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## **Haitian labor movement struggles as workers face increased anti-union persecution and wage suppression**

This report released by [Bureau des Avocats Internationaux](#) (BAI) and [Institute for Justice & Democracy in Haiti](#) (IJDH) describes persecution against union activists, wage suppression and worker exploitation in Haiti's public sector and apparel industry four years after the January 12, 2010 earthquake.<sup>1</sup> The report summarizes troubling trends the BAI, a Port-au-Prince-based law office, observes from its clients fighting for the right to organize and a living wage. The report also proposes a series of recommendations for the Haitian government, employers, and foreign investors like the United States government, as well as international partners wanting to support Haiti's labor movement.

Dozens of union leaders and activists have recently been terminated from their jobs. At least 36 employees in the apparel industry have been terminated in response to their protest in December 2013 asking for higher wages. Similarly, the entire executive committee of a union was terminated by the state-owned public utility company after they tried to organize a press conference denouncing the company's corrupt practices. One union officer was severely injured when the company's security guards violently broke up the press conference. The report calls on public and private employers to stop terminating workers in retaliation for lawful union activity.

The report also describes the Haitian government's complicity in labor and employment violations. The complicity starts with the exclusionary justice system, which caters to Haiti's elite and excludes the poor. The report calls on the Ministry of Social Affairs and Labor, which has jurisdiction over workers' claims, to ensure that workers obtain fair and impartial hearings.

Workers in the apparel industry also experience wage suppression. The apparel industry has recently been revitalized with international support as part of Haiti's earthquake reconstruction. But according to recent [reports](#), all 24 of Haiti's apparel factories have not been paying the minimum wage for piece-rate workers.

The report urges apparel factories to set a production rate to allow workers performing piece work to earn a minimum of 300 Gourdes a day (\$6.97 a day/\$.87 an hour), in compliance with the 2009 minimum wage law. The report recommends that apparel industry employers in violation of the law pay workers back pay retroactive to the date the rate took effect under the law. The Haitian government is also encouraged to allow more debate on the minimum wage so that all stakeholders, including workers, can participate and express their views.

## **Three fundamental challenges facing the workers movement in Haiti**

**Union Persecution.** Dozens of union leaders and activists have recently been terminated for their union-related activity. All five members of the leadership of the Union of Employees of l'EDH (*Le syndicat des employés conséquents de l'EDH* or SECEdH) were terminated after they held a press conference on January 10, 2014, alleging company mismanagement and corruption. EDH (Haiti Electricity) is Haiti's state-owned electricity company. One union officer was severely injured when EDH's security guards violently broke up the press conference. Similarly, at least 36 employees in the apparel industry have been terminated in response to their protest in December 2013 asking for higher wages, and more are being terminated every week. The BAI represents many of these workers before the Ministry of Social Affairs and Labor (known by the French acronym as "MAST") in their request for reinstatement and back pay.

**Wage Suppression.** Employers in the apparel industry have not been paying the minimum wage for piece-rate workers, according to reports from the Washington DC based organization Workers Rights Consortium and Better Work Haiti, an oversight agency operated by the International Labor Organization (ILO) and International Finance Corporation (IFC) and funded by the United States and Canadian governments and major brands and retailers. The reports claim that all 24 of Haiti's apparel factories are underpaying their workers by approximately one-third of the established wage rate. In response, workers are asking for a rise of the minimum wage from 200/300 Gourdes per day to a living wage of 500 Gourdes per day (\$1.45 an hour/\$11.63 a day). The minimum wage issue has increased tension between workers, factory owners and the government. The BAI is actively involved in the minimum wage debate on workers' behalf.

**Worker Exploitation.** Rather than protecting workers rights, the Haitian government has been complicit in labor and employment violations. The complicity starts with the exclusionary justice system, which caters to Haiti's elite and excludes the poor. Haitian law contains basic employment and labor protections, but the impunity for employers' unwillingness to obey the law results in endemic worker exploitation. The BAI is working to pressure MAST, which has jurisdiction over labor and employment cases, to ensure that workers are afforded fair hearings and access to judicial remedies.

## **Wave of terminations highlight union suppression**

### **A. Terminations in the garment industry**

On December 10 and 11, 2013, factory workers (mostly women) in Port-au-Prince's industrial zone SONAPI walked off the job and held demonstrations protesting underpayment of their wages and the government's proposed minimum wage increase from 200 Gourdes a day (\$4.65) to 225 Gourdes (\$5.23). They demanded 500 Gourdes a day (\$11.63) to reflect the actual cost of living.

