

MEMO: CODES UPDATE

NUMBER 6, April 2001

Why a “Codes Update” memo?

This periodic memo is circulated in Spanish to groups in Latin America in an effort to share information on developments and resources circulating in English about codes of conduct and monitoring. In response to a number of requests, we are also sharing the English version. Comments, criticisms and suggestions are always welcome.

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A. WHAT’S GOOD AND BAD ABOUT THE GLOBAL ALLIANCE REPORT?

The Global Alliance for Workers and Communities is a controversial NGO/private sector initiative, involving the International Youth Foundation and the World Bank, in partnership with Nike and Gap. The Alliance’s stated objectives are to assess workers’ aspirations and developmental needs. While the Global Alliance has repeatedly claimed that it is not a code monitoring or verification body, the work of the Alliance has regularly been used by Nike to deflect criticism for labour rights violations, and, in some instances, to discredit more

critical reports by local labour rights organizations.

On February 22, the Global Alliance released a report on labour practices in nine Nike supply factories in Indonesia. The study on which the report is based was carried out by the Centre for Societal Development Studies of Atma Jaya Catholic University in Jakarta. The full report, including Nike’s remediation plan, is available in English at: www.nikebiz.com/labor.

On the positive side, the report confirms that serious labour rights abuses, documented earlier by more critical Indonesian NGO’s, are continuing to take place in Indonesian factories producing for Nike. It also calls into question the effectiveness of Nike’s so-called “independent” code monitoring program, which to date has been carried out by the commercial auditing firm PricewaterhouseCoopers (PWC).

On the negative side, the release of the report further confuses the issue of whether the Global Alliance is acting as a code monitoring body. It also raises a larger strategic question of how labour rights advocacy groups should respond to the recent trend for corporations to pick and choose NGO’s to investigate labour practices and/or monitor code compliance.

While corporations like Nike are selectively releasing reports from NGO investigations, they continue to determine which issues will be addressed in those

investigations and which reports will and will not be released to the public. Merely calling for NGO participation in monitoring and/or verification is no longer a sufficient answer to the codes monitoring dilemma.

What's in the Report?

Based on interviews with more than 4,000 Indonesian Nike workers, the Global Alliance report documents the following serious instances of verbal, physical and sexual abuse by management personnel:

- 56.8% observed verbal abuse of co-workers;
- 13.7 % observed physical abuse;
- 25.7% observed unwanted sexual comments; and
- 15.8% observed unwanted sexual touching.

According to the report, “verbal punishment is often the result of not reaching targeted outputs, sewing machines breaking down, products that are rejected, workers who can’t keep up with the line, or workers requesting annual leave.” In other words, abusive treatment by management personnel is linked to the pace of work, which is largely determined by production demands and order deadlines imposed by Nike.

The report also indicates that overtime during peak seasons is extremely high, that 39% of the workers interviewed were dissatisfied with overtime, and that workers were pressured to sign statements agreeing to “voluntarily” work overtime. Workers also reported that “their base wage is quite low and does not adequately meet the increased cost of living and other needs.”

Significantly, these findings are virtually identical to those in a 1999 study by an

Indonesian NGO, the Urban Community Mission. Of the 3,500 Indonesian Nike production workers interviewed in that study, more than 57% reported seeing fellow workers mistreated or yelled at, and 44% complained of excessive hours of forced overtime. The Urban Community Mission report also revealed that the vast majority of workers were receiving much lower pay than Nike claimed they were receiving.

When the Urban Community Mission released its study in 1999, Nike responded by trying to discredit the report, calling it unprofessional. They contrasted the Urban Community Mission’s study with the so-called “professional” and “independent” monitoring carried out by the commercial auditing firm PricewaterhouseCoopers (PWC), claiming that PWC’s audits proved that the allegations of abuse in the Urban Community Mission’s report were unfounded.

Two years later, Nike’s decision to release the Global Alliance report represents an admission that a local Indonesian NGO had more accurate information on labour practices in its supply factories than did its “professional” social auditor. Apparently, this decision was made after extensive internal debate within the company about the seriousness of the code violations documented in the report and the questions it would raise about the effectiveness and credibility of Nike’s code monitoring program.

What's Missing in this Picture?

