



Monitoring in the Dark

An evaluation of the International Labour Organization's
Better Factories Cambodia monitoring and reporting program

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International Human Rights and Conflict Resolution Clinic
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&
Worker Rights Consortium

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TABLE OF ABBREVIATIONS AND TERMS

BFC	Better Factories Cambodia
CAP	Corrective Action Plan
CTA	ILO-BFC Chief Technical Adviser
FIP	Factory Improvement Plan
FDC	Fixed Duration Contract
GATT	General Agreement on Tariffs and Trade
GMAC	Garment Manufacturers Association of Cambodia
ILO	International Labour Organization
IMS	Information Management System
MFA	Multifibre Agreement
MoL	Ministry of Labour
PAC	Project Advisory Committee
Prakas	Cambodian Ministerial Regulations
RCG	Royal Cambodian Government
UCTA	US-Cambodia Textile and Apparel Trade Agreement
UDC	Unlimited Duration Contracts
WIC	Workers Information Centre
WRC	Worker Rights Consortium
WTO	World Trade Organization

Workers on lunch break



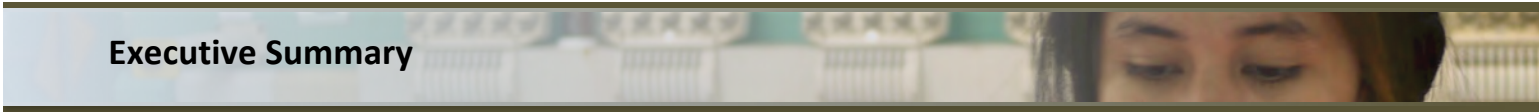
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Lucia Ballard, Virginia Cardenas, Daniel Cassman, Jane Farrington, Jennifer Gibson, Kristina Green, Alexia Romero, Stephanie Tennant, Christina Yang, and Tan Zhi Feng, all graduate-level students in the Stanford International Human Rights and Conflict Resolution Clinic (hereinafter, 'the Stanford Clinic'), jointly undertook research and documentation to prepare and edit this report. Stephan Sonnenberg, Clinical Lecturer at the Clinic at Stanford Law School, oversaw all research, coordinated the project and rewrote and restructured partial drafts in writing this report. Benjamin Hensler and Bent Gehrt of the Worker Rights Consortium (WRC) participated in the development and editing of the report. James Cavallaro, Professor of Law at Stanford and director of the Stanford Clinic, reviewed and edited the final version of the report.

The report is the product of intensive collaboration between the Worker Rights Consortium and the International Human Rights and Conflict Resolution Clinic at Stanford Law School. The WRC, a leading advocate for labor rights in the global apparel industry, has investigated working conditions in factories in Cambodia and other major garment-producing countries on behalf of its more than 180 affiliated universities and colleges, including Stanford University, since its founding in 2000. The Stanford Clinic is one of several clinics in the Mills Legal Clinic at Stanford Law School. The clinic provides direct representation to victims, and partners with either communities that have suffered or face potential abuse, human rights advocacy organizations that integrate Stanford Law students into the work they do. The Stanford Clinic seeks to train Stanford Law students to be effective human rights advocates while simultaneously advancing the cause of human rights and global justice worldwide. The Stanford Clinic is responsible for the research on Better Factories Cambodia (BFC) and stakeholder perceptions of that program. WRC and the Stanford Clinic wish to thank a number of people who helped make this report possible. First and foremost the Clinic would like to thank BFC, and especially its Chief Technical Adviser Jill Tucker, who was refreshingly



forthcoming with the Clinic's research team about her vision for the program as well as the challenges she faces in carrying out her mandate. Her willingness to be open with the Clinic has hopefully resulted in a report that does justice to the institutional hurdles her program faces while still addressing the complaints we heard levied against the organization she now runs. We would also like to thank the many stakeholders we spoke to in Phnom Penh—some of whom wish to remain anonymous—during our visits in February, May/June and December of 2012. The willingness of so many people to speak with us about BFC and the challenges of securing worker rights in Cambodia leaves us optimistic that the problems highlighted in this report—while significant—can nonetheless be addressed, especially given the continued optimism among many stakeholders that BFC will become a more effective force for advancing workers' rights in Cambodia.



Executive Summary

Cambodia's longstanding reputation as a "success story" in efforts to end sweatshop abuses in export garment production—a reputation which has stood, in significant part, on the presence of the ILO's long-running Better Factories Cambodia (BFC) factory monitoring program—is wearing thin.

For over a decade, the Cambodian apparel manufacturing industry has sought competitive advantage in the international marketplace by seeking to obtain and preserve a reputation for relatively greater respect for labor rights than other garment-exporting countries in the region. An examination of the Cambodian garment industry's recent track record with respect to labor rights, however, raises serious doubts about whether this reputation is warranted. The owners of Cambodian garment factories, the international apparel brands and retailers who buy their products, the Cambodian government, and BFC itself all claim that the system of monitoring and reporting described in this report has significantly improved working conditions for Cambodian garment factory employees. Our research suggests, however, that during the eleven years of BFC's operations in Cambodia, wages and basic job security have actually declined for Cambodian garment workers, and that other goals of the labor movement, particularly genuine collective bargaining between employers and workers and basic elements of occupational safety and health, continue to be elusive. This research suggests that perhaps the predominant narrative of success and incremental progress has shielded BFC and other important actors from doing more to improve the real working conditions that Cambodian garment workers face today.

BFC's ability to address these problems effectively is constrained by the fact that, like most private factory inspection regimes, it focuses on uncovering labor rights violations by factory owners, and for the most part does not address buying practices by brands and retailers that strongly contribute to these conditions. Yet even taking this limitation into account, BFC's current operating practices also contribute to the program's under-effectiveness, due primarily to a glaring lack of transparency and an institutional overemphasis on protecting the interests of factory owners and international buyers, rather than responding to appeals from garment workers to protect them from abuse.

BFC was originally established to monitor Cambodia's compliance with the 1999 US-Cambodia Textile and Apparel Trade Agreement (UCTA), which granted the country's garment manufacturers expanded access to the lucrative American apparel market in return for improvements in the labor rights environment in their factories. Since the phase-out of the import quota system in 2005, however, BFC's role has changed to resemble more closely that of most other factory auditing bodies: providing confidential factory monitoring reports to factory owners, and, on a for-pay basis, to international buyers.

While BFC continues to report publicly on labor conditions in the Cambodian garment industry, it does so with less transparency than it did prior to 2005. Reporting occurs without any direct linkage to the financial incentives (in the form of growing export quotas) that once motivated the entire sector—including the factory owners—to strive towards steadily improved labor standards in Cambodia. When after 2005 Cambodia's textile exports to the United States no longer hinged on improving labor standards, BFC's institutional power as the sole designated monitor of those labor conditions also decreased. Without the

transparency that could otherwise feed into a consumer-driven incentive scheme motivating factory owners and buyers to correct for labor violations and strive for improved working conditions, BFC has been increasingly powerless to address longstanding labor rights problems in the Cambodian garment industry or to prevent a slow backward slide in certain conditions for workers.

This report, based on in-country research and extensive interviews with stakeholders, analyzes the garment sector in Cambodia and recommends structural and other reforms that could make BFC a more effective force for protecting worker rights.

Despite the significant flaws and shortcomings that are discussed in this report, the BFC program is being widely replicated in other garment-producing countries through the ILO's Better Work program. The findings in this report, however, suggest that, with respect to certain key areas of labor rights promotion, relying on BFC as a model for programs in other countries is unlikely to produce significant progress for garment workers. These concerns are underscored by the fact that the import-quotas that were so essential to BFC's early success prior to 2005 were phased out when the Uruguay Round of WTO trade negotiations brought the textiles sector under GATT rules. Thus, unless BFC and other BFC-inspired ILO Better Work programs develop effective mechanisms to substitute for the defunct export-quota-linked incentives, the BFC model risks losing its relevance both in Cambodia and globally.

Background

In 1999, the United States and Cambodia signed the UCTA, granting Cambodian garment manufacturers progressively greater access to the American apparel market, provided that the labor rights environment in Cambodian garment factories improved. To measure whether or not such improvement was, indeed, occurring, the International Labour Organization (ILO) in 2001 began to monitor working conditions in the country's garment industry through what today is known as the Better Factories Cambodia (BFC) program. For six years, the US Government relied on BFC's monitoring and reporting to decide semi-annually whether to increase the import quota for Cambodian apparel into the United States. At the same time, apparel brands used BFC's reporting as a primary tool for monitoring their Cambodian vendors' compliance with their codes of conduct. The Royal Cambodian Government retained the responsibility to enforce Cambodian labor laws and standards.

Though the UCTA expired in 2005, BFC has continued to monitor Cambodian factories. Despite fears that the end of guaranteed import quotas into the United States would render the Cambodian garment industry uncompetitive with other major apparel manufacturing countries, the sector has continued to grow. Cambodia's sustained success derives mainly from it having some of the lowest garment worker wages in the world, but also, in some part, from its reputation as a country in which the rights of garment workers are relatively better protected than in some of its leading competitor garment-exporting countries.

The industry's post-2005 expansion, therefore, has occurred in an atmosphere of continual tension: Buyers seek to enjoy the reputational advantages of sourcing from Cambodia (and participating in BFC) while demanding the lowest possible prices for their garments. Factory owners, in turn, must restrict labor costs to meet these demands *and* promise to maintain respect for worker rights. Workers seek to preserve

employment, while struggling to realize the promises of a better livelihood and greater dignity in the workplace.

Worker Rights in Cambodia after Eleven Years of BFC

Despite BFC having monitored Cambodian garment factories for the past decade, Cambodian garment workers continue to face very difficult working conditions. Wages in Cambodian apparel factories have fallen significantly in real terms over the past ten years, while garment workers in some other apparel-exporting countries in the region have seen their wages rise, including in China, Indonesia, and Vietnam (none of which, until very recently, had equivalent ILO programs). Loss of buying power, combined with pervasive excessive working hours and poor health and safety conditions, have contributed to a wave of incidents of mass-fainting among Cambodian factory workers—allegedly caused, at least in part, by exhaustion, overheating, and malnutrition.

While the Cambodian garment industry has prospered and expanded, employment for garment factory workers has grown more precarious, and constructive industrial relations continue to be elusive. Employers have shifted their workforces almost exclusively to employment on serial temporary contracts (“fixed duration contracts” or “FDCs”), and have used threats of nonrenewal of such agreements to pressure workers into non-voluntary overtime and to disrupt union organizing. This coercion, combined with both employer and state influence over many labor organizations, and repeated incidents of violence and mass retaliation against more independent trade unions,¹ has undermined workers’ efforts to secure better working conditions. As a result, genuine collective bargaining remains practically non-existent. Additionally, many garment factories subcontract orders to smaller factories that are currently completely outside of BFC’s monitoring program and exhibit even worse working conditions than those which are regularly monitored by BFC.

These problems cannot simply be ascribed to the existence of unscrupulous factory managers. Undoubtedly, the enormous pressure international buyers put on the Cambodian garment industry to keep costs low and the Cambodian government’s inability to enforce its progressive labor law effectively also contribute significantly to these pervasive problems.

¹ See Lor Chandara & Dene-Hern Chen, *Chea Vichea Documentary Receives Prestigious US Award*, CAMBODIA DAILY, Apr. 6, 2012 (describing the stalled efforts to investigate the 2004 murder of Chea Vichea, former FTUWKC president); Cambodian Labour Confederation & Cambodia Nat’l Confederation, Press Statement, CLEAN CLOTHES CAMPAIGN (Sept. 22, 2010), http://www.cleanclothes.org/component/docman/doc_download/32-press-statement-22-sept-2010-clc-and-cnc-legal-issues (describing a string of retaliatory layoffs of labor activists following a sector-wide strike in September of 2010); *The Human Rights Situation in Cambodia*, F.I.D.H. (June 26, 2007), <http://www.fidh.org/The-human-rights-situation-in> (describing a string of violent or deadly attacks against high-ranking labor activists in the FTUWKC labor union); BETTER FACTORIES CAMBODIA, INT’L LABOUR ORG., TWENTY EIGHTH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA’S GARMENT SECTOR 1, 4 (June 20, 2012), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 28TH SYNTHESIS REPORT] (discussing Feb. 2012 shooting of three workers involved in labor protest at footwear factory in Svay Rieng province by local city official).

As described above, since the expiration of US import quotas tied to improved labor standards in Cambodia, BFC has lost a powerful tool to promote factories' progress on labor rights and counterbalance the disincentives created by buyers' relentless pressure to keep prices low. A system that makes feasible better labor conditions in factories through higher prices paid by brands and retailers is an obvious antidote. There has been increasing recognition among international labor rights advocates that buyers must adjust their purchasing practices if significant improvements in factory conditions are to be achieved and sustained.² Such reforms, however necessary, are beyond the scope of this report. The report focuses instead on changes that BFC can and should make *now*, within its existing structure and operations, to more effectively bolster respect for worker rights in Cambodia's garment industry.

Clearly, there are many stakeholders involved in the production of apparel in Cambodia (and other apparel producing countries), its export, and its sale to end-consumers. There are also numerous other for-profit and non-for-profit actors, in addition to BFC and the ILO's other Better Work programs, that monitor, report on, and/or seek to improve conditions for workers in garment factories, both in Cambodia and in other apparel-exporting countries. This report focuses on BFC. As discussed above, BFC has served as the model for several other ILO programs, including some that are still in the planning phase. Additionally, many of the other industry actors—such as global brands, governments, and factory managers—often cite their support for, or participation in, BFC as their primary contribution to the improvement of labor conditions in Cambodia, and thereby, an implicit justification for not taking other measures, themselves, to address these issues.³

BFC is often described as a model for collaborative improvement of labor standards in the export garment industries of developing countries. By highlighting significant ways in which this claim has been overstated, this report makes clear the need for other stakeholders both to take more effective action, on their own, to improve conditions for Cambodian garment workers, *and* to support a set of measures to make BFC a more effective agent for achieving such progress. It is the second part of this agenda—reforming BFC's

² See Alex Hughes, *Corporate Strategy and the Management of Ethical Trade: the Case of the UK Food and Clothing Retailers*, 37 ENV'T AND PLAN. 1145, 1148 (2005) (describing UK brands' sourcing practices as "highly sophisticated and manipulative forms of supply chain management . . . Retailers' demands on food and clothing suppliers, in terms of dictating pricing and payment terms and requiring strict compliance with their specifications for product development and delivery times, has made for worsening conditions of work for overseas labourers, who already experience low wages, restricted rights in the workplace and barriers to joining trade unions.")(citations omitted); Michael Santoro, *Beyond Codes of Conduct and Monitoring: An Organizational Integrity Approach to Global Labor Practices*, 25 HUM. RTS. Q. 407 (2003) (describing an "organizational integrity" approach to business ethics which emphasizes brands' sourcing practices, as opposed to an overreliance on monitoring and auditing as the primary means of promoting labor rights compliance along supply chains); see also Kate Raworth & Thalia Kidder, *Mimicking "Lean" in Global Value Chains: It's the Workers Who Get Leaned On*, in FRONTIERS OF COMMODITY CHAIN RESEARCH 165 (Jennifer Bair ed., 2009).

³ For example, since after BFC began operations, many major brands and retailers have eliminated their own monitoring of their supplier factories in Cambodia. See, Yoko Asuyama & Seiha Neou, *How Has the Cambodian Garment Industry Evolved?*, in DYNAMICS OF THE GARMENT INDUSTRY IN LOW-INCOME COUNTRIES (Fukunishi ed., 2012) at 5 n. 2 (citing as evidence of the impact of BFC, statistics from Better Work that "the number of buyers that have stopped their own social audits grew from 6 to 31" from 2006 to 2010).

institutional practices and approach to its mission—that is the primary subject of this study and its recommendations.

BFC’s “Black Box Monitoring” Model

Because BFC lacks any actual enforcement power to compel or prohibit specific conduct on the part of factory owners or buyers, much of its influence, actual and potential, rests on its role as a reporting body on working conditions and labor practices at both the factory and industry-wide levels. For this reason, a major focus of this research is BFC’s two primary reporting vehicles: its twice annual public synthesis reports, which aggregate data across all of BFC’s monitoring activities every six months, and its confidential factory reports, which present to individual factory managers and their buyers factory-specific information about the labor conditions prevailing at each factory subject to BFC inspections.

BFC currently provides information about individual factory conditions only to factory managers and to the brands that source apparel from that factory.⁴ As a result, while factories can proclaim that they are subject to routine inspections by a well-reputed monitoring organization and buyers can claim to be acting responsibly by supporting the program, no one outside this limited set of actors has any specific knowledge about the substantive findings of those individual factory visits. This confidential reporting practice, which we term “Black Box Monitoring,” significantly reduces the incentives for factory owners and the brands that buy their products to improve working conditions. It also shields BFC itself from outside scrutiny of its monitoring methods, reducing the incentives for the organization to strengthen its monitoring and reporting work.

Relatedly, within Cambodia’s community of labor rights advocates there is a lack of clarity about BFC’s role, methods, and mandate. At the same time that BFC frequently claims credit for a far-reaching list of public initiatives focusing on some aspects of worker rights, it also hides behind its much narrower monitoring and reporting mandate to justify not taking a public stance on other important labor rights issues, particularly when this is likely to draw the ire of the government or factory owners. The contradiction in BFC’s public messaging, however, leads to criticism from other actors—including trade unions and the broader Cambodian labor rights community—that BFC remains silent on questions that directly affect the rights and welfare of garment workers. BFC needs to do more to clarify its institutional mandate. Labor rights advocates also voice frustration that BFC does not respond directly to reports of labor rights violations from factory workers—a frustration that stems, in part, from the surprising fact that BFC, unlike other leading factory monitoring programs, has no formal procedure for handling direct complaints from workers about labor rights abuses. Similarly, it is not well known that the BFC’s monitoring program extends only to the country’s 300 garment factories that are direct exporters (and thus does not reach subcontractor factories in which, it is commonly recognized, labor rights violations are more prevalent).

⁴ This assumes that the brands actually purchase the reports, which—as we found during our research—some do not. Interview with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, in Phnom Penh, Cambodia (Feb. 10, 2012) [hereinafter Feb. 10 Tucker interview].

Reforming BFC through Transparency

During its early years, BFC played a significant role in the promotion of labor rights in Cambodia, particularly in the expansion of space for workers' exercise of freedom of association. As described above, this was in large part due to the provision of the UCTA that additional expansion of the garment import quotas governing Cambodian apparel exports to the US market was contingent on continuing improvement in labor conditions. Almost all the stakeholders with whom we spoke in Cambodia recognized the important role the ILO and BFC—as the officially-designated institution tasked with monitoring and reporting on any improvements in Cambodian labor conditions—performed at that time.

Since the expiration of those import quotas in 2005, however, in some important aspects conditions for workers have actually worsened and, in others, new problems have arisen as Cambodia's garment industry has continued to expand. Unfortunately, after 2005, BFC's monitoring and reporting practices have also become notably less transparent in ways that made the program more protective of factory owners and less responsive to garment workers.

The recommendations proposed in this document address three central themes. First, we recommend that BFC take a vital step towards greater openness by issuing public reports on individual, identified factories. We call for those reports to detail not only BFC inspectors' monitoring work and any labor rights violations that are uncovered, but also the steps taken by the factory managers and its buyers to remediate these problems. According to the reporting process proposed in this paper, BFC would first report its monitoring results to factory managers, buyers, and worker representatives to allow them the opportunity to remediate any areas of concern highlighted by BFC auditors. After this period for remediation, however, BFC would conduct a follow-up visit to the facility to verify progress made by the factory on these issues, and then issue a public report detailing both its original findings and the actions taken by the factory and/or its buyers to remedy the problems identified in that facility. In instances of severe violations, this approach might require a separate follow-up visit be made on an expedited basis. In most cases, however, it would simply require BFC inspectors to conduct their follow-up assessment concurrently with their next regular factory assessment, and to draft their ensuing public report with a greater focus on whether violations had been adequately remedied.

The second major theme of these recommendations concerns BFC's dealings with garment workers—the people whom the program is supposed to benefit. We recommend that BFC make a much greater effort both to seek input from, and to respond to the concerns of, garment workers and their labor representatives. Specifically, we recommend that BFC gather information concerning factory conditions from workers and unions away from the workplace. Such off-site interviewing is less vulnerable to factory owners' attempts to conceal violations by subtly (or explicitly) exerting pressure on workers. In addition, we recommend that the program develop a policy of not only documenting, but also responding directly to complaints from workers about abuses. Such a two-way communication channel between BFC and workers is essential to garner the trust of workers who turn to BFC with their complaints.

Third, we recommend that BFC expand its role in the remediation process once it identifies labor rights violations at particular factories. BFC should require buyers and factories to submit remediation plans

jointly to BFC that detail a concrete action plan for achieving compliance with Cambodian labor laws and international labor standards. Factories and buyers could do this either by submitting their own Corrective Action Plan⁵ or by subcontracting with BFC's independent training unit. In either case, BFC could play a technical support and advisory role to ensure that the factories are able to come into compliance without interrupting their ongoing business operations, and that worker representatives are adequately consulted in this process.

We believe that these recommendations will help BFC function more effectively in what continues to be a difficult environment for garment workers.

Methodology

This report was researched and drafted between February and December of 2012. It involved three visits by the Stanford Clinic to Phnom Penh, Cambodia, in February, May/June, and December of 2012. During all these visits, the Stanford Clinic benefitted enormously from WRC's logistical and substantive support to help facilitate its research.

The February visit was designed with several objectives in mind. First, our research team sought an updated understanding of current labor conditions in Cambodia's garment industry. Second, our researchers surveyed a broad range of stakeholders about their views of BFC. Finally, we tried to capture suggestions from local stakeholders on how BFC might best address any shortcomings we identified, given the political, social, and institutional context in which BFC operates.

To meet these objectives, the Stanford Clinic spoke with roughly sixty stakeholders over the course of one week. The Stanford team consisted of four researchers (three students and one supervisor), split in two teams of two. We collectively carried out twenty-nine key interviews with individual workers, representatives of Unions, Federations and Confederations,⁶ Cambodian and international labor rights activists, scholars, garment industry lobbyists, media sources, foreign diplomats, members of the Arbitration Council and Arbitration Council Foundation, Royal Cambodian Government (RCG) officials from the Ministry of Labour and Vocational Training (MoL), and BFC officials. We conducted these interviews with the assistance of a translator. Some of these discussions involved multiple interviewees.

⁵ "Corrective Action Plan" is a term employed by BFC, referring to a plan put forward by factory management to address any shortcomings identified during a BFC audit. See *Monitoring Process*, BETTER FACTORIES CAMBODIA (Sept. 20, 2007), [http://www.betterfactories.org/content/documents/1/Monitoring%20Process%20Brochure%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/Monitoring%20Process%20Brochure%20(en).pdf) (reproduced in Appendix C of this report).

⁶ See generally Nuon Veasna & Melisa Serrano, *Building Unions in Cambodia*, FRIEDRICH EBERT STIFTUNG (2010), http://www.fes-asia.org/media/Cambodia/2010_Building%20Unions%20in%20Cambodia_Nuon_Serrano.pdf (for more on Cambodian unions, including the political affiliations/tendencies of the respective unions, superordinate federations and national-level confederations).



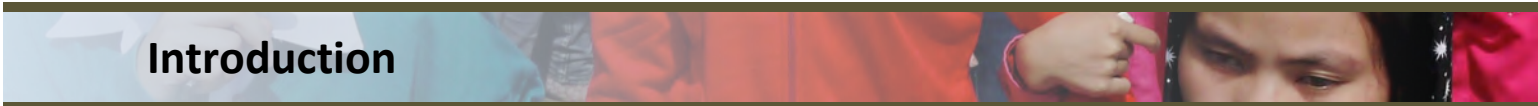
Workers' living quarters, outskirts of Phnom Penh

In addition, the Stanford team convened two focus groups of garment workers—one with ten participants and the other with nine—with the help of the Workers Information Centre (WIC). Participants for those focus groups had come to two of WIC's six drop-in centers to discuss their work concerns with peers and WIC counselors. These participants subsequently agreed to participate in our facilitated discussion about their working conditions and their understanding of the BFC program, unions, and other actors involved in the labor rights movement in Cambodia.

Following its initial visit, the Stanford Clinic and WRC drafted a preliminary report based on the February findings, and circulated that draft informally among some

of the key stakeholders interviewed in February. This was done both to ensure that the authors of the report had accurately captured the views of these stakeholders and to generate additional commentary on the overarching themes and recommendations of the report. This comment period culminated in the second Stanford Clinic visit to Cambodia in late May/early June. During that visit, the Stanford team held six supplemental key interviews, plus two additional focus groups (organized by stakeholder groups) designed to workshop some of the report's key findings.

Based on this initial review of the report's findings and preliminary conclusions, the clinic began preparations for a final visit to Cambodia in December 2012. The purpose of this final visit was to research and prepare a short documentary that would describe the lives, frustrations, and aspirations of average Cambodian garment workers. In addition, the Stanford team circulated a survey of buyer practices among Cambodia's 600+ officially licensed garment producers, conducted follow up interviews with an additional 25 key interviewees, and held two additional focus groups of seven persons each. The research team finalized the report in January 2013.



Introduction

This report examines the BFC Program at ten years. BFC started operations in January 2001, following a three-year trade agreement on textile and apparel between the Royal Cambodian Government and the United States, signed on January 20, 1999.⁷ BFC was designed to improve working conditions in the Cambodian garment industry⁸ and was the first program of its kind to be conducted by the ILO. It has since served as the template for the ILO's Better Work programs in Haiti, Indonesia, Jordan, Lesotho, Nicaragua, and Vietnam.⁹ At the time of this writing, the ILO also plans to initiate Better Work programs in Morocco and Bangladesh,¹⁰ as well as in other industries such as agribusiness, tourism, and the electronics industry.¹¹ As the BFC model continues to be proposed for application to new countries and new industries, it is important to take stock of lessons learned in Cambodia and ensure that future decision-making concerning such programs reflects this experience. This report aims to contribute to that process.

The BFC program makes for a valuable case study for a number of reasons. First, many writers on the subject have credited BFC with contributing significantly to improved working conditions for garment workers in Cambodia since its inception.¹² What has been less widely reported, however, is that by several vital

⁷ BETTER FACTORIES CAMBODIA, INT'L LABOUR ORG., FIRST SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA'S GARMENT SECTOR 1 (Nov. 2001), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 1ST SYNTHESIS REPORT].

⁸ See U.S.-Cambodian Trade Agreement on Textile and Apparel 1999: Agreement Relating to Trade in Cotton, Wool, Man-made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products Between the Government of the United States of America and the Royal Government of Cambodia, art. 10(D), Jan. 20, 1999, available at http://cambodia.usembassy.gov/uploads/images/M9rzdrzMKGi6Ajf0SluJRA/uskh_texttile.pdf [hereinafter UCTA].

⁹ See *Better Work*, INT'L LABOUR ORGANIZATION, <http://www.ilo.org/washington/areas/better-work/lang--en/index.htm> (last visited Jan. 2, 2013) [hereinafter ILO – *Better Work*]; *Frequently Asked Questions*, BETTER FACTORIES CAMBODIA, INT'L LABOUR ORG., <http://www.betterfactories.org/ILO/faq.aspx> (last visited Jan. 2, 2013) (describing BFC as the “model” for Better Work programs in Vietnam, Jordan, Indonesia, Nicaragua and Lesotho).

¹⁰ See ILO – *Better Work*, *supra* note 9; *Improving Working Conditions and Promoting Competitiveness in Global Supply Chains*, BETTER WORK 11, <http://betterwork.com/global/wp-content/uploads/BETTER-WORK-BOOKLET-BDWEB.pdf> (last visited Jan. 3, 2013) [hereinafter *Better Work – Improving Working Conditions*].

¹¹ *Better Work – Improving Working Conditions*, *supra* note 10.

¹² Some, though far from all, of these authors have been officials involved in the development of BFC or representatives of major apparel brands. See, e.g., Yoko Asuyama & Seiha Neou, *How Has the Cambodian Garment Industry Evolved?*, in DYNAMICS OF THE GARMENT INDUSTRY IN LOW-INCOME COUNTRIES 1 (Fukunishi ed., 2012) (interim report); Catherine Chiu, *Workplace Practice in Hong-Kong-invested Garment Factories in Cambodia*, 37 J. OF CONTEMP. ASIA 431, 436-37 (2007); Kevin Kolben, *Integrative Linkage: Combining Public and Private Regulatory Approaches in the Design of Trade and Labor Rights*, 48 HARV. INT'L L.J. 203 (2007) (praising Cambodia's BFC as an early example of what he calls “integrative linkage” between trade policy and labor rights efforts); Kevin Kolben, *Trade, Monitoring, and the ILO*, 7 YALE HUM. RTS. & DEV. L.J. 79 (2004) [hereinafter Kolben, *Trade*]; Joosung Lee, *An Outlook for Cambodia's Garment Industry in the Post-Safeguard Policy Era*, 51 ASIAN SURV. 559-80, 563-64 (2011); Sandra Polaski, *Combining Global and Local Forces*, 34 WORLD DEV. 919 (2006) [hereinafter Polaski, *Combining Forces*]; Lejo Sibbel & Petra Borrmann, *Linking Trade with Labor Rights*, 24 ARIZ. J. OF INT'L & COMP. L. 235, 242-248 (2007); Don Wells, *'Best Practice' in the Regulation of International Labor Standards*, 27

measures—the wages garment workers receive and live on, their ability to bargain over their working conditions at the factory level, their freedom to voice complaints about abuses without fear of retaliation, and basic issues affecting their health and safety—conditions in Cambodia have either not significantly improved or have actually deteriorated over this period. Despite these concerns, however, the majority of stakeholders the Stanford team interviewed felt that the program has an important role to play in protecting the rights of garment workers in Cambodia.

An examination of BFC's history over the past decade reveals both how the program has been altered as conditions have changed, and how relations of power and influence among workers, employers, and the Cambodian government have shaped this process. This report examines the extent to which the program has achieved its original goals and how shifting political, social, and economic forces have changed the organization. These shifts have had a profound effect on BFC's

mandate. The organization's primary mandate is no longer its original one: issuing public reports on working conditions in the Cambodian garment industry to be used by the US government to confer import privileges

Phnom Penh; Royal Palace



COMP. LAB. L. & POL'Y J. 357, 367-373 (2006); Anna Wetterberg, *Public-Private Partnership in Labor Standards Governance: Better Factories Cambodia*, 31 PUBLIC ADMIN. & DEV. 64, 70 (2011); Sandra Polaski, *Cambodia Blazes a New Path to Economic Growth and Job Creation*, 51 CARNEGIE PAPERS (Carnegie Endowment for Int'l Peace, Washington, D.C.), Oct. 2004, available at <http://carnegieendowment.org/files/cp51polaskifinal2.pdf>; Sandra Polaski, *Harnessing Global Forces to Create Decent Work in Cambodia*, INT'L LABOUR ORG. (2009), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_193763.pdf; see also Philip Schleifer, *How to Make Better Factories* (2011) (unpublished Masters dissertation, Free University of Berlin) (on file with author) (citing contributions by Sharan Burrow, President of the International Trade Union Confederation and Neil Kearney, General Secretary of the International Textile, Garment and Leather Work Federation, at the Business for Social Responsibility (BSR) Conference, Nov. 6, 2008, New York, N.Y., as well as Erik Carlborg, Code of Conduct Manager H&M and Naurin Muzaffar, Senior Manager of GAP Inc., at the International Buyers' Forum, Oct. 9-10, 2008, Phnom Penh, Cambodia). But see John Hall, *The ILO's Better Factories Cambodia Program: A Viable Blueprint for Promoting International Labor Rights?*, 21 STAN. L. & POL'Y REVIEW 427-60 (2010) (arguing that BFC may not ultimately succeed if it does not result in a more empowered Cambodian union movement); Wells, *supra*, at 365-67.

to Cambodia's garment sector based on the country's progress in promoting workers' rights.¹³ Since the expiration of the trade agreement between the two countries that gave rise to this mandate, the primary audience for the program's monitoring and reporting has shifted to the brands and retailers that purchase BFC's confidential reports on individual factory conditions.

The implications of this shift have received relatively little scrutiny from those who have previously written about the program internationally.¹⁴ Although the basic mechanism by which BFC's reporting and monitoring affects (or does not affect) factories' labor practices has changed, the program's publicly stated mission continues to be the same: the improvement of labor conditions for Cambodian garment workers. It is against this objective that we have evaluated the program and drafted our recommendations. We hope this report will prove useful to those involved in the development or examination of other ILO country programs with similar mandates, as well as those working to further labor rights in Cambodia's garment industry.



¹³ UCTA, *supra* note 8, art. 10.

¹⁴ A recent report published jointly by the Clean Clothes Campaign and the Community Legal Education Project addresses this point. Jeroen Merk, *10 years of the Better Factories Cambodia Project: A Critical Evaluation*, CLEAN CLOTHES CAMPAIGN 20 (Aug. 2012), <http://www.cleanclothes.org/resources/ccl/working-conditions/10-years-better-factories-report> [hereinafter Merk, *10 years of BFC*] ("The current reporting system is biased toward the factory owners and their clients, while the potential victims of labour rights violations are basically ignored.").

The Cambodian Context

BFC operates in an economic and political context defined by three key characteristics, some of which are shared with other major garment-producing nations and others that are unique to Cambodia.¹⁵ First, the garment industry is of enormous significance to the national economy. Second, because of the garment industry's disproportionate economic impact, national policy makers are highly sensitive to the concerns of buyers and investors as they make policy decisions. And finally, since the country as a whole is relatively small, there is only a limited number of players involved in any policy choices regarding Cambodia's garment industry. Those players tend to know one another well, frequently interacting both formally and informally.

Over the past decade, Cambodia's garment industry has grown at a very rapid pace, becoming the driving force behind the country's economic development. The industry now accounts for approximately 85% of the country's total exports. When footwear is included, that figure rises to 95%.¹⁶ In 2008, this made the Cambodian garment industry the country's second largest economic sector when measured as a share of domestic GDP (17%).¹⁷ At peak periods, more than 400,000 people worked in the factories, approximately 80-90% of them young rural women who send money home to their families in the provinces.¹⁸ Thus, not only the workers themselves, but also their dependents throughout Cambodia are tied to the fate of the garment industry, as is Cambodia's overall development trajectory.

While the garment industry commands a massive share of the Cambodian export market, those exports constitute only a small fraction of the total global supply of low-cost garments.¹⁹ As a result, the



¹⁵ A number of other leading garment-exporting countries share similar traits to Cambodia that would make their apparel industries likely to benefit from a similar strategy of achieving competitive advantage through labor rights promotion. See e.g., Charles Gatchell, Paavo Monkkonen, Joseph Perman & Jeremy Rempel, *Apparel Manufacturing in El Salvador: A Post-Quota Strategy for Competitiveness 4* (April 26, 2005) (Master of Public Policy Degree Program Applied Policy Project, Los Angeles School of Public Policy, University of California), available at http://info.worldbank.org/etools/docs/library/139584/UCLA_El_Salvador_Competitiveness.pdf.

¹⁶ See *Cambodia's Industry Profile*, ASEAN FEDERATION OF TEXTILE INDUSTRIES (AFTEX) (June 28, 2010), <http://sourceasean.com/topics/asean-textiles-apparel/cambodia/> (citing data submitted on June 15, 2010 by GMAC).

¹⁷ Laurent Notin & Florence Pollet, *Foreign Business Leaders Survey/Cambodia*, SOUTHEAST ASIA GLOBE, Jan. 31, 2011, at 29.

¹⁸ See Dennis Arnold & Toh Han Shih, *A Fair Model of Globalization? Labour and Global Production in Cambodia*, 40 J. CONTEMP. ASIA 401, 402; Guy De Launey, *Cambodia Garment Factories Face Demand for Higher Wages*, BBC NEWS (Feb. 8, 2012), <http://www.bbc.co.uk/news/business-16940455>; see also BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 8 (stating that 90% of the workers in the factories monitored by BFC are female).

¹⁹ See David Birnbaum, *Comment: Has China Hijacked The Global Garment Industry?*, JUST-STYLE.COM (Jan. 6, 2011), http://www.just-style.com/comment/has-china-hijacked-the-global-garment-industry_id109932.aspx (reporting that

Cambodian government, garment manufacturers, and trade unions are limited in their ability to make demands on international buyers, since the latter can shift orders to other supplier markets. The bulk of the Cambodian economy is therefore subject to the demands of international apparel companies and these companies' own shifting fortunes in the global marketplace. Since the RCG has set as one of its key development priorities the task of attracting even more foreign investment to Cambodia,²⁰ it too is particularly sensitive to the concerns of international buyers and potential investors. Any discussion of regulating the garment industry or securing labor rights in Cambodia must be informed by that political and economic context. In order to make significant progress, reforms must engage seriously with the power that global apparel brands wield over the Cambodian garment industry.

Of course, a leading factor determining the attractiveness of the Cambodian garment industry to international apparel companies is its cost of production, a key element of which is labor costs. Indeed, Cambodia today is one of the lowest cost countries in which to produce apparel, largely because it has some of the lowest wages for garment workers.²¹ That said, global apparel brands are responsive to more than just cost.²² Many brand name apparel companies—especially those sensitive to consumer concerns regarding sweatshop abuses—have chosen to source a portion of their garments



from Cambodia because, in addition to having very low labor costs, the country is also reputed to be more respectful of worker rights and international labor standards than its principal competitors. Indeed, a 2010

between 2006 and 2010, Cambodian garment exports amounted to just over 3% of the total volume of garments imported to the United States, behind China (39.5% in 2010), Vietnam (8.2% in 2010), Indonesia (6.2% in 2010), Bangladesh (5.5% in 2010), Mexico (4.9% in 2010), India (4.4% in 2010), and Honduras (3.3% in 2010)).

²⁰ *National Strategic Development Plan: Update 2009-2013*, MINISTRY OF PLANNING, ROYAL GOVERNMENT OF CAMBODIA 52-61 (June 30, 2010), <http://www.mop.gov.kh/Home/NSDP/NSDPUPDATE20092013/tabid/206/Default.aspx> (follow "NSDP Update 2009-2013—EN" hyperlink).

²¹ See Mary T. O'Rourke & Raoul Verret, Jassin-O'Rourke Group LLC, *Global Apparel Manufacturing Labor Cost Analysis 2008* 3, 6 (2008), <http://www.textileconnect.com/documents/resources/GlobalApparelLaborCostSummary2008.pdf> (reporting that in 2008, Cambodia's per-hour wage costs were 33¢ US per hour—the second lowest of any country worldwide other than Bangladesh, at 22¢ US per hour).

²² See *infra* text accompanying notes 109, 146-147, 245-247.

study found that, other things being equal, “complying with [occupational safety and health] standards and respecting labour rights increases the likelihood of [factories] retaining buyers.”²³

The garment industry is a classic example of a “buyer-driven commodity chain,” in which corporations sitting at the top of the chain can exert significant leverage over the factories from which they source their goods.²⁴ In addition to pressuring governmental authorities to promulgate and enforce more progressive labor rights standards, an effective advocacy strategy must target both brands’ enforcement of their codes of conduct among factories in their supply chain, and, crucially, the extent to which brands’ business practices—most importantly, pricing, order volumes, and duration of supplier relationships—support or undermine factories’ ability and willingness to comply with these standards.

Finally, Cambodia is a relatively small country, whose apparel industry is geographically quite concentrated. Cambodia’s entire national population of just over 14 million²⁵ is comparable to the populations of some mega-cities in nearby countries.²⁶ Most garment factories are clustered closely in and around the capital of Phnom Penh. The country’s relatively modest size, along with other factors—including a single-party-controlled government, a well-organized employer association, and few truly independent labor organizations—means that national policy discussions often involve fewer actors than in other garment manufacturing countries.²⁷

This reliance on private consultation and deal-making is well-suited to BFC’s tripartite governance structure, but sits uneasily with its mandate to monitor and report independently as well as objectively on working conditions in the garment industry. BFC’s leadership and some outside observers point to these behind-the-scenes discussions with government and industry stakeholders as one of the primary and most effective ways the program contributes to Cambodia’s national labor policy discussions.²⁸ Such informal advocacy is by its very nature difficult to describe and research systematically. Furthermore, most of it happens behind closed doors or in confidential settings, and is therefore nontransparent and dependent on the credibility of those involved. Finally, it lacks any assurance that the interests of garment workers themselves are adequately represented, since the representatives of the most independent unions are those least likely to be welcomed by government and industry in such talks. Where relevant, we share anecdotes we were told during our research of such informal interactions. The bulk of this report’s analysis, however, focuses on the more formal role and mandate of BFC: that of an organization designed to monitor and report on labor conditions in Cambodian garment factories.

²³ Chikako Oka, *Does Better Labour Standard Compliance Pay?* (Better Work Discussion Paper Series No. 5, 2012), available at <http://www.betterwork.org/EN/Publications/Pages/AcademicPapersandResearch.aspx>.

²⁴ Wetterberg, *supra* note 12 (citing Gary Gereffi, *The Global Economy: Organization, Governance and Development*, in HANDBOOK OF ECONOMIC SOCIOLOGY 160-82 (Neil J. Smelser & Richard Swedberg eds., Princeton U. Press 2005)).

²⁵ See *Cambodia: Country at a Glance*, WORLD BANK, <http://www.worldbank.org/en/country/cambodia> (last accessed June 7, 2012) (reporting that in 2010 Cambodia had just over 14 million inhabitants).

²⁶ See *Thailand Info*, U.N. THAI., <http://www.un.or.th/thailand/population.html> (last accessed June 7, 2012) (reporting that the urban area of greater Bangkok in neighboring Thailand has an estimated 9.3 million inhabitants).

²⁷ Interview with David Welsh, Cambodia Country Director, American Center for International Labor Solidarity, in Phnom Penh, Cambodia (June 3, 2012).

²⁸ *Id.*

Better Factories for Whom?

The Cambodian garment industry has seen dramatic growth since BFC's birth a decade ago, with hundreds of new factories, an expanded array of products, and the entry of new buyers and factory owners from around the world. Some important improvements to labor conditions have been made, such as the overall prevalence of unions in garment factories and rates of compliance with minimum wage laws. Nonetheless, in other key areas, many of the same labor rights violations that were present when BFC was first launched still plague the industry. In some cases, conditions have actually worsened.

