



WORKER RIGHTS CONSORTIUM

Update on Ongoing Abuse of Temporary Employment Contracts in the Cambodian Garment Industry

April 11, 2014

I. Executive Summary

In August 2011, Yale Law School's Allard K. Lowenstein International Human Rights Clinic released the report, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry*. This study, which the clinic conducted at the request of the WRC, detailed how Cambodian apparel factories' practice of employing their regular, fulltime workforce almost exclusively on consecutive short-term contracts (known in Cambodia as fixed duration contracts or "FDCs") was seriously undermining compliance with university and buyer codes of conduct, and was placing at risk Cambodia's then-already fraying reputation as a purported role model for other developing countries in protecting worker rights in export-apparel manufacturing.¹

The Yale Law School report documented how the Cambodian garment industry's extensive use of FDCs was exacerbating worker rights abuses in the country, including violations of freedom of association and denial of legally-mandated benefits, among them, maternity benefits for women workers.² Since the end of last year, however, this deterioration in Cambodia's labor rights environment has been thrown into even sharper relief by mass worker protests over unsustainably low wages – which have been met, in turn, by deadly violence and harsh repression from government security forces intervening at the behest of factory owners.³ It is no exaggeration to observe that the Cambodian garment industry's shift to FDCs as its standard employment arrangement helped set the stage for this crisis, by steadily deepening the degree of instability in the sector's already troubled labor relations.

Unfortunately, international buyers, for the most part, failed to heed the Yale Law School report's recommendations for reforming industry practices in this area – among them, to require supplier factories to use FDCs only to employ workers who are truly "temporary workers," i.e., employees hired solely to work during a particular season or to fill another short-term need, and not for workers who make up factories' regular labor force.⁴ As the need

¹ Allard K. Lowenstein Int'l Human Rights Clinic, *Tearing Apart at the Seams* (Yale Law School: 2011), http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf.

² *See, id.* at 71.

³ *See, WRC, Crackdown in Cambodia: Workers Seeking Higher Wages Meet Violent Repression* (Mar. 24, 2014), [www.workersrights.org/freports/WRC Report - Crackdown in Cambodia 3.24.14.pdf](http://www.workersrights.org/freports/WRC_Report_-_Crackdown_in_Cambodia_3.24.14.pdf).

⁴ *See, id.* at 5.

to end the Cambodian's garment industry's cycle of insecurity, unrest and repression has become even more urgent, these recommendations remain more timely than ever.

Cambodian worker rights advocates, including a majority of the country's leading labor federations, repeatedly have endorsed the report's recommendations for reforming the industry's use of FDCs.⁵ Moreover, well before the country's current labor relations crisis, even Cambodian Prime Minister Hun Sen acknowledged that garment workers favor long-term contracts (known in Cambodia as undetermined duration contracts or "UDCs") and urged factory owners to give attention to this issue.⁶

Yet, over the past three years, as on so many other labor rights issues, Cambodian factory owners have taken an entirely contrary and counterproductive approach. As discussed in this update, their industry association, the Garment Manufacturers' Association in Cambodia (GMAC) has attempted to undermine the country's leading industrial dispute resolution body *and* to sabotage efforts to improve labor relations in the garment sector, simply in order to overturn existing legal jurisprudence on use of FDCs – and thereby remove the only currently existing restrictions on their misuse. And, as a recent survey by the WRC of 127 Cambodian garment factories indicates, the GMAC has pursued these tactics despite the fact that most factory owners in Cambodia *already* employ most or all of their workforces on FDCs.

Unfortunately, nearly all of the leading apparel buyers doing business in Cambodia – including companies like Gap and Walmart, that are among the top apparel exporters from the country, as well as leading collegiate licensees like adidas and Nike – have remained publicly silent on this issue, while still benefiting from the lower labor costs that the abuse of FDCs allows their supplier factories to obtain. As discussed below, data collected by the WRC suggests that in the case of not only these firms, but also nearly every other major brand and retailer that purchases garments from Cambodia, the majority of their suppliers in the country are factories that employ most or all of their workers on FDCs.

The following update details the responses of Cambodian garment factory owners and international brands and retailers to the findings and recommendations in the Yale Law School report, since its publication three years ago; provides an update on the misuse of FDCs in the Cambodian garment sector; and offers the WRC's continuing recommendations for remedying this ongoing obstacle to labor rights compliance.

II. Garment Manufacturers Threaten to Boycott Arbitrations over Limits on FDCs

Rather than respond constructively to the recommendations in the Yale Law School report, during the past three years the Garment Manufacturers Association of Cambodia (GMAC), instead, has continued to push for expanded use of short-term contracts – in a manner that became increasingly reckless and high-handed. These efforts are discussed in detail below.

⁵ See, Appendices C and D (Joint Statements from Cambodian Unions on FDCs) (Dec. 2011 and Jun. 2012).

⁶ See, *Cambodia Herald*, "Hun Sen Calls for End to Short-term Labor Contracts" (Dec. 12, 2012), <http://www.thecambodiaherald.com/cambodia/detail/1?page=13&token=ODA2MGNhMTVIZTkzOWRiZmM4MDRlZTQ0MwJkZjA0>.

In August 2011, shortly after the publication of the Yale Law School study, the GMAC threatened to boycott proceedings of Cambodia’s Arbitration Council (“AC”), the country’s leading body for the adjudication of labor disputes, if the AC did not reverse its established precedents concerning legal restrictions on use of FDCs. The AC is a neutral dispute resolution body that has been recognized internationally for its impartiality and objectivity.⁷ Under Cambodian law, the AC is explicitly charged with interpreting the labor code.⁸

Specifically, the GMAC warned in a letter to the country’s labor ministry and to the president of the AC that its member factories would not participate in the AC’s dispute resolution proceedings unless the latter disavowed its current interpretation of Cambodian labor law on the issue of short-term contracts – which holds that workers may only be employed on successive FDCs for a maximum of two years – and adopted the position that the law allows unlimited serial use of FDCs.⁹ By issuing such a threat, the GMAC revealed not only the length it is willing to go in order to ensure that its member factories are able to continue employing their entire workforces under short-term contracts, but also a profound lack of respect for basic principles of rule of law and arbitral independence. (See Appendices A and B for a copy of the GMAC / CAMFEBA letter and a response from the WRC)

In January 2012, the GMAC escalated its threats, announcing its intention to submit the question of the legality of unrestricted use of FDCs to Cambodia’s Supreme Court,¹⁰ the apex body of a national judicial system that has been widely criticized for its corruption and political partisanship at all levels.¹¹ Taking such action, of course, would severely undermine the Arbitration Council, an institution that both stakeholders have worked for a decade to establish as the primary authority on matters of labour law interpretation and application.

Should, as the GMAC proposes in this instance, Cambodia’s regular judiciary become the arbiter of disputes concerning the labor law, then the AC will lose much of its relevance. Any time factory owners objected to an AC award, they would be able to turn to the regular court

⁷ See, International Finance Corporation, 14 *Business Issues Bulletin* 1 (2007) (“One of Cambodia’s most successful legal reforms is the Arbitration Council, a labor arbitration center that . . . demonstrates that it is possible to establish a high quality ADR institution in Cambodia that is effective and corruption-free”); also, USAID Cambodia, *Labor/Industrial Productivity: Activity Evaluations* 51 (2009) (stating that the Council “serves as a model of good governance and probity for the entire Cambodian judicial system” and “is widely recognized as the only judicial or quasi-judicial body in the country that functions with a high degree of integrity, transparency and expertise, and which produces . . . impartial results.”).

⁸ See, Labor Law, §312 (“[T]he Council of Arbitration legally decides disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.”).

⁹ See, Appendix A (GMAC and CAMFEBA Letter to Labor Minister and AC President) (Aug. 2011).

¹⁰ See, Vincent Mac Isaac, “Garment Association Foresees Supreme Fight,” *Phnom Penh Post* (Jan. 5, 2012).

¹¹ See, Surya P. Subedi, *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, UN Human Rights Council, ¶¶ 52-53 (Sept. 16, 2010) (“...[C]orruption seems to be widespread at all levels in the judiciary. Because the laws needed to protect the judges are not there, the judges . . . seem to rely on patronage and political protection rather than on the laws for the security of their jobs. This has resulted in individual judges and prosecutors compromising their independence [...] the judicial proceedings have been used by the rich and powerful in many cases to dispossess, harass and intimidate the poor.”).

system to obtain – through financial inducement or political influence – a more favourable ruling.¹² The GMAC should renounce its ever having made this irresponsible threat.

III. Garment Manufacturers Threaten to Derail Labor Pact over FDCs

On November 2, 2011, the GMAC further announced that it was refusing to renew an existing Memorandum of Understanding on Industrial Relations (MOU),¹³ with the country's labor confederations unless those unions agreed to exempt the issue of unlawful use of FDCs from binding arbitration by the AC. The MOU, which included a clause obligating both employers and unions to seek binding arbitration by the AC in labor disputes, had been credited for reducing the number of strikes in Cambodia's garment sector during its duration.¹⁴ According to participants in the negotiations for renewal of the MOU, the GMAC presented this ultimatum to the labor unions that were party to the MOU with no prior notice.

In a communication to buyers on December 15, 2011, the GMAC claimed that the unions had acceded to this demand and agreed to submit the AC's existing jurisprudence on FDCs for review by the Constitutional Council of Cambodia (CCC), a body of the state judiciary charged with reviewing the constitutionality of the country's laws.¹⁵ The MOU, however, was not signed, and the labour organizations that attended the negotiations subsequently stated publicly their opposition to submitting the FDC issue to the CCC. (See Appendix C)

In rejecting the GMAC's ultimatum, these labour organisations expressed concerns as to whether the Constitutional Council is truly an impartial body, which also have been raised by the United Nation's Special Rapporteur on the Situation of Human Rights in Cambodia.¹⁶ Further, it is not clear that, had the unions accepted this demand, the Constitutional Council's

¹² The ILO has raised similar concerns with regard to subjecting the Arbitration Council to review by the courts. See, Hugo van Noord, Hans Hwang and Kate Bugeja, *Cambodia's Arbitration Council: Institution-building in a Developing Country* ¶24 (ILO: 2011) (“... [E]arlier concerns that a labour court may be vulnerable to corruption, slow and inefficient, remain. Given that decisions of the Arbitration Council may be open to review by courts, and parties may be more likely to go to a newly established labour court, this has the potential to undermine the work of the Council and its body of jurisprudence.”).

¹³ See, Appendix G (“MOU on Improving Industrial Relations in the Garment Industry (October 3, 2012)”).

¹⁴ See, Better Factories Cambodia, *Twenty-Eighth Synthesis Report on Working Conditions in Cambodia's Garment Sector* 4 (2012) (“[T]he [Garment] sector thus [now] lacks the moderating influence of the MOU which, among other provisions, called for binding arbitration in cases of rights and no strikes prior to arbitration. The period when the MOU was in force was marked by a decrease in strike activity.”).

¹⁵ See, Law on the Organization and the Functioning of the Constitutional Council (as amended, 2007), §15 (“[T]he Constitutional Council shall have the competence to guarantee the respect of the Constitution, to interpret the Constitution and the Laws adopted by the National Assembly and definitely reviewed by the Senate, in the framework of the control of the constitutionality of the Laws.”).

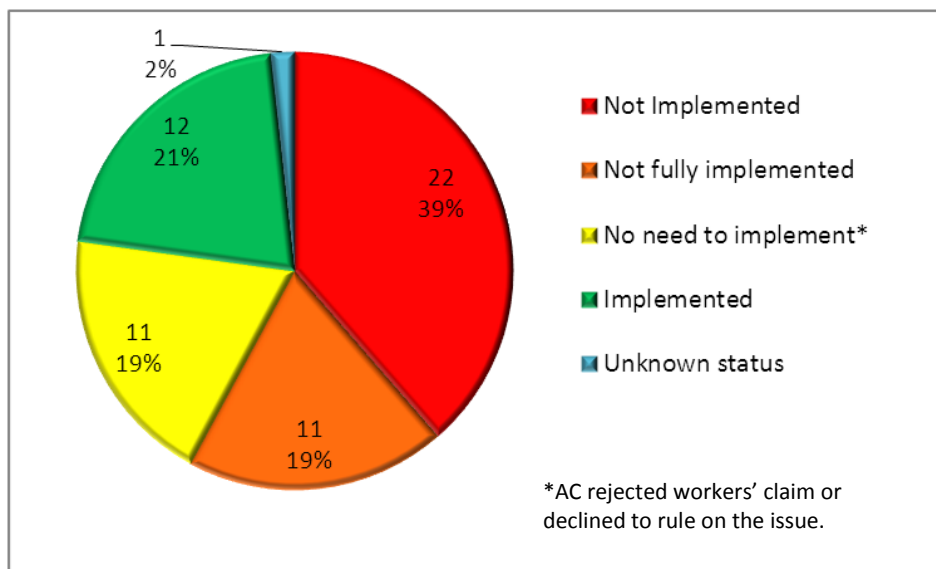
¹⁶ See, Subedi, *supra*, n. 9 at ¶¶ 57-58 (September 16, 2010) (“The domination of the Cambodian People's Party in the State machinery seems to have led to some self-censorship by the [Constitutional] Council. [...] The practice of appointing to the Council people without a legal background and without a long legal service to the nation and on the basis of their party political affiliations should be discontinued.”).

jurisdiction – which extends only to cases referred by Parliament or the Supreme Court, and does not reach cases submitted by private parties¹⁷ – would let it consider the issue.

The GMAC, for its part, accused the unions of bad faith and justified its ultimatum by claiming that disputes over FDCs and statutory attendance bonuses – another area where the GMAC dislikes the AC’s interpretation of the labor law – were causing factory owners to refuse to implement the AC’s awards. The GMAC’s apparent justification for its ultimatum, then, was that because its own members were failing to comply with the AC’s decisions, the problem must be the AC’s interpretation of the law, not its members’ refusal to abide by it.

Yet, even this supremely cynical justification lacked any basis in fact. The WRC conducted a review of employers’ implementation of binding awards issued by the AC during 2011, in period immediately prior to when the GMAC issued its demand. The WRC’s assessment revealed that, despite the commitment factory owners had made in the MOU,¹⁸ by October 2012 they had still failed to implement nearly two-thirds (33 out of 57) of the AC’s binding awards against them. (See Figure 1 below)

Figure 1: Status of Implementation of Binding Awards 2011



Of the awards that factory owners failed to implement, only three (9%) concerned restrictions on use of FDCs, and only four (12%) dealt with the issue of attendance bonuses. This left twenty-six of the thirty-three unimplemented decisions (79%) that were completely unrelated to the justifications that the GMAC gave for its November 2, 2011 ultimatum to the unions to submit the AC’s jurisprudence on FDCs to the Constitutional Council.

¹⁷ Id. at ¶ 56 (“...[T]he scope of i[the Constitutional Council’s] work is limited by the fact that private citizens have no direct opportunities to challenge the constitutionality of the laws enacted by Parliament. The citizens of Cambodia have to go through their Members of Parliament to the Council.”).

¹⁸ See, MOU on Improving Industrial Relations in the Garment Industry (Sept. 28, 2010), clause 6, (“[I]n the absence of a CBA, the parties shall agree to the national dispute procedure and accept, where mediation is unable to resolve the issue, binding arbitration for rights disputes [...] Where an arbitration decision on dispute of rights is given, the employers and workers and their representatives accept that the decision is final and binding on them.”).

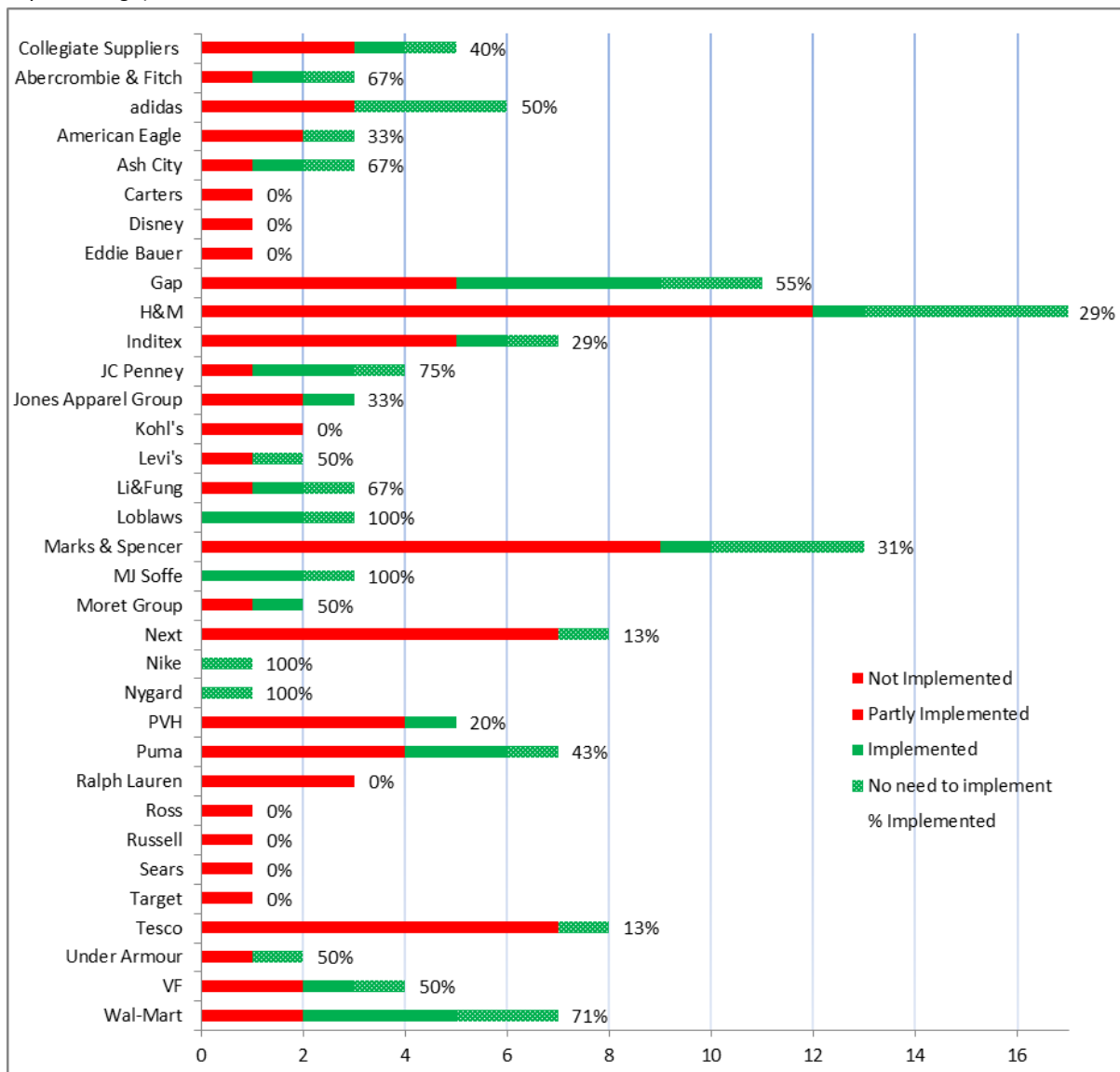
In fact, the most prevalent issue addressed in the non-implemented awards was violation of freedom of association, a problem that the Yale Law School report identified, along with underpayment of maternity benefits, as clearly linked to the factory owners' excessive use of FDCs.¹⁹ Of the thirty-three binding awards that employers failed to fully implement, fourteen (42%) ordered the reinstatement of dismissed union leaders and four (12%) required payment of maternity benefits. (See Appendix E ("List of Unimplemented AC Awards between January and October 2011") for further details)

This review also indicated that in the case of many major buyers doing business in Cambodia, including H&M, Kohl's, PVH, Puma, Ralph Lauren and Tesco, the majority of their suppliers that were party to AC proceedings during this period had failed to implement the Council's awards. So had suppliers disclosed by E5 and Ash City, two firms that are university licensees.²⁰ (See "Collegiate Suppliers" in Figure 2 below)

¹⁹ Yale Law School Report, *supra*, n. 1 at 69-75.

