

March 25, 2019

**To:** Americas Group (AG) e-list  
**From:** AG Coordinating Committee

Dear all,

We write to provide you with a brief review of our 2018 accomplishments, some of the challenges we faced, and our initial plans for 2019. Thanks to all for your important contributions to this work over the past year.

As many of you know, the geographic focus of our work is Mexico and Central America. The primary focus of the Mexico Committee's work in 2018 continued to be freedom of association and the right to bargain collectively, along with the Constitutional Reform to Mexico's labour justice system. The Committee has also been documenting common forms of wage violations in the sector, and has decided to make wages its second priority for 2019. In Honduras and El Salvador, we've focused on three issues -- the right to childcare for working parents, sexual harassment, and occupational health and safety.

## THE MEXICO COMMITTEE

### FREEDOM OF ASSOCIATION AND LABOUR JUSTICE REFORM

In 2018, the Mexico Committee engaged in two interrelated areas of work concerning freedom of association (FOA) and the right to bargain collectively: monitoring and supporting progress on the implementation of a Constitutional Reform to the labour justice system and tracking progress of suppliers in improving their FOA policies and practices.

The Constitutional Reform, which became law in February 2017, offered hope that Mexico's tripartite conciliation and arbitration boards would be replaced by unbiased judicial institutions, and that workers would have the right to choose their union and to vote on collective bargaining agreements.

Over the year, the Committee hosted two multi-stakeholder forums on April 5 and November 28 on the status and issues surrounding the labour justice reform process. Participants in the forums included representatives of 13 apparel brands and manufacturers, the Fair Labor Association (FLA), IndustriALL and MSN. Panelists at the forums included the incoming Sub-Secretary of Labour, Alfredo Domínguez Marrufo, labour lawyer Arturo Alcalde, Inés González of the Friedrich Ebert Foundation, trade expert Kim Nolan, and José Luís Rodríguez Salazar, IndustriALL's new representative in Mexico.

Domínguez Marrufo's participation in the November forum was the first time a senior representative of the Secretariat of Labour and Social Welfare (STPS) had been willing to engage in an open and honest discussion with company and labour members of the Mexico Committee, and offers possibilities for future engagement with the new administration.

In conjunction with our April meeting, the Committee hosted a half-day workshop for social auditors on common forms of wage violations and the implications of the Constitutional Reform to the labour justice system for workers' rights and employers' obligations regarding FOA and the right to bargain collectively.

Although 2018 ended without the all-important secondary (implementing) legislation being passed by the Mexican Congress, we are hopeful that the new government, which took office on December 1, will ensure that legislation will be passed in the February-April 2019 session of Congress, and that it will be consistent with the spirit and intent of the Constitutional Reform.

**Tracking Progress:** In November 2016, the Committee initiated a 2-year assessment process on brands' efforts to better ensure respect for freedom of association in the workplace by their Mexican suppliers. As part of that process, suppliers were asked to fill out a self-assessment questionnaire on their FOA policies and practices. Thirty-six suppliers participated. Brands identified priority suppliers for further work, obtained Supplier FOA Policies and Collective Bargaining Agreements (CBAs), and made plans for on-site verification, which is ongoing.

In November, MSN presented a review of the documentation, assessing whether and to what degree the supplier FOA policies aligned with the Committee's Model FOA Policy, and what contradictions existed between the provision of the policies and the CBAs. Unfortunately, only a few of the FOA policies reviewed to date align with the Committee's Model Policy and the majority of the CBAs were assessed as being "protection contracts".

**Moving into 2019:** Participating brands are currently finishing up on-site verification visits, which are to be completed by April, in time for a final report-back to the Committee at its upcoming May meeting. Participating brands include adidas, Fanatics, Levi's, New Balance, Nike, Patagonia and PVH. Next steps include updating the supplier guidance tool, producing a brief report on the learnings from this work, and bringing together participating suppliers in mid-2019 to discuss the implications of the labour justice reform. (We hope this will follow the passage of the secondary legislation noted above.)