The problems Cambodian garment workers face eleven years after BFC's inception are often seen in other garment producing countries as well:

- Declining real wages;
- Excessive overtime;
- Violations of freedom of association;
- Lack of authentic collective bargaining;
- Subcontracting and prison labor;
- Occupational safety and health violations;
- Child labor.

While these problems are familiar to any knowledgeable observer of the global apparel industry, their persistence in Cambodia is remarkable when one considers that for the past decade, the country's garment factories have been monitored and praised by an ILO program whose eponymous goal is "Better Factories." The following section presents a brief overview of these problems and discusses the extent to which BFC has responded to each of them, either through its formal monitoring and reporting role or more informally.

Declining Real Wages

Over the past decade in which BFC has operated, wages in the Cambodian garment sector have declined sharply in real terms. Even after the most recent increase in the minimum wage in the garment sector in 2011, workers still suffered a 16.6% drop in real wages for regular work (i.e., work hours excluding overtime) from 2000 to 2010, a decrease that was projected to grow to 30% by 2014.²⁹

For many Cambodian garment workers, the result has been that even the basics of human dignity and wellbeing are out of reach. Specifically, workers are unable to maintain a decent diet, live in adequate housing, or provide for their families and save for the future. Ken Loo, Secretary General of the garment manufacturers' lobbying group, Garment Manufacturers Association of Cambodia (GMAC)—an organization that typically argues *against* higher wages—has acknowledged that "[the minimum wage] provides enough

²⁹ Worker Rights Consortium, *Wages and Worker Unrest in Cambodia: The September 2010 General Strike and its Aftermath*, (forthcoming) (manuscript at 3) (on file with authors).

nutrients to survive, but it doesn't mean you won't feel hungry.”³⁰ By the industry's own admission, wages for Cambodian garment workers are far below a “living wage.” Indeed, according to the WRC, the minimum weekly wage in August 2011 (8,117 Riel) would have allowed a worker to buy the following (see chart below)³¹— a worker who purchased *just one* of the following items at the indicated quantity would have nothing left over for any other expenditure.

Given the large number of dependents who usually rely on factory workers' income, declining wages force workers to stretch their meager incomes even further. According to some reports, this decline in real wages among workers has contributed directly to a series of mass faintings of factory workers in 2011.³² This ongoing phenomenon shows how dire the situation has become for Cambodian garment workers.

Item	Quantity	August 24, 2011 market price
Lowest grade rice	4 kg.	2,060 Rials /kg.
Chicken	375 g.	21,600 Rials /kg.
Eggs	17	460 Rials / egg
Cabbage	3.5 kg.	2,300 Rials /kg.
Fish	500 g.	16,200 Rials /kg.
Milk	800 ml.	9,800 Rials /l.
Beef	290 g.	290 Rials /kg.
Gasoline	1.5 l.	5,200 Rials /l.

Factory owners' efforts to restrict wage growth reflect, above all, an attempt to respond to price pressure from brands and retailers while maintaining profitability in the face of strong competition for orders from other apparel-exporting countries. This strategy, however, has downsides for the country's garment industry as well as its workers. Until now, the steady supply of workers to staff an ever-expanding number of factories has been guaranteed by the fact that garment manufacturing was one of the highest paying options available for unskilled Cambodian workers. In 2004, garment workers earned, on average, 44% more per hour than their counterparts working in other industries (and 80% more overall because garment workers tended to work longer hours as well). Juxtaposed with the hardships of rural life, these wages drew many workers from rural areas to the factories in Phnom Penh. More recently, however, Cambodian labor economists have started to worry that with declining wages (in real terms), factories will no longer be able to recruit new laborers, undermining the viability of the sector.³³

³⁰ *Id.* (manuscript at 4) (citing Hul Reaksmeay & Alice Foster, *Wage Hike is Inadequate, Garment Workers Said*, CAMBODIA DAILY, July 13, 2010).

³¹ *Id.* (manuscript at 4).

³² Bent Gehrt, Workers Rights Consortium, *Presentation to Cambodia People's Tribunal on Minimum Living Wage and Decent Working Conditions*, YOUTUBE (Feb. 5, 2012), http://www.youtube.com/watch?v=_UCTSeq35y8 (describing the results of WRC research that suggests approximately 2400 workers between August of 2010 and February of 2012 fainted in the “mass fainting incidences” reported by the media, and that the primary cause of these faintings was a lack of adequate nutrition and hygiene, consequences from low wages and poor working conditions); *see also* Heather Stilwell, *Behind the Scenes of the Garment Industry*, PHNOM PENH POST, Sept. 14, 2012 *available at* <http://www.phnompenhpost.com/7days/1617-behind-the-scenes-of-the-garment-industry> (quoting one worker as saying “Our wage is so low that we're not able to buy enough food.”).

³³ *See* Kuch Naren & Dene-Hern Chen, *Garment Jobs Grow, But Where are the Workers?*, CAMBODIA DAILY, January 28-29, 2012 (“[G]rowing perceptions of long hours, relatively low pay. . . and growing employment options in other sectors of the economy has left garment factories struggling to fill positions”).

Labor activists believe that BFC needs to focus more of its energy on the issue of declining wages.³⁴ Other multi-stakeholder factory monitoring groups active in the global garment industry—including some backed by leading apparel brands—increasingly acknowledge the importance of not merely monitoring compliance with existing minimum wage laws, but also ensuring that the wages garment workers receive are sufficient to meet their actual needs.³⁵

*Plastic Bags of Soup for sale at lunchtime outside Phnom
Penh factory gates (USD 0.25)*



³⁴ Interview with Nuon Veasna, *supra* note 22.

³⁵ Steven Greenhouse, *Factory Defies Sweatshop Label, But Can It Thrive?*, N.Y. TIMES (Jun. 17, 2010), available at <http://www.nytimes.com/2010/07/18/business/global/18shirt.html> (discussing initiative by top U.S. university apparel licensee and the WRC to establish a supplier factory in Dominican Republic paying workers a “living wage”); *FWF Launches Wage Ladder*, FAIR WEAR FOUNDATION (Nov. 24, 2011), http://www.fairwear.org/534/news/news_item/fwf-launches-wage-ladder/?id=291 (announcing initiative by leading European multi-stakeholder program aimed at “helping brands, factories and labour groups make real progress towards living wages for garment and other workers,” by “gradually improv[ing] workers’ wages”); *Enhancing the FLA Workplace Code of Conduct and Compliance Benchmarks*, FAIR LABOR ASSOCIATION 5 (June 2011), http://www.fairlabor.org/sites/default/files/2011_code_enhancements.pdf (announcing amendment of FLA code of conduct to include requirement that “where compensation does not meet workers’ basic needs and provide some discretionary income, employer(s) shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does.”).

Although BFC has publicly welcomed hikes in the minimum wage after they have been announced by the government³⁶ the program has avoided speaking publicly on the subject prior to these decisions. BFC has not, for example, used its public reports or newsletters to present statistics that document the growing gap between garment workers' wages and the cost of living.

Jill Tucker, Chief Technical Adviser of BFC, acknowledged that BFC could do more in its reporting to compare nominal wages in Cambodia with the rising cost of living in Phnom Penh or the country as a whole.³⁷ Tucker predicted, however, that even such a presentation of neutral facts would likely result in BFC being accused of inappropriately advocating on an issue of public policy by one or more of its tripartite governing stakeholders. While this may well be the case, reporting on trends in wages, and on their buying power for workers, would seem to fall squarely in BFC's mandate of "maintain[ing] an independent system to monitor working conditions in garment factories."³⁸

Currently, BFC permits buyers to advertise their support for the program as a demonstration of their commitment to improving conditions for Cambodia's garment workers, even though these same buyers often employ purchasing practices that likely contribute to a decline in workers' ability to support themselves and their families. Simply acknowledging that, in real terms, wages in the Cambodian apparel industry have been falling could ignite discussion on what responsibility buyers share for this problem.

Excessive Overtime

More than ten years after the inception of BFC, workers perform illegally high amounts of overtime at nearly nine out of ten Cambodian garment factories.³⁹ The Cambodian MoL limits overtime to two hours per day and requires that all overtime be voluntary,⁴⁰ thus setting a maximum workday of ten hours and workweek of sixty hours. A 2012 BFC report found, however, that *eighty-six percent* of BFC-monitored factories routinely exceed the two-hour limit.⁴¹

Multiple factors account for the pervasiveness and persistence of this basic violation of the country's labor laws. Factory managers rely on overtime to accommodate the constantly fluctuating, and often last minute,

³⁶ See Press Release, Communication and Advocacy Officer Maeve Galvin, Better Factories Cambodia on Enforcement and Higher Wage Helping Garment Workers (Nov. 24 2011), <http://www.betterfactories.org/newsdet.aspx?z=4&c=1&IdNews=692>.

³⁷ Interview with Jill Tucker, Chief Technical Advisor, Better Factories Cambodia, in Phnom Penh, Cambodia (May 30, 2012) [hereinafter May 30 Tucker interview].

³⁸ Wells, *supra* note 12, at 364.

³⁹ BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 9.

⁴⁰ BETTER FACTORIES CAMBODIA, GUIDE TO THE CAMBODIAN LABOUR LAW FOR THE GARMENT INDUSTRY 16 (Feb. 4, 2012), [http://www.betterfactories.org/content/documents/1/Guide%20to%20the%20Cambodian%20Labour%20Law%20-%20\(Reprinted%202011-EN\).pdf](http://www.betterfactories.org/content/documents/1/Guide%20to%20the%20Cambodian%20Labour%20Law%20-%20(Reprinted%202011-EN).pdf) [hereinafter BFC, GUIDE TO THE CAMBODIAN LABOUR LAW] (citing Prakas 80/99 and Arbitration Council Award 10/04).

⁴¹ BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 9.

demands of buyers.⁴² Overtime allows factory managers to keep the overall number of workers they employ lower, thus reducing their per-worker overhead costs accordingly (such as the obligation to grant workers attendance bonuses, seniority bonuses, severance pay, and maternity benefits).

Workers' own attitudes toward performing overtime are, not surprisingly, mixed. Most feel the need to work *some* overtime given that the higher hourly pay for overtime work can help them offset the declining buying power of their basic wages.⁴³ Many workers with whom we spoke, however, reported that they felt exhausted by grueling work hours. This is particularly true during peak production periods. Workers told our researchers that while they relied on overtime to supplement their wages, they also wanted the freedom to opt out from overtime.⁴⁴

Overtime

Does the factory work overtime?

✓ Yes

Findings: Management and workers said that most workers worked overtime 2 hours per day from Monday to Friday and that there were around 200 workers who worked overtime from 16:00 to 22:00 4 days per week. Workers said that the factory required workers to work overtime from 16:00 to 18:00 and it was hard to get permission from line supervisors to go home at this time. However, line supervisors did not restrict workers to go home after 18:00. Workers said that line supervisors kept workers' time cards and did not allow workers to punch these time cards when workers did not work overtime from 16:00 to 18:00 and then the factory considered that they were absent half day. The factory deducted a half day wages from workers even though they worked a full day (8 hours) because of this reason.

[...]

Overtime is not:

- ✓ voluntary
- ✓ exceptional
- ✓ limited to 2 hours per day

Suggestion: Management should ensure that overtime

- is voluntary
- is exceptional
- does not exceed 2 hours per day

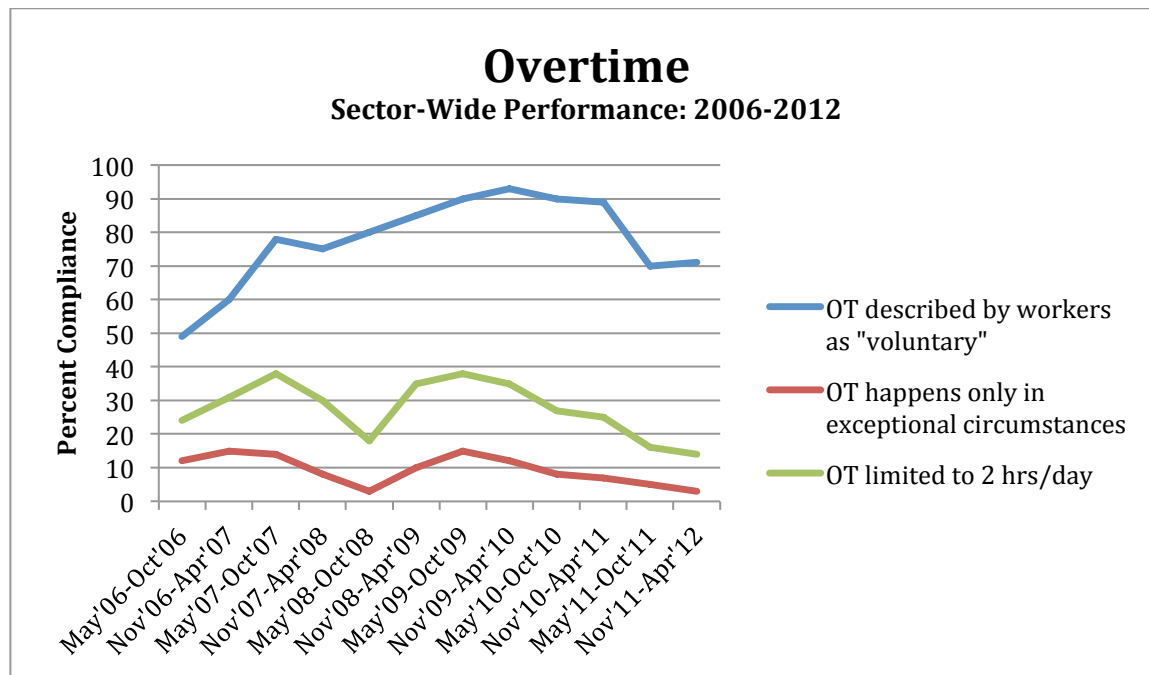
Excerpt from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

⁴² Merk, *10 years of BFC*, *supra* note 12, at 23 ("But global buyers must also share some responsibility as well: their purchasing methods can severely undermine decent working conditions. For example, shorter lead times on deliveries, rush orders, abrupt order cancellations, and fragmentary orders often translate into excessive overtime for the workforce. Furthermore, the constant pressure to reduce costs may exacerbate wage violations, increase the use of fixed-duration-contracts, and lead to further abuses by management.").

⁴³ See confidential interview with two union activists employed at a factory on the outskirts of Phnom Penh, Cambodia (Feb. 13, 2012); interview with Reim Bora, National Union Alliance Chambers Cambodia (NACC) (Feb. 13, 2012); *see also* Merk, *10 years of BFC*, *supra* note 12, at 25 ("[W]orkers accept overtime mainly because their minimum wages are inadequate for the survival of their families; basic pay simply does not pay for their basic survival.").

⁴⁴ Focus group discussions, WIC, in outskirts of Phnom Penh, Cambodia (Feb. 12, 2012) [hereinafter Focus group discussions, WIC].

The chart below draws data from the BFC synthesis reports that consistently highlight the widespread and persistent disregard across the industry for the legal limits on worker overtime.⁴⁵ Although the reports do not indicate individual factories' levels of noncompliance, this aggregate-level poor performance calls into question the program's efficacy in improving conditions for workers and achieving meaningful progress toward compliance with the country's labor laws.⁴⁶ Notable in the graph below, which is drawn from BFC synthesis reports, is that overall compliance among Cambodian garment factories with respect to permissible levels of worker overtime has *declined* since mid-2009.



⁴⁵ Data compiled by the International Human Rights and Conflict Resolution Clinic at Stanford Law School using ILO-BFC 17th–28th synthesis reports. Data prior to the 17th synthesis report was presented using a different format making comparisons prior to the date range above (May 2006–April 2012) impossible. See, e.g., BFC, 28TH SYNTHESIS REPORT, *supra* note 1. Synthesis reports available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1>.

⁴⁶ See text *infra* accompanying notes 110-129. Synthesis reports prior to 2005 listed individual factories that either improved or did not improve with regard to certain labor rights standards. Discontinuing this practice has made it harder to analyze the extent to which various labor issues affecting Cambodian garment workers may be interrelated. For example, one of the factories noted in the February 2004 BFC report for a lack of improvements with regard to overtime work—M&V International Manufacturing Ltd—was also one of the factories hardest hit in 2011 and 2012 with mass worker faintings, with several of the reports at the time placing at least some of the blame on “forced overtime.” See, e.g., Joshua Lipos, *Hundreds Faint in Garment Factory*, RADIO FREE ASIA (August 25, 2011), <http://www.rfa.org/english/news/cambodia/faintings-08252011182914.html> (providing ongoing reporting on individual factories’ performance would have revealed whether conditions at M&V had improved or deteriorated with respect to this issue in the intervening period).

Violations of Freedom of Association

Cambodian garment workers continue to face significant obstacles to exercising their right to freedom of association, a fundamental workplace right and a linchpin for sustainable improvement in working conditions.

A major success of the early years of BFC's operations was the dramatic expansion in the percentage of factories where a union had been established during the period when negotiated incentives linking progress on labor rights to trade privileges were still in place. As discussed below, however, workers seeking to form or participate in a union, particularly one that operates independently of the influence of factory owners or government officials, continue to face the threat of retaliation in the workplace.

A major factor constraining workers' exercise of freedom of association that has emerged since BFC's inception is the pervasive use by factories of fixed duration (i.e., temporary employment) contracts (FDCs), under which the overwhelming majority of workers in GMAC factories are now employed.⁴⁷

In situations of regular ongoing employment, Cambodian labor law dictates that employers should provide workers with unlimited duration contracts (UDCs), which provide workers with significant protections against arbitrary dismissal and guarantee important statutory benefits available only to permanent employees. Prior to 2005, most Cambodian garment workers reportedly were employed on UDCs, but over the following half-decade nearly all GMAC factories converted their workforces to FDCs.

FDCs offer workers fewer protections and make them constantly vulnerable to risk of dismissal or simple non-renewal of these

Employment Contract

Does management consider all workers who are employed for longer than two years total to be employed under an unspecified duration contract?

✓ No

Findings: Workers and management said that the workers who had been working for more than 2 years . . . were still employed under [a] fixed duration contract (FDC). The factory did not have any agreement to employ workers under UDC contracts after having worked for 2 years.

Suggestion: Management should consider all workers who are employed for longer than two years total to be employed under an unspecified duration contract. (This suggestion takes into account the Cambodian Labour Law; MOLVT Letters No. 2540 and No. 2640; AC Order 10/03; and ILO Recommendation 166 (Termination of Employment Recommendation), 1982. There is a discrepancy in interpretation between MOLVT and the AC. Better Factories is adhering to the AC interpretation, which is in accordance with ILO R166.)

Excerpt from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

⁴⁷ See also Arnold & Shih, *supra* note 18, at 417-19 ("FDSs have become the biggest challenge for trade union organizing and workers' livelihoods."). See generally Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams*, YALE LAW SCHOOL (April 2011), http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf.

temporary contracts. According to the Cambodian Labor Law, factory managers are under no obligation to renew workers on FDCs once the contract expires.⁴⁸ Under a UDC, on the other hand, factory managers may only terminate an employee for a “valid reason related to the employee’s skill, behavior, or the requirements of the enterprise” (Article 74).⁴⁹ Thus, from the perspective of an employer seeking to restrict workers’ exercise of freedom of association, hiring all employees on FDCs presents an ideal way to fail to renew selectively (that is, to fire) workers who engage in union activism, and thereby intimidate the remaining workers into forgoing the exercise of their associational rights. When the garment industry’s shift to reliance on FDCs began to gain momentum, BFC published in its October 2006 newsletter an article entitled “Better Factories Concerned About Labour Contracts,” in which Anne Ziebarth, described as a “legal advisor” to BFC,⁵⁰ was quoted as stating, “the ILO recommends that fixed duration contracts should not be used for long term employment, and suggests that permanent employees should be put on UDCs,”⁵¹ a position for which the program reportedly was publicly criticized by the government⁵² and industry actors.⁵³

Subsequently, BFC has addressed labor rights abuses related to FDCs mostly through more private and informal channels,⁵⁴ rather than in its published newsletter and synthesis reports. For example, BFC’s synthesis reports do not indicate the extent to which the factories surveyed employ their workforces on FDCs rather than UDCs. Moreover, on the multiple occasions when GMAC has sought to have Cambodian law amended, or have the currently prevailing interpretation of existing laws overturned to permit factories’ unlimited use of FDCs, BFC has not used its newsletter or synthesis reports publicly to reiterate the point that FDCs should not be used for factories’ regular workforce.⁵⁵

⁴⁸ BFC, GUIDE TO THE CAMBODIAN LABOUR LAW, *supra* note 40, at 39-41 (citing Cambodian Labour Law Articles 73, 83, Notice 06/97 and Arbitration Council Award 10/03).

⁴⁹ *Id.* at 42-45 (citing Cambodian Labour Law Articles 74-75, 77-79, 81-82, 86, 89-91 & 110 Notice 06/97 and Arbitration Council Awards 27/03, 27/04, 29/04 & 51/04).

⁵⁰ Email communications with Tuomo Poutiainen, Former Chief Technical Adviser, Better Factories Cambodia, January 31, 2013 (in which he specified that Ziebarth was a non-staff consultant to BFC).

⁵¹ BETTER FACTORIES CAMBODIA, QUARTERLY NEWSLETTER NO. 6 (Oct. 2006), *available at* <http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.6%20%28en%29.pdf>.

⁵² *Cf.* Yun Samean & John Maloy, *When Pressed for an Answer by ILO, Hun Sen Backs Down and Now Claims That He Didn’t Blame ILO*, CAMBODIA DAILY, Jan. 30, 2007.

⁵³ Email communications with Tuomo Poutiainen, *supra* note 50 (describing BFC’s intent at the time to send a clear statement on BFC’s position on the increasing use of FDCs by employers).

⁵⁴ Email communications with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, January 28-29, 2013 (describing BFC’s private interactions with various actors on the issue, including GMAC and the media, providing them with the data on the increased use of FDCs by factory managers).

⁵⁵ Based on an independent IHRRC/WRC review of ILO-BFC publications subsequent to its October 2006 statement on the issue, *supra* note 51, after this point BFC apparently refrained from making additional public statements on the issue, even in response to active lobbying by GMAC to amend the law to allow for greater use of FDCs. *See, e.g.*, BETTER FACTORIES CAMBODIA, INT’L LABOUR ORG., EIGHTEENTH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA’S GARMENT SECTOR 14 (Jun. 1, 2007), *available at* <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> (noting an “increasing use of fixed term contracts” and making mention of the fact that “[t]he Royal Government of Cambodia has recently commenced a process to review provisions in the labour law regarding contracting under fixed - and undetermined

Instead, BFC has focused on monitoring factories' compliance with existing law on employment of workers under FDCs and UDCs by trying to determine whether, as the law requires, management has converted the contracts of workers who have been employed at a factory under FDCs for more than two years into UDCs. A factory inspection report obtained by the Stanford team and excerpted above demonstrates that BFC not only monitors for violations of Cambodian labor law with regard to workers' employment contracts, but also communicates an unambiguous position against such violations to factory managers.

In her meetings with the Stanford team, Tucker said that she has pushed other stakeholders on the legal violations related to use of FDCs through other private channels. For example, Tucker recounted how in 2012, during an annual buyers' forum, Ken Loo announced that GMAC would be receptive to any complaints from workers who had lost their seniority as a result of being employed under successive FDCs. In response, she asked him, in front of all the assembled buyers and government dignitaries, whether he would be responsive to complaints from BFC alleging such instances. Under pressure, Loo agreed; subsequently, Tucker said, she sent GMAC a series of recent allegations of precisely such behavior that BFC auditors had gathered.⁵⁶



A 30-year-old worker rests after being hit in the face with a club during a labor protest over freedom of association in November 2012.

It seems, therefore, that since 2006 BFC has shifted away from taking a public policy position on the excessive, but arguably still legal, use of FDCs to a more-private role focused more narrowly only on instances of employers illegally using FDCs.

Nonetheless, taking a public position on efforts by factory owners to change the law or its interpretation to allow even more unfettered use of FDCs, however, would seemingly fall squarely within the program's mandate. One of BFC's mandated roles is to "help draft new laws and regulations for improving working

duration contracts" but failing to reference its own legal opinion on the matter, which it had stated just six months prior in its October 2006 newsletter).

⁵⁶ May 30 Tucker interview, *supra* note 37.

conditions and to make labor laws more effective.”⁵⁷ The program fails to perform these responsibilities when it declines to take a public position on attempts to make the labor laws *less* effective, much less to help develop ways by which FDCs can be confined to what BFC once recognized as their proper role: arrangements for genuinely temporary employment.

Another threat to freedom of association is the difficulty unions face in gaining a foothold in factories from which the management seeks to exclude independent union activity. Cambodian law prohibits employers from supporting or favoring “management-friendly” unions.⁵⁸ It requires employers to deduct union dues, upon workers’ request, from their salaries, and forward these funds directly to unions.⁵⁹ Cambodian law also mandates that factories provide space for unions to organize free elections of shop stewards to represent workers in negotiations with management.⁶⁰ During our research, however, we consistently heard allegations from union representatives that management brazenly disregards these legal obligations or erects administrative hurdles to prevent workers from organizing.

Freedom of Association

Can workers freely join trade unions of their choice?

✓ No

Findings: Management said that workers had the right to join unions as they wished. However workers said that male workers who talked in group (sic) of more than 5 would be terminated. Workers said that workers were asked to resign if office staff knew that they joined a union. [...] Workers further said that workers did not believe that both unions that were still active could help workers. Therefore, workers tried to set up a new union (Rights and Benefit Workers of Federation of Trade Unions), but unfortunately all union leaders were terminated. [...]

Suggestion: Management should not interfere with the right of workers to form and join unions of their choice.

[...]

Anti-Union Discrimination

Does management get permission from the labour ministry before dismissing union leaders or candidates for union leadership?

✓ No

Findings: [...] Management said that the factory terminated all union leaders without getting permission from the Ministry of Labour. The top management told us during the exit meeting that the factory will improve this issue in the future.

Excerpts from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

In fact, we found that employers often fail to afford unions the freedom to organize, and even actively undermine unionization efforts. Labor activists we interviewed described facing intimidation and harassment

⁵⁷ Wells, *supra* note 12, at 364.

⁵⁸ BFC, GUIDE TO THE CAMBODIAN LABOUR LAW, *supra* note 40, at 56.

⁵⁹ *Id.*

⁶⁰ *Id.* at 57.

in Cambodian factories, as managers sometimes fired those who either openly sympathized with or joined labor unions.⁶¹ The past decade has seen recurring incidents of violence against Cambodian worker activists, with victims ranging from leaders of national labor federations, to factory-level union officers, to ordinary factory workers.⁶²

As illustrated by the example above, we found that BFC auditors do document such allegations, and present them in clear and unambiguous terms in individual factory reports—which are then, of course, kept confidential from all parties except factory owners themselves, and, if the former permit, their buyers. Tucker also related how with regard to freedom of association BFC sometimes “strategically takes on investigations that not only provide information for a single factory, but which can serve to further the conversation about bigger issues, such as FOA violations.”

Using an investigation into a freedom of association problem at a single factory to further a nationwide conversation on the topic is laudable, but *only if* the findings from that investigation are subsequently made public. In both the report we read and the special investigation mentioned by Tucker, it seems that the contrary was true: namely that the lack of transparency makes it impossible for other stakeholders to determine what, if any, steps factory owners, buyers, and BFC are taking to correct such violations when identified. This is particularly unfortunate. Violations of freedom of association significantly constrain workers’ ability to exercise other basic labor rights. Furthermore, they are amenable to concrete and measurable remediation by an employer—whether through reinstatement of union activists who have been victims of retaliatory termination or through recognition of a union’s representation of its workforce.

Lack of Authentic Collective Bargaining

In spite of ongoing employer interference and retaliation, the past decade has seen the dramatic proliferation of trade unions in Cambodian garment factories. Unionization rates, when measured by the percentage of factories where a union is present, are among the highest of any major garment-producing country in the world.⁶³ This achievement, however, has so far failed to translate into much in the way of authentic collective bargaining at the factory level,⁶⁴ a problem illustrated by the draft BFC factory report

⁶¹ Interview with anonymous union organizer, in Phnom Penh, Cambodia (Feb. 7, 2012) (on file with authors); Confidential focus group with seven factory workers and C.CAWDU leaders, in Phnom Penh, Cambodia (Dec. 7, 2012) [hereinafter C.CAWDU focus group discussion].

⁶² See BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 4 (discussing Feb. 2012 shooting of three workers involved in labor protest at footwear factory in Svay Rieng province committed by local city official); *Fashion Labels Call for Action on Murder*, STANDARD (Hong Kong), Apr. 26, 2007 (discussing killings of three national and factory-level union leaders between 2004 and 2007).

⁶³ Compare Veasna & Serrano, *supra* note 6, at 71 (“[Cambodia’s garment sector] has the highest union density among all industries in any country in Asia.”), with Mark Anner, *The Impact of International Outsourcing on Unionization and Wages: Evidence from the Apparel Sector in Central America*, 64 ILR REVIEW 306, 316 (2011) (noting that in Latin America “unionization rates for apparel export workers remain exceptionally low” and citing rates of less than 14% in Honduras and El Salvador).

⁶⁴ Veasna & Serrano, *supra* note 6, at 35 (estimating that of union contracts negotiated in 2008 and 2009 more than eighty percent “deal[t] mostly with a single issue and on an ad hoc basis rather than through an orderly negotiation

excerpted here referring to a one-page collective agreement that apparently dealt mainly with the timing of wage payments.

The proliferation of unions in Cambodia masks the reality that only a small percentage of unions operate without management or political interference, or pursue an agenda that advances the day-to-day interests of rank-and-file workers.⁶⁵

A primary reason for the failure to develop constructive industrial relations in the country's garment factories is the continued resistance of factory owners. GMAC's Ken Loo acknowledges that its member factories prefer to deal directly with their employees rather than with unions. Since unions are, by their nature, organizations formed by workers to deal with employers, such policies amount to the deliberate undermining of collective bargaining.⁶⁶

To avoid having to negotiate with independent unions, some employers reportedly have created management-sponsored

unions that provide token material benefits in order to lure workers away from more independent unions. This fragments the workforce and suppresses the establishment of authentic collective bargaining relations between the company and its employees.⁶⁷ Such employer sponsorship of unions also constitutes a clear violation of Cambodian law and international labor standards.⁶⁸

Collective Agreement

Is there a collective agreement?

✓ No

Findings: The factory and shop stewards signed a one page collective agreement. The collective agreement focused on wage payments. Both parties agreed that the factory pays wages to workers once per month. The pay day should be no later than [the] 5th of the following month. The collective agreement was registered with [the] Labour Dispute Department on [date]. According to paragraph 3 of article 96, the term of the collective agreement which [is] signed by the factory and shop stewards should not exceed one year. Therefore this CBA was invalid.

Excerpt from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

bargaining process" that "there were only about 30 high quality CBAs concluded by . . . unions [with full bargaining rights] across all [employment] sectors,"); *id.* at 65 (noting that existing CBAs in Cambodia "tend to do little more than reaffirm existing rights under Cambodia's Labour Law").

⁶⁵ See Kolben, *Trade*, *supra* note 12, at 87-88.

⁶⁶ See Nuon & Serrano, *supra* note 6, at 90-100.

⁶⁷ See *id.* at 97-98 (detailing common tactics used by employers to deny unions "most representative status"); Dec. 7th focus group interview, *supra* note 33; see also Arnold & Shih, *supra* note 18 at 415-17 ("[D]espite a high level of unionisation, trade unions largely struggle to maintain representation at the factory level.").

⁶⁸ See International Labour Organization Convention 98 art. 2, 1949 ("(1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other . . . in their establishment, functioning or administration. (2) In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers . . . shall be deemed to constitute acts of interference within the meaning of this Article."); ILO, FREEDOM OF ASSOCIATION: DIGEST OF DECISIONS AND PRINCIPLES OF THE FREEDOM OF ASSOCIATION COMMITTEE OF THE GOVERNING

Additionally, many unions' activities are closely tied to the leadership and policies of political parties. While freedom of association encompasses the right of workers and unions to participate in the political process,⁶⁹ in Cambodia, political parties tend to influence the labor movement rather than vice versa.⁷⁰ In some cases these political ties have caused union leaders to fail to advance pro-worker agendas that may rankle party leaders.⁷¹ Finally, financial payoffs from employers to some labor leaders have allegedly rendered many unions operating in Cambodian factories almost entirely ineffective.⁷² Such unions, not surprisingly, have made little effort to negotiate collective bargaining agreements that improve conditions and wages for garment workers.

Because more independent unions must typically operate in factories alongside other labor organizations whose agendas are aligned mostly with those of employers or political parties, effective coordination among worker representatives is severely hampered. Where unions have attempted coordinated action to establish industry-wide bargaining, resistance has been fierce and sometimes violent.⁷³ Surprisingly, such incidents, which have had a significant chilling effect on workers' attempts to exercise the right of collective bargaining, have gone largely unreported and unmentioned on by BFC.⁷⁴

For example, in 2010 factory owners rejected a demand by the C.CAWDU and NIFTUC labor federations for negotiations over wages. An ensuing strike by the two labor groups was met with suspensions and firings of

BODY OF THE ILO (5th ed. 2006) ¶ 343 [hereinafter ILO CFA DIGEST] (“[E]mployers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities.”); LABOR LAW art. 280 (Cambodia 1997) (“Acts of interference are forbidden. For the purpose of the present article, acts of interference are primarily measures tending to provoke the creation of worker organizations dominated by an employer or an employers' organization, or the support of worker organizations by financial or other means, on purpose to place these organizations under the control of an employer or an employers' organization.”).

⁶⁹ See ILO CFA DIGEST, *supra* note 68, at ¶ 500 (“[I]mposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are [sic] contrary to the principles of freedom of association.”).

⁷⁰ See interview with Morn Nimh, Cambodia National Confederation, in Phnom Penh, Cambodia (Dec. 6, 2012) [hereinafter Morn Nimh interview]; see also Kolben, *Trade*, *supra* note 12, at 85-88.

⁷¹ See Morn Nimh interview, *supra* note 70; see also Kolben, *Trade*, *supra* note 12, at 87 (“For example, during the first consultation meeting between the U.S. and Cambodia to discuss the criteria for the monitoring program, in July 1999, Chuon Mom Thol, leader of the Cambodian Union Federation (CUF), testified that the only major challenge facing workers in the garment industry was the threat of job loss from the imposition of quotas. The CUF has little grassroots legitimacy. Nevertheless, Chuon Mom Thol is routinely presented by the government as the legitimate representative of the labor movement in Cambodia and serves as vice-chair of the Labor Advisory Committee.”).

⁷² See *Annual Survey of Violations of Trade Union Rights – Cambodia 2012*, INT’L TRADE UNION CONFEDERATION (ITUC), <http://survey.ituc-csi.org/Cambodia.html> (last accessed Jan. 20, 2013) (“Branch union representatives are occasionally offered large sums of money to join the ranks of a yellow union during labor disputes”); C.CAWDU focus group interview, *supra* note 61 (union organizers described to us how they were offered double pay in “incentives” if they agreed to cease their labor activism).

⁷³ See, e.g., C.CAWDU focus group interview, *supra* note 61 (workers at the Nex-T Apparel (Cambodia) Co., Ltd. described to us how workers were severely beaten by hired “thugs” and Cambodian police officers—two to the point of hospitalization—during a strike to protest poor working conditions and low wages).

⁷⁴ But see BFC, 28TH SYNTHESIS REPORT (highlighting an incident where a local official fired shots at protesters demonstrating for increased benefits).

hundreds of their factory-level leaders and activists.⁷⁵ This act of concerted retaliation by employers was never publicly deplored, or even discussed, by BFC in either its synthesis reports or its newsletter.⁷⁶

In extreme cases, resistance to labor activists has been lethal. The only other union federation to have pursued a similar industry-wide strategy to bargain up wages, the FTUWKC,⁷⁷ saw its national president, Chea Vichea, and two of its top factory-level leaders, Ros Sovannareth and Hy Vuthy, assassinated between 2004 and 2007.⁷⁸ The killings of Vuthy and Sovannareth also apparently passed without an official statement from BFC or mention in the program's newsletter or synthesis reports.⁷⁹ Since these murders, the FTUWKC has become a noticeably less forceful presence in the industry.⁸⁰

The near absence of authentic collective bargaining agreements in Cambodia and the repression of attempts by workers' organizations to secure them strongly belie claims that the country's garment industry represents a labor rights "success story." The establishment of unions, though a significant achievement, is of only limited value to workers if they cannot make use of collective representation to bargain for improvements in their working conditions. The impact of this limited progress over the past decade is readily apparent at both the factory level and the industry as a whole: in the ubiquity of excessive overtime and unhealthy working conditions, and in the failure of wages to keep pace with the cost of living. Yet the key causal factor for the lack of any tangible progress in these domains—the lack of meaningful collective bargaining agreements that actually protect and advance workers' basic rights—has been largely unexamined by BFC.

Subcontracting and Prison Labor

Subcontracting is another issue where BFC has, until recently, failed to respond to industry practices that contribute to the deterioration of labor conditions for garment workers in Cambodia. Since 2005, increasing numbers of GMAC factories have begun to *subcontract* some portions

Factory Information:

[...]

Subcontracting: SL Garment Processing (Washing only)

Excerpt from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

⁷⁵ See *Cambodian Workers Locked Out*, ASEAN AFFAIRS (Sept. 29, 2010), http://www.aseanaffairs.com/cambodia_news/labor/cambodian_workers_locked_out.

⁷⁶ Analysis done by IHRCRC.

⁷⁷ See Kolben, *Trade*, *supra* note 12, at 87 ("[I]n the summer of 2000, the FTUWKC led a massive strike of up to 20,000 garment workers protesting for a higher minimum wage. The minimum wage was subsequently raised to forty-five dollars per month.").

⁷⁸ See *Fashion Labels Call for Action on Murder*, *supra* note 62.

⁷⁹ By contrast, BFC's most recent synthesis report avoids this type of omission. See BFC, 28TH SYNTHESIS REPORT, *supra* note 1 (explicitly making note of Feb. 2012 shooting of three workers involved in labor protest at footwear factory).

⁸⁰ Email correspondence with Tola Moeun, Director of the Labour Program at the Community Legal Education Center (Jan. 29, 2013) (on file with author).

of their orders to smaller factories, reportedly to enable them to fill larger orders. In practice, these factories can outsource the production of their apparel products to workplaces free from the periodic scrutiny of BFC.⁸¹

BFC monitors only factories that are members of GMAC and thereby possess licenses to export goods. However, many of the GMAC factories subcontract work to smaller factories that do not have export licenses, some of which are reportedly operated by the GMAC factories themselves. The subcontractors manufacture garments and ship them back to the original GMAC factories, where labels are then attached and the goods are readied for export, using the GMAC factories' export licenses. This practice creates the false appearance that the apparel in question was produced in a GMAC-member, BFC-monitored factory.

The subcontractor factories where the goods are actually manufactured often have working conditions that are significantly worse than the GMAC member facilities.⁸² Recent reports indicate that the practice of subcontracting orders to other facilities has even extended to prison wardens accepting lucrative subcontracting orders to run so-called "vocational training" programs in prisons.⁸³ A May 2012 law now prohibits any subcontracting of garment production intended for export to prison facilities, a practice that also violates US and EU customs laws.⁸⁴

In private conversations with the Stanford team, Tucker discussed BFC's ongoing efforts to engage with the RCG in closed-door meetings on the issue.⁸⁵ BFC rejects, however, the suggestion that it extend the purview of its monitoring activities to the countries' prisons.⁸⁶ This still leaves open the question of whether there could be some limited monitoring role for BFC simply to detect if the problem of export garment production inside the prisons reemerges.

Subcontracting, whether illegally, to prisons, or, legally, to private sector sweatshops, is a practice that poses a fundamental risk to Cambodia's reputational advantage for greater labor rights compliance (see below, p. 52), and, more importantly, exerts downward pressure on conditions for garment workers. Those affected

⁸¹ See Dennis Arnold, *Wage and Workers' Voice: Labour and Global Production in Cambodia* 8 (paper prepared for Better Work Research Conference: Workers, Firms and Government: Understanding Labour Compliance in Global Supply Chains, October 26-28, 2011), available at <http://betterwork.com/global/wp-content/uploads/Session-7-Wage-and-Workers'-Voice.pdf>.

⁸² See *id.* (noting that the rise of subcontractor factories has led to "a general degradation of working conditions throughout the industry").

⁸³ See News Release, Human Rights Watch, Cambodia: Cut Draft Provision Allowing Prison Labor (Nov. 28, 2011), <http://www.hrw.org/news/2011/11/28/cambodia-cut-draft-provision-allowing-prison-labor>.

⁸⁴ But see Abby Seiff & Kuch Naren, *Despite Decree, Prison Labor Law Problems Persist, NGO Says*, CAMBODIA DAILY, May 10, 2012.

⁸⁵ Interview with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, in Phnom Penh, Cambodia (Feb. 14, 2012) [hereinafter Feb. 14 Tucker Interview] (describing BFC's efforts to bring together the Ministries of Commerce, Interior and Labour in a workshop that later resulted in the 2012 law).

⁸⁶ Email communications with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, January 28, 2013 (defending BFC's decision to not monitor prison garment production, saying that "[BFC] would be rightly viewed as unwelcome in terms of the work inside prisons" when other organizations, such as the Office of the High Commissioner for Human Rights are also operating in country).

are not only the workers of the unmonitored factories—who are denied the protections provided by BFC’s audits—but also the workforce of the monitored GMAC factories, which must compete with this unregulated sector of the industry.

A more long-term concern is that as ever-growing portions of Cambodia’s garment production are withdrawn from BFC’s scrutiny, BFC will cease to be a sector-wide monitoring and reporting program. Taken to an extreme, this trend could result in GMAC factories becoming either “shell companies” or “boutique” factories producing for only those brands willing to pay a premium for the relatively greater reputational security of having their products manufactured in BFC-monitored facilities. Indeed, many of the labor activists we interviewed felt strongly that BFC needed to find a way to gain access to the country’s subcontracting factories, or else risk decreasing relevance.⁸⁷

This concern is apparently shared by BFC as well. Indeed, Tucker informed our research team that plans were underway to gain a foothold monitoring the pool of subcontracting factories. Her predecessor, Tuomo Poutiainen, also spoke publicly about the large number of subcontracting factories that operate outside BFC’s monitoring umbrella.⁸⁸ BFC is currently developing an interview protocol and monitoring strategy as well as seeking permission from the Ministry of Labor and other authorities to begin a small-scale pilot project for monitoring subcontracting factories.⁸⁹

Occupational Safety and Health Violations

Approximately half of the questions BFC auditors currently ask during factory visits pertain to health and

OSH

Does the factory have a written health and safety policy?