²⁰ E5 has informed the WRC that it ceased doing business with the factory in question in early 2011. *See*, WRC, *Zongtex Garment Manufacturing (Cambodia)* (Mar. 13, 2014), <http://www.workersrights.org/freports/WRC%20Assessment%20re%20Zongtex%20%28Cambodia%29%203.13.2014.pdf>.

Figure 2: Selected buyers - % of surveyed suppliers implementing binding Arbitration in 2011 (implementation in percentage)



The bad faith exhibited by the GMAC on the issue of FDCs is underscored by the fact that the 2010 MOU it signed with the unions explicitly stated that,

The parties agree to carry out fact-based joint research on the prevalence and nature of short term employment contracts in the garment industry. On the basis of this research, the parties agree [to] examine *limiting* the use of fixed duration contracts to *legitimate reasons such as business cycle, seasonality and related reasons*.²¹
(Emphasis added)

Despite having committed in writing to pursue *limiting* the use of FDCs to purposes of responding to business cycles and seasonality, the GMAC, instead, during the term of the MOU, continued to press for factory owners to have the right to *unlimited* use of FDCs.

²¹ Appendix G (MOU on Improving Industrial Relations in the Garment Industry (September 28, 2010)).

In May 2012, the GMAC appeared to moderate its position, however, sending a communication to its members urging them to refrain from using FDCs to deny workers legally entitled seniority benefits and maternity leave. Revealingly, the key concern expressed in the letter was the need to head off calls from workers and buyers for cessation of the use of FDCs. The letter did not mention other labour rights violations that are linked to the use of FDCs, such as pressure on workers to work overtime involuntarily and restrictions on workers' exercise of freedom of association, nor did it recommend that factories employ workers on UDCs instead of FDCs.

On October 3, 2012, the GMAC entered a new MOU with Cambodia's major labour confederations. (See Appendix H ("MOU on Improving Industrial Relations in the Garment Industry (October 3, 2012)")) Revealingly, the biggest difference between the new MOU and the previous agreement related to the issue of employment contracts. Instead of renewing its prior commitment to pursue reducing the use of FDCs, in the new MOU the GMAC only agreed to "work in good faith to resolve the issue."²²

As recent unrest in the Cambodian garment sector has highlighted, factory owners' decision in 2011-2012 to put their wish to employ their entire workforces on short-term contracts ahead of respect for the rule of law, neutral dispute resolution, or good faith negotiation, represented a squandered opportunity for the development of mature labor relations in the industry. As the GMAC, itself, reported, in 2011 the number of strikes in its members' factories fell to 34 – the lowest annual total in a decade – suggesting that unions were showing greater willingness to submit disputes to mediation and arbitration, rather than move immediately to industrial action.

As discussed, however, factory owners failed to hold up their side of the bargain through their refusal to implement the AC's binding awards, and, moreover, delayed the MOU's renewal by attempting to hold it hostage to removal of any restriction on their use FDCs. Workers' and unions' resulting frustration and loss of faith in the efficacy of dispute resolution mechanisms and sector-wide negotiations arguably has been a significant factor in the resurgence of strikes in the industry since 2011.²³

IV. Cambodian Garment Factories' Ongoing Misuse of FDCs

In April 2013, the ILO Better Factories Cambodia (BFC) monitoring program reported that, among the factories it had inspected during the previous year, nearly 40% used such contractual arrangements to deny workers legally mandated seniority benefits and maternity

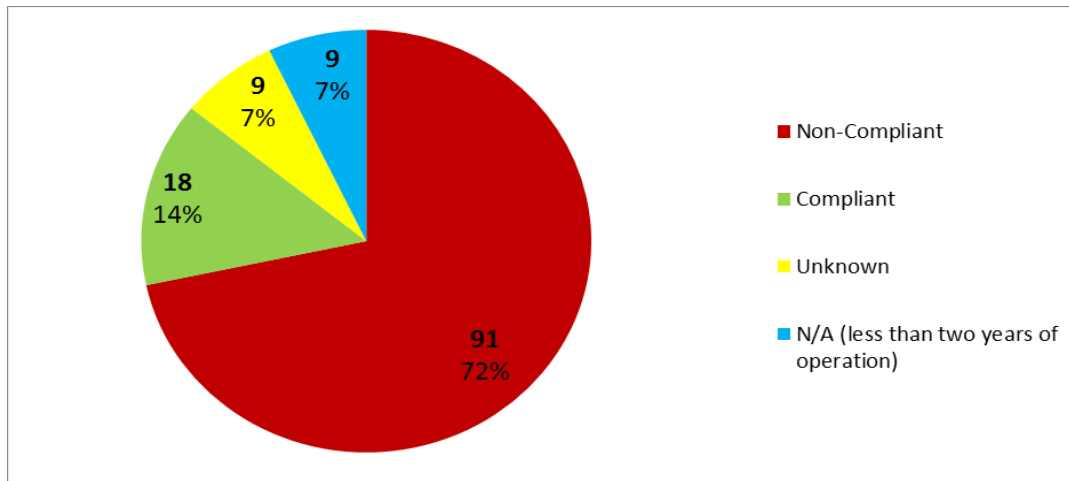
²² MOU on Improving Industrial Relations in the Garment Industry (Oct. 3, 2012), clause 7 ("[T]he parties take note of the LAC decision to establish a working group on the issue of fixed duration and undetermined duration contracts. The parties agree to work in good faith to resolve this matter in this working group."). Appendix H.

²³ See, GMAC, "Strike Report", <http://gmac-cambodia.org/strike/>. The GMAC reported that the sector saw 34 strikes in 2011. In terms of employee work days lost to strikes, the number in 2011 was 139,513 days, while during the preceding five years the annual number varied between 200,000 and 340,000. In both 2012 and 2013 the number of work days lost annually totaled more than 500,000.

leave.²⁴ In addition, BFC found that at least 90% of newly opened garment factories in Cambodia were employing workers exclusively under FDCs.²⁵ Moreover, a survey conducted by the WRC between August 2012 and May 2013 of 127 factories that supply major brands and retailers revealed that nearly 80% employ most or all of their workers on FDCs, and at least 72% violate the labor law’s two-year limit on successive FDCs.²⁶ (See Figure 3 below)

Over the past three years, Cambodian factory owners have shown that they are willing to (1) undermine an established and respected dispute resolution body in favor of recourse to a court system mired in corruption and cronyism; (2) hold hostage previously successful efforts to improve the garment sector’s industrial relations; and (3) renege on written commitments to worker representatives, all to shackle the industry’s production workforce, *indefinitely*, to the status of “temporary workers.” Remarkably, factory owners have pursued this agenda despite the fact that: (a) as the WRC’s recent survey of 127 facilities indicates, most factory owners in Cambodia *already* employ most or all of their workforces on FDCs;²⁷ and (b) as the 2011 Yale Law School report detailed, Cambodian labor law’s two-year limit on serial use of FDCs is a *weaker* restriction on short-term contracts than those enforced by countries whose garment industries the GMAC considers its primary competitors.²⁸

Figure 3: Compliance with the two-year statutory limit on FDC use



V. International Brands and Retailers Are Complicit in Abuse of FDCs

The 2011 Yale Law School report recommended that apparel buyers require their supplier factories to, “[c]omply with the Arbitration Council’s interpretation of the Labor Law as imposing a cumulative two-year cap on FDCs.” Perhaps more significantly, the report’s

²⁴ See, Better Factories Cambodia, *Twenty-Ninth Synthesis Report on Working Conditions in Cambodia’s Garment Sector* (April 11, 2013) (“This report finds that 37% of factories used rotating fixed term contracts or otherwise did not include the entire period of continuous employment when determining a worker’s entitlements to maternity leave, seniority bonus and/or annual leave.”).

²⁵ Ibid. (“Data analyzed by BFC confirms that 90% of newly registered factories assessed classify all workers as FDC workers.”).

²⁶ See Appendix F (“Survey of Short Term Contract Use at Cambodian Garment Factories”).

²⁷ Ibid.

²⁸ See, Yale Law School Report, *supra*, n. 1, at 14, 50 – 54.

authors also urged that buyers mandate that supplier factories “[r]eport on the composition of their workforces and ensure that their regular workforces (i.e., all workers who are not seasonal, temporary, or casual) are employed on UDCs.”²⁹ Yet, with only a few exceptions (which we discuss below), brands and retailers sourcing apparel from Cambodia have done little to address the abusive and illegal use of FDCs by their suppliers.

Consistent with the former recommendation, in February 2012, the German brand, Puma, publicly stated that it would require its Cambodian suppliers to abide by the Arbitration Council’s jurisprudence establishing two years as the maximum total duration of FDCs.³⁰ The WRC has confirmed through interviews with factory workers that, in accordance with this policy, at least one Puma supplier, Huey Chuen, converted the contracts of its employees who had been working at the factory for at least two years from FDCs to UDCs.

Huey Chuen’s move to comply with the law’s requirements on FDCs demonstrates that reducing abuse of short-term contracts is possible – if a buyer is genuinely committed to upholding the rule of law and enforcing its suppliers’ compliance with its code.³¹ Yet, as can be seen in Figure 4, below, since then, Puma has failed to follow through on this commitment by requiring its other supplier factories to comply with Cambodian law on use of FDCs.

Similarly, in August 2013, the Goldfame Enterprises Knitters factory, at the insistence of H&M, one of its buyers, implemented an outstanding 2011 AC award requiring the factory to convert the FDCs of 25 workers to UDCs.³² Unfortunately, the policy H&M apparently has adopted on this issue is not to require its suppliers to convert employees’ FDCs to UDCs after two years on the job – as the law requires – but, instead, to require factories to comply with awards from the AC on this issue. In other words, workers will need to first take factory owners to arbitration on this issue, before H&M will require the latter to comply with the law.

Unfortunately, other buyers sourcing apparel from Cambodia appear to have done even *less* to address this issue. The WRC’s 2012-2013 survey of the employment contract practices of 127 Cambodian factories identified more than 90 European and US buyers sourcing from one or more of these facilities.³³ In the cases of more than 95%, including major buyers like Gap

²⁹ The Yale Law School report further recommended that the GMAC: (1) Require, as a criterion of membership, that factories not employ under FDCs more than a fixed percentage of their workforces, to be established in consultation with the ILO and labor NGOs; (2) Publish a “best practices” manual, in collaboration with the ILO and other stakeholders, explaining the proper provision of benefits and accrual of seniority for FDC workers; (3) Suspend the membership of all companies found to have engaged in factory closings in violation of the Labor Law; and (4) Disqualify managers of factories found by the AC to have engaged in anti-union retaliation against workers from holding positions on the GMAC’s Board of Directors, even if this finding was made in a non-binding award. Yale Law School Report, *supra*, n. 1.

³⁰ Statement of Edel Anit, Puma RSL & Environment Manager, at Asia Floor Wage Tribunal (Feb. 6, 2012).

³¹ Interviews with Huey Chuen workers.

³² See, Arbitration Council Award 11/105 (Goldfame Enterprise Knitters), (“[C]onvert contracts for 25 workers who have been working in the factory for more than two years from FDC to UDC contracts.”).

³³ See Appendix F (“Survey of Short Term Contract Use at Cambodian Garment Factories”).

and Walmart, more than half of the factories in the survey that were identified as their suppliers violated the statutory two-year limit on employing workers on FDCs.³⁴

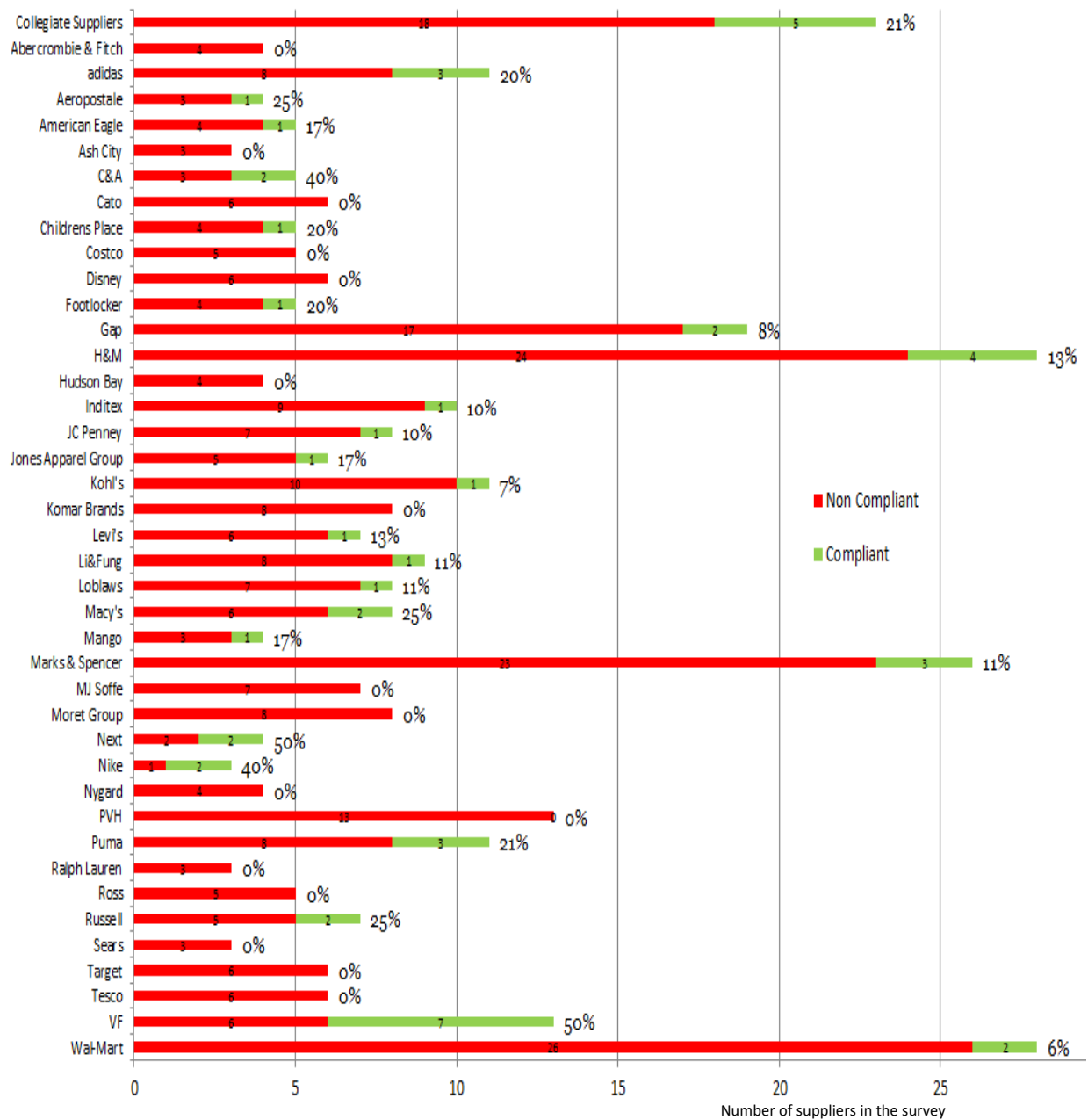
For nearly half the buyers doing business with one or more of the surveyed factories, including Costco, Disney, Polo Ralph Lauren, Sears and Target, *all* of the factories identified as their suppliers were found to be breaking the law.³⁵ Among buyers that produce apparel licensed by US universities and colleges, nearly 80% – including leading licensees such as adidas and M.J. Soffe – were having these goods supplied by factories that violate the legal limit on employment of workers on FDCs.³⁶ (see “Collegiate Suppliers” in Figure 4, below)

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

Figure 4: Selected buyers - % of surveyed suppliers complying with two-year limitation on FDCs (compliance in percentage)



Yet, as the Yale Law School report made clear, requiring factories to comply with the labor law’s limited restrictions on use of FDCs still leaves workers employed under such arrangements with insufficient protection from abuses such as discriminatory termination, forced overtime, and denial of maternity benefits.³⁷ Even Puma’s supplier, Huey Chuen, which converted the contracts of its employees who had been working at the factory for at least two years from FDCs to UDCs, still hires workers under consecutive two-month FDCs for their first two years of employment.

³⁷ See, Yale Law School Report, *supra*, n. 1 at 68 – 72.

VI. Recommendations

The WRC again urges all buyers sourcing from Cambodia, nearly all of whose codes of conduct require compliance with national labor laws – and some of whose codes specifically prohibit abuse of temporary employment contracts – to end the misuse of FDCs by their supplier factories in Cambodia. To accomplish this, the WRC recommends that these buyers take the following measures:

- Immediately require all supplier factories to abide by the Arbitration Council’s existing jurisprudence establishing two years as the maximum duration for which workers can be employed under FDCs by issuing UDCs to all workers with more than two years’ cumulative service with their employers;
- Require all suppliers to limit issuance of any new FDCs to workers whose employment is legitimately seasonal and/or temporary in nature, and to issue UDCs to all workers currently employed or newly hired as part of their factories’ regular year round workforce;
- Urge the GMAC to cease its efforts to remove existing statutory restrictions or reverse existing jurisprudence establishing two years as the maximum total duration of FDCs; and
- Support the implementation of all other recommendations on use of FDCs and related issues in the Yale Law School report.

The WRC looks forward to collaboration with buyers and other stakeholders to address this continuing obstacle to progress in Cambodia’s labor rights environment.

Unofficial translation from original Khmer version.