While Nike has decided to address the hot-button issues of verbal, physical and sexual abuse exposed in the Global Alliance report, its response to workers’ complaints of inadequate wages and excessive and forced overtime is far less encouraging. On wages, Nike promises to

“ensure the factories have a clear communication process in place to educate workers on their compensation structure and calculations,” but continues to insist that “the adequacy of wages is a contentious issue in Indonesia.” On hours of work, Nike admits that excessive overtime is “both a Nike compliance problem as well as a structural problem within the apparel industry worldwide,” but then states that a maximum of 72 hours a week is acceptable for factories that receive a government exemption from the legal limit of 54 hours. It then points approvingly to its current policy of requiring factories to notify workers in advance when overtime is required and to have workers sign agreements to “voluntarily” work overtime, ignoring the report’s finding that workers feel pressured to sign these “voluntary” agreements.

Totally missing from the study is the crucial question of freedom of association. Despite the fact that the right to join and form independent unions is a major issue in Indonesia, an issue for which Nike has repeatedly come under fire, the Global Alliance study failed to even mention the issue.

What Will Come Out of the Study?

Surprisingly, Nike has not suffered very much negative publicity as a result of the publication of the Global Alliance report. In fact, Nike has even received some – limited – positive publicity for its decision to make public these very disturbing findings. Of course, Nike will face renewed criticism if the same or similar labour rights abuses are reported in yet another study two years in the future.

If Nike takes the Global Alliance report seriously, it will be compelled to reexamine its current code monitoring and verification program, including the

apparent inability of its commercial auditors to gain sufficient trust of workers to determine whether violations are occurring. It will also have to face the underlying problem that its pricing policies and production demands are at least partially responsible for continuing abuses.

In the “Nike Remediation Plan” attached to the report, Nike acknowledges there are “problems behind the problems” in its code compliance system and in the “fundamental business dynamics that lead to non-compliance.” It also pledges to take “a fresh look at the worker-management relationship and how communication, collaboration and improvements can be fostered more effectively through various means, including trade unions.” For Nike to win credibility among labour rights organizations and with the workers who make its products, it will have to put these nice words into practice.

In the wake of its Indonesia report, the Global Alliance must also deal with its credibility problem. If studies by the Global Alliance continue to be used by Nike, or any other corporate members, as part of its code compliance program, or the assessment of that program, the Global Alliance has a responsibility to publicly define its role in that program. At the very least, the Alliance must ensure that all future studies address all issues relevant to corporate codes, international standards, and local law, including freedom of association.

B. VERITE REPORT ON NIKE MEXICAN CONTRACTOR

Our March Codes Update reported that the US non-profit code monitoring organization Verité has been accredited as the first “independent, external monitor” for the Fair Labor Association. As an FLA-approved member, Nike is now required to use FLA-accredited external monitors.

The first test of Verité’s effectiveness in monitoring conditions for an FLA member company took place in February at the Korean-owned Kuk Dong garment factory in the town of Atlixco in the state of Puebla, Mexico. On January 9, 800 workers had staged a work stoppage to protest the illegal firing of five workers and the forced resignation of 20 others who had complained about low wages and rotten food served in the cafeteria. After police attacked and beat striking workers, in collaboration with the “official” union, the FROC-CROC, workers began to demand an independent union. Following the work stoppage, a significant number of workers who had participated in the strike were initially denied the right to return to work. (Codes Memo #4 gives a more detailed review of events at Kuk Dong. Visit: www.maquilasolidarity.org.)

The fact that the Kuk Dong struggle coincided with the launch of the FLA’s monitoring program, and that Kuk Dong produces sweatshirts for US universities affiliated to the FLA, made Nike the focus of Students Against Sweatshop protests across the US and in Canada. How Nike addressed reported violations of freedom of association at the Kuk Dong factory therefore became a major test not only for Nike’s code and monitoring program, but also for the FLA

and its first accredited external monitor, Verité, for a number of US universities that had adopted their own codes of conduct for university-licensed apparel, and for the Worker Rights Consortium, a student-initiated alternative to the FLA.

As a result of this convergence of US code initiatives, Kuk Dong became the subject of three investigations, the first carried out by a delegation from the Worker Rights Consortium, a second by the respected Mexican labour lawyer Arturo Alcalde, on behalf of the US International Labor Rights Fund (an NGO member of the FLA) with Nike’s blessing, and the third by Verité on Nike’s behalf.

What’s in the Verité Report?

While the Verité report addresses a number of violations of the Nike code of conduct and Mexican law, we will focus on the two issues most central to the current dispute at Kuk Dong – freedom of association and discipline and termination. (For a copy of the full 22-page report in English, visit: www.nikebiz.com/labor.)

1. Freedom of Association

The report confirms that the “official” union, the FROC-CROC, signed a collective agreement with the company before the factory began production and before any workers had been hired. The agreement appears to allow the CROC to discipline or fire workers who engage in legal union activity.

