Online supplement to

Non-judicial mechanisms in global footwear and apparel supply chains: Lessons from workers in Indonesia

Dr Tim Connor, University of Newcastle

Dr Annie Delaney, RMIT University

Sarah Rennie, University of Melbourne

About this report series

This report is part of a series produced by the Non-Judicial Human Rights Redress Mechanisms Project that draw on the findings of three years of research. Non-judicial redress mechanisms are mandated to receive complaints and mediate grievances, but are not empowered to produce legally binding adjudications. The focus of the project has been on analysing the effectiveness of these mechanisms in responding to alleged human rights violations associated with transnational business activity. The series presents lessons and recommendations regarding ways that:

- non-judicial mechanisms can provide redress and justice to vulnerable communities and workers;
- non-government organisations and worker representatives can more effectively utilise the mechanisms to provide support for and represent vulnerable communities and workers; and
- redress mechanisms can contribute to long-term and sustainable respect and remedy of human rights by business throughout their operations, supply chains and other business relationships.

The Non-Judicial Human Rights Redress Mechanisms Project is an academic research collaboration between the University of Melbourne, Monash University, the University of Newcastle, RMIT University, Deakin University and the University of Essex. The project was funded by the Australian Research Council with support provided by a number of non-government organisations, including CORE Coalition UK, Homeworkers Worldwide and Action Aid. Principal Investigators on the team included Dr Samantha Balaton-Chrimes, Dr Tim Connor, Dr Annie Delaney, Dr Fiona Haines, Dr Kate Macdonald and Dr Shelley Marshall. The project was coordinated by Dr Kate Macdonald and Dr Shelley Marshall.

This online supplement to one of those reports is authored by Tim Connor, Annie Delaney and Sarah Rennie.

Correspondence concerning this report should be directed to Tim Connor, tim.connor@newcastle.edu.au.

© 2016 Tim Connor, Annie Delaney and Sarah Rennie. *Online supplement to: Non-judicial mechanisms in global footwear and apparel supply chains: Lessons from workers in Indonesia* is published under an unported Creative Commons Attribution Non-commercial Share Alike (CC-BY-NC-SA) licence, details of which can be found at <https://creativecommons.org/licenses/by-nc-sa/3.0/>

corporateaccountabilityresearch.net

Acronyms and abbreviations

- Factory C: A sport shoe factory in Indonesia (research participants from the factory requested that it not be named).
- GSBI: Gabungan Serikat Buruh Indonesia (Indonesian Workers Union Association): a national trade union that first officially registered after the fall of Suharto in 1998.
- Komnas Ham: Komisi Nasional Hak Asasi Manusia (The Indonesian Human Rights Commission).
- 'majority union': The largest union (by membership) in Factory C. It was established as part of the official government trade union during Suharto's military rule but disaffiliated from that union in 1998 when the Suharto era came to an end (research participants from this union requested that it not be named).
- NCP: National Contact Point for the OECD Guidelines for Multinational Enterprises
- Perbupas: Perkumpulan Buruh Pabrik Sepatu (The Association of Footwear Workers). Perbupas is the second largest union (by membership) in Factory C, established in 1998. It later changed its name to SBGTS in 2007. It is affiliated to GSBI.
- SBGTS: In 2007 the Perbupas union at Factory C changed its name to SBGTS - Serikat Buruh Garmen Tekstile dan Sepatu (Shoe, Garment & Textile Workers' Union).
- WRC: Worker Rights Consortium: an independent organisation established by universities in the United States to investigate labour rights issues in factories supplying the collegiate apparel market.

Online supplement to: *Non-judicial mechanisms in global footwear and apparel supply chains: Lessons from workers in Indonesia*

This online supplement provides a detailed case study of the strategies pursued by a particular trade union (Perbupas, which later changed its name to SBGTS) to claim the rights to freedom of association and collective bargaining in a particular sports shoe factory (Factory C*) in Indonesia over a 17-year period. The case-study is presented to illustrate some of the more general observations made in the report *Non-Judicial Mechanisms in Global Footwear and Apparel Supply Chains: Lessons from Workers in Indonesia*, which was released in October 2016.