CAMBODIAN FEDERATION OF EMPLOYERS AND BUSINESS
ASSOCIATION

No. 001/08/2011-CAMFEBA

To: Excellency Vong South
Minister, Ministry of Labor and Vocational Training,
And President of Labor Advisory Committee

Subject: Asking the Ministry of Labor and Vocational Training to issue an urgent
direction to the Arbitration Council to follow the explanation made by the
department of labor inspection and the notification no. 017

Reference: Paragraph 3 of the July 18, 2000 Notification No. 017 by the Ministry of
Social Affairs, Labor, Vocational Training and Youth Rehabilitation on
the remuneration for workers' punctual work performance in footwear and
garment industry,

The April 21, 2004 Prakas No. 099 on the Arbitration Council,

The Arbitration Council Award on case file No. 10/03-Jacqsintext and the
subsequent awards regarding employment contract,

The Award on case file No. 04/03-Ly Da garment, 62/04-Ecent Cambodia,
63/04-Shine Well Garment and the subsequent award regarding the regular
attendant bonus in footwear and garment industry,

In regard to the subject and reference mentioned above, on behalf of Cambodian
Federation of Employer and Business Associations (CAMFEBA) and Garment
Manufacturers Association in Cambodia (GMAC) and on behalf of myself as a co-deputy
president of the Labor Advisory Committee, I have the great honor to inform you that the
employers parties completely reject the Arbitration Council award regarding the
interpretation of labor law's Article 67 and Article 73 on employment contract, and the
notification No. 017 on the regular attendant bonus in footwear and garment industry.
Our objection is based on the following facts and laws.

1. The Arbitration Council Award on employment contract

-Arbitrator AN Nan's conflict of interest:

In December 2002, Mr. AN Nan worked as a manager in legal section for
Cambodia Labor Organization (CLO), an organization characterized as a trade
unions rather than a non-governmental organization. To play his role, Mr. AN
Nan represented many workers who are members of the Solidarity Worker Union
of Jacqsintext factory. He represented the workers on many disputes in relation to
interpretation of the employment contract.

On March 12, 2003, Excellency Ith Sam Heng, the Minister of Social Affairs, Labor, Vocational Training and Youth Rehabilitation issued a Prakas No. 096 to appoint 21 arbitrators for dealing with labor dispute. Mr. AN Nan was selected among 21 arbitrators by the workers party.

On July 2003, the dispute between the Solidarity Worker Union of the Jacqsintext factory and the factory's employer was referred to the arbitration council. At the time, the workers selected the arbitrator AN Nan to be a member of the arbitrators who deal with this case. The issue-1 of the case is the demand that the employer change the employment contract status. That is to change from FDCs to UDCs after two years of employment by the factory (four renewal of 6 month FDC). This dispute is the one that Mr. AN Nan used to represent the factory's workers in fighting with the employer in December 2002. Because the employer did not understand the Arbitration Council procedure that was newly established, the employer did not raise the issue of the conflict of interest of the arbitrator AN Nan during the hearing of the case. As a result, the arbitration members dealing with the case made their decision and issued an award No. 10/03-Jacqsintext, the first award made on the interpretation of the labor law's Article 67 and Article 73 on employment contract in accordance with what was used to be demanded for the workers by Mr. AN Nan. This award becomes the strategy for the Arbitration Council in dealing with the subsequent cases.

Article 15 of the Prakas 099 on the Arbitration Council say: *"A member of the arbitration panel shall recuse himself or herself from membership of the arbitration panel on which he or she has been chosen, if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, including close personal or professional relationship with other members of an arbitration panel or with any of the parties, or direct personal or professional interest in the outcome of the case."*

Article 16 of the same Prakas say: *"The fact that a member of an arbitration panel does not recuse himself or herself if required under provision of Article 15 above, may be used as a reason for the implementation of provisions set out in Article 47 of this Prakas relating to the non-recognition of an award."*

In accordance with the fact stated above, we understand that the arbitrator AN Nan acted against Article 15 of the Prakas No. 099 because of the conflict of interest of his membership in the arbitration panel dealing with case file No. 10/03-Janqsintext. **AN Nan should have recused himself from membership of the arbitration panel that deal with the case even if no one objects his membership.**

Because of his conflict of interest, according to Article 16 of Prakas 099, the award on case file 10/03-Jacqsintext **cannot be applied and it cannot be used as a strategy for awarding other cases by the arbitration panel.**

The Legal Interpretation Power of the Ministry in charge of labor:

The arbitration council, with support from ILO and workers union, explained that the FDC will become UDC, if the renewal of the contract accrues 2 years. On the contrary, the employer parties see that Article 67 and 73 of the labor law state very clearly that the FDC cannot exceed 2 years. The FDC can be renewed many times and remains FDC as long as it does not exceed 2 years. In the letter No. 1230 from the Ministry in charge of Labor dated September 20, 2002 by Mr. HuotChanthy, Department Director of Labor Inspection and a letter No. 891, dated December 1, 2006 by Mr. InKhemara, Department Director of Labor Inspection recognized the interpretation by the employer parties.

Despite of the letters clarifying Article 67 and 73 issued by the Ministry in charge of labor represented by Mr. HuotChanthy and Mr. InKhemara, the arbitration panel did not accept the clarification. They considered it as **personal view that does not represent the Ministry's view**. The arbitration panel's view gave us an extremely surprise. Here is a question to the panel: don't the Ministry's official with position as a Department Directors and the law implementers have the right to issue the direction on implementation of the law? Is it right that the arbitration panel considered the clarification by the Ministry's official as personal view, even if they officially used the Ministry's letter head and stamp? If the inspection officials really do not have the power to give such direction on implementing laws and regulations on labor such as the interpretation by the arbitration panel, we therefore understand that the establishment-employers do not need to follow any direction given by the Ministry's inspection official during each of their inspection visit to their establishment.

On the other hand, we see that if the Ministry of Labor does not have the power to give instruction on implementing the law, the arbitration panel does not have such power as well, because the arbitration panel is a judicial institution and is not constitutional council. The arbitration panel is just an institution that is established to meet the requirement by the labor law and it is an institution that has to the process in alternative dispute resolution. No law says the arbitration panel has the power to interpret any law. The labor law and the Prakas No. 099 only authorize the institution to apply the law to solve the dispute.

2. The Arbitration Council Award on regular attendant bonus

In Cambodia, there is no provision that says the employer shall pay attendant bonus to worker who comes to work regularly in a month. However, in order to encourage workers to come to work punctually, the Garment Manufactures Association in Cambodia during the Labor Advisory Committee's meeting agreed to give a regular attendant bonus of at least US\$5.00 per month to footwear and garment industrial workers who perform their work punctually and without taking any leave during the month. The aim of the bonus is only for the workers who are not absent from work during the month. It is not for purpose other than this.

To legalize the decision, the Ministry of Labor issued a notification No. 017, dated July 18, 2000. The notification also states clearly that workers who come to work regularly on regular working days of a month shall receive the attendant bonus.

It is regrettable that the Arbitration Council misinterpreted the GMAC's purpose and tried to interpret it using the principles of equality, despite that the notification is already clear, and required the employers to continue to give the remuneration to workers even though they are away from work to join demonstration (the Award on the case file No. 04/03-Ly Da garment) and despite that their annual and sick leave were taken (the Award on the case file No. 62/04-Ecent Cambodia, 63/04- Shine Well garment). The Arbitration Council orders the employer to deduct the remuneration in proportion to the number of days of workers' absence.

May we ask "did the Arbitration Council take part in a discussion during the Labor Advisory Committee's meeting with the employers and the workers union? Is it against the law when the employers made their decision to give such benefit that is not set out in the law to their workers and set out the requirement that the workers has to fulfill before having their right to receive the benefit? Is the clause "come to work regularly on regular working days of a month" difficult for the Arbitration Council to understand?

We would like to inform you that issuing the award by the Arbitration Council dealing with case file No. 10/03-Jacqsintext which is against Article 15 of the Prakas 099, while AN Nan really has the conflict of interest in dealing with the case, and issuing the award against the notification No. 017 in relation to remuneration for punctual work performance has established a wrong strategy for the Arbitration Council as a whole and caused subsequent disputes between the employers and workers. This also caused disruption and hindrance to local and international investors in the Kingdom of Cambodia because the restriction that the employers should not use the 2 year FDC and the requirement that the employers continue to give the regular attendant bonus to workers even they do not perform their job punctually can make Cambodia a country with laws that are stricter than other neighbor countries. Especially, there is no law in the world, even in France who originated the labor law for our country, allow the employers to use the FDC for only 2 years.

On behalf of the Ministry of Labor and Vocational Training that is mandated by the government to keep good professional relationship to encourage the investors, we think that the Ministry should not allow arbitrators who did not perform their role properly and within legal framework to hinder the government's efforts in attracting foreign investment, because it badly affect the government policy in reduction of poverty through creating job opportunity for Cambodians.

As mentioned and requested above, and in order to solve these two main problems, we would like to ask you to issue an urgent direction to all concerned parties, especially the to arbitration council to follow the department of labor inspection's direction on FDC, and to make appropriate decision on remuneration for punctual work performance.

If the problems are not appropriately solved, the employer parties will consider seek ways and give advice to their members to boycott the hearing by the arbitration panel and not to follow any award made by this institution. Furthermore, we will raise and report the issue to the Prime Minister for an intervention on the 16th Government-Private Sector Forum in the upcoming days.

Yours sincerely,

Phnom Penh, August 10, 2011

For the president of Cambodian Federation of Employer and Business Associations
(CAMFEBA),
Member of the Board, and Co-Deputy President of Labor Advisory Committee

[Stamp and Signature]

Ouknha, Ph.D Nang Sothy

CC:

- H.E. Ith Sam Heng, Minister of Social Affairs, Veterans, and Youth Rehabilitation, and co-president of 8th working group,
- H.E. Seng Sakda, General Department Director of Labor, Ministry of Labor and Vocational Training,
- Mr. Vann Si Eang, President of CAMFEBA and GMAC,
- Mr. In Khemara, Department Director of Labor Inspection, Ministry of Labor and Vocational Training
- Mr. Sok Lor, Executive Director of the Arbitration Council,
- Members of the Board, CAMFEBA and GMAC,
- Members of CAMFEBA and GMAC (for info)
- Documentation and Archive

Appendix B: Memo from WRC to buyers re CAMFEBA/GMAC boycott threat against Arbitration Council August 2011



WORKER RIGHTS CONSORTIUM

To: University Licensees and International Buyers
From: Scott Nova, Executive Director, Ben Hensler, General Counsel
Re: **(Cambodia) Factory Owner Threat to Boycott the Arbitration Council / Abusive Use of Short-Term Employment Contracts**
Date: August 29, 2011

We are writing regarding disturbing developments in the labor rights environment in Cambodia. On August 10, 2011, the Cambodian Federation of Employers and Business Associations (CAMFEBA) sent a letter to the country's Ministry of Labor and Vocational Training, on behalf of both CAMFEBA and the Garment Manufacturers Association in Cambodia (GMAC) threatening that factory owners would boycott the proceedings of the Arbitration Council, Cambodia's leading adjudicatory body for labor relations, unless the Labor Ministry issues a directive overruling the Council's existing precedents¹ to adopt positions advantaging employers – and disadvantaging workers – on two highly controversial issues.

In the letter CAMFEBA and GMAC demand that the Labor Ministry “issue an urgent direction” to the Arbitration Council to reinterpret Cambodian labor law to suit the wishes of garment factory owners. CAMFEBA and GMAC go on to threaten that “if the problems are not appropriately solved” – i.e., if the Council's jurisprudence is not overruled to factory owners' liking – they will advise their members to “boycott the hearing by the arbitration panel and not to follow any award made by this institution.” We attach the letter sent to the Ministry by CAMFEBA and GMAC, and we discuss its contents more fully in the appendix to this memorandum.

Needless to say, such coercive tactics by employers towards the Arbitration Council, a well-respected dispute resolution body, are completely contrary to basic principles of adjudicatory independence and the rule of law. Lamentably, garment factory owners are seeking to weaken

¹ While the Arbitration Council is not formally bound to follow its previous decisions, it does so when the prior decision was based on reasoning that is sound and transparent. *See, e.g., Evergreen*, Arbitration Council Award No. 57/06 (“Generally, the Arbitration Council follows the previous Awards if they are reasonable.”).

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and undermine, for purely self-serving ends, an institution that is widely-regarded as the country's most efficient and independent adjudicatory body.² Because garment factories that make up the leading members of CAMFEBA and GMAC are your companies' suppliers and business partners, it is crucial that international apparel companies publicly disavow such tactics and demand an immediate cessation of such threats.

Moreover, the positions which garment manufacturers would coerce the Arbitration Council to adopt would be not only completely contrary to the Council's published jurisprudence, but also quite harmful to the country's labor rights environment. Most significantly, CAMFEBA and GMAC threaten to boycott the Arbitration Council unless Labor Ministry overrules the Council's existing precedents and declares it legal for factories to employ workers indefinitely on repeating short-term contracts (known in Cambodia as "fixed duration contracts" or "FDCs").³

As you may know, the removal of current legal restrictions on the use of short term contracts is a position long advocated by factory owners, but widely-recognized by other stakeholders as posing significant risks for Cambodia's labor rights environment. Indeed, when, more than two years ago, the industry tried to push through such a change as an amendment to the labor law, both international apparel buyers and the U.S. government went on record expressing their disapproval.⁴ Stymied by their failure to push through the change as an amendment to the labor

² See, e.g. International Finance Corporation, World Bank Group, 14 *Business Issues Bulletin* 1 (2007) ("One of Cambodia's most successful legal reforms is the Arbitration Council, a labor arbitration center that . . . demonstrates that it is possible to establish a high quality ADR institution in Cambodia that is effective and corruption-free"); also, USAID Cambodia, *Labor/Industrial Productivity: Activity Evaluations* (2009) 51 (stating that the Council "serves as a model of good governance and probity for the entire Cambodian judicial system" and "is widely recognized as the only judicial or quasi-judicial body in the country that functions with a high degree of integrity, transparency and expertise, and which produces . . . impartial results."); Levi Strauss and Co., *Annual Financial Report* 13-14 (2007) ("The Council has become widely regarded as one of the country's most successful, effective and transparent legal institutions, and the only forum . . . where employers and unions can turn to have their labor disputes resolved quickly and fairly.").

³ The letter also threatens an employer boycott if the Council is not overruled on the issue of whether an employer can deny a worker a legally-mandated attendance bonus for having utilized a sick day or annual leave. The industry's apparent position is that – contrary to the Council's existing precedents – a worker should forfeit her entire month's attendance bonus unless she is willing to come to work sick and forfeit use of rest days to which she is legally entitled. The industry has taken this position despite the fact that Cambodian garment factories currently are experiencing a rash of incidents of dozens of workers fainting on the job, mostly likely from a combination of malnutrition (in part due to low wages which the attendance bonus was intended to address), exhaustion, excessive heat and chemical exposure. See, e.g., Morn Kunthea, "Mass Collapse at Factory," *Phnom Penh Post* (Aug. 24, 2011).

⁴ See, USAID, *supra*, n. 2 at 49 (describing the industry proposal "to permit an employer to utilize any number of such short-term fixed duration contracts with no time limitation," as a "development [that] may undermine the Arbitration Council's authority and independence . . . [and] is a major threat to job security, particularly for union leaders and activists, [that] would undermine such statutory rights as maternity leave; and . . . very likely would cause the incidence of wildcat strikes to increase."); also, Letter from Business for Social Responsibility ("BSR") to H.E. Sar Kheng, Deputy Prime Minister and Co-Minister, Ministry of Interior, H.E. Cham Prasidh, Senior

law, factory owners now have seized upon the underhanded tactic of coercing an adjudicatory body in order to achieve the same goal.

The unfortunate reality is that, even under the Arbitration Council's current jurisprudence, which caps use of short-term contracts at two years, Cambodian garment factories are already using such arrangements in a manner which seriously undermines worker rights. On August 3, 2011, researchers at Yale Law School's human rights center released an in-depth report highlighting the serious labor rights abuses associated with the Cambodian garment industry's excessive use of short term contracts – from violations of associational rights and denial of legally-mandated benefits like maternity leave to increased pressure to work excessive overtime.⁵ For this reason, the report's authors recommend, among other measures, that international buyers prohibit their suppliers from using short-term contracts to employ their regular production workforce.

The WRC urges international buyers to clearly communicate to CAMFEBA and GMAC the need to take following actions:

- Immediately disavow and retract their threats of boycotting the Arbitration Council;
- Issue a statement recognizing the Arbitration Council's crucial role in dispute resolution and its right to independently interpret Cambodian labor law;
- Adhere to the Arbitration Council's existing precedents related to employment contracts and attendance bonuses; and
- Implement the recommendations pertaining to the use of short-term contracts in the Yale Law School report.

The WRC looks forward to your cooperation in addressing this very serious and urgent matter. Thank you very much.

Appendix: Analysis of CAMFEBA / GMAC Letter

1. CAMFEBA and GMAC claim that the Arbitration Council lacks the authority to interpret Cambodian labor law.

CAMFEBA and GMAC claim, inaccurately, that “no law says the arbitration panel has the power to interpret any law.” Article 312 (2) of the Cambodian Labor Law, however, explicitly

Minister/Minister, Ministry of Commerce, H.E. Ith Sam Heng, Chair, 8th Working Group on Labor & H.E. Vong Soth, Minister of Labor, Mar. 3, 2009 (stating similar opposition of international apparel buyers that are members of BSR).

⁵ See, Yale Law School Allard K. Lowenstein International Human Rights Clinic, *Tearing Apart at the Seams: How Widespread Use of Fixed-Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry* (2011); http://www.law.yale.edu/documents/pdf/Intellectual_Life/Cambodia_TearingApartattheSeams.pdf.

states the opposite: “The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement.” It is precisely because the Labor Law clearly vests this authority in the Arbitration Council that the factory owners’ attempt to have the Council’s interpretation of the law overruled is so egregious.

2. CAMFEBA and GMAC claim that Labor Ministry’s inspectors have the authority to re-interpret the Labor Law.

In the letter CAMFEBA asks “don’t the Ministry’s official with position as a Department Directors and the law implementers have the right to issue the direction on implementation of the law?” The obvious answer to the question is that the Labor Ministry *does* have the right to implement the law – but only consistent with the Arbitration Council’s interpretation of it.

Unfortunately, CAMFEBA and GMAC miss the basic distinction between “implementation” and “interpretation” of the law. If the Labor Ministry “issu[es] [a] *direction on implementation* of the Labor Law” (emphasis added) that contradicts the Council’s *interpretation* of the law, that is the same thing as the Ministry *reinterpreting* the Labor Law, which is beyond its authority.

As noted, Article 312 of the Labor Law, which lists the responsibilities of the Arbitration Council, *explicitly refers* to interpretation of the law as one of the Arbitration Council’s duties. By contrast, Article 344 of the Labor Law, which lists the functions of the labor inspectorate, makes *no reference* to interpretation of the Labor Law as one of the inspectorate’s duties. A plain reading of the Labor Law, then, rules out any possibility that the Labor Ministry possesses the authority to interpret the law in a manner that contradicts the Arbitration Council.⁶

Put simply, labor inspectors enforce labor laws; adjudicators, like the Arbitration Council, interpret them. The WRC knows of no labor law system in the world where labor inspectors can issue legal interpretations that trump those of a statutorily-constituted adjudicatory body. For CAMFEBA and GMAC to suggest that this should be the case in Cambodia reveals an unfortunate lack of appreciation for the vital role of the Arbitration Council as an independent dispute resolution body.

3. CAMFEBA and GMAC claim that the leading Arbitration Council decision interpreting restrictions on short-term contracts, *Jacqsintex*,⁷ should be disregarded.