✓ No [...]

Has management failed to take steps to ensure workers’ occupational health and safety?

✓ Yes [...]

Does the factory hold regular emergency drills?

✓ No [...]

Has management trained enough workers to use the fire extinguishers (both men and women)?

✓ No [...]

Does management provide periodic first aid training to workers?

✓ Yes [...]

Excerpts from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

⁸⁷ Interview with David Welsh, Cambodia Country Director, American Center for International Labor Solidarity, in Phnom Penh, Cambodia (Feb. 8, 2012); Interview with Reim Bora, *supra* note 43.

⁸⁸ See Sebastian Strangio, *Fraying at the Edges?* SOUTHEAST ASIA GLOBE, Sept. 19, 2011.

⁸⁹ Feb. 10 Tucker interview, *supra* note 4.

safety issues (see Appendix A).

Despite the fact that such problems (unlike, for example, excessive overtime) are among those most amenable to corrections based on visual inspections of factory premises, after more than ten years of BFC monitoring and reporting, noncompliance with basic health and safety standards remains epidemic, with disturbing implications for workers' health and safety on the job.

OSH (*continued*)

Does management provide workers with all necessary protective clothing and equipment?

✓ No

Is the workplace well lit?

✓ No [...]

Are the noise levels in the factory excessive?

✓ Yes [...]

Is hearing protection provided to all workers who need it?

✓ No [...]

Do the sewing machines have functioning needle guards?

✓ No [...]

Are heat levels in the factory acceptable?

✓ No [...]

Are dust levels in the factory acceptable?

✓ No [...]

Is the workplace clean?

✓ No [...]

Are access paths free of obstruction?

✓ No [...]

Findings: Workers said that they were not regularly provided with masks after the last visit. The factory did not provide within the last 1 year, workers said. [...]

What equipment do workers need that management is not providing?

✓ Masks

Excerpts from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

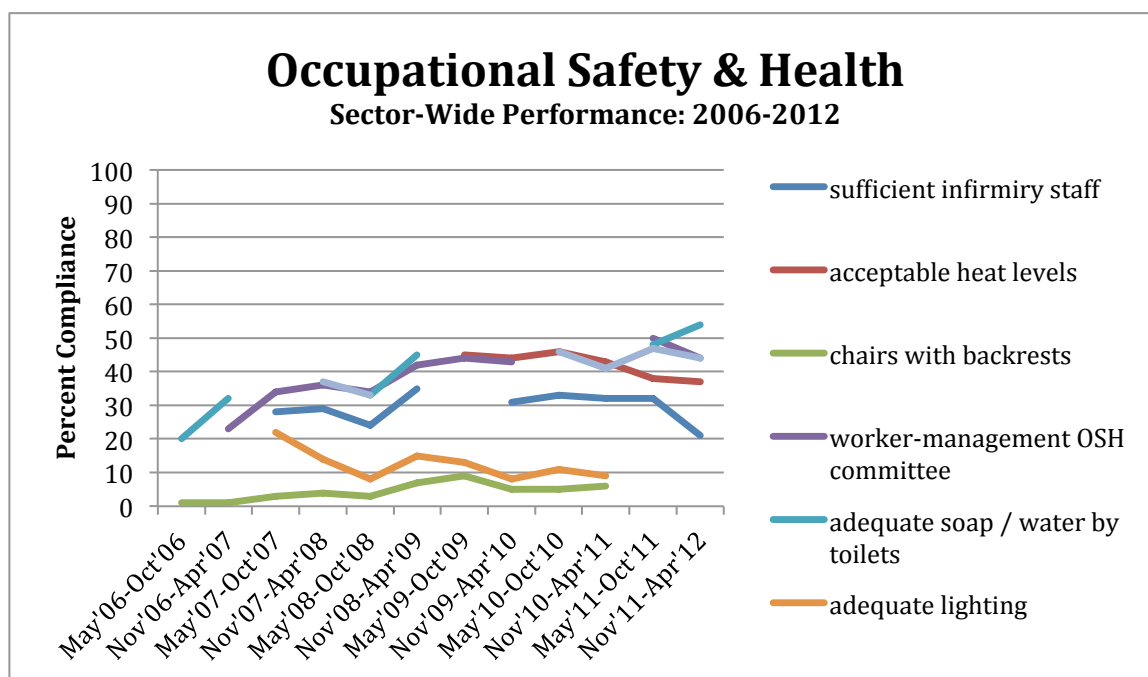
For example, as shown in the chart on the following page, over a five-year period, more than *ninety percent* of factories inspected by BFC consistently had employees who worked while seated on chairs that lacked

backrests, a basic occupational health deficiency that significantly increases the likelihood of long-term musculoskeletal injury.⁹⁰

One recent BFC synthesis report (aggregating across the sector) revealed that:

- Heat levels were unacceptable in more than 60% of factories assessed;
- Management did not provide sanitary access to drinking water in 53% of factories;
- The portion of factories lacking adequate ventilation had increased by 13% since the previous monitoring period;
- There was not enough soap and water near the toilets in 52% of factories assessed, and the portion of factories with broken toilets had increased 10% since the previous monitoring period; and
- Only 65% of factories had a written Occupational Safety and Health (OSH) policy. Management had consulted with workers in developing this policy in only 56% of factories assessed, down 5% from the previous synthesis report period. Management had trained managers and supervisors in OSH in 7% fewer factories.⁹¹

Drawing data from the last six years of BFC's synthesis reports, which do not consistently reveal data for each of these OSH indicators, a similarly unimpressive sector-wide record emerges:



⁹⁰ See David M. Rempel, et al., *A Randomized Controlled Trial Evaluating the Effects of New Task Chairs on Shoulder and Neck Pain Among Sewing Machine Operators*, 32 SPINE 931 (2007).

⁹¹ BETTER FACTORIES CAMBODIA, INT'L LABOUR ORG., TWENTY SEVENTH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA'S GARMENT SECTOR (Jan. 30, 2012), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 27TH SYNTHESIS REPORT].

Needless to say, these are not particularly impressive statistics. It is striking to note, moreover, that many of these problems would cost factories minimal sums to remedy. With regard to OSH considerations, BFC's synthesis reports provide only imperfect longitudinal data.⁹² Still, the data show that approximately half of the BFC-monitored factories stubbornly resist investments in basic OSH standards mandated by Cambodian law and monitored regularly by BFC.

Child Labor

Child labor continues to be a significant concern in Cambodia—one that BFC considers a “zero tolerance” issue (along with forced labor).⁹³ Instances of child labor are much less common today than they were in 2000, when both Gap and Nike were caught up in high-profile allegations of child labor at a Cambodian factory that supplied both brands.⁹⁴ That occurrence resulted in Nike withdrawing entirely from the Cambodian market, agreeing to return only after the ILO had begun its garment factory monitoring program.⁹⁵

“ If there is a rotten fish
in a cage, get it out
before it makes all others
rotten too.
- Khmer saying ”

The potential effect of BFC discovering evidence of child labor is no less serious today than it was in 2001, when the BBC reporter Paul Kenyon, who broke the story implicating Gap and Nike, wrestled with the consequences his story might have for hundreds if not thousands of Cambodian workers:

Before we embarked on this programme, we had been warned of the potential knock-on effects; children being sacked, Nike and the Gap cancelling contracts, or even pulling out of Cambodia altogether depriving the economy of much-needed investment.

Unfortunately, some, though not all, of these threatened consequences did materialise. This is obviously distressing, but it is not a reason to be held to ransom by big multi-nationals making use of child labour in developing countries.

If journalists, and others, are not prepared to expose such practices, the use of children in manufacturing

⁹² Stanford Clinic synthesis report analysis, *supra* note 45. This data is selective—drawn from the section appearing in each synthesis report detailing the top ten non-compliance issues during the past half year of BFC monitoring. Thus, they are the indicators that consistently feature in that list—a significant selection bias. Each indicator also does not feature in every synthesis report’s “worst-ten list,” resulting in the interrupted lines.

⁹³ Feb. 14 Tucker Interview, *supra* note 85.

⁹⁴ See Paul Kenyon, *Gap and Nike: No Sweat?* BBC NEWS: PANORAMA (Oct. 15, 2000), <http://news.bbc.co.uk/2/hi/programmes/panorama/970385.stm> [hereinafter Kenyon, *No Sweat*]; see also Paul Kenyon, *Gap and Nike: No Sweat?—Programme Update*, BBC NEWS: PANORAMA (May 21, 2001), <http://news.bbc.co.uk/2/hi/programmes/panorama/archive/1342867.stm> [hereinafter Kenyon, *Update*].

⁹⁵ See Wells, *supra* note 12, at 368; Polaski, *Combining Forces*, *supra* note 12, at 925; see also Elizabeth Becker, *Cambodia’s Garment Makers Hold Off a Vast Chinese Challenge*, N.Y. TIMES, May 12, 2005, available at <http://www.nytimes.com/2005/05/12/business/worldbusiness/12cambodia.html>.

products for the West will continue, and perhaps worsen. At the moment we are effectively relying on these companies to self-regulate.⁹⁶

This is an important lesson to keep in mind. If brands respond to the exposure of serious labor rights violations like child labor by pulling orders from factories, instead of working to remedy the problem and continuing the business relationship on terms that make such remediation possible, the impact on workers can be severe. In 2000 “Nike and the Gap told [the BBC] they were working with the factory to improve

Child Labour

Is there any indication that the factory employs children below the age of 15? (based on visual check and random record checks during factory visit)

✓ Yes

Findings: Management said that the factory employed workers who were 18 or over. However, after checking workers' personal profiles, observing the workplace and interviewing workers, we found that 10 workers were suspected to be underage. [...]

According to further investigation in [date] at their home villages for 9 workers, we found that 6 workers were confirmed underage (under 15 years), 3 other workers were confirmed between 15 to 18 years [...]. We found that 9 workers used their relatives' names. [...]

- The third worker was born on 08 November 1999 and she was 11 years (11 years, 11 months and 2 days) on the date of employment on 10 October 2011 at the sewing section. She will reach 15 on 8 November 2014. [...]

The first meeting was held on 11 January 2011 to discuss the remedial action of the 6 confirmed underage workers. After having around 5-hours discussion, the factory manager told us that he could not decide anything yet [...].

The second meeting was held on 19 January 2011 and found that the factory went to double check for 5 among 6 confirmed underage workers. The factory collected some related documents for a few cases, but they were not reliable.

Finally, the factory agreed to remove those 6 underage workers from the factory and place them in a sewing skills course on 25 January 2012. The factory will reemploy those workers when they reach 15 years by maintaining the seniority of their work, if they workers wish so. During the underage break period, the factory agreed to pay \$61 per month for all workers and the factory also agreed to pay the training fees for those workers (for more detail see the agreements).

The factory manager strongly claimed that the factory has never intended to employ young workers, but the cases happened unintentionally. [...] The factory agreed that they will further strengthen the recruitment process, the process of age verification in particular to protect potential underage applicants. [...]

Excerpts from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012 (reproduced in full in Appendix B)

⁹⁶ Kenyon, *Update*, *supra* note 94.

conditions”⁹⁷ when instead they simply withdrew their orders. BFC today faces this same threat—often made explicit by GMAC and other proponents of the status quo—that vigorous criticism of factories’ labor practices will lead to unintended knock-on effects that neither the factory managers nor the workers who rely on those factories for their livelihoods would welcome.

Surely there are times when activists should proceed with caution when bringing to light abuses or violations of labor rights. But a monitoring and reporting agency that succumbs to such thinking risks abandoning the core of its institutional role. To its credit, BFC since late 2011 has again begun to highlight key systemic issues facing workers in Cambodia’s garment factories in its synthesis reports. This has added value to the periodic reports and has drawn attention towards pressing issues, such as child labor and worker faintings (see p. 68). According to sources familiar with the discussions at the tripartite stakeholder meetings preceding the publication of these periodic synthesis reports, BFC and especially BFC’s country director expended significant effort to retain this language in the final draft of the synthesis reports.

The excerpted text above was drawn from a *confidential* factory report distributed only to the managers of the factory concerned, along with those buyers who chose to purchase the report. Although this arrangement shields both the factory and the companies that chose to do business with it from accountability for the factory’s violations of a fundamental labor right, it was designed, at least in part, to reduce the likelihood that buyers would react to risk of reputational damage by simply pulling their orders from a factory where child labor is found, rather than continuing to do business with the plant while seeking to remedy the violation. This lack of transparency also means, however, that if a brand doing business with the factory does choose to terminate the relationship or, alternatively, to continue placing orders while doing nothing to correct the problem, the brand’s conduct will not be subject to any public scrutiny.

When asked about the tension between wanting to retain jobs and shining a light on rights violations at certain factories, union representatives told our research team in no uncertain terms that “if a worker has a job, but that job is really dangerous and unhealthy, it’s not a job worth fighting for.”⁹⁸

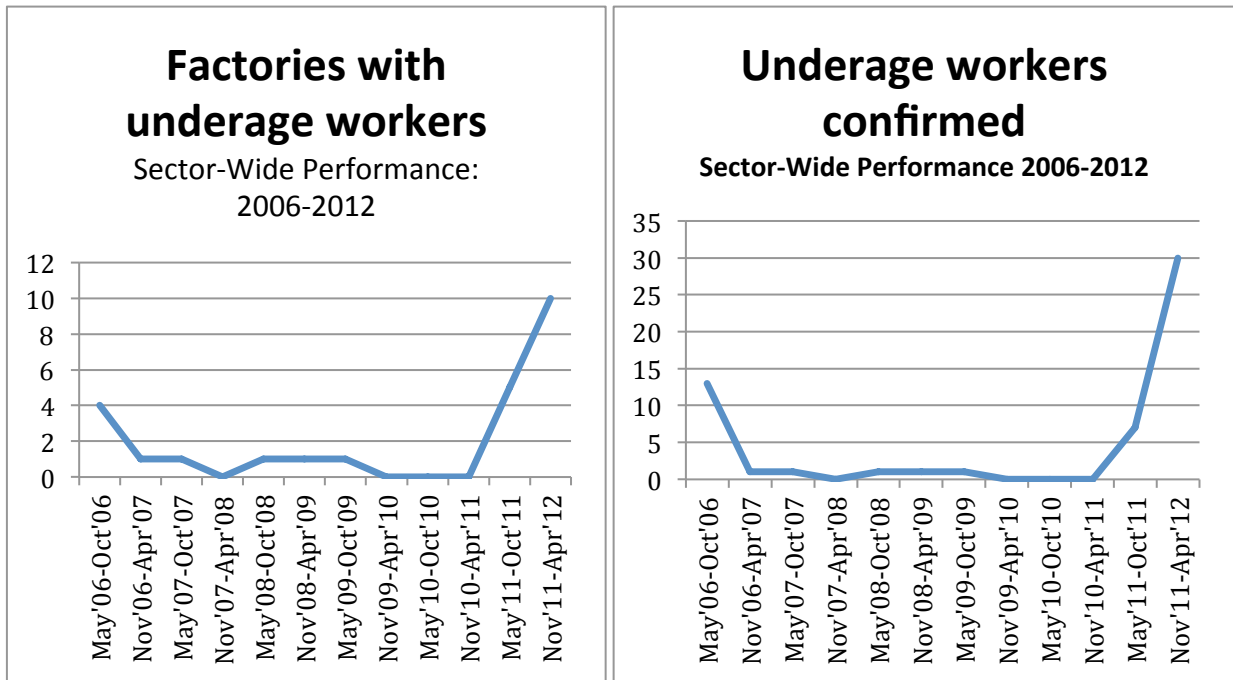
During the period under review, BFC reported few or no instances of child labor.⁹⁹ The only notable exceptions to this trend occur at the very beginning of the tenures of both the previous and current **ILO-BFC Chief Technical Advisers (CTAs)**.¹⁰⁰

⁹⁷ Kenyon, *No Sweat*, *supra* note 94.

⁹⁸ Interview with Um Visal, C.CAWDU representative, in Phnom Penh, Cambodia (May 29, 2012).

⁹⁹ Stanford Clinic synthesis report analysis, *supra* note 45.

¹⁰⁰ Mr. Poutiainen occupied his post with BFC from June 2006 to August 2011.



It is unclear whether this is due to a reinvigorated assiduousness in factory monitoring under BFC's current CTA, actual increases in the overall prevalence of child labor during these periods, or more aggressive hiring by factories to meet production requirements.

When child labor is an issue, violations must be remedied—through educational opportunities and income maintenance for child laborers—to achieve outcomes that benefit the affected workers. BFC's private reporting indicates that, at least for the factory whose confidential report is excerpted here, the program has sought such remediation. BFC's current public reporting, however, fails to create incentives for such remediation as it only publicly reports the overall incidence of child labor and fails to provide any information as to the steps individual buyers and specific factories are, or are not, taking to respond in a constructive manner when child labor is found.

Late lunch outside the factory gates, Phnom Penh





Better Factories Cambodia

Cambodia began to garner its reputational advantage for labor rights promotion as a result of the reforms implemented subsequent to a preferential trade agreement it signed with the United States in 1999.¹⁰¹ The **US-Cambodia Textile and Apparel Trade Agreement (UCTA)** granted Cambodian garment manufacturers progressively greater access to US markets via a gradually increasing US import quota, revisited on a semi-annual basis, contingent on the continued improvement of the labor rights environment in Cambodia's garment factories. The treaty marked the first time the United States included a provision on labor standards in the text of a bilateral trade agreement,¹⁰² and therefore served as an early experiment in linking such standards to trade privileges.¹⁰³

The agreement also broke ground by relying on a system of third-party monitoring as the means for assessing compliance with labor standards. Third-party monitoring was more independent and transparent than the self-monitoring of supplier factories by buyers and private auditors that predominated in the industry at that time.¹⁰⁴ Although factory owners participated in the program's governance, and buyers were among its funders, the actual monitoring was to be conducted by the **International Labour Organization (ILO)**, a tripartite organization of employers, national governments, and labor organizations. Launched in 2001,¹⁰⁵ the program, known as BFC (although originally called the ILO Garment Sector Working Conditions Project in Cambodia, we refer to it throughout its existence as BFC), was designed to centralize and standardize monitoring, reporting, and remediation efforts throughout the entire industry, with the intent of focusing resources on those factories with the worst working conditions.

From the outset, the project has been supervised by a tripartite governance structure. A **Project Advisory Committee (PAC)**, comprising equal representation from the RCG, GMAC, and a rotating subset of union confederation leaders, met periodically to assess BFC's performance and review the contents of the synthesis

¹⁰¹ See FOREIGN INVESTMENT ADVISORY SERVICE, *CAMBODIA: CORPORATE SOCIAL RESPONSIBILITY IN THE APPAREL SECTOR AND POTENTIAL IMPLICATIONS FOR OTHER INDUSTRY SECTORS* 11 (2005).

¹⁰² The United States did, however, conclude a side agreement in 1993 with its partners in the North American Free Trade Agreement (NAFTA) that all parties would enforce their own labor laws or face negative trade sanctions. North American Agreement on Labor Cooperation, U.S.-Can.-Mex., Sept. 13, 1993, 32 I.L.M. 1499, available at <http://www.naalc.org/naalc.htm> (last visited Jan. 26, 2013).

¹⁰³ See Hall, *supra* note 12, at 439.

¹⁰⁴ See, e.g., Steven Greenhouse, *Report Says Global Accounting Firm Overlooks Factory Abuses*, N.Y. TIMES, Sept. 28, 2000, available at <http://www.nytimes.com/2000/09/28/world/report-says-global-accounting-firm-overlooks-factory-abuses.html>.

¹⁰⁵ See generally Sibbel & Borrmann, *supra* note 12 (detailing the history of its initial development and the trade agreement that precipitated its creation).

reports.¹⁰⁶ This governance model was intended to ensure that BFC remained responsive to a broad set of stakeholders in the Cambodian garment industry. This original BFC governance model persists to this day.

The program, as created, had the following objectives:

1. to develop and maintain an independent system to monitor working conditions in garment factories;
2. to help draft new laws and regulations for improving working conditions and to make labor laws more effective;
3. to increase worker and employer awareness of core international labor standards and of their rights under Cambodia labor law; and
4. to increase worker, employer, and government capacities to improve working conditions and to comply with national and international labor standards.¹⁰⁷

While participation in BFC was initially voluntary, in 2001 the Cambodian Ministry of Commerce restricted the availability of export licenses to factories that registered with the program.¹⁰⁸ In so doing, the RCG required even those garment manufacturers whose buyers were unconcerned with monitoring labor standards on the factory floor to participate in the program. Near-universal participation in the new program, according to one group of economists, may have “helped factories coordinate away from a prisoner’s dilemma in noncompliance.”¹⁰⁹

BFC’s Original and Current Monitoring Model

Cambodian factories intending to produce garments destined for export are required to register with the program and thereby agree to both announced and unannounced monitoring visits. Initially, BFC conducted such monitoring visits approximately once every six months,¹¹⁰ but—due to increasing numbers of factories to monitor and growing demands on BFC monitors—the frequency of visits has since dropped to once every 12-15 months. During each visit, monitors assess conditions in the factory against 156 labor standards drawn

¹⁰⁶ Interview with CFITU representative (anonymous), in Phnom Penh, Cambodia (Feb. 11, 2012); *see also* Wells, *supra* note 12, at 364.

¹⁰⁷ Wells, *supra* note 12, at 364.

¹⁰⁸ *See* Polaski, *Combining Forces*, *supra* note 12, at 922-23; Sibbel & Borrmann, *supra* note 12, at 238.

¹⁰⁹ Raymond Robertson et al., Reputation Sensitivity, Public Disclosure, and Labor Law Compliance in Cambodia, Presentation at the Conference on Social Labeling in the Global Fashion Industry, Northumbria University (Sept. 3, 2010), *available at* <http://www.northumbria.ac.uk/static/5007/despdf/events/sociallabelling12.pdf>.

¹¹⁰ *Cf.* Kolben, *Trade*, *supra* note 12, at 101 (noting the original stated goal of BFC that “each factory would be monitored on average six times per year”). *But see* Sibbel & Borrmann, *supra* note 12, at 241 (“In principle, follow-up visits were to be undertaken within six months. However, in practice, workload and logistics did not always allow compliance with this timeframe.”).

from both Cambodian and international law.¹¹¹ They also speak with workers and union representatives inside and outside of the factory.¹¹²

BFC produces two types of reports after the monitoring visits: **individual factory reports**, which are typically shared only with factory owners and buyers, and periodic **synthesis reports**, which are posted to the ILO's website. The factory reports detail the results of BFC visits to a given factory, including the auditors' findings and their recommendations for how to improve the facility. The ILO sends these reports to the individual factory managers and to those buyers who choose to purchase the reports. BFC is not involved in, and does not oversee remediation of, any violations it identifies. This responsibility is left to the factory owners and their buyers.

The synthesis reports, on the other hand, provide a public record of progress across the entire Cambodian garment industry. These reports currently serve as one of the only sources of standardized and quantifiable data on the state of the Cambodian garment sector.¹¹³ It was these synthesis reports that the US Government used from 2000 to late 2004 (the period of time during which Cambodian garment exports were governed by the UCTA) to determine whether to increase Cambodia's import quotas to the United States.¹¹⁴ To this day, many academics and other commentators on the labor rights scene in Cambodia rely on these same synthesis reports for much of their analysis of the program's effectiveness.¹¹⁵

At the outset of BFC's mandate, synthesis reports provided both aggregate findings and the names of individual factories monitored. Furthermore, except for factories where BFC had only conducted a single initial auditing visit, the synthesis reports also named those factories that had either succeeded or failed to act on recommendations made during a *previous* BFC visit to that same facility.¹¹⁶ An example from such an early synthesis report is reproduced on the following page.

¹¹¹ BFC, 1ST SYNTHESIS REPORT, *supra* note 7, at 3.

¹¹² Wells, *supra* note 12, at 364.

¹¹³ See, e.g., Günesli Berik & Yana van der Meulen Rodgers, *Options for Enforcing Labour Standards: Lessons from Bangladesh and Cambodia*, 22 J. INT'L DEV. 56, 73 (2010); Strangio, *supra* note 88 ("International brands just look at the BFC [synthesis] reports, because they are very official . . . [but] the report does not reflect reality 100 percent." (quoting Moeun Tola, Head of Labor Program, Community Legal Education Center)).

¹¹⁴ Wells, *supra* note 12, at 364 (citing ILO sources).

¹¹⁵ See, e.g., *id.* at 372 ("Based on evidence provided in these [synthesis] reports from 2001 to 2005, it appears that while there is a considerable distance to go in achieving full compliance with international and Cambodian labor standards, the UCTA with its ILO plant monitoring led to significant improvement in many important labor standard areas."); Polaski, *Combining Forces*, *supra* note 12, at 926 ("The ILO project provides a source of useful and reliable information both about initial conditions in the factories and progress on remediation of problems. The progress seen in the reports . . . [is] noteworthy.").

¹¹⁶ See BFC, 1ST SYNTHESIS REPORT, *supra* note 7. The first synthesis report outlined this approach in detail: "In this report, factories are not identified by name in the overview of the working conditions situation. With this report and all subsequent reports, factories are given an opportunity to make improvements before the specific findings for their particular factory are made public. Consequently, factories covered by this report will be named in the subsequent three-monthly report, after a follow-up visit to the factory has been made to monitor progress." *Id.* at 4. Subsequent synthesis reports went on to detail the progress individual factories had made (or not made) regarding the findings of prior visits. The bulk of these early synthesis reports was organized according to suggestions issued previously by the

The rationale for distinguishing between first visits and subsequent visits was simple: while initial visits were aimed at identifying areas for improvement, follow-up visits were aimed at assessing a factory's progress towards implementing BFC's suggestions.¹¹⁷ Any given factory would thus be afforded the opportunity to take remedial action. As Lejo Sibbel, BFC's first Chief Technical Adviser, wrote in 2007, "The idea is that factories are given a certain grace period during which they can make improvements and prove they have good will. After this period they can basically no longer claim ignorance about any problems that may exist."¹¹⁸

As illustrated in the example below, the factory-specific information contained in these early synthesis reports was so general as to be of limited analytical value.¹¹⁹ The "successful" factory described in the report may simply have faced a less serious problem with overtime than the others, requiring less effort to remedy; alternatively, it may have acted with particular urgency to overcome the problem. The synthesis reports thus provided little insight into either

Suggestion

Management should ensure that overtime work is exceptional and does not exceed 2 hours per day.

Implemented: Wing Tai 2.

Not implemented: Qing Dao, Medtecs, M&V 1, M&V 3, Wing Tai 1.

BFC, Eighth Synthesis Report, Feb. 8, 2004

the severity of the violations that existed at particular factories or the cost and effort required for a given factory to correct a problem, thereby leaving readers with only a crude assessment of each factory's efforts. Individual factory reports may have contained much more detailed information that factories and buyers could use to prioritize remediation efforts and address violations. Other stakeholders, however, did not have access to such information.

Despite their shortcomings, these early synthesis reports did serve to advance labor rights in Cambodia. In particular, they may have increased pressure on less compliant factories from their more compliant peers and the Cambodian Ministry of Commerce, as their underperformance reflected negatively on the

program to factories on how they should improve their working conditions, followed by a breakdown of which factories either implemented or failed to implement those reforms. *See, e.g.,* BETTER FACTORIES CAMBODIA, INT'L LABOUR ORG., THIRD SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA'S GARMENT SECTOR 7 (June 3, 2002), *available at* <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1>.

¹¹⁷ Sibbel & Borrmann, *supra* note 12, at 241.

¹¹⁸ *Id.*

¹¹⁹ *See* Anna Shea, Mariko Nakayama & Jody Heymann, *Improving Labor Standards in Clothing Factories*, 85 GLOBAL SOCIAL POLICY 85-110 (2010) 92-96 (discussion of the methodological shortcomings of the synthesis reports as the basis data from which to draw longitudinal conclusions about the achievement of labor rights in the Cambodian garment sector).

Cambodian garment industry in aggregate, and thereby threatened everyone's ability to gain greater access to the US market.¹²⁰

There is little doubt that between 2001 and 2005, Cambodian garment manufacturers benefited significantly from the UCTA and BFC. The promise of periodic quota increases to the US market during this period served as a powerful incentive driving both factory participation and RCG support for the program. Employment in the garment industry tripled from 79,000 in 1998 to around 270,000 by 2004, with one estimate suggesting that the 2002 quota increase alone gave birth to an additional 13,000 Cambodian jobs.¹²¹

While UCTA was helping to expand garment industry employment in Cambodia, BFC's synthesis reports showed improved working conditions in several key areas, particularly with regard to freedom of association.¹²² Labor unions in the garment industry also proliferated, growing from only three independent unions before the UCTA to fourteen national labor federations and 499 registered factory level unions by 2004.¹²³

BFC monitoring also may have helped the Cambodian garment sector to attract foreign buyers. For example, both Nike and Disney decided to resume sourcing from Cambodian factories monitored by BFC, despite having pulled out of Cambodia in the 1990s citing labor rights concerns.¹²⁴ Furthermore, one 2008 empirical study—relying on a coding of the various factory reports produced by BFC—found, *inter alia*, that between 2001 and 2007:

- Overall labor rights compliance rates improved as the number of BFC visits to a factory increased;
- Between the first and the fourth BFC visits to a factory, low-compliance factories rose to match the levels at high compliance factories;
- Factories were able to pay higher wages to their workers while also simultaneously improving working conditions, thus debunking the commonly cited myth of a necessary tradeoff between the two labor rights priorities.¹²⁵

Another notable aspect of the initial program design was its direct communication of inspection results with garment workers, a feature lacking in most industry-run monitoring programs. The initial program required that monitors discuss individual factory reports “with the employer and workers in an attempt to conciliate and reach agreement.”¹²⁶ Sibbel initially refused to implement this provision, claiming that workers would

¹²⁰ Polaski, *Combining Forces*, *supra* note 12, at 923.

¹²¹ Wells, *supra* note 12, at 367-68.

¹²² *Id.* at 369 (Wells also mentions collective bargaining as a particular area of success; however in light of the contemporary paucity of meaningful CBAs, this can no longer be counted as a success in hindsight).

¹²³ *Id.* (citing Hall, *supra* note 12, at 145); Raghwan, *Uncomfortable but Taking Part—Cambodia's Unions and the PRSP*, in 1-2 LAB. EDUC. 57 (2004) (Trade Unions and Poverty Reduction Strategies issue).

¹²⁴ *Id.* at 368.

¹²⁵ Robertson et al., *supra* note 109, at slide 8.

¹²⁶ Kolben, *Trade*, *supra* note 12, at 104 (citing ILO, *Ensuring that Working Conditions in the Textile and Apparel Sector of Cambodia Comply with Internationally Recognized Core Labor Standards and the Cambodian Labor Law*, app. 1, ¶ 2.5 (May 4, 2000)).

use the results to justify a strike.¹²⁷ If this happened, Sibbel worried, the workers might inadvertently undermine the entire BFC program before it had a chance to establish itself.¹²⁸ After a backlash from unions and workers' rights groups, however, Sibbel eventually compromised, and by the end of 2002 was sharing portions of the reports with worker representatives.¹²⁹

BFC after 2005: The End of Preferential Trade and Uncertainty about BFC's Future

Despite significant advances in labor rights as a direct result of the incentive scheme set forth by the UCTA, the agreement expired on January 1, 2005 due to its incompatibility with the dictates of free international trade. In 1994, the United States and other members of the **General Agreement on Tariffs and Trade (GATT)** concluded the "Uruguay Round" of multilateral trade negotiations.¹³⁰ These negotiations sought to create a comprehensive global framework for regulating free trade and resolving trade disputes between member nations.¹³¹ A major part of that agreement was to gradually phase out national import quotas in the textile industry.¹³² Prior to the conclusion of the Uruguay Round, the international garment trade was regulated by the **Multifibre Arrangement (MFA)**,¹³³ which addressed national import quotas designed to protect higher-priced garment industries from lower-cost foreign competition.¹³⁴ One of the sub-agreements to the Uruguay Round detailed a temporary ten-year replacement agreement to the MFA called the **Agreement on Textiles and Clothing (ATC)**,¹³⁵ which set forth a roadmap to incorporate the global garment trade into the GATT framework of quota-free trade. When Cambodia joined the **World Trade Organization (WTO)** on October 13, 2004, it was clear that the UCTA would expire along with the ATC on January 1, 2005.¹³⁶

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* (citing interview with Lejo Sibbel, Chief Technical Adviser, Better Factories Cambodia, in Phnom Penh, Cambodia (Dec. 13, 2002)).

¹³⁰ See generally Amrita Narlikar, *THE WORLD TRADE ORGANIZATION: A VERY SHORT INTRODUCTION* 22-41 (2005).

¹³¹ *Id.*

¹³² See generally *Textiles: Back in the Mainstream*, WORLD TRADE ORG., available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm (last accessed Jan. 31, 2013).

¹³³ Arrangement Regarding International Trade in Textiles, Dec. 20 1973, 25 U.S.T. 1001, available at <http://gatt.stanford.edu/bin/detail?fileID=424967454>.

¹³⁴ See generally *Textiles: Back in the Mainstream*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm (last visited Jan. 21, 2013).

¹³⁵ Agreement on Textiles and Clothing, Apr. 15, 1994, 1868 U.N.T.S. 14, available at http://www.wto.org/english/docs_e/legal_e/16-tex_e.htm.

¹³⁶ See *Working Party Completes Cambodia's Membership Negotiation*, WORLD TRADE ORG., (2003) http://www.wto.org/english/news_e/news03_e/acc_cambodia_23jul_e.htm. This expiration of the UCTA was made explicit during the membership negotiations between Cambodia and the WTO, where it was stipulated that "Textiles and clothing import quotas that other members apply to imports from Cambodia will have growth rates applied as provided for in the Agreement on Textiles and Clothing . . ." but that "[t]hese growth rates will end when the Agreement on Textiles and Clothing terminates (in 2005)." *Id.*

The expiration of the UCTA meant that the Cambodian garment industry would have to compete head-to-head with the much larger garment industries of competitor nations, especially China.¹³⁷ The specter of open market competition between Cambodian factories and producers in these competitor countries raised concerns that buyers would either exit the country entirely or that the national garment industry as a whole would engage in a race to lower production costs to prevent them from doing so.¹³⁸ The latter, it was predicted, could lead to the undoing of the improvements made in Cambodia's labor rights environment and to increased subsequent strife between workers and management.¹³⁹ As a result, serious questions arose about the future of BFC, and whether its labor-rights focused monitoring and reporting activities could survive in the face of heightened global competition.¹⁴⁰ Moreover, as the majority of BFC's funding came directly from the US Department of Labor, it was uncertain at the time whether this financial support would continue after the trade agreement ended.¹⁴¹

In response to such concerns, a number of diplomats, academics, reputation-sensitive brands, and international civil society representatives argued that the RCG should avoid defining the competitiveness of its garment industry solely on its ability to offer a low price, and instead capitalize also on the country's reputation for labor rights compliance it had earned under the trade agreement.¹⁴² Indeed, Cambodia's reputation as a worker rights-friendly production location appears to have aided the industry to some degree in the immediate post-MFA period. Reputational factors did not operate alone: Cambodia continued to have low production costs relative to key competitors,¹⁴³ and buyers diversified their orders from a variety of different markets so as to avoid disruptions to their supply chain.¹⁴⁴ But together, these factors resulted in

¹³⁷ See Becker, *supra* note 95.

¹³⁸ Wetterberg, *supra* note 12, at 64.

¹³⁹ *Id.* at 64-65.

¹⁴⁰ See generally Omar Bargawi, *Cambodia's Garment Industry—Origins and Future Prospects*, (Econ. & Statistics Analysis Unit, Working Paper No. 13) available at <http://www.odi.org.uk/resources/docs/2513.pdf> (discussing the economic impact of the expiration of the MFA on Cambodia's garment industry); see also JODIE KEANE & DIRK WILLEM TE VELDE, INV. & GROWTH PROGRAMME, OVERSEAS DEV. INST. THE ROLE OF TEXTILE AND CLOTHING INDUSTRIES IN GROWTH AND DEVELOPMENT STRATEGIES 27-28 (2008), available at <http://www.odi.org.uk/resources/docs/3361.pdf> (comparing the fates of the Cambodia and Madagascar garment industries following these markets' exposure to the open market).

¹⁴¹ Polaski, *Combining Forces*, *supra* note 12, at 927. During the first five years of the program, the US government paid for about 81 percent of the costs of running the BFC program. During the first three years, the United States made a contribution of \$1,675,000, while the Cambodian Government and GMAC each contributed \$200,000. In 2003, the parties agreed to renew funding at comparable levels for two more years, until 2005. *Id.*

¹⁴² *Id.* at 928.

¹⁴³ Asuyama & Neou, *supra* note 12, at 6 (noting that Cambodia enjoyed cost advantages over some other leading Asian garment exporters, first, due to the temporary re-imposition by the U.S. and E.U, post-2005, of import quotas on certain categories of Chinese apparel, and, later (post-2008), as a result of wage increases and labor shortages in garment factories in China and Vietnam).

¹⁴⁴ See generally Christopher S. Tang, *Perspectives in Supply Chain Risk Management*, 103 INTL J. OF PRODUCTION ECON. 451-88 (2006); Peter Trkman & Kevin McCormack, *Supply Chain Risk in Turbulent Environments—A Conceptual Model for Managing Supply Chain Network Risk*, 119 INTL J. OF PRODUCTION ECON. 247-58 (2009).

better-than-expected performance by the Cambodian garment industry during this period.¹⁴⁵ According to Hing Vutha, Research Manager at the Cambodian Development Resource Institute, Cambodia's garment industry actually grew by ten percent in the eighteen months following the expiration of the MFA.¹⁴⁶

As a result, buyers did not abandon the Cambodian market in droves following the expiration of the MFA—as many had prophesized—but instead openly reiterated their support for Cambodia's garment industry. Indeed, some brands explicitly attributed part of their decision to continue sourcing textiles from Cambodia to the presence of the ILO monitoring and reporting program. Gap, Cambodia's largest buyer, went so far as to claim that its continued presence in Cambodia was contingent on BFC prolonging its activities.¹⁴⁷

In response, the Cambodian government also adopted a position in support of BFC's continued operation after the expiration of the UCTA. Cham Prasidh, RCG Minister of Commerce and a key member of the team that negotiated the UCTA in 1999, stated: "We are extending our labor standards beyond the end of quotas because we know that is why we continue to have buyers. If we didn't respect the unions and labor standards, we would be killing the goose that lays the golden eggs."¹⁴⁸

There is no evidence, however, that buyers' rhetorical enthusiasm for BFC and Cambodia's continued commitment to make progress on labor rights translated into a willingness to pay higher prices to factories so as to allow them to pay higher salaries to workers or make investments necessary to improve working conditions on the factory floor. Moreover, as noted above, the Cambodian garment industry *did* exert downward pressure on labor conditions to maintain its global competitiveness—shifting its workforce to temporary employment contracts, expanding subcontracting to unmonitored factories, continuing to require excessive overtime, and aggressively resisting attempts by trade unions to collectively bargain for better wages and working conditions.

In May 2005, the RCG and ILO announced an agreement on a new BFC sustainability strategy, laying out a three-year transition period for the program.¹⁴⁹ Under this new agreement, ILO involvement in the program would continue until 2009, at which time BFC was to become a Cambodian government body. During the transition period, the government would continue to tie export licensing to BFC participation, thus guaranteeing continued universal coverage of the garment sector.¹⁵⁰ Over the course of the three years, it was envisioned that the government and the garment industry (both buyers and GMAC) would gradually pick

¹⁴⁵ Ivo Spauwen & Maarten den Uyl, *Cambodian Garment Industry: One Year Later*, BETTER FACTORIES CAMBODIA (May 2006), available at [http://www.betterfactories.org/content/documents/One%20year%20later%20-%20May%2006%20\(en\).pdf](http://www.betterfactories.org/content/documents/One%20year%20later%20-%20May%2006%20(en).pdf) (detailing a 9.66% growth of garment exports from 2004 to 2005).

¹⁴⁶ Shea, Nakayama & Heymann, *supra* note 119, at 104.

¹⁴⁷ Interview with David Welsh, *supra* note 87; see also Becker, *supra* note 95, and Polaski, *Combining Forces*, *supra* note 12, at 928.

¹⁴⁸ Becker, *supra* note 95.

¹⁴⁹ *Announcement to Stakeholders on Sustainability Strategy*, BETTER FACTORIES CAMBODIA (May 30, 2005) <http://www.betterfactories.org/newsdet.aspx?z=4&idnews=23&c=1>.

¹⁵⁰ Prime Minister Hun Sen, *Circulation On the Implementation of the ILO's Better Factories Cambodia Project in the Cambodian Textile and Apparel Sector* § 3 (unofficial translation) (July 2005) (on file with author) [hereinafter "Circular"].

up the costs of BFC, so that by 2009, the program would be financially self-sufficient.¹⁵¹ The program today still has not achieved such self-sufficiency, and is currently operating under an extension of its mandate expiring in 2013, funded jointly by the Royal Cambodian Government, GMAC, the US Department of Labor, the World Bank, the Australian Agency for International Development (AusAID), and international buyers through their purchase of individual factory assessment reports.¹⁵²

In its 2005 sustainability strategy, the RCG also reinforced BFC's tripartite governance structure, which—as was described above (p. 29)—ties BFC's mandate to the dictates of these three stakeholders' interests. This meant that BFC must monitor and report on factory conditions in a manner that all three governance stakeholder groups, including factory owners, would find acceptable.

Even before the expiration of the UCTA, this balance of interests was often hard to achieve. In particular, BFC's dependence on authorization from the RCG for its very operation, and on continued cooperation by factory owners for access to the workplaces it is mandated to inspect, has made Cambodian unions a distinctly weaker third player at BFC's governance table.¹⁵³ Exacerbating the situation, two of those three stakeholders (the RCG and GMAC) are centralized organizations, whereas the third stakeholder category (the unions) are splintered into literally dozens of competing labor organizations, many heavily influenced by factory owners and politicians.

Developments in the post-2005 period, especially the trend of steadily worsening industrial relations between workers and their employers, have made reconciling the divergent interests of the tripartite governance parties more difficult than ever. BFC's governance structure, and the weak position of worker representatives within it, helps explain BFC's reluctance to take a public position on key labor rights issues, lest it lead to a showdown with its own governance body.

