WORKER RIGHTS CONSORTIUM

The Failure of Factories in Haiti to Pay Legally Required Health Benefits, the Related Deaths of Two Workers at Facilities Making Collegiate Apparel, and the Status of Remedial Action

Funeral procession in Haiti for garment worker who died after being denied legally required healthcare coverage.
(Photo credit: Telemarque Pierre)

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I. Introduction and Executive Summary

This is a report of the Worker Rights Consortium's (WRC) investigation of the failure of garment factories in Haiti, including factories producing collegiate apparel, to make legally required contributions to the country's public healthcare and pension systems. The WRC's investigation found that the failure of two of these factories to make these payments, which violated both Haitian labor law and university codes of conduct, contributed to the avoidable deaths of two workers, which, in both cases, occurred after each of these workers was unable to access lifesaving medical treatment.

The two factories that employed the deceased workers, Palm Apparel ("Palm") and Sewing International, S.A. ("SISA"), share a common owner, the Haiti-based Palm Apparel Group. At the time that the violations reviewed in this report occurred, Palm was disclosed as a producer of university licensed apparel by the licensees New Agenda, Top of the World, and MV Sport, while Sewing International S.A. ("SISA") was disclosed by the licensee New Agenda.

A substantial portion of the collegiate apparel produced at both factories is supplied to these licensees by the Canadian apparel company, Gildan Activewear, which is among the Palm Apparel Group's largest buyers. As a result of these sourcing relationships, both the university licensees and Gildan were required, under university codes of conduct, to ensure that the Palm and SISA factories complied with Haitian labor laws, in particular, those requiring employers to make contributions to the country's public healthcare and pension systems.[1]

The first section of this report discusses both the legal requirement in Haiti for employers to make contributions to the country's national healthcare and pension systems and the widespread noncompliance of Haitian garment factories, including Palm and SISA, with this statutory mandate. The latter is a chronic problem in the Haitian garment sector that has been documented over the course of many years by the International Labour Organization's Better Work Haiti factory monitoring program ("ILO/IFC Better Work Haiti").[2]

The second section of this report outlines the WRC's findings concerning the circumstances of the deaths of the two workers from the Palm and SISA factories, specifically in relation to the workers' inability to access lifesaving medical care. The report also discusses the WRC's findings concerning the responsibility of the factories' owner, Palm Apparel Group, to provide compensation to the families of the two deceased workers, since evidence indicates that the factories' failure to make the legally required healthcare contributions were a contributing factor in their deaths.

The third section of this report describes the WRC's engagement with Gildan Activewear concerning these findings and recommendations, which led to the factories' owner, Palm Apparel

[1] CLC, Special Agreement on Labor Codes of Conduct, Schedule I, §§ II. A ("Legal Compliance: … [requiring] compl[iance] with all applicable legal requirements of the country(ies) of manufacture ….") and B ("Employment Standards: … [requiring] compl[iance] with the following standards: 1. Wages and Benefits: …. provide legally mandated benefits.").

[2] More information about the ILO/IFC Better Work Program, including information about ILO/IFC Better Work Haiti and all reports published by the program, are available on its website, https://betterwork.org.

Group, agreeing to provide significant financial compensation to the families of the deceased workers.

The concluding section of this report discusses current efforts by the WRC to assess compliance by other Haitian garment factories producing university licensed apparel with regard to their obligation to make healthcare and pension contributions for their workers. In order to ensure that no further harm to workers results from factories' nonpayment of these contributions, the WRC has requested that licensees verify compliance with this obligation by their suppliers in Haiti and cooperate in the remediation of the impacts of prior violations in this area.

II. Methodology

The findings in this report are based on the following sources of evidence:

- Interviews with family members of deceased workers from the Palm and SISA factories and with Haitian trade union leaders;
- Written communications from Gildan Activewear and Palm and SISA factory ownership;
- A review of relevant reports, correspondence, and documentation from ILO/IFC Better Work Haiti, Office d'Assurance Accidents du Travail, Maladie et Maternité (OFATMA), and the Centre Hospitalier de Carrefour; and
- A review and analysis of applicable Haitian labor and social security laws.

