

## **ASSESSMENT OF FREEDOM OF ASSOCIATION OF WORKERS AT THE E GARMENT FACTORY (CAMBODIA)**

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### **INTRODUCTION**

This report provides an assessment of labour rights, particularly the freedom of association of workers, at the E Garment Factory in Cambodia. This factory assessment has been conducted at the request of the Fair Labour Association (FLA), to which the Hong Kong-based Yee Tung Garment Company, the owner of E Garment, is affiliated. The main purpose of the factory assessment was to determine if the right of workers at E Garment to associate freely with the union of their own choosing (right to freedom of association) was violated by the company in the light of the following complaints and allegations leveled against E Garment by C.CAWDU, one of the two unions at the E Garment factory, and by the Worker Rights Consortium (WRC):

- a) violation by management of freedom of association of workers at the E Garment Factory; and
- b) management-instigated violence against members of the trade union C.CAWDU, particularly in the last three months.

The assessment was conducted over approximately one week and involved reviewing and analyzing documents and reports related to the case (i.e., reports by the WRC, rulings by the Arbitration Council, the Multilateral Agreement involving E Garment, C.CAWDU, ITGLWF and Inditex of 2009, C.CAWDU's strike notification, complaints by both of the unions and factory management) and interviews/meetings with factory management (Administration Manager and Human Resource Manager), union presidents and union committee members of C.CAWDU and VKYFTU, 20 union members of the two unions at the factory (the meetings took place both inside and outside of the factory), C.CAWDU's top leaders at the federation level, WRC investigators, representatives of the Arbitration Council, and the Head of the Cambodian Legal Education Center (CLEC)'s Labour Unit. Both the CLEC and the WRC have been working on and following the case for a number of years. The fieldwork began on March 16, 2013, and an initial report was prepared on March 25, 2013.

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## **CASE DESCRIPTION**

On 6 August 2007, C.CAWDU notified factory management that they had established a union in the factory and conducted a union election. They submitted to the management a list of 44 employees who were members and officers of the newly organized affiliate union. Soon after, 28 C.CAWDU-associated workers who were key union leaders (including the C.CAWDU local president, vice president and secretary) and committee members were dismissed. Subsequently, another 33 local C.CAWDU officers and members were also terminated, bringing the total dismissed workers in 2007 to 61. C.CAWDU lodged two complaints against the factory with the Arbitration Council. On 30 August 2008, the Arbitration Council ruled that management had violated the workers' right to association and ordered reinstatement of all of the 28 terminated workers. However, E Garment failed to reinstate the terminated workers.

Faced by mounting pressure from various international labour organizations, particularly the International Textile, Garment and Leather Worker Federation (ITGLWF), now part of IndustriAll, the Inditex Group, which was among the major buyers of the factory at the time, became involved in the case and on 2 May 2009, a multilateral agreement was signed by C.CAWDU, factory management, Inditex and ITGLWF. The agreement committed the parties to improve industrial relations in the factory, mainly through the reinstatement of the 61 dismissed workers; to conduct training on the roles, rights and responsibilities of both management and the unions; and to promote and engage in collective bargaining as a way to promote harmonious relations in the workplace. In accordance with the agreement, the factory reinstated the first group of 28 workers (officers and members), but did not reinstate the remaining 33 workers (who had still not been reinstated as of the time of writing of this report). Management's failure to reinstate the remaining workers was deemed by Inditex to be non-fulfillment of the agreement and led to Inditex suspending its business relations with E Garment in 2010.

On 31 July 2010, several C.CAWDU local union leaders and members were physically attacked on the shop floor during working hours allegedly by VKYFTU officers and members and in the presence of Mr. Sok An, the company's human resources officer. On 2 August 2010, factory management lodged a formal complaint with the local labor authority to suspend and dismiss 12 workers involved in the 31 July shop floor "fighting" incident, 8 of whom were officers and members of C.CAWDU and 4 of whom were affiliated with the VKYFTU. The following day, the local government labour office approved the dismissals without providing reasons or citing any evidence. This incident provoked criticism from the Inditex Group, the ITGLWF and the WRC. Later in 2010, C.CAWDU lodged a complaint with the Arbitration Council on the dismissals. The Council ruled that management should reinstate two of the C.CAWDU workers. Management appealed the ruling and did not implement it.