Eighteen of 29 workers interviewed reported that the company does not allow workers to form and join unions of their choice. The majority of the workers do not want the CROC as their union or want no union.

KEY RECOMMENDATION: A free and fair union representation election by secret ballot vote be held at the earliest possible date.

2. Discipline and Termination

In addition to reports of unjust use of fines, disciplinary reports and firings, several workers confirmed the January 3 firing of five supervisors for organizing a boycott of cafeteria food. Management files on the firing of four of the supervisors were not available.

The report confirms that:

- workers who were fired were pressured to sign resignation letters;
- initially some workers who sought reinstatement at the factory were not permitted to return;
- some workers who did not seek reinstatement prior to a management deadline were not reinstated in the same position with the same salary and seniority rights, and that some workers were not “rehired”;
- armed private security police and municipal police were stationed inside the factory (Some workers reported that their union and other activities were being monitored and that security personnel were authorized to dismiss workers without justification).

KEY RECOMMENDATIONS:

- Discontinue unfair or severe disciplinary practices, including summary firings and unjust or punitive fines, and the use of resignation letters for fired workers.
- Remove armed factory security personnel or government police

from inside the factory, and prohibit security personnel from firing workers.

- Reinstatement any remaining workers and supervisors who were employed prior to the work stoppage.

How Did Nike Respond?

On a number of important issues Nike acknowledges Verité’s recommendations and promises specific action to rectify the situation, including:

- “rehire” workers terminated for participating in the work stoppage;
- “support workers’ freedom to select their own representation in accordance with ILO Conventions and local law;” and
- ensure that workers who are terminated are not forced to sign resignation letters.

Nike’s reference to ILO Conventions as well as Mexican law concerning freedom of association is also a welcome step forward.

However, Nike fails to mention or promise action on crucial recommendations, such as the call for the “reinstatement” rather the “rehiring” of workers, implying that the workers do not have the right to the positions, salaries and seniority they had prior to the work stoppage, and the absence of any mention of a free and fair, secret ballot union representation election (recuento), which Verité proposes should be held at the earliest possible date. Nor does Nike mention Verité’s recommendations that armed police and private security be removed from the factory, and that security personnel be prohibited from firing workers.

What lies ahead?

What is missing from both the Verité report and Nike's response is the recognition that there is a fundamental problem with how freedom of association is institutionally limited in Mexico. While the Verité report acknowledges that the CROC signed a collective agreement with the company before the factory was in operation or any workers had been hired, it fails to point out that "protection contracts" are common in Mexico, and that they are a government-inspired tool to prevent workers from exercising freedom of association.

In contrast to the report by Arturo Alcalde, which situates the CROC's role at Kuk Dong in the Mexican context, the Verité report and Nike's response to it give the impression that this is a conflict between unions, and that the only issue is which union the workers choose. In fact, the signing of a protection contract by a company should in itself be considered a violation of freedom of association.

If freedom of association is to be respected at Kuk Dong, Nike must do more than act as a neutral observer. If Kuk Dong workers request a union representation election (recuento), that election must be by a secret ballot vote held in a neutral location, and under circumstances in which workers are not threatened, harassed or intimidated by the company, the official union or state authorities.

What are the lessons from Kuk Dong?

Under enormous pressure from university students and administrators, the Worker Rights Consortium, and some of its NGO partners in the Fair Labor Association (and in particular the International Labor Rights Fund), Nike did respond and facilitate the reinstatement of some of the unjustly fired workers. It has also helped

to create some space in which workers at Kuk Dong can regroup and seek registration of an independent union.

Whether Kuk Dong workers will have the opportunity to be represented by the union of their choice will depend on whether Nike goes one step further by following the recommendation in the Verité report and demanding a free and fair, secret ballot election.

What must be kept in mind, however, is that Nike's intervention in the Kuk Dong dispute was the result of an unusual convergence of interests and pressures. Under "normal" circumstances, the Verité report would not be public. Nor would Nike be compelled to respond to more critical reports from other sources.

While the Verité report appears to be based on a relatively fair and impartial investigation, Nike's control of the information (and the control of information from similar or less rigorous reports by other FLA-affiliated companies) means that the role of external critics will continue to be important. In fact, with the launching of the FLA's monitoring program, the role of external critics will be more important than ever.