#### **WAGE VIOLATIONS:**

At its April 2018 meeting, the Committee decided to add a second priority to its work — addressing common wage violations in the sector, including opaque and/or deceptive pay structures, pay slips and accounting; improper payment of overtime; failure to properly compensate workers for lunch breaks; and annual profit-sharing calculation errors. To begin that work, MSN interviewed six Mexico Committee brands, one social auditing organization, and four local labour rights organizations in order to gain a better understanding of how these violations manifest themselves and how employers respond to corrective action requests. Findings from the interviews were reviewed at our November meeting, which reaffirmed the decision to make wages a priority work stream going forward. Opaque and/or deceptive pay slips and structures was identified as the first priority issue, with overtime calculation as the second. A working group was formed, which includes Puma, VF, C&A, New Balance, the FLA and MSN, to propose guidance on how committee members can address these issues where they exist. Proposals on both issues will be presented to the Committee's upcoming May 2019 meeting.

*The Mexico Committee's work is coordinated by adidas (Julian Vargas); New Balance (Rolando Grillo); Nike (Claudio Kehrwald and Sam Diaz); and MSN (Bob Jeffcott and Lynda Yanz).*

## THE CENTRAL AMERICA (CA) COMMITTEE

El Salvador and Honduras continue to be the priority countries for our work in Central America, as we work closely with key labour and women's movement stakeholder partners in each country. In El Salvador, our labour rights partner is the *Concertación por Trabajo Digno para las Mujeres* (CEDM), a coalition of trade union and women's organizations. In Honduras, we have been coordinating with the network of unions representing workers in the maquila sector, the *Red de Sindicatos de la Maquila – Honduras* (RSM-H) and the labour rights NGO, the *Equipo de Monitoreo Independiente de Honduras* (EMIH). Our thematic focus areas are childcare, sexual harassment, and Occupational Health & Safety (OH&S).

Unlike the Mexico Committee, the CA Committee's planning meetings typically take place in Washington, DC. In 2018, the Committee met twice, in February and June. We also met in February 2019 to evaluate the past year's work and set out priorities for 2019, which are noted in the text below and summarized at the end of this section.

### EL SALVADOR

**COMPANY-LABOUR DIALOGUE:** In August, the CA Committee and CEDM held our fourth annual dialogue session. In addition to ongoing coordinated work on childcare and sexual harassment, our two-day agenda included discussions of ongoing endemic violations of freedom of association, employer legal requirement for payment of the first three days of medical leave, and wages. Smaller working sessions between CEDM and the Americas Group (AG)<sup>1</sup> took place in March, May, and November with Puma and MSN taking the lead for the AG.

**CHILDCARE:** On May 23, CEDM and the AG co-hosted a bi-national forum that brought together over 90 representatives of international brands and manufacturers, Salvadoran and Honduran suppliers, industry associations, and trade union, women's and labour rights organizations to highlight the legal requirement for childcare and the business case for employer-supported childcare, and to discuss possible solutions to the childcare needs of working parents in the maquila garment industry. The forum report *Childcare: Options for Workers and the Business Case for Employers* is available [here](#).

At the forum, CEDM and MSN launched their report on the findings and recommendations of a childcare needs assessment, which was carried out with the active involvement of CA Committee brands and the FLA. Based on interviews with just under 600 workers at six Salvadoran factories, *Seeking Solutions to Childcare Needs of Maquila Workers in El Salvador* documents how garment sector workers currently resolve their childcare needs, what they pay for childcare, and how they assess the advantages and disadvantages of different childcare options. That report is available [here](#).

On August 28, the AG and CEDM co-hosted a 2-day roundtable for suppliers and brands on the implications of new legislation regulating the constitutional requirement for childcare, which was passed on May 31. The legislation will come into full effect in June 2020. Our resource person at the roundtable was Ena Lilian Nuñez Mancía, an expert labour lawyer well known to both companies and labour organizations. Ena provided an overview of the new legislation, including areas where it is unclear. All who attended the roundtable agreed that a more detailed review of the legislation would be useful to assist employers in assessing options and preparing to comply with employer obligations. As part of our ongoing childcare project, Ena was contracted to produce an analysis of the current legislation as a tool for factory management, civil society and public officials. The final document is in the design stage and will soon be available in both English and Spanish.

