



adidas Response to Clean Clothes Campaign Open Letter on PT Panarub Dwikarya Benoa

The Clean Clothes Campaign (CCC) has recently posted an open letter on its website calling for the payment of severance for 345 workers, who in 2012 were involved in a strike at an Indonesian shoe factory by the name of PT Panarub Dwikarya Benoa (PDB). As a former subcontractor to the Panarub Group, the factory had previously made product for adidas but not at the time of the strike, nor afterwards.

The following is our response to the CCC's letter.

With respect to a settlement of this case, adidas is disappointed that recent negotiations, instituted by the Indonesian government, have not reached a successful conclusion and that the amount of compensation claimed by the local union (GSBI-SBGTS), and the payments offered by the Panarub Group, remain far apart. This has remained the case - despite sporadic meetings and negotiations between the two parties - since January 2013, when the first formal mediation was facilitated by adidas.

CCC state that adidas has neglected its responsibility to address human rights violations in this case or to create the necessary leverage to resolve this long-standing dispute. We believe the opposite to be true. We have stepped outside the normal boundaries of what would be expected of any buyer to help resolve this case – given the fact that we held no active or ongoing relationship with PDB.

We had no orders with PDB at the time the workers went on strike, or at the time when they lost their employment, or at any time thereafter, up until the factory closed in January 2014. CCC are fully aware that throughout the period in question the factory was making products for another sporting goods company, not adidas. Despite this fact, we stepped forward, based on our long-standing relationship with the union's parent federation, to encourage an early resolution of the dispute. Those efforts were both extensive, and continuous. For example:

- We monitored the strike activities and on several occasions GSBI came to our offices to brief us on their demands and PDB's response. Based on those briefings it was reported that PDK had agreed to meet the workers' demands for full payment of the minimum wages, but the factory would not agree to union's call for reinstatement of Ms Kokom Komalawati, whose redundancy case had already been reviewed and dismissed by the Manpower Department;
- When the strike continued into its second week, we reached out to PDB and encouraged them to extend the deadline for workers to return to work, i.e. beyond the 7 days' legal limit, to allow for additional time to resolve the dispute;
- In the aftermath of the strike, we consulted with Manpower Department officials, the ILO and sought independent advice from an industrial relations lawyer and shared this feedback with both Panarub and GSBI;
- We facilitated the appointment of an independent third party, to mediate between the parties and after that mediation failed, we continue to urge both parties to negotiate and reach a mutual agreement to resolve their dispute;



- And finally, we spoke with GSBI on multiple occasions advising them that if they were unable to secure a favourable outcome through negotiate with PDB they should to take the case to court for final resolution.

PDK was an independent business, located in Tangerang, which had been used as an overflow factory and subcontractor to PT Panarub, our main footwear supplier. During peak times, orders would flow to PDK. However, in January 2012, when government announced a new minimum wage, we sent an advisory to all our suppliers requiring them to meet, in full, those new wage requirements. In our memo we made it clear that we would not accept regional waivers, which were being sought by many local suppliers and were being duly contested by trade unions through the courts. We were the only brand operating in Indonesia to stand with the trade union movement and to decline accepting waivers granted by regional governments. Although not illegal, the waivers offered by the regional governments breached our Workplace Standards, which call for minimum wages to be paid on time and in full.

PT Panarub had not sought a waiver, but PDB had. Thus, by mutual agreement with PT Panarub, existing orders at PDB were completed, but no new orders were placed with the subcontractor. It is important to note that the waiver granted to PDB was not unlawful and it had been obtained with the consent of the plant's majority union, SPN.

CCC claim that adidas has failed to apply appropriate pressure on the Panarub Group - as the principal investor in the now closed PDB factory - to pay the claims demanded by the GSBI union. CCC are fully aware that it was only through adidas' active engagement with Panarub Group that the supplier undertook to engage with the union in 2016, long after they had concluded that the unions' case had no legal merit.

Panarub's position – one which has been supported by the representations made by the Indonesian government to the ILO – was that the strike was not lawful, and on this basis workers were treated as having resigned when they did not return to work within the time specified by the law.¹ Hence their initial offer of payment to the workers matched those amounts for a worker resignation, not for a situation of dismissal, or severance, or any subsequent claims for other material impacts. For the past 5 years, this has been the central issue which has driven a clear and, to date, unresolvable gap in the expectations between the two parties.

The ILO Committee on Freedom of Association, in its evaluation of the case has noted that: “the responsibility for declaring a strike illegal should lie with an independent and impartial body, such as an independent court”. Although there was no legal impediment placed on GSBI-SBGTS, the union chose not to exercise its right to seek a judicial review of the lawfulness of the factory's decision (to treat

¹ “The Government states that the strike undertaken by Kokom Komolawati and other employees can be considered as illegal because it did not correspond to the procedure of strike implementation as stipulated in section 140 of Act No. 13 of 2003. It further indicates that the employees who were on strike from 12 to 23 July 2012 were encouraged by the factory to return to work on 12, 13, 16, 17 and 18 July 2012. Since they ignored the company's appeal to return to work, they were later qualified as resigned employees in line with section 168 of Act No. 13 of 2003” Para 578, ILO Committee on Freedom of Association, *Case No. 3124 (Indonesia) Complaint date: 27 Feb 2015, Interim Report - Report No 380, October 2016*



workers as having resigned for failure to return to work in due time) and after 2 years of inaction those rights lapsed.² Instead, the union chose another route to address this issue and in February 2015 GSBI lodged a complaint directly with the ILO Committee on Freedom of Association in Geneva. The ILO Committee has now deliberated and delivered its conclusions and a remedy: it has called on the Indonesian government to hold a formal inquiry to reach a decision on the legality of the strike, based on which the appropriate level of compensation due to the workers can then be determined.

At Para 585 of the Committee's conclusion it requests:

“the Government to take the necessary measures to initiate an independent inquiry to address **the allegations** of anti-union termination of 1,300 workers and to determine the real motives behind these measures and, should it be found that they were terminated for legitimate trade union activities, take the necessary measures to ensure that the workers are fully compensated, if indeed reinstatement is not possible due to the company's closure.”³

The above conclusion is repeated in the Committee's recommendations, listed under Para 589 (b).⁴

As a signatory to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Indonesian government must now act to fulfil the Committee's recommendation. In support of this, adidas has written to the government calling on them to appoint a duly qualified and independent person to conduct such an inquiry, and for the outcome of the inquiry to bind the parties. That is the most appropriate course of action and is aligned with the ILO Committee's recommendation.

² This is contrast to GSBI-SBGTS actions in relation to Ms Kokom Komalawati, who four months earlier had refused to be laid off by PDB, based on her trade union status. In her case the termination of employment dispute was taken to the Industrial Relations Court and then appealed by GSBI-SBGTS to the higher courts for a decision when the Industrial Relations Court upheld the factory's actions as lawful. Her case was subsequently declared as non-eligible by the Supreme Court, due to late submission. Reinstatement of Ms Komalawati was one of 13 core demands made by the union during the strike of July 2012, in addition to their calls for improved working conditions and the full payment of the workers' minimum wages.

³ Para 585, ILO Committee on Freedom of Association, *Case No. 3124 (Indonesia) Complaint date: 27 Feb 2015, Interim Report - Report No 380, October 2016*

⁴ *Ibid*, Para 585 (b)