¹⁵¹ *Long-term Strategy*, BETTER FACTORIES CAMBODIA NEWSLETTER (May 2005), [http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.1%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.1%20(en).pdf).

¹⁵² *ILO Better Factories MoU for 2011-2013 Signed*, BETTER FACTORIES CAMBODIA NEWSLETTER (Sept. 18, 2011), [http://www.betterfactories.org/content/documents/1/NewsletterNº18%20\(Eng\)_Sep%202011.pdf](http://www.betterfactories.org/content/documents/1/NewsletterNº18%20(Eng)_Sep%202011.pdf); see also *About Better Factories: Funding*, BETTER FACTORIES CAMBODIA, <http://www.betterfactories.org/aboutBFC.aspx?z=2&c=1&#F> (last visited Jan 24, 2013).

¹⁵³ Interview with Morm Nimh interview, *supra* note 70.

BFC Today: Black Box Monitoring and Reporting

Although BFC survived the end of the UCTA, it emerged post-2005 with its monitoring and reporting operations even less transparent than before. The program continues to state, however, that it seeks to achieve its goal of “improve[d] working conditions in Cambodia’s export garment factories”¹⁵⁴ through a “rigorous and transparent cycle of improvement”¹⁵⁵ that involves monitoring, reporting, and working with factories, the government, and buyers. For BFC’s official description of its monitoring process, please see Appendix C.

The “BFC model” as it stands today essentially relies on three core processes to protect and advance the rights of Cambodian garment workers: (1) monitoring, (2) reporting, and (3) remediation (also sometimes referred to as “continuous improvement”).¹⁵⁶ Although BFC has staff who are trained to engage with factories in each of these three areas, as a matter of its *mandate* BFC has only the prerogative to monitor factories and issue periodic reports—privately to factory owners and their designees in the case of individual factory reports, and publicly, through its synthesis reports—based on their findings.¹⁵⁷

Monitoring

BFC today covers over three hundred factories, one hundred and twenty more than when it started in 2001.¹⁵⁸ Since contributions from government and industry currently cover only half the program’s costs,¹⁵⁹ the program’s ever-expanding scope has stretched the program’s resources and resulted in a reduction in the frequency of monitoring visits. While the program initially aimed to monitor factories every six months,¹⁶⁰ in practice, due, in part, to the growing number of participating factories and list of compliance benchmarks for BFC auditors to monitor, visits today occur approximately once per year and in some instances even less

¹⁵⁴ *Frequently Asked Questions*, BETTER FACTORIES CAMBODIA, <http://www.betterfactories.org/ILO/faq.aspx?z=9&c=1> (last visited Jan. 24, 2013).

¹⁵⁵ *About Better Factories*, BETTER FACTORIES CAMBODIA, <http://www.betterfactories.org/ILO/aboutBFC.aspx?z=2&c=1> (last visited Jan. 24, 2013).

¹⁵⁶ *About Better Factories: Continuous Improvement*, BETTER FACTORIES CAMBODIA, <http://www.betterfactories.org/aboutBFC.aspx?z=2&c=1&#CI> (last visited Jan. 24, 2013).

¹⁵⁷ *See Memorandum of Understanding*, BETTER FACTORIES CAMBODIA, [http://www.betterfactories.org/content/documents/BFCMoU\(en\).pdf](http://www.betterfactories.org/content/documents/BFCMoU(en).pdf) (Sept. 13, 2005).

¹⁵⁸ BFC, 1ST SYNTHESIS REPORT, *supra* note 7, at 2.

¹⁵⁹ Feb. 10 Tucker interview, *supra* note 4. The shortfall is currently covered by the US Department of Labor (USDOL), the World Bank, and the Australian Agency for International Development (AusAID). *See About Better Factories: Funding*, *supra* note 152.

¹⁶⁰ Arianna Rossi & Raymond Robertson, *Better Factories Cambodia: An Instrument for Improving Industrial Relations in a Transnational Context*, Center for Global Development 5 (Working Paper 256, June 2011), available at www.cgdev.org; see also *Memorandum of Understanding*, *supra* note 157, at Annex A, § 3 (“3. Scheduling of visits: the projects seeks to visit each participating factory at least twice per year.”).

frequently.¹⁶¹ When deciding which factories to monitor, BFC takes into consideration a number of factors, including whether the factory has been monitored before, the outcome of any prior assessments, the length of time since the last monitoring visit, and any external information BFC has received regarding alleged problems at a particular factory.¹⁶²

Reporting

Although the reduced frequency in monitoring is significant, BFC has also reduced the transparency of its reporting. Individual factory reports are confidential to all but the factory managers and their buyers—just as they have been since the program’s inception. In addition, however, BFC no longer reports the findings of its audits to workers, thus ending all direct communication with workers except during the factory audits.

Furthermore, BFC no longer includes any factory-specific information in its public synthesis reports. Starting in 2006, BFC stopped mentioning which factories had either succeeded or failed to implement suggestions made during previous monitoring visits.¹⁶³ Later, in early 2008, BFC stopped even publishing the list of factories it had visited from which the aggregate data was compiled.¹⁶⁴ And while individual factory reports apparently contain some limited data about how BFC inspectors collected information in a particular location, there is not enough to give insight into the methodological credibility of the BFC’s monitoring. In the confidential factory report we reviewed, for example, BFC monitors state the date of their visit, the contact person at that factory, the fact that the visit was unannounced, the types of documents examined, the types of monitoring activities undertaken by the investigators, the broad categories of stakeholders with whom they met while at the premises, and a notation that the monitors were able to freely observe the workplace.

¹⁶¹ Feb. 10 Tucker interview, *supra* note 4 (estimating that a factory would receive a BFC visit once every 10 months or so).

¹⁶² *Id.*

¹⁶³ Compare BETTER FACTORIES CAMBODIA, INT’L LABOUR ORG., SEVENTEENTH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA’S GARMENT SECTOR (Oct. 31, 2006), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 17TH SYNTHESIS REPORT], with BETTER FACTORIES CAMBODIA, INT’L LABOUR ORG., SIXTEENTH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA’S GARMENT SECTOR (Mar. 10, 2006), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 16th Synthesis Report]; see also *Statement of the Project Advisory Committee of Better Factories Cambodia on the Release of the Seventeenth ILO Synthesis Report on Working Conditions in Cambodia’s Garment Sector*, BETTER FACTORIES CAMBODIA (Nov. 17, 2006), available at [http://www.betterfactories.org/content/documents/1/PAC%20Statement%20for%2017th%20SR%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/PAC%20Statement%20for%2017th%20SR%20(en).pdf) (mentioning the new format of the report that is “for the first time generated using the automated Information Management System (IMS)”). Thus, it is possible that the shift from naming factory improvements by issue to BFC’s current synthesis reporting model is entirely a function of a shift away from manually typing a report to automatically generating a statistical printout. In his interview with us, Mr. Ken Loo, Garment Manufacturers Association of Cambodia, in Phnom Penh, Cambodia (Feb. 14, 2012) mentioned how in 2004 GMAC tried very hard to transition BFC to an automated Information Management System (IMS).

¹⁶⁴ Compare BETTER FACTORIES CAMBODIA, INT’L LABOUR ORG., NINETEENTH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA’S GARMENT SECTOR (Dec. 4, 2007), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 19TH SYNTHESIS REPORT], with BETTER FACTORIES CAMBODIA, INT’L LABOUR ORG., TWENTIETH SYNTHESIS REPORT ON WORKING CONDITIONS IN CAMBODIA’S GARMENT SECTOR (June 30, 2008), available at <http://www.betterfactories.org/ILO/resources.aspx?z=7&c=1> [hereinafter BFC, 20TH SYNTHESIS REPORT].

The report also indicates that in this particular instance, three management staff and two union leaders were interviewed; however, no other quantifiable numbers are mentioned to convey exactly how many interviews with workers the results are based upon, or where and how these interviews were conducted.

To increase analysts' confidence in BFC's findings and methods, BFC should include such information in its confidential factory reports, and certainly in any public reports meant to be used as authoritative representations of working conditions in Cambodian garment factories. For example, because it is well known that the context in which workers are interviewed greatly influences whether they will speak openly or simply tell inspectors what their employers want them to say, BFC should disclose whether interviews were conducted individually or in a group setting, and whether the interviews took place in the factory, outside its gates, or at an offsite location.

As a result of BFC's decision to discontinue including any factory-specific information in its public synthesis reports and to no longer brief factory workers on its inspection results, only factory owners and buyers now have access to information about individual factories monitored by BFC, and whether according to the BFC auditors the factories comply with Cambodian and international labor standards. The only publicly available data generated by BFC today is sector-wide, aggregate data, which is presented without any specific details about the



methodology used to collect it and which cannot easily be tracked over time. Finally, as has been true since the program's inception, BFC does not provide any information concerning which brands or retailers are purchasing the goods being produced in the audited factories.

These changes have made the program's reporting practices, which had limited transparency to begin with, distinctly more opaque than some of the other leading factory monitoring organizations, and even some of the major buyers' own auditing schemes. The WRC, for example, includes in its public reporting the names of both the individual factories it inspects and their buyers. The Fair Labor Association (FLA), which includes apparel buyers and manufacturers among its members and funders, releases summaries of individual factory inspection reports, identifying their buyers and the countries where they are located, but not the individual factories' names.

Moreover, Adidas, Levi-Strauss, New Balance, and Nike all now publicly post on their websites a complete list of their global supplier factories, including those in Cambodia.¹⁶⁵ Finally, the major athletic apparel firms that produce collegiate apparel (school logo t-shirts, sweatshirts, and caps), which include not only Adidas and Nike, but also Knights Apparel, Gear for Sports (a licensee of Champion and Under Armour), New Era Cap, JanSport (VF), Columbia, and Team Edition (Footlocker) already disclose the names and locations of their suppliers of these goods, among them those in Cambodia, all of which are publicly available via the WRC website.¹⁶⁶

Remediation

According to today's "BFC model," it is the garment factories and their managers who retain sole responsibility for addressing any labor rights violations identified by BFC auditors. BFC today lacks the mandate, the resources, and the systematic verification procedures to see that labor violations are remedied. Buyers retain complete discretion whether or not to purchase the confidential BFC factory reports and, if they do, to seek remediation of the violations that are identified. Even if they do seek remediation of violations, there is no guarantee that buyers will help make corrective action financially feasible for factory owners—even though the same buyers may have already profited indirectly from these violations in the form of lower prices. Global apparel brands and retailers are nearly always resistant to modifying their commercial terms of business to fund improved conditions for workers, choosing instead to leave the responsibility solely with the factory owners.¹⁶⁷

BFC has developed its capacity to assist interested factory owners with the task of remediation. Following the issuance of a factory report to the factory and its buyers, "a clarification meeting with ILO staff can be organized upon request, in order to discuss the findings in the report and/or seek assistance in addressing areas of non-compliance."¹⁶⁸ This meeting "may include a member of the *Better Factories Cambodia* training unit, who can draft a preliminary needs assessment and suggestions for corrective action that the factory can use to rectify non-compliance areas and also interactions with buyers."¹⁶⁹

A key point, however, is that this is a *discretionary* resource for factory managers. Factory owners have no obligation to take advantage of BFC services if they are not so inclined. BFC offers a number of different types

¹⁶⁵ *Global supplier factory list*, ADIDAS GROUP, http://www.adidas-group.com/en/sustainability/assets/factory_list/2012_Jan_Global_Factory_List.pdf (last visited Jan. 30, 2013); *Levi Strauss & Co. Factory List*, LEVI STRAUSS, <http://www.levistrauss.com/sites/default/files/librarydocument/2011/5/Isco-factory-list-may-2011.pdf> (last visited Jan. 30, 2013); *New Balance Athletic Shoe, Inc. Active Factory List*, NEW BALANCE, http://assets.newbalance.com/nb-us/about_nb/leadership/documents/nb_suppliers.pdf (last visited Jan. 30, 2013); *Nike Contract Factory Disclosure List*, NIKE, http://www.itglwf.org/lang/en/documents/Nikefactory_disclosure_list2011.pdf (last visited Jan. 30, 2013).

¹⁶⁶ *Factory Database*, WORKER RTS. CONSORTIUM, <http://www.workersrights.org/search/> (last visited Jan. 21, 2013).

¹⁶⁷ See, e.g., Jim Yardley, *Export Powerhouse Feels Pangs of Labor Strife*, N.Y. TIMES, Aug. 24, 2012, at A1, available at <http://www.nytimes.com/2012/08/24/world/asia/as-bangladesh-becomes-export-powerhouse-labor-strife-erupts.html>; see also Interview with Michael Hsu, Factory Manager at Xin Fang (Cambodia), Garment Manufacturing Co. Ltd., (<http://www.xfgroup.com.cn/>), outskirts of Phnom Penh, Cambodia (May 31, 2012).

¹⁶⁸ *Monitoring Process*, *supra* note 5.

¹⁶⁹ *Id.*

of training—everything from one-off trainings on a range of topics¹⁷⁰ to customized twelve-month “advisory services” processes designed to help a factory develop and implement its own **Factory Improvement Plan (FIP)**. To take advantage of BFC’s advisory services, however, a factory would have to pay an up-front fee of \$2,500 and commit to forming a committee to implement the jointly developed FIP (See Appendix D).¹⁷¹ Moreover, whether a factory engages in this process is not included in BFC’s report on the factory when it is made available to buyers. According to Tucker, only 20 factories chose to engage BFC for its training and advisory services in 2012, up from a mere 12 in 2011.¹⁷² Thus, unless the factory owners specifically contract with BFC to provide remediation consulting services, the remediation process—assuming it occurs at all—typically unfolds outside of BFC’s purview.

Table 1: Comparison of BFC monitoring and reporting, pre-2005 vs. post-2005

	Pre-2005	Post-2005
Auditors make both announced and unannounced factory visits	Twice per year	Less than once per year
Auditors report on implementation of previous BFC recommendations	✗	✗
Periodic synthesis reports publicly available	✓	✓
Synthesis reports detail specific factories’ progress (or lack thereof) by issue	✓	✗ ¹⁷³
Synthesis reports list names of specific factories covered in the report	✓	✗ ¹⁷⁴
Individual factory reports publicly available	✗	✗
Worker representatives briefed on individual factory reports	✓	✗

The result of these changes is that with the sole exception of the periodic synthesis reports, BFC’s monitoring, reporting, and remediation activities today take place shielded entirely from public scrutiny. Aside from BFC itself, no stakeholder group other than factory managers and buyers has any significant information about what happens inside this “black box.”

¹⁷⁰ See *Training*, BETTER FACTORIES CAMBODIA, <http://www.betterfactories.org/trainingann.aspx?z=6&c=1> (last visited Jan. 21, 2013).

¹⁷¹ *Modular Training Programme*, BETTER FACTORIES CAMBODIA, [http://www.betterfactories.org/content/documents/1/Modular%20Training%20Brochure%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/Modular%20Training%20Brochure%20(en).pdf) (last visited Jan. 30, 2013); *Advisory Services* BETTER FACTORIES CAMBODIA, [http://www.betterfactories.org/content/documents/AS%20Overview%20\(En\).pdf](http://www.betterfactories.org/content/documents/AS%20Overview%20(En).pdf) (last visited Jan. 30, 2013).

¹⁷² Interview with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, in Phnom Penh, Cambodia (Dec. 8, 2012) [hereinafter Dec. 8 Tucker interview].

¹⁷³ Compare BFC, 16TH SYNTHESIS REPORT, with BFC, 17TH SYNTHESIS REPORT, *supra* note 163.

¹⁷⁴ Compare BFC, 19TH SYNTHESIS REPORT, with BFC, 20TH SYNTHESIS REPORT, *supra* note 164.

Factory managers, by contrast, are privy to BFC activities at multiple points throughout the monitoring and reporting process: they host BFC auditors when they appear unannounced and sit in meetings with them, both during the audit and (possibly) even after. The factory managers also receive a copy of the confidential factory report drafted by BFC auditors subsequent to an inspection of their factories. They are also the only stakeholders currently given the opportunity to engage with BFC about those report findings and any **corrective action plans (CAP)** that may be appropriate.

Buyers, too, have anonymous access to what happens within the BFC black box. Should they choose to purchase BFC's factory reports, they can see for themselves the outcome of BFC's monitoring visits. And should they choose to engage with their contracting factories concerning any labor rights violations identified in the factory report, buyers can always participate in any remediation efforts in line with their supply chain relationships. However, any such participation is strictly voluntary, and BFC currently lacks any mechanisms to incentivize such collaborative engagement in the remediation process.

Since 2005, factory workers have lost almost all of the access they once had into the black box of BFC's reporting. While BFC auditors derive much of their information about workplace conditions from the factory workers with whom they speak, both in the factories and outside the plant gates, this information flows only one way. BFC no longer convenes meetings at monitored factories to report on its findings to workers and their representatives. Although individual workers certainly still have anecdotal experience being interviewed during a BFC audit, they currently have no way of knowing or commenting on what BFC does with the information it collects.

How Black Box Monitoring Harms BFC

Other than BFC, factory owners, buyers, industry insiders, and perhaps the odd scholar or hired consultant, few other stakeholders have any real understanding of how BFC does its work, much less how it compiles its

“ *Like a student studying for an examination, there will be no motivation to study if there are no grades* ”

- Factory manager on why he supports more transparent BFC factory reporting practices

most important work product: the results of BFC's factory audits. The program's extreme lack of transparency prevents the public from verifying BFC's claims about its ongoing positive impact on labor rights compliance in the Cambodian garment industry.¹⁷⁵

Indeed, the Stanford team was struck by the disconnect between the progress assessments contained in BFC's synthesis reports and the views of the labor activists with whom we spoke, many of whom had a much more critical assessment of BFC's impact. The differences were especially stark when speaking with interviewees from labor federations typically

¹⁷⁵ See Berik & van der Meulen Rodgers, *supra* note 113, at 73 (discussing the “‘judge and jury’ problem in which the organization charged with monitoring factory compliance (the ILO) also has the authority to compile and publish the results.”).

described as more “independent” from the government or GMAC.¹⁷⁶ This impression was echoed by at least three other groups of researchers who ventured beyond the content of BFC’s synthesis reports to inform their analysis of the state of worker rights in the Cambodian garment sector.¹⁷⁷

These differing perspectives on BFC’s overall impact are not surprising given BFC’s tripartite governance model. The BFC’s PAC meets prior to every release of a synthesis report to “review and endorse” the report.¹⁷⁸ One leadership representative from a union commonly described as “fiercely independent”—C.CAWDU—described to the Stanford team the intense discussions that go into negotiating the precise language of the synthesis reports.¹⁷⁹ These debates take place among representatives from GMAC, the government, the union confederation members present (some of whom are in fact closely aligned with the Cambodian government or GMAC), and the report’s authors. According to this interviewee, therefore, the non-quantitative language in the synthesis reports (i.e., discussions of overall trends in working conditions in the industry, particular incidents, or labor rights issues meriting particular attention) can only properly be understood as a product of negotiated compromise between the aggregate findings made by BFC monitors during their factory visits and the politically acceptable public messaging that BFC’s tripartite governance board will allow.¹⁸⁰ While the raw data BFC presents concerning any one issue in these reports is no doubt an accurate representation of BFC’s inspection results at least as to that indicator, the synthesis reports generally discuss only a small subset of the 376-point dataset BFC auditors gather during factory audits. The framing and presentation of that data, however, is the subject of intense debate and political posturing by BFC’s tripartite governance board members, and thus—in this important regard—even the synthesis reports fail to present a fully transparent summary of BFC monitoring.¹⁸¹

Not surprisingly, then, some labor activists felt that BFC’s synthesis reports fail to capture the true state of working conditions in the Cambodian garment sector. In 2012, BFC’s new country director introduced

¹⁷⁶ See generally Nuon & Serrano, *supra* note 6. While the quality of Cambodia’s unions, federations and confederations goes beyond the scope of this paper, many commentators comment openly on the spectrum of unions. These range from the more pro-government unions and federations, such as the Cambodian Union Federation (CUF), affiliated with the Cambodia Confederation of Trade Unions (CCTU), and the Cambodian Labor Union Federation (CLUF), part of the National Union Alliance Chamber of Cambodia (NACC), to the more independent unions and confederations such as the Coalition of Cambodian Apparel Worker Democratic Unions (C.CAWDU)—part of the Cambodian Labor Confederation (CLC), the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)—part of the (Cambodian Confederation of Union) CCU, and the National Independent Federation Textile Union of Cambodia (NIFTUC)—part of the Cambodian National Confederation (CNC).

¹⁷⁷ See Shea, Nakayama & Heymann, *supra* note 119; see also Merk, *10 years of BFC*, *supra* note 14.

¹⁷⁸ See *Statement of the Project Advisory Committee of Better Factories Cambodia on the Release of the Twenty-Seventh ILO Synthesis Report on Working Conditions in Cambodia’s Garment Sector*, BETTER FACTORIES CAMBODIA, (Jan. 18, 2012), available at [http://www.betterfactories.org/content/documents/1/PAC%20Statement%20for%2027th%20SR%20\(En\).pdf](http://www.betterfactories.org/content/documents/1/PAC%20Statement%20for%2027th%20SR%20(En).pdf).

¹⁷⁹ Focus group discussion with labor activists, in Phnom Penh, Cambodia (May 28, 2012) [hereinafter May 28 Focus group].

¹⁸⁰ *Id.*

¹⁸¹ See also Email communications with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, January 28, 2013. (when asked to comment on the issue, Tucker acknowledged “that wording and individual figures generate[s] discussion and debate but [that she] cannot stress enough that the data itself is never negotiated or altered by such interactions.”).

significant changes to the reports. These changes represent a substantial improvement over prior reporting practices. BFC's more rigorous reporting practices under Tucker's leadership suggest that some of the statistics upon which BFC based its earlier claims of labor rights progress possibly conflated actual progress with either poor reporting practices or poor monitoring practices.¹⁸² But even with regard to the most recent synthesis report, many labor rights activists still felt that BFC was adopting an overly cautious tone with regard to pressing labor rights issues that should fall squarely within BFC's mandate for decisive action—for example the issue of employers using FDCs as a tool to harass workers who wished to join independent labor unions.

The remainder of BFC's activities—monitoring, confidential reporting, and the program's passive efforts to encourage remediation—all fail to give stakeholders other than buyers the information they need to hold factory owners accountable or to reward them for their commitment to improved worker rights. Moreover, BFC's reporting practices provide *no basis at all* for judging the performance of the parties who have the most economic and structural power to support or undermine progress in labor rights compliance in Cambodia—the buyers themselves. As one factory manager told us, making an argument for greater transparency in BFC reporting practices: “Like a student studying for an examination, there will be no motivation to study if there are no grades.”¹⁸³

From a structural standpoint, therefore, BFC's reduced transparency is especially problematic. By design, BFC never had enforcement power. On paper at least, the Cambodian government has directly linked BFC's monitoring and reporting to its enforcement of the labor law.¹⁸⁴ The authors are not aware of any instances where the



¹⁸² See graph *supra* p. 25 (showing a marked deterioration in "voluntary overtime" compliance as reported to BFC in 2012, coinciding with the implementation of the new reporting practices).

¹⁸³ Interview with Michael Hsu, *supra* note 167.

¹⁸⁴ See Prime Minister Hun Sen, *Circular*, *supra* note 150, § 6:

Ministry of Commerce has actually sanctioned a factory for non-compliance based on BFC's monitoring. Instead, BFC has always relied on the actions of other stakeholders—buyers, government authorities,¹⁸⁵ civil society, end-consumers, union activists, etc.—to require factory owners to redress the violations identified by its monitors. What BFC does have, by contrast, are resources, sector-wide access, and an officially sanctioned mandate that gives it an unparalleled capacity to physically inspect Cambodian garment factories. But by limiting the public's access to the information it collects through these inspections, BFC blunts its potential impact. BFC's current reporting practices squander a crucial opportunity to empower important proponents of labor rights—such as labor rights advocates and ethically motivated consumers—to independently exert pressure on brands, factory owners, or Cambodian government regulatory bodies. Since there is no longer any formal link between Cambodia's labor rights performance and its access to the US apparel market, BFC's most powerful remaining tools to incentivize better labor practices have effectively been neutered by its lack of transparency.

A significant result of the program's opacity, as one study found, is that those factories without a “reputation-sensitive” buyer began to backslide despite BFC's ongoing monitoring and reporting.¹⁸⁶ Moreover, even those buyers that are “reputation sensitive” are less likely to remain so, and are less likely to take meaningful action based on this sensitivity, if they doubt that any failures to correct for labor rights violations in their supply chains will ever see the light of day.

To be clear, the bulk of the interviewees with whom we spoke still feel strongly that BFC has an important role to play in curbing labor abuses in Cambodia's garment industry. Nonetheless, BFC's transparency deficit is contributing to a strong undercurrent of discontent among many of those interviewed for this report. First, several stakeholders believe that BFC's monitoring does not accurately capture or report on the true working conditions in factories. Second, many interviewees have inaccurate understandings of BFC's role and its ability or willingness to respond to complaints from workers about labor rights violations. These doubts have contributed to an erosion of trust between BFC and the workers it is supposed to protect.

Textile and apparel factories failing to comply with the Cambodian Labor Law and regulations will face the following 4-steps administrative sanctions from the Ministry of Commerce:

1. Warning letter from the Ministry of Commerce, upon review of a report of serious labor law's violations by the ILO Better Factories Cambodia's monitoring team corroborated by a report from the Ministry of Labor and Vocational Training;
2. One Week-long Ban of all textile and apparel exports from the said factory, if no corrective measures are taken one week after the warning letter is received;
3. Three months-long Ban of all textile and apparel exports from the said factory, if no corrective measures are taken two weeks after the warning letter is received;
4. Permanent ban of all textile and apparel exports from the said factory, if no corrective measures are taken by the end of the 3 months after the warning letter is received.

¹⁸⁵ *But see* Interview with anonymous Ministry of Labor official in Phnom Penh, Cambodia (Feb. 10, 2012) (“In Cambodia the economy needs to develop...” and as a result “[the government] hasn’t taken any serious action against factories, because we need them. We only fine them in cash. [Cambodia is] a developing country, so if courts shut down a factory, investment will dry up.”)

¹⁸⁶ Raymond Robertson, Rajeev Dehejia, Drusilla Brown & Debra Ang, *Labour Law Compliance and Human Resource Management Innovation: Better Factories Cambodia* 19-20 (Better Work Discussion Paper Series: No.1, 2011), available at <http://betterwork.org/global/?p=663>.

Concerns about the Efficacy of BFC's Monitoring

Many of the workers and union leaders we spoke to doubted that BFC monitors accurately capture the working conditions in the factories. Several workers interviewed for this report had the impression that although monitors regularly visit their factories, conditions in those same factories rarely or never improve.¹⁸⁷

First, some workers with whom we spoke did allege incompetence or worse among the BFC auditing staff. According to the broad consensus of those familiar with the details of the program, however, BFC auditors do their jobs professionally, in line with the mandate that they and their organization have been given.

Instead, such concerns about the BFC's auditing process appear to stem, in significant part, from unmet expectations about how BFC uses the information workers provide to its factory inspectors. Workers reasonably assume that the violations they report to BFC inspectors feed into a process that ultimately will



culminate in the violations' rectification. When this does not happen, they may conclude that BFC is not mentioning these alleged violations in its reports, ineffective in improving factory conditions, or even, as some workers whom we spoke to alleged, simply corrupt. To be clear, with regard to the last allegation,

¹⁸⁷ Interview with two anonymous union organizers working at factory in outskirts of Phnom Penh, Cambodia (Feb. 13, 2012).

these rumors are unsubstantiated—and, according to sources most familiar with BFC’s operations, unfounded. Nonetheless, the mere existence of these rumors should be cause for serious concern to BFC and its proponents, even if they are simply symptoms of a less culpable, but still harmful, lack of responsiveness to workers’ concerns.

BFC’s individual factory reports, however, *do* regularly find labor rights violations in factories, and often state clearly when a factory’s practice is either patently illegal or in need of immediate and urgent redress. Yet BFC releases these reports only to factory managers and their buyers, neither of which BFC can compel to correct any violations identified. Workers remain in the dark.

As alluded to above, BFC and ILO staff do regularly engage in advocacy on labor rights issues to other influential stakeholders in the RCG, civil society, and the business community. Such activity, however, takes place behind closed doors and thus often fails to satisfy workers’ expectations that their input will lead to some visible action on the part of BFC. Our belief, therefore, is that greater transparency and direct communication with workers and their representatives would help clarify perceptions and understanding of BFC and its role, and clear up potentially devastating interpretations of why BFC is not currently delivering on the workers’ expectations of the organization.

Second, the Stanford clinic spoke with a number of workers and unions who were under the impression that factories had been notified in advance of impending monitoring visits. Workers and unions alleged that although factory managers seek to create the impression that the workers interviewed by BFC monitors are randomly selected on the day of the audit, these workers have in fact been pre-selected and coached extensively on what to say.¹⁸⁸ In some instances, workers are reportedly threatened with reprisal if they say something negative about the factory to BFC auditors.¹⁸⁹

Furthermore, BFC’s practice of interviewing workers in groups on the factory premises reportedly stifled the willingness of workers to speak out about conditions in the factory, for fear of what others in the room might report back to management.¹⁹⁰ BFC’s reliance on such interviews is surprising given the longstanding recognition that such interview techniques are highly susceptible to employer “coaching” and coercion.¹⁹¹

On its website, BFC claims it conducts interviews “both at and away from the factory.”¹⁹² Subsequent discussions with the Chief Technical Adviser confirmed that BFC auditors often approach workers outside factories, for example at food stalls where they gather on meal breaks.¹⁹³ Such interviews can be extremely

¹⁸⁸ Interview with Anonymous WIC Representatives, in Phnom Penh, Cambodia (Feb. 8, 2012); Interview with Anonymous CFITU Representative, in Phnom Penh, Cambodia (Feb. 11, 2012); Focus group discussions, WIC, *supra* note 44.

¹⁸⁹ Interview with Anonymous NLC representative, in Phnom Penh, Cambodia (Feb. 10, 2012).

¹⁹⁰ Interview with Anonymous NLC representative, in Phnom Penh, Cambodia (Feb. 10, 2012).

¹⁹¹ See, e.g., T.A. Frank, *Confessions of a Sweatshop Inspector*, WASH.N MONTHLY, Apr. 2008, <http://www.washingtonmonthly.com/features/2008/0804.frank.html>.

¹⁹² BETTER FACTORIES CAMBODIA: MONITORING, <http://www.betterfactories.org/ILO/monitoring.aspx?z=5&c=1> (last visited Jan. 24, 2013).

¹⁹³ May 30 Tucker interview, *supra* note 37.

valuable, and conducting them is certainly preferable to relying solely on interviews conducted inside the factory premises. It is unclear how systematically BFC auditors employ off-site interviews, and whether they are used as a matter of course or only in response to suspicion of certain “no tolerance” violations such as child labor.¹⁹⁴

One of the distinctive features of Cambodia’s labor rights environment, which BFC is often credited with helping to foster, is the prevalence of trade unions at the factory level. International labor experts recognize the advantages of organizing interviews with the assistance of trade unions that have already earned workers’ trust, rather than attempting to independently organize interviews—possibly even in a group setting or with the help only of the factory management—inside the factory gates.¹⁹⁵ Given the widespread industry practice of coaching workers who are interviewed inside their factories, it is striking that BFC does not (or perhaps *cannot* as a result of its tripartite governance structure) make greater use of offsite interviews arranged through unions and NGOs.

Further contributing to the perception that BFC is ineffective in capturing conditions is the program’s current practice of allowing factory managers to keep BFC monitors waiting for up to forty-five minutes outside the factory gates before permitting their entry for the monitoring visit.¹⁹⁶ This waiting period gives factories an opportunity, even when a visit is unannounced, to hide and/or correct violations before the monitors enter the premises. Several workers reported that they saw factory management sweeping the floors, cleaning the toilets, increasing the ventilation, and hiding all underage and pregnant workers¹⁹⁷ immediately before a BFC monitoring visit. Tolerating such waiting periods contributes to workers’ suspicions that management had advance notice of visits.¹⁹⁸ Some unions and factory workers also reported that some factory managers use this time to warn or intimidate their workers not to speak poorly of the factory with the monitors.¹⁹⁹

¹⁹⁴ *Id.* During this interview, Tucker described for us her colleagues’ extensive use of off-site interviewing in response to the discovery of an alleged case of child labor. This stands in contrast, however, to numerous interviews we had with workers and union representatives who told us that they were aware only of BFC monitors conducting their interviews while in the factory premises.

¹⁹⁵ See, e.g., ADRIAN GOLDIN, MISSION REPORT: THE CLOSURE PROCESS AT JERZEES DE HONDURAS, PREVIOUS INVESTIGATIONS, AND THE RIGHT OF FREEDOM OF ASSOCIATION 4-5, 9 (2009), available at http://www.fairlabor.org/sites/default/files/documents/reports/jdh_hq_01.28.09.pdf (criticizing the “methodological deficiencies” of auditors’ reliance on group interviews of workers conducted inside factory and failure to give proper attention and weight to offsite interviews arranged by trade union).

¹⁹⁶ Feb. 10 Tucker interview, *supra* note 4. If the monitors are kept waiting for longer than forty-five minutes, they leave and BFC reports that the factory refused the visit. *Id.* During subsequent discussions Tucker mentioned possibly shortening this 45-minute maximum tolerable wait period.

¹⁹⁷ Focus group discussions, WIC, *supra* note 44 (one worker recounted for us her factory’s practice of hiding in one elevator car all pregnant workers and known underage workers while BFC auditors used the other elevator).

¹⁹⁸ Interviews with Anonymous Representatives from WIC (Feb. 8, 2012), NLC (Feb. 10, 2012), and CFITU (Feb. 11, 2012), in Phnom Penh, Cambodia; Focus group discussions, WIC, *supra* note 44. *But see* Interview with Two Anonymous Union Organizers, in Phnom Penh, Cambodia (Feb. 13, 2012) (specifying that they did not believe that BFC was giving the factory where they worked advance notice of an impending unannounced visit).

¹⁹⁹ Focus group discussions, WIC, *supra* note 44.

BFC acknowledges that monitors are sometimes kept waiting for extended periods of time, and that there is a possibility for factories to cover up for some of their most obvious labor violations during this time. BFC is currently in the process of changing the rules for monitoring visits to reduce the amount of time factories have to admit monitors.²⁰⁰ In the interest of transparency, BFC should also include statistics in its factory reports on how long its auditors were forced to wait before being granted access. The reports should also highlight in one place all possible instances of manipulation, delay, or cover-up by factory managers during the factory audit.

The factory report obtained by the Stanford team contains some illustration of the kind of behavior by factory managers to which our interviewees were referring. When looking into the issue of blocked doorways and emergency exits, the auditors report:

"The factory unlocked all emergency exit doors when ILO Factory Advisor or buyer auditors to visit the factory, workers said. (*sic*)

*Excerpts from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012
(reproduced in full in Appendix B)*

In the context of their efforts to investigate allegations of child labor, the auditors write:

We asked the factory to call some suspected underage workers for interview, but the factory said that some workers took a long sick leave and some others did not come to work on that day while their time cards showed that they came to work in the morning. In addition, workers told us that line supervisors told some young workers to stay at their rental rooms/houses in the afternoon because ILO visited the factory. We raised this issue with the top management at the end of the first day. Finally, we could interview these workers when we went to continue the factory visit a day later.

*Excerpts from a draft BFC factory report following unannounced visit, factory unknown, Feb. 2012
(reproduced in full in Appendix B)*

The factory report was given to us as an example of a particularly problematic factory—one where conditions are poor and management's commitment to improving them is weak, as confirmed by a reading of the report. That said, the two vignettes above show that even with a well-established monitoring system, factory managers will be tempted to skirt the labor laws and to subsequently hide the truth from BFC auditors. Such deception is a natural consequence of a system where buyers demand both compliance with labor laws *and* the lowest possible prices for their goods.

BFC trains its auditors to combat such efforts. Indeed, the second vignette illustrates how BFC auditors were able to get around a mistruth they had been told by factory management about the whereabouts of the underage workers. Nonetheless, it is fair to assume that factory managers are able to conceal some

²⁰⁰ Dec. 8 Tucker interview, *supra* note 172.

violations from inspectors, and that BFC should therefore continue to focus its energy on ensuring the overall integrity of its monitoring process.

BFC insists that monitoring visits are unannounced.²⁰¹ One insider acknowledged, however, that due to time constraints, BFC auditors sometimes had to rely on factory managers to provide them with a list of workers and union leaders.²⁰² BFC monitors then select from this list of workers and union leaders whom to interview.

This practice may create the perception among workers that interviewees are pre-selected by managers, regardless of whether this actually is the case. Some of our interviewees complained that BFC monitors only speak with “yellow” (pro-management) unions and do not get a full and accurate picture of conditions in the factories.

Because BFC does not have a practice of contacting unions directly to arrange offsite interviews with workers from the factories it is inspecting, there is no obvious way to ensure that its current inspection methods reach the representatives and members of those unions that are subject to management discrimination and intimidation.

To address this problem, BFC monitors should seek to determine in advance which unions have a presence at factories they visit, information that is available from the various union confederations and federation representatives. They should then compare this information with the list of unions provided by the factory management during the factory visit, and insist that they be allowed to speak with representatives from all unions.

In the factory report we obtained, for example, there was discussion of an attempt by management to dismantle a union that was attempting to form and of the subsequent harassment and arbitrary dismissal of employee union organizers (see above, on p. 16). It is unclear from the report whether BFC auditors made an effort to contact those former factory employees who had attempted to organize the union. If not, they should have, just as they did in the case of the alleged employment of underage workers. Better yet, BFC should develop and advertise a means by which individuals who are victims of such retaliation can contact BFC and lodge a complaint, a common feature of other factory monitoring programs. Had the auditors shown up at the factory during the very time this dispute was unfolding, it is implausible that management would have voluntarily referred them to the very same labor activists it was in the process of harassing and illegally terminating. Nor would one assume that other workers—already keenly aware of the dangers of associating with unions in the workplace—would readily share with BFC auditors information about the situation. Furthermore, contacting the fired workers would no doubt present a significant challenge given the mobility of many Cambodian garment workers. Thus, creating an easily accessible means for such individuals to confidentially contact BFC is imperative if BFC wishes to gather information in such sensitive situations.

²⁰¹ Feb. 10 Tucker Interview, *supra* note 4; *accord* Interview with Nuon Veasna, *supra* note Interview with Nuon Veasna, Labor Rights Activist, in Phnom Penh, Cambodia (Feb. 11, 2012). Mr. Veasna spoke of a recent trend among unions to be highly critical of BFC and Jill Tucker, perhaps subsequent to a CCC-CLEC sponsored conference critiquing BFC. He doubts strongly that there is a possibility that factories would have advance notice of an unannounced audit.

²⁰² Interview with Nuon Veasna, *supra* note 201. (explaining that during a factory audit time pressure would sometimes force an auditor to simply ask factory managers to introduce them to the union representatives).

Even in instances where factory violations do not involve freedom of association or collective bargaining, BFC should provide a channel for contacting workers that is protected from interference by factory managers. Workers who are union members, and whose interviews are facilitated by their union, are likely to be more aware and more forthcoming with BFC inspectors about labor rights violations in the factories where they work.

For example, the Stanford team spoke with one union activist who had been unable to register her union with the authorities (thus securing her and her members certain legal protections enumerated in the Cambodian Labour Code) due to her employer's alleged anti-union discrimination. Despite these challenges, however, she continued to run an informal union at her workplace, giving her members and other co-workers guidance and support, and negotiating with a union representative of a formally registered union at that factory to take up the case of any of her members if they needed help. In this case as well, having some established means for this activist to communicate with BFC in conjunction with a factory audit would have afforded an important opportunity to detect violations and protect the rights of the workforce.

Lack of Clarity about BFC's Role

BFC's website has an abundance of information about its activities and the labor rights situation in Cambodia. The program produces materials in English, Khmer, and Mandarin, ranging in format from easy-to-digest pamphlets to detailed reports on particular issues of concern. Moreover, the program's Country Director and her staff have consistently made themselves available to researchers and journalists. Our research team met with Jill Tucker, Chief Technical Adviser of BFC, and several of her colleagues four times over the course of our two visits to Cambodia. In parallel, several other researchers and journalists also sought Tucker's time and attention, presumably concerning many of the same issues.²⁰³

Unfortunately, however, this openness to researchers and media does not translate into clarity among some stakeholders we interviewed, particularly workers and union leaders, about BFC's role in Cambodia, the legal or political constraints it operates under, or what BFC may be doing to address some of the important labor rights problems in the industry.

For example, many stakeholders felt that BFC should focus its energy on smaller subcontractor factories.²⁰⁴ It became apparent to the Stanford team that many of these commentators did not know that BFC currently lacks authorization from the RCG to monitor any factories other than those with an export license, therefore exempting subcontractor factories from its purview.²⁰⁵ Greater clarity about this fact would enable these

²⁰³ See BETTER FACTORIES CAMBODIA: NEWS, <http://www.betterfactories.org/ILO/news.aspx?z=4&c=1> (last visited Jan. 28, 2013).

²⁰⁴ Interviews with Anonymous Representatives from WIC (Feb. 8, 2012), CNCLP (Feb. 9, 2012), & NACC (Feb. 13, 2012), in Phnom Penh, Cambodia.

²⁰⁵ See *Frequently Asked Questions*, BETTER FACTORIES CAMBODIA, <http://www.betterfactories.org/ILO/faq.aspx?z=9&c=1> (last visited Jan. 24, 2013) ("*Better Factories Cambodia* monitors factories that hold an export license. This is enforced by the Ministry of Commerce. In September 2011, the Ministry of Commerce issued a Prakas on Sub-contract Management in Garment and Textile Industry. Article 3 in the Prakas states that 'Only manufacturers who are the members of Garment Manufacturers Association in Cambodia registered with Better Factories Cambodia in accordance with the

stakeholders to press for extension of the program to subcontractor factories and engage constructively in policy debates on this issue.

The Stanford team also found that many union representatives did not know the extent to which BFC's own capacity constraints had already forced it to reduce the frequency with which it inspects factories that *do* possess export licenses—from every six months to less than once per year. As a result, they also did not have a clear sense of the logistical challenges that expanding BFC's monitoring to subcontractors would entail.