The walkout and demonstrations were organized by a committee of unions representing workers in SONAPI's factories. On the third day, December 12, the Association of Haitian Industries locked out the workers, claiming they had to shut the factories for the security of their employees. Most workers returned to work on December 13. Others continued to protest in the streets. Unions have documented

at least 36 terminations in seven factories throughout December and January in retaliation for the two-day protest, mostly of union representatives. The terminations continue.

The SONAPI protests and their aftermath highlight the pressures facing Haiti's workers as they struggle to improve their plight. Unions have historically faced strong opposition to their organizing efforts from employers and the government in Haiti.<sup>2</sup> Jobs are so scarce that workers are afraid to lose their job if they speak out against low wages, poor working conditions, mistreatment, and anti-union intimidation. Persecution against union activists has intensified over the last few months, resulting in mass terminations of union leaders in retaliation for their work as union activists.

One of the areas with increased anti-union persecution is in the apparel industry. With the help of HOPE II--legislation passed by U.S. Congress in 2008 to provide customs exemptions for garment and textile exporters--the apparel industry is among the largest private employers in Haiti and has created over 30,000 jobs.<sup>3</sup> In 2012, export revenues from the textile and garment industry accounted for 91 percent of national export earnings and 9 percent of national GDP.<sup>4</sup> Most apparel workers are women (63 percent) who support a number of family members.<sup>5</sup> Haitians desperately want jobs (80 percent of Haitians live on \$2 a day or less), but with low wages, widespread wage and hour violations, and unenforced worker protections, it's unclear whether workers are really benefitting.

One World Apparel S.A. is owned by former Presidential candidate Charles Baker. It is one of the factories involved in the ongoing terminations of workers and union representatives following the SONAPI protests highlighted in the introduction of this report.

One World terminated all six members of the executive committee of the union of textile and garment workers (*Syndicat des ouvriers du textile et de l'habillement*, or SOTA) on January 8, 2014. The employer claims the workers were fired for physically forcing coworkers to abandon their posts and join the December demonstrations. Workers claim these accusations are false and that One World has no evidence to substantiate the allegations. They recall that a table was pushed over in the cafeteria on the first day as workers entered the building, but recall no violence or vandalism at the factory. Workers also report that the demonstrations were generally peaceful with few if any reports of injuries. Some injuries were reported, however, when armed Haitian police tried to break up the protests after the lockout.

One World has a history of firing union leaders. In September 2011, six One World employees were fired days after they registered SOTA as a union with the government. After an investigation, [Better Work Haiti](#) concluded the six terminations, all of members of SOTA's executive committee, violated the workers' right to organize a union and recommended reinstatement. Similarly, the [U.S. Department of Labor](#) deemed One World's actions as "non-compliant" with the freedom of association.

BAI represents the workers terminated by One World before MAST, as well as many of the other workers terminated in retaliation for the December protests. The office is requesting reinstatement. BAI is concerned that MAST will be biased in favor of the factory owners. When seven workers from one factory submitted their complaints, the Office of the Direction of Work (*Bureau de la direction du travail*), which receives complaints for MAST, arbitrarily divided the seven complaints into three separate cases. BAI believes the office is attempting to divide the employees to weaken their defense.

There are other obstacles to justice for workers. Legal procedures for the labor court are obscure. Significant time is lost because there are no clear mechanisms with MAST to receive procedural questions from workers or their lawyers. These types of obstacles give power to employers and their lawyers, who often seek to delay the judicial and administrative proceedings to weaken workers, who often have no lawyer, so that they will drop their case. Employers have a strong advantage when workers do not understand the procedures or system within which to enforce their rights.

## **B. Terminations by state public utility**

In January 2014, all five members of SECEdH's executive committee were fired after EDH used violence to stop the union's press conference, injuring one of the union leaders. On January 10, 2014, the leaders of SECEdH held a press conference at EDH, as they had countless times over the last several years. The purpose of the January 10 press conference was to allege mismanagement and corruption at EDH. At the last minute, EDH management refused to let journalists in the building, although they had given permission for the press conference the day before. SECEdH's leaders joined journalists on the street outside EDH's parking lot gate to convene the press conference. EDH security guards pushed down the metal gate onto the crowd, hitting SECEdH's treasurer in the head and knocking him unconscious. The security guards stood by while the employee lay on the ground bleeding and witnesses urged them to help. Some journalists took the injured employee to the hospital in one of their vehicles. He was released from the hospital but suffers constant pain in his head, shoulders, arms, and back from the heavy gate falling on him.