Our research methodology is explained in the main report. Two of the researchers who prepared this report have had a long engagement with events at this factory. Tim Connor researched developments there between 1998 and 2007 as part of the field research for his PhD Thesis. He also was involved in advocacy in relation to trade union rights at this factory in his role as labour rights advocacy coordinator for Oxfam Australia between 2002 and 2010. Sarah Rennie conducted research and advocacy in relation to events at this factory as part of her role as labour rights advocacy officer for Oxfam Australia between 2010 and 2012. Field research interviews for this report were conducted in 2013 and 2014.

Factory C case study (1998–2014)

Factory C is located in West Java, close to Jakarta. In the period considered in this study (1998–2014) it had an exclusive contract to supply a particular kind of sport shoe to Adidas. At times during this period the factory employed more than 11,000 workers.

Background (1998–2000)

Factory C has two main unions. This report focuses on the way one of those unions, Perbupas, has pursued human rights claims. The other main union, which for the purposes of this case study we will call ‘the majority union’ (because it has more members at the factory than Perbupas) was established in the factory during the period of Suharto’s military rule in Indonesia. This majority union was previously part of the only union that the Suharto government permitted to operate (SPSI or the All Indonesia Workers’ Union). In 1998 the majority union at Factory C was part of a number of unions that broke away from SPSI during the Reformasi period following the end of Suharto’s presidency. It was also in 1998 that

Perbupas was established in the factory, as an affiliate of GSBI (Indonesian Workers Union Association). Perbupas was established by workers who felt that factory management and the existing union were not addressing poor working conditions at the factory, which they alleged included inadequate wages, long hours of overtime, physical and psychological abuse of line workers and precarious contracting arrangements. However, Perbupas' arrival and its more forceful approach to pursuing workers' rights were not welcomed by management or the existing union. According to GSBI's national general secretary, Emilia Yanti (2007), between 1998 and 2000 more than a dozen Perpubas worker representatives were dismissed on questionable grounds, such as distributing pamphlets without permission.

Worker criminalisation and the case of Ngadinah (2000–2001)

In September 2000 the Secretary General of the Perbupas union at Factory C, Ngadinah Binti Abu Mawardi (Ngadinah), led a strike to demand better working conditions, including adequate compensation, respect for freedom of association and an end to forced overtime. According to Ngadinah, at that point in time working hours at Factory C were 'insane' and 14-hour shifts were commonplace. The strike lasted for four days and Factory C, which denied that working hours were excessive, claimed losses of approximately 500 million rupiah (approx. USD \$58,180) (*Jakarta Post*, 2001a). During a brief interview about the strike with a national television broadcaster in April 2001, Ngadinah claimed that workers were under extreme pressure due to unrealistic production targets. Later that month, following a complaint to authorities by the company's human resource manager, Slamet Supriyadi, Ngadinah was arrested on allegations of 'offensive behaviour' and incitement. Ngadinah was imprisoned for 29 days pending trial and then placed under house arrest after several prominent civil society leaders offered guarantees to secure her release.

During Ngadinah's prosecution, GSBI and Perbupas coordinated various strategies to put political pressure on the judiciary for a fair trial. Workers held mass demonstrations at police stations, the Ministry of Labour and the courts. GSBI also vowed to submit the case to the June 2001 ILO conference in Geneva. GSBI attracted media coverage by both Indonesian and English language news agencies (e.g. *Jakarta Post*, 2001a). GSBI also obtained support from international NGOs such as the Clean Clothes Campaign network, which organised solidarity campaign actions in Europe and petitions to Factory C management and Adidas. Representatives of local and international human rights organisations attended parts of her trial. Adidas initially responded that while it regretted Ngadinah's arrest, her release was beyond its control (CCC, 2001). However, later Adidas wrote to the Indonesian Minister for

Justice requesting Ngadinah's release, emphasising that it believed that industrial relations disputes should be dealt with by labour department authorities rather than the criminal justice system.

On 30 August 2001 Ngadinah was acquitted of all charges at the Tangerang District Court (*Jakarta Post*, 2001b). In a 2002 research interview with one of the authors of this report, Ngadinah expressed little confidence in the impartiality of the Indonesian court system and expressed the view that international campaigning on her case by civil society networks was the main reason for her acquittal (Connor, 2008).