III. Findings

A. 2009–2020: ILO Factory Monitoring Program Documents Failure of Garment Factories to Make Legally Required Healthcare, Pension Contributions for Workers

In Haiti, workers have a legal right to healthcare coverage and pension benefits through government programs established for these purposes. Haitian law requires factory employers to deduct contributions for these programs from employees' pay and to make their own contributions to these funds.

With regard to contributions for workers' healthcare, Haitian law requires employers to deduct three percent of their employees' wages each pay period and to promptly forward these deductions along with an equivalent employer contribution to the government healthcare program, the Office d'Assurance Accidents du Travail, Maladie et Maternité (Office for Workplace Accidents, Health, and Maternity Insurance, known in Haiti by its acronym, "OFATMA").[3] Similarly, employers are also required by law to collect six percent of their employees' pay and to promptly forward this deduction along with an equivalent employer contribution to the government pension program, the Office National d'Assurance Vieillesse (National Office for Pension Insurance, which is known in Haiti by the acronym, "ONA").[4] These two funds provide a crucial social safety net for Haiti's garment workers, who live in the poorest country in the Western hemisphere, where 59 percent of

[3] Haiti's Organic Law of the Department of Social Affairs, August 28, 1967, and Decree of March 10, 1976.
[4] Haiti's Organic Law of the Department of Social Affairs and Decree of March 10, 1976.

the population has an income that is below the national poverty line and 24 percent of the population is considered to be living in a situation of extreme poverty.[5]

Since its inception in 2009, the ILO/IFC Better Work Haiti program[6] has regularly documented the persistent failure of a large percent of the country's garment factories[7] to make these legally required contributions. The program's most recent public report on factories' compliance with basic labor standards, which covers the period from October 2019 to September 2020, states that 84 percent of the factories reviewed during that time committed violations of these standards in the area of "social security and other benefits",[8] including failure to forward legally required employer and worker contributions to the government healthcare (OFATMA) and pension (ONA) program.

These violations predated the Covid-19 pandemic. In its report covering the period from April 2019 through March 2020, ILO/IFC Better Work Haiti stated that 83 percent of the factories audited by the program had violated labor standards with respect to "social security and other benefits".[9]

International apparel brands sourcing from the country receive detailed biannual reports from ILO/IFC Better Work Haiti concerning factories' compliance with applicable labor standards, including the obligation to make healthcare and pension contributions. These brands have, therefore, been aware for some time of the persistent failure of their suppliers to make timely and complete contributions to the OFATMA (healthcare coverage) and ONA (pension) programs.

During the WRC's engagement with Gildan Activewear regarding the deaths of the two workers from the Palm and SISA factories, Gildan acknowledged that these suppliers had violated Haitian laws concerning required contributions for their employees' healthcare,[10] violations that also, by extension, contravened university licensing standards.

The failure of Haitian factories producing university licensed apparel to provide workers with legally required health and pension benefits has severe implications for garment workers. Minimum wage for garment workers in Haiti, which is equal to approximately US$5.60 per day, reportedly covers less than one-third of the cost of the basic necessities of living.[11] As a result, when employers fail to

[5] Relief Web, United Nations Office for the Coordination of Humanitarian Affairs, *IFRC Country Acceleration Plan 2019 – Haiti,* February 28, 2019*,* https://reliefweb.int/report/haiti/ifrc-country-acceleration-plan-2019-haiti.
[6] ILO/IFC Better Work Haiti was established under the auspices of the US HOPE II Act legislation, which provides preferential trade status for Haiti. ILO/IFC Better Work Haiti conducts periodic audits of factories participating in its program in an effort to "improve working conditions and boost competitiveness in the garment industry". According to ILO/IFC Better Work Haiti's website, participation in the program is mandatory for all apparel producers exporting products to the US under the Hope II Act. See, "Our Programme," Better Work Haiti, https://betterwork.org/home/bwh-our-programme/.
[7] There are currently 41 factories, producing for 25 brands and retailers, that are audited by ILO/IFC Better Work Haiti. See ILO/IFC Better Work Haiti, https://betterwork.org/where-we-work/haiti/.
[8] ILO/IFC Better Work Haiti, *21st Biannual Compliance Synthesis Report,* October 2020, https://betterwork.org/portfolio/better-work-haiti-21st-biannual-compliance-synthesis-report/.
[9] ILO/IFC Better Work Haiti, *20th Biannual Compliance Synthesis Report,* April 2020, https://betterwork.org/portfolio/better-work-haiti-20th-biannual-compliance-synthesis-report/.
[10] Letter from Gildan to the WRC, October 5, 2020.
[11] Solidarity Center, AFL-CIO, *The High Cost of Low Wages in Haiti,* April 30, 2019, https://www.solidaritycenter.org/the-high-cost-of-low-wages-in-haiti-new-report/.

make legally required contributions for employees' healthcare and pensions, workers simply cannot afford either healthcare or retirement savings.