Our research team heard a great deal from BFC about its efforts to get some preliminary access to subcontracting factories to see what can be done about BFC's current lack of comprehensive coverage of the national garment sector.²⁰⁶ However, the perception among many activists with whom we spoke was that BFC was unaware of or unwilling to engage with the problem, suggesting that BFC had not communicated to them its support for extending its monitoring responsibilities to subcontracting factories.

Worker transport to and from factories.



Some of the workers with whom we spoke were not aware that BFC lacks any responsibility, much less any power, to enforce remediation of the violations its reports to factory owners and buyers (see above, p. 41). Workers, and at least one of the union representatives with whom we spoke, had assumed that BFC was responsible for remediation efforts because BFC's auditors, when they conduct inspections, distribute cards with a phone number to call "if there [a]re any problems."²⁰⁷

During our conversations with workers, they referred to this BFC-distributed phone number as a "grievance hotline." In subsequent conversations between the research team and BFC's leadership, the program's director denied that the number was designed to serve such a purpose, explaining that the program had neither the resources nor the mandate to staff a genuine grievance hotline.

announcement made by the Ministry of Commerce are eligible to carry out sub-contract agreement.' Better Factories Cambodia looks forwards to working closely with our key partners while we are developing a new program that will drive change in sub-contract factories.").

²⁰⁶ May 30 Tucker interview, *supra* note 37.

²⁰⁷ *Id.*

Some of the workers we spoke with expressed disappointment that BFC had not taken action to solve problems that they or their union representatives reportedly communicated to BFC using this contact telephone number. From our subsequent conversations with Tucker, we learned that while information from such calls is taken down, entered into a database, and *may* be factored into decisions about which factories to prioritize for future unannounced factory visits, BFC does not take any direct or immediate action on them.

Between November 2011 and April 2012, BFC received 115 calls from individual workers and union representatives, alleging, for example, unlawful terminations or allegations of harsh working conditions in factories.²⁰⁸ BFC needs to do a better job communicating to workers what it will—and will not—do with the information they provide to its staff. Furthermore, BFC needs to develop the institutional capacity to follow up directly on complaints from workers about labor rights violations, and, in cases where this is not possible, refer such complaints to independent bodies capable of responding on a timely basis. In any case, BFC should do everything in its power to encourage and respond to this kind of communication. Moreover, because workers are best situated to know about and report labor rights abuses happening in their workplace, such complaints should not be dismissed lightly.

BFC's Role as an Advocate

Many stakeholders felt that BFC should take a more forceful advocacy position on some of the key policy issues affecting garment workers in Cambodia.²⁰⁹ Where employer practices violate existing law, BFC does in fact take direct positions on labor rights issues, although mainly in private contexts such as its confidential factory monitoring reports or closed meetings with industry and government officials. For example, in the factory inspection report reviewed by the Stanford team, BFC auditors made a clear statement that they considered the factory's practice of employing long-term workers on FDCs to be illegal (see above, p. 25). Since only individual factory owners and buyers are privy to such reports, however, it is not surprising that other stakeholders would not be aware of this position.

While some ILO bodies do routinely pass judgment on countries' adherence to international labor standards (or lack thereof), BFC's country director considers advocacy to be over and above her core mandate,²¹⁰ and possibly even in tension with the neutrality she feels is so important for BFC's monitoring and reporting functions. In contrast, many stakeholders with whom we spoke wanted to see BFC take a more rights-protective stance, even if this meant the organization would have to occasionally take sides in public labor policy debates. For example, Rong Chhun, President of the Cambodian Confederation of Unions (CCU), stated that BFC's resistance to taking a position on key issues makes it easier for the government or GMAC to

²⁰⁸ BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 3.

²⁰⁹ Interviews with Anonymous Representatives from WIC (Feb. 8, 2012), CNCLP (Feb. 9, 2012), & CITA (Feb. 9, 2012), in Phnom Penh, Cambodia (speaking of their desire to see BFC engage in public advocacy on the issue of employers using FTCs to stymie union organizing); *see also* Interview with Anonymous CFITU Representative, in Phnom Penh, Cambodia (Feb. 11, 2012) (expressing the desire to see BFC engage in public advocacy on the issue of inadequate living wages for Cambodian garment workers).

²¹⁰ May 30 Tucker interview, *supra* note 37.

suppress public debate on issues that workers and their representatives feel should be addressed, thereby diminishing BFC's potential to promote positive change.²¹¹ Nuon Veasna, a prominent Cambodian researcher on issues relating to the Cambodian labor market and BFC, similarly noted that BFC cannot claim to be only a monitoring organization when faced with calls for a more advocacy stance but at the same time still promote itself as an agent of positive change in the Cambodian garment industry.²¹²

This point highlights one major cause for the gap between stakeholder expectations and BFC's institutional role: BFC often claims (or is routinely credited with) responsibility for improved labor conditions in Cambodia, and yet its continued dependence on government and industry support severely constrains its ability to advocate publicly for worker rights. Indeed, our experience with the institution highlighted a tendency by BFC to assert its ability to participate in the debate on national issues, especially when it comes to compliance with Cambodian labor laws, while at the same time fending off calls to take a public stance on labor rights issues by referring to its restricted monitoring and reporting mandate.

This gap reflects a basic contradiction in BFC's mandate: The fundamental rationale for factory monitoring and reporting programs like BFC is the recognition that factory owners often pursue practices that violate worker rights. They do so in order to contain labor costs and meet buyers' commercial demands, especially in the absence of effective state regulation. BFC was designed as a check on such behavior. And yet in its day-to-day practice, BFC often refrains from taking public positions that might offend factory owners or their lobbyists, for fear that doing so might lead to a deterioration of its relationship with one of its key governance stakeholders. The result is an organization charged with policing violations that approaches its work as if one of its primary tasks were to maintain the goodwill of those same violators.

Given this stance, it is not surprising that BFC often reserves its criticisms of factory labor practices for private settings where they are least likely to offend factory owners. In discussions with the Stanford clinic, BFC acknowledged that much of its participation in such debates over labor rights policy has happened behind closed doors with government authorities and factory managers. While such interventions might be effective in some circumstances, they are obscured from the view of the workers—their intended beneficiaries. As a result, workers and their representatives have no way of knowing whether the positions taken by BFC on these issues are ones they would support and applaud or with which they would disagree or find inadequate.

Given its role as an international organization tasked with monitoring and reporting on factories' compliance with labor standards and the fact that it is widely seen as an authority on working conditions in Cambodia's garment sector, BFC should be more transparent about when it chooses to engage in labor policy debates. In either case, it should be more forthcoming in articulating the principles it uses to determine when it takes a public stance on an issue and when it does not.

²¹¹ Interview with Rong Chhun, President of the Cambodian Confederation of Unions (CCU), in Phnom Penh, Cambodia (Feb. 9, 2012).

²¹² Interview with Nuon Veasna, *supra* note 201.

Recommendations

Up to this point, the discussion has summarized the most prominent labor rights issues in Cambodia in 2012, provided some insight into what BFC has or has not been doing to address these issues, and elaborated on the critique that BFC's monitoring and reporting today must become more transparent for the program to have a more positive impact in the years ahead. The implications of BFC's diminished transparency today are both reputational and systemic. Reversing this trend, we argue, would increase confidence in the program and would position it to be more effective.

The recommendations below are organized according to the three core processes BFC relies on to improve working conditions in Cambodian garment factories: **monitoring**, **reporting**, and **remediation**. The recommendations include a number of proposed modifications of BFC's practice that the Stanford clinic and the WRC believe would require relatively minor structural changes by BFC but would have a significant impact in terms of the program's transparency and effectiveness. We also make a number of recommendations that we believe would require somewhat more substantial restructuring of BFC's core operations and mandate.

We describe these ideas, flagging what kinds of institutional restructuring they might imply, and list the benefits we expect would follow if BFC and its tripartite governance board were to pursue them further. We recognize, however, that even if BFC were to implement these proposals, such changes alone would still be unlikely to produce major advances in Cambodia's labor rights performance absent substantial reforms in the practices of other stakeholders as well—including changes by buyers to their terms of business with their Cambodian suppliers.

Some of our suggestions would expand the responsibility of BFC to promote and report on factory and buyer remediation efforts. As indicated above (p. 41), BFC currently becomes involved in remediation efforts only at the invitation of the factory management. Its reporting presently does not focus on the extent to which such remediation actually occurs. Our recommendation, elaborated below, is for BFC to adopt a greater focus in its monitoring and its reporting on factories' remediation efforts, and to more actively engage with both buyers and worker representatives in this effort. In so doing, BFC would engage in two complementary but separate processes: first, evaluating workplace conditions and comparing those with pre-existing legal standards; and second, working directly with factories, buyers, and worker representatives to address problems and achieve greater rights compliance.²¹³

²¹³ See Robertson et al., *supra* note 186, at 20.

Monitoring Processes

		<i>Current BFC Model</i>	<i>Proposed BFC Model</i>
M ₁	Physical Factory Inspection	✓	✓
M ₂	Offsite outreach to workers via workers' union representatives	✗	✓
M ₃	Follow-up audits to provide the basis for the public factory report	✗	✓

BFC today conducts only one monitoring process: periodic, unannounced factory visits (M₁). Our first two recommendations pertain to these unannounced visits, seeking to make the process less prone to manipulation by factory managers. In addition, we propose that BFC add two more monitoring processes to its overall repertoire: an offsite communication channel with workers and their representatives (M₂), and a follow-up audit (M₃) to monitor factories' progress implementing remediation measures. BFC sometimes does both M₂ and M₃ informally or in an ad-hoc fashion: we suggest that these processes be both routinized and standardized.

Recommendation #1: Expand Outreach to Workers and Unions

This first recommendation involves BFC's auditors identifying, prior to each factory visit, which unions are represented among the workforce, and making a point of reaching out to all of them as part of the inspection process. Taking action on this recommendation would require periodically contacting union confederation and federation representatives to solicit information concerning which unions have members working at each GMAC factory and maintaining a confidential database reflecting this data for use by the BFC monitors. BFC auditors could use this information during their unannounced factory visits to request private meetings with worker representatives from each of these unions and also to request information from unions about matters specifically related to labor relations and collective bargaining.

In particular, in addition to the questions about interference with freedom of association and anti-union discrimination which already appear on BFC's factory inspection survey, the union(s) could be asked whether: (a) bargaining occurs and, if so, if a collective bargaining agreement covering the factory is in place, and (b) there have been any disputes arbitrated between the factory and the union and, if so, whether the arbitration award has been implemented. For comparative purposes, similar questions could be asked of factory managers, and the results incorporated into factory reports. Finally, copies of collective bargaining agreements could be collected for analysis in BFC's synthesis reports.

If, for whatever reason, a worker representative from one or more of the unions operating in a facility is unavailable at the time of the inspection, BFC can always contact that representative via his or her confederation or federation head in Phnom Penh to schedule an off-site follow-up interview. In addition, if BFC's factory inspection identifies issues where additional interviewing of workers is necessary to reach findings, or if the union believes its members have pertinent information concerning a particular issue, the union could help arrange such interviews.

Recommendation #2: Reduce Opportunities for Factory Owners to Hide Violations

As described above, BFC auditors are sometimes required to wait for up to 45 minutes before being granted admission to a factory during an unannounced visit (see above, p. 49), ostensibly to give factory management the opportunity to verify the identity of the ILO monitors. Forty-five minutes is an excessively long time to wait, especially given BFC's well-established and widely recognized role and the fact that employers have already agreed to be monitored as a condition of their export license. More importantly, forty-five minutes is also sufficient time for a manager to temporarily cover up labor violations—for example, by sending away underage workers, unblocking fire exits, or coercing, coaching, or bribing workers and worker representatives to misrepresent labor conditions at the facility. At the very least, therefore, it is appropriate for BFC to indicate as part of its factory reporting just how long the BFC team was asked to wait at the factory gates, thereby calling attention to any unreasonable delays. BFC should also revisit the tolerable maximum wait time its monitors are kept outside the facility, bringing it more in line with reasonable standards (such as ten to fifteen minutes).

Many of the other recommendations, for example reaching out more systematically to labor representatives as part of factory inspections and eliciting their assistance to arrange offsite interviews with workers (Recommendation #1, p. 57) will also make it more difficult for unscrupulous factory owners to hide violations from BFC's scrutiny or intimidate workers into silence about ongoing violations.

Recommendation #3: Respond to Worker Complaints of Rights Violations

As discussed above (p. 53), BFC auditors already hand out business cards to workers and union representatives they meet during factory audits with a number to call in case workers face problems. BFC is also currently developing an automated cell-phone based call-in system that will further raise workers' expectations that BFC will process and address individual complaints.²¹⁴ Tucker and her colleagues nonetheless maintain, however, that BFC's current staffing and financial constraints mean that there is no way BFC could handle, much less take individual action on, the volume of calls these practices would generate if workers consider them to be anything like an individual complaints hotline. Unfortunately, at least some of the workers we spoke to already see the number²¹⁵ as just that—a BFC-run complaints hotline.

²¹⁴ *Mobile Phone Project for Garment Workers: Concept Note*, BETTER FACTORIES CAMBODIA, (date unknown – on file with authors) (describing the creation of an “Interactive Voice Response (IVR) system” designed “with the aim of giving workers a voice at all times, not only during monitoring visits and during advocacy activities . . .” where callers would first be given a short quiz to test their knowledge of Cambodian labor law and subsequently “asked to give an open answer in voice (and the system will record the voice) about the most important compliance challenge in the factory. . . .”). The Concept Note also states that “the information gained through this project will not be owned by the factory and thus may be collated and made public.”

²¹⁵ At the time that the team was conducting its research, plans for the release of the IVR toll-free call-in system—subsequently dubbed *Kamako Ch'nam*—were not yet public, and so this statement reflects workers' expectations only of the numbers listed on the auditors' business cards.

BFC's current monitoring process relies significantly on workers for information about factory conditions. The problem is that the contact between BFC and garment workers is entirely unidirectional: BFC auditors initiate the contact, direct the interviews or focus group discussions, decide when the interaction is complete, and analyze the results. Even the proposed *Kamako Ch'nam* call-in number is entirely automated, and the concept note provided states only BFC's intent to "collate and [make] public" the data generated,²¹⁶ which again leaves the individual caller without any indication that her case has been individually registered, communicated with relevant actors, or even included in the sector-wide collated data. This leaves the individual worker in the disempowered role of respondent, dependent on the auditor's directives on what information will be most useful for BFC, but without any ability to influence, or even know, what action(s) BFC will take in response.²¹⁷ To the extent BFC wishes to rely on the workers to also identify and guide BFC auditors towards issues of concern to workers, it needs to continue expanding opportunities for worker-initiated information flow.



²¹⁶ *Supra*, note 214.

²¹⁷ See Timothy John Rapley, *The Art(fulness) of Open-Ended Interviewing: Some Considerations on Analyzing Interviews*, 1 QUALITATIVE RESEARCH 303, 315-16 (2001), available at <http://qrj.sagepub.com/content/1/3/303>.

Given BFC's mandate, it is certainly understandable why workers or union activists might attempt to contact the program to report a labor rights violation at a garment factory. If BFC continues to hand out business cards with its contact information, and if indeed BFC launches the *Kamako Ch'nam* call-in number in March 2013 (expected),²¹⁸ Cambodian garment workers may conclude that BFC, in fact, has the capacity to respond to such calls. To the extent that our sample of workers was representative of Cambodian garment workers more generally, BFC should resolve this disconnect between its own capacity and the expectations workers have that the program should be directly accessible to them and their representatives.

The workers with whom we spoke told us of their desire to know what responses their complaints trigger. The appropriate response will vary depending on the nature of the complaint. For some problems, this response could be a clear confirmation that BFC will feed the complaint into a database informing future audits of that facility. In other cases, involving violations where a delayed response could result in permanent harm to workers or long-term chilling of their rights, a more expedited response, with appropriate follow-up with the original complainant, would be most appropriate. This response could involve both immediate fact-finding and/or a more problem-solving oriented response where BFC acts quickly to facilitate remediation. BFC should provide workers with an indication of the concrete actions it can undertake in response to a particular alleged violation. In some cases, the response might be merely an explanation of the reasons why BFC cannot take any action on the complaint while providing the worker with referrals to other organizations better situated to handle the problem.

No matter what the response, BFC would have to ensure that all complaints receive a response, and that the original complainant(s) be kept informed of what happened in response to the complaint. Absent such a case management system, responses to workers risk being ad-hoc, uncoordinated, or even inconsistent, which could then result in further frustration of the type the Stanford research team encountered during our focus group discussions with workers.

When we mentioned the idea of developing a formal complaint management system with Tucker, she responded that such a proposal was unrealistic under present conditions, given BFC's resource and mandate constraints. This raises the question, however, of whether BFC's current use of resources and monitoring methodology is the most effective and appropriate way to achieve the program's stated goals. The development of the proposed *Kamako Ch'nam* call-in number is a welcome, yet still incomplete step in the right direction, since even this initiative still does not envision a genuine two-way communication channel being opened between workers and the BFC. Being more responsive to, and devoting more time to gathering, information from workers about conditions that are *their* greatest concern—outside of the factory, where workers feel secure to speak freely and honestly—is at least as appropriate a use of resources as inspections of factories that rely heavily on interviews of employees in contexts where they are highly vulnerable to coercion and “coaching.”

Devoting some portion of staff time and resources to responding to worker complaints should add to both the program's effectiveness and to its credibility, *especially* in the eyes of Cambodian workers and worker

²¹⁸ Email communications with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, January 28, 2013.

representatives. Many of the most serious labor rights violations—such as unlawful terminations of union activists, or dangerous working conditions—require a highly expedited response. Without such a response, workers may face either permanent economic or physical harm, or irremediable violation of their rights. For example, when workers are terminated in retaliation for union activism, unless the terminations are quickly reversed and the workers reinstated, the result may be a long-term chilling effect on freedom of association in the factory as a whole.

Lack of transparency with workers and their unions about what actions BFC will take in response to their complaints harms both BFC and workers themselves. For BFC, the risk is primarily reputational; the more workers come to see BFC as unresponsive to their problems, the less likely they are to trust the organization as a whole. Moreover, workers and unions may be harmed if they rely on reporting violations to BFC as a means of securing remedial action that is not forthcoming, rather than taking other actions that might well compel factory owners to correct problems—such as complaining to buyers or seeking assistance from national or international trade union bodies or other labor rights groups.

The routine presence of BFC inspectors in Cambodian garment factories will continue to foster an implicit expectation among workers and unions that BFC should respond directly to their stated concerns about violations of worker rights, and perhaps that BFC will take at least some action to correct such violations. Even if BFC currently does not have the mandate or capacity to involve itself directly in enforcement efforts, it should nonetheless have a strategy in place to respond to such complaints within its current role as a fact-finding and reporting body. We believe that the development of a functioning case management system is essential if BFC is to carry out its monitoring and reporting work in a way that is credible to factory workers. If, for some reason, BFC chooses not to adopt such a mechanism, it must, at the very least, make sure that it does not create false expectations among workers by giving the impression that such a system actually exists.

Recommendation #4: Focus Follow-Up Factory Visits on Remediation of Violations

The final monitoring-focused recommendation is for all *follow-up* factory audits to involve a stand-alone analysis in which BFC auditors specifically revisit the violations and priority recommendations for remediation issued during the previous audit. This recommendation should be read in conjunction with **recommendation 6** (p. 65), **recommendation 7** (p. 65), and especially **recommendation 10** (p. 71) below, since it presumes a reinforced BFC mandate to focus on factories' remediation efforts, as well as the publication of factory reports detailing the factory's progress implementing those measures.

The BFC auditing protocol currently allows for only limited analysis of improvement or deterioration over time in factory conditions.²¹⁹ In BFC's own words: "by their nature [monitoring reports] reflect a snapshot of factory working conditions observed during the monitoring visit."²²⁰ The report reviewed by the Stanford team, for example, was the third monitoring visit to one particular factory. Judging from the report, however,

²¹⁹ ILO-BFC, IMS Question Flow Checklist 1 (reproduced in Appendix A). The checklist asks the auditor to list "Best Practices/Major progress made:," followed by three lines for handwritten notes. This is hardly enough space to genuinely capture longitudinal progress over time.

²²⁰ *Monitoring Process*, *supra* note 5, at 4.

it was impossible to discern whether there had been an improvement or worsening of conditions since the last visit.²²¹ The report showed that the factory failed to satisfy a majority of the labor standards against which it was assessed. However, it did not dedicate much room to the factory's performance over time. It also was unclear whether the problems identified in this visit were the same or different than those previously found at this factory. Finally, the report gave no indication whether the factory's buyers had taken any initiative to ensure that improvements were made.

The longitudinal track record of a factory matters, since the appropriate remediation and enforcement measures would likely differ depending upon whether the managers are taking meaningful steps to remedy labor rights issues. Since BFC's questionnaire does not substantially require its monitors to document whether the issues it raised in previous monitoring visits to the factory have been, or are currently being, addressed during subsequent visits, it is impossible from reading just one factory report to gain insight into the factory's commitment to the improvement of its standards, much less whether this commitment is being supported by the factory's buyers. This kind of insight can only come from having repeated access over time to a facility, something BFC as an institution clearly has.²²²

The timing of such follow-up visits would depend both on the nature of the violations found in the prior inspection or reported by workers, and on the corrective action plan that has been adopted by the factory and its buyers as a response. Where violations require an immediate response and prompt corrective action (such as anti-union retaliation or failure to pay owed wages), the period established for a corrective action plan to be adopted should be brief, and a follow-up visit should be made soon afterward to confirm its implementation. Where violations are to be remedied over an extended period of time (such as repairs to a factory's physical plant to correct health and safety problems that do not pose an immediate risk of bodily harm), then follow-up auditing of these issues could be conducted significantly later, perhaps in conjunction with the next regular assessment of the factory (M_1). In either case, the focus of the next inspection would be on the issues identified during the last visit to the factory. The inspection would result in a public factory report detailing a given factory's progress (or lack thereof) implementing proposed remediation steps (**recommendation 7**, p. 65).

²²¹ See BFC, Confidential Factory Report: Editing Report 2 (Feb. 13, 2012) (reproduced below, Appendix B) (the report contained only a hint of longitudinal monitoring of conditions at the facility: "Management and workers said that the factory still did not require workers to conduct a medical check-up before being employed."). *But see* Email communications with Jill Tucker, Chief Technical Adviser, Better Factories Cambodia, January 28-29, 2013 (where in response to this assertion, Tucker notes that the report cited above was an exception in this regard, and that in fact "almost all reports comment on issues that have been addressed or not addressed since the previous assessment.")

²²² May 30 Tucker interview, *supra* note 37. *Institutionally*, BFC has a longitudinal presence at GMAC factories; however, *individually*, BFC auditors are rotated whenever possible to not revisit factories where they have once in the past conducted an audit. This is done to avoid the possibility that one of the auditors develops an ongoing or even corruptible relationship with a particular factory management, but it also has the consequence that every auditing team looks at each factory being audited through fresh eyes.

Reporting Processes

		<i>Current BFC Model</i>	<i>Proposed BFC Model</i>
R ₁	Draft confidential factory report based on initial audit (M ₁) and review factory management objections (if applicable)	✓	✓
R ₂	Review audit findings with factory workers and workers' representatives and review worker objections	✗	✓
R ₃	Distribute factory report via IMS to factory management and buyers.	✓	✓
R ₄	Demand from buyers and factory managers a jointly submitted CAP/FIP, and review with worker representatives	✗	✓
R ₅	Publish public factory report detailing remediation efforts	✗	✓
R ₆	Public semi-annual synthesis reports	✓	✓

BFC today reports on its findings in two separate formats: individual factory reports and periodic synthesis reports. The former involves two analytically discrete and nearly simultaneous reporting processes: the sharing of the report with factory management (R₁) and with buyers (R₃). In addition, BFC compiles its collective experiences across all factories into periodic synthesis reports (R₆).

As indicated in the chart above, this report suggests three additional reporting processes: a resumption of the BFC's earlier practice of reporting back results to the factory workers (R₂); a demand that factories and buyers jointly submit to BFC a Corrective Action Plan (CAP), or, alternatively, hire BFC to jointly craft a Factory Improvement Plan (FIP) together with factory management and worker representatives (R₄); and finally, the publication of a public factory report detailing the results of the longitudinal monitoring process M₃ above (R₅).

With regard to R₁, we particularly note how generous that process is to factory managers. Under today's process, not only do factory managers have 5 days to review the reports confidentially before they are released to buyers,²²³ but they also have 21 days to submit official objections to the report that will be entered into the record and the opportunity to meet with BFC to discuss its findings. These opportunities to provide input are a striking instance of the lack of balance in BFC's reporting process. It is surprising, particularly in light of the program's formally tripartite structure, that worker representatives are currently not even allowed to view the reports, much less comment on their accuracy or completeness.

²²³ *Monitoring Process*, *supra* note 5, at 4.

The generosity of BFC's current practice with regard to factory managers inspires **recommendation 3** above (p. 58), and **recommendation 5** below (p. 64), pertaining to a similar proposed engagement processes with workers and their representatives—stakeholders whom we feel also deserve the opportunity to review and respond to the findings of BFC auditors. Not only will this afford these workers and unions the same opportunity for commentary currently enjoyed by the factory owners, but it would also help engage them more actively in the remediation process to follow.

Recommendation #5: Report Findings and Recommendations to Factory Workers and Worker Representatives

This recommendation seeks to rehabilitate a reporting process that BFC once practiced but has subsequently abandoned. In the chart above, this process is labeled R₂. As described above (p. 33), BFC used to return to factories to report to workers and their representatives about the nature of their findings during the factory audit. We are aware of no substantive reasons why this practice should have been abandoned.

In fact, the spread of internet access and online communication might make it possible for this practice to be revived in a less resource-intensive manner—by sharing reports in summary fashion electronically with worker representatives, identifying issues flagged by the inspection but keeping detailed findings confidential. For example, for the factory whose confidential factory report is described at various points in this paper, one could imagine BFC communicating to the respective labor



representatives that it had identified possible freedom of association violations, without listing the specific findings giving rise to this suspicion. This would enable worker representatives to spot whether particular issues of concern had been captured by the inspection, and, upon request, to be briefed in greater detail by BFC inspectors.

Re-opening lines of regular direct communication between BFC and garment workers (and their representatives) would address both the lack of clarity among workers about BFC’s mandate and program activities, and the concerns described above that BFC may be missing significant violations or proposing inadequate remedies to the violations it finds during its audits. Such direct communication could encourage workers and worker representatives to contact BFC during the proposed 21-day “worker input period” to provide additional relevant information pertaining to BFC’s audit or proposals concerning appropriate remedial measures (see **recommendation 3** above, p. 58).

Recommendation #6: Monitor and Report on Factory Remediation Plans

Below, we propose that BFC strengthen its involvement in factories’ remediation efforts (see **recommendation 10** below, p. 71). *This* recommendation pertains to the outcome of that engagement process, which we believe should be a remediation plan—agreed to by each factory, its buyers, and worker representatives—that responds to the findings in BFC’s inspection report. This plan would be requested from factory owners, buyers, and worker representatives, and summarized and published in the proposed public factory report (see **recommendation 7** below, p. 65). Where factory-owners, buyers or worker representatives fail to provide such a plan, this failure also will be noted in the proposed public report.

Recommendation #7: Publish Public Factory Reports Detailing Remediation Efforts

Of all the recommendations we propose, the most significant (but also the one potentially most controversial with factory owners and buyers) involves the publication of individual factory reports detailing factories’ progress remedying prior labor rights shortcomings.

According to our recommendation, BFC would feed the results of a follow-up monitoring visit (see **recommendation 4** above, p. 61) into a public report. Factory managers, workers, and their union representatives would be given the opportunity to register objections to the findings of the report and the BFC’s recommendations. BFC would retain the discretion either to act on these objections, by modifying its findings or recommendations, or to simply acknowledge them in the report.

The content of the public report would consist of (1) some **basic background information** on the factory and BFC’s monitoring methodology, in addition to those already included in current individual factory reports; (2) the original **findings** giving rise to the remediation recommendations; (3) the **remediation strategy** developed by the factory management and buyers to remediate the problems identified; and (4) the **progress report** documenting any improvements that BFC monitors found on their follow-up visit.

To encourage factories and buyers to make good-faith efforts to improve working conditions, factory managers and buyers should be credited when they have made meaningful improvements.²²⁴ However, if no such progress has been made, or if BFC finds that either the factory managers or the buyers have disregarded the need to adequately remedy labor rights violations, or that buyers whose products were identified during the inspection did not purchase the report or engage in the remediation process, those

²²⁴ Interview with Michael Hsu, *supra* note 183.

facts too should be documented in the public factory reports. Assuming the factory and its buyers have taken measures to correct previously identified violations, the public report generally would not detail new labor violations found in the follow-up visit.²²⁵ To incentivize remediation, these new violations would again be communicated first to the factory and its buyers in the monitoring process M₁.

BFC should hold both the factory managers and buyers accountable for their remediation efforts. If Loo is correct in his assessment that international brands' typical response to labor problems is either to "cut and run" or to insist that they bear no responsibility to help solve the problem, BFC should highlight such problematic conduct in its public reporting. If buyers are as serious as they say about their commitment to responsible apparel production, they should be willing to demonstrate this publicly.

Buyers' commitment to worker rights must be more than just rhetorical, and must go beyond a mere insistence that suppliers comply with buyers' codes of conduct. Instead, buyers must also ensure the remediation of violations when they occur in their supply chains.

Content of the Public Factory Reports	
1	<i>Additional factory statistics</i> • <i>How long are monitors kept waiting at factory gates?</i> • <i>How long did inspection take?</i> • <i>How many workers were interviewed on-site / off-site?</i> • <i>How many workers were interviewed in individual interviews vs. group settings?</i> • <i>Have Arbitration Council decisions involving this factory been implemented?</i> • <i>From which unions were representatives interviewed?</i> • <i>Is there a collective bargaining agreement at this facility?</i> • <i>What are the employment contracting practices (number of workers employed on FDCs vs. UDCs)?</i> • <i>Which buyers purchase from this factory?</i> • <i>Are codes of conduct posted in the factory?</i> • <i>Does the factory subcontract core production work (i.e., assembly, rather than embellishment, of garments)?</i>
2	<i>Recommendations for remedial action made during initial factory visit, complete with findings and (if applicable) any factory/worker commentary on the issue subsequent to the visit.</i>
3	<i>Corrective Action Plan (CAP) or Factory Improvement Plan (FIP) (depending on whether factory & buyer(s) decided to submit their own CAP or engage with BFC to generate an FIP).</i>
4	<i>Detailed results of follow-up audit regarding factory's remediation agenda, detailing progress made or not made, and efforts of factory management/buyers to achieve those results.</i>

²²⁵ An exception should be made if the new violations are in the exact same area as the remediated ones. For example, if a factory manager first fires union activists, then reinstates them subsequent to a BFC audit, but then fires additional union activists, these new firings should be reported in a BFC follow-up report, since they are related to the initial violations. If the new violations were substantively unrelated, on the other hand, the factory should have the opportunity to remediate first before having those violations publicized by BFC.

If BFC finds that a factory refuses to correct violations or, having agreed to remedial measures, fails to implement them, BFC should inquire and report whether or not the factory's buyers have taken measures to enable and incentivize compliance. This is especially the case in light of the uneven distribution of profits in the global apparel industry, where brands and retailers are by far the most profitable players, and thus economically much better positioned to contribute to the remediation process.

BFC's current approach, however, gives buyers all the reputational benefits of being publicly associated with BFC, without subjecting them to any scrutiny with regards to the ways in which their purchasing practices either directly or indirectly contribute to the labor rights violations in Cambodian garment factories. Reporting on the buyers' contribution (or lack thereof) to the remediation process would incentivize brands to correct violations identified by BFC.

Even though the publication of longitudinal factory reports will likely prove controversial among factory owners and buyers, BFC's gathering of such information should not. The Memorandum of Understanding that BFC signs with factories participating in its program includes the following section (reproduced in full in Appendix E).

5. Reporting

Better Factories Cambodia provides individual factory reports as well as synthesis reports in Khmer, Chinese or English. Individual factory reports include . . . suggestions to address specific non-compliance issues, and ***track progress implementing these suggestions***. Individual factory reports are accessible only to the factory and to any buyers or others granted access in writing by the factory (e.g. buyers, vendors).²²⁶

In order for BFC to begin publishing such longitudinal factory reports, BFC must first revisit the last sentence of this MoU. One way to begin this process would be to change the default option for factories on how to grant third parties access to the *longitudinal* factory reports (R₅).

As the sentence currently reads, factory managers must opt in to grant third parties access to factory reports. The presumption is that, absent such specific consent, the factory reports are shared only with the factory managers. Factory reports only become available to the third parties whom factory managers designate, which, in every case we know of, has consisted only of current and potential buyers from that factory.

Under ordinary circumstances, it is reasonable that factory reports remain confidential at this stage so that factory owners, buyers, and worker representatives can develop a remediation plan for any violations that are identified (R₃). The only exceptions to this baseline would be for extraordinary cases—such as very severe rights violations or those committed on a nationwide or industry-wide scale—where it would be necessary that BFC report publicly from the outset and on an expedited basis.

²²⁶ *Memorandum of Understanding*, *supra* note 157, at Annex 3.

Because it is likely that many factory owners may resist amending the MoU to permit BFC to publicly release follow-up reports on factory inspections, implementing this recommendation may take some time and significant political will. Over the past decade, however, the track record for BFC's previous leadership has been either to stop short of running the program in a fully transparent manner²²⁷ or to remain publicly silent while the government or GMAC consider regulations obviously designed to render the program even less transparent. A clear position by BFC in favor of public release of follow-up reports, even if not immediately implemented, would be an important step in the right direction.

Recommendation #8: Make Public Synthesis Reports More Relevant to Key Labor Issues

The most recent two synthesis reports published under Tucker's leadership featured some positive changes over those published prior to her arrival. Prior to these most recent reports, BFC's synthesis reports largely comprised compilations of data from factory inspections with limited analysis or discussion of other trends, events, or developments in Cambodia's labor rights environment. The most recent reports included helpful interpretations of these statistics, plus a clearer picture of what BFC as a program has been doing to address key issues. At several points in these more recent reports, for example, BFC mentioned the mass worker faintings in Cambodian garment factories²²⁸ as well as other serious issues such as union discrimination,²²⁹ failure to provide maternity benefits,²³⁰ and child labor.²³¹ At several points in those reports, BFC drew on its own data to focus debate on possible responses. Such a thematic focus for synthesis reports is a welcome change from past reports.

BFC's most recent synthesis reports also give more insight into what the program is doing to address labor rights violations. The Conclusion and Next Steps section of BFC's 28th report included considerable information about BFC's activities that previously had not been included in the synthesis reports. So, for example, we learned that in response to the major labor rights themes described in the summer 2012 report, BFC had:

- Commissioned further research into the fainting incidents,²³² and launched awareness raising initiatives on how to prevent such fainting episodes;²³³
- Fielded calls and responded to worker/union inquiries;²³⁴

²²⁷ See Kolben, *Trade*, *supra* note 12, at 104-05, 107 (describing past Chief Technical Advisers' resistance to fully transparent actions, even when their mandate explicitly allows them, "likely stem[ing] from a desire to avoid politically challenging positions where illegitimate unions exist, and where there are close and politically charged relationships between the unions, the state, and employers.").

²²⁸ See BFC, 27TH SYNTHESIS REPORT, *supra* note 91, at 1, 6, 9-12; BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 1-2, 8, 11-14, 16.

²²⁹ BFC, 28TH SYNTHESIS REPORT, *supra* note 1, at 4, 10-11, 16.

²³⁰ *Id.* at 2, 5, 9, 15.

²³¹ *Id.* at 2, 10-11, 15-16.

²³² *Id.* at 1.

²³³ *Id.* at 16.

²³⁴ *Id.* at 3.

- Participated in Inter-Ministerial Consultation on Prison Labor;²³⁵
- Engaged with GMAC and the RCG on instances of child labor,²³⁶ developed specialized training materials, and delivered trainings to over 300 participants.²³⁷

In addition, BFC contextualized what happened during the half-year period covered by the report by adding extra information about:

- Context of social unrest in the country;²³⁸
- Industry statistics and trends;²³⁹
- Arbitration Court outcomes;²⁴⁰
- The way in which buyer purchasing practices can put pressure on factory managers to force their workers into involuntary or excessive overtime.²⁴¹

We recommend that BFC add to this list of contextual information. Additional data that would enable observers to evaluate the industry's progress on key labor rights issues might include:

- The percentage change in the value of the legal minimum wage since the last synthesis report;
- The percentage change in the Consumer Price Index (CPI) since the last synthesis report;
- The percentage change in the Food Price Index (FPI) since the last synthesis report;
- The number and percentage of factories experiencing fainting incidents in the past reporting period and the number of workers affected;
- The overall number (and industry-wide percentage) of factories operating with a Collective Bargaining Agreement (CBA);
- The number and percentage of such CBAs providing wages or benefits above the legal minimum;
- The number of past arbitration awards either implemented or yet-to-be implemented by employers;
- The number and percentage of factories inspected with a majority of workers employed on FDCs;
- The number and percentage of factories adhering to the two-year legal cap on the employment of workers on FDCs;
- The number and percentage of factories reporting receiving higher prices from buyers, plus the average percent increase in those prices; and
- The overall annualized turnover rate among buyers doing business with inspected factories since their previous inspections.

²³⁵ *Id.* at 5.

²³⁶ *Id.* at 15-16.

²³⁷ *Id.*

²³⁸ *Id.* at 4.

²³⁹ *Id.* at 4, 7-8.

²⁴⁰ *Id.* at 4-5.

²⁴¹ *Id.* at 15.

Focusing synthesis reports thematically on particularly salient labor rights issues could address the concerns that BFC is remaining silent on pressing matters affecting Cambodian workers without deviating from BFC's core mandate of objective monitoring and reporting. This could make the synthesis reports a more useful lens through which to evaluate the overall progress of efforts to promote worker rights in the Cambodian garment industry.

In order to make the aggregate data in the synthesis reports more useful for tracking sector-wide progress, we also recommend that it be presented systematically over time. Currently, the report highlights different data each period, leaving those interested in following a particular issue over time with incomplete and sporadic data to use for their analysis. As BFC monitors this data on an ongoing basis, it should provide readers with a complete dataset to work with, presented in a consistent format. To preserve the readability of the reports, this data could be included in an appendix or a publicly downloadable dataset.

Recommendation #9: Re-Introduce Factory Specific Information into Synthesis Reports

As discussed above (p. 30), BFC synthesis reports before 2006 not only listed the factories audited during a given reporting period by name, but also identified specific factories that failed to remedy violations of labor standards identified by BFC during previous monitoring visits. This past practice introduced a crucial element of transparency that incentivized the RCG and garment factory owners to focus on improving worker rights. In 2006, BFC changed this practice such that today the synthesis reports contain only aggregate-level data about the Cambodian garment sector.

These changes must be undone. Not only is BFC today less transparent than it was at its formation, but it also is less transparent in this regard than newer Better Works programs that were partially inspired by the BFC model (see Haiti Better Works Program reports, for example),²⁴² as well as other leading factory-monitoring programs, such as the WRC and FLA. There is no discernible reason—other than politics and industry lobbying efforts, perhaps—why BFC should have ended a practice that clearly incentivized progress on labor rights compliance.

The MoU that BFC signs with participating GMAC factories specifically allows for the publication of such factory-specific information in BFC synthesis reports:

5. Reporting

[...]

Synthesis reports are publicly available, and include, for example, ***easy-to-read graphs showing progress by individual factories on compliance***, key industry-wide compliance issues, and data regarding the number of workers employed in garment factories.²⁴³

²⁴² See generally BETTER WORK HAITI, 3RD BIENNIAL REPORT UNDER THE HOPE II LEGISLATION (Oct. 16, 2011), *available at* <http://betterwork.org/global/?p=864>.

²⁴³ *Memorandum of Understanding*, *supra* note 157, at Annex 1 (emphasis added).

In light of this, we recommend that BFC reports include an appendix similar to that of the Better Work Haiti synthesis reports. In compiling that appendix, BFC should adopt a similar methodology and format as the Better Work Haiti program to allow for easy comparisons across national programs. See Appendix F for an extract of one recent Better Work Haiti synthesis report.

As a crucial addition, we recommend that this information should indicate which buyers are doing business with these factories. Failing to provide such transparency perpetuates the current practice of placing responsibility for remediation solely on factories rather than expressing this as a shared duty of factory owners and buyers.

Remediation Processes

		<i>Current BFC Model</i>	<i>Proposed BFC Model</i>
RM ₁	Offer BFC training services to develop FIP	✓	✓
RM ₂	Absent RM ₁ , require submission of CAP detailing remediation strategy	✗	✓

Recommendation #10: Engage with Factory Owners, Buyers, and Worker Representatives in the Remediation Process

Whether by mandate, by choice, or by virtue of its limited resources, BFC currently does not scrutinize factories' remediation efforts. However, there are some simple and relatively low-resource steps BFC can take to incentivize factories and their buyers to ensure that violations are remedied, and to engage with worker representatives in this process. We recommend for BFC to present buyers and factory managers with a choice among three options:

Option A: (RM₂) Factories, buyers, and worker representatives jointly present to BFC a Corrective Action Plan (CAP), drawn up independently, detailing how they plan to respond to BFC's findings of violations. This CAP should be concrete in its terms and timeline, realistic in its ambition, and firm in its commitment, from both factory managers and buyers.

This option is no different than the option factories currently have,²⁴⁴ except that BFC would require the CAP to be submitted *jointly* by the factory and its buyers. This process would presumably commence with a clarification meeting of BFC, factory managers, buyers, and worker representatives in which the parties discuss the audit findings and develop the CAP. Furthermore, the process would also have to live up to the minimum

²⁴⁴ *Monitoring Process*, *supra* note 5, at 4.

standards set by the BFC advisory services, which are very specific about the need to develop and implement a remediation plan jointly with genuine worker representation.

Option B: (RM₁) Factories and their major buyers can forego the above submission and opt instead to use BFC's advisory services.

Again, these services are already available at cost to factories and their buyers, and thus would require no expansion of existing BFC resources or any change in its mandate. The process would likely begin with a clarification meeting of BFC, the factory managers, the buyers, and worker representatives in which the scope of BFC's advisory services would be jointly determined. This process would then involve BFC's independent training unit providing the factory and its workers with advisory services designed to remedy the shortcomings identified by the BFC auditors.