⁶ A universal principle of statutory interpretation, *expressio unius est exclusio alterius* (“the express mention of one thing excludes all others”), dictates that when a term is included in one portion of a law and absent in another, the absence should be read as intentional.

⁷ *Jacqsintex Industrial Cambodia*, Arbitration Council Award No. 010/03.

The factory owners urge that this 2003 decision, which set a two-year limit on the length of time that an employee can be employed on successive short-term contracts, should be overruled because of alleged conflict of interest on the part of one of the members of the arbitration panel.⁸

CAMFEBA and GMAC ignore the plain fact that the *Jacqsintex* case was decided unanimously, meaning that even the arbitrator *chosen by the employer* agreed with the panel's interpretation of the law. Moreover, the *Jacqsintex* decision makes clear that the panel in that case squarely addressed the allegation of conflict of interest, and that the employer party explicitly and voluntarily waived any argument that the arbitrator in question should be removed on that ground.⁹ Furthermore, the Council has, in later cases, where no allegations of conflict of interest were raised, reviewed the *Jacqsintex* decision and confirmed that its interpretation of the law was the proper one and should be followed.¹⁰ Finally, as CAMFEBA and GMAC acknowledge in their letter, the ILO also agrees with the Arbitration Council's interpretation of the labor law on this issue in *Jacqsintex*. CAMFEBA and GMAC's conflict of interest allegations are simply a red herring.

CAMFEBA and GMAC also falsely claim that the two-year limit on the use of short-term contracts makes Cambodian labor laws more restrictive on this issue than those of other garment-producing countries. The factory owner groups claim that "[T]he restriction . . . make[s] Cambodia a country with laws that are stricter than other neighbour countries. Especially, there is no law in the world, even in France who originated the labor law for our country, allow the employers to use the FDC for only 2 years." As the Yale Law School report on the Cambodian garment industry's excessive use of short-term contracts discusses, however, leading competitor countries, including China, Indonesia, Pakistan, and Vietnam, all place greater or equal legal restrictions on temporary work contracts.¹¹

⁸ The Council does not employ full-time arbitrators, but draws its panels from local experts in the fields of labor law and industrial relations. The arbitrator who is the subject of CAMFEBA and GMAC's allegation, Mr. An Nan, currently also serves as a consultant to the WRC, and formerly worked for the Cambodian Labor Organization [CLO]. The WRC and An Nan have a standing agreement, however, that he will not serve as an arbitrator for the Council in any case involving a factory concerning which he has represented the WRC, and *vice versa*.

⁹ See, *Jacqsintex* at 8 ("The Arbitration Council then told the parties that if any party believed that any arbitrator had a conflict of interest in this case then that arbitrator would withdraw from the hearing. In response . . . the employer party said that he knew that Mr. An Nan worked for the CLO and that [An Nan] had assisted the union to resolve similar disputes at *Jacqsintex* but that he [the employer] didn't have any problem with his [An Nan's] participation in the panel.").

¹⁰ See, e.g., *Evergreen*, Arbitration Council Award No. 057/06 ("Generally, the Arbitration Council follows the previous Awards if they are reasonable. In this case, the Arbitration Council found that the Arbitrators of *Jacqsintex* gave a very reasonable explanation.").

¹¹ See, Yale Law School, *supra*, n. 5 at 50-53.

4. CAMFEBA and GMAC threaten to boycott the Arbitration Council unless factory owners are permitted to withhold legally-mandated attendance bonuses from workers who take legitimate sick leave or statutory annual leave.

CAMFEBA and GMAC are also demanding that the Labor Ministry overrule the Council's 2004 decision in the *Shine Well*¹² case concerning whether employers are required to pay statutory attendance bonuses to workers who have been absent due to a legitimate illness or use of statutory annual leave. The mandatory payment of attendance bonuses to eligible workers was agreed upon by the Labor Advisory Council, a tripartite body that includes government, worker and employer representatives, as announced in Labor Ministry Notification No. 17 of 2000.

Because the Labor Advisory Council did not specify how statutory sick days or annual leave are to be treated for the purpose of awarding attendance bonuses, in *Shine Well* the Arbitration Council interpreted Notification 17 pursuant to its authority, under the labor code, to rule according to basic principles of equity on questions not governed by statute, regulation or contract.¹³ The Arbitration Council reasonably ruled that the employer still must pay the attendance bonus if the worker legitimately takes sick leave or annual leave but may deduct from the monthly bonus an amount proportional to the number of days of sick leave which the worker took that month.¹⁴

Here, again, CAMFEBA and GMAC are inappropriately attempting to secure, through coercion of the Arbitration Council, what the factory owners have wanted, but been unable to gain, through legitimate channels. The GMAC already has proposed at the Labor Advisory Council that the 2000 agreement on providing attendance bonuses should be amended to specify that workers who use sick leave should not receive attendance bonuses, however, the other parties in that body have not agreed to this change.

CAMFEBA and GMAC's demand that the Labor Ministry overrule the Arbitration Council on this issue represents an attempt to not only undermine the Arbitration Council, but also make an end run around the process of tripartite negotiations at the Labor Advisory Council. Again, such tactics reveal a lack of respect on the part of factory owners for those institutions of the Cambodian labor relations system that other stakeholders – including international buyers and the ILO – have worked so hard to foster.

¹² *Shine Well Industry Co. Ltd.*, Arbitration Council Award No. 063/04.

¹³ Labor Law, art. 312 (stating that the Council is authorized to "decide on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement" and that "[t]he Council's decisions are in equity for all other disputes").

¹⁴ See, *Shine Well* at 10.

សេចក្តីថ្លែងការណ៍

នៅថ្ងៃទី១៩និង២០ខែធ្នូ ឆ្នាំ២០១១ នេះ ថ្នាក់ដឹកនាំសហជីពចំនួន៥២នាក់តំណាងមកពីសហភាពចំនួន៧ និងសហព័ន្ធសហជីព២ ព្រមទាំងអង្គការគាំទ្រវិស័យការងារនានាបានរួបរួមគ្នា ពិភាក្សាអំពីបញ្ហាភិច្ចសន្យាមានចរិយាលកំណត់ (FDCs) និងរៀបចំផែនការសកម្មភាពដើម្បីឆ្លើយតបនឹងបញ្ហាទាំងនេះ។

ក្នុងកំឡុងពេលពិភាក្សា តំណាងសហជីពបានចែករំលែកបទពិសោធន៍ ទាក់ទិននឹងការកើនឡើងនូវការប្រើប្រាស់ភិច្ចសន្យាមានរយៈពេលកំណត់(FDCs) ដែលទូរលេខបច្ចុប្បន្នមានចំនួនប្រហែលពី ៨០% ទៅ៩០% នៃកម្មករសរុបនៅក្នុងវិស័យកាត់ដេរសំលៀកបំពាក់ និងដេរស្បែកដើង។ ជាងនេះទៅទៀតនិយោជកព្យាយាមបញ្ចុះបញ្ចូលកម្មករដែលមានភិច្ចសន្យាមិនមានរយៈពេលកំណត់(UDCs)ឲ្យប្តូរទៅជាភិច្ចសន្យាមានរយៈពេលកំណត់ FDCs តាមរយៈការលួងលោម ដូចជាការផ្តល់ឲ្យនូវប្រាក់បំណាច់ភិច្ចសន្យា៥%នៅពេលបន្តភិច្ចសន្យាថ្មី ឬក៏ការខ្ចីលុយមុន នៅមុនពេលបុណ្យជាតិសំខាន់ៗ។ ភាពដោតដ៏យំទាំងអស់នេះត្រូវបានពិចារណាថា គឺជាភាពមិនប្រក្រតី ក្នុងការអនុវត្តច្បាប់ស្តីពីការងារដែលកំណត់ភិច្ចសន្យាមានរយៈពេលកំណត់គួរ ត្រូវប្រើប្រាស់ សម្រាប់តែការងារដែលមានលក្ខណៈបណ្តោះអាសន្នប៉ុណ្ណោះ ដូចជាការងារតាមរដូវ ឬការល្បួងការងារជាបណ្តោះអាសន្ន ដោយហេតុផលសមរម្យណាមួយ(ការងារជំនួស)។

ការព្រួយបារម្ភរបស់សហជីពចំពោះភិច្ចសន្យាការងារមានចរិយាលកំណត់ដែលលើកឡើងស្របគ្នាដោយសហភាពសហជីពអន្តរជាតិ (ITUC) នៅក្នុងរបាយការណ៍ ស្តីពី ស្តង់ដារការងារស្នូលដែលទទួលស្គាល់ជាអន្តរជាតិ នៅកម្ពុជា ដើម្បីឱ្យមានការពិនិត្យសើរើដោយក្រុមប្រឹក្សាទូទៅរបស់អង្គការពាណិជ្ជកម្មពិភពលោក ទៅលើ គោលនយោបាយពាណិជ្ជកម្មនៅកម្ពុជា (ថ្ងៃទី១-៣ ខែវិច្ឆិកា ឆ្នាំ២០១១ នៅហ្សឺណែវ) រួមទាំងមាន ឯកសារសិក្សាស្រាវជ្រាវរបស់សាលាច្បាប់យែល ដែលមានចំណងជើងថា "សំពត់រំហែកជាយ" : ការសាយភាយនៃការប្រើប្រាស់ភិច្ចសន្យាការងារមានកំណត់ចេរវេលា គឺជាការគំរាមកំហែងចំពោះកម្មករ និយោជិត និង ឧស្សាហកម្មកាត់ដេរកម្ពុជា (ផ្សព្វផ្សាយនៅញ៉ូយក និងនៅភ្នំពេញ ខែមេសា ២០១១)។ របាយការណ៍ទាំងពីរនេះបានបង្ហាញយ៉ាងច្បាស់ថា ភិច្ចសន្យាការងារមានចេរវេលាកំណត់ពិតប្រាកដ ត្រូវបាន យកមក ប្រើប្រាស់ខុស ក្នុងគោលបំណងដើម្បីធ្វើឱ្យចុះខ្សោយសកម្មភាពសហជីព

បំពានសិទ្ធិជាមូលដ្ឋាន របស់កម្មករនិយោជិត ជាពិសេស វិលោភលើអនុសញ្ញារបស់អង្គការពលកម្មអន្តរជាតិលេខ៨៧ ស្តីពី សេរីភាពនៃសមាគម និងអនុសញ្ញាលេខ ៩៨ ស្តីពីសិទ្ធិក្នុងការចរចាជាសមូហភាព ដែលនិយោជកកំពុង ប្រើប្រាស់ប្រព័ន្ធកិច្ចសន្យានេះ ដើម្បីគម្រាមកំហែង កម្មករ និយោជិតមិនឱ្យចូលរួមសហជីព និង បំភិតបំភ័យ ថ្នាក់ដឹកនាំសហជីពឱ្យចាកចេញពីកន្លែងធ្វើការ ។

តាមពិតទៅកិច្ចសន្យាមានរយៈពេលកំណត់ មានផលប៉ះពាល់ជាអវិជ្ជមានដល់ផលិតភាពការងារនិង ភាពប្រកួតប្រជែងរបស់ពាណិជ្ជកម្មក៏ដូចជាការអភិវឌ្ឍន៍ជាតិប្រកបដោយចីរភាព ដោយសារតែវាធ្វើ ឲ្យបាក់ទឹកចិត្តជាប្រព័ន្ធចំពោះការអភិវឌ្ឍន៍ធនធានមនុស្សនិងបំផ្លាញនូវទំនាក់ទំនងវិជ្ជាជីវៈ។ ការអនុវត្ត នាពេលបច្ចុប្បន្នចំពោះកិច្ចសន្យាការងារមានចីរវេលាកំណត់ ក៏ដូចគ្នាដងដែរចំពោះមាត្រា ៣៦ នៃរដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា ដែលធានាសេរីភាពសមាគមក៏ដូចជាជំពូកទី៤នៃច្បាប់ ស្តីពីការងារ ដែលត្រូវបានបញ្ជាក់យ៉ាងច្បាស់លាស់អំពីលក្ខខណ្ឌនៃការប្រើប្រាស់កិច្ចសន្យាមានចីរវេលាកំណត់។

តំណាងសហជីពទាំងអស់បានរួមដៃគ្នានិងសូមលើកការទាមទារចំពោះអ្នកពាក់ព័ន្ធទាំងអស់ដូចតទៅ៖

១. យើងសូមអំពាវនាវដល់រដ្ឋាភិបាល

- ជំរុញការអនុវត្តន៍ច្បាប់ការងារ ជាពិសេសជំពូកទី៤ពាក់ព័ន្ធនឹង កិច្ចសន្យាការងារ
- ពង្រឹងប្រព័ន្ធអធិការកិច្ចការងារ ក្នុងការត្រួតពិនិត្យស្ថានភាពការ ងារ និងការអនុវត្តច្បាប់
- អនុវត្តកិច្ចសន្យាការងារមានកំណត់ចីរវេលាដោយសមស្របតាម អនុសញ្ញារបស់អង្គការពលកម្មអន្តរជាតិលេខ៨៧ (សេរីភាពនៃ ការចូលរួមបង្កើតសមាគម) និងអនុសញ្ញាលេខ ៩៨ (សិទ្ធិចរ ចារូម) ដែលបានផ្តល់សច្ចាប័នដោយរដ្ឋាភិបាលកម្ពុជា ។

២. យើងសូមអំពាវនាវដល់រោងចក្រកាត់ដេរសំលៀកបំពាក់

- ត្រូវអនុវត្តតាមច្បាប់ការងារ
- គោរពតាមការបកស្រាយរបស់ក្រុមប្រឹក្សាអាជ្ញាកណ្តាលទាក់ទិននឹងកិច្ចសន្យាមានចីរភាពកំណត់
- អនុវត្តអោយមានប្រសិទ្ធភាពលើអនុសាសនៈនៃការយោគយល់គ្នាដែលបានចុះហត្ថលេខាដោយសហជីពនិងសមាគមនិយោជកតាំងពីថ្ងៃទី២៨ ខែកញ្ញា ឆ្នាំ ២០១០

៣. យើងសូមអំពាវនាវដល់អ្នកបញ្ជាទិញ

- ប្រើឥទ្ធិពលរបស់ខ្លួនមកលើអ្នកផ្គត់ផ្គង់ដើម្បីជំរុញការអនុវត្តនូវអនុសាសនៈនៃការយោគយល់គ្នា ដែលធានានូវការគោរពច្បាប់ការងារនិងស្របតាមបទដ្ឋានអន្តរជាតិ និងលើកទឹកចិត្តអោយមានការគោរពដល់សេចក្តីបង្គាប់របស់ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល។

៤. យើងសូមអំពាវនាវដល់សហគមន៍អន្តរជាតិខាងការងារ

- សូមធានានូវការលើកកម្ពស់ និងការការពារសិទ្ធិការងារ សិទ្ធិសេរីភាពសហជីពឲ្យសមស្របតាមច្បាប់ការងារជាតិ និងបទដ្ឋានច្បាប់អន្តរជាតិ។

ព័ត៌មានបន្ថែមសូមទាក់ទង:

1. Dr. Vong Sovann, the president of Cambodian Confederation Trade Unions (CCTU): 012 785 890
2. Mr. Rung Chhun, the president of Cambodian Confederation Unions (CCU): 012 930 706
3. Mr. Rem Bora, the president of Federal Union of Khmer Democratic Workers (FUKDW): 017489 448
4. Ms. Morm Nhim, the president of Cambodian National Confederation (CNC): 012 824640

Joint Press Statement

On 19 and 20 December 2011, 52 leaders representing 7 confederations, 2 non-affiliated federations and labour-supporting organizations gathered to discuss the misuse of Fixed Duration Employment Contracts (FDCs) and explore their action plan against it.

During discussions, union representatives shared their experiences regarding the increasing use of FDCs, which currently account for around 80-90% of total workforce in the garment and shoe sectors. In addition, employers attempt to persuade their workers with Unspecified Duration Contracts (UDCs) to convert to less secure FDCs through the enticements such as frequent 5% severance pay being issued prior to renewal or payment advances offered before national holidays. This entire phenomenon is considered to be inappropriate of compliance of the Labour Law, saying that the FDCs should be used primarily for work of a temporary nature, such as seasonal work or temporary suspension of employment by rational reasons (substitution works).

The concerns of trade unions with the FDCs were concurred by the International Trade Union Confederation (ITUC) report on *"Internationally Recognised Core Labour Standards In Cambodia: Report For The WTO General Council Review Of The Trade Policies Of Cambodia (Geneva 1-3 November 2011)"* as well as by the study paper of Yale Law School, titled *"Tearing At the Seams: How Widespread Use of Fixed Duration Contracts Threatens Cambodian Workers and the Cambodian Garment Industry (New York and Phnom Penh, April 2011)"*. These two reports clearly state that the FDCs has been manipulated to undermine trade unions activities, violating workers' fundamental rights, especially ILO conventions No.87 on freedom of association and No.98 on the right to have collective bargaining. Employers have been utilising this contract system to threaten workers not to join trade unions and to intimidate union leaders to leave workplace.

In fact, the FDCs have a negative impact on labour productivity and corporate competitiveness as well as a sustainable national economic development as the system discourages human resource development and jeopardizes Industrial relations. The current practices of the FDCs are also in contrast to Article 36 of the Cambodian Constitution, guaranteeing freedom of association as well as Section 4 of the Labour Law, articulately stipulating the conditions of using FDCs.

Representatives of the unions join hands and put forward the following demands to the various stakeholders.

1. We urge the government

- to enforce the Labour Law, especially Chapter IV concerning labour contract;
- to strengthen the labour inspection system to monitor the employment situation and enforce the law;
- to comply FDCs in line with ILO convention No. 87 (freedom of association) and No. 98 (the right to have collective bargaining), which were ratified by the Government of Cambodia.

2. We urge the garment manufacturers
 - to apply the Labour Law;
 - to respect the interpretation of the Arbitration Council concerning the FDCs;
 - to effectively implement the MOU signed by trade unions and the GMAC on 28 September 2010.
3. We urge the international buyers
 - to influence their suppliers to implement the MOU, respect the Labour Law and comply with international labour standards and encourage the respect of the AC Awards.
4. We also urge the international labor communities
 - to ensure the promotion and protection of labor rights and trade union rights in compliance with domestic labour laws and international instruments.

