix 2. Nike's Code of Conduct

NIKE Inc. was founded on a handshake. Implicit in that act was the determination that we would build our business with all of our partners based on trust, teamwork, honesty and mutual respect.

We expect all of our business partners to operate on the same principles. At the core of the NIKE corporate ethic is the belief that we are a company comprised of many different kinds of people, appreciating individual diversity, and dedicated to equal opportunity for each individual. NIKE designs manufactures and markets products for sports and fitness consumers. At every step in that process, we are driven to do not only what is required, but what is expected of a leader. We expect our business partners to do the same. Specifically, NIKE seeks partners that share our commitment to the promotion of best practices and continuous improvement in:

1. Occupational health and safety, compensation, hours of work and benefits.
2. Minimizing our impact on the environment.
3. Management practices that recognize the dignity of the individual, the rights of free association and collective bargaining, and the right to a workplace free of harassment, abuse or corporal punishment.
4. The principle that decisions on hiring, salary, benefits, advancement, termination or retirement are based solely on the ability of an individual to do the job.

Wherever NIKE operates around the globe, we are guided by this Code of Conduct. We bind our business partners to these principles.

While these principles establish the spirit of our partnerships, we also bind these partners to specific standards of conduct. These are set forth below:

1. Forced Labor. (Contractor) certifies that it does not use any forced labor—prison, indentured, bonded or otherwise.
2. Child Labor (Contractor) certifies it does not employ any person under the minimum age established by local law, or the age at which compulsory schooling has ended, whichever is greater, but in no case under the age of 14.
3. Compensation (Contractor) certifies that it pays at least the minimum total compensation required by local law, including all mandated wages, allowances and benefits.
4. Benefits (Contractor) certifies that it complies with all provisions for legally mandated benefits, including but not limited to housing; meals; transportation and other allowances; health care; child care; sick leave; emergency leave; pregnancy

and menstrual leave; vacation, religious, bereavement and holiday leave; and contributions for social security, life, health, worker's compensation and other insurance.

5. Hours of Work/Overtime (Contractor) certifies that it complies with legally mandated work hours; uses overtime only when employees are fully compensated according to local law; informs the employee at the time of hiring if mandatory overtime is a condition of employment; and, on a regularly scheduled basis, provides one day off in seven, and requires no more than 60 hours of work per week, or complies with local limits if they are lower.
6. Health and Safety (Contractor) certifies that it has written health and safety guidelines, including those applying to employee residential facilities, where applicable; and that it has agreed in writing to comply with NIKE's factory/vendor health and safety standards.
7. Environment (Contractor) certifies that it complies with applicable country environmental regulations; and that it has agreed in writing to comply with NIKE's specific vendor/factory environmental policies and procedures, which are based on the concept of continuous improvement in processes and programs to reduce the impact on the environment.
8. Documentation and Inspection (Contractor) agrees to maintain on file such documentation as may be needed to demonstrate compliance with this Code of Conduct, and further agrees to make these documents available for NIKE or its designated auditor's inspection upon request.

Appendix 3. Fair Labor Association (formerly the Apparel Industry Partnership) Workplace Code of Conduct

(Adopted by Nike in March 1997)

REPORT OF APPAREL INDUSTRY PARTNERSHIP

The members of the Apparel Industry Partnership hereby report to the President and to the public on:

- The announcement of the attached "Workplace Code of Conduct" as a set of standards defining decent and humane working conditions;
- The individual determination of each company participating in the Partnership to adhere to the Code and to implement as soon as reasonably practicable a moni-

toring program consistent with the attached 'Principles of Monitoring', by adopting an internal monitoring program consistent with such Principles and utilizing an independent external monitor that agrees to conduct its monitoring consistent with such Principles; and

- The Partnership's commitment to work together to form, during a six-month transition period, a non-profit association that would have the following functions intended to provide the public with confidence about compliance with the Code:
- To determine the criteria for company membership in the association and for companies to remain members in good standing of the association;
- To develop criteria and implement procedures for the qualification of independent external monitors;
- To design audit and other instruments for the establishment of baseline monitoring practices;
- To continue to address questions critical to the elimination of sweatshop practices;
- To develop means to maximize the ability of member companies to remedy any instances of non-compliance with the Code; and
- To serve as a source of information to consumers about the Code and about companies that comply with the Code.

The association would be governed by a board whose members would be nominated by companies, labor unions and consumer, human rights and religious groups. The Partnership would work together during this transition period to further determine the governance of the association.

WORKPLACE CODE OF CONDUCT

The Apparel Industry Partnership has addressed issues related to the eradication of sweatshops in the United States and abroad. On the basis of this examination, the Partnership has formulated the following set of standards defining decent and humane working conditions. The Partnership believes that consumers can have confidence that products that are manufactured in compliance with these standards are not produced under exploitative or inhumane conditions.

FORCED LABOR. There shall not be any use of forced labor, whether in the form of prison labor, indentured labor, bonded labor or otherwise.

CHILD LABOR. No person shall be employed at an age younger than 15 (or 14 where the law of country of manufacture allows) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15.

HARASSMENT or ABUSE. Every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.

NON-DISCRIMINATION. No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.

HEALTH and SAFETY. Employers shall provide a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities.

FREEDOM of ASSOCIATION and COLLECTIVE BARGAINING. Employers shall recognize and respect the rights of employees to freedom of association and collective bargaining.

WAGES and BENEFITS. Employers recognize that wages are essential to meeting employees' basic needs. Employers shall pay employees, as a floor, at least the minimum wage required by local law or the prevailing industry wage, whichever is higher, and shall provide legally mandated benefits.