As described in its promotional materials, BFC's advisory services are built around the inclusion of worker representatives in the remediation process. The engagement process transpires over the course of a twelve-month period. Since certain labor rights violations can result in irreparable harm to workers if not urgently remedied, however, BFC should also advise that in some cases its recommendations should be implemented on a more expedited basis.

Option C: Factories and their major buyers can ignore both Options A and B, in which case they would accept that BFC would publicize that decision in the public factory reports (see **recommendation 9** above, p. 65).

According to our research, many factories and buyers unfortunately *already* ignore BFC's recommendations on how to address labor rights violations, and many buyers do not even purchase BFC's factory reports. Under our proposed model, their choice to do so would simply be made public.

If BFC begins to publish longitudinal factory reports that include descriptions of factories' and buyers' efforts to remedy violations, we expect that incentives for reputation-sensitive buyers to engage in genuine remediation efforts would increase. Greater scrutiny would give both factories and buyers a greater incentive to make tangible improvements in working conditions, while shining a spotlight on those factories and buyers that refuse to remediate violations or approach this responsibility halfheartedly.

Expected Results

The above recommendations are long and detailed; however, they can be summarized as a set of reforms intended to restore and expand BFC's transparency while improving its investigative methods and making it more responsive to the needs of garment workers and their union representatives. This paper concludes with a number of outcomes one might expect if BFC implements some or all of these measures.

Greater Buyer Accountability

Whether implicit or explicit, the promise of greater orders from buyers, and the corresponding risk of losing them as a result of reputational damage, has always been a primary source of BFC's support from both government and industry. The knowledge that buyers, via BFC factory reports, have access to information about substandard conditions can be an important motivator for remedial action by factory managers.²⁴⁵ Buyers exert pressure on garment factories to improve working conditions when brands themselves are concerned about their reputation.²⁴⁶ According to Tucker, when factories monitored by BFC make efforts to implement suggestions from BFC's individual factory reports, it is often because those factories have reputation-sensitive buyers.²⁴⁷

But what is it that makes a brand name buyer reputation-sensitive? More than any positive value from "doing the right thing," companies are motivated by the *negative* repercussions when its consumers learn of bad labor practices taking place along their supply chains, and when those consumers subsequently decide to stop buying goods from that company.²⁴⁸ Surveys have found that American consumers are willing to pay more for goods produced under good working conditions.²⁴⁹ In particular, one study has

²⁴⁵ Interview with Michael Hsu, *supra* note 167 (describing his efforts to expand the factory's premises to provide better ventilation and more space for the workers, because a major US-based retail store would not place any orders with his factory unless the ventilation for at the factory was improved); see also Chikako Oka, *Accounting for the Gaps in Labour Standard Compliance*, 22 EUR. J. OF DEV. RES. 59, 74 ("[T]he gap in compliance performance appears to stem from reputation-conscious buyers' tendency to rigorously regulate supplier compliance performance through pre-order selection and post-order enforcement, both reactively and proactively.").

²⁴⁶ Kolben, *Trade*, *supra* note 12, at 105-6.

²⁴⁷ May 30 Tucker interview, *supra* note 37.

²⁴⁸ Kolben, *Trade*, *supra* note 12, at 105-06; Wells, *supra* note 12, at 363; Kevin Tan, *Profits with Principles: Being Socially Responsible Can Pay*, INSEAD KNOWLEDGE (Sept. 17, 2009) <http://knowledge.insead.edu/csr-levi-strauss-090916.cfm> (summary of comments by John Anderson, former President and CEO of Levi Strauss & Co.) ("We believe consumers will continue to vote with their wallets and support companies who embed their values in their products and work to create positive changes in the world.").

²⁴⁹ See KIMBERLY ANN ELLIOTT & RICHARD B. FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? 29-35 (2003). See generally PIETRA RIVOLI, THE TRAVELS OF A T-SHIRT IN THE GLOBAL ECONOMY (2009).

found that 75 percent of Americans would avoid retailers they knew sold goods produced in sweatshops.²⁵⁰ These results from surveys are supported by a recent empirical study finding that eBay shoppers are willing to pay a premium of 45 percent for polo shirts bearing labels stating that they were produced under ethical labor standards.²⁵¹ When it works, such reputational sensitivity gives brands a strong economic incentive to take actions that will help avoid labor rights violations and to remedy problems if and when they do occur.

These consumer-driven incentives are diminished, however, when the public does not have ready access to information about rights violations taking place along a company's supply chain. In the absence of independent and transparent information about the conditions in the factories where their clothes are stitched together, brands can describe their labor practices and policies however they wish.

In the case of Cambodia, BFC plays an important role as a leading source of information about labor conditions in the country's garment factories. Unfortunately, BFC currently provides consumers and other interested parties with no information linking actual conditions in specific garment factories to the purchasing practices of particular brands. The more BFC can make such information available, the more it will be able to restore the incentives for improved labor rights performance that existed in the Cambodian garment industry from 2000 to 2005 when the program was at its height of effectiveness.

Fairer to Individual Factory Owners

The recommendations we propose also promise to be fairer to the managers of individual factories. As Ken Loo from GMAC expressed to us during an interview in Phnom Penh, GMAC is not opposed to the publication of factory reports if guarantees can be added that international buyers will not withdraw orders ("cut and run") in response to a particularly negative allegation in one of those reports.²⁵² Indeed, BFC currently sheds no light on the ways in which the brands also share some responsibility for persistently poor working conditions in Cambodia, and defines remediation as the sole responsibility of the factory owners. This structure belies the reality of the garment industry, in which the greatest power and largest profits lie with the international buyers, not factory managers. International brands should not enjoy the reputational advantages of association with BFC unless they are willing to invest in improvements to the working conditions of those whose labor contributes to their profits.

The existence of publicly available factory reports would benefit those factory owners who invest in securing higher labor standards at their premises. For *these* factories, greater transparency and more publicly available information allowing for comparison of the labor practices of individual factories in Cambodia will allow them to capitalize on that distinction. The manager we spoke to described for us how

²⁵⁰ ARCHON FUNG, DARA O' ROURKE, & CHARLES SABEL, *CAN WE PUT AN END TO SWEATSHOPS?* (2001).

²⁵¹ Michael J. Hiscox et al., *Consumer Demand for Fair Labor Standards: Evidence from a Field Experiment on eBay* (SSRN working papers series, April 12 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1811788; see also Howard Kimeldorf et al., *Consumers with a Conscience: Will they Pay More?* 5 CONTEXTS 24 (2006).

²⁵² Interview with Ken Loo, Secretary General, Garment Manufacturers Association of Cambodia, in Phnom Penh, Cambodia (May 29, 2012).

he would use transparent factory reporting to highlight what he felt was his own factory's comparative advantage in labor standards, and thereby cultivate longer-term and more profitable relationships with reputable brands that seek to purchase goods produced under rights-compliant conditions. BFC should seek to incentivize such forward-thinking strategies among factory owners, instead of continuing with a policy of nontransparent reporting that effectively shields factories with lower standards from public scrutiny.

More Effective Advocacy by Unions

As representatives of Cambodian workers, unions bear the most immediate right and responsibility to advocate for workers, and are best positioned to facilitate the flow of accurate information about factory conditions to BFC inspectors. For this reason BFC and the trade unions each have the potential to enable the other to do their respective work more effectively. Our research found, however, that this potential is not currently being realized.

Most of the labor representatives consulted for this report called for BFC to engage in more transparent reporting practices.²⁵³ As one federation representative stated, if BFC produces factory reports but does not publicize them, it is like “cooking the rice but being unable to eat it.”²⁵⁴ Another representative recognized that, although BFC itself does not have the power to enforce labor laws, it can make the factory reports public so that other stakeholders, including the MoL and the unions, can seek enforcement in line with *their* mandates.²⁵⁵

When specifically asked how they would use more transparent reporting, the union representatives provided constructive examples. Several unions acknowledged that, since ILO-BFC enjoys a reputation as an independent, credible organization, a BFC report highlighting factory violations could provide strong objective evidence in unions' negotiations with factory managers, as well as in cases before the Arbitration Council.²⁵⁶ In addition, the findings in public factory reports could usefully inform policy discussions among unions, employers, and the government.²⁵⁷ Providing unions with such information would help to diversify their repertoire of advocacy tools, potentially decreasing the common perception among Cambodian workers and unions that strikes are “the only tool [they] have” in promoting worker rights,²⁵⁸ and inure to the overall improvement of industrial relations.

Greater Credibility with Workers

The above recommendations would also address the recent erosion of BFC's credibility among workers. By engaging specifically with workers and their representatives (**recommendation 5**, at p. 64), BFC can begin to

²⁵³ May 28 focus group, *supra* note 179.

²⁵⁴ *Id.* (C.CAWDU representative).

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.* (CCU representative).

reverse this process and gather valuable feedback about what further improvements and reforms to the program are needed.

A More Effective BFC

Finally, our recommendations would result in a more effective BFC. One of the major findings of this study was that while BFC regularly identifies labor rights violations in the factories it monitors, it does not currently share that information with those who would ensure effective action to remediate those problems. BFC's nontransparent reporting practices and its silence on remediation efforts by factories and buyers make it less effective for promoting worker rights than it could be.

We are concerned that should BFC fail to adopt the reforms proposed here, the program is unlikely to make significant progress in overcoming the very serious and growing labor rights problems that face Cambodian garment workers today. We believe that without such reforms, BFC's current black box approach to factory monitoring and reporting will impede such progress. As it currently operates, the program permits the most directly responsible parties—individual factory owners and the international brands and retailers who purchase their products—to claim they are addressing these problems, without being held publicly accountable.

As we have noted, programs like BFC are necessarily limited in their ability to end such violations so long as they focus solely on the conduct of factory owners and fail to address buyers' commercial practices—most notably pricing, order volumes, and durability of supplier relationships—that currently act as a powerful incentive to their commission. Nevertheless, the recommendations made in this report have the potential to enable BFC do its current work of factory monitoring and reporting in a fashion that would be more responsive to garment workers, and would do more to hold both factory owners *and* buyers accountable for conditions under which their products are made.

Cambodian garment workers and their union representatives have stated repeatedly that they *want* and *need* a BFC that is responsive to them and transparent in its work. Our hope is that by making the changes enumerated above, BFC will rise to those expectations and continue to be a key driver for worker rights in Cambodia.



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Appendix A

IMS Question Flow Checklist ILO Better Factories Cambodia

Factory Name: _____

Monitor 1: _____

Date of Visit: _____

Monitor 2: _____

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Factory Information

Starting date of operation:

Office Staff:

International Staff:

Hours of Operation (all shifts):

Production process(es):

Products produced:

Best Practices/Major progress made:

Recommended Priority Action:

Other:

CONTRACTS**Internal Regulations**

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
1.	Does the factory have internal regulations (IRs)?	Y	N				LL 22, N.14/02
2.	IRs comply with the labour law?	Y	N				LL 23, 25; N.14/02
3.	Were worker representatives consulted on the IRs when they were written or amended?	Y	N				LL 24, 284; N.14/02
4.	IRs posted in the workplace?	Y	N				LL 29; N.14/02; C.40/98
5.	IRs legible?	Y	N				LL 29; N.14/02
6.	IRs approved by a Labour Inspector?	Y	N				LL 24; N.14/02
7.	IRs on training of apprentices?	Y	N	N/A			P.004/00, Annex I
8.	IRs on apprentices comply with Cambodian Labour Law?	Y	N				P.004/00, Annex I
9.	IRs on apprentices posted in the workplace?	Y	N				LL 29; P.004/00, Annex I, 40/98
10.	IRs on apprentices legible?	Y	N				LL 29; 004/00, Annex I

Employment Contract

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
11.	How many workers are working in the factory?						
12.	Total workers						
13.	Male workers						
14.	Regular workers						
15.	Casual workers						
16.	Do workers have to pay someone to get a job?	Y	N				
17.	Does management (Mgt) require workers to: ☐ post a bond or ☐ provide a cash guarantee in order to sign or ☐ maintain an employment contract?	Y	N				LL 44
18.	Do workers undergo a medical examination before being employed?	Y	N				LL 247, P.09/94
19.	Does Mgt pay for workers' medical examinations?	Y	N				LL247; P.09/94
20.	Does Mgt use any written employment contracts?	Y	N				LL 65
21.	UDCs						
22.	Regular workers ☐						
23.	Probationary workers ☐						
24.	Casual workers ☐						
25.	Apprentices ☐						
26.	Employment contracts (ECs) written in Khmer?						
27.	ECs specify the terms and conditions of employment?	Y	N				LL 67
28.	Does Mgt give workers a copy of the contract?	Y	N				
29.	ECs comply with Cambodian labour law?	Y	N				LL 65
30.	Do the EC comply with the factory's IRs?						
31.	Do workers understand the terms and conditions of employment?	Y	N				LL 67(4)
32.	Are casual workers only hired to do specific work for a short period of time?	Y	N	NA			LL 9

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33.	Probation for longer than 3 months?	Y	N	NA			LL 68; N.017/00
34.	Apprentices train for longer than 2 months?	Y	N	NA			P.004/00; N.06/97
35.	Apprenticeship contracts comply with the law?	Y	N	NA			LL 52, 53; P.004/00
36.	Mgt arbitrarily change the employment status of workers? (e.g., from regular to probationary)	Y	N				LL 65
37.	Use rotating short-term duration contracts as a way to avoid providing worker's entitlements to ☐ maternity leave ☐ attendance bonus, ☐ seniority bonus, and/or ☐ annual leave?	Y	N	NA			LL 9, 73; N.017/00
38.	All workers who are employed for longer than two years total to be employed under an UDC?	Y	N	NA			LL 67; AC:10/03
39.	Disciplinary sanctions proportional to the seriousness of workers' misconduct?	Y	N	NA			LL 27

Termination of Employment Contracts/Suspension of Work

Nr	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
40.	Does Mgt only terminate workers for valid reasons?	Y	N	NA			LL 27, 73, 74
41.	Does Mgt pay terminated workers their wages for days they already worked?	Y	N	NA			LL 102, 116
42.	Does Mgt pay workers for their accrued annual leave (when workers resign, their contracts expire, or they are terminated)?	Y	N	NA			LL 166, 167
43.	Has Mgt terminated any workers' FDCs, or have any FDCs expired?	Y	N	NA			
44.	Does Mgt give workers proper notice of termination before their contracts expire when workers' contracts are not renewed? (only for contracts of longer than 6 months; no agreement to terminate; no serious misconduct by worker)	Y	N	NA			LL 73
45.	Does Mgt renew workers' contracts for the same fixed term when Mgt fails to give workers proper notice of termination before their contracts expire?	Y	N				LL 73
46.	Does Mgt pay workers severance pay equal to at least 5% of the total wages paid under the contract when workers' contracts expire or are terminated?	Y	N				LL 73
47.	Is there a collective agreement that provides for workers' severance pay upon termination?	Y	N				LL 73
48.	Does Mgt pay workers severance pay in accordance with the collective agreement?	Y	N				LL 73
49.	Does Mgt pay workers their wages owed through the end of the contract when Mgt terminates contracts before they expire? (if no serious misconduct and no agreement to terminate)	Y	N	NA			LL 73
50.	Has Mgt terminated any UDCs?	Y	N	NA			
51.	Does Mgt give workers the correct amount of notice before terminating their contracts? (no serious misconduct by worker)	Y	N				LL 74, 75
52.	Does Mgt pay workers the wages they would have earned during the notice period when Mgt fails to give workers proper notice? (no serious misconduct by worker)	Y	N	NA			LL 75, 77
53.	Does Mgt pay the correct indemnity for dismissal? (no serious misconduct by worker)	Y	N	NA			LL 89, 90, 110; AC: 27/03, 29/04
54.	Does Mgt pay damages if workers are terminated without a valid reason?	Y	N	NA			LL 91

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55.	How many suspensions of work have there been since the last visit? (including partial and total suspensions)	☐ 1 _____	☐ 3 _____	☐ 5 _____	
		☐ 2 _____	☐ 4 _____	☐ 6 _____	
56.	Were the suspensions	☐ Partial	☐ Total	☐ Both	
57.	How many total days was work suspended since the last visit? (including during partial and total suspensions)				
58.	Does Mgt notify the labour ministry before suspending work due to economic, material, or other unusually difficult problems?	Y	N	NA	LL 71
59.	Does Mgt continue to provide accommodation to workers while work is suspended?	Y	N	NA	LL 72

WAGES

Informing Workers/Record Keeping

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
60.	Has Mgt posted minimum wage information in the workplace?	Y	N				LL 109
61.	Does Mgt explain to all workers the items that make up their wages and the terms of payment before workers start work?	Y	N				LL112; AC14/03
62.	Which workers do not have their wages explained before they start work?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					LL112; AC14/03
63.	Does Mgt provide clearly written pay slips to workers?	Y	N				LL 112
64.	Do the payslips accurately reflect the hours actually worked and the wages actually paid to the workers?	Y	N	NA			LL 112
65.	Do workers understand the calculation of wages?	Y	N				LL 112
66.	Does Mgt keep a detailed payroll ledger in Khmer that is easy to understand?	Y	N				LL 39-41; P.269/01
67.	Does Mgt include the starting dates for workers in the payroll ledger?	Y	N	NA			LL 31-41; P.269/01
68.	Does the payroll ledger accurately reflect the wages actually paid to workers?	Y	N	NA			LL 31-41; P.269/01

Minimum Wage, Overtime, Sunday, Public Holiday, and Night Work

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
69.	Is the piece rate set at a level that permits a worker of average ability working normal hours to earn minimum wage?	Y	N	NA			LL 108
70.	Does Mgt pay workers from the date they start work, including during the pre-trial period?	Y	N				LL 102
71.	Does Mgt pay all workers at least the correct minimum wage for ordinary hours of work?	Y	N				
72.	Which workers are not paid at least the correct minimum wage for ordinary hours of work?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					
73.	Does Mgt pay all workers 150% of their normal pay for overtime work performed on a normal weekday before 22:00?	Y	N	NA			LL 139; P.80/99; LL 10
74.	Which workers are not paid 150% for normal overtime work?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					
75.	Does Mgt pay all workers double for work at night (between 22:00 and 05:00)?	Y	N	NA			LL 139; P.80/99; AC024/99
76.	Which workers are not paid double for night work?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					
77.	Does Mgt pay all workers double their normal pay for work during weekly time off (Sunday)?	Y	N	NA			LL 139; LL 10
78.	Which workers are not paid double for work on Sunday?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					

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79.	Does Mgt pay all workers one day's pay in addition to their normal daily wage when they work on public holidays?	Y	N	NA			LL 164; P.10/99; LL 10
80.	Which workers are not paid one day's pay (in addition to their normal daily wage) for work on public holidays?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					
81.	Does Mgt pay all workers their daily wage when they do not work on public holidays?	Y	N				LL 163; P.10/99
82.	Which workers are not paid their normal wage on non-working public holidays?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					
83.	Does Mgt pay all workers 1,000 Riels for a meal or give them a reasonable free meal if they work overtime?	Y	N	NA			N. 017/00
84.	Which workers are not paid 1,000 Riels for a meal?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					

Bonuses

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
85.	Does Mgt pay all workers who work regularly the attendance bonus of \$5 per month?	Y	N				N. 017/00
86.	Which workers are not paid the attendance bonus?	☐ Regular workers ☐ Piece rate workers ☐ Probationary workers ☐ Casual workers ☐ Apprentices					
87.	Does Mgt pay workers the correct seniority bonus?	Y	N				N. 017/00
88.	Which workers are not paid the correct seniority bonus?	☐ Regular workers ☐ Piece rate workers ☐ Casual workers					

Deductions from Wages

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
89.	Does Mgt make any unauthorized deductions from workers' wages?	Y	N				
90.	What does Mgt deduct?						
91.	☐ disciplinary fines (LL 28)	☐ the cost for materials (LL 127)			☐ the cost of a bond or guarantee to get or keep the worker's job (LL 44)		
92.	☐ more than the daily wage for a worker's unauthorized absence(LL 28)	☐ more than the cost to replace the worker's ID card (LL 28, 127; AC30/03)			☐ other unauthorized deductions		
93.	☐ the cost to replace worn out tools or equipment (LL 127)						

Payment of Wages

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
94.	Does Mgt pay workers at least once per month?	Y	N				LL 116
95.	Does Mgt pay workers a day early when payday falls on a day off (e.g., Sunday or Public Holiday)?	Y	N				LL 115
96.	Does Mgt pay workers within 48 hours after they stop working for the factory?	Y	N	NA			LL 116
97.	Does Mgt pay workers during normal working hours?	Y	N				LL 115; AC37/04
98.	Does Mgt use the correct exchange rate when converting worker's wages from dollars to Riels?	Y	N	NA			LL 102; N.017/00

HOURS

Ordinary Hours

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
99.	Are normal working hours more than 8 hours per day, 6 days per week?	Y	N				LL 137
100.	Does Mgt give workers at least 24 consecutive hours off per week?	Y	N				LL 147
101.	Is weekly time off given on Sunday? (tick N/A if factory rotates shift workers)	Y	N	NA			LL 147
102.	Does Mgt rotate workers' weekly day off?	Y	N				

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103.	Has Mgt obtained the required authorizations from the labour ministry?	Y	N				LL 148
104.	Does Mgt keep an up-to-date list showing each worker's schedule for weekly time off?	Y	N				LL 159
105.	Does Mgt maintain a shift pattern for at least two weeks?	Y	N	NA			
106.	Do apprentices work more than 6 hours per day, 5 days per week?	Y	N	NA			N. 004/00; Annex

Overtime

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
107.	Does the factory work overtime?	Y	N				
108.	Is overtime voluntary, exceptional, and limited to 2 hours per day?	Y	N				
109.	Overtime is not: ☐ voluntary(P.80/99), ☐ exceptional (LL 139; P.80/99), and ☐ limited to 2 hours per day (LL 140)						
110.	How many overtime hours, on average, do workers work per month?	This question is not in use.					
111.	Does Mgt get permission from the Labour Inspector before workers work overtime?	Y	N				P.80/99
112.	Does Mgt post the overtime permission in the factory?	Y	N				C.40/98
113.	Are workers punished if they refuse to work overtime?	Y	N				P.80/99
114.	Does the factory work on public holidays?	Y	N				
115.	Is work on public holidays voluntary and exceptional?	Y	N				
116.	Work on public holidays is not: ☐ voluntary(P.80/99), ☐ exceptional (LL 139; P.80/99)						
117.	Are workers punished if they refuse to work on public holidays?	Y	N				P.10/99
118.	Does the factory work on Sundays?	Y	N				
119.	Is work on Sundays voluntary and exceptional?	Y	N				
120.	Work on Sundays is not: ☐ voluntary(P.80/99), ☐ exceptional (LL 139; P.80/99)						
121.	Does Mgt get permission from the Labour Inspector before suspending the weekly break?	Y	N				LL 160; P.100/02
122.	Does Mgt post the permission to suspend the weekly break in the factory?	Y	N				C.40/98
123.	Are workers punished if they refuse to work on Sundays?	Y	N				P.10/99, 80/99
124.	Does Mgt provide transportation or a place to sleep for workers who finish work between 22:00 and 05:00?	Y	N				LL 144; P.80/99

LEAVE

Public Holidays

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
125.	Does Mgt post the list of public holidays in the factory?	Y	N				C.40/98

Annual Leave

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
126.	Does Mgt give workers any annual leave at all (paid or unpaid) or any annual leave compensation?	Y	N	NA			LL 166; N.017/00
127.	Does Mgt give workers at least 18 days of paid annual leave each year?	Y	N				LL 166; N.017/00
128.	Does Mgt deduct the \$5 attendance bonus when workers take annual leave?	Y	N	NA			LL 168; N.017/00
129.	Does Mgt unreasonably restrict workers from taking annual leave?	Y	N				LL 167, 170
130.	Does Mgt give workers an extra day of annual leave for every three years of service?	Y	N	NA			LL 166
131.	Does Mgt get workers' consent before converting	Y	N	NA			

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	annual leave to cash compensation?						
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Special Leave

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
132.	Are workers who request special leave allowed to take any special leave at all (paid or unpaid)?	Y	N	NA			LL 171; P.267/01
133.	Do workers get 7 days of paid special leave?	Y	N				LL 171; P.267/01
134.	Can workers take leave for all reasons allowed by law? (employee's wedding, the employee's spouse giving birth, illness or death in the employee's family, and marriage of the employee's child)	Y	N				P.267/01
135.	Workers can NOT take special leave for	☐ the worker's own wedding ☐ wedding of the worker's son/daughter				☐ the worker's wife giving birth ☐ sickness or death of the worker's spouse/children/ parents	
136.	Does Mgt unreasonably restrict workers from taking special leave?	Y	N				P.267/01
137.	Does Mgt deduct the \$5 attendance bonus when workers take special leave?	Y	N	NA			
138.	Does Mgt deduct workers annual leave or require workers to make up the special leave time?	Y	N				N.017/00; AC45/05; Letter from LID 1865/01
139.	If Mgt does NOT deduct workers annual leave or require workers to make up the special leave time, is the attendance bonus deducted by more than an amount proportional to the number of special leave days taken during the month?	Y	N	NA			N.017/00; AC45/05; Letter from LID 1865/01
140.	Does Mgt deduct special leave from workers' annual leave?	Y	N				
141.	Is the annual leave deducted only from the same year during which the worker took special leave?	Y	N				LL 171; P.267/01
142.	Does Mgt require workers to make up the time they take off for special leave?	Y	N				
143.	Do workers make up their time taken off for special leave within 90 days?	Y	N				P.267/01
144.	Do workers work more than 10 hours per day, 54 hours per week, when they make up their time taken off for special leave?	Y	N				P.267/01

Sick Leave

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
145.	Does Mgt give workers paid sick leave (100% pay for month 1; 60% pay for month 2; 40% pay for month 3; no pay for months 4-6)?	Y	N				
146.	Do the factory's IRs provide for paid sick leave (100% pay for month 1; 60% pay for month 2; 40% pay for month 3; no pay for months 4-6, or better)?	Y	N				N.14/02; AC26/03; MOLVT Policy
147.	Does Mgt unreasonably restrict workers from taking sick leave?	Y	N	NA			LL 71,72
148.	Does Mgt deduct annual leave from workers when they take sick leave?	Y	N	NA			LL 166
149.	Does Mgt deduct workers' attendance bonus when workers take sick leave?	Y	N	NA			
150.	Does Mgt deduct the attendance bonus by more than an amount proportional to the number of sick days taken during the month? (for workers who have illnesses certified by a doctor/hospital)	Y	N				AC13/04, 30/04; 62/04; 63/04

Maternity Leave

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
151.	Are women workers aware of their right to maternity leave?	Y	N				LL 182
152.	Do women workers get at least 90 days of	Y	N	NA			LL 182

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	maternity leave?					
153.	Do women workers who have worked for more than one year get paid for maternity leave?	Y	N	NA		LL 183
154.	How much of their normal wages and benefits are women paid during maternity leave?	☐ Half wages only ☐ Half wages and benefits ☐ Other				LL 183
155.	Are women paid their maternity leave benefits either before or during leave?	Y	N			LL 183
156.	Can women do light work for two months after returning from maternity leave?	Y	N	NA		LL 182

Breast-Feeding

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
157.	Are women aware of their right to one hour of paid time off for breast-feeding?	Y	N				LL 184
158.	Does Mgt give workers one hour of paid time off for breast-feeding?	Y	N	NA			LL 184

WELFARE

Nursing Room/Day Care Centre

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
159.	Does the factory have 100 or more women workers?	Y	N				
160.	Does the factory have a functioning and accessible nursing room?	Y	N				LL 186; AC03/03
161.	Does the factory have a functioning day care centre at or near the workplace?	Y	N				
162.	Does Mgt pay the childcare costs of women employees?	Y	N				LL 186; AC03/03

Drinking Water

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
163.	Does Mgt provide safe drinking water?	Y	N				LL 229; P.054/00
164.	Does Mgt provide enough drinking water?	Y	N				LL 229; P.054/00
165.	Are there enough drinking water stations?	Y	N				LL 229; P.054/00
166.	Are the water containers and the drinking area clean and hygienic?	Y	N				LL 229; P.054/00
167.	Is the drinking water in the sun?	Y	N				LL 229; P.054/00
168.	Do the drinking water taps work?	Y	N	NA			LL 229; P.054/00
169.	Does Mgt provide cups or other sanitary means for drinking water?	Y	N				LL 229; P.054/00
170.	Does Mgt unreasonably restrict workers from drinking water?	Y	N				LL 229; P.054/00

Sanitation Facilities

Nr.	Issues	Y	N	N/A	Mgt.	SS/UL	LL REF
171.	Does the factory have the number of toilets required?	Y	N				LL 229; P.052/00
172.	Are the toilet walls and doors high enough?	Y	N				LL 229; P.052/00
173.	Are all the toilet doors working properly?	Y	N				LL 229; P.052/00
174.	Are all the toilets working properly?	Y	N				LL 229; P.052/00
175.	Are the toilets clearly marked for use by men and women?	Y	N				LL 229; P.052/00
176.	Are the toilets close to the workplace?	Y	N				LL 229; P.052/00
177.	Are the toilets cleaned regularly?	Y	N				LL 229; P.052/00

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178.	Is enough soap and water available near the toilets?	Y	N				LL 229; P.052/00
179.	Does Mgt unreasonably restrict workers from using the toilets?	Y	N				LL 229; P.052/00
180.	Are the toilets well lit?	Y	N				LL 229; P.052/00
181.	Has Mgt provided suitable footwear, or can workers wear their own footwear when they use the toilets?	Y	N				LL 229; P.052/00

Eating Area

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
182.	Does the factory have an eating area?	Y	N				
183.	If food is provided, is it of reasonable quality?	Y	N				LL 229
184.	Does Mgt fine workers who do not eat at the company canteen?	Y	N				LL 42

Personal Belongings

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
185.	Does Mgt provide a secure place for workers to store their belongings?	Y	N				
186.	Does the lack of a secure place to store their belongings cause problems for workers?	Y	N				LL 229

LABOUR RELATIONS

Shop Stewards

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
187.	Does the factory have shop stewards elected by workers?	Y	N				LL 283; P.286/01
188.	Did the (last) election for shop stewards comply with all legal requirements?	Y	N				
189.	What did Mgt fail to do? ☐ consult with worker representatives before organizing the election ☐ allow representative unions (if any) to nominate candidates ☐ allow workers to submit their names as candidates (if no union exists) ☐ hold the election during working hours ☐ conduct the election by secret ballot ☐ post the voting rules and list of candidates 3 days before the election ☐ give workers a 2-hour break to consider the candidates ☐ provide separate ballots for shop stewards and assistant shop stewards					☐ hold a new election at least 15 days before the expiration of the current delegates' terms ☐ submit the minutes of the election to the labour ministry ☐ elect the correct number of shop stewards ☐ elect the correct number of assistant shop stewards ☐ pay the cost of the election ☐ establish separate electoral bodies for manual workers and skilled workers (only if factory has more than 51 workers, and more than 8 skilled workers) ☐ post a copy of the election result in the factory	LL 285, 287, 288, 296; P.286/01
190.	Are any managers or supervisors serving as shop stewards?	Y	N				
191.	Does Mgt provide the shop stewards with everything required?	Y	N				
192.	What has Mgt failed to provide? ☐ an office, ☐ a meeting room, ☐ office supplies,					☐ a place to display information, ☐ a copy of the labour law upon request, and ☐ 2 hours per week to perform their functions	
193.	Does Mgt get permission from the labour ministry before dismissing shop stewards?	Y	N	NA			LL 293
194.	Have the shop stewards been consulted and given their written opinion on redundancy?	Y	N	NA			LL 284

Liaison Officer

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
195.	Has Mgt appointed a liaison officer?	Y	N				C.021/99
196.	Did Mgt consult with worker representatives before appointing the liaison officer?	Y	N				C.021/99
197.	Did Mgt inform workers about the appointment of	Y	N				C.021/99

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	the liaison officer?					
198.	Has Mgt notified the labour ministry about the appointment of the liaison officer?	Y	N			C.021/99
199.	Do workers have easy access to the liaison officer?	Y	N			C.021/99
200.	Does Mgt have any grievance handling procedures in place?	Y	N			

Collective Disputes

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
201.	Have there been any collective disputes since the last visit?	Y	N				
202.	If there is a collective bargaining agreement with a dispute resolution procedure was this followed to resolve the dispute?	Y	N	NA			
203.	If there is no collective agreement, did the parties inform the Labour Inspector about the collective dispute(s), so the dispute(s) could be conciliated?	Y	N	NA			LL 303; P.317/01
204.	Was the dispute conciliated in accordance with the law? (parties must attend conciliation meetings; no strikes or lockouts)	Y	N	NA			
205.	Did the parties reach a conciliation agreement?	Y	N				
206.	Has Mgt implemented the conciliation agreement?	Y	N				LL 307; P.317/01
207.	Has Mgt posted the conciliation agreement in the workplace?	Y	N				P.287/01
208.	Did the parties submit their dispute to arbitration?	Y	N				
209.	If the parties reached a mutual agreement during the arbitration process, did Mgt implement the agreement?	Y	N	NA			LL 307, 309
210.	Did Mgt and workers arbitrate the collective dispute in accordance with the law? (parties must attend conciliation meetings; provide information requested by AC; no strikes or lockouts)	Y	N	NA			
211.	Did any party appeal the arbitration award?	Y	N	NA			
212.	Did Mgt implement the arbitration award?	Y	N	NA			LL 314
213.	Did Mgt post the arbitration award?	Y	N	NA			LL 315

Individual Disputes

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
214.	Have there been any individual disputes since the last visit?	Y	N				
215.	What was the individual dispute about?						
216.	Was the dispute referred for conciliation?	Y	N				
217.	Who referred the dispute for conciliation?						
218.	Did the parties come to an agreement?	Y	N				
219.	Did Mgt implement conciliation agreements (if any)?	Y	N	NA			LL 301
220.	Did either party file a complaint in court?	Y	N				
221.	What was the outcome of the court action?						

Indecent Behavior

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
222.	Does Mgt, including line supervisors, treat workers with respect?	Y	N				LL 172

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Collective Agreement

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
223.	Is there a collective agreement?	Y	N				
224.	Who are the parties to the agreement?						
225.	Is the collective agreement at least as good for workers as the Labour Law?	Y	N				LL 98
226.	What is the term of the agreement?						
227.	Is the collective agreement written in Khmer?	Y	N				P.287/01
228.	Has Mgt registered the collective agreement with the labour ministry?	Y	N				P.287/01
229.	Has Mgt given a copy of the collective agreement to the shop stewards?	Y	N				P.287/01
230.	Has Mgt posted the collective agreement in the workplace?	Y	N				P.287/01

OSH

Policy

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
231.	Does the factory have a written health and safety policy?	Y	N				LL 229, 230, 250
232.	Did Mgt consult with workers when developing the health and safety policy?	Y	N				LL 229, 230
233.	Is the health and safety policy written in Khmer?	Y	N				LL 229, 230
234.	Has Mgt posted the health and safety policy in the workplace?	Y	N				LL 229, 230
235.	Do workers and supervisors understand the health and safety policy?	Y	N				LL 229, 230
236.	Has Mgt posted safety and health information in Khmer (e.g., posters and signs) in the workplace?	Y	N				LL 229, 230
237.	Has Mgt failed to take steps to ensure workers' occupational health and safety? (assign OSH duties to managers, train managers on OSH, ensure that workers can express opinions on OSH, inform workers about workplace hazards, develop OSH rules, or form an OSH committee)?	Y	N				LL 229, 230, 250
238.	What has Mgt failed to do?	☐ ensure that managers and supervisors have clear OSH responsibilities ☐ train managers and supervisors on OSH ☐ ensure that workers have opportunities to express their opinions on OSH matters				☐ inform workers about health and safety hazards to which they may be exposed ☐ develop specific, written safety and health rules and communicate them to workers ☐ form a functioning joint management/worker OSH committee	

Work-Related Accidents and Illnesses

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
239.	Does Mgt keep a record of work-related accidents and illnesses?	Y	N	NA			P.243/02
240.	Does Mgt regularly provide a summary report of work-related accidents and illnesses to the relevant authorities?	Y	N				P.243/02
241.	Does Mgt notify the relevant authorities of work-related accidents or illnesses within 48 hours of their occurrence?	Y	N	NA			P.243/02
242.	Do workers notify Mgt of work-related accidents and illnesses within 24 hours?	Y	N	NA			

Compensation for Work-Related Accidents and Illnesses

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
243.	Does Mgt compensate workers correctly for work-related accidents and illnesses? (including compensation plus daily wages for days missed)	Y	N	NA			LL 252-254; P.243/02
244.	What types of compensation owed to	☐ wages for work missed due to work-related accidents or illnesses				☐ supplementary compensation for permanently disabled workers who require constant care	

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workers has Mgt failed to pay correctly?	☐ costs for medication, treatment and hospitalization ☐ annuity for permanently disabled workers (20% or more disabled)	☐ funeral costs ☐ annuity for death of worker
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Emergency Arrangements

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
245.	Are procedures in place to handle emergencies (e.g., fire, explosion, natural disaster)?	Y	N				LL 230
246.	Are managers, supervisors and workers aware of these procedures?	Y	N				LL 230
247.	Does the factory hold regular emergency drills?	Y	N				LL 230
248.	Does the factory have enough emergency exit doors?	Y	N				LL 230
249.	Are all emergency exit doors clearly marked?	Y	N				LL 230
250.	Are all emergency exit doors unlocked during working hours, including overtime?	Y	N				LL 230
251.	Are all emergency exit doors accessible?	Y	N				LL 230
252.	Does the factory have any fire extinguishers?	Y	N				LL 230
253.	Are there enough regularly serviced fire extinguishers within easy reach of workers?	Y	N				LL 230
254.	What is the problem with the fire extinguishers?	☐ The factory does not have enough fire extinguishers ☐ The fire extinguishers are not within easy reach of workers					☐ The fire extinguishers are not regularly serviced
255.	Has Mgt trained enough workers to use the fire extinguishers (both men and women)?	Y	N				LL 230

First Aid

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
256.	Are there any first-aid boxes in the workplace?	Y	N				LL 230
257.	Are there enough properly stocked first-aid boxes in the workplace that are easily accessible to workers?	Y	N				LL 230
258.	The first-aid boxes are not	☐ sufficient ☐ properly stocked					☐ easily accessible
259.	Does Mgt provide periodic first aid training to workers?	Y	N				LL 230

Infirmary

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
260.	Does the factory have an infirmary? (if factory has less than 50 workers, tick N/A)	Y	N	NA			LL 242; JP.330/00; AC03/03
261.	Does the infirmary have enough beds?	Y	N				LL 244; JP.330/00; AC03/03
262.	Does the infirmary have enough medical staff working the required number of hours (including overtime)?	Y	N				
263.	The infirmary does not have	☐ enough nurses ☐ a doctor					LL 242; JP.330/00;
264.	Does the infirmary have enough medicine and medical equipment?	Y	N				LL242; JP.330/00; AC03/03
265.	Can workers easily access the infirmary?	Y	N				
266.	How is access to the infirmary impeded?	☐ Workers can not go to the infirmary when they need to ☐ Workers cannot get to the infirmary easily					JP.330/00
267.	Do workers have to pay for medicine or treatment provided by the infirmary?	Y	N				LL242,244; JP.330/00
268.	Is the infirmary clean?	Y	N				LL 229;
269.	Is there a toilet inside or near the infirmary?	Y	N				AC03/03

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Storage and Use of Hazardous Substances

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
270.	Are hazardous substances used in the factory?	Y	N				
271.	Does Mgt keep an inventory of all chemicals stored at the workplace?	Y	N				LL 230
272.	Does Mgt have safety data sheets for chemicals used at the workplace?	Y	N				LL 230
273.	Do workers understand the content of the safety data sheets?	Y	N				LL 230
274.	Are the safety data sheets written in Khmer?	Y	N				LL 230
275.	Are chemicals properly stored in a separate area of the workplace?	Y	N				LL 229, 230
276.	Are chemical containers properly labelled in Khmer?	Y	N				LL 230
277.	Does the factory have satisfactory exhaust ventilation in areas where chemicals are used?	Y	N				LL 229, 230
278.	Are chemicals used in a separate area of the workplace?	Y	N				LL 229, 230
279.	Does Mgt train workers who work with chemical substances how to use them safely?	Y	N				LL 229, 230
280.	Does Mgt provide proper clothing and equipment to workers who work with chemical substances?	Y	N				LL 229, 230

Protective Measures

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
281.	Does Mgt provide workers with all necessary protective clothing and equipment?	Y	N				
282.	What equipment do workers need that Mgt is not providing? ☐ goggles ☐ masks ☐ shields ☐ footwear ☐ earplugs ☐ helmets ☐ gloves ☐ overalls ☐ other						LL 229, 230
283.	Do workers who need it use the protective clothing and equipment provided?	Y	N	NA			LL 229, 230

Lighting

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
284.	Is the workplace well lit? Embroidery: _____ Sewing: _____ Cutting: _____ Ironing: _____ Knitting: _____ QC: _____ Packing: _____ Washing: _____	Y	N				LL 229; P484/03
285.	Is the workplace free of reflection and glare?	Y	N				LL 229; P484/03
286.	Are light fittings in good condition?	Y	N				LL 229; P484/03

Noise

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
287.	Have any workers complained of hearing loss due to high noise levels at work?	Y	N				
288.	Are the noise levels in the factory excessive?	Y	N				
289.	Is hearing protection provided to all workers who need it?	Y	N				LL 229; P138/03
290.	Do workers use the hearing protection provided?	Y	N				LL 229; P138/03

Machine Safety

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
291.	Are the machines well maintained?	Y	N				LL 230
292.	Do the sewing machines have needle guards?	Y	N				LL 230
293.	Are proper guards installed on all dangerous moving parts of machines and power transmission equipment? (not including needle)	Y	N				LL 230

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	guards)						
294.	Are electrical wires and switches properly installed?	Y	N				LL 230
295.	Are electrical wires and switches well maintained?	Y	N				LL 230
296.	Are safety warnings posted on the electrical switch boxes?	Y	N				LL 230
297.	Are transformers or earth leakage devices used when there is a danger of shock?	Y	N				LL 230
298.	Are workers trained to use machines and equipment safely?	Y	N				LL 230

