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October 20, 2014

Benjamin Hensler  
General Counsel and Deputy Director  
Worker Rights Consortium  
5 Thomas Circle NW, Fifth Floor  
Washington, D.C. 20005

*Re: Haitian Minimum Wage/Piece Rate for the Garment Sector*

Dear Mr. Hensler:

In response to your request, the Cornell Labor Law Clinic (Clinic) and the Bureau des Avocats Internationaux (BAI) have undertaken a thorough review of the 2009 Haitian Minimum Wage statute as applied to garment workers in the export industry, including in-country research by the Clinic in Port-au-Prince in early May 2014.<sup>1</sup> This letter will address our interpretation of the minimum wage statute and the 300 Haitian Gourdes per day standard that it applies to piece rate garment workers who are engaged in production for export.

From interviews conducted by the Clinic in Haiti and a review of relevant materials, it is apparent that there is disagreement about how to apply the minimum wage statute, but this reflects political and financial interests, rather than confusion over the statutory language or the

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<sup>1</sup>The Clinic's research included detailed interviews with the following individuals in Port-au-Prince: Josseline Féthière, Labor Ombudsman for the Garment Industry; Dominique Saint-Eloi, Coordinator for the Haitian Workers National Center (CNOH); Moise Jules, Ministry of Labor and Social Affairs; Louis Fignolé St Cyr, Wages High Council (CSS); Haitian Senator Steven Benoit, Charles Archelus, Secretary General, Haitian Workforce Confederation (CFOH), Susan Washington, Solidarity Center in Haiti; and shorter conversations with Janika Simon, Better Work Haiti and Crispin Rigby, International Relations Officer, Office of Trade and Labor Relations, Bureau of International Labor Affairs, U.S. Department of Labor. There were brief interviews with workers and one factory owner. During the Clinic team's stay in Port-au-Prince, it also visited a garment factory in the industrial park in Sonapi.

intent of the legislature. As we discuss below, however, the argument that the 300 Gourde rate is only aspirational rather than mandatory is at odds with the plain language of the statute and the historical context of its adoption.

Most notably, in October 2013, the Minister of Labor and Social Affairs (MAST), Charles Jean Jacques, released a communiqué to enterprises in the export garment sector that refers to the 300-Gourde rate, paraphrases the language of the statute and asserts that the price per piece should not be considered a minimum wage. But, while MAST is the executive agency charged with enforcing the statute, it does not have the legal authority under Haitian law to interpret the law. Under Haiti's Constitution, the authority to interpret the law resides with the Haitian legislature or the country's Court of Cassation, which is presently not functioning. Articles 128 and 183. Even high officials at the MAST admit that the piece rate garment workers should be earning the 300 Gourde rate per day, but acknowledge the challenges the agency faces in trying to enforce the law.

For the reasons contained in this letter, we reach the conclusion that the legislature intended for piece-rate production workers in the export sector to earn at least 300 Gourde in an 8-hour day. The statutory interpretation is based primarily on the language of the statute itself. While in Haiti, the Clinic did try to obtain documentation from the legislature that would help elucidate the legislative intent. The Clinic was unable to obtain an equivalent of the U.S. Congressional Record or early drafts of the bill that might have been helpful in this context, and it is unclear whether, since the 2010 earthquake, such records exist. However, the Clinic's interviews with legislators, MAST officials and others were instructive and the statutory language itself is decisive.

#### Language of the Minimum Wage Law

As with all issues of statutory interpretation, we begin our analysis with the specific language of the law. The minimum wage law at issue was passed by the Haitian legislature in 2009. Law No. CL-09-2009-010. The title of the statute reads *Law Fixing the Minimum Wage in Industrial and Commercial Establishments*. The preliminary language cited by the legislature acknowledges the pressing social need for the increase in the minimum wage and specifically lists:

- (1) the reduced value of the Haitian Gourde against the U.S. Dollar and other foreign currencies and the negative impact of the increases in the price of petroleum products and their derivatives on the cost of living in general;
- (2) the last minimum wage was motivated by the reality of how the low wages affect Haitians and it is today cruelly aggravated; every citizen should be able, through his work, to meet his needs and those of his family; and that
- (3) any employee of a public or private institution has the right to a fair wage and the state must guarantee a minimum of social and economic equity and it's imperative to take measures that take into account the criteria of social justice and the reduction of



inequality.