In October 2012, C.CAWDU lodged a complaint with the Arbitration Council and demanded the reinstatement of all C.CAWDU's terminated workers and the payment of additional benefits to the workers. The Council upheld C.CAWDU's complaint. However, E Garment rejected the Arbitrators' non-binding award and appealed it.

On 24 January 2013, C.CAWDU organized a legal strike at the E Garment factory, primarily demanding that the dismissed workers be reinstated and provided with back pay. During the course of the strike, which is still ongoing as of the time of the writing of this report, two incidents occurred. First, on 6 February 2013, the local police came to the factory and helped prevent the striking workers from stopping the factory's van from leaving the factory. The police clashed with the striking workers at the factory gate and some strikers were allegedly beaten. Second, on 21 February 2013, 7 male strike leaders and members were attacked on their way home by around 20 "gangsters" armed with weapons. Some of those attacked were taken to the hospital to receive treatment for their injuries. C.CAWDU lodged a complaint against the attackers with the police, alleging that some of them were VKYFTU activists who are still in the employ of the factory.<sup>2</sup>

## **ASSESSMENT FINDINGS**

There are a number of positive aspects to industrial relations at the factory. First, the working conditions of workers are generally good and the benefits they receive are competitive. Their base wage is higher than the nationally-determined wage level.

Second, and at first glance, the factory has a very high level of unionization. Among the total workforce of 3,350, 2500 workers are members of VKYFTU and 350 workers are members of C.CAWDU. About 500 workers are not members of either union. In addition, two unions – VKYFTU and C.CAWDU – have been in co-existence, albeit not peacefully, in the factory for many years. Both unions are allowed to hold meetings at the factory during working hours and have been exercising that privilege regularly.

However, this assessment nevertheless concludes that E Garment has been violating the right to freedom of association of some of its workers who are officers and members of C.CAWDU. In the next part, this conclusion will be corroborated.

### **1. Illegal termination of trade union officers and members of C.CAWDU**

It is submitted that the factory's dismissal of the workers affiliated with C.CAWDU in August 2007 was without due cause. The fact that the dismissed workers were at that time union leaders and activists of C.CAWDU suggests that factory management sought to disrupt the

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<sup>2</sup> In the complaint filed with the police, the victims identified four attackers from the competing VKYFTU union.

establishment and functioning of the C.CAWDU-affiliated union. In Cambodia, C.CAWDU is seen as politically independent and active in defending and promoting the rights and interests of workers. The termination was in contravention of international labour standards and, in particular, of the provisions that provide legal protection to union leaders when establishing their union.<sup>3</sup>

Some of the reinstated workers were subsequently dismissed again. These were the same workers who were attacked on the shop floor during work hours on 31 July 2010 -- allegedly by some VKYFTU officers and members. Management referred the termination decision as a result of the violent attack to the local labour office, a government office that is generally perceived to be corrupt. The systematic and continued dismissal of workers who were officers and activists/members of the C.CAWDU-affiliated unionists creates a pattern of dismissals that had the effect of preventing the independent union from being established and/or weakening it.

## **2. Alleged involvement of VKYFTU and management in the instances of violence**

In the first violent incident in 2010, when both unions made their complaint to the concerned authority, management lodged a complaint with the local labour office demanding the termination of the 12 workers involved in this incident. Eight of these workers were key union leaders of C.CAWDU. In the second incident in January 2013, the municipal police was summoned to stop workers from blocking access to the factory gate.<sup>4</sup> The factory should have known that the involvement by the police might provoke violence. In the third incident, the C.CAWDU strikers who were victims of the violence lodged a formal complaint with the authorities identifying some of the attackers as being from VKYFTU. Many of the workers on strike claimed that key VKYFTU union leaders were allowed by the management to observe the strike and threaten the strike organizers.