More information, please contact:

1. Dr. Vong Sovann, the president of Cambodian Confederation Trade Unions (CCTU): 012 785 890
2. Mr. Rung Chhun, the president of Cambodian Confederation Unions (CCU): 012 930 706
3. Mr. Rem Bora, the president of Federal Union of Khmer Democratic Workers (FUKDW): 017489 448
4. Ms. Morm Nhim, the president of Cambodian National Confederation (CNC): 012 824640
5. Ms. Ken Chhenglang, general secretary of Building and Wood Workers Trade Union Federation of Cambodia (BWTUC): 012 366 859
6. Mr. Sreang Narith, the vice president of Cambodian National Confederation for Laborers Protection (CNCLP): 012 636 766
7. Mr. Dith Sam Ath, the vice president of National Confederation Labour of Cambodia (NLC): 077 550 979
8. Mr. Ath Thorn, the president of Cambodia Labor Confederation (CLC): 012 998 906

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ



សហភាពសហជីព និង សេចក្តីសម្រេចសហជីព នៅកម្ពុជា

សូមគោរពជូន

**ឯកឧត្តម វង ឌុន សុត រដ្ឋមន្ត្រីក្រសួងការងារ និង បណ្តុះបណ្តាលវិជ្ជាជីវៈ និងជាប្រធាន
គណៈកម្មការរៀបចំការងារ**

កម្មវត្ថុ: គោរពស្នើសុំរបៀបវារៈប្រជុំគណៈកម្មការប្រឹក្សាការងារ ដើម្បីធ្វើកិច្ចពិភាក្សាពិគ្រោះយោបល់ និង ដោះស្រាយកង្វល់ទៅលើ កិច្ចសន្យាការងារដែលមានចំណែកកំណត់ ក្នុងពេលឆាប់ៗ ដើម្បីឱ្យមាន ភាពច្បាស់លាស់ និងត្រឹមត្រូវ ដែលជាការរួមចំណែកធានាដល់ សេរីភាពសហជីព ការចរចាជា សមូហភាព សន្តិសុខការងារ និងផលប្រយោជន៍ របស់កម្មករនិយោជិត ។

យោង: សន្និសីទថ្នាក់ជាតិរបស់ ILO និងសហជីព ស្តីពីការអនុវត្តកិច្ចសន្យាការងារបច្ចុប្បន្ន និង តម្រូវការ ដើម្បីផ្លាស់ប្តូរ កាលពីថ្ងៃទី២៧-២៨ ខែមិថុនា ឆ្នាំ២០១២ នៅសណ្ឋាគារអាំងទែកុងទីណង់តាល់ ។

តាមរយៈ: អនុប្រធានគណៈកម្មការប្រឹក្សាការងារភាគីកម្មករនិយោជិត ។

តបតាមកម្មវត្ថុ និង យោងខាងលើ យើងខ្ញុំជាថ្នាក់ដឹកនាំអង្គការវិជ្ជាជីវៈរបស់កម្មករនិយោជិត នៅក្នុង ព្រះរាជាណាចក្រកម្ពុជា សូមជម្រាបជូន ឯកឧត្តម មេត្តាជ្រាបថា បច្ចុប្បន្នមានការសាយភាយការប្រើប្រាស់ កិច្ចសន្យាការងារមានចំណែកកំណត់ខ្លីៗ ជាមួយ កម្មករនិយោជិតនៅគ្រប់ទីកន្លែង ជាពិសេស នៅក្នុងផ្នែកវាយន ភ័ណ្ណ កាត់ដេរសំលៀកបំពាក់ និង ផលិតស្បែកជើង ដែលជាវិស័យការងារវិនិយោគរយៈពេលវែង ។ ការប្រើប្រាស់ កិច្ចសន្យាផ្ទុយពីចរិកការងារជាក់ស្តែងបែបនេះ បានធ្វើឱ្យប៉ះពាល់យ៉ាងច្រើន ជាពិសេស ទៅដល់ ទំនាក់ទំនងវិជ្ជា ជីវៈ សន្តិសុខការងារ សុវត្ថិភាពផ្នែកស្មារតី សេរីភាពសហជីព ការចរចាជាសមូហភាព និង ផលប្រយោជន៍ផ្សេងៗ ដែលជាឧបសគ្គធ្វើឱ្យកម្មករនិយោជិត និង សហជីពមិនអាចរួមចំណែកបំពេញតួនាទីរបស់ខ្លួនធ្វើឱ្យមានការងារ សមរម្យសម្រាប់ទាំងអស់គ្នាបាន ។

សេចក្តីដូចបានជម្រាបជូនខាងលើ យើងខ្ញុំមានសង្ឃឹម និងជឿជាក់យ៉ាងមុតមាំថា ឯកឧត្តម នឹងទទួល យកសំណើរបស់យើងខ្ញុំទៅធ្វើការពិភាក្សាពិគ្រោះយោបល់ក្នុងពេលឆាប់ៗខាងមុខនេះ ដើម្បីធានាដល់កម្មករ និយោជិត នូវសន្តិសុខការងារ និង បញ្ជ្រាបបាននូវផលប៉ះពាល់នានា ដែលរួមចំណែកដល់ការលើកកម្ពស់ឱ្យមានការ ប្រកួតប្រជែងកាន់តែច្រើន និង ធ្វើឱ្យប្រទេសជាតិមានកេរ្តិ៍ឈ្មោះកាន់តែល្អ ។

សូម ឯកទ្វេភាគី ទទួលនូវការគោរពខ្ពង់ខ្ពស់អំពីយើងខ្ញុំ ។

ភ្នំពេញ ថ្ងៃទី០៦ ខែកក្កដា ឆ្នាំ២០១២ ។

គំណាទអង្គការវិជ្ជាជីវៈកម្ពុករើយោជិតមានដូចខាងក្រោម:

| | | | |
|---|--|--|---|
|  |  | | |
| លោកបណ្ឌិត វង្ស សុវណ្ណ | លោក សោម អូន | លោក អាត់ ធន់ | ជួន ម៉ុំផុល |
| ប្រធាន CCTU | ប្រធាន NACC | ប្រធាន CLC | សហអនុប្រធាន LAC |
|  |  |  |  |
| លោក រ៉ុង ឈុន | លោក យ៉ឹង ឈុន | លោក សំ សៀន | លោក សាត់ ឈាងហូ |
| ប្រធាន CCU | ប្រធាន CC KYFTU | ប្រធាន NLC | ប្រធាន CNCLP |
| | |  | |
| | | លោក ហ៊ា ម៉ុង | |
| | | ប្រធាន F.T.U.W.K.C | |

- ភ្ជាប់ជាមួយនូវ:
- វិធានការរួមសហជីព
- ចម្លងជូន :
- គិស៊ីការកោះរដ្ឋមន្ត្រី
 - ក្រសួងសង្គមកិច្ច អតីតយុវជន និង យុវនីតិសម្បទា
 - ក្រសួងពាណិជ្ជកម្ម
 - ស្ថានទូតសហរដ្ឋអាមេរិក
 - សហព័ទ្ធមិយោជក (CAMFEBA)
 - សហព័ទ្ធសហជីពទាំងអស់
 - អង្គការ ILO
 - ឯកសារ-កាលប្បវត្តិ

Appendix D: Joint statement on FDCs from Cambodian unions, June 2012 (unofficial translation)

**Kingdom of Cambodia.
Nation Religion and King.
Confederations and federations in Cambodia.**

To: H.E. Vong Sauth, Minister of the Ministry of Labor and Chairman of the Labor Advisory Committee (LAC)

Subject: Propose for LAC meeting to discuss the concern of using Fixed Duration Contracts (FDCs) in the near future in order to clarify the use in order to improve job security, freedom association, collective bargaining and others benefits of workers.

Reference: National Workshop organized by ILO and unions on the FDC practice and the need for change on June 27-28, 2012 at the Intercontinental Hotel.

Through: Vice chairman of the LAC (from workers party)

As having seen subject and reference above we, professional organizations in Cambodia, would like to inform his Excellency that these days there is a widespread use of FDCs in all sectors in Cambodia especially in the garment, textile and shoes industries which is long term investment sector. Such misuse of FDCs is contradicting the nature of the work and it has negatively impacted industrial relations, job security, mental stress, freedom of association, collective bargaining and other benefits; all which make workers and unions unable to fulfill their duty in order to have decent work for all.

According to above mentioned we strongly believe that his Excellency will kindly accept our request, and organize for discussion on this matter to ensure job security for workers, and to avoid any negative impact on the competitiveness of the country and to improve the country's reputation.

Please accept our high respect.

Written in Phnom Penh

July 6, 2012.

Confederation and Federation representatives:

CCTU (signed by Mr. Vong Savann, president)
NACC (Som Aun - not signed)
CLC (signed by At Thorn, president)
LAC (deputy Choun Mom Thol – not signed)
CCU (signed by Rong Chhun)
KYFTU (signed by Yuang Chhun, president)
NLC (signed by Som Seun, president)
CNCLP (Sat Sianghou, president)

FTUWKC (signed by Chea Mony, president)³⁸

³⁸ Acronyms for the labor organizations whose full names are indicated in parentheses: CCTU (Cambodia Confederation of Trade Union), NACC (National Union Alliance of Chamber of Cambodia), CLC (Cambodian Labor Confederation), LAC (Labor Advisory Committee), CCU (Cambodian Confederation Unions), KYFTU (Khmer Youth Federation of Trade Union), NLC (National Labor Confederation of Cambodia), CNCLP (Cambodian National Confederation for Laborers Protection), FTUWKC (Free Trade Union of Workers of the Kingdom of Cambodia).

Appendix E: List of Unimplemented AC Awards between January and October 2011

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|--|--|---|---|
| 1 | 11/05 | M&V International Mfg. Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Rejected demand that employer re new fixed duration contracts (FDCs) of two union leaders, but Ordered employer to <u>consider union leaders for re-employment without discrimination</u> when hiring new workers. | No award Not implemented | H&M, Walmart, Cello, Marks & Spencer, Next, Auchan |
| 2 | 11/012 | Dai Young Garment Co., Ltd. vs. CLUF | <ul style="list-style-type: none"> Ordered employer to <u>pay workers maternity benefits</u> for three month period before maternity leave commences. Declined to consider the workers' demand that the employer deduct union dues, because union was not registered. Ordered the employer to <u>refrain from deducting from attendance bonus</u> for absences that had prior approval from employer. | Implemented No award Implemented | Gap, InMocean Group |
| 3 | 11/013 | Gold Kamvimek Garment Factory Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered <u>reinstatement</u> of three terminated union leaders. | Not implemented | PVH, Haggag Clothing, H&M Wal-Mart, Marc Ecko, Next, Target, Broder Bros. |
| 4 | 11/14 | GHG Cambodia Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Rejected workers' demand that employer pay US \$ 5 attendance bonus to worker for period when she did not come to work. | No award | Gap, Nike, H&M, Levis |
| 5 | 11/017 | JRB Action Textile & Clothing Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered <u>reinstatement</u> of terminated union president. Ordered employer to <u>convert contracts from fixed duration contracts (FDCs) to undetermined duration contracts (UDCs)</u> for workers with more than two years' seniority. Ordered employer to <u>pay workers maternity benefits</u> for three month period before maternity leave commences. | Not implemented Not implemented Implemented | C&A, American Eagle, Disney, Contempo, Cotton On Group |
| 6 | 11/030 | South Bay Enterprise Co., Ltd. vs. KWPFU | <ul style="list-style-type: none"> Ordered reinstatement of terminated union president and vice president and <u>back pay</u> from date of dismissal to reinstatement date. Ordered <u>employer to pay workers maternity benefits for three month period before maternity leave commences, and calculate maternity benefits using worker's average earnings</u> for the prior 12 months. | Not implemented Not implemented | Moose Creek |

¹ Data collected between August 2012 and October 2012. Sources for information include interviews with factory workers and unions and publications of the Arbitration Council. The color codes indicate the following: **Green** indicates fully implemented awards, **Orange**, partially implemented awards, **Red**, awards which have not been implemented, **Yellow** no need for implementation of an award as employee demands were declined or rejected, and **Blue** indicates that the status of the award's implementation is unknown.

² Sources for information regarding brands and retailers reported doing business with a given factory include worker interviews, U.S. Customs records, and brands and retailers' own disclosures. Buyers that have identified a given factory as a supplier of collegiate licensed apparel are indicated in **bold** in the list of brands and retailers doing business with the factory.

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|--|---|---|--|
| 7 | 11/031 | Quint Major Industrial Co., Ltd. vs. KWPFU | <ul style="list-style-type: none"> Ordered employer to <u>refrain from deducting from attendance bonus for absences which had been approved in advance by employer.</u> Ordered <u>reinstatement of terminated union officer.</u> | Not implemented | Ash City, adidas, VF (Nautica), Kohl's, Perry Ellis, Polo Ralph Lauren |
| 8 | 11/034 | Lim Line International (Cambodia) Gmt. Co., Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered employer to <u>reinstate union president, vice president and secretary.</u> Ordered employer to <u>build childcare facility</u> in the factory. if the employer is unable to do so, then the employer must reimburse workers for documented childcare expenses. Ordered employer to <u>recruit nurse and doctor</u> for factory clinic. Rejected workers' demand that employer convert three month FDCs to six month FDCs. | Not implemented | Honig's |
| 9 | 11/035 | Gold Gear Garment Ltd. vs. KYFTU | <ul style="list-style-type: none"> Ordered employer to <u>convert probationary workers who have been working for more than two months to regular employment status and provide back pay of 5 USD each to workers who had completed 3 months probation.</u> Ordered employer to <u>spray water on the roof or take other measures to lower temperature inside the workplace.</u> Ordered employer to <u>recruit nurse for factory's health clinic.</u> Ordered <u>payment of severance benefits to one worker.</u> Ordered <u>payment of seniority bonuses of 3 USD each to 17 workers listed in the award.</u> | Implemented | YBS Trim, Dynasty Fashion, Ellison Apparel, Verna Fashion, Moon Collection |
| 10 | 11/037 | ASD (Cambodia) Co. Ltd. vs. NIFTUC | <ul style="list-style-type: none"> Ordered employer to <u>convert probationary workers who have been working for more than two months to regular employment status and provide back pay of 5 USD each to workers who had completed 3 months probation.</u> Ordered employer to <u>spray water on the roof or take other measures to lower temperature inside the workplace.</u> Ordered employer to <u>recruit nurse for factory's health clinic.</u> Ordered <u>payment of severance benefits to one worker.</u> Ordered <u>payment of seniority bonuses of 3 USD each to 17 workers listed in the award.</u> | Implemented | Jeno Neuman et Fils, Les Creations Bgn |
| 11 | 11/045 | Zhong Yov Co., Ltd. vs. CUF | <ul style="list-style-type: none"> Rejected workers' demand that the employer sign one year fixed duration contracts with casual workers. | No award. Note: factory now closed. | |
| 12 | 11/046 | San Lei Fung Gmt. & Woolen Knitting Factory Ltd. vs. CLUF | | | |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|--|--|---|---|
| 13 | 11/050 | Talent Garment Industry (Cam.) Co., Ltd. vs. KYFTU | <ul style="list-style-type: none"> Ordered employer to provide workers 90 days maternity pay at 50% of usual wage rate, including fringe benefits, prior to commencement of maternity leave. | Implemented | MJ Soffe, Walmart, Puma, Loblaw, Belk, JC Penney, Trimark Sportswear, Jones Apparel Group |
| 14 | 11/058 | United Apparel Cambodia Inc. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered reinstatement of fired candidate for union office with back pay from date of termination. If employer does not reinstate employee, employer must pay severance benefits as if worker were employed under a UDC. Ordered payment of maternity benefits before workers start maternity leave. Ordered reinstatement of fired union activist with back pay. | Not implemented | Gap, Talbots, PVH, Kohl's, Eddie Bauer, Salomon, Abercrombie & Fitch |
| 15 | 11/059 | Ming Jian (Cambodia) Co. Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered payment of wages for period of suspension to worker suspended without permission of government labor inspector | Not implemented | Planet Gold, Marshalls |
| 16 | 11/062 | Ocean Garment Co. Ltd. vs. CLUF | <ul style="list-style-type: none"> Ordered employer to include overtime payments in wages when calculating maternity benefits. Ordered employer to either establish a childcare center for employees' children over the age of 18 months or reimburse documented childcare expenses for workers who place their children in offsite paid childcare. Ordered employer to prorate attendance bonus for absences due to personal (non-statutory) leaves taken for personal commitments authorised by employer. | Not Implemented | Gap |
| 17 | 11/064 | M&V 3 International Mfg. (Branch #3). vs. CFITU | <ul style="list-style-type: none"> Ordered employer prorate attendance bonus in proportion to the number of days of sick and personal leave authorized in advance by employer. Ordered employer to calculate daily wage of piece rate workers for purpose of annual leave payments based on monthly piece rate wages. Ordered employer to calculate the hourly wage of piece rate workers by dividing their average daily wage by the number of hours they have worked. | Not Implemented | H&M, Next, Celio, Marks & Spencer, Tesco, Auchan (In Extenso) |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|---|---|---|--|---------------------|
| 18 | 11/081 GHG (Cambodia) Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered <u>payment of seniority bonuses</u> to 111 workers (as listed in annex B in the award), for service until March 2011 according to Labor Ministry Notification 017 and for service after March 2011 according to Labor Ministry Notification 041/11.³ Ordered <u>payment of maternity benefits</u> before workers start maternity leave. | Implemented | Gap, JC Penney | |
| 19 | 11/084 Supertex vs. C.CAWDU. | <ul style="list-style-type: none"> Ordered <u>payment of severance benefits</u> to all workers, including 20 employees who were awaiting reinstatement at the time of factory's closure. | Implemented Note: factory now closed. | VF | |
| 20 | 11/086 Reliable Source Industrial (Cambodia) Co., Ltd. vs. KYFTU | <ul style="list-style-type: none"> Rejected workers' demand that the employer add additional guards to check for theft when workers leave factory in order to reduce delay in exiting factory at end of work shifts. Ordered employer to <u>inform workers of company policy on employee use of hot drinking water</u> and ordered employer to remove all signs prohibiting workers from using hot water. Rejected workers' demand that the employer assign an additional male worker to transport fabric from factory's cutting section to its ironing section. Ordered employer to <u>comply with Labor Ministry Prakas (Regulation) limiting weights</u> that male and female workers may be required to carry. Ordered employer to <u>take disciplinary action against administrator Thol Phalin</u> in accordance with factory's internal work rules should workers provide evidence of administrator violating internal work rules. Ordered employer to <u>cease signing attendance records for employees working overtime</u> and, instead, require that workers sign attendance records themselves. Affirmed that overtime must be voluntary and employer must not punish any worker who decides not to work overtime Ordered employer to <u>take urgent measures to reduce heat levels</u> inside warehouse to ensure safety and health of workers. | No award Implemented No award Implemented Implemented Not implemented Implemented | Under Armour, adidas, Lulu Lemon, VF, American Eagle, Zuffa, Sports Authority, Limited Brands, Marks & Spencer, Harrow Sports, Lucy Activewear | |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|---|---|---|--|
| 21 | 11/087 | Kennetex Int'l (Cambodia) Co., Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered reinstatement of fired employee candidate for union office and conversion of her contract from FDC to UDC. | Not implemented | Jones Apparel Group, Gap, Li & Fung |
| 22 | 11/088 & 089 | Dai Young Garment Co. Ltd. vs. CWLFU | <p>2011/088</p> <ul style="list-style-type: none"> Rejected demand of Cambodian Workers Labor Union to annual results of election contest between it and another union in May 28, 2011. Ordered employer to recognize CWLFU union as having most representative status in factory, and, thereby, right to compel employer to bargain collectively. Ordered employer to pay CWLFU union dues that have been deducted from employees' pay since March 2011, and, going forward, deduct union dues from the wages of 917 workers at the factory who have provided written consent to dues deduction, except for those who subsequently object in writing. <p>2011/089</p> <ul style="list-style-type: none"> Rejected demand that the employer pay severance benefits to employees who have worked at factory since 2003. Rejected demand that the employer pay wages to workers for paternity leave in addition to ordinary paid annual leave. Ordered employer to permit workers to take paid paternity leave by using paid annual leave or performing additional work to compensate employer. | No award Implemented Implemented | Gap, InMocean Group |
| 23 | 11/090 | Green Tech vs. KYFTU | <ul style="list-style-type: none"> Declined to consider workers' demand that the employer provide 5 USD per month transport/accommodation allowance to all workers. | No award | |
| 24 | 11/092 | Zongtex Garment (Branch) vs. KYFTU | <ul style="list-style-type: none"> Ordered payment of overtime food allowance to workers for every day that employees work overtime. Ordered reinstatement of terminated union president and vice president. | Not implemented Not implemented | E5, Costco, Army & Air Force Exchange Service, Planet Gold, Moret Group, Ross, Cato, Komar Brands, Leonard Feinberg, Hi Rollers Sportswear, Jese Apparel |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|---|---|---|---|
| 25 | 11/093 | M&V International (Kampong Chhnang Branch) vs. CLUF | <ul style="list-style-type: none"> Rejected workers' demand that employer increase food allowance by 0.12 USD per day when workers perform overtime. Rejected workers' demand that the employer end use of industrial engineering (IE) piece rate system at employer's #4 unit in Kompong Chhnang. Ordered employer to revise IE piece rate system to ensure that at least 60% of workers of average ability can earn minimum wage. | <p>No award</p> <p>No award</p> <p>Partially implemented</p> <p>Implemented</p> | H&M, Next, Cello, Marks & Spencer, Tesco, Auchan (In Extenso) |
| 26 | 11/095 | Blooming Textile Corporation vs. KYFTU | <ul style="list-style-type: none"> Ordered employer to provide an additional 2000 riel or an additional meal when employees work on Sundays. | Implemented | |
| 27 | 11/096- | Top World Garment (Cambodia) Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered employer to build a factory canteen within 6 months of award. Ordered employer to provide paid sick leave to workers upon receipt of certificates of treatment issued by state hospital or private clinic authorized by the Ministry of Health. Rejected workers' demand that the employer provide union leaders with paid leave, in addition to statutory annual leave, to attend union workshops outside the factory. | <p>Implemented</p> <p>Not implemented</p> <p>No award</p> | Children's Place |
| 28 | 11/099 | Shoe Premier II (Cambodia) Co., Ltd. vs. FTUWKC | <ul style="list-style-type: none"> Rejected workers' demand that employer remove factory line leader. | No award | Rack Room Shoes |
| 29 | 11/103 | Huey Chuen (Cambodia) Corp. Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered employer to reinstate terminated union president and three terminated union activists with back pay. Declined to consider workers' demand that the employer reinstate terminated union secretary. | <p>Implemented (under pressure from buyer)</p> <p>No award</p> | Puma |
| 30 | 11/104 | Winner Garments Mfg Co. Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered employer to inform workers of piece rates three to seven days after their starting to work under those rates. | Not implemented | H&M, Inditex, Gap, |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|---|---|---|---|
| 31 | 11/105 | Goldfame Enterprises Knitters Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Rejected demand that the employer reinstate terminated worker with back pay. Rejected demand that the employer reinstate two other terminated workers but ordered employer to pay them back wages from July 15, 2010 to December 31, 2010, as well as any other unpaid wages and severance benefits. Rejected demand that employer pay employees severance benefits at end of each FDC in amount of 5% of total wages earned under contract. Ordered employer to convert contracts of 25 workers who have been working in the factory for more than two years from FDCs to UDCs. | No award Not implemented | H&M, PVH, Inditex, Marks & Spencer, Tesco |
| 32 | 11/109 | Ming Jian (Cambodia) Co., Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered payment of full wages and benefits to workers for period during which company suspended production without prior permission from labor inspectors. | Not implemented | Planet Gold |
| 33 | 11/112 | Yung Wah I Industrial (Cambodia) Co., Ltd. vs. CLUF | <ul style="list-style-type: none"> Ordered employer to pay 90 days maternity pay, calculated based on average prior earnings, before commencement of maternity leave. Ordered employer to prorate deductions from the attendance bonus based on the number of days taken of authorized nonstatutory leave. | Not implemented Implemented in July 2012. Note: factory now closed. | Gap, H&M, C&A, Levis, Russell Athletic, Bon-ton, Belk |
| 34 | 11/115 | Hongs One (Cambodia) Garment Co., Ltd. vs. TUFIKEL | <ul style="list-style-type: none"> Ordered employer to pay severance benefits equal to 5% of total wages received by employee under two month FDC. | Implemented in August 2012 | Moret Group, LuenThai, PVH |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|--|---|---|--|
| 35 | 11/116 | Fortune Garment & Woolen Knitting Factory Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Declined to consider workers' demand that employer pay 100% of workers' wages for period during which factory suspended work without prior permission from labor inspector. Declined to consider workers' demand that the employer make deductions from their attendance bonus for absences on a prorata basis (as this issue had already been decided by the AC). Rejected demand that the employer provide uniforms to workers. Rejected demand that the employer convert casual workers to regular employees. Ordered employer to <u>provide casual workers with same rights as it extends to regular workers.</u>⁴ Ordered employer to <u>provide annual leave</u> to employees who have been working at factory for more than one year. Rejected workers' demand that employer provide a separate room with an information board and office supplies for worker representatives. Rejected workers' demand that employer provide replacement drinking water glasses to workers who have previously received a water glass from the company. Rejected workers' demand that their time cards must be punched when they work more than two hours of overtime or on public holidays or Sundays. | No award No award No award Implemented Not implemented (for FDC workers) No award No award No award | Jones Apparel Group, Polo Ralph Lauren, Arcadia, Top Shop, Bhs, Next, Tesco, H&M, Inditex, Marks & Spencer |
| 36 | 11/128 | Manhattan (Kch.) vs. FTUWKC | <ul style="list-style-type: none"> Declined to consider workers' demand that employer implement 2008 agreement to pay two months' wages to workers employed on UDCs when they resign their employment. Ordered employer to <u>implement 2008 agreement that employer must seek consent from workers when transferring them among work stations.</u> | No award Not implemented | Encompass, ICP Medical (hospital supplies) |
| 37 | 11/129 | M&V (Kampong Chnang Branch) vs. FTUWKC | <ul style="list-style-type: none"> Rejected workers' demand that employer reinstate nine fired union leaders and activists. | No award | H&M, Next, Celio, Marks & Spencer, Tesco, Auchan (In Extenso) |
| 38 | 11/130 | Dignity Knitter Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Rejected workers' demand that the employer increase piece rates. | No award | Walmart, Nygard, Inditex, Mango, Marks & Spencer |