Ngadinah's arrest and trial experience raise the possibility that in the context of a country like Indonesia where there is relatively weak respect for the rule of law and significant problems with judicial corruption (Caraway, 2009; Fenwick, 2008), 'legal' outcomes are susceptible to pressures from beyond the formal legal system. While in many situations this undermines workers' ability to access justice (e.g. where companies 'purchase' judicial decisions), in the case of Ngadinah the strength of local and international civil society support may have influenced the outcome to her benefit: certainly Ngadinah and her organisation believe that the combination of local and international campaign pressure had an important influence on the court's decision.

International scrutiny of working conditions in Factory C (2002–2004)

In the years immediately after Ngadinah's reinstatement, Perbupas had ongoing concerns about labour rights violations at the factory and its union leaders and members continued to allege discrimination from Factory C managers. According to then Perpubas leader Mohammad Ali, in a research interview conducted in October 2003:

They scare other workers by warning them that if they join Perbupas they are sure to get fired sooner or later...And then these workers see that Perbupas members get sanctioned, demoted and intimidated more than [the majority union's] members and non-members...so naturally they feel even more hesitant to join...

As the minority union at the factory, Perbupas was excluded from bipartite negotiations for the collective bargaining agreement regulating wages and conditions in the factory and had limited capacity to convince management to discuss its concerns about ongoing discrimination and harassment of its members. As a strategy to increase its leverage, Perbupas engaged extensively with international campaign networks, particularly Oxfam and the Clean Clothes Campaign, in order to put pressure on Adidas to intervene. Union members shared detailed information about violations of workers' rights with several NGOs involved in the anti-sweatshop movement, who raised these concerns with Adidas' Social and Environmental Affairs team and used various means to put pressure on Adidas. For example, in 2002 international NGOs from

Australia, North America and Europe released the report *We are not Machines*, which criticised Adidas for failing to do more to ensure respect for workers' rights in the factory.¹

The allegation that there were ongoing freedom of association violations at Factory C was also one of two cases pursued by the European labour rights network, the Clean Clothes Campaign, when, in September 2002, it lodged a complaint to the German National Contact Point (NCP) for the *OECD Guidelines for Multinational Enterprises*. The German NCP agreed to take on the case and facilitated mediation between Adidas and the Clean Clothes Campaign. Although no worker representatives from Indonesia were directly engaged in the process, in pursuing the complaint the Clean Clothes Campaign relied on information that had been provided by Perbupas. During the mediation the parties could not agree on whether or not the alleged labour rights violations were occurring, since Adidas characterised the testimonies of the Indonesian workers making those allegations as unreliable. As the German NCP was not itself willing to investigate the allegations (or appoint someone else to do so) the allegations remained unresolved and the process did not result in any tangible outcomes, although it did increase international scrutiny and media attention of labour rights issues at the factory.

Significant progress in respect for rights: the first WRC investigation (2004–2005)

As an alternative way to address these allegations, in 2004 Adidas approached Oxfam Australia and, with GSBI's consent, Adidas and Oxfam agreed to jointly invite the Worker Rights Consortium (WRC) to conduct an investigation into allegations of labour rights abuses at Factory C. The WRC is an independent labour rights monitoring organisation founded in 2000 by universities in the United States and funded by participating colleges, government grants and charitable donations (it does not accept funding from trade unions or businesses). The WRC had a staff member based in Indonesia, Frans Supiarso, who conducted a thorough investigation into working conditions at the factory, interviewing approximately 120 production workers and 35 members of Factory C management, as well as Adidas representatives and labour ministry officials. The WRC identified numerous violations of both labour laws and Adidas' code of conduct and produced detailed recommendations (WRC, 2004). Interestingly the WRC's investigation uncovered violations that were more serious than many of the allegations documented in the CCC's German NCP complaint. However, whereas Adidas questioned the veracity of sources cited by CCC, it did not challenge the WRC's findings, possibly because of the extensive nature of Supiarso's field research. Adidas (2004) accepted the WRC's account of the 'history of labour relations at the factory' and 'chronic non-compliance' and committed to

provide some financial support for a remediation process, but emphasised that ‘the cost of legal compliance must be borne by the manufacturing partner, i.e. the employer.’

According to research conducted by Oxfam Australia in August 2005, in the months following the WRC investigation Adidas and Factory C implemented many of its recommendations (Connor and Dent, 2006). Conditions in the factory improved considerably; several unfairly dismissed trade union leaders were reinstated and the factory offered full-time status to production-line workers who were employed under short-term contract arrangements. The Perbupas union obtained increased recognition and was given office space within the factory (a facility already provided to the majority union).

