

JABA GARMINDO (INDONESIA)

SUMMARY REPORT

July 8, 2021

This is a Third Party Complaint (TPC) investigation like none other. Typically the Fair Labor Association initiates these investigations with the intention of assessing and, as needed, remediating ongoing labor rights violations in a supplier factory. At times the process reaches to recent factory retrenchments and closures.

Here, however, the case involves a factory closure that occurred nearly five years before the complaint was filed – and an investigation conducted without the benefit of access to many of those who were directly involved in, or affected by, the closure and the actions preceding it. This long period between the closure and filing of the complaint obviously had implications for access not only to individuals but to other sources of information that, in a more typical TPC investigation, are critical to both the findings and potential remedies.

Moreover, here one of the two companies at the heart of the complaint was not an affiliate of the FLA at the time of the closure, only joining later that year. Finally, for both companies, the appropriate measuring stick was their adherence to the standards of responsibility in place in 2014 and 2015, not 2021.

Nevertheless, the FLA decided to initiate this investigation because of the seriousness of the issues raised in the complaint, the substantial impact of the closure on the former factory workers, and based on a view that the time had come – several years later – to try to finally clarify the record of what happened and in turn reach some conclusions about the causes of and responsibilities for the well-publicized closure.

At times along the way, undertaking – let alone concluding – this investigation consistent with the standards set for TPC cases seemed like a long shot. Having received the complaint from the Clean Clothes Campaign (CCC) and the Federasi Serikat Pekerja Metal Indonesia (FSPMI) labor union in October 2019, the FLA concluded within a short period that it did satisfy the threshold criteria for initiation under the TPC process. But that came with a recognition of the tough road ahead.

Following initiation, the FLA spoke separately with the parties – the complainants and the two affiliated companies – to help better understand the theory of the case and sources of information that would be important for conducting the inquiry. And then the FLA, being committed to find an independent investigator without any preconceived views yet knowledgeable about the underlying issues, embarked on a search for a highly qualified individual to take on those responsibilities.

Fortunately, after interviewing several candidates, the FLA in late April 2020 selected Bhima Yudhistira Adhinegara. From the perspective of the FLA, Bhima met and indeed exceeded expectations with his ability to digest and analyze pertinent information, coupled with his knowledge of the relevant legal and policy structure in Indonesia at the time the Jaba Garmino factory closure occurred (as summarized on pages 5 and 6 of his report). The FLA thanks Bhima for his skills and diligence, and his patience and perseverance. These qualities are critical because the FLA is committed to not overriding or otherwise interfering with the independent investigator’s analysis, findings, and recommendations.

The investigator, based in Jakarta, moved forward notwithstanding the combined hurdles of the pandemic, the difficulties involved in accessing relevant information, and the challenges involved in resolving starkly different narratives from the parties. After some delays and interruptions, he completed his research and analysis and then drafted his report.

At that point, and in coordination with the FLA in line with longstanding TPC procedures, Bhima submitted his report for review by the parties focusing on any remaining factual questions or concerns – with his conclusions and recommendations not subject to further scrutiny. To their credit, both sides conducted careful reviews and provided constructive feedback that helped shape the final report.

The details of the investigative process, including the interviews conducted and documents reviewed, as well as the key findings, conclusions, and recommendations, are carefully laid out in the report and need not be repeated here. The report reflects the investigator’s careful assessment of eighteen allegations from the Complaint. The assessments of Allegations 5 (pages 16-17)

and 9 (pages 19-20) are especially pertinent to consideration of the roles of the two companies' purchasing practices in the factory's bankruptcy and closure. Those findings in turn lead to his core conclusions about responsibility for the closure.

Having found that the factual information reviewed and analyzed did not demonstrate the companies' responsibility for the Jaba Garmino bankruptcy, the Investigator further notes that as a legal matter, "the responsibility of buyers/brands for compensating workers in case of a factory closure/bankruptcy remains a subject of considerable debate and disagreement." Based on his review, he concludes that current international and national legal standards do not impose this responsibility on sourcing brands such as the two companies in this case.

The FLA concurs with this determination – even as it also recognizes the great challenges raised by cases where the supplying factory has failed to fulfill its own clear responsibilities to employees and the government has not provided adequate coverage to address the affected workers' financial needs.

In the absence of finding any legal violations or non-compliance with the FLA's standards pursuant to its Code and Benchmarks, the investigator could have moved on without a detailed final recommendations section. However, and correctly in the FLA's view given the consequences of the closure and the value of providing guidance to prevent reoccurrences, the investigator has provided a series of recommendations directed at the brands, the Indonesian government, the banks, and the FLA itself.

Concerning the latter, the FLA acknowledges and accepts the five recommendations directed at it (see pages 30-31), including the following two:

Similar to the recommendations to brands above, the FLA can help its affiliates through detailed country-specific risk assessment studies to better understand the level of legal protection provided for workers in cases of business closures/bankruptcies. The FLA can also help identify different means for covering the unpaid termination payouts/severance of workers in high-risk sourcing destinations.

The FLA also should continue its efforts to strongly encourage its affiliates to support and participate in efforts to fund accounts to assist workers in cases where their employer and/or the government has failed to cover the benefits legally due to those workers.

The FLA also takes note of one of the recommendations directed at the brands:

Although this investigation revealed that the bankruptcy and closure of Jaba Garmino was not due to any wrongdoings of the two sourcing brands targeted in the Complaint, the Investigator recommends that these two brands – as well as any of the eighteen others that also sourced from Jaba Garmino – come together under the leadership of an impartial organization and create an account for providing financial relief to the ex-Jaba Garmino workers. Such an effort would be a huge benefit, even several years later, for the workers and their families and would at the same time demonstrate the brands' willingness to assist – even in the absence of any legal obligation to do so.

The investigator thus affirms that both the facts and the law do not support finding responsibility on the part of the companies, as well as his view that they should help address the still-unmet needs of the affected workers – while adding that he is not in a position to determine the amount of any such assistance.

The FLA joins Bhima in thanking both the complainants (CCC and FSPMI) and the FLA-affiliated brands (s.Oliver and Fast Retailing) for their engagement and cooperation throughout the lengthy investigative process. While the two sides likely will have very different views of some of the findings, conclusions, and recommendations, we trust that they will maintain that constructive approach as the process now moves forward. The FLA will be ready to follow up and provide updates on relevant developments.