⁴ This includes rights to paid maternity leave and pay during temporary layoff for lack of work. Before award, casual workers did not receive maternity leave, even if they had worked for the same employer for more than one year, and were not paid statutorily required 50% of their regular wages during temporary layoffs.

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|--|--|--|--|
| 39 | 11/140 | Global Apparel Limited vs. WUF | <ul style="list-style-type: none"> Rejected workers' demand to pay company drivers at double ordinary rate when working overtime on Sundays and public holidays. Ordered employer to clearly inform workers of any change in wage rates. Rejected demand that the employer sign one-year FDCs with workers. | No award Not implemented No award | adidas, Gap, Puma |
| 40 | 11/141 | Dai Young Cambodia Co., Ltd. vs. CLUF | <ul style="list-style-type: none"> Rejected demand that the employer pay wages to workers for paternity leave in addition to ordinary paid annual leave. Ordered employer to cease deductions from wages when workers who have exhausted statutory annual leave take statutory "special leave" (for bereavement, family medical leave, etc.). Ordered employer to pay 2000 riels per day food allowance to employees when they work on Sundays and public holidays. | No award Implemented Implemented | Gap, InMocean Group |
| 41 | 11/144- | Manhattan Textile and Garment Corp. vs. FTUWKC | <ul style="list-style-type: none"> Ordered employer to permit workers to wear shoes during working hours in accordance with the company's internal work rules. Ordered employer to provide seniority bonuses to 82 workers in accordance with 2008 agreement with employer and with Ministry of Labor Notification 41 (2011). Rejected demand that employer implement internal work rules regarding payment of bonuses for full time work. Ordered employer to pay wages and severance benefits to one union member. Rejected demand that employer sign two year FDCs with workers instead of six month FDCs. | Not implemented Not implemented No award. Implemented No award | Encompass, ICP Medical |
| 42 | 11/146- | Huey Chuen (Cambodia) Corp. Ltd. (Meanchey Branch) vs. FUKDW | <ul style="list-style-type: none"> Ordered employer to revoke suspension of union advisor, permit her return to work, and provide her with back pay from date of suspension to reinstatement. | Not implemented | Puma |
| 43 | 11/147 | Hung Wah (Cambodia) Garment Mfg Co., Ltd. Vs. FTUWKC | <ul style="list-style-type: none"> Rejected worker demand that the employer pay an additional US \$3 each per month as an incentive to line assistants and workers in the finishing and quality control areas. | No award | H&M, Esprit, Ash City, Calvin Klein, Li & Fung, MJ Soffe, Giordano, Abercrombie & Fitch, Loblaw, Walmart |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|---|---|--|---|
| 44 | 11/149 | Fortune Garment & Woolen Knitting vs. C.CAWDU | <ul style="list-style-type: none"> Ordered employer to <u>provide workers with pay slips explaining overtime rates</u> so workers understand pay rates they are entitled to by law. Rejected workers' demand that the employer compensate piece rate workers for prior miscalculation of overtime wages. | <p>Not implemented</p> <p>No award</p> | Jones Apparel Group, Marks & Spencer, H&M, Inditex, Polo Ralph Lauren, Arcadia, Top Shop, Bhs, Next, Tesco |
| 45 | 11/151 | Great Honour Textile Factory Limited vs. C.CAWDU | <ul style="list-style-type: none"> Ordered workers to respect employer's right to manage production when such management does not affect the employer's payment of legal minimum wages to workers. Rejected as moot demand that employer refrain from requiring workers to produce a given item – item was no longer produced at factory. | No award | H&M, Inditex, Marks & Spencer |
| 46 | 11/152 | Reliable Source Industrial (Cambodia) Co., Ltd. vs. WUF | <ul style="list-style-type: none"> Rejected workers' demand that the employer conduct meetings with workers no more than three times per week. | No award | Under Armour, adidas, VF, Lulu Lemon, American Eagle, Lucy Activewear, Zuffa, Limited Brands, Sports Authority, Harrow Sports |
| 47 | 11/155 | Ying Dong Shoes Co., Ltd. vs. CUF | <ul style="list-style-type: none"> Ordered employer to <u>reinstate terminated union president, vice president and secretary with back pay from date of dismissal to date of reinstatement, and ordered the employer to cease antiunion discrimination.</u> | Not implemented (All three employees resigned after the award was issued, according to the union) | Blondo, Acton, Asics |
| 48 | 11/156 | Goldfame Enterprises Knitters Ltd. vs. C.CAWDU | <ul style="list-style-type: none"> Ordered reinstatement of 2 terminated union activists. Ordered <u>wage increase given to one worker be equalized with those provided to other employees performing the same job.</u> | Not implemented Not implemented | H&M, PVH, Inditex, Marks & Spencer, Tesco |
| 49 | 11/160 | Huey Chuen (Branch 1) vs. FUKDW | <ul style="list-style-type: none"> Ordered employer to <u>revoke suspension of union president, allow him return to work, and provide him with back wages from October 18, 2011 to date of reinstatement.</u> | Not implemented | Puma |

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|---|--|---|--|
| 50 | 11/167 | Hung Wah (Cambodia) MFG. Ltd. vs. NIFTUC | <ul style="list-style-type: none"> Ordered employer to pay wages for overtime work twice monthly to 319 workers. | Implemented | Abercrombie & Fitch, H&M, Marks & Spencer, MJ Soffe, Esprit, Ash City, Calvin Klein, Li & Fung, Walmart, Loblaw, |
| 51 | 11/170 | M & V (Kampong Chhnang Branch) vs. FTUWKC | <ul style="list-style-type: none"> Rejected demand that employer limit deductions from attendance bonuses for absences due to illness or personal commitments as follows: one day's leave, US \$2 deduction; two days' leave, US \$4 deduction; three days, US \$7 deduction. Rejected demand that the employer forgo requiring overtime work from 9 pm to 11 pm, but ordered that overtime work must be voluntary. Rejected demand that the employer only employ workers under long term contracts. | No award Not implemented No award | H&M, Next, Celio, Marks & Spencer, Tesco, Auchan (In Extenso) |
| 52 | 11/172 | Vision Glory Knitting (Cambodia) Co., Ltd. vs. CLUF (union later dissolved) | <ul style="list-style-type: none"> Rejected demand that the employer renew workers' employment contracts as six month or one year FDCs. Ordered employer to inform workers of new piece rates three to seven days after production begins under those rates. Ordered the employer to deduct from the attendance bonus only on account of workers taking unauthorized leave. Rejected, due to lack of evidence, worker demand relating to alleged employer practice of terminating contracts of pregnant workers. | No award Status unknown Status unknown No award | |
| 53 | 11/175 | Global Apparel Ltd. vs. WUF | <ul style="list-style-type: none"> Rejected demand that the employer cease conducting evaluations of workers employed under FDCs. Rejected demand that the employer remove the shipping manager from the shipping department. | No award No award | adidas, Gap, Puma |
| 54 | 11/178 | Huey Chuen (Cambodia) Corp. Ltd. vs. C-CAWDU. | <ul style="list-style-type: none"> Ordered employer to pay severance benefits, final wages and unused annual leave benefits to 35 technical staff members listed in the award. Rejected demand that the employer pay full wages and regular attendance bonus to 67 workers for day when they were absent from work.⁵ Ordered that attendance bonus for 67 workers for relevant pay period be prorated to reflect day of absence. | Union rejected award, negotiated and went on strike resulting in a court order. No award Implemented ⁶ | Puma |

² According to the Arbitration Council's findings, the 67 workers had been absent because they had been so instructed by their supervisor, and, therefore, they should be paid for their absence.

⁶ In June 2012 after the union had filed a new complaint and the parties agreed at AC.

| Nr. | Year and case no. | Parties | Award | Status of Award as of October 2012 ¹ | Buyers ² |
|-----|-------------------|--|--|--|--|
| 55 | 11/180 | Whitex Garments (Cambodia) Co., Ltd. vs. KYFTU | <ul style="list-style-type: none"> Declined to consider workers' demand for employer to reinstate terminated union president. Ordered employer to pay severance benefits to terminated union president as follows: Compensation for lack of prior notice of termination, indemnity, unused annual leave, and wages for final pay period. Ordered employer to pay employees food allowance or provide free food when they perform overtime work. | No award Implemented Not implemented | Sears-Kmart, Hanesbrands, Hudson Bay, Sara Lee, Primark, Delta Galil |
| 56 | 11/183 | Great Honour Textile Factory Limited vs. C.CAWDU | <ul style="list-style-type: none"> Ordered employer to pay 50% of back wages to reinstated union activist for the period from October 17, 2011 to the date of the latter's reinstatement. | Implemented | H&M, Inditex |
| 57 | 11/188 | Sun Well Shoes Co., Ltd. vs. WUF | <ul style="list-style-type: none"> Rejected demand that the employer allow union members to wear union membership cards in the factory. | No award | Adidas, Acton, Blondo |

List of Union Acronyms

CFITU Cambodia Federation of Independent Trade Unions
 C.CAWDU Coalition of Cambodian Apparel Workers Democratic Unions
 CLUF Cambodia Labour Union Federation
 WUF Worker Union Federation
 KYFTU Khmer Youth Federation of Trade Unions
 FTUWKC Free Trade Union of Workers of the Kingdom of Cambodia
 FUKDW Federation Union of Khmer Democracy Workers
 CUF Cambodia Union Federation
 NIFTUC National Independent Federation of Trade Unions of Cambodia
 TUFIKEL Trade Union Federation for Increasing Khmer Employees Lifestyle
 KWPFU Khmer Workers Power Federation Union

Appendix F: Survey of Short Term Contract Use at Cambodian Garment Factories

Use of FDCs and UDCs in Cambodian Garment and Footwear Factories¹

| Nr. | Factory Name | GMAC Member? (* Executive Committee) | Monitored by ILO-BFC Program? ² | Supplier to Collegiate Licensee? ³ | Type(s) of Contracts in Use? ⁴ | Illegal Use of FDCs beyond 2 Years? ⁵ | Buyers Reported | Notes |
|-----|---|--------------------------------------|--|---|---|--|--|--|
| 1 | (Cambodia) Senbao Garment MFG Co., Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Team Edition, Ouray Sportswear, Holloway Sportswear, Macy's, Mountain Gear, Cato | |
| 2 | 8 Star Sportswear Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Puma, Gap | |
| 3 | Alim (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | N/A | Walmart, Moret Group, Ambiance USA, Jadelaine, Union Bay, Alfred Dunner, Decoy Intl, Mun & Sun Co. | |
| 4 | Anful Garments Factory (Cambodia) Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | H&M, Oxford Industries (Tommy Bahama) | Same owner as Gladpeer Garments. Workers denied seniority and maternity benefits. |
| 5 | ASD (Cambodia) Co., Ltd. | ✓ | ✓ | ✓ | Only UDC | ● | Ellison Apparel, Verma Fashion, Dynasty Fashion, Moon Collection | |
| 6 | B&N Garment (Cambodia) Co., Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | NFLPA by Levelwear | 60% of workers are employed on FDCs. Some workers denied seniority benefits. |
| 7 | Beauty Silk Screening | ✗ | ✗ | ✗ | Only FDC | ● | Adidas, Puma, Gap | Owned by PCCS Group. |
| 8 | Berry Apparel (Cambodia) Co., Ltd. | ✓* | ✓ | ✓ | Majority UDC | ● | Gap, Walmart, H&M, Kvintet, Matalan, Fruit of the Loom | Some workers hired on consecutive 3 month FDCs, resulting in denial of seniority benefits. |

¹ Scope: Factories surveyed include roughly 25% of GMAC members and employ approximately 50% of the industry's workforce. **Methodology:** Data collected between August 2012 and May 2013. Sources for information regarding types of contracts in use at individual factories include interviews with factory workers and unions and published awards of the Arbitration Council. Sources for information regarding reported buyers include worker interviews, U.S. Customs records, and brands and retailers' own disclosures.

² Data regarding whether a factory is monitored by the International Labor Organization's Better Factories Cambodia (ILO BFC) program is based on publicly available information from ILO BFC. See, ILO BFC, "Active Factories that have Registered with and been Monitored by Better Factories Cambodia" (June 1, 2013).