But one key issue identified by the WRC investigation remained unresolved: the verification of workers’ union membership. The WRC had identified a significant history of systematic discrimination against Perbupas and in favour of the other union by Factory C management including ‘the use of the Human Resources Department’s administrative process to channel workers into [the majority union] without their consent, and refusal to recognise workers’ right to resign from one union and join another’ (2006: 5).

In the second half of 2005, Adidas responded to ongoing international campaign pressure to address the union membership issue by proposing that Factory C suspend the whole check-off system of deducting union dues from workers’ salaries until both unions agreed on a fair membership verification process or, at a minimum, that Factory C suspend deductions from those workers’ whose membership was unclear. Had Adidas pursued this proposal and persuaded Factory C to adopt it, it would potentially have resolved the issue by putting significant pressure on both unions to agree to an independent membership verification process.

Dismissal of Perbupas union leadership (October 2005 – January 2007)

On 12 October 2005, before Adidas’ proposed intervention could be implemented, 33 workers, including the entire leadership of Perbupas, were dismissed following participation in a one-day strike. Factory C management alleged that union leaders involved in the strike had perpetrated and incited violence, behaved offensively and damaged company property. In November 2005 WRC returned to Factory C to conduct an investigation into the events and found that the dismissals were unlawful. WRC also found that the dismissals had effectively banished Perbupas from within the factory and that employees were now ‘too scared and intimidated to publicly acknowledge or act on their affiliation with Perbupas’ (WRC, 2006a). The WRC recommended that Adidas ask Factory C to immediately reinstate the dismissed workers. However, whereas Adidas had accepted the findings and recommendations of the WRC’s previous investigation,

Adidas was initially reluctant to accept the WRC's findings and recommendations in this case. Instead Adidas argued that it was not the appropriate body to interpret Indonesian law in relation to the right to strike and that Indonesian legal procedures should determine whether the workers had been wrongfully dismissed (Adidas, 2006a).

In January 2006 the Ministry of Labour's P4P Committee (which was at that time the tribunal that considered labour disputes at first instance) issued its decision within one day of receiving the case, declaring the dismissals legal. The WRC (2006) described the speed of this decision as 'unheard of' (implying that they suspected corruption) and Adidas expressed disappointment that the P4P Committee did not publish its reasons for the decision.

Due to a lack of faith in the court system, GSBI chose not to appeal the decision to the Supreme Court. Instead, GSBI filed a formal complaint to the Indonesian Human Rights Commission (Komnas HAM). An NGO worker supported GSBI by lobbying personal contacts working at Komnas HAM to take up the case, which was important because the Commission has limited resources and cannot investigate all the cases it receives. Komnas HAM agreed to investigate.

Adidas then indicated it would take Komnas HAM's finding seriously, on the basis that the Commission had a good reputation. Komnas HAM found that the dismissals were in violation of Indonesian labour law and workers' human rights and recommended that all 33 workers be reinstated. Adidas had previously required Factory C to conduct three separate reviews of the dismissals and Adidas had rejected all three reports from reviews as inadequate in light of Adidas' Code of Conduct and ILO norms (Adidas, 2006a). However, it was only following the release of the Komnas HAM report that Adidas issued a formal request that Factory C reinstate the dismissed union leaders.

Adidas (2006c) then decided to cap all future growth in order levels to Factory C until the issue of the workers' dismissal was satisfactorily resolved. Factory C argued that since the decision of the P4P committee, and not Komnas HAM, was legally binding, they would not reinstate the workers unless otherwise ordered to do so by a court. Adidas encouraged Factory C to participate in arbitration with the dismissed workers, however Factory C refused.

In mid-2006 Adidas announced that, because of concerns about the factory's product quality and speed of delivery, it would cut a significant percentage of orders at Factory C, resulting in 2000 job losses. WRC (2006: 3) expressed strong disappointment with this decision:

the WRC is gravely concerned by Adidas's recent announcement of plans to reduce orders substantially at [Factory C], for reasons entirely unrelated to code compliance concerns. This action not only threatens the livelihood of many [Factory C] workers but it also complicates efforts to achieve the reinstatement of the unlawfully terminated workers...Adidas should send a clear

message to [Factory C] management that if the 33 workers are reinstated Adidas will pay a price adequate to meet the costs of full code compliance.