The following week, SECEdH's executive committee, including the injured officer, received letters of termination dated January 10, 2014. EDH's violent interference with the press conference amounted to criminal assault and battery, as well as a violation of the union leaders' freedoms of association, assembly and speech. Moreover, the terminations did not follow EDH's own employment contract ("internal procedures"), which authorizes revocation when an employee has received two suspensions or four infractions within a 12-month period. None of the five workers had been disciplined in the previous 12 months.

Fortunately, the five workers were able to negotiate their reinstatement in February. But their terminations sent a clear message of management's displeasure with their union activity. SECEd'H has received persecution from EDH in the past. Since its inception in 2007, SECEd'H has opposed EDH's-management-controlled union federation, which bargains with EDH over working conditions and benefits. While individual unions like SECEd'H can bargain directly with EDH, the federation has far more bargaining power and respect with the employer. The federation disqualifies eligible unions like SECEd'H from participating in its rigged elections, and it only allows certain employees to vote while discriminating against others who are critical of the federation.

The federation was run by Raphael Dukens for nine years. He is now EDH's Deputy General Director and Administrative Director. Although Dukens stepped down as federation president when he took the management positions, workers say he had close ties with management before his official roles and that he still runs the federation, including the elections.

SECEd'H's leadership believes that the recent terminations and the attempts to disrupt their press conference were in retaliation for their denunciations of the federation and other corruption within EDH. The state agency was recently criticized for its \$3 billion budget deficit and poor electricity service throughout the country. The BAI continues to represent SECEd'H executive committee members in their ongoing struggle to be recognized by the union federation and to protect their jobs.

### **Minimum wage remains low and is poorly enforced**

The garment industry in Haiti pays among the [lowest](#) salaries in the world's leading apparel-exporting nations.<sup>6</sup> Extremely low wages and a conflict in the interpretation of a 2009 minimum wage law for industrial workers, including those in the garment industry, has created a crisis between workers, employers and the Haitian government.

The 2009 law provides a two-tier approach. The minimum wage is set at 200 Gourdes for an eight-hour-day (\$4.65 or \$.58 an hour). However, employers must set a piece rate that allows workers to make a *minimum of 300 Gourdes* for an eight-hour-day (\$6.97 or \$.87 an hour). A translation of the relevant portion of the 2009 minimum law is provided below:

*Article 2.2 - From October 1, 2012, for the industrial establishments that exclusively export and essentially employ their workers on a piece rate basis, the price paid for the unit of production (including the piece, the dozen, the gross, the meter) must be set so as to allow the worker to perform his day of eight (8) hours for at least three hundred (300) Gourdes; minimum wage reference in these establishments was set at Two Hundred (200) Gourdes.*

Separate investigations by Better Work Haiti and the Workers' Rights Consortium last year found widespread violation of the higher 300 Gourdes wage in all of the Haitian garment factories. Better Work issued a [report](#) in October 2013, based on its investigation of all 24 factories in Haiti, finding that only 16 percent of apparel workers who are paid by the number of pieces they produce earned 300 Gourdes per day.<sup>7</sup> Better Work cited the factories for failing to set a piece rate that would allow its production workers to make at least 300 Gourdes per day, per the 2009 law.

The WRC found consistent violations. Its [report](#), also released in October 2013, concluded that all five of the factories it investigated failed to pay the 300 Gourdes wage.<sup>8</sup> As the WRC points out, North American brands and retailers such as Gap, Gilden, Kohl's, Levi's, Target, and Wal-Mart who buy goods from these factories are "tacitly complicit in this theft of wages".<sup>9</sup>

With the support of the Minister of Labor and CTMO-HOPE (French acronym for The Tripartite Commission for Implementation of the HOPE law<sup>10</sup>), factories counter that they are only required to pay the minimum wage for factory workers – now 200 Gourdes a day. This interpretation of the 2009 law runs counter to the plain meaning of the text, which requires that a piece rate be set to allow employees to earn a minimum 300 Gourdes per day, as well as the legislative intent to provide higher wages for garment workers. Previous report by Better Work dating to back 2011 indicate that most factories have failed to set a piece rate since the 2009 law first took effect in 2010, essentially ignoring the two-tiered system and underpaying their workers.

