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Interim Report Regarding E Garment Factory (Cambodia)

In mid-March 2013, the Fair Labor Association (FLA) engaged Veasna Nuon, an independent expert on Cambodian industrial relations, to investigate allegations of freedom of association violations at the E Garment factory in Cambodia by the Worker Rights Consortium. E Garment is owned and operated by FLA Participating Supplier Yee Tung Group; Category B Licensee VF Corporation sources from the factory.

This interim report summarizes the assessment by the independent expert; describes the context and content of an agreement signed on March 26, 2013 between the union federation C.CAWDU and E Garment following negotiations facilitated by FLA President & CEO, Aurret van Heerden; discusses an issue that was renegotiated after the conclusion of the original agreement; and outlines the plan of action for E Garment aimed at improving the industrial relations climate at the factory in accord with the March 26, 2013 agreement between C.CAWDU and management.

ASSESSMENT BY INDEPENDENT EXPERT

Independent expert Veasna Nuon conducted an assessment of E Garment over the course of approximately one week commencing on March 16, 2013. The FLA's terms of reference for the assessment called for the expert to investigate and report on the following allegations:

1. Violation by management of workers' freedom of association at E Garment; and
2. Management-instigated violence against members of the trade union C.CAWDU, particularly in the last three months.

The assessment consisted of reviewing and analyzing documents and reports related to the case, and interviews/meetings with factory management, union presidents and union committee members of C.CAWDU and VKYFTU, 20 union members of the two unions (interviewed inside and outside the factory), C.CAWDU's top leaders at the federation level, WRC investigators, representatives of the Arbitration Council, and the Head of the Cambodian Labor Education Council (CLEC).

As the investigation report points out, allegations of violations of freedom of association at E Garment stem back to mid-2007, when C.CAWDU lodged complaints before the Arbitration Council against the factory alleging the illegal dismissal of two groups of

workers (61 in total) who were involved in establishing a union affiliated with C.CAWDU. On March 14, 2009, E Garment, C.CAWDU, the International Textile, Garment and Leather Workers' Federation (ITGLWF)¹ and Inditex² signed a multilateral agreement aimed at improving industrial relations at the factory, specifically by reinstating the 61 dismissed workers; conducting training on the roles, rights and responsibilities of management and unions; and promoting and engaging in collective bargaining as a way to improve harmonious workplace relations. The agreement was not fully implemented, and Inditex suspended commercial relations with E Garment in 2009.

From 2010 through early 2013, there were several incidents between the C.CAWDU and VKYFTU unions that resulted in violence. Some of the workers involved in the fighting were dismissed, leading to allegations of unfair dismissal by both unions. In early 2013, C.CAWDU launched a strike demanding reinstatement of its members who had been dismissed; at least two incidents of violence related to the strike action were reported.

Findings

1. The dismissal by management of workers affiliated with C.CAWDU in August 2007 was without due cause and disrupted the establishment and functioning of independent union C.CAWDU.
2. Information gathered by the assessor was not sufficient or conclusive with regard to allegations that management instigated violence against C.CAWDU members.
3. Factory management did not honor the multilateral agreement it negotiated in 2009 and various Arbitration Council awards.
4. Factory management lacks full understanding of the roles, rights and importance of trade unions.

Recommendations

To remedy the violations of freedom of association and to improve labor relations at the factory, the expert recommends:

1. Reinstatement with full back pay of all dismissed workers who have not already received such back pay.
2. Neutrality regarding all unions operating in the factory and respecting workers' right to join a union of their own choosing.
3. Capacity building for management and the two unions on good industrial relations, including collective bargaining, to promote social dialogue and good industrial relations at the factory.

C.CAWDU-MANAGEMENT AGREEMENT

Negotiations between the top leadership of C.CAWDU and of E Garment were held in Phnom Penh at the same time that the FLA expert was conducting his assessment. On

¹ The ITGLWF has since merged with two other global unions to form the IndustriAll Global Union.

² At the time of the negotiation and signature of the agreement, Inditex was a significant E Garment buyer.

March 26, the parties signed an agreement “to fully implement their commitments made in the Agreement dated March 14, 2009 [the multilateral agreement mentioned above].”³ FLA President and CEO Aurret van Heerden witnessed the negotiations and the signature of the agreement. Pursuant to the agreement, the parties undertook the following complementary roles:

E Garment: E Garment will embed in its business practices respect for worker rights as an instrument of competitive advantage and will work to establish Human Resources Management Systems aimed at promoting cooperation and reducing conflicts at its facility in Kandal, Cambodia.

C.CAWDU: C.CAWDU will work to develop a constructive and stable relationship with the Management of E Garment to help improve productivity and quality in return for the implementation of the principles of “Decent Work” and promote this approach throughout its membership at the facility. In addition, it will seek to build trade union harmony at E Garment through the avoidance of inter-union conflicts.