The WRC suggested that Adidas offer to raise orders to previous levels if Factory C reinstated the workers, but Adidas declined to do so, reportedly telling the WRC that ‘business decisions cannot be driven by compliance performance’ (WRC, 2006). In recent correspondence with the authors Adidas indicated this cut in orders resulted from Factory C’s unauthorised use of a particular glue in production of a footwear product rather than from an increase in costs or slower delivery times due to improved respect for labour rights at the factory. It is nonetheless worth noting that in a public statement released at the time Adidas (2006b) described the cut in orders as resulting not only from underperformance in ‘quality’ and ‘leadership’ but also underperformance in delivery times. Performance on delivery times may relate directly to the amount of pressure management exerts on workers to take on long hours of overtime at very high intensity and, before its leaders were dismissed, the Perbupas union had been actively resisting what it saw as undue pressure on Factory C workers to work at high intensity. In several focus group discussions held after the Perbupas leaders were dismissed, workers alleged that work intensity had increased once the union leaders were no longer at the factory. Further, in July 2006 the WRC (2006: 6) reported that it had received:

...credible information that Adidas has asked [Factory C] to take a 3% price cut next year, and likely another price cut the following year, making it substantially more difficult for [Factory C] management to negotiate better labor benefits with the two legally registered trade unions at [Factory C]. If true, this price pressure would also serve as a strong disincentive for [Factory C] to comply with recommendations for reinstatement of the 33 Perbupas leaders and code standards around freedom of association and collective bargaining going forward—since constructive labour relations and meaningful collective bargaining necessarily result in at least modest increases in labor costs and, hence, production costs.

WRC representative FX Supiarso, who met with Factory C management on several occasions during this period, believes that Factory C was not interested in complying with WRC’s recommendations because implementing changes to improve labour conditions were expensive and Adidas was not interested in paying a higher price to ensure it could meet those higher costs. In a 2013 interview, Supiarso said:

In our informal meetings with management [in the period 2004–2006] they complained to me: ‘If I invest my money to protect the workers, Adidas does not do the same thing with us, they do not give the premium price for the shoes’...So I think that is the reason they just stopped working with WRC and following up the complaints from workers.

In statements at the time, and in correspondence regarding earlier drafts of this report, Adidas rejected the idea that offering Factory C incentives to reinstate the workers would have been effective, arguing:

...the factory contested the reinstatement of the workers because it believed that the union had acted illegally, that its actions to dismiss the workers had been upheld by the P4P committee and the union had waived its right of appeal. The factory never accepted the Komnas HAM findings as legitimate, despite the brand's commitment. There was no 'incentive' that would have moved the factory to secure a better outcome and to suggest this is purely speculative. It does not reflect the actual circumstances and intense engagement that took place with the factory management.

Adidas did cap further growth in Factory C's orders until the dispute regarding the union leaders' dismissal was resolved, but refused to offer financial incentives (such as longer-term contracts or higher prices). In January 2007, 15 months after their dismissal, the workers decided they could no longer sustain their campaign for reinstatement and accepted severance payments, which Factory C made conditional on their surrendering their right to request reinstatement at the factory.

Ongoing concerns regarding respect for freedom of association (2007–2014)

In January 2007 GSBI successfully reestablished a new union at Factory C, SBGTS, and held a General Assembly of Members to select its new leaders. In research interviews and correspondence with the authors both Adidas and Factory C management argued that since then factory management has fully respected freedom of association and has in fact gone further than required by either the law or by instruments such as the Freedom of Association Protocol, which is considered in a companion report in this series. Adidas, for example, pointed out that Factory C releases more union officials from factory-line responsibilities to undertake union activities than is required under the Protocol. In a 2013 interview, a representative of the majority union at the factory also expressed the view that freedom of association was respected at the factory.²

However, in research interviews and other meetings in 2009, 2010, 2011, 2012, 2013 and 2014, Dewi Utomo* and Wayan Sidik*—members of the SBGTS leadership team elected in 2007—provided a very different perspective. Their view was that the union has continued to be plagued by interference and discrimination from management and that it is more difficult to serve union members' needs than it was before October 2005, for example because union

officials are no longer allowed to visit factory lines during work hours if requested to do so by their members. While investigating allegations of freedom of association breaches occurring between 2007 and 2013 was beyond the scope of this research study, we were able to investigate such allegations in relation to events at the factory in 2014.