³ Factories are designated as having supplied collegiate licensees if they have been disclosed by a licensee as a supplier of collegiate licensed apparel at any time since 2009. Licensees having disclosed a given factory as a supplier are indicated in **bold** in the list of brands and retailers doing business with that factory.

⁴ Designation "Only FDC" includes factories with fewer than 5 workers employed on UDCs.

⁵ "Illegal use of FDCs beyond 2 Years" refers a violation of the requirement under Cambodian law, as interpreted by the Arbitration Council, that two years is the maximum length of time under which a worker can be employed under successive Fixed Duration Contracts (FDC), before the worker's employment contract must be converted to an Undetermined Duration Contract (UDC). Where the WRC was unable to reach a finding regarding this practice at a particular factory, this is indicated with "U/C" (Unable to Confirm). Where this question was not applicable to a given factory, either because the factory had been in operation for fewer than two years or because it did not employ workers under FDCs, this is indicated with "N/A" (Not Applicable).

| Nr. | Factory Name | GMAC Member? (* Executive Committee) | Monitored by ILO-BFC Program? ² Collegiate Licensee? ³ | Supplier to | Type(s) of Contracts in Use? ⁴ | Illegal Use of FDCs beyond 2 Years? ⁵ | Buyers Reported | Notes |
|-----|--|--------------------------------------|--|-------------|---|--|---|---|
| 9 | Best Tan Garment Ltd. | ✓* | ✓ | | Only FDC | ● | Jordan Manufacturing | Workers are denied seniority and maternity benefits. |
| 10 | Blooming Textile Corporation | * | * | | Only FDC | ● | | |
| 11 | Bloomtime Embroidery Pte Ltd. | ✓(*) | ✓ | ✓ | Only FDC | ● | Team Edition, Disney, PVH, Gap | Owned by Luen Thai Group. |
| 12 | Blossom Century (Cambodia) Ltd. | ✓ | ✓ | | Only FDC | ● | Walmart, Disney, Tesco, Marks & Spencer, Inditex, Target, Bestseller, C&A, Arcadia Group | Workers are given new starting date after each contract renewal resulting in denial of seniority benefits. |
| 13 | Bright Sky Pte. Ltd. | ✓(*) | ✓ | ✓ | Only FDC | ● | MJ Softe, PVH, Walmart, Disney, Gap, VF, Dallas Cowboys, Talbot, H&M, Marks & Spencer, Footlocker, C&A, PriceSmart, Carter's, Aeropostale, Children's Place, C&O Apparel, Fifth & Pacific Co., Dirt Cheap, Calvin Klein | Owned by Luen Thai Group. |
| 14 | Cambo Handsome Ltd. | ✓* | ✓ | | FDC & UDC | U/C | Gap, Kohl's, Sears, H&M, Forever 21, JC Penney, La Senza, Walmart, American Eagle, Mango | Owned by Hansoll Textile Group. |
| 15 | Cambo Kotop Ltd. | ✓(*) | ✓ | | Only FDC | N/A | Walmart, H&M, JC Penney, Gymboree, Mango, Kohl's, Gap | Owned by Hansoll Textile Group. |
| 16 | Cambo Yun Fung Garment (formerly Best One) | * | * | | Only FDC | ● | | |
| 17 | Camitex (Cambodia) Mfg. Co. Ltd. | ✓ | ✓ | (✓) | Only FDC | ● | Walmart, Li & Fung, Loblaw, JC Penney, Kohl's, Russell Newmar, Komar (Carole Hochman), Ross, Ikeddi, Costco | Owned by Gspec-Intl. |
| 18 | Canteran Apparel (Cambodia) Co. Ltd. | ✓ | ✓ | | Majority FDC | ● | Walmart, Costco, Danny and Nicole (Siouni and Zarr Corp.), Kohl's, California Dynasty, Komar (Carole Hochman) | Workers are denied seniority benefits. |
| 19 | Chu Hsing Garments (Cambodia) Co. Ltd. | ✓ | ✓ | | Majority FDC | ● | Levi's, VF, Kohl's, H&M, Hybrid Promotions, Marks & Spencer | |
| 20 | Clean Circle Co. Ltd. | ✓ | * | | Only FDC | ● | Anna Sui, Riz Shoes | Footwear factory. |
| 21 | Daqian Textile (Cambodia) Co. Ltd. | ✓ | ✓ | (✓) | Only FDC | N/A | Nike, Adidas, Puma | Opened in 2012. Owned by Shen Zhou group |
| 22 | Da Rong Print and Embroidery Co. Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Adidas, Gap, VF, Columbia, Nike | Factory has CBA requiring that, after two years' employment, workers' contracts are converted to UDCs. 25% of workers are employed on FDCs. |

| Nr. | Factory Name | GMAC Member? (* Executive Committee) | Monitored by ILO-BFC Program? Collegiate Licensee?* | Supplier to | Type(s) of Contracts in Use?* | Illegal Use of FDCs beyond 2 Years?* | Buyers Reported | Notes |
|-----|---|--------------------------------------|---|-------------|-------------------------------|--------------------------------------|---|---|
| 23 | Dignity Knitter Limited. (formerly River Rich) | ✓ | ✓ | ✓ | Majority FDC | ● | Walmart, Nygard, Inditex, Marks & Spencer, H&M, Mango | 65% of workers are employed on FDCs. Factory owned by Addchance Group. |
| 24 | E Garment Co., Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | VF, Marks & Spencer, C&A, Diesel, Esprit, Okaidi, GruppoCoin, Bon-Ton, Loblaw, Dressbarn | Male workers are employed on very short term FDCs (21 days to 2 months). 70% of workers are employed on UDCs. |
| 25 | Evergreen Industrial Co. Ltd. | ✓* | ✓ | ✓ | Only UDC | ● | VF, H&M, Celio, Next, C&A | |
| 26 | Five Stars Cotton Garment (Cambodia) Ltd. | ✓ | ✓ | ✓ | Only FDC | N/A | Gap | Factory opened in 2012. |
| 27 | Flexitime (Cambodia) Apparel Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Marks & Spencer, s.Oliver, Tesco, Champion, Quicksilver, Esprit, Mango | |
| 28 | Fortune Garment & Woollen Knitting Factory Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Jones Apparel Group, Ralph Lauren, Arcadia, Top Shop, Bhs, Next, Tesco, H&M, Inditex, Marks & Spencer | 10% of workers are employed on FDCs, with some workers employed on FDCs beyond two years. 20% of workers are employed on 1-day contracts. |
| 29 | Full Fortune Knitting Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Walmart, Nygard, Inditex, Marks & Spencer | Owned by Addchance Group. |
| 30 | G Foremost (Cambodia) Co. Ltd. | ✓ | ✱ | ✓ | Only FDC | ● | Bussola, Camel, PVH (Tommy Hilfiger) | Workers are denied seniority, annual leave and maternity benefits. |
| 31 | Ghim Li (Cambodia) Pte. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Walmart, Macy's, Moret Group, Target, Dirt Cheap | |
| 32 | Gladpeer Garments Factory (Cambodia) Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Pine Hosiery Mills, H&M, Destiny Maternity, Oxford Industries (Tommy Bahama) | |
| 33 | Global Apparel Ltd. | ✓(+) | ✓ | ✓ | Majority FDC | ● | Adidas, Gap, Puma | Owned by PCCS Group. Workers are denied seniority and maternity benefits. |
| 34 | Glory Knitwear Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Gap, H&M, Hudson Bay, Marks & Spencer | Workers are denied seniority benefits. |
| 35 | Gold Kamvimek Garment Factory Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | PVH, Haggard Clothing, Timberland, Next, Target, Walmart, Marc Ecco, H&M, Kazoo, Broder Bros. | |
| 36 | Goldfame Enterprises Knitters Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | H&M, PVH, Inditex, Marks & Spencer, Tesco, Gap | 80%+ of the workforce is employed on FDCs. Workers are denied seniority and maternity benefits. |
| 37 | Grand Textiles (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | MJ Soffe, Disney, Danskin Now | Owned by New Wide Group |
| 38 | Grand Twins International (Cambodia) Ltd. | ✓* | ✓ | ✓ | Only FDC | ● | Adidas, Levi's, Amer Sports, Manhattan Beachwear | |

| Nr. | Factory Name | GMAC Member? (* Executive Committee) | Monitored by ILO-BFC Program? ² | Supplier to Collegiate Licensee? ³ | Type(s) of Contracts in Use? ⁴ | Illegal Use of FDCs beyond 2 Years? ⁵ | Buyers Reported | Notes |
|-----|---|---|--|---|---|---|--|-------|
| 39 | Great Honour Textile Factory Ltd. | ✓ | ✓ | Majority UDC | ● | H&M, Marks & Spencer, Inditex | | |
| 40 | Great Union (Cambodia) Garment Co. Ltd. | ✓ | ✓ | Only FDC | ● | Walmart, Loblaw, H&M | | |
| 41 | Heart Enterprise (Cambodia) Co. Ltd. | ✓ | ✓ | Only FDC | ● | Walmart, New York Laundry, Almost Nothing, Cato, Lizden Industries | | |
| 42 | Heng Shing (Cambodia) Garment Mfg. Ltd. | ✓ | ✓ | Only FDC | ● | American Eagle, PVH (Calvin Klein), Ezrani 2 (Ruim) | | |
| 43 | Hongs One (Cambodia) Garment Co. Ltd. | ✓ | ✓ | Only FDC | ● | Moret Group, PVH (Calvin Klein) | Owned by Luen Thai Group. | |
| 44 | Huey Chuen (Cambodia) Corp. Ltd. | ✓ | ✗ | Majority UDC | ● | Puma | | |
| 45 | Huey Chuen (Cambodia) Corp Ltd. (Meanchey Branch) | ✓ | ✗ | Only FDC | ● | Puma | | |
| 46 | Hung Wah (Cambodia) Garment Mfg. Ltd.-I | ✓ | ✓ | Majority FDC | ● | MJ Softe, H&M, Esprit, Ash City, PVH (Calvin Klein), Li & Fung, Abercrombie & Fitch, Loblaw, Walmart, Giordano | Workers denied seniority benefits. | |
| 47 | Hung Wah (Cambodia) Garment Mfg. Ltd.-II | ✓ | ✓ | Only FDC | ● | MJ Softe, H&M, Esprit, Ash City, PVH (Calvin Klein), Li & Fung, Marks & Spencer, Abercrombie & Fitch, Loblaw, Walmart, Giordano | | |
| 48 | I Cheng Cambodia Co. Ltd. | ✓ | ✗ | Only FDC | N/A | Magnum | Factory opened in 2012. | |
| 49 | In Fong (Cambodia) Garment Co. Ltd. | ✓* | ✓ | Majority FDC | ● | | | |
| 50 | In Jae Garment Co. Ltd. | ✓ | ✓ | Only FDC | ● | JC Penney, Moret Group, Aeropostale, Costco, Li & Fung | | |
| 51 | International Fashion Royal Co. Ltd. | ✓ | ✓ | Only UDC | ● | Tresics (Damo Textile), Unicolors | | |
| 52 | JIT Textiles Ltd. | ✓* | ✓ | Only FDC | ● | Adidas, Puma, Gander Mountains, Gap | | |
| 53 | JK Forever Co. Ltd. | ✓ | ✓ | Majority UDC | U/C | Walmart, Planet Gold, Moret Group, Jones Apparel Group, Leonard Feinberg | 30% of workers are employed on FDCs. Some are employed on consecutive 21-day contracts for several years. Workers are denied seniority benefits. | |
| 54 | JRB Action Textile & Clothing Ltd. | ✓ | ✓ | Majority FDC | ● | PVH, Disney, C&A (as licensee of Sanrio for Hello Kitty), American Eagle, Contempo, Cotton On Group | 60% of workers are employed on FDCs. Workers are denied seniority benefits. | |
| 55 | Jacqsintex Industries Cambodia Co. Ltd. | ✓ | ✓ | Majority FDC | ● | Moret Group | | |
| 56 | JTH Textile (Cambodia) Inc. | ✓ | ✓ | Only FDC | ● | Gap, Kohl's, Macy's, LL Bean | Formerly Lotus Textile Garment (Cam). | |
| 57 | Kaoway Sports Ltd. | ✓ | ✗ | Only FDC | ● | Puma | | |
| 58 | Kbal Koah Garment Co. Ltd. | ✓ | ✓ | Majority FDC | ● | Childrens Place, Kayo Clothing, Delta Gallii, C&O Apparel | 55% of workers are employed on FDCs. | |

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| 59 | Kie & Kie World Co. Ltd | ✓ | ✓ | ✓ | Only UDC | ● | Walmart, Li & Fung, VF, Moxie Apparel, Dillard's, Aeropostale, Oakley, Forever 21, Footlocker, JC Penney, In Mocean, Kohl's | |
| 60 | Kin Tai Garment Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Nygard, 5 11 Tactical, Armani Jeans | 95% are employed on FDCs. Workers are denied seniority and maternity benefits. |
| 61 | King Fashion Garment Co. Ltd | ✓* | ✓ | ✓ | Only FDC | ● | Russell, H&M, Loblaw, Polo Ralph Lauren, Groupe Dynamite, Jones Apparel Group, American Eagle, Komar Brands, Hudson Bay, Belk, Planet Gold, Li & Fung, Ikeddi, Mast Global Fashion, Marks & Spencer | |
| 62 | King First Industrial Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Walmart, JC Penney, H&M, Kohl's | |
| 63 | King Way | ✗ | ✗ | ✗ | Only FDC | ● | H&M, Inditex, Marks & Spencer, Tesco | |
| 64 | Long Victory International (Cambodia) Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Bon-Ton, H&M | Workers are denied seniority benefits. |
| 65 | M & V International Manufacturing Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | H&M, Marks & Spencer, Next, Cello, Auchan, Walmart | 90% are employed on FDCs. Workers are denied seniority and maternity benefits. |
| 66 | Makalot Garments (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Kohl's, Target, Walmart, Carter's, H&M, Gap, Inditex, Decathlon, VF, JC Penney, Abercrombie & Fitch, Hanesbrands | |
| 67 | Manhattan (Medtecs) | ✓* | ✓ | ✓ | Majority FDC | ● | Encompass, ICP Medical | Manufactures hospital supplies. |
| 68 | Maru Chuen (Cambodia) Corp. Ltd. | ✓ | ✗ | ✗ | Majority UDC | ● | Puma | |
| 69 | Maurea Garments Corp. | ✓ | ✓ | ✓ | Only FDC | ● | Walmart, JC Penney, Guess? | |
| 70 | Maxlin (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Russell, Macy's, Mango | 20% of workers are employed on FDCs. |
| 71 | Medcrest Textiles (Cambodia) Co. Ltd. | ✓* | ✓ | (✓) | Majority FDC | ● | | Manufactures hospital supplies. |
| 72 | Meng Tong Garment Manufactory Ltd. | ✓(*) | ✓ | ✓ | Only FDC | ● | Kohl's, Gap, Hanesbrands, Marks & Spencer, Polo Ralph Lauren | |
| 73 | Meroson (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Oakley, Hurley, Cataria, White Wave Sportswear | |
| 74 | Nan Kuang Garment (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Adidas, Nygard, Trimark Sportswear | |
| 75 | New Archid Garment Factory Ltd. | ✓ | ✓ | ✓ | FDC & UDC | ● | Levi's, H&M, Forever 21, PriceSmart, Tiger J., Esp Group | |
| 76 | New Orient (Cambodia) Garment Co. Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Adidas, VF, Footlocker, H&M, Reebok, Jenou Neuman | 10% of workers are employed on FDCs. |

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| 77 | New Wide (Cambodia) Garment Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Holloway Sportswear, MJ Soffe, Vantage Custom Classics, Walmart, PVH, Ash City, Belk, Tchibo, Li & Fung, JJ-S Mae, Mast Global Fashion, Tharanco Bloch, Shimano (Pearl Izumi), Lifestyles | |
| 78 | Nex-t Apparel (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | N/A | Target, Topson Downs | |
| 79 | Now Corp | ✓ | ✓ | ✓ | FDC & UDC | ● | Colony Holdings, Camus Now, Walmart, JK Cambo | |
| 80 | Nugget Textile (Pte.) Ltd. | ✓ | ✓ | ✓ | Majority FDC | U/C | Shopco, Pamida, Moret Group, Kroger, Fred Meyer, MJ Soffe | |
| 81 | Ocean Garment Co. Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Gap | |
| 82 | Orsambath (Prey Veng Province) | * | * | ✓ | Only FDC | ● | Marks & Spencer | |
| 83 | Pak Shun Knitting Factory Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | H&M, PVH, Inditex, Marks & Spencer, Tesco | Factory is owned by Goldframe group. |
| 84 | Papillon Textile Co. Ltd. (former Tun Yun) | ✓ | ✓ | ✓ | FDC & UDC | U/C | Adidas, Puma | |
| 85 | Perfecta (Cambodia) Garment Co. Ltd. | * | * | ✓ | Only FDC | ● | Walmart | |
| 86 | Pine Great (Cambodia) Garments Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | U/C | Walmart, Target, Kmart, Gap, Sears, Marks & Spencer | |
| 87 | Quantum Apparel (Cambodia) Ltd. | ✓(*) | ✓ | ✓ | Only FDC | ● | Marks & Spencer | |
| 88 | Quantum Clothing (Cambodia) Ltd. | ✓* | ✓ | ✓ | Only UDC | ● | Marks & Spencer, Jaytex Group, Moores | |
| 89 | Quicksew (Cambodia) Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Walmart, Children's Place, InMocean, Pacific Sunwear, Spanx, Bwi | |
| 90 | Quint Major Industrial Co. Ltd. | ✓(*) | ✓ | ✓ | Majority UDC | U/C | Ash City, Adidas, Polo Ralph Lauren, Perry Ellis, Kohl's, VF | |
| 91 | Reliable Source Industrial (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Under Armour, Adidas, VF, American Eagle, Marks & Spencer, Lulu Lemon, Zuffa, Sports Authority, Limited Brands, Harrow Sports, Lucy Activewear | |
| 92 | Roo Hsing Garment Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Levi's, American Eagle, Perry Ellis, Gap, VF, Columbia Sportswear, Hybrid Promotions, Marks & Spencer | |
| 93 | S.H. International Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Moret Group, Marika | |
| 94 | Sabrina (Cambodia) Garment Mfg. Corp. | ✓ | ✓ | ✓ | Majority UDC | ● | Nike, Lulu Lemon, VF, Amer Sports, Wilson Sporting Goods, Mavic | 10% of workers are employed on FDCs. |
| 95 | Sae Han International (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | FDC & UDC | ● | Walmart, Groupe Dynamite, Age Group | |