Consistent with the social concerns expressed, on October 1, 2009, the Haitian legislature raised the minimum wage in industrial and commercial establishments to 200 Gourdes for an 8-hour day. Article 1.

The legislature recognized the need to have special provisions in the export sector that apply to those who work by the piece or task, a widespread practice in the garment industry. Because of the variation in production and garment type, no specific compensation level per piece was established, instead the statute simply requires employers to ensure that whatever quota system is established by the employer will enable these workers to earn *at least* 300 Gourdes in an 8-hour workday. Specifically, Article 2.2 requires that:

industrial facilities functioning exclusively for reexport and employing workers essentially by the piece or task, the price paid per unit of production (including the particular object, dozen, gross, meter) must be set so as to allow the worker to earn at least 300 Gourdes in an 8-hour workday.

Piece-rate workers were provided a gradually increasing minimum wage that took effect in 2009, 2010 and 2012. The initial increase on October 1, 2009 was 200 Gourdes, in 2010 it raised to 250 and since October 1, 2012 it has been 300 Gourdes.

In addition to the 300-Gourde piece rate specified in the statute for production workers, there is a lower minimum wage “of reference” listed that also has had corresponding increases in each of the years mentioned above. The purpose of this second rate is not specified, but it was explained in interviews conducted in Port-au-Prince that the rate applies to those who work in industrial facilities for export, but who are not doing production work. Other explanations have been proffered, including that the lower rate was intended to be used during the 3-month training period. The most coherent interpretation of this language is that it was intended to cover nonproduction workers in the export sector.

### Rules of Statutory Interpretation and its Application to Article 2.2

Statutes should be interpreted to give effect to the intention of the legislature with the language given its ordinary and natural meaning unless it leads to an absurd result. We look first at the text from which the objective meaning should surface. The language should be interpreted logically. Interpretative criteria should include consideration of the following: 1) the specific statutory language; 2) the genesis of the language; 3) its context with the statute and the legal system as a whole; 4) its purpose; and 5) extralegal values. Gerard Carney, *Comparative Approaches to Statutory Interpretation in Civil Law and Common Law Jurisdictions*, 35 STATUTE L. REV. (forthcoming 2014).



## 1) Statutory Language

Interpreting the plain meaning of Article 2.2 of the statute, which applies to piece-rate garment workers, we conclude that it explicitly requires employers to ensure that these workers are paid at a high enough rate per piece to earn at least 300 Gourde in an 8-hour day. The plain meaning of the statute supports that conclusion. The legislature chose to insert “at least” 300 Gourdes in an 8-hour day. Rules of statutory construction require that each term be given meaning. “At least” would have to be read out of the statute for it to have any other meaning than imposing the 300 Gourde standard as a requirement. Therefore it would not make sense to conclude that the legislature intended for only some production workers to earn that rate per day while others earned a lower rate.

If the legislature had intended the lower reference rate to serve as the minimum wage for piece-rate workers, it would not have bothered including the very specific language requiring the employer to pay per unit of production a sum that would permit the worker to earn 300 Gourdes in a workday. Interpreting the reference wage in that manner nullifies the earlier language in Article 2.2, leading to an illogical result. It would not be consistent with norms of statutory interpretation for one sentence in the article to be interpreted in such a way that it would eliminate any relevance or meaning to the preceding section of the statute.

The 300-Gourde rate is also mandatory. The legislature used the word “must,” instead of choosing words indicating that it is permissive. This section of the law also indicates that it is mandatory. The title itself describes it as establishing or fixing the minimum wage. There is no indication in Article 2.2 or other parts of the minimum wage law that the legislature intended it to be aspirational rather than mandatory. It would have been a lot of unnecessary effort to proceed with a statute that required passage by the legislature and the signature of the executive, if it was intended to be only aspirational.