C. WHO'S WHO AT WRAP

Otto Reich, the Vice-Chairman of the Board of the Worldwide Responsible Apparel Production certification program (WRAP), has become the subject of controversy in the US, and it isn't because of the WRAP factory certification program. Reich's nomination by President Bush as his proposed assistant secretary of state for Latin America is setting off alarm bells for US Democrats and journalists because of Reich's association with the Iran-contra scandal.

Before he joined the WRAP Board, Reich was better known for being the director of the Center for a Free Cuba, and for his past activities as Director of the Reagan Administration's Office of Public Diplomacy for Latin America and the Caribbean, which ran a covert propaganda campaign to win US public support for US intervention in Central America. Reich was noted for the heavy-handed pressure he put on US journalists who were critical of the US role in the region.

A closer look at the WRAP Board and staff reveals that other key players have equally interesting histories. WRAP's Executive Director Lawrence Doherty is a former staff person with the American Institute for Free Labor Development (AIFLD), which was notorious for undermining militant unionism in Latin America and the Caribbean. Between 1986 and 1997, he directed AIFLD's programs on democracy, governance and cooperative labour-management relations in Brazil, Venezuela and Barbados. In 1997, he became a senior program officer for AIFLD's Asian Division, coordinating programs on manpower legislative reform in Indonesia during the Suharto dictatorship. William Doherty, Lawrence's father, was the head of AIFLD.

WRAP Board Chairman Joaquin (Jack) Otero was the chief US government negotiator of the NAFTA labour side agreement. A Cuban American and former trade unionist, Otero is currently the Co-chair of the Greater American Business Coalition, Vice-president of the US/Panama Business Council, and a member of the US Council on Foreign Relations.

Another member of the WRAP board, Charles Masten, is a former US Department of Labor Inspector General. Before working at the Department of

Labor under both the Bush and Clinton administrations, he was a Special Agent with the Federal Bureau of Investigation (FBI). Among other responsibilities, he served with the FBI's foreign counter-intelligence program.

WRAP is a code of conduct and factory certification program initiated by the American Apparel Manufacturers' Association as an alternative to the Fair Labor Association and SA8000. It has been endorsed by apparel manufacturers' and maquila associations in Honduras, El Salvador, Guatemala, Nicaragua, Costa Rica, Haiti, the Dominican Republic, Mexico, Jamaica, the Philippines, Sri Lanka, and South Africa.

Given the histories of some of its key staff and board members, it is not surprising that the WRAP initiative has some of the lowest code standards of all the multi-company initiatives and is one of the most secretive code monitoring systems. WRAP offers virtually no information to consumers or workers on factories certified or the process for certification.

D. NEWS FROM THE FAIR LABOR ASSOCIATION (FLA)

On April 5, The FLA Board of Directors announced that Phillips-Van Heusen Corporation and Eddie Bauer had been approved for membership in the FLA's monitoring program, bringing the number of participating companies to nine.

The Guatemalan independent code monitoring group COVERCO has been accredited by the FLA as an external monitor for Guatemala. As reported in Code Memo #5, COVERCO has established conditions for monitoring code compliance for FLA member companies, including COVERCO's

ownership of the data and analysis and the right to make public key findings from its research and monitoring.

Currently, two other NGOs are accredited as FLA external monitors. Phulki, a Bangladesh-based NGO, is accredited to monitor all the FLA code elements, except for Freedom of Association, in Bangladesh. The US non-profit code monitoring organization Verité is accredited to monitor the full FLA code in 14 countries -- Bangladesh, China (including Hong Kong and Macau), India, Indonesia, Malaysia, Mauritius, Mexico, the Philippines, Saipan, Sri Lanka, Taiwan, Thailand, Turkey, and the USA. FLA external monitors are accredited for a two-year period.

E. NEW RESOURCES

Workers Tool or PR Ploy? A Guide to Codes of International Labour Practice by Ingeborg Wick (Friedrich Ebert Stiftung and Sudwind, Bonn, 2001).

Situates codes in the broader discussion of other trade-related initiatives such as the WTO and framework agreements and provides an overview of current multi-stakeholder code initiatives. Also reprints an article by Neil Kearny (ITGLWF) and Dwight Justice (ICFTU). To order, visit:

www.suedwind-institut.de.

English and German only. 99 pages.

White Paper on Occupational Health, Safety and Environmental Conditions in Sweatshops, Adopted by the American Industrial Hygiene Association (AIHA), March 24, 2001.

Excellent policy statement, including recommendations for advancing health and safety and environmental commitments related to codes of conduct and monitoring. Includes an extensive bibliography. See:

www.aiha.org/papers/gov18.html

English only. 29 pages.