HOURS OF WORK. Except in extraordinary business circumstances, employees shall: (i) not be required to work more than the lesser of: (a) 48 hours per week and 12 hours of overtime, or (b) the limit on regular and overtime hours allowed by the law of the country of manufacture or, where the laws of such country do not limit the hours of work, the regular work week in such country plus 12 hours overtime, and (ii) be entitled to at least one day off in every seven day period.

OVERTIME COMPENSATION. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required in the country of manufacture or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Any company that determines to adopt the Workplace Code of Conduct shall, in addition to complying with all applicable laws of the country of manufacture, comply with and support the Workplace Code of Conduct in accordance with the attached Principles of Monitoring and shall apply the higher standard in cases of differences of conflicts. Any company that determines to adopt the workplace Code of Conduct also shall require its contractors and, in the case of a retailer, its suppliers to comply with applicable local laws and with this Code in accordance with the attached Principles of Monitoring and to apply the higher standard in cases of differences or conflicts.

PRINCIPLES OF MONITORING

I. OBLIGATIONS OF COMPANIES

A. Establish Clear Standards

Establish and articulate clear, written workplace standards.

Formally convey those standards to company factories as well as to contractors and suppliers.

Receive written certifications, on a regular basis, from company factories as well as contractors and suppliers that standards are being met, and that employees have been informed about the standards.

Obtain written agreement of company factories and contractors and suppliers to submit to periodic inspections and audits, including by independent external monitors, for compliance with the workplace standards.

B. Create An Informed Workplace

Ensure that all company factories as well as contractors and suppliers inform their employees about the workplace standards orally and through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and undertake other efforts to educate employees about the standards on a regular basis.

C. Develop An Information Database

Develop a questionnaire to verify and quantify compliance with the workplace standards.

Require company factories and contractors and suppliers to complete and submit the questionnaire to the company on a regular basis.

D. Establish Program to Train Company Monitors

Provide training on a regular basis to company monitors about the workplace standards and applicable local and international law, as well as about effective monitoring practices, so as to enable company monitors to be able to assess compliance with the standards.

E. Conduct Periodic Visits and Audits

Have trained company monitors conduct periodic announced and unannounced visits to an appropriate sampling of company factories and facilities of contractors and suppliers to assess compliance with the workplace standards.

Have company monitors conduct periodic audits of production records and practices and of wage, hour, payroll and other employee records and practices of company factories and contractors and suppliers.

F. Provide Employees With Opportunity to Report Non-compliance

Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable company employees and employees of con-

tractors and suppliers to report to the company on non-compliance with the workplace standards, with security that they will not be punished or prejudiced for doing so.

G. Establish Relationships with Labor, Human Rights, Religious or Other Local Institutions

Consult regularly with human rights, labor, religious or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions and utilize where companies deem necessary, such local institutions to facilitate communication with company employees and employees of contractors and suppliers in the reporting of non-compliance with the workplace standards.

Consult periodically with legally constituted unions representing employees at the worksite regarding the monitoring process and utilize, where companies deem appropriate, the input of such unions.

Assure that implementation of monitoring is consistent with applicable collective bargaining agreements .

H. Establish Means of Remediation

Work with company factories and contractors and suppliers to correct instances of non-compliance with the workplace standards promptly as they are discovered and to take steps to ensure that such instances do not recur.

Condition future business with contractors and suppliers upon compliance with the standards.

II. OBLIGATIONS OF INDEPENDENT EXTERNAL MONITORS

A. Establish Clear Evaluation Guidelines and Criteria

Establish clear, written criteria and guidelines for evaluation of company compliance with the workplace standards.

B. Review Company Information Database

Conduct independent review of written data obtained by company to verify and quantify compliance with the workplace standards.

C. Verify Creation of Informed Workplace

Verify that company employees and employees of contractors and suppliers have been informed about the workplace standards orally, through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and through other educational efforts.

D. Verify Establishment of Communication Channel

Verify that the company has established a secure communications channel to enable company employees and employees of contractors and suppliers to report to the company on non-compliance with the workplace standards, with security that they will not be punished or prejudiced for doing so.

E. Be Given Independent Access to, and Conduct Independent Audit of Employee Records

Be given independent access to all production records and practices and wage, hour, payroll and other employee records and practices of company factories and contractors and suppliers.

Conduct independent audit, on a confidential basis, of an appropriate sampling of production records and practices and wage, hour, payroll and other employee records and practices of company factories and contractors and suppliers.

F. Conduct Periodic Visits and Audits

Conduct periodic announced and unannounced visits, on a confidential basis, of an appropriate sampling of company factories and facilities of contractors and suppliers to survey compliance with the workplace standards

G. Establish Relationships with Labor, Human Rights, Religious or Other Local Institutions

In those instances where independent external monitors themselves are not leading local human rights, labor rights, religious or other similar institutions, consult regularly with human rights, labor, religious or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions

Assure that implementation of monitoring is consistent with applicable collective bargaining agreements and performed in consultation with legally constituted unions representing employees at the worksite

H. Conduct Confidential Employee Interviews

Conduct periodic confidential interviews, in a manner appropriate to the culture and situation, with a random sampling of company employees and employees of contractors and suppliers (in their local languages) to determine employee perspective on compliance with the workplace standards

Utilize human rights, labor, religious or other leading local institutions to facilitate communication with company employees and employees of contractors and suppliers, both in the conduct of employee interviews and in the reporting of non-compliance

I. Implement Remediation

Work, where appropriate, with company factories and contractors and suppliers to correct instances of non-compliance with the workplace standards.

J. Complete Evaluation Report

Complete report evaluating company compliance with the workplace standards.