To provide some background, when the SBGTS union at Factory C re-formed in 2007 there were three enterprise-level leaders elected, including Ms Utomo and Mr Sidik, who was elected as chairperson (the main leader). The SBGTS constitution requires that, barring exceptional circumstances, leadership elections should take place every three years. An election was due to take place in 2011 but a Plenary Meeting of union representatives extended the term of the current leaders for several more years. An election was due to be held early in 2014 but Mr Sidik's supporters sought to delay it for a further year. According to the chairperson of the national union (GSBI) a considerable number of SBGTS members in Factory C complained to GSBI about this further delay, pointing out that the SBGTS leaders had not faced an election since 2007.

In the first week of March 2014, the national leadership of the GSBI union therefore stepped in and delivered a letter to the leaders who had been elected in 2007, instructing them to step down because their leadership terms had expired. GSBI also appointed interim SBGTS leaders at Factory C, with the sole mandate of organising an election for the enterprise-level SBGTS leadership within the following two months.

According to GSBI's national general secretary, the managers of Factory C refused to make themselves available to meet with the interim leaders to discuss arrangements for giving SBGTS members time off to attend a union election. Factory C management did, however, meet with Mr Sidik, who argued that GSBI's intervention was undemocratic, oppressive and hypocritical and that it did not comply with the union's constitution. Mr Sidik and his colleagues quickly arranged an Extraordinary General Assembly of Members in order to hold their own election and Factory C cooperated by giving some SBGTS members two days off production duties to attend this meeting. The meeting took place on 12–13 March, and was attended by 37 SBGTS members, including a significant number of field coordinators and group leaders within the union. According to Mr Sidik, a larger number of second-tier leaders and other members were invited but many were not able to attend because they were not all given time off from production duties to do so. The 37 members who attended this meeting elected 19 individuals as members of the plenary. The 19 members then elected the leadership structure and appointed Mr Sidik as the chairperson of the union for a further three-year term.

On March 21 the national chairperson of GSBI met with representatives of Factory C management and asked them to allow all SBGTS members time off work to attend a congress

and election. The factory noted that Mr Sidik had been reelected in the March 13 meeting and refused to cooperate in any other election process until GSBI and SBGTS had resolved its internal dispute.

The interim SBGTS leaders appointed by GSBI's national office therefore instead arranged an election outside the factory, during a meeting that took place from 15–17 April. All of the SBGTS members at Factory C were invited to participate in this election process and more than 1500 of the 2866 SBGTS members in Factory C did so. On 16 May 2014 the GSBI national office wrote to Factory C management and called on them to recognise the leaders elected in the April meeting by allowing them to take up residence in the union's office within the factory and by directing members' union fees collected through the salary system to an organisational bank account on which they were signatories rather than to an organisational account controlled by Mr Sidik and other leaders elected in the March meeting. More than 1000 SBGTS members at the factory have also signed a letter to Factory C management (accompanied by signed union membership forms) calling on factory management to acknowledge the leaders elected at the meeting held in April. Factory C has refused to do so.

According to Ms Utomo the leaders elected in April 2014 also notified the Tangerang City Labour Department of the election process and provided copies of all the documentation from the election process but the Department informed them that they had already registered Mr Sidik and others as the legitimate leaders of SBGTS at Factory C. According to Mr Sidik, the Labour Department and the Industrial Relations courts have also continued to recognise the legitimacy of his leadership by allowing him and other leaders elected in the March meeting to represent SBGTS members in mediation hearings and court cases. According to Mr Sidik, in one such case Ms Utomo sought to disrupt the action by arguing that Mr Sidik's leadership was no longer legitimate but the presiding judge decided that Mr Sidik did have authority in accordance with the law and that the case could therefore proceed.

Obviously, internal leadership disputes within trade unions create significant barriers to effective representation of workers' interests and such disputes complicate attempts to improve respect for freedom of association. However, it is a violation of freedom of association for an employer to acknowledge and direct members' salary-deducted union fees to union 'leaders' who have not been elected by union members according to the union's rules. Freedom of Association is included in Adidas' Social and Environmental Standards for its suppliers, and in other instruments that Adidas has signed, such as the Freedom of Association Protocol and the Fair Labor Association's Workplace Code of Conduct.