| Nr. | Factory Name | GMAC Member? (* Executive Committee) | Monitored by ILO-BFC Program? ² | Supplier to Collegiate Licensee? ³ | Type(s) of Contracts in Use? ⁴ | Illegal Use of FDCs beyond 2 Years? ⁵ | Buyers Reported | Notes |
|-----|--|---|--|---|---|--|---|--|
| 96 | San Fong International Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Knights Apparel , Gap, Li & Fung, Outerstuff, Marks & Spencer | |
| 97 | Sangwoo (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority UDC | U/C | Gap, H&M | 20% of workers are employed on FDCs. |
| 98 | Seratex Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Walmart, H&M, Dynasty Fashion, Target, Kohls | Some workers are employed on one month contracts. Workers are denied seniority bonuses and maternity leave. |
| 99 | Shen Zhou (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Nike, Russell , Adidas, Puma, Uniqlo | |
| 100 | Sinomax International (Cambodia)-branch 1 | ✓ | ✓ | ✓ | Majority FDC | ● | Children's Place | 70% are employed on FDCs. Some are re-employed after a few days break with resulting loss of seniority bonus, extra annual leave and right to maternity leave. |
| 101 | SL (II) Garment Processing (Cambodia) Ltd. | ✓ | ✓ | ✓ | Majority UDC | ● | Levi's, Macy's, Parker School Uniforms H&M, J Brand Jeans, Inditex, Union Bay, YSL | 40% of workers are employed on FDCs. |
| 102 | South Bay Enterprise Co. Ltd. | ✓ | ✓ | ✓ | FDC & UDC | ● | Moose Creek | |
| 103 | Sun Sky (Cambodia) Industries Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | ● | Walmart, Bon Ton, Macy's, Champion, Cato | |
| 104 | Suntex Pte. Ltd. | ✓* | ✓ | (✓) | Only FDC | ● | Disney, VF, Gap, Dallas Cowboys, New Balance, Russell, Aeropostale, H&M, Authentic T-shirt Co., Marks & Spencer | Owned by Luen Thai Group. |
| 105 | Sun Well Shoes Co. Ltd. | ✓ | ✘ | ✓ | Only FDC | ● | Adidas, Regence (Acton, Blondo) | |
| 106 | Su Tong Fang Group Ying Kan (Cam.) Gar. | ✓ | ✓ | ✓ | Majority FDC | ● | Levi's | |
| 107 | Tai Yang Enterprises Co. Ltd. | ✓* | ✓ | ✓ | Majority FDC | ● | Gap, Levi's, Loblaw | Workers' contracts were converted from UDCs to FDCs in August 2012. Some workers are denied seniority benefits. |
| 108 | Talent Garment Industry | ✓ | ✓ | ✓ | Only FDC | ● | MJ Softe , Walmart, Puma, Loblaw, Belk, JC Penney, Trimark Sportswear, Jones Apparel Group | |
| 109 | Thai Pore Garment Manufacturing Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Macy's, Hudson Bay, Parker School Uniforms, Mango, Puma | Workers' contracts were converted from UDCs to FDCs when factory moved to new location. |
| 110 | Top One Garments (Cambodia) Mfg. Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | College Concepts , Bhs, Debenhams, Marks & Spencer, H&M | Owned by G-Spec Intl. Workers are denied seniority and maternity benefits. |
| 111 | Top Summit Garment Inc. | ✓ | ✓ | (✓) | Only FDC | N/A | Nike | Owned by Sabrina Garment Mfg. |
| 112 | Top World Garment (Cambodia) Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Children's Place | 60% of workers are employed on FDCs. |

| Nr. | Factory Name | GMAC Member? (* Executive Committee) | Monitored by ILO-BFC Program? ² | Supplier to Collegiate Licensee? ³ | Type(s) of Contracts in Use? ⁴ | Illegal Use of FDCs beyond 2 Years? ⁵ | Buyers Reported | Notes |
|-----|--|--------------------------------------|--|---|---|--|--|--------------------------------------|
| 113 | Trax Apparel (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Only FDC | N/A | Adidas, Puma | Factory opened in 2012. |
| 114 | United Apparel Cambodia Inc. | ✓ | ✓ | ✓ | Only FDC | ● | Gap, Talbots, PVH, Eddie Bauer, Kohl's, Under Armour, Sears, Abercrombie & Fitch, Salomon | |
| 115 | USA Fully Field (Cambodia) Garments C/L | ✓ | ✓ | ✓ | Majority FDC | ● | Loblaw, LA Gear, Givova | |
| 116 | Violet Apparel (Cambodia) Co. Ltd. | ✓(*) | ✓ | ✓ | Majority FDC | U/C | H&M, Gap, Russell | |
| 117 | Volumecocomo Apparel (Cambodia) Inc. | ✓ | ✓ | ✓ | Only FDC | ● | Kohl's, JC Penney, Kmart, Cato, Ross, Sears, VF | |
| 118 | Weibo Best Production (Cambodia) Co. Ltd. | ✓ | ✘ | ✘ | Only FDC | N/A | Levi's (Dockers), Perry Ellis | Factory opened in 2012. |
| 119 | Whitex Garments (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Sears, Hanesbrands, Hudson Bay, Sara Lee, Primark, Kmart, Delta Galil, Macy's Marks & Spencer | |
| 120 | Wing Star Shoes Co. Ltd | ✓(*) | ✘ | ✘ | Only FDC | ● | Asics | |
| 121 | Win Shingtex (Cambodia) Co. Ltd | ✓ | ✓ | ✓ | Majority FDC | ● | Eddie Bauer, PriceSmart, Li & Fung, JC Penney, Komar Brands | 80% of workers are employed on FDCs. |
| 122 | Xin Fang (Cambodia) Garment Mfg. | ✓ | ✓ | ✓ | Only FDC | ● | E5, Walmart, Sears, Moret Group, Komar Brands, Leonard Feinberg, TJ Maxx, MJ Soffe, Jones Apparel Group, O'Neil, Russell (Spalding), High Life | |
| 123 | Yang Guang (Cambodia) Pte. Ltd. | ✘ | ✘ | ✘ | Majority FDC | ● | | |
| 124 | Yu Da Garment Industry (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | U/C | Walmart, Hudson Bay, Ross, High Life Llc., Liz Claiborne, Jones Apparel Group, Trimark Sportswear, Ellen Tracy, Firetrap | |
| 125 | Yu Fa Garment Industry (Cambodia) Co. Ltd. | ✓ | ✓ | ✓ | Majority FDC | ● | Walmart, Ross, Outerstuff, Komar Brands, Adidas, Isfel Co | |
| 126 | Zongtex Garment Mfg. Ltd | ✓ | ✓ | ✓ | Only FDC | ● | E5, Planet Gold, Moret Group, Ross, Leonard Feinberg, Army & Air Force Exchange Service, Komar Brands, Cato, Jese Apparel, Hi Rollers Sportswear, Costco | |
| 127 | Zongtex Garment Mfg. Ltd. (Pochentong Tong branch) | ✘ | ✘ | ✓ | Only FDC | ● | E5, Planet Gold, Moret Group, Ross, Leonard Feinberg, Army & Air Force Exchange Service, Komar Brands, Cato, Jese Apparel, Hi Rollers Sportswear, Costco | |

**Memorandum of Understanding
On Improving Industrial Relations in the Garment Industry
Sunway Hotel, Phnom Penh
28 September 2010**

In the interest of promoting harmonious industrial relations in Cambodia, we, the undersigned parties representing workers and employers in the garment industry, have committed today to improve industrial relations in the garment industry. This solemn agreement, referred to as the MoU, has been reached freely and in good faith, and commits the parties to respect and adhere to certain key principles, and to follow up these principles with a number of concrete steps and actions.

This MoU covers, on the side of employers, current and future members of the Garment Manufacturers Association in Cambodia. It covers, on the side of the unions, the confederations and federations that have signed this MoU, and their current and future affiliates at the federation and enterprise level.

The undersigned shall promote and encourage the spirit of this MoU to all employers and workers who are not signatory to this MoU.

Parties agree to treat this MoU as a whole package; each article cannot be read or referred to individually. The monitoring mechanism agreed herein shall review adherence to this MoU as a whole. If either party finds, through the monitoring mechanism described herein, that violations of the MoU by either party make it impossible to implement, then the parties may choose to declare the MoU null and void. However, the parties agree not to declare the MoU null and void for at least one year following the signature of the MoU.

This text specifies these principles and commitments.

- 1) Parties agree to adhere to national law
- 2) Both parties support CBA in order to achieve certainty and predictability, and to protect rights and terms and conditions of work for both parties.
- 3) Both parties support the MRS as the exclusive bargaining agent on behalf of all workers in the enterprise. Minority unions can participate in the process by choice but along with all employees must respect the authority of the MRS union, and have no right to initiate or disrupt bargaining or to object to any CBA reached by MRS union
- 4) A CBA negotiated by MRS union applies to all employees in the enterprise and no strike or lockout should be permitted by any group during the term of the CBA. No further claims shall be lodged by either party during the term of the agreement.

5) Any dispute that arises during the term of the CBA will be settled in accordance with a shortened dispute procedure with binding arbitration on rights disputes. No strike shall take place over disputes of rights.

6) In the absence of a CBA, the parties shall agree to use the national dispute procedure and accept, where mediation is unable to resolve the issue, binding arbitration for rights disputes. The parties also agree to follow the dispute resolution procedures and not resort to strike or lockout during the process. Where an arbitration decision on dispute of rights is given, the employer and workers and their representatives accept that the decision is final and binding on them. Where a party fails to honour the agreement, then strike or lockout shall be available a last resort.

IMPLEMENTATION: Union confederations and federations, and GMAC and its members factories agree to undertake the following steps to implement this MoU in good faith:

1) Media and Publicity

- *To issue a joint press release upon signing the MoU, in Khmer, Chinese and English, and distribute it to relevant national and international media*
- *Post the MoU and press release on GMAC and union websites*
- *With the consent of the parties, ILO may also take measures to inform the public through newsletters, websites, newspapers etc.*

2) Inform unions and employers

- *Unions shall send a copy of the signed MoU to each union federation and enterprise union; GMAC shall send a copy of the signed MoU to the General Manager and senior manager responsible for HR at each member factory*
- *With ILO assistance, develop brochure or other promotional and educational material that both GMAC and union confederations and federations can send to members*
- *Post the agreement and/or signed model MoU in a public space within the factory*
- *Encourage workers and employers at the enterprise level to discuss, reproduce and sign this MoU at the enterprise level*

3) Inform Royal Government of Cambodia

- *On behalf of all parties, ILO shall send a copy of the MoU to Ministry of Labour and Vocational Training at central and provincial level; Ministry of Commerce; Ministry of Social Affairs, Veterans and Youth Rehabilitation; and other government authorities as appropriate.*
- *On behalf of all parties, ILO shall take measures to ensure that relevant MOLVT officials concerned with dispute resolution and labour inspection are aware of and understand the content of the MoU.*
- *With the consent of the parties, ILO may also take measures to ensure that MOLVT and other government agencies are aware of this MoU.*

4) *Inform Arbitration Council*

- *On behalf of all parties, ILO shall send a copy of the signed MoU to the Arbitration Council and request the Secretariat of the Arbitration Council to ensure that parties covered by the MoU are aware of its contents*

The above applies to Points 1 through 6 of the agreement.

7) The parties agree to carry out fact-based joint research on the prevalence and nature of short term employment contracts in the garment industry. On the basis of this research, the parties agree examine limiting the use of fixed duration contracts to legitimate reasons such as business cycle, seasonality, and related reasons.

IMPLEMENTATION: ILO shall draft TORs for this research, which shall be reviewed and agreed by unions and GMAC. The research shall be completed no later than 2 months after the agreement on the TORs, and a report shall be sent to unions and GMAC no later than one month after the research is completed. The parties agree to meet within one month after receiving the report to discuss its findings and to determine further policy measures, if any.

8) The parties agree to start a national policy dialogue on productivity.

IMPLEMENTATION: Employers and unions undersigned, in collaboration with relevant government agencies, training institutions and national and international organizations, commit to seek opportunities for, and to engage in good faith in, a national dialogue to improve productivity

9) The parties agree to discuss the selection process of arbitrators in order to ensure confidence in the Arbitration Council by all parties.

IMPLEMENTATION: Under the auspices of the World Bank's Demand for Good Governance program, which provides funding for the AC, a tripartite advisory committee has been established. This committee may wish to discuss the process of selecting arbitrators.

MONITORING MECHANISM: The parties agree to meet 4 times per year to review and monitor implementation of this MoU. The parties shall, in good faith, attempt to resolve any differences that may come up during the life of this MoU.

Timeframe: This agreement comes into effect on 1 January 2011. The right to terminate this agreement as described herein shall come into effect after 1 October 2011.

Signed on Behalf of GMAA




Date: 28 September 2010

ME. VAN Sou Leng, Chairman

Signed on behalf of Union Confederations, Federations and affiliated enterprise unions

1.  Print Name: MORI NHISY

Confederation/Federation Name: Cambodian National Confederation (CNC)

2.  Print Name: Som Aum

Confederation/Federation Name: National Union Alliance Chamber of Cambodia (NACC)

3.  Print Name: Vong Savann

Confederation/Federation Name: Cambodian Confederation of Trade Unions (CCTU)

4.  Print Name: Ath Thorn

Confederation/Federation Name: Cambodian Labour Confederation (CLC)

5.  Print Name: Rong Chhan

Confederation/Federation Name: Cambodian Confederation of Unions (CCU)

6.  Print Name: HANG Sotiya

Confederation/Federation Name: Khmer Youth Federation of Trade Unions (KYFTU)

**Memorandum of Understanding
On Improving Industrial Relations in the Garment Industry
Hotel Cambodiana, Phnom Penh
3 October 2012**

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This MoU covers, on the side of employers, current and future members of the Garment Manufacturers Association in Cambodia. It covers, on the side of the unions, the confederations and federations that have signed this MoU, and their current and future affiliates at the enterprise level. Any registered union federations and confederations may "opt-in" to this MOU by informing in writing the Secretariat of the Arbitration Council, with copies to GMAC and signatory union confederations.

The undersigned shall promote and encourage the spirit of this MoU to all employers and workers who are not signatory to this MoU. GMAC, with the support of unions, will make particular efforts to extend coverage of this MOU to all garment and footwear factories registered with NSSF.

Parties agree to treat this MoU as a whole package; each article cannot be read or referred to individually. The monitoring mechanism agreed herein shall review adherence to this MoU as a whole. If either party finds, through the monitoring mechanism agreed herein, that violations of the MoU by either party make it impossible to implement, then the parties may choose to declare the MoU null and void. However, the parties agree not to declare the MoU null and void for at least one year following the signature of the MoU.

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- 4) A CBA negotiated by MRS union applies to all employees in the enterprise and no strike or lockout should be permitted by any group during the term of the CBA. No further claims shall be lodged by either party during the term of the agreement.

5) Any dispute that arises during the term of the CBA will be settled in accordance with a shortened dispute procedure with binding arbitration on rights disputes. No strike shall take place over disputes of rights.

6) In the absence of a CBA, the parties shall agree to use the national dispute procedure and accept, where mediation is unable to resolve the issue, binding arbitration for rights disputes. The parties also agree to follow the dispute resolution procedures and not resort to strike or lockout during the process. Where an arbitration decision on dispute of rights is given, the employer and workers and their representatives accept that the decision is final and binding on them. Where a party fails to honour the agreement, then strike or lockout shall be available as a last resort.

IMPLEMENTATION: Union confederations and federations, and GMAC and its members factories agree to undertake the following steps to implement this MoU in good faith:

1) *Media and Publicity*

- *To issue a press release upon signing the MoU, in Khmer, Chinese and English, and distribute it to relevant national and international media*
- *Post the MoU and press release on GMAC and union websites*
- *With the consent of the parties, ILO may also take measures to inform the public through newsletters, websites, newspapers etc.*

2) *Inform unions and employers*

- *Unions shall send a copy of the signed MoU to each union federation and enterprise union; GMAC shall send a copy of signed MOU to the General Manager and senior manager responsible for HR at each member factory*
- *With ILO assistance, develop brochure or other promotional and educational material that both GMAC and union confederations and federations can send to their members*
- *Post the agreement and/or signed model MoU in a public space within the factory*
- *Encourage workers and employers at the enterprise level to discuss, reproduce, and sign this MOU at the enterprise level*

3) *Inform Royal Government of Cambodia*

- *On behalf of all parties, ILO shall send a copy of the MoU to Ministry of Labour and Vocational Training at central and provincial level; Ministry of Commerce; Ministry of Social Affairs, Veterans and Youth Rehabilitation; and other government authorities as appropriate.*
- *On behalf of all parties, ILO shall take measures to ensure that relevant MOLVT officials concerned with dispute resolution and labour inspection are aware of and understand the content of the MoU.*
- *With the consent of the parties, ILO may also take measures to ensure that MOLVT and other government agencies are aware of this MoU.*

4) *Inform Arbitration Council*

- Send a copy of the signed MoU to the Arbitration Council and request the Secretariat of the Arbitration Council to ensure that parties covered by the MoU are aware of its contents

The above applies to Points 1 through 6 of the agreement.

7) The parties take note of the LAC decision to establish a working group on the issue of fixed duration and undetermined duration contracts. The parties agree to work in good faith to resolve this matter in this working group.

8) The parties agree to start a national policy dialogue on productivity.

IMPLEMENTATION: Employers and unions undersigned, in collaboration with relevant government agencies, training institutions and national and international organizations, the parties commit to seek opportunities for, and to engage in good faith in, a national dialogue to improve productivity

9) The parties agree to discuss the selection process of arbitrators in order to ensure confidence in the Arbitration Council by all parties.

IMPLEMENTATION: Under the auspices of the World Bank's Demand for Good Governance program, which provides funding for the AC, a tripartite advisory committee has been established. This committee may wish to discuss the process of selecting arbitrators.

OVERALL IMPLEMENTATION: The parties who have signed agree to meet quarterly to review and to strengthen implementation of this MOU. The Arbitration Council Foundation shall be invited to provide information on the application of the MOU. The parties shall, in good faith, attempt to resolve any differences that may come up during the life of this MoU.

Timeframe: This agreement shall come into force from the date of signature until 2 October 2014

Signed on Behalf of GMAC



Date: 03 October 2012

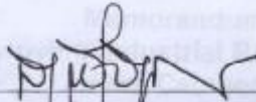
Mr. Ken Loo, Secretary General


Signed on behalf of Union Confederations, Federations and affiliated enterprise unions




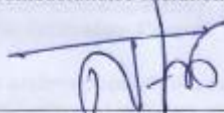
Print Name: SOM HUN

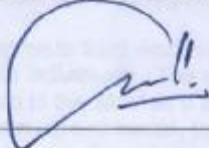
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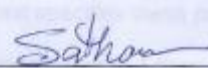

Print Name: Chhun Moulleal
Confederation/Federation Name: Cambodia Confederation of Trade Unions (CCTU)



Print Name: ATH THORN
Confederation/Federation Name: Cambodia Labour Confederation (CLC)


Print Name: Yoeung Chhun
Confederation/Federation Name: Cambodia National Confederation (CNC)


Print Name: Ou Seohat
Confederation/Federation Name: National Labour Confederation of Cambodia (NLC)


Print Name: YANN SOTHORN
Confederation/Federation Name: Cambodian Association of Trade Unions (CATU)


Print Name: Sath Chheang Hour
Confederation/Federation Name: Cambodian National Confederation for Laborers Protection (CNCLP)


Print Name: Mann Sanghak
Confederation/Federation Name: Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)