While it remains to be seen whether and how the new Salvadoran government will follow through with the development of appropriate implementing legislation, we believe there is much that CEDM and the CA Committee can do over the next months to facilitate useful discussion on this issue. At this point, we are planning on holding a follow-up roundtable in early June to launch Ena's document and delve more deeply into the discussion of how employers begin their preparations. More information on the round-table will be available soon.

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<sup>1</sup> While in Mexico we're known by stakeholders as the "Mexico Committee" in Central America, we're more commonly referred to as the "Americas Group."

**ADDRESSING SEXUAL HARASSMENT (ASH):** At our August dialogue session, CEDM and the CA Committee agreed to begin to implement some ASH-related work in 2019, building on the groundwork done by Francisco Chicas, who was contracted in late 2017 to produce a reference document, the final draft of which was presented to the Committee at a special session in May. In June, we set up a small ASH working group, which spent much of its time over the last months reviewing resources and initiatives on this important topic.

The first priority was to work with Francisco Chicas to finalize his *Guide to Prevent and Address Sexual Harassment and other Forms of Workplace Violence against Women Maquila Workers in El Salvador*, which was completed in early October. We also reviewed case studies from CARE and Better Work, various exemplary sexual harassment policies, and had conversations with and reviewed resources produced by BSR and the Fair Wear Foundation to learn from projects both organizations are implementing in countries in Asia on gender-based violence prevention.

Two critical learnings from our research and discussions: ASH work needs a long-term and comprehensive approach, given the complexity of the issues, and partnership with local NGOs who have relevant expertise is necessary to provide key support. To prepare to move forward plans for El Salvador, the working group developed a survey questionnaire for senior factory management to get a baseline understanding of what factories currently have in place and where they feel they most need support in addressing sexual harassment. Twelve factories completed the questionnaire in January, and summary results were presented to the CA Committee at its February 2019 meeting, along with a backgrounder and proposal on options for initial activities. The next step will be to develop a more concrete proposal for work in 2019 and 2020 to discuss with CEDM in early April. At the February meeting, it was also agreed to begin work on short educational materials aimed at different stakeholders (auditors, companies and workers) using Francisco's document as a key reference.

As of February, the original working group -- which includes adidas, Dallas Cowboys Merchandising, Fanatics, Mountain Equipment Co-op and MSN – has been expanded to include Hanesbrands and Nike.

**Of note:** Reference materials from this work, including Francisco's *Guide*, BSR's curriculum deck and FWF reports, are available from the working group.

**3-DAY PAID MEDICAL LEAVE:** At our annual dialogue meeting in 2017, CEDM had flagged the persistent non-compliance complaint of companies not paying the first three days of medical coverage (before social security coverage kicks in), which causes workers financial hardship. Following that meeting, a small sub-committee, including adidas, Under Armour, Puma and the FLA, started working on this issue. In May 2018, the FLA coordinated a meeting with the Minister of Labour, at which the group asked for a written legal ruling outlining employer responsibilities, which she sent on June 26. In August, CEDM reported that while some companies were paying for the 3-day coverage, many were not. Various brands recommitted to raising the issue with supplier factories, and the FLA committed to publishing an issue brief on the issue and to hosting a webinar for affiliates. In October, the FLA posted *Employers in El Salvador Obligated to Pay the First Three Days of Medical Leave*, which is available [here](#).

## HONDURAS

**OH&S:** In Honduras, two planning meetings between labour partners and representatives of the Central America Committee took place in August and November of 2018 to identify priority issues to address in a 2019 multi-stakeholder round-table. The issues identified were: ergonomics, improving Ministry of Labour inspections, and the impact of unrealistic production targets on workers' health. While agreement was reached to proceed with joint efforts on these issues, the increasingly difficult economic and political context made it challenging to set clear plans for 2019. The working group coordinating work in Honduras includes Gildan Activewear, Fanatics, Nike, and MSN.

**Childcare:** While the main focus of the CA Committee’s work on childcare in 2018 was in El Salvador, we did continue to connect with developments in Honduras. Representatives from six factories, the Honduras Maquila Association (AHM), the network of maquila unions (RSM-H), and the Independent Monitoring Team (EMIH) attended the May regional forum.