To put this into context, a 2011 analysis by the Solidarity Center of the AFL-CIO found that based on average monthly expenses of factory workers in Port-au-Prince, an employee must receive at least 1,152 Gourdes (\$29) per day, six days a week, or approximately six times the 200 Gourdes minimum wage, to earn a living wage.<sup>11</sup>

One of the wage violators is S & H Global S.A., which employs about 1,200 apparel workers and operates out of Caracol Industrial Park in Northern Haiti. Caracol was built after the January 12, 2010 earthquake in partnership with USAID, the Clinton Foundation and the Inter-American Bank. They have invested over \$270 million in the industrial park. It was expected to create 65,000 new jobs, but only 2,500 have been created so far. The WRC and Better Work found that S & H Global failed to pay the 300 Gourdes piece rate, failed to pay the correct overtime wages, and frequently miscalculated hours worked.<sup>12</sup>

### **Haitian Government's Complicity in Worker Exploitation**

In press conferences, terminated workers complain that the Haitian government is complicit in recent attacks against their rights. They say the government has taken steps that have prevented unions from organizing, particularly in the public sector and apparel industry. The termination of all five SECEdH officers at EDH is one of many examples of public sector employers unlawfully persecuting unions.

Another example is Josué Mérielien, Coordinator of the National Union of Haitian Teachers (Union nationale des normaliens/nes d'Haïti--UNNOH). He was summoned to court by the Port-au-Prince prosecutor after UNNOH declined to sign an agreement that ended a teachers strike in January 2014. The January 2014 strike held by Haiti's teachers' union platform (which includes CONEH, GIEL, UNNOH, CNEH and FENATEC) called for wage increases, among other things. A truce was declared by some members of the platform after negotiations with an ad hoc committee that contained representatives from the Martelly administration, Senate and House of Deputies.<sup>13</sup> Mérielien said that the negotiations did not adequately engage the teachers and recommended further protest until their needs were met. The prosecutor did not appear in court on January 29 when Mérielien was summoned, but human rights groups say the summons "impedes the teachers' movement that is protesting to reclaim better working conditions, in particular, higher wages."<sup>14</sup>

Similarly, the ongoing campaign of terminations at apparel factories appears to be intended to prevent unions from increasing their presence in the industry as Haiti attempts to attract more investors to fill its empty factory space.

Making Haiti "open for business" was a core piece of President Michel Martelly's election platform that has won him political and economic support from the U.S. government, despite low voter turnout and flawed elections in 2010 and 2011.<sup>15</sup> Part of the Martelly administration's strategy to attract foreign investment has been to keep wages low so that Haiti can be competitive with the global low-wage market.<sup>16</sup> Haiti has the third lowest monthly wages in the apparel industry, surpassing only Cambodia and Bangladesh.<sup>17</sup> This U.S.-backed "sweat shop" economic model is similar to the model in the 1970s and 1980s under former dictator Jean-Claude "Baby Doc" Duvalier. As mentioned earlier, the Minister of Labor and CTMO-HOPE has backpedaled on the 2009 minimum wage law and issued public statements that support factory owners' interpretations and non-compliance with the piece rate wage.

Government complicity is also evident in the justice system, as public and private employers generally enjoy impunity for their labor and employment violations. Like most Haitians, workers have little access to the formal justice system. Court fees and lawyers are too expensive for the poor to afford. Proceedings are conducted in French, which most Haitians do not speak. Lawyers, judges and prosecutors are conditioned by their elite legal training to give preferential treatment to the powerful and discount the causes, testimonies and legal needs of the poor. As a result, Haiti lacks experienced and qualified labor lawyers willing to represent low-wage workers who cannot pay legal fees or costs. Similarly, the judiciary generally favors employers in labor and employment disputes, and workers and union organizers struggle to find justice.