Despite this, Adidas has declined to conduct an investigation of this alleged violation of those standards. In research meetings Adidas gave two reasons for its refusal to investigate. First, Adidas argued that its role is to monitor the actions of its suppliers, not of unions within those suppliers, and since in Adidas' view Factory C has remained neutral in relation to an internal union dispute it was not Adidas' role to intervene. Second, since both sets of union leaders claimed their elections complied with the SBGTS constitution, Adidas argued it could not investigate the matter as it is not an appropriate party to interpret a trade union's constitution.

In relation to Adidas' first argument, if Factory C management had remained neutral in the internal union dispute, then Adidas' position would be entirely defensible. However, managers at Factory C have not remained neutral. After they became aware of this dispute, they chose to ignore attempts by interim leaders appointed by the national union to arrange an election on the factory site and instead chose to cooperate with Mr Sidik and his supporters by giving some of the workers invited by Mr Sidik time off from work to attend the meeting on 12–13 March 2014. Factory C subsequently continued to treat Mr Sidik as the legitimate leader of SBGTS. In an email in response to research questions, a manager of Factory C argued that the meeting on 12–13 March 2014 gave Mr Sidik 'the strong foundation as the legitimate leadership of the period 2014–2017 in accordance with the evidence conveyed to the management' (email from a manager of Factory C, 29 November 2014). That is, Factory C management made a decision that the March election, involving 37 SBGTS members, was legitimate and the April election, involving more than 1500 SBGTS members, was not. The union leaders elected in April, including Ms Utomo, alleged that these decisions by Factory C constituted inappropriate interventions in internal union affairs and violations of freedom of association and it was on that basis that they called on Adidas to investigate.

In relation to Adidas' second argument, company representatives argued that the union leaders involved in this dispute should resolve the issue by negotiation or by following Indonesian government processes for clarifying union leadership disputes. However, the leaders elected in April have decided against pursuing government avenues on the grounds that the local Department of Labour and a judge in the Industrial Relations Court had previously ratified Mr Sidik's leadership and that, because of corruption concerns, they have little faith in the integrity of the labour department or the courts to make a fair assessment.

Corruption in the Indonesian judicial system is well documented and in numerous interviews with union leaders conducted for this research project, including with representatives of both the major unions at Factory C, they noted that judicial officers and public servants commonly accept bribes. It is precisely because much global production takes place in countries with very weak regulatory capacity that non-judicial mechanisms such as company codes of conduct and

the Fair Labor Association have been established. Supporters of these initiatives claim they help address this regulatory gap by providing additional grievance mechanisms in circumstances in which workers believe local legal systems have not operated fairly. When Adidas responds to alleged violations of freedom of association in countries with weak regulatory capacity by deferring to government investigative processes without making any independent assessment it calls into question the value of Adidas' code as an additional means of addressing alleged violations of this right.

That is not to say that Adidas is wrong to be hesitant to act as an interpreter of a union's constitution, particularly if the terms are unclear. However it is very clear that the election process in 12–13 March 2014 did not comply with the SBGTS Constitution. Under that Constitution it is the General Assembly of Members that has the power to elect the enterprise-level union leaders. The Constitution specifies that any such Assembly must be attended by field coordinators and group heads who collectively represent the union's entire membership (art 17(3)(4)). In accordance with union regulations, every 10 workers must be represented by one group head and every 10 group heads must be represented by one field coordinator (*Articles of Association*, art 8). Given that SBGTS had 2866 members in March 2014, therefore, approximately 286 group heads and 28 field coordinators were eligible to attend any General Assembly of Members. For an ordinary or extraordinary General Assembly of Members to be legitimate and for its decisions to be valid it must be attended by at least half of either the total number of members or half of the member delegates (see *SBGTS Constitution* arts 17(6), 18(4); *Articles of Association* art 4(2)). Therefore for the March 2014 election to be constitutionally valid the meeting would have had to be attended by either 1433 members or 157 member representatives (field coordinators and group heads). Since only 37 people attended the March 2014 meeting, the election process conducted at that meeting was clearly invalid. The March 2014 election also contradicts several other general democratic principles in the union's constitution, such as the right of every member to elect and to stand for election to become a leader (art 13(2)) as well as the right to participate and play a role in every organisational activity (art 13(4)). It is therefore likely that, had Adidas chosen to investigate, it would have quickly become clear that Factory C is violating freedom of association by recognising the result of the election at the meeting held in March 2014 and ignoring the result of the election at the meeting held in the following month. This decision means that the factory has been inappropriately giving those people elected in the March 13 meeting all of the rights associated with union leadership under the Freedom of Association Protocol, including releasing them from production-line work to conduct union activities, allowing them to occupy the union's offices within the factory and directing the 2866 SBGTS members' union fees to an

organisational bank account that they control. Meanwhile the leaders elected in the much larger and more representative April 2014 meeting are being denied all these rights.