B. 2017–2020: Palm and SISA Factories Were Delinquent in Making Legally Required Healthcare Contributions for Workers

The consequences of Haitian employers' failure to consistently make legally required contributions for workers' health coverage through the OFATMA program were tragically exposed in 2020, at the Palm and SISA factories, both of which, as noted, are owned by the Palm Apparel Group. At each of the factories, according to the testimony of their family members, the two employees had contributions to OFATMA for health coverage deducted from their wages every pay period but were unable to access lifesaving medical treatment when it was urgently needed.

The workers' inability to access this care was due, at least in part, to their employers' failure to ensure that these contributions from the workers, and the required matching contributions from the factories, were sent by the factories to OFATMA. As discussed below, in both cases, the employees' lack of access to lifesaving care was, in turn, a major contributing factor in their deaths.

Based on a review of both reports from ILO/IFC Better Work Haiti and correspondence sent by OFATMA to the two factories, the WRC determined that both facilities had been delinquent in making legally required contributions to OFATMA for their employees' health coverage.

In a public report dated October 2020, ILO/IFC Better Work Haiti cited the Palm factory for the following violations of Haitian labor law:

- Failure to collect and forward workers' contributions to OFATMA;
- Late and inaccurate calculation of the employer's contribution to OFATMA for maternity and health insurance; and
- Failure to pay OFATMA for employees' "CDS" (health cards) as the law requires.

The same ILO/IFC Better Work Haiti report cited the SISA factory for:

- Inaccurate reporting of employee salaries to OFATMA;
- Past due payments by the factory of its required contributions as an employer to OFATMA; and
- Incorrect payments of workers' wage deductions for contributions to OFATMA.[12]

Further evidence of this delinquency, on the part of both the Palm and SISA factories, were revealed in letters issued by OFATMA on June 23, 2020, to both Palm and SISA, copies of which were later obtained by the WRC. OFATMA's letters stated that Palm owed OFATMA HTG 10,311,704.25 (US$110,541) for unpaid healthcare contributions from October 2017 through April 2020 and that SISA owed OFATMA HTG 18,473,694.18 (US$198,038) for unpaid healthcare contributions for

[12] ILO/IFC Better Work Haiti, *21st Biannual Compliance Synthesis Report*. This report also documents violations at both factories with regard to requirements for contributions for worker retirement benefits to the government pension program, ONA.

the period of June 2019 to June 2020. Based on all of this evidence, the WRC found that Palm and SISA had violated Haitian law and, by extension, university licensing standards, by their failure to make, in a timely manner, legally required healthcare contributions to OFATMA on behalf of their workers.

C. The Failure of the Palm and SISA Factories to Ensure Required Healthcare Coverage for Workers Contributed to the Deaths of Two Workers Who Died as a Result of Lack of Access to Lifesaving Medical Treatment

1. Death of Palm Apparel Employee from Lack of Access to Maternity Care

The worker from the Palm factory, who died after failing to receive lifesaving medical treatment, was a woman who, at the time of her death, was 30 years old and had been employed by Palm for nine years prior to her death. The worker's family members told the WRC that, on July 12, 2020, this employee, who was in the third trimester of pregnancy, felt unwell and that her family members, therefore, decided to take her to a small local hospital affiliated with OFATMA, the Centre Hospitalier de Carrefour.

Doctors at the hospital examined the worker and informed her family that the worker had extremely high blood pressure and urgently required a Caesarean section in order to save her life. Both the worker's key symptom—elevated blood pressure—and the prescribed course of treatment—Caesarean delivery—are consistent with a diagnosis of pre-eclampsia, a life-threatening illness associated with pregnancy. Because the worker's pregnancy was significantly short of full-term, the family was told that the worker's baby would need to be kept in an incubator for some period after the delivery.