### **Recommendations to Improve Working Conditions**

1. Public and private employers must stop terminating workers in retaliation for lawful union activity. They must reinstate workers with back pay.
2. The Ministry of Social Affairs and Labor (“MAST”) must ensure that workers who file claims against their employers obtain fair and impartial hearings, especially apparel workers terminated as a result of the December 10 and 11, 2013 protests.
3. Labor and employment lawyers need funding to represent low-wage workers who struggle to feed their families and are unable to pay attorneys’ fees or court costs.
4. Employers in the apparel industry should set a production rate to allow workers performing piece work to earn a minimum of 300 Gourdes a day, in compliance with the 2009 minimum wage law. Apparel industry employers in violation of the law should pay workers back pay retroactive to the date the rate took effect under the law, October 1, 2012.
5. The United States government, through the U.S. Agency for International Development (USAID) and international financial institutions investing in the apparel industry, should ensure that factories participating in the HOPE II program are in compliance with all Haitian labor and employment laws and international standards.
6. The Haitian government is encouraged to allow more debate on the minimum wage promulgated by the government so that all stakeholders, including workers, can participate and express their views.
7. Workers would benefit from “Know-Your-Rights” trainings so that they can learn to enforce their rights.
8. Haitian unions and worker groups would benefit from solidarity and joint advocacy with international partners such as unions, workers’ rights and labor organizations, and labor lawyers and professors.

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- <sup>1</sup> More information about the *Bureau des Avocats Internationaux* (BAI) and Institute for Justice & Democracy in Haiti (IJDH) is available at [www.ijdh.org](http://www.ijdh.org).
- <sup>2</sup> Solidarity Center, *Unequal Equation, the Labor Code and Workers Rights in Haiti*, p. 7 (July 2003), available at:
- <sup>3</sup> Haitian Hemispheric Opportunity through Partnership Encouragement Act (HOPE II), Food, Conservation, and Energy Act, Pub. L. No. 110-24, tit. 15 (2008).
- <sup>4</sup> Better Work, *Better Work Haiti: Garment Industry, 7th Biannual Synthesis Report Under Hope II Legislations* (Oct. 16, 2013), available at: <http://betterwork.org/haiti/wp-content/uploads/2013/10/HOPE-II-FINAL.pdf>.
- <sup>5</sup> *Ibid.*
- <sup>6</sup> See, Worker Rights Consortium, *Global Wage Trends for Apparel Workers 2001-2011* (Center for American Progress: Jul. 11, 2013), available at: <http://www.americanprogress.org/wp-content/uploads/2013/07/RealWageStudy-3.pdf>.
- <sup>7</sup> Better Work, *supra* note 3.
- <sup>8</sup> Worker Rights Consortium, *Stealing from the Poor: Wage Theft in the Haitian Apparel Industry* (Oct. 15, 2013), available at: <http://www.workersrights.org/Freports/WRC%20Haiti%20Minimum%20Wage%20Report%2010%2015%2013.pdf>.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> HOPE II, *supra* note 2.
- <sup>11</sup> Solidarity Center, *A Post-Earthquake Living Wage Estimate for Apparel Workers in the SONAPI Export Processing Zone* (Mar. 3, 2011), available at: [http://www.solidaritycenter.org/Files/haiti\\_livingwagesnapshot030311.pdf](http://www.solidaritycenter.org/Files/haiti_livingwagesnapshot030311.pdf).
- <sup>12</sup> Worker Right Consortium, *supra* note 5.
- <sup>13</sup> *Haiti – Education: Truce of the strike of public sector teachers*, Haiti Libre (Jan. 25, 2014), available at: <http://www.haitilibre.com/en/news-10383-haiti-education-truce-of-the-strike-of-public-sector-teachers.html>.
- <sup>14</sup> *Haiti-Education / Justice : Avortement de l’audition de Josué Mérilien au parquet de Port-au-Prince*, AlterPresse (Jan 30, 2014), available at: <http://www.alterpresse.org/spip.php?article15897#.U0w0lfdXjU>.
- <sup>15</sup> Institute for Justice & Democracy in Haiti, *Haiti’s November 28 Elections: Trying to Legitimize the Illegitimate* (Nov. 22, 2010), available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Election-Report-11-23-2010.pdf>.
- <sup>16</sup> Rashmee Roshan Lall, *Haiti’s employment push turns to textiles as farming tradition uprooted*, The Guardian (Aug. 31, 2013), available at: <http://www.theguardian.com/global-development/poverty-matters/2013/aug/21/haiti-employment-textiles-farming>.
- <sup>17</sup> Center for American Progress, *supra* note 6.