Although Adidas itself refused to investigate, it did suggest to the leaders elected in the April 2014 election that they could make a complaint to the National Committee of the Freedom of Association Protocol. Ms Utomo wrote to that Committee and, as of June 2016, that committee is working through a process to address the complaint. The case will provide an interesting test of the capacity and effectiveness of the grievance procedures associated with the Protocol.

Endnotes

* If this symbol appears beside a name the first time that the name appears in this supplement then it indicates that the name is a pseudonym. Research participants interviewed for this research project were given the option of remaining anonymous.

1. One of the authors of this report (Connor) was the primary author of the *We are not Machines* report.
2. By this time there was also another minority union at the factory, with a significantly smaller union membership than Perbupas/SBGTS, but we were not able to arrange interviews with the leaders of this third union.

References

- Adidas (2004) Preliminary response to Worker Rights Consortium Assessment re [Factory C] (Indonesia) *Adidas-Group*, 27 May 2004. Available at: www.adidas-group.com/en/media/news-archive/sustainability-news/2004/preliminary-response-worker-rights-consortium-ass/ Accessed 20 August 2014.
- Adidas (2005), First quarter report 2005, *Adidas-Group*, Available at: www.adidas-group.com/en/corporate_governance/_downloads/annual_document/adidasQB1_2005E.pdf Accessed 20 August 2013.
- Adidas (2006a) Adidas Group statement on Oxfam report & the current situation at [Factory C], *Adidas-Group*, 26 May.
- Adidas (2006b) Updated statement on the current situation at [Factory C], Indonesia. *Adidas-Group*, 28 June.
- Adidas (2006c) Letter from William Anderson of Adidas to Hendrik Sasmito of [Factory C]. *Adidas-Group*, 24 August.
- Caraway T (2009) Labor rights in East Asia: Progress or regress? *Journal of East Asian Studies* 9: 153–186.
- Clean Clothes Campaign (2001) Update and action request on Ngadinah case. *Clean Clothes Campaign*, 1 May. Available at: <http://archive.cleanclothes.org/urgent-actions-list/666-update-and-action-request-on-ngadinah-case> Accessed 20 August 2014.
- Connor T (2008) *Rewriting the rules: The anti-sweatshop movement; Nike, Reebok and Adidas' participation in voluntary labour regulation; and workers' rights to form trade unions and*

- bargain collectively*. PhD Diss., University of Newcastle, Australia. Available at: hdl.handle.net/1959.13/31403.
- Connor T and Dent K (2006) *Offside! Labour rights and sportswear production in Asia*. Oxford: Oxfam International.
- Fenwick S (2008) Measuring up? Indonesia's anti-corruption commission and the new corruption agenda. In: *Indonesia: Law and Society*, edited by T. Lindsey, pp. 406–429. Sydney: The Federation Press.
- Jakarta Post* (2001a) Union vows to take Adidas' case to ILO. 11 May. Available at: www.thejakartapost.com/news/2001/05/11/union-vows-take-adidas039-case-ilo.html (accessed 20 August 2014).
- Jakarta Post* (2001b) Court acquits labor activist of strike charges. 31 August. Available at: www.thejakartapost.com/news/2001/08/31/court-acquits-labor-activist-strike-charges.html (accessed 20 August 2014).
- Worker Rights Consortium (WRC) (2004) Worker Rights Consortium Assessment re [Factory C] (Indonesia): Summary of Findings and Recommendations. September 7 2004. Available at: http://archive.cleanclothes.org/documents/04-09-wrc_PT_Panarub.pdf
- Worker Rights Consortium (WRC) (2006) Update on Code of Conduct Violations at [Factory C] (Indonesia). July 3 2006. Available at: www.workersrights.org/Freports/PanarubMemo-7-3-06.pdf