A senior representative of the AHM participated in the May forum and provided an updated on the advances made, as well as the challenges they have faced, in implementing the bi-partite pilot project to establish certified home-based childcare centres servicing maquila workers. Of note, the new tri-partite wage agreement (2019 – 2021) once again includes a commitment on the part of labour and the private sector to advance on facilitating childcare opportunities for workers in the maquila sector. This time, the agreement includes time-bound commitments to report. In addition, we are currently in communication with two companies that are moving forward with childcare initiatives, which we are keen to support in any way we can.

Unfortunately, although Honduras law requires companies to provide childcare for their workers, we know of no company that is complying with this legal obligation. FLA and WRC audits have been consistent in calling out employers for refusing to accept responsibility for establishing and/or funding childcare centres in the workplace or community. This seems to be one issue on which there is no clear agreement among the stakeholders, and an issue the Committee will need to address going forward.<sup>2</sup>

## MOVING INTO 2019

Clearly, we have a lot on our agenda. The CA Committee’s priorities in 2019 will be:

- Facilitating discussions and activities aimed at identifying concrete commitments brands, manufacturers and suppliers are prepared to make to help meet the childcare needs of working parents in the maquila sector in El Salvador and Honduras;
- Working with CEDM to begin implementation of program of action and/or pilot project to engage with suppliers and worker representatives to prevent and remediate sexual harassment in the workplace. We anticipate this work will include the development of educational resources for different constituencies (suppliers, workers, and auditors);
- Convening the fifth annual CEDM-Americas Group dialogue session in San Salvador, likely in early September;
- Monitoring implementation of the 3-day medical leave payment at factories producing for AG brands; and
- Hosting a labour-AG dialogue session in Honduras, with a focus on OH&S.

*The Central America Committee’s work in 2018 was coordinated by adidas (Remy Arguello); Dallas Cowboys Merchandising (Audrey Ogawa Johnson); the FLA (Shelly Han and Jessica Vasquez); and MSN (Lynda Yanz).*

## MONEY MATTERS

The operating budget in 2018 was \$107,500, an increase of \$4,500 over 2017 (\$103,000) due to contributions from new participants.

Thanks very much to Americas Group participants who contributed financially last year – adidas; American Eagle Outfitters; Dallas Cowboys Merchandising; Fanatics; Gap Inc.; Gildan Activewear; Hanesbrands Inc.; Levi’s; Mountain Equipment Co-op; New Balance; Nike; Outerstuff; Patagonia; Puma; PVH Corporation; SanMar; Under Armour; VF Corporation; and the Fair Labor Association (Re-direct Allocation). Our end-of-year operating expenses came in at \$104,138, which gave us a small surplus (\$3,362) to start 2019.

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<sup>2</sup> In July 2017 MSN and labour partners in Honduras published a legal analysis, available [here](#). MSN prepared an internal memo for the Committee’s February 2018 meeting which reviews the findings of FLA and WRC audits over the last five years (available on request).

In addition to revenue from participating companies, two special grants were important contributions to the Americas Group work. The Mexico Committee's work on the constitutional labour justice reform process was supported financially through a grant to MSN from the Labour Program of Employment and Social Development Canada. That grant ran through September 2018. A second similar grant for 2019-2020 has been approved. The Central America Committee's work on childcare was supported through a grant from the Disney International Labour Standards Supply Chain Investment Program to MSN. We have a small balance for that work, which will support childcare-related work through June 2019.

**Americas Group Coordinating Committee:** Remy Arguello and Julian Vargas, *adidas*; Audrey Ogawa Johnson, *Dallas Cowboys Merchandising*; Nancy Contreras, *Gap Inc.*; Holdy Hernandez, *Levi's*; Rolando Grillo, *New Balance*; Cláudio Kehrwald, *Nike*; and Lynda Yanz, *Maquila Solidarity Network*.

Mid-year we said good-bye to Che Choi from *New Balance*. Che provided leadership in Americas Group work over many years. We thank him for his contribution and wish him well in his future endeavors.