## 2) Genesis of the Statutory Language

The genesis of the statute is also worth considering. Haiti’s garment industry is critically important because it employs about 30,000 workers and generates over 90% of the country’s export earnings. It is understandable that the legislature would be particularly attentive to the industry’s core workers--those producing garments at a piece rate. Garment workers had been protesting their low wages in 2009 and there were strikes involving several plants. These workers sought a much higher wage than is codified in this statute. The bill was contentious and the president, under pressure from political and financial interests inside and outside of Haiti, refused to sign the original draft, which resulted in a compromise and the passage of the current statute. The language in the current statute has a lower wage for piece-rate garment workers than what was originally proposed, and phases-in wage increases over a period of several years.



### 3) Context Within the Statute

The legislature's intent to propel the minimum wage forward is also evident from the other provisions of the statute that reference both mechanisms for regular increases and internationally accepted standards. For industrial and commercial establishments, the Superior Council of Salaries is to meet annually to increase the minimum wage for industrial and commercial establishments based on macroeconomic indicators. Article 4. For the piece-rate wage, the Council of Wages is to meet on an ad-hoc basis to increase the rate, taking into account internationally accepted standards. Article 4.1. Haiti's piece-rate wage remains one of the lowest for garment workers in the region, especially considering the cost of living and regional norms for this industry.<sup>2</sup> Additionally, the statute clarifies that any agreements between an employer and worker for a lower salary will be considered null and void. Article 3. By disallowing a lower wage, the legislature further illustrated its intent that the minimum wage articulated in the statute be mandatory rather than aspirational.

### 4) Its Purpose

The purpose of the statute as articulated in the preliminary language is also consistent with this interpretation that the higher 300-Gourde rate is a mandatory minimum for piece-rate workers. The legislature expressed concern about the high cost of living and the cruel consequences of low salaries recognizing that the level of compensation should be sufficient for the worker to meet his needs and those of his family. Furthermore, the legislature recognized the important role of the state in advancing a fair wage for reasons of social equity and the reduction of inequality. Even the higher rate is the equivalent of approximately \$6.62 U.S. dollars a day— a sum that does not go far in Haiti.

### 5) Extralegal Values

The legislature considered the enormous economic needs of workers as they passed the minimum wage statute and sought to address it through legislation taking into account the rising cost of living. These values expressed by the legislature in the language of the statute are given meaning in the 300 Gourde standard.

### Conclusion

After a careful review of the statute and considering norms of statutory construction, review of relevant documentation and interviews with numerous Haitians with pertinent knowledge, we

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<sup>2</sup> AFL-CIO Solidarity Center, *High Cost of Low Wages in Haiti* (May 2014) (reporting the results of a "market basket" study which found that the cost of basic necessities for a Haitian worker and her family was 1,006 Gourdes per day), <http://www.solidaritycenter.org/Files/Haiti.Living%20Wage%20Study%20FINAL%20updated.4.29.pdf>.



believe that the Haitian legislature intended to raise the piece-rate compensation for production workers to ensure that they earned at least 300 Gourde in an 8-hour day. Interviews in Haiti made clear that employers have the technical capacity to ensure their production quotas or piece rates permit these core workers to earn that minimum sum. Those who set their production quotas so high that these workers cannot earn 300 Gourde in an 8-hour day are violating the Haitian minimum wage statute and the language of Article 2.2.

Sincerely,

  
Angela B. Cornell

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Mario Joseph, Legal Director

Institute for Justice and Democracy in Haiti

cc: Marie Carmele Rose Anne Auguste, Minister of Human Rights and the Fight against Extreme Poverty;  
Jean Jacques, Minister of Social Affairs and Work;  
Jean Renel Sanon, Minister of Justice and Public Security;  
Rose-Marie Belle Antoine, Special Rapporteur to Haiti, Inter-American Commission on Human Rights;  
John Cerabino-Hess, Political Officer, U.S. Embassy Port-au-Prince;  
Yannick Etienne, Coordinator, Batay Ouvriye;  
Gustavo Gallon, Independent Expert on the Situation of Human Rights in Haiti, U.N. Human Rights Council  
Susan Washington, Haiti Representative, AFL-CIO Solidarity Center