Staff at the hospital also informed the worker's family that her employer, Palm, was delinquent in its contributions to OFATMA for her healthcare coverage, and the family would have to pay, out-of-pocket, 27,600 Haitian gourdes (US$301), more than two months' regular wages, just for the care the worker had already received (i.e., not including the cost of any subsequent delivery services and post-natal care). Although conflicting reports and limited documentation leave the timeline and some details less than entirely clear, the family was, at a subsequent point, told at the hospital that they would be required to pay an additional 70,000 Haitian gourdes (US$764) for the Caesarean delivery and for the immediate neonatal care that her baby would need to survive (the latter of which could not be provided at the Centre Hospitalier de Carrefour). This was equivalent to more than five months' regular wages for the Palm worker.

Unable to afford this substantial additional cost (especially after having already been required to pay the hospital's HTG 27,600 fee for the services the worker already had received), the worker's family took her home on July 16. Both the worker and her unborn child died at home three days later, on July 19. Soon after her death, the factory paid the worker's family a small amount of compensation, equivalent to twice the amount of severance benefits which would have been due to her under Haitian law (i.e., about eight months' wages), which was supplemented by another modest payment that the family received from OFATMA to cover the cost of her funeral expenses.

2. Death of SISA Employee from Lack of Access to Dialysis Treatments

According to interviews with his family members, the employee at SISA who died after failing to receive lifesaving medical care was a man who had begun working at the factory in 2016. The worker's family members stated that, throughout his years of employment at the factory, the company had consistently taken deductions from his pay for contributions to OFATMA. In April 2020, the worker was diagnosed by medical staff at an OFATMA-affiliated hospital with a kidney disorder requiring regular treatment with dialysis.

After providing the worker with three such treatments without charge, the hospital then told him that, because his employer was delinquent in its payments to OFATMA, the worker would have to pay HTG 6,000 (US$64), nearly two weeks' regular wages, upfront, for each additional dialysis treatment.

According to the worker's family, because they were unable to afford to pay this amount, the employee was forced to forgo the additional dialysis treatments that he needed. Without the treatments, the worker's health deteriorated, and he became unable to work.

The worker's family told the WRC that he visited the factory and asked if the management would pay for his OFATMA coverage or otherwise provide him with financial assistance to pay for his medical care, but that factory management denied this request. The worker's family also reported to the WRC that they telephoned the factory on multiple occasions to make the same request, but that the management refused to assist them.

Without the dialysis treatments he needed, the SISA employee's health continued to decline. He died at his home on August 3, 2020. He is survived by his wife and four children.

IV. Remedial Measures to Assist Families of Workers from Palm and SISA Factories Who Died from Lack of Required Healthcare Coverage

University licensing standards require that suppliers of collegiate licensed apparel ensure that the facilities manufacturing these goods comply with local labor laws. Under Haitian law, the Palm and SISA factories were required to make timely contributions to the OFATMA program to ensure their workers' health coverage. The WRC found that the factories' failure to comply with this legal requirement was a contributing factor in the deaths of two employees, as it led to medical providers requiring out-of-pocket payments, for lifesaving care, that these workers could not afford.

Because this legal violation also contravened university licensing standards, the WRC determined that the factories should undertake remedial measures by not only correcting the delinquency in its contributions to OFATMA but also by providing monetary compensation to the families of both workers. Accordingly, the WRC engaged with Gildan, which, as noted, is a significant buyer from the Palm and SISA factories of apparel that it supplies to multiple university licensees.

Gildan responded by reporting to the WRC that it had obtained documentation from the factory's owner indicating that, subsequent to the deaths of the two workers, the factories had made contributions to OFATMA for its workers' healthcare coverage that corrected the arrears that existed at the time of these tragic incidents.

Nevertheless, to address the harms that had already occurred, the WRC recommended that Gildan should still require Palm and SISA to:

- Reimburse the families of the two workers who died for all medical and funeral expenses incurred as a result of their illnesses and deaths, including all expenses that would have been covered by OFATMA-affiliated healthcare providers, had Palm and SISA made their legally required contributions to OFATMA for these workers when these payments were due; and

- Provide compensation to the families of each of the two deceased workers consistent with international standards related to death and injury of workers under ILO Convention 121 (Employment Injury Benefits).