Heat and Ventilation

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
299.	What was the temperature outside the factory?	Time: _____				Measurement: _____	
300.	What temperatures were recorded inside the factory?						
	Embroidery: _____	Cutting: _____			Knitting: _____		Packing: _____
	Sewing: _____	Ironing: _____			QC: _____		Washing: _____
301.	Do workers faint or suffer heat exhaustion due to excessive heat in the workplace?	Y	N				
302.	Are heat levels in the factory acceptable?	Y	N				LL 229
303.	Does the factory have adequate ventilation and air circulation?	Y	N				LL 229
304.	Are fans and other ventilation systems in good repair?	Y	N				LL 229
305.	Are dust levels in the factory acceptable?	Y	N				LL 229

Housekeeping

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
306.	Is the workplace clean?	Y	N				LL 229
307.	Is the workplace tidy?	Y	N				LL 229
308.	Are access paths wide enough to allow for two-way traffic?	Y	N				LL 229
309.	Are access paths free of obstruction?	Y	N				LL 229
310.	Is the surface of transport routes even and not slippery?	Y	N				LL 229
311.	Can workers easily reach switches, controls, tools and materials?	Y	N				LL 229
312.	Do workers have enough equipment for carrying heavy or bulky materials?	Y	N				LL 229

Seating

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
313.	Do workers who work sitting down have adjustable chairs with backrests?	Y	N				LL 229; P053/00
314.	Do workers who work standing up have chairs near the workstation to rest on?	Y	N				LL 229; P053/00
315.	Does Mgt unreasonably restrict workers who work standing up from resting on the chairs?	Y	N				LL 229; P053/00
316.	Do any workers work sitting on the floor?	Y	N				LL 229; P053/00
317.	Do workers have to bend over or raise their hands to work because the work height is not adequately adjusted?	Y	N				LL 229; P053/00

FUNDAMENTAL RIGHTS

Discrimination

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
318.	Does Mgt dismiss pregnant workers or force them to resign?	Y	N	NA			LL 12; ILO C111
319.	Does Mgt dismiss workers or change their employment status or seniority during maternity	Y	N	NA			LL12, 169,

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	leave?						182, C. 111
320.	Are men and women doing work of equal value, but receiving different pay?	Y	N				LL 12, C. 100
321.	Does Mgt discriminate against workers during hiring, employment, or termination based on their race, colour, sex, religion, creed, ancestry, social origin, or political opinion?	Y	N				
322.	On what basis has Mgt discriminated against workers?	☐ race ☐ colour ☐ sex	☐ religion/creed ☐ ancestry ☐ social origin	☐ political opinion ☐ HIV/AIDS ☐ other			LL 12, C. 111

Sexual Harassment

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
323.	Are workers subject to unwelcome conduct of a sexual nature (physical contact, spoken words, or conduct that creates an intimidating or humiliating work environment)?	Y	N				
324.	What is the nature of this conduct?	☐ unwelcome physical contact of a sexual nature ☐ unwelcome spoken words of a sexual nature	☐ unwelcome conduct that creates an intimidating or humiliating work environment ☐ other				LL 172, C. 111

Forced Labour

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
325.	Is there any evidence of forced (involuntary) labour?	Y	N				
326.	In what form is forced labour is occurring?	☐ slavery (LL 15, C.29) ☐ labour under threat of penalty, including the deprivation of rights or privileges (LL 15, C.29) ☐ labour by prisoners (LL 15, C.29) ☐ labour by victims of trafficking (LL 15, C.29)	☐ labour as punishment for holding views different from mainstream political thought (LL 15, C.105) ☐ labour as a means of labour discipline (LL 15, C.105) ☐ labour as punishment for having participated in peaceful and lawful strikes (LL 15, C.105) ☐ labour in order to pay off significant indebtedness to the employer labour as a means of discrimination on the basis of race, social origin, nationality or religion (LL 15, 16, C. 29)				

Child Labour

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
327.	Does Mgt use reliable documents to verify the age of workers prior to hiring?	Y	N				LL 177, 179
328.	Is there any indication that the factory employs children below the age of 15? (based on visual check and random record checks during factory visit)	Y	N				
329.	Have monitors verified the employment of workers below age 15?	Y	N				LL 177, C. 138
330.	Is there any evidence that the factory employs workers below the age of 18? (based on visual check and random record checks during factory visit)	Y	N				
331.	Does Mgt keep a register of workers who are under age 18?	Y	N				LL 179, Notice 11/03
332.	Has Mgt submitted the register of workers under age 18 to the Labour Inspector?	Y	N				LL 179, Notice 11/03
333.	Does Mgt get consent from the guardians of workers who are under age 18?	Y	N				LL 181
334.	Is there any indication that workers under 18 years of age are subject to the worst forms of child labour? (trafficking, debt bondage, prostitution, pornography, or activities related to drugs)	Y	N				
335.	Which forms of child labour are workers under age 18 subject to?	☐ trafficked into the job (P. 106/04, C. 182) ☐ debt bondage to the employer (P. 106/04, C. 182) ☐ organized prostitution (P. 106/04, C. 182)	☐ pornography (P. 106/04, C. 182) ☐ production or distribution of drugs (P. 106/04, C. 182)				

Freedom of Association

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
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Appendix A

336.	How many unions are registered in the factory?						
337.	Please give name(s) of unions and number of members for each:	1. _____			3. _____		
		2. _____			4. _____		
338.	Are workers free not to join the union(s)?						LL 273
339.	Has Mgt taken steps to bring the union(s) under its control?	Y	N				LL 280, C.87 Art.2
340.	Is any worker's job dependent on the worker not joining a union?	Y	N				LL 271
341.	Does Mgt deduct union dues when workers request this in writing?	Y	N				LL 129, P. 305/01, AC 03/03
342.	Does Mgt deduct union dues from worker's wages without the worker's written authorization?	Y	N				LL 129
343.	Does Mgt interfere with workers or unions when they draw up their constitutions and rules, hold elections, or organize their activities, administration or finances?	Y	N				
344.	When does Mgt interfere with workers or unions?	☐ when they draw up their constitutions and rules (LL 267, 280, C. 87 Art.2) ☐ when they hold elections (LL 267, 280, C. 87 Art.2) ☐ when they organize their activities, administration or finances (LL 267, 280, C. 87 Art.2)					
345.	Can workers freely form and join trade unions of their choice?	Y	N				LL 266, 271, C.87 Art. 2,11

Anti-Union Discrimination

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
346.	Has Mgt discriminated against any worker because of the worker's union membership or union activities?	Y	N				
347.	When has Mgt discriminated against workers because of their union membership or union activities?	☐ during recruitment? (LL 279) ☐ during employment? (LL 279) ☐ when terminated? (LL 293, P. 305/01)					
348.	Does Mgt get permission from the labour ministry before dismissing union leaders or candidates for union leadership?	Y	N	NA			LL 293, P. 305/01
349.	Do unions and Mgt engage in voluntary negotiations with a view to reaching a collective agreement?	Y	N	NA			C. 98
350.	Has Mgt brought any criminal claims against individual unionists in response to peaceful union activities?	Y	N	NA			
351.	Do these claims seem fair under the circumstances?	Y	N				

Strikes and Lockouts

Nr.	Issues	Y	N	N/A	Mgt	SS/UL	LL REF
352.	How many strikes have there been since the last visit?						
353.	How many total days were workers on strike since the last visit?						
354.	How many person days were workers on strike? (days on strike x number of workers on strike, totalled for all strikes)						
355.	Why did workers go on strike?	☐ to defend the socio-economic interests of workers ☐ to enforce compliance with a collective agreement or the law ☐ workers or management rejected an Arbitration Council award ☐ time allowed for an Arbitration Council decision lapsed ☐ other					
356.	For how many strikes did workers fail to comply with all legal requirements before going on strike?						
357.	Workers failed to:	☐ go on strike for reasons permitted by law (LL 320, 323-329) ☐ attempt to settle the dispute using other peaceful methods first (LL 320, 323-329) ☐ approve the strike by secret ballot (LL 320, 323-329) ☐ provide 7 days prior notice to management (LL 320, 323-329) ☐ provide 7 days prior notice to the labour ministry (LL 320, 323-329) ☐ meet with the factory to arrange for minimum service during the strike (LL 320, 323-329) ☐ other (LL 320, 323-329)					
358.	Were all the strikes since the last visit peaceful?	Y	N				
359.	How many strikes were not peaceful?						

Appendix A

360.	Were any non-striking workers threatened or coerced?	Y	N	NA			
361.	Did Mgt punish any workers for participating in the strike?	Y	N				LL 333
362.	Was the worker's punishment reversed and Mgt fined?	Y	N				
363.	Did Mgt reinstate all workers after the strike?	Y	N				LL 332
364.	Did Mgt recruit any new workers during the strike?	Y	N				
365.	Did Mgt pay the striking workers' wages during the strike?	Y	N				LL 334
366.	If a court declared the strike illegal, did workers return to work within 48 hours?	Y	N	NA			

MONITORING PROCESS

Number of Mgt staff interviewed

Nr	Issues	Y	N	N/A	Mgt	SS/UL	LL-REF
367.	Did Mgt cooperate with monitors during the interview?	Y	N				
368.	Were the Mgt staff who met with monitors sufficiently knowledgeable about the factory?	Y	N				
369.	Number of shop stewards interviewed (approximate)						
370.	Number of union leaders interviewed (approximate)						
371.	Was there an exit meeting with Mgt?	Y	N				
372.	Workers, Shop Stewards, and Union Leaders Ability to Communicate Freely	Y	N	N/A			
373.	Did workers appear able to talk freely with monitors?	Y	N				
374.	Did shop stewards appear able to talk freely with monitors?	Y	N	N/A			
375.	Did union leaders appear able to talk freely with monitors?	Y	N	N/A			
376.	Did Mgt allow monitors to freely interview workers (all types)?	Y	N				



Better Factories Cambodia

Editing Report

Factory Name
Factory Address

Contact Person

Phone

Email

Fax

Dates of visit

Type of visit

unannounced

Date of report

13/02/2012

Date of previous report:

30/04/2010

Number of IMS reports

3 rd

**Number of monitoring reports
(including pre-IMS reports)**

3 rd

Number of workers

1716 (1354 women) (362 men)

To view this report in Khmer or Chinese, please visit our website and have your factory password ready:
ims.betterfactories.org

Author : Nang Narith

Factory Information:

Starting date of operation:

07-2009

Subcontracting:

SL Garment Processing (Washing only)

Office Staff:

19

International Staff:

19

Hours of Operation (all shifts):

07:00 to 11:00 and 12:00 to 16:00

Production process(es):

Cutting, Sewing, Ironing, QC, and Packing.

Products produced:

Jean and Children Wears

**Good Practices/Major Progress
Made:**

N/A

Recommended Priority Action:

- Management should ensure that all emergency exit doors are unlocked during working hours, including overtime.
- Management should ensure that overtime is voluntary.
- Management should not employ underage workers.
- Management should not discriminate against workers on the basis of sex.
- Management should not discriminate against workers because of their union membership or union activities.
- Management should not interfere with the right of workers to form and join union of their choice.

Other:



Contracts

Internal Regulations

Does the factory have internal regulations?

✓ Yes

Findings: The factory set up internal regulations on 11 August 2010 and then the Ministry of Labour recognized on 18 August 2010. We found that all clauses complied with law. ^{them}

Does the factory have internal regulations on training of apprentices?

✓ N/A

Findings: Management and workers said that the factory did not employ apprentices after the last visit.

Employment Contract

How many workers are working in the factory?

Total workers 1716

Male workers 362

Regular workers 1260

Casual workers 0

Probationary workers 456

Piece-rate workers 0

Apprentices 0

Do workers have to pay someone to get a job?

✓ No

Findings: Management and workers said that workers were not required to pay someone to get a job.

Do workers undergo a medical examination before being employed?

✓ No

Findings: Management and workers said that the factory still did not require workers to conduct a medical check-up before being employed. Workers were required to undergo a medical check-up after they passed the probationary period. The factory invited a doctor to conduct medical check-ups at the factory. According to the factory's internal regulations and law, the factory has to require workers to undergo a medical check-up before employment. The last medical check-up was conducted in January 2011 for 400 workers. A document confirmed the same.

Suggestion: Management should ensure that workers undergo a medical examination before being employed.

Does management use any written employment contracts? (please describe the types and duration of the contracts used for the different categories of workers)

✓ Yes

Findings: Management and workers said that the factory employed the probationary workers under 2 months fixed duration contracts and then the regular workers were employed under 3 and 6 months fixed duration contracts. The male workers were signed for 3-month contracts while female workers were signed for 6-month contracts. We found that the contracts clearly stated basic wage, working hours and other benefits, based on contracts signed in August 2011. Workers said that they were not provided with a copy of contract. Article 16 of regular contract stated that the factory provided a copy to each worker, but the factory did not implement this.

Do the employment contracts comply with Cambodian labour law?

✓ No



Contracts

Findings: We checked the employment contracts and found that most clauses of the probationary and regular contracts complied with law, except point A of the probationary contract and article 3, 4 (5), and 6 (1-2).

- Point A states that the factory can terminate without paying any compensations to workers who have a mistake or get 2 warning letters or have a serious misconduct.

- Article 3 states that workers must to work overtime on ^{the} voluntary basis if the factory request to work overtime.

- Article 4 (5) states that the factory provides \$5 attendance bonus to workers while the new notice requires the factory to pay \$7 per month. However, in practice the factory provided \$7 per month as attendance bonus.

- Article 6 (1-2) states that the factory provides \$50 as basic wage to workers. However, in practice the factory provides basic wage to workers at least \$61 per month.

In addition, we noted that article 9 of the regular contract requires workers to provide a medical certificate before taking leave. The factory will not provide leave permission if workers do not have a medical certificate to prove to management.

Suggestion: Management should amend clauses in the employment contracts that do not comply with the law

Do the employment contracts comply with the factory's Internal Regulations?

✓ No

Findings: We found that all clauses of employment contract complied with law, except point F of the probationary contract. Point F states that workers are considered as giving up ^{their} job in case they are absent for 3 days while article 6 of the internal regulations states that the factory will consider that workers give up a job when they are absent for 6 days onwards.

Suggestion: Management should amend clauses in the employment contracts that do not comply with the Internal Regulations.

Do workers understand the terms and conditions of employment?

✓ No

Findings: Management said that the factory did not ^{provide} have any training to the newly recruited workers. Workers said that they did not understand terms and conditions of contract. They were not explained anything before working. In addition, the factory did not give time for them to read before signing employment contracts.

Suggestion: Management should ensure that workers understand the terms and conditions of employment.

Are casual workers only hired to do specific work for a short period of time?

✓ N/A

Findings: Management and workers said that the factory stopped employing casual workers since March 2011.

Are workers placed on probation for longer than 3 months?

✓ No

Findings: Management and workers said that the factory employed the probationary workers for 2 months. Employment contracts confirmed the same.

Does management consider all workers who are employed for longer than two years total to be employed under an unspecified duration contract?

✓ No

Findings: Workers and management said that the workers who had been working for ^{more} than 2 years, but they were still employed under fixed duration contract (FDC). The factory did not have any agreement to employ workers under FDC ^{UDC, right?}



Contracts

Suggestion: Management should consider all workers who are employed for longer than two years total to be employed under an unspecified duration contract. (This suggestion takes into account the Cambodian Labour Law; MOLVT Letters No. 2540 and No. 2640; AC Order 10/03; and ILO Recommendation 166 (Termination of Employment Recommendation), 1982. There is a discrepancy in interpretation between MOLVT and the AC. Better Factories Cambodia is adhering to the AC interpretation, which is in accordance with ILO R166.)

Are disciplinary sanctions proportional to the seriousness of workers' misconduct?

✓ No

Findings: Workers said that the disciplinary sanctions were not proportional to the seriousness of misconducts. Some workers were warned and terminated because they could not reach the incentive target setting. In addition, we found that the workers were warned in ^{written} ~~written~~ when workers were absent one day while the factory's internal regulations stated that workers who were absent less than 2 days were considered as minor mistake and they should get a verbal warning. Management told us during the exit meeting that the factory will improve and follow the factory's internal regulations.

Suggestion: Management should ensure that disciplinary sanctions are proportional to the seriousness of the misconduct.

Termination of Employment Contracts/Suspension of Work

Does management only terminate workers for valid reasons?

✓ No

Findings: Management said that some workers were terminated due to poor performance and absence without permission. Management further said that there were at least 100 workers ^{who} ~~who~~ resigned from work per month due to their personal reasons. Workers said that some union leaders were terminated due to union discrimination (please see more information under union discrimination).

Suggestion: Management should only terminate workers for valid reasons.

Does management pay workers for their accrued annual leave (when workers resign, their contracts expire, or they are terminated)?

✓ Yes

Findings: We found that the factory provided accrued annual leave to workers who resigned or they were terminated. Documents confirmed the same.

Has management terminated any workers' fixed-term contracts, or have any fixed-term contracts expired?

✓ Yes

Findings: Management and workers said that the factory paid 5% severance pay to the workers at the end of contracts. Documents confirmed the same.

Has management terminated any unspecified duration contracts?

✓ N/A

Findings: We found that all workers were employed under fixed duration contracts (FDC).

How many suspensions of work have there been since the last visit? (including partial and total suspensions)

✓ 0

Findings: Management and workers said that there had not been any work suspensions since the last visit.

Wages

Informing Workers/Record Keeping

Do the payslips accurately reflect the hours actually worked and the wages actually paid to the workers?



Wages

✓ Yes

Findings: We found that the factory recorded all working hours, including Sundays, public holidays and overtime more than 2 hours per day in the payslips, therefore the payslips reflected the wages paid to workers.

Do workers understand the calculation of wages?

✓ No

Findings: Most workers who interviewed said that they did not understand ^{the} wage calculation even some workers had been working for years. Management said that the factory trained some workers during the last 3 to 4 months. The factory sent some pictures to us by e-mail one day after visit about ^{the} training. Some workers on wage calculation (see photos and method for calculation). The pictures did not indicate when they conducted the training.

Suggestion: Management should ensure that workers understand the calculation of wages.

Does management keep only one payroll ledger that accurately reflects the wages actually paid to workers?

✓ Yes

Findings: We found that the factory recorded all working hours, including Sundays, public holidays and overtime more than 2 hours per day in the payroll, therefore the payroll reflected the wages paid to workers. The factory did not record meal allowance and incentive bonus in the payroll. We encouraged the factory to include all payments in the payroll.

Minimum Wage, Overtime, Sunday, Public Holiday, and Night Work

Is the piece rate set at a level that permits a worker of average ability working normal hours to earn minimum wage?

N/A? ✓ No

Findings: Management and workers said that all workers get basic wages.

Suggestion: Management should set the piece rate at a level that permits a worker of average ability working normal hours to earn the minimum wage.

Does management pay all workers at least the correct minimum wage for ordinary hours of work?

✓ Yes

Findings: The factory provided \$56 per month to the probationary workers and \$61 per month to the regular workers. Some workers got basic wage more than \$61 per month. The payroll for November 2011 confirmed the same.

Does management pay all workers 150% of their normal pay for overtime work performed on a normal workday before 22:00?

✓ Yes

Findings: We found that the factory paid the correct overtime to workers who worked overtime. The factory paid 2 hours to workers who worked overtime 1.5 hours from 18:00 to 19:30. The payroll for November 2011 and documents confirmed the same.

Does management pay all workers correctly for work at night (between 22:00 and 05:00)?

✓ Yes

Findings: Management said that the factory paid double when workers worked between 22:00 to 05:00. Workers said that they did not know whether the factory paid double or not. However, documents indicated that workers were paid double.

Does management pay all workers double their normal pay for work during weekly time off (Sunday)?

✓ Yes

Findings: We found that the factory paid the correct Sunday work to workers. The payroll for November 2011 confirmed the same.



Wages

Does management pay all workers one day's pay in addition to their normal daily wage when they work on public holidays?

✓ Yes

Findings: Management and workers said that the factory paid 150% to workers in addition to the minimum wage to workers who worked on public holidays.

Does management pay all workers 1,000 Riels for a meal or give them a reasonable free meal if they work overtime?

✓ Yes

Findings: Management and workers said that the factory paid 2,000 Riels to workers who worked overtime from 16:00 to 18:00. the factory provided additional meals to workers who worked overtime from 20:00 to 22:00. The factory paid meal allowance to workers every 2 weeks without recording in the payroll.

Bonuses

Does management pay all workers who work regularly the attendance bonus of \$5 per month, and any other mandatory wage supplements?

✓ Yes

Findings: Management and workers said that the factory provided \$7 per month as attendance bonus to all workers. The factory also provided proportional attendance bonus to the newly recruited workers who started working from 2nd of the first month onwards. The payroll for November 2011 confirmed this.

Does management pay workers the correct seniority bonus?

✓ Yes

Findings: We found that the factory provided the correct seniority bonus to workers.

Deductions from Wages

Does management make any unauthorized deductions from workers' wages?

✓ Yes

Findings: Management and workers said that the factory deducted 2,000 Riels when workers lost factory ID card. Workers said that the price was reasonable.

Workers said that the workers were required to give 7-day prior notice to the factory while they were employed under 6-month fixed duration contracts. The factory deducted 7-days of wages from workers who resigned from work ^{but} did not give prior notice to the factory. The labour law does require the factory to give prior notice to workers only when workers are employed under more than 6-month fixed duration contracts. However, the law does not require workers to give any prior notice.

Workers said that line supervisors kept worker's time card ^{and} did not allow workers to punch the time cards when workers did not work overtime from 16:00 to 18:00 and then the factory considered that they were absent half day. The factory deducted wages half day from workers even ^{though} they worked full day (8 hours) because of this reason. ^a

What does management deduct?

✓ disciplinary fines

Suggestion: Management should

- not punish workers by imposing fines or deducting wages.

Payment of Wages

Does management pay workers at least once per month?

✓ Yes

Findings: The salary payment was paid to workers on the 5th of the following month.



Wages

Does management pay workers within 48 hours after they stop working for the factory?

☒ No

Findings: Management and workers said that the factory paid immediately wages to the terminated workers. However, we met with some workers who terminated at the end of contracts and found that they were terminated on 27 December 2011, but they were paid on 11 January 2012. In addition, the factory paid wages to the resigned workers every Tuesday. According to law, the factory has to pay within 48 hours after workers stop working.

Suggestion: Management should pay workers within 48 hours after they stop working for the factory.

Does management pay workers during normal working hours?

☒ No

Findings: Workers said that the factory did not pay wages to workers within working hours during the last visit. Sometimes the factory started paying at 16:50 and they finished paying after 17:00. The factory must pay before 16:00, according to the law.

Suggestion: Management should pay workers during normal working hours.

Hours

Ordinary Hours

Are normal working hours more than 8 hours per day, 6 days per week?

☒ No

Findings: The factory operates one shift; 07:00 to 11:00 and 12:00 to 16:00.

Overtime

Does the factory work overtime?

☒ Yes

Findings: Management and workers said that most workers worked overtime 2 hours per day from Monday to Friday and there were around 200 workers who worked overtime from 16:00 to 22:00 for 4 days per week. Workers said that the factory required workers to work overtime from 16:00 to 18:00 and it was hard to get permission from line supervisors to go home at this time. However, line supervisors did not restrict for workers to go home after 18:00. Workers said that line supervisors kept workers' time cards and did not allow workers to punch these time cards when workers did not work overtime from 16:00 to 18:00 and then the factory considered that they were absent half day. The factory deducted wages half day from workers even they worked full day (8 hours) because of this reason. *though a*

In addition, the factory set up the target for incentive bonus for workers. Workers said that the target was too high and the factory increased target numbers from month to month. The factory set 10 hours for target incentive bonus, including 2 hours overtime and workers had to produce 400 to 650 *pieces*. Workers said that it was hard to reach this target. In addition, the factory did not only set up this target for workers to get more incentive bonus, but they also got warning letters and some were terminated ~~because this reason~~. *if they did not reach their target.*

Overtime is not:

- ☒ voluntary
- ☒ exceptional
- ☒ limited to 2 hours per day

Suggestion: Management should ensure that overtime

- is voluntary
- is exceptional
- does not exceed 2 hours per day



Hours

How many overtime hours, on average, do workers work per month?

answer: This question is not in use

Does the factory work on public holidays?

✓ Yes

Findings: Management and workers said that workers worked occasionally on public holidays after the last visit. Workers said that work on public holidays was voluntary.

Does the factory work on Sundays?

✓ Yes

Findings: Management and workers said that workers worked at least 1 to 4 Sundays per month after the last visit. The factory asked permission from the Ministry of Labour before working on Sundays. Workers said that work on Sundays was voluntary. The payroll for November 2011 indicated that most workers worked on Sundays from 8 to 32 hours per month.

Work on Sundays is not:

✓ exceptional

Suggestion: Management should ensure that work on Sundays is
- exceptional

Does management provide transportation or a place to sleep for workers who finish work between 22:00 and 05:00?

✓ Yes

Findings: Workers said that the factory provided transportation to workers who worked between 22:00 to 05:00.

Leave

Public Holidays

Annual Leave

Does management give workers any annual leave at all (paid or unpaid) or any annual leave compensation?

✓ Yes

Findings: Management said that the factory provided 18 days of paid annual leave to workers who had worked for one year. The factory allowed workers to use paid annual leave, management said. The remaining annual leave was converted to cash compensation at the expiration of contracts.

Special Leave

Are workers who request special leave allowed to take any special leave at all (paid or unpaid)?

✓ Yes

Findings: Management and workers said that the factory provided 7 days of paid special leave. The factory provided daily wages and attendance bonus. Special leave was deducted from annual leave. Documents confirmed the same.

Sick Leave

Does management give workers paid sick leave (100% pay for month 1; 60% pay for month 2; 40% pay for month 3; no pay for months 4-6)?

✓ No



Leave

Findings: Management said that the factory provided paid sick leave to workers who took leave with a medical certificate. The factory showed us a case of paid sick leave and she took sick leave 2 days. The payroll and related documents indicated the factory provided daily wage and full attendance bonus. A doctor at government hospital recommended that this worker should take 7-day leave for treatment, but the factory allowed to take leave 2-day only. Documents confirmed the same. Workers further said that it was hard to get permission from line supervisors. In addition, we found that article 9 of employment contract stated that workers are required to provide medical certificate before taking leave. The factory also deducted daily wage and attendance bonus even line supervisors allowed to take sick leave or they took sick leave with a medical certificate. ~~workers said~~ Management declined this comment during the exit meeting. We asked the factory to provide more related documents that workers could take paid sick leave for more than 2 days, but the factory did not provide any.

Do the factory's internal regulations provide for paid sick leave (100% pay for month 1; 60% pay for month 2; 40% pay for month 3; no pay for months 4-6, or better)?

✓ Yes

Suggestion: Management should provide paid sick leave as required by the factory's Internal Regulations.

Does management unreasonably restrict workers from taking sick leave?

✓ Yes

Findings: Please see the above comments.

Suggestion: Management should not unreasonably restrict workers from taking sick leave.

Does management deduct workers' attendance bonus when workers take sick leave?

✓ Yes

Findings: Please see the above comments.

Does management deduct the attendance bonus by more than an amount proportional to the number of sick days taken during the month? (for workers who have illnesses certified by a doctor/hospital)

✓ Yes

Suggestion: Management should only deduct workers' attendance bonus for days missed due to an illness certified by qualified doctor in proportion to the number of days missed during the month.

Maternity Leave

Do women workers get at least 90 days of maternity leave?

✓ Yes

Findings: Management and workers said that the factory provided 90 days of paid maternity leave to workers. The factory paid maternity leave 50% of average monthly earnings during the last 12 months, including OT pay and other benefits. The factory started paying this payment in December 2011. All payments were paid to workers before taking leave. Documents confirmed the same.

Breast-Feeding

Does management give workers one hour of paid time off for breast-feeding?

✓ No

Findings: Management said that the factory provided one hour paid for breast feeding time-off to workers. Workers said that the factory used to allow workers who returned from maternity leave to get one hour paid for breast feeding, but the factory did not provide this time-off to workers in 2011. Workers said that the factory changed this rule. We asked the factory to support that the factory provided one-hour paid for breast feeding time off, but we did not get any.



Leave

Suggestion: Management should provide workers one hour of paid time-off per day for breast-feeding during the first year after the baby is born.

Welfare

Nursing Room/Day Care Centre

Does the factory have 100 or more women workers?

✓ Yes

Findings: We found that the factory still set up a nursing room in the clinic. We did not consider this room as an appropriate room for a nursing room. In addition, the factory did not set up any day care centers, but the factory paid \$3 per month for 18 months and \$2 per month for other 18 months. Documents confirmed the same.

Does the factory have a functioning and accessible nursing room?

✓ No

Suggestion: Management should set up a functioning and accessible nursing room.

Drinking Water

Does management provide cups or other sanitary means for drinking water?

✓ No

Findings: Management said that the factory provided 2 bottles for drinking water to each worker for every 6 months. However, workers said that they got only 2 bottles within 1 year. The factory did not have any bottles to replace when workers wished to change in case they were old or broken. In addition, the newly recruited workers said that they were not provided any bottles even they had been working for nearly 1 year. *though*

Suggestion: Management should provide cups or other sanitary means for drinking water.

Sanitation Facilities

Does the factory have the number of toilets required?

✓ Yes

Findings: The factory set up 50 toilets, including 4 toilets for male and 6 toilets for pregnant workers.

Is enough soap and water available near the toilets?

✓ No

Findings: We found that soap was not available at ^{the} toilet facility. Workers said that the factory did not provide soap regularly to workers. However, the factory sent us some photos ^{which} related to providing soap at the washing area.

Suggestion: Management should ensure that sufficient soap and water is available near the toilets.

Eating Area

Does the factory have an eating area?

✓ Yes

Findings: We found that the factory set up an eating area for workers, but the factory did not provide food.

Personal Belongings

Labour relations

Shop Stewards

Does the factory have shop stewards elected by workers?

✓ No



Labour relations

Findings: The factory did not hold the new shop stewards election yet while the last shop stewards election expired on 5 September 2011. The factory has to hold shop stewards election ~~for~~ every two years, according to law. Management further said that the factory will hold a new shop stewards election at the beginning of year 2012.

Suggestion: Management should hold shop steward elections.

Liaison Officer

Has management appointed a liaison officer?

✓ Yes

Findings: Management and workers said that the appointed liaison officer was still active in the factory.

Collective Disputes

Have there been any collective disputes since the last visit?

✓ Yes

Findings: Management and workers said that there had been one collective dispute since the last visit. The dispute happened on 20 May 2011, but did not lead to strike. The workers demanded to improve working conditions as the following points:

1. To provide meal allowance 1,500 Riels to workers who volunteer to work overtime from 18:00 to 19:30.
2. To pay all wages before taking leave to workers who take maternity leave.
3. To not punish workers who wear jackets, blouses or coats without seeing the factory' ID card.
4. To not hide time cards when workers do not want to work overtime.
5. To instruct all line supervisors to treat workers with respect.
6. To not tear the leave application papers when workers ask for leave.
7. To provide leave without any restrictions.
8. To install music materials in the workplace.
9. To not take out music instruments from workers who listen ^{to} songs
10. To turn on all exhaust fans in the workplace.
11. To open all exit doors for any emergency cases.
12. To reduce heat in the workplace.
13. To reinstate Mr. Khlok Sopha, a union leader substitute who was terminated on 7 May 2011.
14. To instruct line supervisor C to treat workers with respect.
15. Disciplinary sanctions should be proportional to serious misconduct (not double).

The union demanded 15 points to improve working conditions. The factory and union leaders reached an agreement on 11 points (#1, 3-7, 10-12, 14, and 15). The remaining issues (#2, 8, 9, and 13) were sent to the labour inspector. The labour inspector conciliated on 16 June 2011, but could not reach any agreements. Then the Labour Inspector sent the case to Arbitration Council on 5 July 2011. The arbitration council conciliated on 17 July 2011. Union leader agreed to drop point # 13 during the conciliation process (see more information under anti-union discrimination). The remaining issues (3 issues) were decided by arbitrators on 27 July 2011 (case #80/2011) to order the factory as the following points;

- Order the factory to pay all wages before taking leave to workers who take maternity leave (#2)
- Do not consider the workers' demands on point #8 and 9.

Both management and workers said that they did not object the AC award.

Individual Disputes

Have there been any individual disputes since the last visit?

✓ No

Findings: Management and workers said that there had not been any individual disputes since the last visit.



Labour relations

Incent Behavior

Does management, including line supervisors, treat workers with respect?

✓ No

Findings: Workers said that management and line supervisors treated them with respect, except translators, fabric manager, and security guards. Workers further said that translators always shouted loudly and treated workers with bad words. Workers said that most workers who worked at the fabric section resigned from work due to bad behavior of the manager. In addition, a security guard hit a worker's cheek when they left the factory without orders at 19:30. Management said that the factory tried to solve this issue in a good manner.

Suggestion: Management should treat workers with respect, including line supervisors.

Collective Agreement

Is there a collective agreement?

✓ No

Findings: The factory and shop stewards signed ^{one} page collective agreement. The collective agreement focused on wage payment. Both parties agreed that the factory pays wages to workers once per month. The pay day should be no later than 5th of the following month. The collective agreement was registered with Labour Dispute Department on 12 July 2010. According to paragraph 3 of article 96, the term of the collective agreement which ^{was} signed by factory and shop stewards is not exceed one year. Therefore, this CBA was invalid.

OSH

Policy

Does the factory have a written health and safety policy?

✓ No

Findings: Management said that the factory developed an OSH policy already and trained workers on this. However, we found that it was not an OSH policy. It was ~~a~~ safety and health instructions.

Suggestion: Management should develop a health and safety policy.

Has management failed to take steps to ensure workers' occupational health and safety (assign OSH duties to managers, train managers on OSH, ensure that workers can express opinions on OSH, inform workers about workplace hazards, develop OSH rules, or form an OSH committee)?

✓ Yes

Findings: Management said that the OSH committee did not have any meeting for several months. We did not see any structure of OSH committee members. The factory just provided us a copy of the written of OSH committee instructions in Khmer. They did not know who was a member of OSH committee, workers said. We encouraged the factory to set up a functioning OSH committee.

What has management failed to do?

✓ form a functioning joint management/worker OSH committee

Suggestion: Management should take the following steps to ensure workers' occupational health and safety:

- consider forming a functioning joint management/worker OSH committee

Work-Related Accidents and Illnesses

Does management keep a record of work-related accidents and illnesses?

✓ Yes

Findings: We found that the factory regularly sent the summary report to the relevant authorities. Documents confirmed the same.



OSH

Compensation for Work-Related Accidents and Illnesses

Does management compensate workers correctly for work-related accidents and illnesses? (including compensation plus daily wages for days missed)

✓ Yes

Findings: Management and workers said that there were no serious accidents after the last visit. However, there were a few minor accidents. The factory was a member of national social security fund (NSSF) and the factory and NSSF covered all work-related accidents and daily wage.

Emergency Arrangements

Does the factory hold regular emergency drills?

✓ No

Findings: Management and workers ^{did not} said that the factory held emergency drill once per year. The factory ~~never~~ conducted any emergency drill since 4 October 2010. The factory conducted emergency drill one day after our visit on 30 November 2011. Documents confirmed the same. We encouraged the factory to hold emergency drills at least twice per year.

Suggestion: Management should hold regular emergency drills.

Are all emergency exit doors unlocked during working hours, including overtime?

✓ No

Findings: Workers said that most exit doors were locked when they worked overtime from 19:30 to 20:00, except one emergency exit door. In addition, the factory also locked some emergency exits during normal working hours. The factory unlocked all emergency exit doors when ILO Factory Advisor or buyer auditors to visit the factory, workers said.

Suggestion: Management should ensure that all emergency exit doors are unlocked during working hours, including overtime.

Does the factory have any fire extinguishers?

✓ Yes

Findings: Management and workers said that the factory trained workers to use fire extinguishers once per year. The factory never conducted any fire training since 4 October 2010. The factory conducted fire training one day after our visit the factory on 30 November 2011. Documents confirmed the same. We encouraged the factory to hold the fire training at least twice per year.

Has management trained enough workers to use the fire extinguishers (both men and women)?

✓ No

Suggestion: Management should train an appropriate number of workers to use the fire extinguishers, including both men and women workers.

First Aid

Does management provide periodic first aid training to workers?

✓ No

Findings: Management and workers said that the factory held the first aid training once per year. The last training was conducted on 25 October 2010. The factory did not hold any first aid training within the last one year (25 October 2010 to 30 November 2011). Documents confirmed the same. We encouraged the factory to hold the first aid training at least once per year.

Suggestion: Management should provide periodic first aid training to workers.

Infirmary

Does the factory have an infirmary? (if factory has less than 50 workers, tick N/A)

✓ Yes



OSH

Findings: Management and workers said that the factory employed one doctor and two nurses to work in the clinic. The doctor worked 2 to 3 hours per day and 3 to 4 days per week, management said. We found that the doctor's time card in November 2011 indicated that he worked 2 hours per day and 7 days per month. One nurse worked 8 hours per day (07:00 to 16:00) and other one worked 6 hours per day (12:00 to 18:00). The nurses worked 6 days per week and they worked on public holidays and Sundays. There was no medical staff on duty when workers worked overtime more than 2 hours per day. The nurses time cards confirmed the same. According to the law, the doctor must work 6 hours per day and 6 days per week and the medical staff are on duty when workers work overtime. We found that the clinic has 20 beds, including 6 folding beds and the clinic had enough medicines. Workers confirmed the same.

The infirmary does not have

- ✓ medical staff working the required number of hours (including overtime)

Suggestion: Management should increase the staffing in the infirmary by
- ensuring that medical staff are on duty during the required number of hours (including overtime)

Storage and Use of Hazardous Substances

Are hazardous substances used in the factory?

- ✓ No

Findings: Management said that the factory did not use any chemicals in the workplace. The factory sent unfinished products to SL factory for washing. We found that no workers used chemical substances in the workplace.

Protective Measures

Does management provide workers with all necessary protective clothing and equipment?

- ✓ No

Findings: Workers said that they were not regularly provided with masks after the last visit. The factory did not provide within the last 1 year, workers said.

What equipment do workers need that management is not providing?

- ✓ masks

Suggestion: Management should provide workers with masks.

Do workers who need it use the protective clothing and equipment provided?

- ✓ Yes

Findings: We found that workers who worked at the cutting section wore metal gloves when they cut fabrics.

Lighting

Is the workplace well lit?

- ✓ No

Findings: The light measurement indicated that the sewing was 217 to 446 Lux, Ironing 367 to 712 Lux, Cutting was 578 to 715 Lux, Packing 302 to 395 Lux, and Q.C was 495 to 944 Lux. According to law, the factory has to set up 1,000 Lux at the sewing and finishing, cutting 750 Lux, and ironing 300 Lux.

Suggestion: Management should ensure that the workplace is well lit.

Noise

Are the noise levels in the factory excessive?

- ✓ Yes

Findings: We found that the noise level was between 86.4 to 92.9 dB(A), especially the pressing section. Workers were not provided ear protection, workers said. According to law, the factory has to provide ear protection to workers who work 85 dB(A) for 8 hours onwards.



OSH

Is hearing protection provided to all workers who need it?

✓ No

Suggestion: Management should reduce noise levels in the factory, or provide hearing protection for workers.

Machine Safety

Do the sewing machines have functioning needle guards?

✓ No

Findings: We found that most sewing machines were not equipped with needle guards. Management said that the factory will try to explain workers to use the needle guards.

Suggestion: Management should equip the sewing machines with functioning needle guards.

Heat and Ventilation

What was the temperature outside the factory?

answer: 30.5

What temperatures were recorded inside the factory?

answer: 30.9

Findings: We found that the heat level in the workplace was between 29 to 30.9 degrees.

Are heat levels in the factory acceptable?

✓ No

Findings: Workers said that the heat level in the workplace was acceptable, except the finishing and some parts of the sewing section. Workers said that the heat was acceptable for workers who worked near the water cooling system. Workers further said that the factory did not turn on the water cooling system regularly. We found that the water cooling system was not regularly checked and maintained.

Suggestion: Management should take steps to reduce heat in the workplace.

Are dust levels in the factory acceptable?

✓ No

Findings: We found that most access paths were dusty, especially the sewing A, Batex and Ironing sections.

Suggestion: Management should introduce dust reduction measures.

Housekeeping

Is the workplace clean?

✓ No

Findings: We found that the workplace was not clean and there were a lot of spider net on windows, wall and roof of the factory.

Suggestion: Management should keep the workplace clean.

Is the workplace tidy?

✓ No

Findings: We found that the workplace was messy ^{with} unfinished products and broken materials.

Suggestion: Management should keep the workplace tidy.

Are access paths free of obstruction?

✓ No



OSH

Findings: We found that the access paths were free of obstruction, except the sewing B, sewing ES, sewing KL, and Batex sections. They were blocked by broken materials.

Suggestion: Management should ensure that access paths are free of obstruction.

Do workers have enough equipment for carrying heavy or bulky materials?

✓ No

Findings: We found that 4 workers who worked at the accessory warehouse did not use a trolley for carrying unfinished products and fabric (10 to 31 kg) from the ground floor to the first floor.

Suggestion: Management should provide (enough) equipment for transporting heavy or bulky materials.

Seating

Do workers who work sitting down have adjustable chairs with backrests?

✓ No

Findings: We found that the factory still provided the sitting workers with chairs without backrest and adjustable height.

Suggestion: Management should provide adjustable chairs with backrests for workers who work sitting down.

Do workers who work standing up have chairs near the workstation to rest on?

✓ No

Findings: We found that the factory still did not provide some chairs for workers who worked in the standing position, especially the Q.C line and final, pressing, and packing sections. The factory provided some chairs to workers who worked in the cutting section. One day after visit (31 December 2011), the factory sent some photo by e-mail to show that workers who worked in the standing position were allowed to rest 5 minutes when they felt tired, especially at the trimming and Q.C sections.

Suggestion: Management should provide workers who work standing up chairs near the workstation to rest on.

Fundamental Rights

Discrimination

Does management discriminate against workers during hiring, employment, or termination based on their race, colour, sex, religion, creed, ancestry, social origin, or political opinion?

✓ Yes

Findings: Management and workers said that the factory employed around 362 male workers among 1,716 workers. Previously, both male and female workers signed 6-month fixed duration contracts (FDC). However, the male workers had been required to sign 3-month fixed duration contracts (FDC) since November 2011. We encouraged the factory to treat workers equally between male and female workers.

On what basis has management discriminated against workers?