The parties agreed to cooperate to maintain a positive working environment through consultation, dialogue and negotiation, consistent with Cambodian law and international standards. They also pledged to resolve issues that might arise at E Garment through dialogue and negotiation (while agreeing to submit to binding arbitration those situations where a voluntary agreement cannot be reached). In addition, the parties agreed to the following specific provisions:

1. Reinstatement by the factory on May 2, 2013, on permanent contracts, of the 33 members of C.CAWDU identified for reinstatement in the earlier agreement. These workers would be paid back wages at the rate of \$93 per month, offset against any compensation already paid, regardless of whether they decide to take the offer of reinstatement.
2. Reinstatement by the factory on May 2, 2013, on permanent contracts, of eight C.CAWDU members dismissed on August 5, 2010. These workers would be paid back wages at the rate of \$93 per month, offset against any compensation already paid – regardless of whether they decide to take the offer of reinstatement. Reinstatement would occur in accord with a time schedule specified in the agreement.⁴
3. Workers on strike since January 24 (156 workers) would be accepted back to work effective on the date of the signature of the agreement. These workers would be offered back wages at the rate of \$83 per month, offset against any compensation already paid, regardless of whether they decide to take the offer of

³ The text of the March 26, 2013 agreement is at <http://www.fairlabor.org/report/e-garment-factory-cambodia>.

⁴ According to the Agreement, workers to be *reinstated* (33 per subparagraph 1 above and 8 per subparagraph 2 above) were required to inform management of their decision to accept the reinstatement by March 25 (the day before the signature of the agreement, March 26). These dates caused some confusion and led some analysts to assume that they were in error; the explanation is that the union consulted with its members eligible for reinstatement during the week prior to the signature of the Agreement and, therefore, on the date the Agreement was signed, the union already knew which workers would seek reinstatement.

reinstatement. Workers would return to work in three tranches – 20 on May 2, 50 on September 2 and the rest on October 2. Workers returning to the factory would not be subject to disciplinary measures, transfers or any reduction of pay or benefits.

In addition, E Garment pledged to finance a monitoring and coaching program to support C.CAWDU with respect to the social dialogue process effective with the reinstatement of workers. Both parties committed to maintaining industrial peace in the factory. In this regard, C.CAWDU agreed to avoid strike actions for 2 years by referring any disputes to the Social Dialogue Committee and the Arbitration Council; if those bodies fail to resolve the dispute, C.CAWDU may apply for a legal strike.

Finally, E Garment agreed to finance the creation and functioning of the Social Dialogue Committee, comprised of representatives of civil society, C.CAWDU and VKYFTU and management. The ILO and the Arbitration Council will be invited to observe meetings of the Committee. The purpose of the Social Dialogue Committee is to ensure that policies and procedures are drafted covering the handling of discipline and grievance cases, union organizing activities and inter-union rivalry.

DEVELOPMENTS POST C.CAWDU-MANAGEMENT AGREEMENT

After the Agreement was signed, C.CAWDU and E Garment management continued to discuss implementation issues. One of the issues subject to further negotiation was the schedule for taking back striking workers. Per the Agreement, striking workers would be brought back to the factory in tranches, beginning on May 2, immediately after the Khmer Cambodian New Year, and running through October 2; all workers would be eligible for full back pay. In subsequent negotiations, C.CAWDU and management modified the schedule of reinstatements, with all 156 striking workers to return to their jobs on May 2.

IMPROVING THE INDUSTRIAL RELATIONS CLIMATE AT E GARMENT

The objective of the referenced multilateral agreement signed in March 2009, and of the bilateral agreement between C.CAWDU and E Garment of March 2013, is to cooperate to “develop a ‘mature system of industrial relations’ aimed at making E Garment viable, profitable and internationally competitive based on the principles of Decent Work and grounded in respect for Cambodian Labour Law and International Labour Standards.” When implemented, the specific provisions in the March 2013 Agreement regarding remediation of previous non-compliances with the principles of freedom of association, will go a long way toward cleaning the slate and permitting robust industrial relations to proceed.

In the next six months, E Garment management should:

1. Ensure that specific provisions of the March 2013 Agreement addressing reinstatement and back pay of dismissed workers (and workers on strike) are fully

- implemented.
2. Develop a methodology and financing mechanism for the monitoring and coaching program to support C.CAWDU in all issues related to social dialogue.
 3. Negotiate with C.CAWDU and VKYFTU the composition, governance structure and terms of reference for the Social Dialogue Committee.
 4. Develop a financing mechanism for funding the establishment and functioning of the Social Dialogue Committee.

The FLA will monitor the implementation of the above steps, including the return to work of reinstated workers and workers on strike, and will commission an independent verification of progress in the fourth quarter of 2013.