To its credit, Gildan committed to work with the factories' owner, Palm Apparel Group, to respond to the WRC's remedial recommendations. As a result, Palm Apparel Group agreed to make significant contributions of financial assistance, in amounts that were consistent with the WRC's recommendations, to both workers' families.

The payments are being made to the two workers' families by the factory owner in installments, and the WRC will continue to verify that they are received by the workers' families.

Clearly these workers should have had access to the medical care that could have saved their lives, and the factories that employed them should have made the legally required contributions to the OFATMA program that could have enabled this. The WRC finds that, in the aftermath of these tragic incidents, the factory provided, on the recommendation of the WRC to both the factory and Gildan, meaningful financial assistance to the workers' families. That corrective action addresses the violation of university codes of conduct as it relates to the deaths of these two workers, though it obviously cannot compensate in any broader sense for their families' loss.

V. Proactive Assessment of Compliance with Healthcare Coverage and Pension Contribution Requirements by Other Haitian Factories Producing Collegiate Licensed Apparel

As discussed, the failure of garment factories in Haiti to make legally required contributions for workers to the country's public health insurance programs (OFATMA) and public pension fund (ONA) is a widespread and chronic problem in the country's garment sector. The ILO/IFC Better Work Haiti program has reported "persistent" noncompliance by factories with this requirement and observed that violations of this type are among the forms of noncompliance with basic labor standards that are most commonly found by its inspectors. Between 2018 and 2020, Better Work Haiti found that 75 percent to 88 percent of the factories that it inspected during any given reporting period were noncompliant with regard to payment of healthcare and pension contributions.

This widespread and ongoing failure by garment factories to fulfill their legal responsibility to ensure access to healthcare and pension benefits for their workers has been a longstanding source of grievance for Haitian garment workers and their trade unions. Following the deaths of the two workers from the Palm and SISA factories, which were the result of their inability to obtain lifesaving medical treatment, hundreds of Haitian garment workers participated in work stoppages at these two factories and marched through the streets of Port-au-Prince to express their solidarity with the families of the deceased workers.[13]

Organizations advocating for Haitian garment workers have reported that many other garment workers, while not suffering such fatal consequences, have also been unable to access needed healthcare at OFATMA-affiliated medical facilities due to their employers having failed to make the required contributions to the program on their behalf.[14] In light of these widespread violations, and in order to reduce the likelihood of future tragedies of this kind, the WRC initiated an assessment of whether other factories in Haiti that are producing university licensed apparel are complying with the legal requirement to make the healthcare and pension contributions for their workers.

In May 2021, the WRC contacted all of the university licensees that had reported sourcing collegiate apparel from factories in Haiti, as well as Gildan, which, as noted, is a supplier to many of these companies, and asked them to cooperate with the WRC in ensuring that these suppliers comply with Haitian law and, by extension, university codes of conduct with respect to making contributions for their workers' healthcare and pension coverage. Specifically, the WRC requested that university licensees sourcing from factories in Haiti:

- Require their suppliers in the country to provide documentary evidence that they currently are not in arrears with respect to their statutory contributions to the OFATMA and ONA programs;
- Indicate what measures they will take to ensure that their suppliers in Haiti remain compliant with the legal requirement to make such contributions going forward; and
- Agree to engage in further discussions with the WRC and other stakeholders with regard to measures that may be needed to remedy the impact of past noncompliance in this area.

Nearly all of the university licensees that the WRC contacted, including College Concepts, Gorilla Marketing, Knights Apparel, MV Sport, New Agenda, New Era Cap, Top of the World by Fanatics, and Uscape Apparel, as well as Gildan, agreed to engage with their Haitian suppliers as the WRC requested. The only licensee that has not responded to date is the licensee, Uniform Shoppe.

Once the WRC has received and had an opportunity to review the requested information from licensees, the WRC will engage with them to ensure that the supplier factories in question are making the required healthcare coverage and pension contributions on behalf of their workers and that, where necessary, past noncompliance is addressed and remedied. We will continue to update universities concerning this process.

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[13] Michel Dugré, "Haitian garment workers protest deaths of co-workers denied medical care," *The Militant,* September 14, 2020, https://themilitant.com/2020/09/05/haiti-garment-workers-protest-deaths-of-co-workers-denied-medical-care/.
[14] Solidarity Center, AFL-CIO, *The High Cost of Low Wages in Haiti*.