✓ sex

Suggestion: Management should
- not discriminate against workers on the basis of sex.

Sexual Harassment

Are workers subject to unwelcome conduct of a sexual nature (physical contact, spoken words, or conduct that creates an intimidating or humiliating work environment)?

✓ No

Findings: Management and workers said that there had not been any sexual hara



Fundamental Rights

Forced Labour

Is there any evidence of forced (involuntary) labour?

✓ No

Findings: There had not been any forced labour in the factory, management and workers said.

Child Labour

Does management use reliable documents to verify the age of workers prior to hiring?

✓ No

Findings: Management said that workers were required to have at least 2 reliable documents such as family book and ID citizen card. Workers were required to certify their hometown address from the local authorities in case they had only one document among the above 2 reliable documents. Based on 10 documents checked for suspected underage workers, we found that a few documents ~~were~~ *had* changed the birth dates. Some documents did not have the same birth dates between family books and birth certificates and ~~a~~ *one* worker did not have her name in the family book.

We encouraged management to get at least two reliable documents to verify the workers' age before being employed either ID card or family book, and birth certificate, and those documents should ~~not~~ *be consistent and* be corrected or changed in any manner.

Suggestion: Management should use reliable documents to verify the age of workers prior to hiring.

Is there any indication that the factory employs children below the age of 15? (based on visual check and random record checks during factory visit)

✓ Yes

Findings: Management said that the factory employed workers who were 18 or over. However, after checking workers' personal profiles, observing the workplace and interviewing workers, we found that 10 workers were suspected *to be* underage

According to further investigation in December 2011 at their home villages for 9 workers, we found that 6 workers were confirmed underage (under 15 years), 3 other workers were confirmed between 15 to 18 years and 1 other worker ~~was~~ *we were* ~~not able to investigate~~ *decided to drop due to the poor road conditions*. We found that 9 workers used their relatives' names. One worker used her real name, but ID citizen card, family book and birth certificate were made in 2009 and 2011. Some workers who were interviewed said that the factory did not screen or interview workers when they applied for the job. The factory just tested at the workplace, checked documents and then allowed workers to work, ~~workers said~~ *Management said* that local line leaders and line supervisors had the rights to recruit workers and then workers were sent to HR/Admin office to fill all required documents if they passed the tests. We noted that the factory asked 2 among 5 suspected workers to sign the new contracts by changing the new names after buyer's auditing. A case was revealed that the factory went to visit her parent at home village, then her parent spent 5 days to produce a new birth certificate (29/11/2011). This case was complicated because the answers from her parent were not the same. They seemed to tell us the true information at that time, our observation.

We went to visit the factory on 30 November 2011. We left the factory to go for lunch and then ~~we~~ *returned* ~~backed~~ *to the factory* after lunch. We asked the factory to call some suspected underage workers for interview, but the factory said that some workers took long sick leave and some others did not come to work on that day while their time cards showed that they came to work in the morning. In addition, workers told us that line supervisors told some young workers to stay at their rental rooms/houses in afternoon because ILO visited the factory. We raised this issue with the top management at the end of the first day. Finally, we could interview these ~~suspected~~ *workers* when we went to continue the factory visit ~~in~~ *a* day ~~after~~ *later*.



Based on family record books A1 kept by the local police, family books, and birth certificates indicated the following:

- The first worker was born on 9 June 1997 and she was 14 years (12 years, 4 months and 8 days) ~~by~~ the date of employment on 17 October 2011 at the QC section. She will reach 15 years on 9 June 2012.
- The second worker was born on 01 January 1998 and she was 13 years (13 years, 7 months and 25 days) ~~by~~ the date of employment on 26 August 2011 at the QC section. She will reach 15 on 01 January 2013.
- The third worker was born on 08 November 1999 and she was 11 years (11 years, 11 months and 2 days) ~~by~~ the date of employment on 10 October 2011 at the sewing section. She will reach 15 on 8 November 2014.
- The fourth worker was born on 10 April 1997 and she was 14 years (14 years, 5 months and 26 days) ~~by~~ the date of employment on 6 October 2011 at the QC section. She will reach 15 on 10 April 2012.
- The fifth worker was born on 01 January 1998 and she was 13 years (13 years, 9 months and 4 days) ~~by~~ the date of employment on 05 October 2011 at the sewing section. She will reach 15 on 01 January 2013.
- The sixth worker was born on 15 July 1997 and she was 14 years (14 years, 3 months and 2 days) ~~by~~ the date of employment on 17 November 2011 at the sewing section. She will reach 15 on 15 July 2012.

The first meeting was held on 11 January 2011 to discuss ~~on~~ the remedial action of the 6 confirmed underage workers. After having around 5-hours discussion, the factory manager told us that he could not decide anything yet because they needed one week to double check and review all 6 confirmed underage workers again. We tried to explain the factory about our process of clarifying the real workers' names with their parents and local authorities.

The second meeting was held on 19 January 2011 and found that the factory went to double check for 5 among 6 confirmed underage workers. The factory collected some related documents for a few cases, but they were not reliable.

Finally, the factory agreed to remove those 6 underage workers from the factory and place them at a sewing skills course on 25 January 2012. The factory will re-employ those workers when they reach 15 years by maintaining the seniority of their work, if the workers wish so. During the underage break period, the factory agreed to pay \$61 per month for all workers and the factory also agreed to pay the training fees for those workers (for more detail see ^{the} ~~in~~ agreements).

The factory manager strongly claimed that the factory has never intended to employ young workers, but the cases happened unintentionally. We tried to advise the factory that the factory should interview about educational background and family members in order to get more information from workers who looked young.

The factory agreed that they will further strengthen the recruitment process, the process of age verification in particular to protect potential underage applicants. Management also agreed to review all personal profiles to ensure that all workers have achieved ~~with~~ the legal minimum age.

Have monitors verified the employment of workers below age 15?

✓ Yes

Suggestion: Management should not employ underage workers.

Is there any evidence that the factory employs workers below the age of 18? (based on visual check and random record checks during factory visit)

✓ Yes



Fundamental Rights

Findings: The factory employed 3 workers who were confirmed ~~to~~ under 18 years. The factory will ask their parents to sign a consent letter to certify that they will allow their daughters to work in the factory. The factory did not keep a register of workers below the age of 18 because the factory did not know this. Management said that the factory will follow all legal requirements soon.

Does management keep a register of workers who are under age 18?

✓ No

Suggestion: Management should keep a register of workers under age 18 that includes their dates of birth and indicates the section of the factory they work in.

Does management get consent from the guardians of workers who are under age 18?

✓ No

Suggestion: Management should get consent from the guardians of workers who are less than 18 years of age.

Freedom of Association

Can workers freely form and join trade unions of their choice?

✓ No

Findings: Management said that workers had the rights to join unions as they wished. However, workers said that male workers who talked in group ^{for} more than 5, ~~they~~ would be terminated. Workers said that workers were asked to resign if office staff knew that they jointed a union. Some workers were called to *the* office and got warning letters by office staff (both verbal and written warning). Workers further said that workers did not believe that both unions that were still active could help workers. Therefore, workers tried to set up a new union (Rights and Benefit Workers of Federation of Trade Unions), but unfortunately all union leaders were terminated (please see more details in anti-union discrimination).

Suggestion: Management should not interfere with the right of workers to form and join unions of their choice.

Please give name(s) of unions and number of members for each:

answer: 1. Free Trade Union Workers of the Kingdom of Cambodia (FTUWKC); 380 members.

2. Cambodian Union Federation (CUF); 690 members.

Anti-Union Discrimination

Has management discriminated against any worker because of the worker's union membership or union activities?

✓ Yes



Fundamental Rights

Findings: Management said that the factory terminated all 3 union leaders of Rights and Benefit Workers of Federation of Trade Union ^{which was} recognized by the Ministry of Labour on 26 April 2011 because they committed serious misconducts. The factory could show us two documents of 2 union leaders, but could not find another one. The factory just said that he resigned from work. However, union leaders and workers said that the factory terminated union leaders because anti-union discrimination. The union leaders requested to discuss with the factory for 15 issues on 20 May 2011 (after forming the union). Both union leaders were terminated before the expiration of the contracts. Documents confirmed the same.

One union leader agreed to get payments from the factory before sending the cases to the AC. The factory terminated this union leader without getting permission from the Ministry of Labour. The factory terminated his contract before the expiration of contract. He was terminated on 7 May 2011 while his contract expired on 16 May 2011. The factory accused this union leader of committing a serious misconduct. According to articles 282, 292-294 and 295 of the law, the dismissal of a union leader can take place only after authorization from the Labour Inspector. In case of serious misconduct, the manager of enterprise can suspend the union leader's contract and ask permission from the labour inspector for the termination. In addition, According to 2 warning letters, the factory issued the first written warning letter on 17 March 2011 because he was absent one day while the factory's internal regulations stated that workers who were absent less than 2 days were considered as minor mistake and they should get a verbal warning. Therefore, the disciplinary sanction was not proportional to serious misconduct. The factory issued the second written warning letter by accusing the union leader ^{of} committing a serious misconduct on 6 May 2011.

One other union leader's contract was suspended on 9 June 2011 while his contract expired on 16 June 2011. However, the factory did not send any letters to get approval from the Ministry of Labor for the termination. At the same time, the factory gave ^{no} notice to the union on 9 June 2011 (7 days before the expiration of the contract). According to 3 warning letters, the factory issued the first written warning letter on 17 February 2011 because he was absent one day while the factory's internal regulations stated that workers who were absent less than 2 days were considered as minor mistake and they should get a verbal warning. The second and the third warning letters indicated that he could not work well and misbehavior, but the union leader did not recognize for the second and the third warning letters. The factory sent a complaint to the Chom Chao Police Officer on 13 June 2011 for criminal claim against this union leader by accusing him of threatening to kill the security guards. Union leaders said that they decided to give up their complaints on anti-union discrimination to the Labour Inspector (conciliation by Labour Inspector on 16 June 2011) and AC (AC conciliation process on 12 July 2011) due to ~~the~~ security reasons.

Finally, we found that he agreed to get 5% severance pay from the factory on 14 July 2011 because he had no choice. According the last agreement between the factory and union leaders on 14 July 2011, we found that all 3 points ~~were~~ required the union leaders to resign and give up all complaints that were sent to the Labour Inspector and AC.

When has management discriminated against workers because of their union membership or union activities?

✓ when terminated?

Suggestion: Management should not discriminate against workers because of their union membership or union activities when terminating workers

Does management get permission from the labour ministry before dismissing union leaders or candidates for union leadership?

✓ No



Fundamental Rights

Findings: Management said that the factory terminated all 3 union leaders of Rights and Benefit Workers of Federation of Trade Union ^{which was} who recognized by the Ministry of Labour on 26 April 2011 because they committed serious misconducts. The factory could show us two documents of 2 union leaders, but could not find another one. Management said that the factory terminated all union leaders without getting permission from the Ministry of Labour. The top management told us during the exit meeting that the factory will improve this issue in the future.

Suggestion: Management should get permission from the labour ministry before dismissing union leaders or candidates for union leadership.

Has management brought any criminal claims against individual unionists in response to peaceful union activities?

✓ No

Findings: Management said that the factory sent a complaint to the Chom Chao Police Officer on 13 June 2011 for criminal claim against a union leader. The factory accused this union leader of threatening to kill the security guards. The union leader decided to give up their complaints on anti-union discrimination to the Labour Inspector and AC by an agreement on 14 July 2011. Then the factory agreed to drop this case.

Strikes and Lockouts

How many strikes have there been since the last visit?

✓ 0

Findings: Management and workers said that there had not been any strikes since the last visit.

Monitoring Process

Access to Factory

Was the ILO monitor's access to the factory restricted in any way?

✓ No

Findings: We went to visit the factory on 30 November 2011.

Contact Person:

Office Phone:

Fax:

E-mail:

Address:

Announced or Unannounced Visit

Was the visit announced or unannounced?

✓ Not announced

Suggestion: The visit was not announced.

Documents Not Provided in a Timely Manner

Types of Documents Examined

What types of documents did monitors examine?

- ✓ internal regulations
- ✓ employment contracts
- ✓ payroll
- ✓ time cards
- ✓ leave records



Monitoring Process

- ✓ age-verifying documents for workers
- ✓ work-related accident/illness records
- ✓ OSH documents
- ✓ liaison officer records
- ✓ union registration records
- ✓ records relating to labour disputes

Suggestion: Monitors examined the following documents:

- internal regulations
- employment contracts
- payroll
- time cards
- leave records
- age-verifying documents for workers
- work-related accident/illness records
- OSH documents
- liaison officer records
- union registration records
- records relating to labour disputes

Incomplete/Inconsistent/Inaccurate Records

Management, Workers, Shop Stewards, and Union Leaders Interviewed

Was there an exit meeting with management?

- ✓ Yes

Suggestion: Monitors conducted an exit meeting with management.

Who did monitors interview?

- ✓ management staff
- ✓ workers inside the workplace
- ✓ workers outside the workplace
- ✓ union leaders

Suggestion: Monitors interviewed:

- management staff
- workers inside the workplace
- workers outside the workplace
- union leaders

Number of management staff interviewed

answer: 3

Number of union leaders interviewed (approximate)

answer: 2

Workers, Shop Stewards, and Union Leaders Ability to Communicate Freely

Factory Observation

Did monitors observe the workplace?

- ✓ Yes

Suggestion: Monitors freely observed the workplace.



International Labour Office



Monitoring Process



- *Better Factories Cambodia* is a compliance monitoring and remediation programme of the International Labour Organization (ILO), a specialized agency of the United Nations, supported by the Government of Cambodia, the Garment Manufacturers Association in Cambodia, unions and international buyers.



- Factory participation in the programme is voluntary, but is made a condition for export licensing, as directed by the Cambodian Ministry of Commerce.

- The programme monitors working conditions in the garment sector against the Cambodian labour law and international labour standards.

- Factory monitoring reports are confidential, however, factories can grant third parties such as buyers access to their reports. Factory monitoring reports include detailed findings and suggestions for improvement.



- Manufacturers can object to the findings in their reports and/or post corrective action plans to show their intent to improve working conditions in the factory.

- Compliance data is made public through *Better Factories Cambodia's* website in synthesis reports and in reports indicating the progress of individual factories.

Key Steps

1. Registration

Manufacturer registers with the programme and gets basic information about the monitoring process



2. Un-announced Visit

Un-announced monitoring visit takes place during which meetings are held with management, shop stewards, union leaders, and workers, documents are reviewed and the workplace is observed



3. Report Preparation

Documentary evidence provided by the manufacturer is reviewed, and the report is prepared



4. Report Published

After internal checks, the report is made available for the manufacturer and any authorized third parties, such as buyers



5. Objections and CAPs

Manufacturer can post objections and Corrective Action Plans (CAPs) and/or request clarification on issues of concern



6. Follow-up Visit

Next monitoring visit expected within six months time, with a possibility of additional single-issue ad hoc checks at any time

Monitoring Visit

Part I: Announcement of the visit and entry to the factory

1. ILO monitors introduce themselves at the factory gate and/or reception area, and explain the purpose of their visit.
2. Upon receiving permission to enter (maximum acceptable waiting time 45 minutes) they proceed with the monitoring visit.

Part II: Conducting the visit inside and outside the factory premises

1. Management Meeting/Interview
 - Introductions
 - Explanation of the monitoring process
 - Overview of Information Management System (IMS)
 - Providing of materials to management, such as FAQs, monitoring brochure, Third Party Access Form, previous factory report, Labour Law Guide, newsletter, website card, etc.
 - Interview with management regarding factory working conditions
 - Request for copy of current payroll and other materials
2. Interviews with shop stewards, union leaders, and workers
3. Workplace observation (including worker interviews, general observations, and measurements of noise, lighting, and temperature)
4. Exit meeting
 - Overview of findings regarding working conditions (exit meeting checklist)
 - Written request for documents
 - Explanation of post-monitoring activities (see below)

Main Issues Monitored (Not all-inclusive)

WORKING CONDITIONS

- Contracts
- Wages
- Hours
- Leave
- Welfare

OCCUPATIONAL SAFETY AND HEALTH (OSH)

- OSH Policy
- Work related accidents/illnesses
- Compensation for accidents/illnesses
- Protective measures
- Lighting
- Noise
- Ventilation and heat
- Infirmary

LABOUR RELATIONS AND FUNDAMENTAL RIGHTS

- Workers' freedom to organize
- Anti-union discrimination
- Shop stewards
- Liaison Officer
- Collective disputes
- Strikes/Lockouts
- Individual disputes
- Discrimination
- Child labour

Part III: Post-monitoring activities (objections, corrective action plans and clarification meeting)

1. The factory should provide all documents requested within 7 working days after the monitoring visit.
2. Monitors will write the report and check additional information as required.
3. Upon sign-off, the factory is notified that the report is posted on the IMS, and can be viewed using user name and password. Authorized third parties can access the factory report 5 days after it is posted on the IMS. (This 5 day delay period can be changed upon request.)
4. Factories have 21 days (excluding weekends) to post objections; there is no time limit on posting of corrective action plans
 - Factories are advised to study the report promptly in order to prepare for potential questions raised by authorized buyers. They can also seek a meeting to clarify issues raised in the report with ILO and/or request assistance from the *Better Factories Cambodia* training team to help them to develop and implement corrective action plans.
 - Monitoring reports by their nature reflect a snapshot of factory working conditions observed during the monitoring visit.
 - *Better Factories Cambodia* monitoring reports typically do not take into account intentions to comply with requirements or actions taken after the visit.
5. A clarification meeting with ILO staff can be organized upon request, in order to discuss the findings in the report and/or seek assistance in addressing areas of non-compliance.
 - If the monitoring report includes information that is incorrect, *Better Factories Cambodia* may revise the report at its discretion. In this case, the report will be corrected and the manufacturer and any authorized buyers informed about the changes made.
 - The clarification meeting may include a member of the *Better Factories Cambodia* training unit, who can draft a preliminary needs assessment and suggestions for corrective action that the factory can use to rectify non-compliance areas and also in interactions with buyers.
 - Issues that are beyond the monitors' competence, i.e., policy debates about the labour law are typically not addressed in exit meetings or clarification meetings.

Profile of Monitors

Better Factories Cambodia monitors are staff of the International Labour Organization (ILO), and are trained to conduct their duties in line with the highest standards of the United Nations. Their work is based on a strict ethic of integrity, transparency, diplomacy, and most of all respect towards all those they encounter while executing their work as ILO monitors.

Better Factories Cambodia monitors are not labour inspectors and they do not have any authority to enforce the labour law. Their primary duty is to document working conditions during the monitoring visits through observation, interviews and study of documentary evidence. *Better Factories Cambodia* monitors are experienced and well versed in the Cambodian Labour Law and international labour standards, and they can be consulted for any clarification concerning their work.

For any matters regarding interpretation of the Labour Law or the ILO position on labour issues, the manufacturer is advised to turn to competent Governmental authorities or to contact the *Better Factories Cambodia* project office.

Better Factories Cambodia aspires to conduct the workplace monitoring in full collaboration with all parties and highly appreciates all help extended to the monitors in carrying out their duties.

In the event of pressure or interference in the monitoring process, the visit will be aborted, and a non-cooperation report will be filed with the competent authorities in the Ministry of Labour and Vocational Training and the Ministry of Commerce for appropriate follow up action.

Core Values of *Better Factories Cambodia* Monitors

PROFESSIONAL CONDUCT

Cordial, respectful of others, focuses on tasks and issues

INTEGRITY AND INDEPENDENCE

High standard of ethics, i.e., not influenced by others; does not accept gifts or get into compromising situations

TRANSPARENT AND OPEN

Explains the monitoring process, is accessible and open to discussion

TRUSTWORTHY

Does not disclose information carelessly, downplay or overlook issues; follows up on commitments made

Objectives of the Monitoring: A Reminder

- The monitoring and training are intended to point out areas where the manufacturer is not following the labour law, help address these gaps, and provide information for improving working conditions, workplace relations and productivity.
- The monitoring is not intended to punish a factory, condone strikes, or compromise business.
- Manufacturers that take corrective action can increase productivity, make the factory a better place to work, and improve relations with buyers by showing that management is attentive to worker concerns and compliance with labour standards.

For further information, please contact:

ILO *Better Factories Cambodia*
#9, Street 322, Boeung Keng Kang 1
Chamkarmorn, Phnom Penh, Cambodia
Tel: +855 23 212847 / 220362
Fax: +855 23 212903
Email: betterfactories@ilo.org
Website: www.betterfactories.org/ilo





ព្រះរាជាណាចក្រកម្ពុជា
Kingdom of Cambodia

រាជរដ្ឋាភិបាល
Royal Government

ជាតិ សាសនា ព្រះមហាក្សត្រ
Nation Religion King

Unofficial Translation

CIRCULATION
On the Implementation
of the ILO's *Better Factories*
***Cambodia Project* in the Cambodian Textile and Apparel Sector**

In the spirit of enhancing and safeguarding workers and employees' rights more favorable conditions and complying with the International Labor Organization's standard in the Kingdom of Cambodia, the Royal Government of Cambodia issues guidelines as follows:

1. To implement on a unilateral basis the policy of the Royal Government of Cambodia in linking international trade with labor standards in the textile and apparel sector in Cambodia.
2. The implementation of the newly-designed ILO's **Better Factories Cambodia Project** is aimed at continuing improvement of working conditions in the textile and apparel sector, including the respect of internationally-recognized core labor standards, through the application of the Labor Law of the Kingdom of Cambodia. Through the implementation of this Project, Cambodia seeks to ensure that labor law and regulations are effectively implemented and also to provide for high quality and productive workplaces; and seeks to foster transparency in the administration of labor law, to promote compliance with, and effective enforcement of, existing labor law and regulations, and to promote the general labor rights embodied in the Labor Law of the Kingdom of Cambodia.
3. All textile and apparel factories and their duly authorized sub-contractors are required to be registered with ILO's Better Factories Cambodia's Office and with the Ministry of Commerce and have to abide by the Labor Law of the Kingdom of Cambodia for export eligibility.
4. Only ILO Better Factories Cambodia-registered textile and apparel factories are eligible to apply to the Ministry of Commerce for a certificate of origin and/or any other export document from Cambodia, after registering with the Trade Preferences Department of the Ministry of Commerce.

5. Textile and apparel factories failing to register under this Project would be de-registered from the GSP Register of the Ministry of Commerce and will not be allowed to export from Cambodia.
6. Textile and apparel factories failing to comply with the Cambodian Labor Law and regulations will face the following 4-steps administrative sanctions from the Ministry of Commerce:
 1. Warning Letter from the Minister of Commerce, upon review of a report of serious labor law's violations by the ILO Better Factories Cambodia's monitoring team corroborated by a report from the Ministry of Labor and Vocational Training;
 2. One Week-long Ban of all textile and apparel exports from the said factory, if no corrective measures are taken one week after the warning letter is received;
 3. Three months-long Ban of all textile and apparel exports from the said factory, if no corrective measures are taken two weeks after the warning letter is received;
 4. Permanent ban of all textile and apparel exports from the said factory, if no corrective measures are taken by the end of the 3 months after the warning letter is received.
7. In the event of the imposition of an export ban upon a said textile or garment factory, all government entities positioned at border posts shall cooperate with the Ministry of Commerce in imposing such a ban, whether or not the said textile or apparel shipments need a Certificate of Origin and/or any export document from the Ministry of Commerce.

For immediate implementation by all competence authorities.

Phnom Penh, July , 2005

PRIME MINISTER

CC:

- Ministry of Royal Palace
- Senate's Secretariat
- National Assembly's Secretariat
- Office of the Council of Ministers
- Ministry of Economy and Finance
- Ministry of Commerce
- Ministry of Industry, Mines and Energy
- Ministry of Labor and Vocational Training
- Royal Cambodian Embassies abroad
- All Foreign Embassies in the Kingdom of Cambodia
 - "For information"
- ILO's Better Factories Cambodia Office
- GMAC
- As named in point 3
 - "For implementation"
- Royal Gazette/National TV/Radio
 - "For publication and broadcasting"
- Archives

HUN SEN

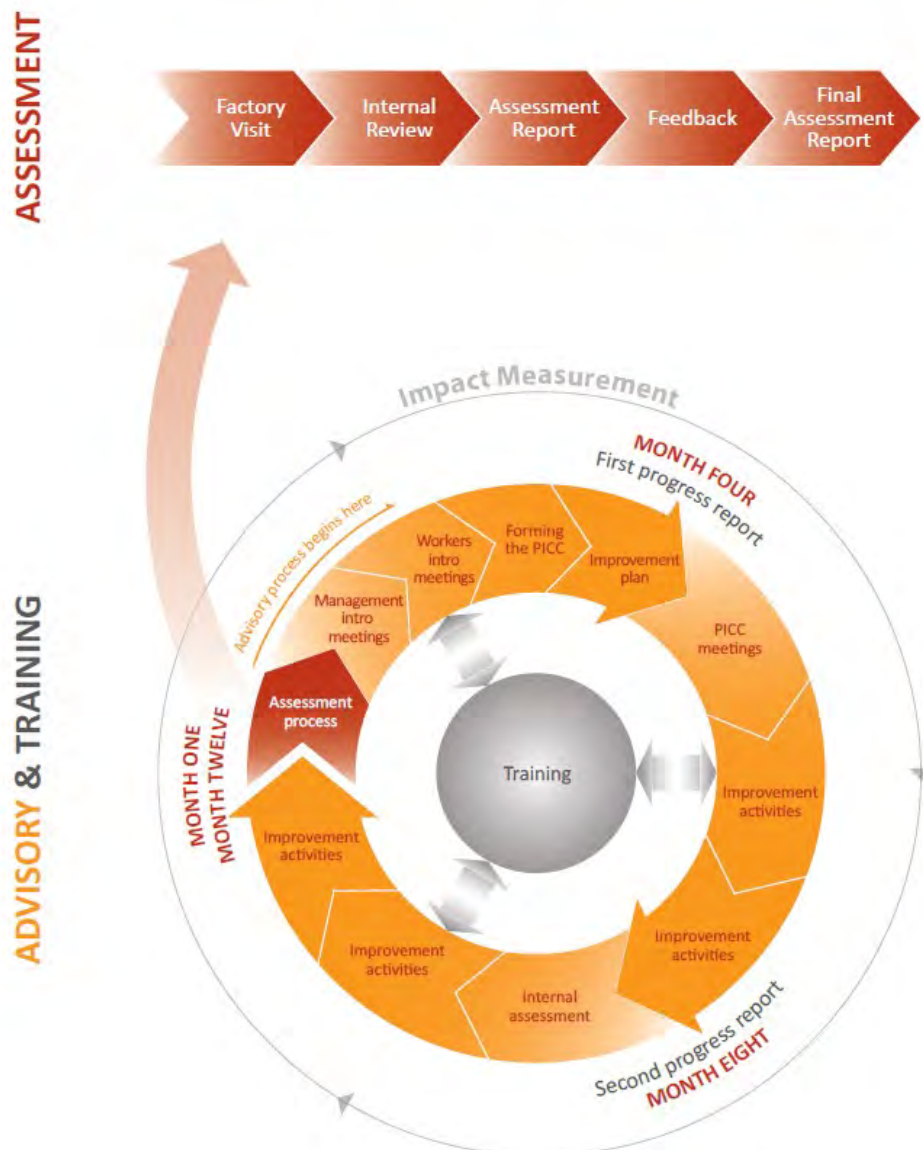
Advisory Services

Better Factories Cambodia has two distinct units: the monitoring unit and the advising and training unit. All BFC's locally recruited factory advisors are trained not only on monitoring, but also on advisory services.

Enterprises may choose to participate in BFC's advisory services program to remediate non-compliance issues identified during monitoring. BFC's factory advisors will then work directly with each enterprise for a period of one year to:

- develop Performance Improvement Consultative Committees with management and union/worker representatives,
- create and implement improvement plans that address both non-compliance issues and management systems,
- increase factory performance on subsequent compliance monitoring.

Better Factory Cambodia advisors will never implement both monitoring and advisory services in a factory at the same time. This distinction of roles ensures transparency and integrity in the programme's implementation of services. The advisory process is shown in detail in the graphic below, which illustrates the 12-month sequence.



While enterprises are responsible for identifying and implementing improvement plans, advisory services ensure a tailored approach that provides direction and capacity building.

During the first year of the advisory cycle, advisors provide guidance that helps to build trust with the factory and workers, while identifying simple compliance issues that can be fixed with relative ease.

If the enterprise chooses to work with BFC's factory advisors for a second year, the advisors shift toward a coaching role, increasing training services and establishing systems that support sustainable improvement.

By the third year of advisory services, advisors serve primarily as consultants, working on core labour standard and non-compliance issues, while strengthening management systems and monitoring success.

Throughout the process, Better Factory Cambodia advisors conduct follow-up visits and update buyers, through progress reports, about steps enterprises have taken to address key non-compliance issues at their facilities.

BFC's factory advisors are trained to conduct their duties based on a strict ethical code of integrity, transparency, diplomacy and respect in line with the highest standards of the United Nations.

Overview of Advisory Services

Forming the Performance Improvement Consultative Committee (PICC)

- Establishment of a joint management and workers committee to oversee the entire improvement

Complete Problem Needs Assessment (PNA) of factory's challenges

- Based on factory's monitoring/assessment analysis
- Identification of factory's priorities
- Drafting of a global factory's improvement plan

Improving visibility of factory's investment in factory's improvements (internal and external marketing support)

- Banner announcing factory's participation in a sustainable improvement initiative
- Brochure to be distributed to workers
- Other means of communication to highlight the positive stance taken by the factory toward workplace improvements

Coaching

- HR management system
- Responsible transition practices
- Joint consultative committee
- HR policies and contracting practices
- OSH issues
- Workplace cooperation and communication skills
- Interpretation of labour law etc.

Trainings and follow-ups*

- Customized training services
- Supervisors skills training
- Global garment context
- Workplace cooperation
- Quality
- Productivity
- OSH matters
- HR management
- Working conditions
- Gender awareness
- Negotiation skills
- Freedom of Association
- Factory workers training
- Energy efficiency and cleaner production
- Managing across culture etc

Referrals*

- For specific issues, BFC would refer work items to other garment industry services providers, eg: language training, productivity/engineering matters

Access to information

- Thematic brochures and tool kit
- Good practice sheet
- Newsletter
- International best practices
- Seminars on relevant thematic areas
- Industry updates etc.

Networking

- Better Work family
- ILO
- IFC
- Factory's network and discussion group
- Other garment relevant networks and information

Other services

- Depending on the specific case of each factory.

Continuous monitoring of progress and impact evaluation

- Annual or biannual formal monitoring reports
- Regular progress reports against Factory improvement plan
- Through monitoring and impact evaluation of the Advisory service scheme

* Optional and will be charged separately



MEMORANDUM OF UNDERSTANDING

Between

Better Factories Cambodia and (name of factory)

1. *Better Factories Cambodia* (formerly known as the ILO Garment Sector Project), was established in 2001 to help Cambodia's garment sector achieve and maintain improvements in working conditions. The project grew out of a trade agreement between the United States and Cambodia, which set an export quota for certain garments from Cambodia to the United States. Under the agreement, the US allocated bonus export entitlements to Cambodia, as long as the country made gains in improving working conditions.

2. In order to measure and ensure gains in working conditions, *Better Factories Cambodia*, in cooperation with participating Cambodian garment factories, has monitored and reported on working conditions according to national and international standards, helped factories to improve their productivity, and worked with the Government and international buyers to ensure a rigorous and transparent cycle of improvement.

3. The Cambodian-US trade agreement expired on 31 December 2004, as did a global Multi-Fibre Agreement (MFA), which had imposed limits on imports to the United States and the European Union countries from key low-cost manufacturing countries such as China and India. With the expiration of these agreements, Cambodia is subject to global competition. In order to remain competitive, Cambodian garment factories now must somehow distinguish themselves in the market.

4. Cambodia has set itself apart to some extent by continuously improving working conditions, and by facilitating access to reliable information regarding factory compliance with international and national labour standards. *Better Factories Cambodia* will seek to build upon the progress that already has been made in both of these areas, but the cooperation of Cambodia garment factories is critical to the project's continued success.

5. This memorandum of understanding and its attached registration form provide the framework for cooperation between *Better Factories Cambodia* and individual garment factories that wish to participate in the project.



Better Factories Cambodia
International Labour Organization

#9, Street 322
Boeung Keng Kang I
Phnom Penh, Cambodia
PO Box 2642

Tel: (+855) 23 212 847
(+855) 23 220 362
ext. 106/7

Fax: (+855) 23 212 903
E-mail: betterfactories@ilo.org

6. By signing this memorandum of understanding and providing the information required for registration, (factory name)..... agrees to:

- a. provide full access to *Better Factories Cambodia* monitors to factory premises, including surrounding areas (such as dormitories), as well as to all relevant documentation required by monitors in order to perform their tasks;
- b. allow *Better Factories Cambodia* monitors to freely interact with shop stewards, union representatives, factory workers and other relevant persons, both inside and outside factory premises;
- c. provide access as specified under paragraphs a and b above during both announced and unannounced factory visits;
- d. refrain from any acts or omissions that may hamper the ability of *Better Factories Cambodia* monitors to perform their tasks;
- e. undertake to improve working conditions.

By signing this memorandum of understanding, *Better Factories Cambodia* agrees to:

- a. execute the monitoring system in accordance with Annex 1, taking into account any future recommendations of the Project Advisory Committee;
- b. carry out monitoring visits in a fair and objective manner;
- c. attempt to minimize any disruption to factory operations during monitoring visits;
- d. keep confidential basic commercial information regarding business operations that is not related to factory compliance with core labour standards or Cambodian labour law;
- e. consider, in good faith, any allegation of misconduct by a *Better Factories Cambodia* monitor in the execution of his/her duties;
- f. In case of any disagreement over the interpretation of the present memorandum of understanding, the parties shall make an effort, in good faith, to reach a common understanding. In the absence of such a common understanding, the matter shall be referred to a mutually agreed upon arbitrator.

Garment factory representative

Name:

Date:

Better Factories Cambodia representative

Name:

Date:

13 September 2005

ANNEX 1

Garment Factory Monitoring Process ***Better Factories Cambodia***

1. Background

One goal of *Better Factories Cambodia* is to ensure that garment factories in Cambodia comply with internationally recognized core labour standards and the Labour Law of Cambodia. The project has developed an independent monitoring system designed to generate reliable information on working conditions in participating factories. Monitoring is conducted by monitors who are recruited and trained by *Better Factories Cambodia*, and who operate under the direction of the Programme Assistant and the Chief Technical Advisor (CTA). A Project Advisory Committee (PAC) discusses the functioning of the monitoring system and provides guidance and evaluation.

Better Factories Cambodia has developed an information management system (IMS), which is a computerized system for collecting, storing and analyzing data. The IMS enables monitors to store the information they collect during monitoring visits directly into laptops specifically designed to collect data (Tablet PCs).

2. How the monitoring process works

- 2.1 Factories voluntarily register with the project by providing a completed, signed registration form, with related documents, to the *Better Factories Cambodia* office in Phnom Penh, Cambodia. By registering with the project, factories agree to submit to unannounced and announced monitoring visits by project monitors.
- 2.2 *Better Factories Cambodia* employs monitors, who conduct monitoring visits in teams of 2. All monitors receive appropriate training on national and international labour standards and inspection techniques.
- 2.3 The monitoring teams work as follows:
 - The Programme Assistant schedules monitoring visits, using information generated by the IMS.
 - The monitors conduct monitoring visits, which may include discussions with management, workers, shop stewards, and union leaders; observation of factory conditions; and collection and review of documents.
 - The monitors use Tablet PCs to record their findings during factory visits. The use of Tablet PCs enables monitors to complete reports quickly and accurately.
 - A copy of the payroll and working hours information must be provided on the day of the visit. Factories are given one week to provide copies of any additional documents requested by monitors during the factory visit.

- Monitors complete monitoring reports upon receiving all necessary documents, or upon expiration of the time allotted for a factory to provide documents.
- Monitors present their reports to the CTA for approval.
- Finalized, approved reports are uploaded to the IMS.
- Factory management is notified by email that a new report is available.¹
- Management can receive reports by logging onto the *Better Factories Cambodia* IMS website, at ims.betterfactories.org. A password is required to access factory reports.

- 2.4 A checklist approved by the Project Advisory Committee identifies the issues covered during monitoring visits, including the following:

Basic worker rights:

- Freedom from child labour
- Freedom from forced labor
- Freedom from sexual harassment
- Freedom of association and collective bargaining
- Non-discrimination

Other working conditions:

- Wages
- Hours of work
- Leave
- Occupational safety and health
- Labor relations

Monitors also record the level of cooperation by management during a factory visit.

- 2.5 The indicators for freedom of association and collective bargaining in particular, focus on the process of workers exercising these rights at the workplace. The monitors may witness trade union elections, shop steward elections, and collective bargaining sessions. They also consider any complaints by workers of interference in union activity or anti-union actions in violation of Cambodian labor law. This information is reflected in factory monitoring reports.
- 2.6 The monitors do not have law enforcement powers. This is the role of labour inspectors from the ministry of labour. Their role is to verify the conditions in participating factories, to report on them and to provide information and advice on improving compliance. The CTA oversees the monitoring and remediation programs, approves the monitoring reports, and works with the social partners to ensure a continuous cycle of improvement in working conditions.

¹ Factories that do not have access to email or the worldwide web may have their factory visit reports delivered to the factory.

3. Scheduling of visits

The project seeks to visit each participating factory at least twice per year.

4. Resolving Disputes Regarding Reports

Once the CTA has approved a monitoring report, the report is made available to the factory. Factories may request advice from monitors in addressing compliance issues identified in monitoring reports. Factories also can lodge objections to findings in their reports online within 21 working days, by logging onto the *Better Factories Cambodia* IMS website, at ims.betterfactories.org. Objections will be visible to buyers who have been granted access by factories to the reports.

5. Reporting

Better Factories Cambodia provides individual factory reports as well as synthesis reports in Khmer, Chinese or English. Individual factory reports include graphs tracking progress on compliance over time, and comparing this to the industry average. Factory reports also include suggestions to address specific non-compliance issues, and track progress implementing these suggestions. Individual factory reports are accessible only to the factory and to any buyers or others granted access in writing by the factory (e.g. buyers, vendors).

Synthesis reports are publicly available, and include, for example, easy-to-read graphs showing progress by individual factories on compliance, key industry-wide compliance issues, and data regarding the number of workers employed in garment factories.

DKDR Haiti S.A.

Location Port-au-Prince
No. of workers 1538
Registration date 9 October 2009

Advisory Services and Training

Participation to the BWH OSH event on April 30 (81 workers). Participation to the HR management training provided by Sofitraining from May to July 2011. Advisory services provided on May 14 and May 17.

Compliance cluster	Compliance point	1 st Assessment	2 nd Assessment	3 rd Assessment	Improvement priorities identified by the factory	Efforts made to remedy the compliance needs	Time elapsed
1 Child Labour	Child Labourers	☐	☐	☐			
	Documentation and Protection of Young Workers	☐	☐	☐			
	Hazardous Work	☐	☐	☐			
	Unconditional Worst Forms	☐	☐	☐			
	Gender	☒	☐	☐		Application form was revised and corrected.	
2 Discrimination	Other Grounds	☐	☐	☐			
	Race and Origin	☐	☐	☐			
	Religion and Political Opinion	☐	☐	☐			
	Bonded Labour	☐	☐	☐			
	Coercion	☐	☐	☐			
3 Forced Labour	Forced Labour and Overtime	☐	☐	☐			
	Prison Labour	☐	☐	☐			
	Collective Bargaining	☐	☐	☐			
	Association and Collective Bargaining						
	Interference and Discrimination	☐	☐	☐			

5	Strikes	☐	☐	☐	☐
	Union Operations	☒ ¹³	☐	☐	☐
	Method of Payment	☐	☐	☐	☐
	Minimum Wages	☒	☐	☒ ⁱ	12 months
	Overtime Wages	☒	☐	☐	
	Paid Leave	☒	☐	☐	
	Premium Pay	☐	☐	☐	
	Social Security and Other Benefits	☒	☒	☒ ⁱⁱ	12 months
	Wage Information, Use and Deduction	☒	☐	☐	
	Contracting Procedures	☐	☐	☐	
6	Discipline and Disputes	☐	☐	☐	
	Employment Contracts	☐	☒	☒	6 months
	Termination	☒	☐	☐	
	Chemicals and Hazardous Substances	☒	☐	☐	
7	Occupational Safety and Health				
	Emergency Preparedness	☒	☐	☐	

¹³ In the first round of assessments by Better Work Haiti, there were non-compliance findings under the Union Operations CP referring to trade union access to factories. Under policies adopted during the general strikes in August 2009 over the minimum wage, the SONAPI authority required all persons to have a badge in order to enter the zone. This was initially considered unduly restrictive by BWH. Further consultations on the SONAPI policy within the ILO have clarified that such provisions do not, on their face, violate international conventions related to freedom of association. Under international standards, the factories and the SONAPI authority cannot unreasonably restrict trade union officials from accessing workplaces where the trade union has members. However, if there are no trade union members in the workplace, access can be subject to greater restrictions. Better Work Haiti has not uncovered evidence of non-compliance regarding trade union access in the latest assessment rounds.

Health Services and First Aid	●	●	●	Establish a policy for pregnant women. Provide training on first aid to workers.	Management is establishing a policy for pregnant women but this policy has not yet been published. The factory provided first aid training to 20 workers. Better Work recommends to train at least 10 percent of the workforce.	12 months
	●	●	●	Elaborate a written OSH policy.	Management is still in the process of elaborating an OSH policy.	12 months
	●	●	●			12 months
	○	○	○			
Worker Accommodation	○	○	○			
Working Environment	●	○	● ¹⁴			
Worker Protection	●	●	●	Provide Personal Protective Equipment to all workers in the spot cleaning area and train workers on the use of the equipment.	Some, but not all spot cleaners were provided with masks.	12 months
Working Time						
Leave	●	○	●			
Overtime	●	●	●	Obtain authorization from the Ministry of Labour to work overtime on Sunday.	Factory sent a letter to ask authorization for working on Sundays.	12 months
Regular Hours	●	●	●	Provide breastfeeding breaks.	Factory is still in the process of elaborating a breastfeeding policy.	12 months

Appendix G

¹⁴ NB: In the third round of assessment, the factory floor was found to be over the acceptable temperature, over the acceptable noise levels and with insufficient lighting.