The information gathered by the assessor is not sufficient and conclusive regarding the allegations of management instigation of the instances of violence.

## **3. Disrespect of the multilateral agreement and Arbitration Council Rulings**

It was clear from the assessment that the factory management did not honor either their obligations in terms of the agreement with Inditex, ITGLWF and C.CAWDU or the rulings of the Arbitration Council in 2008 and 2010. Although the factory reinstated some of the dismissed

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<sup>3</sup> ILO Convention 87, "workers shall have the right to establish and... join organizations of their own choosing."  
"Union leaders candidates are provided with protection against dismissal within 45 days prior and after the election. This protection also applies to union founders and union activists" (Clause 3 and 4 of Declaration on Representative Status of Professional Organizations of Workers).

<sup>4</sup> Workers interviewed opined that factory management had summoned the police; management countered that the call for the police was made by local residents who were bothered by the activities going on outside of the factory.

workers, some of the reinstated workers were later terminated for other reasons. This non-compliance led Inditex to suspend their business relationship in 2010, pending resolution of the case.

In the interviews by the assessor with factory management, the latter tried to evade questions related to their failure to honor the agreement and the judicial orders and instead put the blame on C.CAWDU. Management insisted that the agreement was merely about building trust and not about reinstating the dismissed workers. However, these assertions are contradicted by specific clauses in the Agreement in which the company commits itself to reinstating the dismissed workers. The factory's failure to honor the rulings of the Arbitration Council also led directly to the succeeding strike action.

#### **4. Lack of knowledge about freedom of association and the need to have good industrial relations at the factory**

It is clear from the documentation review and interviews conducted by the assessor that factory management lacks full understanding of the roles, rights and importance of trade unions. Management's violation of fundamental principles of freedom of association, such as the dismissal of union members, the interference in union activities and the perception of favoring one union over the other all lends support to this conclusion. The interview with management also revealed management's limited knowledge or flagrant disregard of legal provisions protecting the right of workers to organize and join a union of their choice. The facts of the case also highlight management's failure to commit to building harmonious industrial relations in the factory.

### **RECOMMENDATIONS**

On the basis of the above-mentioned findings of violations of legal provisions protecting workers' right to associate freely, the following recommendations are made to remedy the violations and improve industrial relations in the factory.

#### **1. Reinstatement with full back pay**

The 41 terminated workers need to be reinstated with full back pay according to the legal requirements. These workers comprise the 33 dismissed workers in 2007 and the 8 workers affected in the first violent incident that took place in 2009. This reinstatement is key to addressing the on-going case lodged by C.CAWDU. The rulings and conditions of the Arbitration Council and the multilateral agreement lend support to this recommendation.

#### **2. Respect for unions and non-interference with the unions**

The management of E Garment should refrain from committing actions (or inactions) that violate trade union rights and the associational rights of the workers in the factory. Management needs to ensure that all workers – irrespective of union affiliation – are treated fairly; that workers are free to join the union of their choice; and that no one union is favored over another.

### **3. Knowledge building on principles and labour standards on freedom of association and the need for mature industrial relations**

There is a need to increase knowledge and recognition of the principles and standards on freedom of association and good industrial relations, including collective bargaining between management and the two unions. It is imperative that management increases their knowledge of the provisions of Cambodian Labour Law and International Labour Standards regarding the rights and protections of trade union organizations and workers, dispute resolution, collective bargaining and industrial peace. These constitute the first steps in building social dialogue and good industrial relations at the factory. Efforts should be made to put in place mechanisms to prevent conflict among the parties and to embark on good faith negotiations to conclude a collective bargaining agreement or memorandums of understanding, as appropriate, which will address and improve the current and future situation in the factory.